



THE DOCKET

The Newsletter of the Michigan Association of District Court Magistrates

Spring 2009

STOPS OUTSIDE OF JURISDICTION

*By Sgt. Lance R. Cook, MSP Traffic Safety Division
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Michigan law allows county and municipal police officers some limited ability to take enforcement action outside of their normal jurisdictional limitations. Some of these sections are as follows:

- MCL 257.742(1) "If a police officer of a village, city, township, or county, or a police officer who is an authorized agent of a county road commission, witnesses a person violating this act or a local ordinance substantially corresponding to the act within that village, city, township, or county and that violation is a civil infraction, that police officer may pursue, stop, and detain the person outside the village, city, township, or county where the violation occurred for the purpose of exercising the authority and performing the duties prescribed in this section and section 749, as applicable." **This section effectively gives a police officer time to turn around and catch up with a violator when an offense was committed near the jurisdictional boundary. It applies to civil infraction violations.**
- MCL 257.726a "A peace officer of any county, city, village or township of this state may exercise authority and powers outside his own county, city, village or township when he is enforcing this act on a street or highway which is on the boundary of the county, city, village or township the same as

if he were in his own county, city, village or township." **This section allows a police officer the ability to take enforcement action when a vehicle is on the opposite side of the road, technically in the next jurisdiction. It is limited to violations of the Michigan Vehicle Code, and does not apply to other state law or any local ordinance.**

- MCL 257.906 "Notwithstanding any other provision of law, a police officer may enter upon such a private road to enforce violations of this act." **This section does not expand the scope of the Michigan Vehicle Code to private property, but gives a police officer the right to enter private roads to enforce those sections that are enforceable on private property. It is limited to violations of the Michigan Vehicle Code, and does not apply to other state law or to any local ordinance.** Most Michigan Vehicle Code violations are limited to public highways per MCL 257.601. Attorney General Opinion #7138 provides a list of those sections that specifically include enforcement on private roads. A local ordinance may be enacted for enforcement on private roads (MCL 257.601a), parking lots (MCL 257.942), school districts or

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2009 Annual Conference
Sept. 30 - Oct. 2, 2009
Park Place Hotel, Traverse City, MI
<http://www.park-place-hotel.com>

Our agenda for the 2009 Conference will include a presentation by Federal Magistrate Mark Randon. Magistrate Randon was a District Court Judge in the 36th District Court before his appointment, and will give an update on setting bond. The Honorable Elizabeth Hines of the 15th District Court will follow with information on setting bond on domestic violence cases. We are also pleased to have with us Mr. Kenneth Stecker from the Prosecuting Attorney's Association of Michigan. He will brief us on the medical marijuana law. Jill Booth from the State Court Administrator's Office will present us with information regarding upcoming changes in statutes and court procedure. And back by popular demand, Sgt. Lance Cook of the Michigan State Police, Traffic Services Section, will enlighten us on the latest and greatest traffic laws. Hope to see you all there!

Registration packets are expected to be sent out in June.

Welcome New Magistrates

Based on information from MJJ

The following District Court Magistrates completed the New Magistrates Training Seminar in March 2009. Welcome them to the profession and invite them to become members of MADCM if they have not already joined.

Tamara J. Bates	12th District Court
Kimberly Becker	65B District Court
Mark Books	3B District Court
Hon. David T. Coyle (Ret.)	3A District Court
M. Colleen Currie	15th District Court
Jodi R. Debbrecht	45A District Court
Elizabeth L. DiSanto	27th District Court
Janice E. Doner	74th District Court
Helal A. Farhat	19th District Court
Michael J. Granzeier	27th-1 District Court

James Jolly	16th District Court
Eric Jones	17th District Court
Mark W. Nelson	14B District Court
Liz Pilon	89th-1 District Court
Donna M. Posey	46th District Court
Mark W. Sadecki	52nd-2 District Court
Marsha J. Teysen	91st District Court
Audrey D. Van Alst	84th-2 District Court
Kenneth J. Wassus	1st District Court
David R. Wiacek	18th District Court

“Tweety Bird” is a Vision Obstruction

By Kenneth Stecker, Esq.
Traffic Safety Resource Prosecutor
Prosecuting Attorneys Association of Michigan

****** NOTE – Mr. Stecker wrote an article for The Docket (Winter 2009) regarding the 6th Circuit Court of Appeal's December 19, 2008 ruling. On December 31, 2008, the Court withdrew its opinion and judgment, because 28 U.S.C. Section 2403(b) requires federal courts to give states notice and an opportunity to intervene before ruling that a state statute is unconstitutional.**

The Michigan Attorney General's Office filed it's Brief on the issues, and the 6th Circuit then released it's Revised Opinion on April 30, 2009.

