



THE DOCKET

The Newsletter of the Michigan Association of District Court Magistrates

Winter, 2017

Michigan Indigent Defense in 73B District Court

In 2013, The State of Michigan enacted Act 93 of 2013, MCL 780.981 et al. The Act became effective July 7, 2013 creating the Michigan Indigent Defense Commission, (MIDC) <http://michiganidc.gov/>. In the spring of 2016, the MIDC submitted standards for appointed counsel. The standards include education and training for defense counsel, MIDC suggestions on initial interview of client, a requirement to have investigators and experts available for indigent clients, and a requirement to have counsel present at defendant's first appearance in court and at all other critical stages.

The 73B District Court in Bad Axe implemented procedures to comply with the fourth standard, "Counsel at First Appearance and other Critical Stages." To begin the process, the Court met with the Huron County Prosecutor's Office, the Defense Bar and court staff to discuss implementation of having counsel at first appearance. In August 2016 the project began. The Court worked closely with MIDC, local defense attorneys, and the Prosecutor's Office to ensure a smooth transition. Several meetings were held among the participants to make many adjustments for unforeseen issues. The District Court Judge and the regional representative of MIDC then met with the funding unit to explain

this program and the MIDC. As is said, "the devil is in the details." After a few weeks the process was working smoothly.

In Huron County (population 32,000), arraignments begin Monday through Friday at 1:30 p.m. Defendants are instructed to appear in court at 12:00 noon to meet with a defense attorney. Six local attorneys in the program appear on alternating days. The lawyers explain that their representation is for arraignment purposes only unless the case is able to be disposed of that day. The attorneys explain the charge(s), possible penalties, collateral consequences, constitutional rights, and plea bargain offers if any. Also, bond amount, bond conditions, and concerns are discussed. When the defendant appears in court, the attorney is present and represents the defendant throughout the arraignment process. A prosecutor is also present at arraignments to address bond issues; municipal attorneys have chosen to not appear at arraignments.

As part of the project, the Court has worked closely with MIDC to collect data regarding charged offenses, penalty range, arraignment disposition, and time spent with clients. The Court purchased an inexpensive tablet for

lawyers to enter data which is electronically sent to MIDC at the end of the day's arraignments. The survey was designed by MIDC with input from the Court and local attorneys, and takes about two minutes per case. MIDC will also be collecting data from the Huron County Jail on these cases such as date defendant is taken into custody, date released from custody and actual time served on the charge.

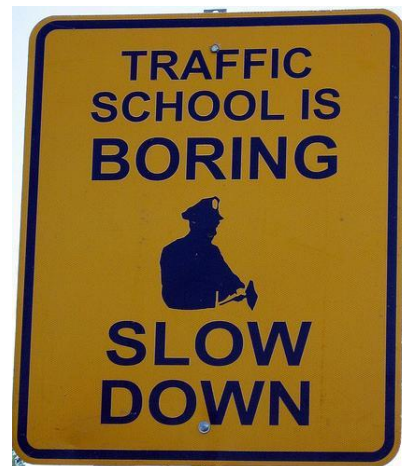
The Court, with input from local defense counsel and the prosecutor's office, has developed a basic process for arraignments (or first appearance of defendants). An intake form was developed specifically for this process. The Court provides the defendants name and file or ticket number, then makes a copy of the complaint or ticket and provides this to the prosecutor for review. The prosecutor then prepares a discovery packet if possible and gives the packet to the Court to hold with the intake form. The defense attorney picks up the packet from the Court and reviews it before meeting with the defendant(s) scheduled for arraignment that day. All discovery packets are returned to the prosecutor for distribution to appointed lawyers when they file appearances. Intake forms are forwarded to the attorney appointed in the case at the time of arraignment. The Court also created a checklist to track progress of packets, intake forms, and any other records related to the case.

After all arraignments for the day are completed, the defense attorney files their arraignment appearance and attorney fee bill with the Court. The Court pays \$65.00 per hour and pays a minimum of one hour on arraignment day. As a result of the project, Huron County has experienced an increase in attorney fee compensation, inability to have two courtrooms conducting arraignments at one time because there is only one defense attorney and one prosecutor available each day. Also, lack of discovery available at the time of arraignment remains a concern. There has also been, as

expected, an increase in defendants requesting court appointed attorneys at arraignment. On the other hand, there have been pleas and sentencing which in the long run will hopefully offset increased attorney fees. However, most importantly, defendants now have the opportunity to discuss their case with a lawyer at their first appearance.

