



THE DOCKET

The Newsletter of the Michigan Association of District Court Magistrates

Summer, 2008

NEW ALTERNATIVE VEHICLES

With the price of gasoline continuing to rise, we have been receiving a large number of calls regarding various alternative vehicles, and their legality (or lack thereof) to operate on the street.

As a reminder, if an object has a motor making it self-propelled, it meets the definition of Motor Vehicle in MCL 257.33, with some very limited exceptions. Electric bicycles, motorized skateboards, go-carts, gopeds, golf carts, and Barbie cars are all motor vehicles. Unless one of these vehicles is able to be registered (as a moped, low speed vehicle, etc.), it is prohibited from operation on any public street or highway. Operation on a sidewalk is also prohibited (MCL 750.419).

Items such as farm tractors, lawn mowers, forklifts, etc., are allowed incidental use on a street or highway as part of their normal operations. "Incidental" is not defined, but AG Opinion #5563 indicates that "such equipment may be driven for several blocks so that it may be used at its destination..." The actual distance that constitutes "incidental" use is open to

local interpretation at this point, but if the vehicle is used for transportation of persons or property, then it can no longer operate without registration.

References to "Electric personal assistive mobility device" (MCL 257.13c) mean the Segway scooter manufactured by Kayman Industries, not any kind of electric wheelchair or similar mobility device for people with disabilities. Motorized wheelchairs and similar devices are not addressed in the MVC. Common practice is to treat these devices as pedestrians unless they are being misused in some manner that creates a hazardous situation.

This should provide enough of an overview for most questions. Please feel free to contact me if you need additional specific information. Thanks.

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Seeking Traffic Safety Summit Session Topics

Based on information posted on OHSP's website.

The Michigan Office of Highway Safety Planning seeks ideas for general sessions and workshops for the annual **Michigan Traffic Safety Summit, March 24-26, 2009**, at the Kellogg Center in East Lansing. Selections will be based on ability to appeal to a broad range of participants, if the topic or similar topic was covered at a recent summit, and if the summit is the appropriate venue for the topic. You can obtain the suggestion form from the website, and fax it or mail it to OHSP. Further information can be obtained from Anne Readett at OHSP readetta@michigan.gov or (517) 333-5317.

Trooper Recruit School Begins

Based on information from an August 11, 2008 MSP Press Release.

On August 10, 2008, 101 prospective troopers reported to the Michigan State Police (MSP) Training Academy in Lansing for the first day of the 121st Trooper Recruit School. This is the first class to be held since 89 members the 120th Trooper Recruit School graduated in December 2004.

"Today is the first day of your journey with the Michigan State Police -- a journey that will hopefully span a career marked by happiness, fulfillment and pride for what you do," Colonel Peter C. Munoz, director of the MSP, told the recruits during his welcoming remarks. "The arrival of a new recruit school is always an exciting time for the department; be assured there are many people rooting for you and anxiously awaiting your graduation."

For the next 19 weeks, between wake-up at 5 a.m. and lights-out at 10 p.m., the recruits will receive training in firearms, water safety, defensive tactics, patrol techniques, report writing, ethics, first aid, criminal law, crime scene processing and precision driving. Instruction is provided by current MSP members and the academy staff including a school commander and assistant commander, as well as 12 troopers from across the state who are assigned to the MSP Training Academy on a temporary basis. Because the school is a residential program, the recruits are only allowed to leave the MSP Training

Academy from Friday evening to Sunday afternoon. Recruits who successfully complete the training will graduate on Friday, Dec. 19, 2008, at which time they will be assigned to work sites across the state. Over 4,000 individuals applied for the 121st Trooper Recruit School. In order to be selected to attend the academy, applicants had to pass a stringent selection process that included a physical fitness test, background investigation and hiring interview.

ORV'S ON COUNTY ROADS

Based on an email from Sgt. Lance Cook, MSP Traffic Safety Division, (517) 336-6660

On July 17, the governor signed PA 240 and PA 241, allowing the operation of off-road vehicles on the maintained portion of county roads in "eligible counties" if an appropriate county or municipal ordinance is passed. The bills were introduced in February, 2007, in response to an Attorney General and Department of Natural Resources letter (attached) dated September 14, 2006, that indicated that previous ordinances allowing such operation were not legal. Although passed ostensibly to promote tourism, these changes have the potential to adversely affect traffic safety by placing ORVs in conflict with motor vehicles.

The following is a brief summary of the changes: Ordinances:

- Eligible counties are Mason, Lake, Osceola, Clare, Gladwin, Arenac, or Bay county or a county lying north thereof, including all of the counties of the Upper Peninsula (MCL 324.81131(15)(a)).
- **There are no current valid ordinances in place.** Previous ordinances are not valid, and new ordinances must go through a public hearing, with at least 45 days notice given to the road commission, and DNR if there is state forestland located within the county. The earliest that a valid ordinance could be enacted pursuant to this act would be early October (MCL 324.81131(2)).
- Townships within eligible counties that choose not to enact county-wide ordinances will be authorized to enact their own ordinances beginning in July, 2009, subject to certain restrictions (MCL 324.81133(3)). Counties may restrict up to 30% of the "linear miles" of their roads.
- State trunkline highways are exempted, as "road" is defined as a county primary or local

road, and "street" is defined as a municipal major or local street (MCL 324.81131(15)).

- Municipalities within eligible counties may enact similar ordinances (MCL 324.81133(5)).
- The law sunsets in July, 2013 (MCL 324.81133(7)).