The Court held that "In view of the broad scope of Mich. Comp. Law 257.709(1)(c), we cannot accept that police lacked probable cause to stop him based upon the Tweety Bird. The law's language is unqualified: an obstruction of any size for any amount of time falls within it. Consequently, the mere sight of the dangling Tweety Bird supplied the quantum of individualized suspicion sufficient to establish probable cause to believe that Davis was violating Section 257.709(1)(c). Thus, **the stop was reasonable under the Fourth Amendment**, and the district court correctly denied Davis's motion to suppress."

Therefore, the dangling ornament statute remains good law.

Jurisdiction *Continued from page 1*

community colleges (MCL 257.972), or state colleges or universities (MCL 390.891), but all require signs, signals, and pavement markings that comply with the Michigan Manual of Uniform Traffic Control Devices.

- MCL 762.3(1) "Any offense committed on the boundary line of 2 counties, or within 1 mile of the dividing line between them, may be alleged in the indictment to have been committed, and may be prosecuted and punished in either county." **This comes from the Code of Criminal Procedure, and does not apply at the time of a traffic stop and/or warrantless arrest. It is part of a group of statutes that apply to courts and prosecutors when venue is difficult to establish.**

In addition to the sections listed above, other statutes provide some additional opportunities for enforcement outside of an officer's normal jurisdiction. MCL 123.811 and MCL 3.732 allow for both intrastate and interstate mutual aid agreements between local governments. MCL 51.70 allows a sheriff to appoint deputies and special deputies, which often include municipal officers within and adjacent to the county. There are also a number of obscure statutes that allow for potential enforcement by non-municipal agencies outside of their jurisdictions; MCL 28.589 for school district police departments, as an example.



The Michigan Office of Highway Safety Planning is seeking ideas for general sessions and workshops for the annual Michigan Traffic Safety Summit in the spring of 2010. Selections are based on: (1) ability to appeal to a broad range of participants; (2) if the topic/similar topic was covered at a recent summit; and (3) if the summit is the appropriate venue for the topic.

Suggestions should be submitted by August 31, 2009 and the form can be found at: http://www.michigan.gov/documents/msp/Summit_topic_sheet_276674_7.pdf

Michigan Earns National Recognition for Belt Use Rate

OHSP Press Release dated May 14, 2009
Contact: Anne Readett (517) 333-5317

Michigan's steadily increasing seat belt use rate today will earn national recognition and praise from the U.S. Department of Transportation (D.O.T.) just as law enforcement agencies ready for the annual statewide Buckle Up or Pay Up, Click It or Ticket seat belt mobilization.

Admiral Tom Barrett, U.S. D.O.T. deputy secretary, will present the National Highway Traffic Safety Administration's "Champion Award" in honor of Michigan's successful efforts to increase seat belt use, achieving the No. 1 spot in the country in 2008.

Last year, belt use rose to 97.2 percent, besting the other high belt-use states. At the same time, Michigan traffic deaths dropped 8 percent to 980, the lowest figure since 1925.

More than 300 law enforcement agencies from 55 counties will have additional officers on the road starting Monday through May 31. Motorists should notice nearly 700 safety belt enforcement zones as well as additional late-night traffic patrols where officers will have zero tolerance for unbuckled drivers. Because seat belt use falls sharply during late night/early morning hours, agencies are stepping up traffic patrols during these times to encourage high compliance both day and night.

The entire effort is coordinated by the Michigan Office of Highway Safety Planning (OHSP), utilizing federal funds for traffic safety programs. Officers working the zones and nighttime patrols are working additional shifts, not being diverted from their regular duties.

"Despite these challenging budget times, public safety remains a priority," said Michael L. Prince, OHSP director. "This effort is about saving lives and is funded entirely through federal traffic safety dollars. It does not add extra strain to local or state budgets or manpower."

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State Police Identifies Posts Impacted by Layoffs

MSP Press Release dated May 8, 2009

Contact: Shanon Akans, Public Affairs (517) 336-6364

Effective June 28, 2009, the following Michigan State Police (MSP) posts will be impacted by the 100 trooper layoffs included in Executive Order 2009-22. By union contract, layoffs affect the least senior trooper statewide. This list includes 82 troopers from the 121st Trooper Recruit School that graduated in December 2008 and 18 troopers from the 120th Trooper Recruit School that graduated in December 2004.