Huron County is a rural community and the following data reflects that. From August 8, 2016 through October 7, 2016, the Court arraigned a total of 144 defendants on new charges and expended a total of \$7,198.00 in attorney fees for the new arraignment process. The average cost per week for Court Appointed attorney fees during the first nine weeks was \$800.00 per week and an average cost of \$50.00 per defendant (based on attorney billings). The Court is averaging a little over 3.7 defendants per day being arraigned on new charges. Also, during the first nine weeks of the program the Court's data showed the following:
78% of cases resulted in arraignment only.
21% of cases resulted in arraignment and plea or arraignment, plea and sentencing.
1% of cases resulted in other dispositions such as bench warrants.

Overall, all participants have worked hard implementing this new program and based upon feedback to the court the program has been effective and well received.



From the President

Jessica Testolin-Reinke, 73B District Court

My husband and I are proud to announce the birth of our son Emmett Rhys Reinke, born January 7, 2017 at 3:48AM. Weighing in at a whopping 10 lbs 12 ounces and 21.5 inches long.



The impact of the Standardized Field Sobriety Test law on police officers and prosecutors

By Kenneth Stecker and Kinga Gorzelewski

From an article published in the December 2016 issue of the Green Light News, a publication of the Prosecuting Attorneys Association of Michigan.

The Standardized Field Sobriety Tests (SFSTs) are a battery of three tests performed during a traffic stop to determine if a driver is impaired. The three tests that make up the SFSTs are the Horizontal Gaze Nystagmus (HGN), the Walk and Turn, and the One-Leg Stand tests. Developed in the 1970s, these tests are scientifically validated and admissible as evidence of impairment in Michigan courts. According to researchers, officers trained to conduct SFSTs correctly identified alcohol-impaired drivers more than 90 percent of the time using the results of SFSTs. Burns and Anderson 1995; Stuster and Burns 1998.

In 1981 the NHTSA promulgated a federal standard for field sobriety testing procedures. States are not required to adhere to this federal standard. Admissibility of the HGN test may be treated differently due to its “scientific nature.” For this reason, HGN results are vulnerable to challenge and may likely be excluded by a court if the test was not administered in strict compliance with established protocols.

The Michigan Court of Appeals has held that, before an officer is allowed to testify about HGN, it must be shown that he or she was qualified to perform the test (i.e. properly trained) and that the officer properly administered the test. *People v. Berger*, 217 Mich App 213 (1996).

On September 22, 2016, a new law took effect that may impact SFST testimony in Michigan. Pursuant to this act, a witness is allowed to testify to SFST results and how they relate to impairment if the witness is qualified by knowledge, skill, experience, training, or education.

The law also specifically states that the HGN is admissible under this provision by an officer trained in how to perform the test. Furthermore, Public Act 242 will not preclude the admissibility of a non-standardized field sobriety test if it complies with the Michigan Rules of Evidence.

Under Public Act 242, “Standardized Field Sobriety Test” means one of the standardized tests validated by the NHTSA. A field sobriety test is considered a SFST under this section if it is administered in substantial compliance with the standards prescribed by the NHTSA. In essence, the act states that the police officer has to administer the tests in substantial compliance with the NHTSA’s standards.

Webster Dictionary defines “substantial” as follows: “Of or having substance, real actual, strong, solid, firm, of considerable worth or value; important.” Webster’s Dictionary defines “compliance” as follows: “A complying, or giving in to a request, wish, or demand; acting in accordance with a request, or a command, rule or instruction.”

The preface to the NHTSA’s Student Manual states as follows: “The procedures outlined in this manual describe how the Standardized Field Sobriety Tests (SFSTs) are to be administered under ideal conditions.

We recognize that the SFSTs will not always be administered under ideal conditions in the field, because such conditions will not always exist. Even when administered under less than ideal conditions, they will generally serve as valid

and useful indicators of impairment. Slight variations from the ideal, i.e. the inability to find a perfectly smooth surface at roadside may have some affect on the evidentiary weight given to the results. However, this does not necessarily make the SFSTs invalid.”

