



# THE DOCKET

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## **RAILROAD POLICE AUTHORITY**

*By Benjamin R. Black, Patrol Officer  
CN Railroad Police Dept. – U.S. [benjamin.black@cn.ca](mailto:benjamin.black@cn.ca)*

While some Magistrates may not have a set of railroad tracks anywhere near their jurisdiction and question what a "railroad cop" even is, some may know their local railroad police officers very well and/or routinely preside over cases involving violations against the railroads. So you may be wondering, just who are these "railroad police"? And what is their authority anyway? To understand the role of railroad police officers in modern day law enforcement, we must first appreciate the condition of law enforcement in America and her territories when railroads were first being built.

In the mid 1800's, as railroads were spreading west of the Mississippi River, boomtowns and worker camps sprang up along the right of way. With these boomtowns came every sort of person, including gamblers, highwaymen, and other outlaws. As the railroads pushed on, so did this population of vagabonds, and crime tended to follow alongside the right of ways. By the mere nature of the railroads unique physical construction of miles of unfenced track, trackside equipment and open yards, it quickly became easy prey for bands of outlaws. Bridges, tunnels, stations, tracks and trains were easy targets and crews and passengers alike were robbed and killed in brazen holdups. With little effective or organized law enforcement on the American frontier, and U.S. Marshals few and widely scattered, railroads became forced to protect themselves. As territories became states, railroads used their powerful influences on the newly formed legislatures to enact statutes creating railroad police officers with full police authority. As these laws were passed, railroads quickly began hiring employees that were designated "railroad police officers".

In Michigan, Railroad Police Officers are fully commissioned police officers that are granted broad police powers very similar to that of any other municipal, county or state law enforcement officer. What is truly unique is that they are employees of private rail transportation companies, providing police functions and services for a private industry while being granted authority under public law. Michigan Compiled Law 462.377 states that "Every railroad police officer, who is appointed and commissioned as provided in this act, shall have, exercise, and possess, throughout the state, while in the discharge of his or her duties as a railroad police officer, the powers of sheriffs, marshals, constables, and municipal police officers except in the service of civil process. A railroad police officer shall enforce and compel obedience to the laws of this state and to the ordinances of the cities, villages, and townships of this state when engaged in the discharge of his or her duties as a railroad police officer for the company."

Each State has its own particular laws granting railroad police authority, some more liberal in powers and duties and some more conservative. Whatever power an individual state grants, however, is augmented by the United States Secretary of Transportation under United States Code, Title 49-Transportation, Part E, Chapter 281, Subsection 28101, (49USC28101). Interstate Authority grants a railroad police officer employed by a rail carrier and certified or commissioned as a police officer under the laws of a State to enforce the laws of any jurisdiction in which the rail carrier owns property, to the extent of the authority of a police officer certified or commissioned under the laws of that jurisdiction to protect:

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## Is Dangling Object A Vision Obstruction or Not?

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

**\*\*\*\* NOTE – Mr. Stecker wrote this article shortly after the 6th Circuit's ruling was issued, and then on December 31, 2008, the Court withdrew its December 19, 2008 opinion and judgment. The reason the Court withdrew its opinion is that pursuant to 28 U.S.C. Section 2403(b), the federal courts are required to give states notice and an opportunity to intervene before ruling that a state statute is unconstitutional.**

**The Michigan Attorney General's Office has until Wednesday, February 4, 2009 to file its brief on this issue. It is expected the brief will be filed by that date. It is expected soon thereafter, that the Court will render a decision.**

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**MCL 257.709(1)(c)** prohibits driving with "a dangling ornament or other suspended object that obstructs the vision of the driver of the vehicle, except as authorized by law."

On December 19, 2008, in *United States v. Davis*, No. 07-1964, the 6th Circuit Court of Appeals held that MCL 257.709(1)(c) was unconstitutionally vague. Specifically, the Court found that reliance on MCL 257.901(c) to justify a stop will not suffice.

More specifically, the defendant was driving on a highway in Westland, Michigan. A Westland police officer observed that the defendant had in his vehicle a four-inch tall "Tweety Bird" air-freshener doll hanging from his rearview mirror. Immediately thereafter, the officer stopped the defendant on suspicion for violating MCL 257.709(1)(c).

When the officer asked for the defendant's driver's license, the defendant admitted he did not have one. The officer then placed the defendant under arrest. During a search incident to an arrest, the officer found approximately 24 grams of cocaine base, and a loaded pistol. The United States Attorney's Office charged the defendant with being a felon in possession of a firearm and possession of cocaine base with intent to distribute.

The defendant moved to suppress the evidence, but the district court denied his motion. The defendant pled guilty to both offenses and was sentenced to 188 months in prison. He appealed the district court's denial of his motion to suppress.

