



THE DOCKET

The Newsletter of the Michigan Association of District Court Magistrates

Spring, 2008

NEW CHILD RESTRAINT LAW

OHSP Article: Will enhance safety of children

Governor Jennifer M. Granholm has signed legislation that will require the use of approved booster seats for children who are both under eight years old and less than four feet nine inches tall. Current law requires children under age four to ride in a car seat. The new law extends the requirement to include older children who are also not optimally protected by seat belts alone.

The new law will take effect July 1, 2008 and will be a primary enforcement law. This type of law allows officers to stop a driver for that violation alone and issue a ticket for each improperly restrained child. Violators will face a fine of up to \$65.

Proper restraint use is critical since motor vehicle crashes are the leading cause of death for Michigan children. Research has shown that the risk of injury for children ages 4-8 is reduced by 59 percent when using a booster seat versus a seat belt alone. Seat belts are designed for adults and don't fit children correctly. Children in seat belts are 4 times more likely to suffer head/brain injury as compared to those in booster seats. Michigan joins 43 other states by adopting an expanded child passenger safety law. States that have passed similar laws have seen child restraint use increase dramatically. For more information, go to www.michigansafekids.org.

Are Cells Phones and MP3/MP4 Players Now Prohibited?

*Based on an email from Traffic Services Section's listserv
MSP-TRUCK-LAWS@LISTSERV.MICHIGAN.GOV*

Public Act 19 of 2008 amended Section 257.708b, which prohibits a driver from watching TV while operating a vehicle. The statute has been expanded to also prohibit drivers from watching "other similar electronic device that displays a video image..." The intent of the statute was to prohibit drivers from watching videos on laptop computers and other electronic devices. So, the question from an enforcement standpoint, will police officers start stopping people with MP3 Players or cell phones that display video images?

MAGISTRATE SPECIALTY SEMINAR

MJI has scheduled the Magistrate Specialty Seminar for **Wednesday, July 23, 2008** at the Hall of Justice. The tentative agenda includes: Dr. Ray Bingham on Teen Driver Distractions; a presentation from the Ohio 4-H CarTeens program; and Mr. Jeff Steffel's update on search warrant issues. Registration forms and information has been sent out by MJI. Deadline for registration is June 23, 2008. See link - <http://courts.michigan.gov/scao/features/Mailings/2008/05-22-08/MJI-MagistrateSpecialtySeminar.pdf>

2008 MADCM Conference –

Our annual conference will be held September 24-26, 2008 at Treetops Resort in Gaylord, MI. The educational program has been confirmed to include:

Wednesday – agency reports from MJI, OHSP, SCAO, SOS

Thursday –

9:00 am -10:45 am - Judge Lou Schiff from Florida will present “Ethics and Magistrates”

11:00 am – 12:15 pm - Dave Ford will present “Masking CMV violations”

Friday –

9:00 am – 10:30 am - Sgt. Lance Cook, MSP will present “Traffic and Magistrate Issues”

10:45 am – 11:30 am - Sandi Hartnell, SCAO will present “Courts and Magistrates”.

The registration packets and information will be sent out soon, so watch you mailbox.

Pros and Cons of SB 1066

Article submitted by Sgt. Lance R. Cook, MSP Traffic Services Section (517) 336-6660.

Senate Bill 1066 was introduced on January 30, 2008, by Senator Pappageorge, et al., and would amend MCL 257.320a and MCL 257.743, and add MCL 257.320d. These changes would establish a “basic driver improvement course” and eligibility requirements, waive points for successful completion of such course, and require the Secretary of State to track eligibility and completion of courses by individuals.

There are several potential benefits to this bill. Under current practice in some Michigan courts, violations for which points should be assessed pursuant to MCL 257.320a are often reduced to non-moving violations in order to reduce the size of the docket, protect the revenue stream to the local district court and/or municipality, and provide the appearance of giving the driver “a break.” This practice of circumventing the law is

frowned upon by the State Court Administrative Office, but they have had little ability to curb it. This bill would give these courts another option to provide the same “service” to the individual driver, but would allow the Secretary of State to track serial offenders, making them ineligible for the course. While considered unethical by some, the current practice does serve to provide some protection to drivers from poor traffic engineering and predatory insurance companies. This bill provides the same protection by dismissing the citation upon successful completion of the course.

Similar schools in other states are frequently considered ineffective by who those attend, and are often derided in the media as a waste of time or simply a game to avoid punishment. Several recent newspaper articles and editorials have said as much, including one in the February 8, 2008 New York Times, which commented that drivers, “by attending its classes, can legally conceal a traffic violation from their insurance companies.” Despite this, there may be some slight benefit to traffic safety if an occasional driver adjusts his or her driving behavior based on something learned in the course, or simply through being subjected to the process. The tracking of serial offenders makes this more likely than under the current system of reducing citations to non-moving violations. This bill would also put Michigan more in line with the practice of other states.

On the negative side, this bill appears to some to be designed simply to enhance revenue at the local level under the guise of traffic safety. This bill will give drivers limited incentive to challenge inappropriate speed limits or unwarranted traffic control devices, and could increase the number of citations issued in error by less competent police officers. Under the current system, the magistrate at least has the opportunity to hear both sides before offering a reduction, and may dismiss an inappropriate citation altogether. This important check and balance would be lost if most drivers simply opt for the training course. This bill would also cause a significant increase in the number of citations dismissed by those courts that currently follow correct procedure per MCL 257.320a.

The point system established in MCL 257.320a has been in place since 1958, ostensibly for the purpose of allowing the Secretary of State to track serial violators and suspend the license of the most dangerous drivers. Some municipalities, however, clearly take advantage of drivers to generate revenue by establishing artificially low speed limits and erecting unwarranted traffic control devices under the guise of traffic safety. This bill may have the unintended consequence of increasing such abuse, as has been frequently documented in other states that allow automated enforcement where points are waived while fees are increased.