It is important to note that SFSTs are designed as divided attention or psychophysical tests which involve requiring the subject to concentrate on both mental and physical tasks at the same time. These tests are important evidence of impairment in Operating While Intoxicated (OWI) trials. They are designed to mimic the different abilities and tasks involved in operating a motor vehicle. These would include information processing, short-term memory, judgment and decision making, balance, quick steady reactions, clear vision, small muscle control, and limb coordination.

In conclusion, in light of this new law it is more imperative than ever that police officers substantially comply with NHTSA standards in administering the SFSTs. Every piece of an OWI investigation is important to painting the whole picture of impairment—SFSTs included. Let’s do them right and give the defense no reason to file motions to keep them out.

For more information on this article and PAAM training programs, contact Kenneth Stecker or Kinga Gorzelewski, Traffic Safety Resource Prosecutors, at 517-334-6060 or e-mail at steckerk@michigan.gov or gorzelewskik@michigan.gov. Please consult your prosecutor before adopting practices suggested by reports in this article. Discuss your practices that relate to this article with your commanding officers, police legal advisors, and the prosecuting attorney before changing your practice.

41 percent of Michigan young adult driver's text and email while driving

From an article published in the November, 2016 issue of the Safety Network, a publication of the Michigan Office of Highway Safety Planning.

Although Michigan law prohibits drivers from reading, manually typing, or sending a text message while driving, 41 percent of young adult drivers admitted to sending texts and emails on a regular basis while driving, according to a recent statewide telephone survey conducted for the Office of Highway Safety Planning (OHSP).

More than 26 percent indicated they did so daily. The 400-sample survey of 20 to 30-year-olds was directed by Glengariff Group, Inc. Respondents were asked about driving habits, Michigan's texting law, and cell phone use while driving.

"While drivers are aware of the hazards associated with texting and driving, they have an overwhelming desire to remain connected with others no matter what the risk," said Michael L. Prince, OHSP director. "There is an intense need to stay in touch with friends and family around the clock and those emotions are a key factor as traffic safety advocates confront the growing problem of distracted driving."

Despite the danger, 51 percent admitted texting at night and 22 percent had texted when it was snowing. The survey found that 56 percent were more likely to text on a local road. Nearly one in five Michigan young adult drivers consider themselves addicted to their cell phone.

Among those surveyed, 77 percent said they would be much less likely to text or read texts while driving if a child was in the vehicle; and 53

percent would be less likely to text if points were added to driving records in addition to fines.

Under Michigan's texting ban, violators face a \$100 fine for the first offense and \$200 for subsequent offenses.

The OHSP will use the survey results in developing traffic safety strategies to reduce fatalities and injuries caused by distracted driving.

According to the MSP Criminal Justice Information Center, there were 7,516 crashes in Michigan involving distracted driving during 2015, resulting in 28 fatalities and 3,472 injuries. This was up from 5,353 crashes in 2014, resulting in 14 fatalities and 2,401 injuries. Of the distracted driving crashes in 2015, a cell phone was involved in 753 crashes, with three fatalities and 251 injuries.

2017 Judge's Conference

From materials supplied by SCAO.

SCAO does not plan to hold a Michigan Supreme Court Judicial Conference in 2016-2017. As an alternative, MJI will plan one-day Regional Judicial Seminars during the 2016-2017 program year. These seminars will offer education to enhance judicial competencies in the areas of substantive law, ethics, communication and administration. Because these are one-day events, it should be easier for you to attend. It is my hope that you would attend two sessions over the course of the year. For your information these one-day seminars will occur:

- February 2, 2017, Lansing, MI
- April 20, 2017, Bay City, MI
- May 11, 2017, Plymouth, MI

Each seminar will offer morning and afternoon simultaneous educational sessions. Judges may

register to attend one session or multiple sessions offered during each program.

2017 MADCM Annual Conference

By: James Pahl, Editor

Save the dates: September 13, 14 & 15 at the Hotel Indigo, Traverse City. More details coming.

From SCAO

Court Rules and Administrative Orders

Proposed

MCR Cite: 9.200 *et seq.*
ADM File No: [2015-14](#)
Comment expires: December 1, 2016

The proposed amendments rearrange and renumber the rules applicable to the JTC to provide clarity and facilitate navigation. The proposed amendments also include new rules and revisions of current rules regarding costs and sanctions, as well as other substantive proposed changes.