First District	Sixth District
Brighton Post – 3	Grand Haven Post – 3
Corunna Post – 1	Hart Post – 2
Ithaca Post - 2	Ionia Post – 2
Jackson Post - 2	Lakeview Post – 3
Jonesville Post - 2	Newaygo Post – 4
Lansing Post - 2	Wayland Post – 3
Second District	Seventh District
Detroit Post - 1	Alpena Post – 1
Groveland Post - 3	Cadillac Post – 2
Monroe Post - 3	Cheboygan Post – 1
Richmond Post - 4	Houghton Lake Post – 2
Ypsilanti Post - 5	Kalkaska Post – 2
	Manistee Post – 2
Third District	Petoskey Post – 1
Bad Axe Post - 2	Traverse City Post – 1
Bay City Post - 2	
Bridgeport Post - 3	Eighth District
Gladwin Post - 1	Calumet Post – 2
Caro Post - 2	Iron River Post – 1
Flint Post - 5	L'Anse Post – 1
Mt. Pleasant Post - 1	Manistique Post – 1
West Branch Post - 1	Munising Post – 1
	Newberry Post – 1
Fifth District	Wakefield Post – 2
Battle Creek Post - 2	
Bridgman Post - 1	Other Work Sites
Coldwater Post - 2	Criminal Investigation Division – 1
Hastings Post - 2	
Niles Post - 2	
Paw Paw Post - 4	
Paw Paw/South Haven Satellite - 1	
White Pigeon Post - 2	

Recognition *Continued from page 3*

The following 55 counties will set up safety belt enforcement zones from May 18-31: Allegan, Alpena, Barry, Bay, Berrien, Branch, Calhoun, Cass, Charlevoix, Cheboygan, Chippewa, Clinton, Delta, Eaton, Emmet, Genesee, Grand Traverse, Hillsdale, Huron, Ingham, Ionia, Isabella, Jackson, Kalamazoo, Kent, Lapeer, Lenawee, Livingston, Mackinac, Macomb, Marquette, Mason, Mecosta, Menominee, Midland, Monroe, Montcalm, Muskegon, Newaygo, Oakland, Oceana, Ogemaw, Otsego, Ottawa, Saginaw, Sanilac, Schoolcraft, St. Clair, St. Joseph, Shiawassee, Tuscola, Van Buren, Washtenaw, Wayne and Wexford.

Michigan law requires all drivers, front seat passengers and passengers 15 and younger in any seating position in the vehicle to be buckled up. Children must be in a car or booster seat until they are 8 years old or 4'9" tall, whichever comes first.

For a list of planned enforcement zone and patrols, visit www.michigan.gov/ohsp.

News from SCAO

Submitted by Jill Booth, Management Analyst
SCAO, Trial Court Services

The Michigan Supreme Court has published for comment a proposal that would require courts to submit a local administrative order to the State Court Administrative Office when appointing magistrates and referees. The LAO would include name and contact information as well as the scope of the magistrate or referee's authority. These requirements would provide SCAO necessary information for assisting them with compliance with the requirement that magistrates and referees file annual financial reports, for example. Also, by having the scope of their authority written out, magistrates and referees would be protected from claims that they are acting outside of their authority. Currently, local administrative orders are recommended, but not required. The public comment period expires August 1, 2009 and a public hearing will be scheduled after that. For more information go to <http://courts.michigan.gov/supremecourt/Resources/Administrative/2009-09.pdf>

OWI AND MURDER

Adaptation of an Article by Kenneth Stecker, Esq.
Traffic Safety Resource Prosecutor
Prosecuting Attorneys Association of Michigan

A recent *60 Minutes* feature reported on how New York's Nassau District Attorney, Kathleen Rice, successfully prosecuted a drunken driving case as murder.

In the case, the defendant, Martin Heidgen, was driving his full-size pickup at 3x the legal limit of alcohol in his system. His friends told him not to drive but he did not listen and ended up driving the wrong-way on the roadway before crashing head-on into a limousine carrying the Flynn family from a wedding. The result was horrifying.

Seven year old Katie Flynn and the limousine driver were was killed by the defendant. Katie's family was also injured, and both parents were there to witness the end of Katie's life.

CAN A DRUNK DRIVER LIKE MARIN HEIDGEN BE CHARGED WITH MURDER IN MICHIGAN?