There seems to be a chicken-or-egg argument about how the practice in many courts evolved from actually conducting hearings in the old days, through taking citations “under advisement” or knocking a few mph from a speeding ticket when I was first driving, into the current practice of reducing to non-point violations. I would suspect that several major factors played a role: (1) the decriminalization of most traffic violations, leading directly to a reduction in the standard needed to convict a violator; (2) the advent of speed measurement devices, leading to rapid increases in the number of citations issued in some areas and the swelling of court dockets; (3) the 1974 national energy speed limit, which bred widespread contempt for speed limits in general; (4) the failure of traffic law to keep pace with improvements in vehicles and roadways, leading to outdated, artificially low speed limits, and; (5) various budget crises and increasing reliance on ticket revenue to fund municipal budgets.

Especially since 1974, there has been a schizophrenic public perception paradigm regarding speed limits and traffic safety. On one hand, drivers have been told that violating posted speed limits is dangerous, while on the other hand, many speed limits have nearly zero compliance. Proper traffic engineering incorporates the 85th percentile speed into setting appropriate limits, while many traffic engineers are coerced into setting artificially low limits by politicians and interest groups that don't understand traffic safety, which is often

counterintuitive. Police and the courts, however, seem to intuitively know when speed limits are inappropriate, which is probably a major reason that breaks and reductions are so frequently applied. There is something inherently wrong with a system where the average citizen can frequently run afoul of the legal system.

While SB 1066 may help to resolve some of the current issues, perhaps a more educated approach would simply be to set appropriate speed limits, use good engineering when posting other traffic control devices, and get back to the attitude that only a small portion of the population are actually driver in a dangerous manner. My two cents.

New Laws

Based upon information regarding new Public Acts from SCAO and the Michigan legislature.

PA 152 of 2008

SB 1234 of 2008 was signed into law to regulate the speed of watercraft and airboats near residences. Amends 1994 PA 451 (MCL 324.101 - 324.90106) by adding sec. 80108a.

Last Action: 5/28/2008 ORDERED ENROLLED

PA 95 of 2008

SB 105 of 2008 was signed into law (effective 4-8-08) to grant **District Court Magistrates** the authority (if authorized by the Chief Judge) to arraign, set bond and accept a plea on contempt violations and violations of conditions of probation, but only if a judge or magistrate conducted the initial arraignment on the charge.

Bills to Watch

Based upon information regarding pending legislation from SCAO and the Michigan legislature.

HB 4006 – Would eliminate driver responsibility fees – referred to House Jud. Comm. 1-23-07.

HB 4289, 4920, 4921- The high BAC bills have **passed the House** - referred to the Senate Trans. & Senate Jud. Comm. 10-16-07.

HB 4304 – Would prohibit passing in an intersection. Passed the House, referred to Senate Trans. Comm. 3-22-07.

HB 4323 – Would allow off road vehicles on road right of ways. Passed House, referred to Senate Nat. Res. Environ. Affairs Comm. 3-22-07.

HB 4578 – Would allow attorney representation in enforcement actions in small claims court. Referred to House Jud. Comm. 4-5-07.

HB 4749 – Would change the penalties for not having a proper motorcycle endorsement, and also create an exception for wearing motorcycle crash helmets under certain circumstances. **Passed the House and Senate, presented to the Governor 6/5/2008 @ 2:52 PM.**

HB 5654 – Would create a new 6-month misdemeanor for “**aggressive driving**”, which would require the court to order a “driver review session” of both classroom and behind-the-wheel instruction. Referred to House Trans. Comm. 1-22-08.

HB 5696 – Would prohibit using a cell phone while driving if the driver has a graduated driver’s license. Referred to House Trans. Comm. 2-6-08.

HB 5884 – Would provide for a 5-years phase out of the driver responsibility fees. Referred to House Trans. Comm. 3-12-08.

HB 5885 – Would give drivers 62 years or old an exemption from having to pay any driver responsibility fees. Referred to House Trans. Comm. 3-12-08.

HB 6183 – Would require electronic recording of suspect interrogations by law enforcement in certain circumstances. Referred to House Jud. Comm. 5-28-08.

SB 492 – Would eliminate double the fine bonds on overweight trucks - Passed Senate, referred to House Trans. Comm. 6-6-07.

SB 786 – Would increase the jurisdictional limit of small claims court to \$5,000 – passed Senate on 2/12/08 (House version **HB 6157** also sets limit to \$5,000 – old version **HB 4422** set limit at \$6,000) HB 6157 referred to House Jud. Comm. 5-22-08.

SB 1066 – Would create a driver’s right to take a driver improvement course once per year (up to a maximum of 5 times) for most traffic violations. If successfully completed would result in a dismissal of the case upon payment of fines & costs. Referred to Comm. of Whole 3-5-08.

SB 1298 – Would eliminate the certified mail method of service for small claims matters – referred to Senate Jud. Comm. on 5-7-08.

THOUGHTS & PRAYERS

James Merriman, 59, a former Magistrate and Probation Officer from 73rd District Court (who retired in 2007) died recently after a tragic turkey hunting accident. He apparently lost his balance while attempting to climb onto an elevated hunting blind, according to a press release from the Michigan State Police. During his fall, his firearm went off.

Tom Bleau, Magistrate from 74th District Court in Bay City is still recovering after undergoing extensive surgery in January, **but the great news is that he is home after many months in the hospital.** Well wishes and cards can be sent to the Court and will be forwarded to him once per week:

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