MCR Cite: 2.625 and 3.101
ADM File No: [2016-40](#)
Comment expires: April 1, 2017

The proposed amendments, submitted by the Michigan Creditor's Bar Association, would address recent amendments of MCL 600.4012, would clarify the authority and process for recovering post judgment costs, and would provide clearer procedure for garnishment proceedings.

MRE Cite: 404(b)
ADM File No: [2015-11](#)
Comment expires: March 1, 2017

This proposed amendment would require the

prosecution to provide reasonable notice of other acts evidence in writing or orally in open court.

Adopted

ADM File No: [2002-37](#)
Adm. Order Num.: 2016-3
Effective Date: November 2, 2016

The new administrative order authorizes the Michigan Supreme Court to implement a Prisoner Electronic Filing Program with the Michigan Department of Corrections. Filings by prisoners in the initial phase of the program will be limited to applications for leave to appeal and related documents in criminal cases. At the present, only Carson City Correctional Facility and St. Louis Correctional Facility are participants.

MCR Cite: 2.004, 3.705, 3.708, 3.804, 3.904, 4.101, 4.202, 4.304, 4.401, 5.119, 5.140, 5.402, 5.404, 5.738a, 6.006, and 6.901
ADM File No: [2013-18](#)
Effective Date: January 1, 2017

The adopted amendments would permit courts to expand the use of videoconferencing technology in many court proceedings.

ADM File No: [2014-03](#)
Adm. Order Num.: 2016-5

The new administrative order provides a clearer and simplified version of the ant nepotism policy to be used by courts in Michigan. Effective December 2016, [SCAO Form 75, Nepotism Waiver](#), requires a chief judge to sign and send to the appropriate regional administrator SCAO Form 75 indicating the circumstances of a prospective employee for a position.

Legislation

Statute Cite: MCL 333.7411

P.A. Number: [2016 PA 291](#)

Effective Date: January 16, 2017

What it Does: Allows the Michigan Commission on Law Enforcement Standards (MCOLES) to have access, for certain purposes, to a nonpublic record of a discharge and dismissal of a controlled substance violation maintained by the Michigan State Police.

Statute Cite: MCL 333.7403 & MCL 333.7404

P.A. Number: [2016 PA 307](#) and [2016 PA 308](#)

Effective Date: January 17, 2017

What it Does: Amends the Public Health Code to exempt a person from prohibitions against possessing or using a controlled substance or controlled substance analogue, if he or she sought medical assistance or accompanied another person who sought assistance for a drug overdose or other perceived medical emergency arising from drug use. Revises the definition of “seeks medical assistance.”

Statute Cite: MCL 257.312a

P.A. Number: [2016 PA 318](#)

Effective Date: February 7, 2017

What it Does: Amends the Michigan Vehicle Code to prescribe a misdemeanor penalty for an individual who operates a motorcycle without an endorsement on his or her license. The first violation is punishable by imprisonment for up to 90 days or a maximum fine of \$500, or both. A second or subsequent violation is punishable by imprisonment for up to one year or a maximum fine of \$1,000, or both.

Statute Cite: MCL 338.1087 & 338.1089

P.A. Number: [2016 PA 324](#)

Effective Date: November 22, 2016

What it Does: Amends the Private Security Business and Security Alarm Act to allow a private college security officer appointed under the Act to be sworn

and fully empowered by a local chief of police or deputized by a county sheriff. Allows for a private college security officer who is sworn and fully empowered, to exercise the authority and power of a peace officer. Specifies that unless sworn and fully empowered, a private college security officer would have the limited arrest authority otherwise allowed under the Act.

Statute Cite: MCL 764.2a

P.A. Number: [2016 PA 326](#)

Effective Date: February 20, 2017

What it Does: Amends the Code of Criminal Procedure to include a public airport authority peace officer in provisions that allow peace officers to exercise their authority and power outside the geographical boundaries of their employing entity under certain circumstances. Permits a peace officer to exercise his or her authority and powers outside the geographical boundaries, if a public airport authority peace officer witnessed a violation that occurred within the airspace above the airport authority but while the person committing the violation was outside the public airport authority. Also defines “Public Airport Authority.”

Statute Cite: MCL 780.621

P.A. Number: [2016 PA 336](#)

Effective Date: March 14, 2017

What it Does: Amends the act which governs the setting aside of criminal convictions, to allow someone to apply for the expunction of a conviction for violating a prostitution-related local ordinance that was substantially similar to a State law, as currently permitted if a person is convicted for violating the State law as a direct result of being a victim of a human trafficking violation. (Includes: soliciting, accosting, or enticing prostitution; admitting another person to a place of prostitution; and aiding, assisting, or abetting prostitution.)