Drunk driving that results in death are especially serious cases for prosecutors to try before a jury. In Michigan, the prosecutor has broad discretion to bring any charge supported by the evidence.

In Michigan, Operating While Intoxicated (OWI) cases involving death generally fall into three categories:

1. Operating While Intoxicated (OWI) Causing Death
2. Manslaughter with a Motor Vehicle
3. Second Degree Murder

OWI Causing Death

To convict a defendant of Operating While Intoxicated Causing Death, the prosecution must prove beyond a reasonable doubt that:

1. The defendant was operating his motor vehicle in violation of MCL 257.625 (1), (3), or (8);
2. The defendant voluntarily decided to drive, knowing that he or she had consumed liquor and/or a controlled substance and might be intoxicated; and
3. The defendant's operation of the motor vehicle caused the victim's death.

People v. Schaefer, 473 Mich. 418 (2005).

Manslaughter with a Motor Vehicle

To convict a defendant of Manslaughter with a Motor Vehicle, the prosecution must prove beyond a reasonable doubt that the defendant operated the vehicle in a grossly negligent manner and substantially caused the death of another.

People v. Lardie, 452 Mich. 231 (1996).

Second –Degree Murder

To convict a defendant of Second-Degree Murder the prosecution must prove beyond a reasonable doubt that there was:

1. a death,
2. caused by an act of the defendant,
3. with malice,
4. without justification or excuse.

People v. Goecke, 457 Mich. 442 (1998).

Under Michigan law, **malice** is defined as the intent to kill, the intent to cause great bodily harm or the intent to do an act in wanton and willful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm. *Id.*

Malice may be implied when the defendant does an act with a high probability that it will result in death and does it with a base antisocial motive and with wanton disregard for human life. *Id.*

In addition to the second-degree murder charge, the prosecutor also has the discretion to simultaneously charge the defendant with OWI causing death. Second-degree murder and OWI causing death convictions do not violate the Double Jeopardy Clause to the 5th Amendment of the United States Constitution.

Proposed Legislation to Watch

HB 4098 Would eliminate Driver Responsibility Fees.
SB 317

HB 4101 Would amend Driver Responsibility Fees to one-year assessments instead of two-year.

HB 4141 Would add \$10 fee to all alcohol-related convictions to be paid to Supreme Court for drug treatment courts.

HB 4163 Would require use of headlights during periods of precipitation.

- HB 4267 Would prohibit courts from furnishing to the public a copy of an arrest or bench warrant until it is returned (arrest made).
- HB 4322 Would create a new 30-day misdemeanor for providing false information regarding court-ordered community service.
- HB 4343 Would amend window tint law to: (1) allow person to operate vehicle with tint if they reside with the owner who has doctor letter and have permission from the owner; (2) allow other person to operate vehicle with tint if the owner who has a doctor letter is a passenger in the vehicle; and (3) require a new SOS sticker in the back window of a vehicle that has tint and owner has the required letter from a doctor.
- HB 4360 Would codify the extension of the seat belt usage exemption to newspaper delivery personnel, and defines "frequent stops" as a series of stops with at least 1 stop within every ½ mile of travel.
- HB 4362 Would prohibit use of cell phones while operating school bus.
- HB 4369 Would prohibit use of mobile phones while operating a motor vehicle, unless hands-free or under certain exceptions.
- HB 4370, 4394 Would prohibit messaging on an electronic wireless device while operating a motor vehicle.
- HB 4482, SB 80 Would amend fleeing and eluding offenses to add a 2-year mandatory minimum to all degrees.
- HB 4493 Would prohibit all first year drivers from having more than 1 passenger under 18 years of age other than family member in car.
- HB 4495 Would remove the horsepower threshold from the definition of a moped.
- HB 4604, SB 127 Amend Driver Responsibility Fees - add for certain offenses, and eliminate for certain offenses. Also, payment options amended.
- HB 4648 Would regulate motor vehicle pursuits by police officers.
- HB 4705 & 4706 Would create an Indigent Defense Counsel Fund, and require Courts to impose a 5% bail surcharge and sliding scale probation fee (not to exceed \$135), and transmit monies to the Treasury Dept. for the Fund.
- HB 4748 Would require police officers to ascertain and indicate the race or ethnicity of a person to whom a traffic citation is issued.
- HB 4978 Would prohibit lane changes in an intersection.
- SB 473 Would require (whenever possible) the use of 2-Way Interactive Video in certain proceedings.
- SB 566 Would require written notification of the applicability of a driver responsibility fee on a traffic citation written for no proof of insurance.