Operation:

- During hours of darkness or inclement weather, headlight and taillight are required. After January 1, 2010, headlight and taillight are required at all times (MCL 324.81131(8) and MCL 324.81133(c)).
- Valid operator license or under direct supervision with safety certificate if between 12 and 18. Under 12 prohibited. Eighteen and over not required to have a license. Provision of 324.81129 apply (MCL 324.81131(9)).
- Helmet required unless vehicle is equipped with safety belts and roof that meets federal standards for rollover protection (MCL 324.81133(b)).
- ORV is defined as a motor drive off-road recreation vehicle capable of cross-country travel without benefit of a road or trail...(MCL 324.81101m)), but is not limited to traditional ATV vehicles. Golf carts and other vehicles not otherwise normally capable of being registered for road use will likely meet this definition.
- Operation is allowed within the "maintained portion" of the road, which likely includes both the roadway and the shoulder, but not the ditch slope. These definitions come from the Michigan Vehicle Code, which does not automatically make them apply to the Natural Resources and Environmental Protection Act.. Language in the first draft of the bill specifying the right-of-way was replaced with the maintained portion language in the final version.

This enumeration is not intended to be all-inclusive, but to simply offer some guidance on how the new law works, and what can be expected once ordinances start becoming enacted beginning in October. More information may be provided as issues are identified.

2008 MADCM Conference –

All District Court Magistrates should have already received the Conference Packet in the mail and email. This year's 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 MJJ, 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".



Construction Zone Speeds

*Listserv reminder by Sgt. Lance R. Cook, MSP
Traffic Services Section (517) 336-6660.*

The Traffic Safety Division has received a number of calls and e-mails from irate citizens regarding inconsistent enforcement of speed limits in work zones. As a reminder, the speed limit for the entire work zone is posted at the beginning of the work zone, or is the original speed limit, based on engineering judgment. The 45 mph "where workers present" signs are only enforced in those areas **directly adjacent to the areas where workers are in close proximity to traffic.** If workers are

protected by a concrete barrier or guard rail, they are not "present" for enforcement of the signs. They are considered "present" if only protected by barrels, cones, or other channelizing devices. The normal work zone speed limit applies for unoccupied sections of the work zone. Be aware that some contractors are placing the signs when they are not warranted, due to a false sense of security provided by the signs.

This issue was addressed in Field Updates #13, 14, and 20 [Editor's Note – can be found at http://www.michigan.gov/documents/msp/Archived_Field_Updates_Table_203934_7.pdf].

A training video can be accessed through a link in #20, or by clicking [here](#). Please feel free to contact me directly if additional clarification is needed. Thanks.

Magistrates and Referees Now Required to Complete Financial Reporting Form

Based on information from the June 24, 2008 Memo from Carl Gromek, State Court Administrator.

After consulting with representatives from the judicial associations, the State Bar of Michigan, and the Executive Director of the Judicial Tenure Commission, I am left with the inescapable conclusion that because referees and magistrates are subject to the Michigan Code of Judicial Conduct [MCR 9.201(B)(2)], they are also required to file financial reports pursuant to Canons 6C and 5C(4)(c).

Beginning with the 2008 Financial Report (due on or before April 15, 2009), every full-time and part-time magistrate and referee must annually submit a Financial Report form (SCAO 17 – the same form used by the judges) to the State Court Administrative Office with a copy to the chief judge of the court in which the magistrate or referee serves. The Financial Report form has been revised to include magistrates and referees. A copy of the revised form is attached. Chief judges should review the reports for potential conflicts and notify their regional administrator of any problems.

"Sudden Emergency" Clarified

Based upon information contained in PAAM's The Yellow Light Legal Update, August 2008 Edition.

The Court of Appeals recently ruled that a Van Buren trial court did not abuse its discretion in denying the defendant's request for a jury instruction on the sudden-emergency doctrine. Defendant's truck collided with a stationary state police patrol vehicle, resulting in injury to a state trooper who was providing emergency assistance to another driver after the driver's semi-truck jackknifed and blocked the highway. The patrol vehicle was parked on the shoulder of the highway with its emergency lights and spotlights activated when the collision took place. The highway was icy and it was snowing.

Defendant argued he was denied his constitutional right to present a defense when the trial court denied his request for a jury instruction on the sudden-emergency doctrine. Although the highway might have been icy, there was no direct evidence his truck actually hit an icy patch and slid out of control due to the ice, resulting in the crash.

Further, the court that it could find no binding precedent that recognizes the sudden-emergency doctrine as a defense in a criminal prosecution. Additionally, the requested instruction does not fit the sudden-emergency doctrine. In *White v Taylor Distributing Co, Inc*, 275 Mich App 615, 622; 739 NW2d 132 (2007), the Court examined the sudden-emergency doctrine and described the doctrine as follows:

"One who suddenly finds himself in a place of danger, and is required to act without time to consider the best means that may be adopted to avoid the impending danger is not guilty of negligence if he fails to adopt what subsequently and upon reflection may appear to have been a better method, unless the emergency in which he finds himself is brought about by his own negligence."

The court held that the sudden-emergency doctrine is a logical extension of the "reasonably prudent person" standard, and the issue is whether the defendant acted as a reasonably prudent person when facing the emergency, giving consideration to all the circumstances surrounding the accident.

Further, the court concluded defendant's requested instruction did not fit the sudden-emergency doctrine. His factually unsupported theory was that he hit a patch of ice and lost control, slamming into the police cruiser; he did not contend that he came upon an emergency situation and made some kind of a choice or reacted in a particular manner. Defendant's conviction of failure to use due care when approaching a stationary emergency vehicle was

affirmed. *People v. Savic*, case no. 277257, released
May 20, 2008.