Statute Cite: MCL 750.451 and 750.462f
P.A. Number: [2016 PA 338](#)
Effective Date: March 14, 2017

What it Does: Amends the act so that it also applies in local ordinance cases. In any prosecution of a person under 18 for certain prostitution-related offenses, there is a rebuttable presumption that the person was coerced into child sexually abusive activity or commercial sexual activity or was otherwise forced into committing the offense by another person engaged in human trafficking. This amendment requires that the presumption also would apply in a prosecution of a person under 18 for a substantially corresponding local ordinance.

Statute Cite: New act
P.A. Number: [2016 PA 350](#)
Effective Date: March 21, 2017

What it Does: Creates the "Impaired Driving Safety Commission Act" to establish the Commission and do the following (in pertinent part):

- Specify the Commission's responsibilities; including funding a university research program, subject to appropriation, to determine the appropriate threshold of THC bodily content to provide evidence of per se impaired driving.
- Require the Commission to file a final report with the Governor and legislative leaders within two years after the bill's effective date.

Statute Cite: MCL 750.70a
P.A. Number: [2016 PA 353](#)
Effective Date: January 20, 2017

What it Does: Amend the Michigan Penal Code to prohibit an individual (other than the owner or the authorized agent of the owner of a dog, or a law enforcement officer, an animal control officer, or an animal protection shelter employee acting in his or her official capacity), from willfully or maliciously removing a collar from that dog with the intent to remove traceable evidence of the dog's ownership. An individual who violated the bill would be responsible for a **state civil infraction** and would have to be

ordered to pay a civil fine of not less than \$1,000 and not more than \$2,500.

Statute Cite: MCL 436.1703
P.A. Number: [2016 PA 357](#)
Effective Date: January 1, 2018

What it Does: Amends the statute to lower a first violation of minor in possession (MIP) from a misdemeanor to a state civil infraction with a maximum fine of \$100. A second violation is a misdemeanor punishable by imprisonment for not more than 30 days, a maximum fine of \$200, or both. A third offense is a misdemeanor punishable by imprisonment for not more than 60 days, a fine of not more than \$500, or both. An individual can still have the second offense (or first misdemeanor offense) deferred.

Statute Cite: MCL 257.319
P.A. Number: [2016 PA 358](#)
Effective Date: January 1, 2018

What it Does: Defines a "prior conviction" for purposes of a license suspension and indicates that it includes either a misdemeanor or a civil infraction determination. So, if a person has one prior conviction (either a state civil infraction or a misdemeanor), SOS must suspend the license for 90 days and can issue a restricted license after 30 days. If the person has two or more convictions for MIP, SOS must suspend the license for 1 year, and can issue a restricted license after 60 days.

Statute Cite: MCL 287.331
P.A. Number: [2016 PA 392](#) & [393](#)
Effective Date: *unknown*

What it Does: Create the Animal Adoption Protection Act and allows an animal control shelter to consider an individual's criminal history (e.g., conduct an ICHAT search) when deciding whether to allow that individual to adopt an animal. The shelter may choose not to allow an individual who has been convicted of an animal abuse offense to adopt an animal unless a period of five years has elapsed since the date of the

conviction.

Statute Cite: MCL 333.7523 & 333.7524
P.A. Number: [2016 PA 418](#)
Effective Date: March 30, 2017

What it Does: Amends civil forfeiture provisions in Article 7 of the Public Health Code (controlled substances) that allow local units of government and the state to seize property related to criminal activity connected with controlled substances. Applies in cases where property is seized without process. Eliminates the requirement that a bond be provided by a person claiming interest in property subject to forfeiture proceedings to cover the costs and expenses of those proceedings.

Statute Cite: MCL 780.983 et seq.,
P.A. Number: [2016 PA 439](#), [440](#), [441](#), [442](#), and [443](#)
Effective Date: *unknown*

What it Does: Amend the Michigan Indigent Defense Commission Act, which creates the Michigan Indigent Defense Commission (MIDC) within the judicial branch of State government; requires the MIDC to propose minimum standards for the local delivery of indigent criminal defense services providing effective assistance of counsel; and establishes procedures for approval of the standards by the Michigan Supreme Court.

- Reestablishes the MIDC in the Department of Licensing and Regulatory Affairs
- Prohibits the minimum standards from infringing on the Supreme Court's authority over practice and procedure in the courts of the State.
- Revises the definition of "indigent criminal defense system" to refer to local units of government that fund trial courts, rather than such local units combined with trial courts.
- Requires the MIDC to submit proposed standards to the Department, rather than the Supreme Court, for approval or rejection.
- Specifies that an approved minimum standard would not be a rule under the Administrative Procedures Act.

- Specifies that an approved minimum standard would be considered a final department action subject to judicial review to determine whether it was authorized by law, and vest jurisdiction for review in the Court of Claims.
- Revises MIDC principles regarding continuing legal education of defense counsel, and the review of defense counsel.
- Requires a defendant's indigency to be determined by the indigent criminal defense system, rather than by the court, and state that a trial court could play a role in determining indigency.
- Deletes requirements concerning the collection of data by the MIDC from individual attorneys who provide indigent criminal defense services.
- Approval of a standard would be by the Department, rather than the Supreme Court.
- Deletes a requirement that every trial court that is part of an indigent criminal defense system comply with an approved plan under the Act.

Statute Cite: MCL 257.629 & 257.629c
P.A. Number: [2016 PA 445](#)
Effective Date: December 31, 2016

What it Does: Amends the Michigan Vehicle Code to revise, establish or modify current speed limits across Michigan.

Statute Cite: MCL 257.627a & 257.633
P.A. Number: [2016 PA 446](#)
Effective Date: December 31, 2016

What it Does: Amends the Michigan Vehicle Code to modify and or delete provisions relating to school zone speed limits. Allows louvered signs, digital message signs, and flashing lights to supplement or replace permanent signs. Revises the definition of "school" and "school zone" and states that an individual who violates a school zone speed limit is responsible for a civil infraction.

Statute Cite: MCL 257.628
P.A. Number: [2016 PA 447](#)
Effective Date: December 31, 2016

What it Does: Amends the Michigan Vehicle Code to set requirements for the modification of speed limits on roads across Michigan.

Statute Cite: MCL 257.320 et seq.
P.A. Number: [2016 PA 448](#)
Effective Date: December 31, 2016

What it Does: Amends the Michigan Vehicle Code to modify the number of points assigned to a person's driving record for speeding. Allows the SOS, after being notified, to conduct an investigation or reexamination of a person if they have a total of six or more points charged within two years and permits the restriction, suspension, revocation, or the imposition of other terms and conditions based upon that investigation or reexamination.

Statute Cite: MCL 257.724
P.A. Number: [2016 PA 450](#)
Effective Date: *unknown*

What it Does: Amend the Michigan Vehicle Code to do the following:

- Require, rather than permit, the court to impose a misload fine of \$200 per axle, if an overweight vehicle or vehicle combination would be lawful by proper distribution of the load, but one or more axles exceeded the maximum weight by more than 1,000, but less than 4,000 pounds.
- Require the court to impose a per-pound fine for pounds exceeding the permitted axle weight under a special permit, if the court determined that a vehicle or vehicle combination would meet specified loading restrictions by a proper distribution of the load, but one of the axles exceeded the permitted weight by more than 1,000 pounds.
- Revise a provision requiring a per-pound fine to be imposed if the court determines that a vehicle or vehicle combination would be lawful by a proper distribution of the load, but at least one axle exceeded

the permitted axle weight by more than 4,000 pounds, to refer to between 4,000 and 8,000 pounds and require a misload fine of \$400 per axle, up to three axles.

- Require the court to impose a fine according to the per-pound schedule, if a vehicle or vehicle combination would be lawful by a proper distribution of the load, but at least one axle exceeded the permitted weight by more than 8,000 pounds.

Statute Cite: MCL 257.710e
P.A. Number: [2016 PA 460](#)
Effective Date: February 13, 2017

What it Does: Adds an additional exemption to the Motor Vehicle Code allowing the operator of a motor vehicle performing road construction or maintenance in a work zone to wear a lap belt but not a shoulder harness.

Statute Cite: MCL 324.43516, 324.43523a, 324.43545, 324.43516 et seq.
P.A. Number: [2016 PA 461](#), [2016 PA 462](#), [2016 PA 463](#)
Effective Date: March 1, 2018

What it Does: Amends the Natural Resources and Environmental Protection Act to require the DNR to develop electronic licenses and kill tags that individuals could display using electronic devices, no later than March 1, 2018.

Statute Cite: MCL 750.145n
P.A. Number: [2016 PA 480](#)
Effective Date: *unknown*

What it Does: The Penal Code provides that a caregiver or other person with authority over a vulnerable adult is guilty of fourth-degree vulnerable adult abuse if his or her reckless act or reckless failure to act causes physical harm to the vulnerable adult. A violation is a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$1,000. Under the bill, a caregiver or other person with authority over a vulnerable adult also would be guilty of that offense if he or she knowingly committed an

act that, under the circumstances, posed an unreasonable risk of harm or injury to the vulnerable adult, regardless of whether physical harm resulted.

Statute Cite: **600.1987**
P.A. Number: [2016 PA 519](#)
Effective Date: December 13, 2016

What it Does: Extends, for one year, a sunset date in the Revised Judicature Act so that courts could continue to collect certain existing electronic filing fees.

Statute Cite: **333.26427**
P.A. Number: [2016 PA 546](#)
Effective Date: *unknown*

What it Does: Amends the Michigan Medical Marihuana Act (MMMA) to specify that the Act could not be construed to require a private property owner to lease residential property to a person who smoked or cultivated marihuana on the premises, if a written lease prohibited smoking or cultivating marihuana.

Statute Cite: **330.1748**
P.A. Number: [2016 PA 559](#)
Effective Date: *unknown*

What it Does: Amends the Mental Health Code to authorize the disclosure of information in the record of a recipient as necessary for the delivery of mental health services in accordance with Federal privacy law. It would also allow disclosure as necessary for treatment, coordination of care, or payment, in accordance with the Health Insurance Portability and Accountability Act.

Case Law

[People v Turn](#), __ Mich App __ (2016). Defendant admitted during his guilty plea that he stabbed the victim several times in the back and side. During his recovery, the victim used approximately 112 hours of sick, personal, and vacation time to recuperate from his injuries. At sentencing, the trial court ordered defendant to pay \$17,744.44 in restitution. Defendant

challenged the restitution order and the court held a restitution hearing. Following the hearing, the court ordered the defendant to pay restitution to the victim's insurer for actual medical expenses, for the loss of the victim's jacket, and for the loss of his accumulated leave time. The economic benefit of the lost time was \$2,153.77. Defendant appealed. The Court of Appeals held that the time the victim used to recuperate from his injuries falls within the definition of "income loss" even though he was paid by his employer for the time he used. **By using 112 hours of accumulated leave time, the victim lost the ability to use and be paid for taking that time in the future, and he lost the ability to be paid for that time upon termination of his employment. Thus, when the victim used his time, he suffered a monetary loss.**

[Noll v Ritzer](#), __ Mich App __ (2016). Plaintiff sold a motorcycle to a third party for cash, but failed to maintain documentation to prove that the sale had taken place. The person who purchased the motorcycle was subsequently involved in an accident with the motorcycle that involved a fatality. SP towed the motorcycle from the scene and then stored it for nearly a year while the police investigated the incident. The towing fee and storage fees of \$35 per day charged by defendant during that time totaled over \$11,000. Plaintiff was eventually sent a Notice of Abandoned Vehicle and he submitted a petition requesting a hearing to challenge the reasonableness of the towing and storage fees pursuant to MCL 257.252a(6), but did not post the \$40 bond. The district court held the hearing and eventually limited the storage company to only \$1,000 in damages. Defendant appealed. The circuit court determined that because plaintiff was not seeking release of the vehicle, he did not have to post the bond and affirmed. The Court of Appeals reversed and held that "the district and circuit courts erred in determining that MCL 257.252a allowed a hearing challenging the reasonableness of towing and storage fees where [the] plaintiff did not post a bond in the amount of those towing and storage fees[;]" "the amendment of the statutory language by 2008 PA 539 reveals the Legislature's intent that **posting of a bond in the amount of \$40 plus accrued towing and storage fees must accompany a request for a**

hearing under MCL 527.252a, unless the fees have already been paid (or bond posted)."

People v Latz, ___ Mich App ___ (2016). The defendant was a medical marijuana patient who was cited for Illegal Transportation of Marijuana written under MCL 750.474. The defendant appealed to the Court of Appeals by leave from an order affirming the denial of his motion to dismiss his charges which he asserts was an unconstitutional amendment of the Michigan Medical Marijuana Act, MCL 333.26521 *et seq.*, and was superseded by the MMMA. The "defendant, as a compliant medical marijuana patient, [could not] be prosecuted for violating" MCL 750.474, concerning the illegal transportation of marijuana, because "MCL 750.474 is not part of the [MMMA]" and "unambiguously seeks to place additional requirements on the transportation of medical marijuana beyond those imposed by the MMMA[;]" **"if another statute is inconsistent with the MMMA such that it punishes the proper use of medical marijuana, the MMMA controls and the person properly using medical marijuana is immune from punishment."**

People v Jose, ___ Mich App ___ (2016). The defendant was convicted of first-degree CSC and later appealed his conviction and moved to remand his case for a *Ginther*¹ hearing, which was granted. The circuit court granted the defendant's request for a new trial, concluding that the trial counsel's failure to properly authenticate evidence denied the defendant the effective assistance of trial counsel.² COA denied the prosecutor's application for leave to appeal and so did the Michigan Supreme Court. In February 2014, the circuit court appointed an attorney to represent the defendant on retrial and ordered that he "repay the county for this court-appointed attorney and any other costs incurred by the county in this case." The prosecutor decided not to proceed with a retrial and

entered a nolle prosequi. Although the defendant was free from criminal charges, the county sent him notice that he owed \$900 for the cost of his appointed counsel. He filed a motion to vacate that order requiring that he reimburse for his court appointed counsel, relying on MCL 768.34 and the circuit court denied his motion. "MCL 768.34 precludes a trial court from ordering reimbursement of any costs—including the cost of appointed counsel—for a defendant whose prosecution is suspended or abandoned." Additionally, MCR 6.005(C) did not provide authority for the trial court to order reimbursement for the work appointed counsel performed before trial; "[t]he court never determined that [the] defendant was 'able to pay part of the cost of a lawyer' and never 'require[d] contribution[']" under MCR 6.005(C). The Court noted that **there is a difference "between an order for 'contribution' (which suggests an on-going obligation during the term of the appointment) and 'reimbursement' (which suggests an obligation arising after the term of appointment has ended)[']"**.

People v Williams, ___ Mich App ___ (2016). The defendant was questioned by police after he discovered his pregnant girlfriend murdered in their shared apartment. Investigators probed the defendant's whereabouts and extracted a timeline from him. He denied straying from the timeline he provided. Police subsequently learned that the defendant had made an additional stop at his apartment during the time that the homicide likely occurred and that there was an additional passenger in his vehicle. Prosecution charged Williams under MCL 750.479c which makes it a felony to make "statements that omit material information that may qualify as false or mislead an investigating officer[.]" and also "permits the prosecution of people who deliberately mislead the police by withholding material information[;]" there was "probable cause to believe that [the defendant] violated MCL 750.479c(1)(b)" where the defendant provided "statements omitting information that [led] the interrogator in the wrong direction." "While nonassertive

¹ *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

² Defendant withdrew his appeal in Docket No. 311478 after the circuit court granted his motion for a new trial. *People v Terrence Lamontt Jose*, unpublished order of the Court of Appeals, entered September 20, 2013 (Docket No. 311478).

omissions may not qualify as ‘statements’ under MRE 801(a), in general parlance ‘statements’ include verbal and written expressions of something[; a]n answer to a question necessarily represents an expression[, and i]t may mislead the listener by omitting relevant information.” **Because the plain language of MCL 750.479c(1)(b) permits William’s prosecution for withholding information, the COA affirms the decision to bind him over for trial.**

From MJI

From materials supplied by Peter Stathakis,
Program Manager, Michigan Judicial Institute

The new District Court Magistrate Benchbook is now available on the MJI web site. This will be updated regularly. It is available at:

<https://mjieducation.mi.gov/benchbooks/dcm>

Several new magistrates are in line to participate in New Magistrates School, to be held in the Hall of Justice March 21 to 23. Several members of MADCM will be assisting as instructors.

The Magistrate Speciality Seminar will be August 3 at the Hall of Justice in Lansing. Further details coming later.

If you are not yet subscribing to the e-version of IMPACT, you can do so at:
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