In analyzing the statute, the Court stated as follows:

First, the breadth of discretion it delegates to law enforcement: legislatures have a constitutional duty to set out "minimum guidelines to govern law enforcement," *Kolender v. Lawson*, 461 U.S. 352, 358 (1983), but here no such neutral, objective standards are set forth. Second, the discretion delegated to law enforcement by this statute has a potentially far-reaching application in practice. Objects hung from rearview mirrors are legal in Michigan and are indeed quite common. Many vehicles on the road today have something hanging from the rearview mirror, whether it be an air freshener, a parking pass, fuzzy dice, or a rosary. And many organizations, both public and private, either encourage or require their use. Because of this, many vehicles on the road may violate the obstruction law, but the statute itself provides no guidance either to motorists or police as to which ones do. It is simply up to the officer on the street to decide. We believe that the Constitution requires more of the Michigan statute.

Therefore, based on its analysis the Court held the statute was unconstitutionally vague:

Going forward, however, reliance on MICH. COMP. LAWS 257.709(1)(c) to justify similar stops will not suffice. Michigan has a constitutional duty to regulate dangling ornaments in a way that more clearly conveys the vehicular safety purpose of the statute and provides better guidance to the law enforcement officials that enforce it. Otherwise, we risk authorizing "a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections" in enforcing this law...We hold that the vehicular safety statute Westland police relied upon to make the stop is unconstitutionally vague.

It should be noted that the district court's decision was affirmed on other grounds (i.e. good faith exception to the exclusionary rule applied in this situation). **\*\*\*\*NOTE – The Court withdrew the ruling, but it is expected that a new decision will be rendered sometime after Feb. 4th.**

### HE'LL BE GREATLY MISSED!

We lost a great friend and Past-President of MADCM. On November 2, 2008, Attorney Magistrate **Thomas Bleau** from Bay County passed away after a courageous battle with cancer. At our Annual Conference, this last September, Tom was given the MADCM Distinguished Service Award for all his hard work over many years. Our thoughts and prayers are with his wife Mary, and their children.

### **Railroad Police** *Continued from page 1*

- Employees, passengers or patrons of the rail carrier;
- Property, equipment and facilities owned, leased, operated or maintained by the rail carrier;
- Property moving in interstate or foreign commerce in the possession of the rail carrier;
- Personnel, equipment and material moving by rail that is vital to the national defense.

Throughout the years, the role of the railroad police officer has evolved along with the changing needs of the railroads. Railroad police departments had to adapt themselves and their tactics as railroads and criminals became more sophisticated. Today's railroad police officers receive training equal to and greater than the average law enforcement officer. As with all law enforcement agencies, railroad police departments emphasize and require continuing training and education, and railroad police officers in Michigan must meet the requirements set forth by the Michigan Commission on Law Enforcement Standards. Resources available to a railroad police officer today include fully equipped patrol cars, K-9 units, surveillance and undercover devices, CCTV and electronic detection devices, and many other intelligence and enforcement tools. Many railroad police officers participate in multi-agency task forces or major case squads. Some are qualified to respond to hazardous material incidents and train local public safety personnel in train/vehicle crashes or emergency response to derailments. Railroad police officers also provide community policing services to local civic and school groups through the proven national rail safety program known as Operation Lifesaver.

After the horrific attacks of 09/11/01, railroads and their infrastructure of bridges, tunnels and communication and operations centers became recognized as that much more critical to protect for the nations economy and security. The shipment of military equipment, hazardous materials, and the borders where trains enter the United States require a different security approach. Military equipment and personnel travel regularly by rail and national defense "rail corridors" must be protected for use in national emergencies. In Michigan, as elsewhere in the Country, railroad police work hand in hand every day with the various agencies that comprise the U.S. Department of Homeland Security, to include, U.S. Customs and Border Protection (CBP), U.S. Border Patrol (BP) and the U.S. Immigration & Naturalization Service (INS) to protect the U.S. from outside threats attempting to use trains or railroad property to gain

access into Michigan and the United States.

Railroads today still run through some of the most crime-ridden areas of the state. For the most part, railroad right of ways are still unfenced and difficult to patrol, and railroads still carry all types of high value, easily disposable goods and materials. Railroad police officers must patrol these vast territories, mostly working alone and often dealing with multiple offenders at one time. The following sections outline the most common violations against the railroad, and the most common that a magistrate would deal with from a railroad police officer.

To many police officers and courts, trespassing is a minor "nuisance" crime. To the railroad, however, trespassing is taken very seriously. Offenders who burglarize rail cars or vandalize rail equipment begin their crime by trespassing. Many injuries and deaths occur from trespassers on railroad property, from juveniles using the tracks as a "shortcut" to illegal immigrants or drug traffickers trying to utilize a train as a mode of transportation into, or across, the United States. In Michigan, the railroad trespass law is clear; MCL 462.273 (1) states, in part, that; "...a person shall not walk, ride, drive, or be upon or along the right-of-way or yard of a railroad company operating its lines within this state, or go upon or cross the right-of-way or yard at a place other than a public or private crossing..." and further states "A person shall not be upon, enter, or damage any buildings, rolling stock, or equipment of any railway company operating its lines within this state". Violation of Michigan's railroad trespass law is a misdemeanor. Depending on the particular situation, railroad police and other law enforcement also have the option of bringing felony charges on an offender. MCL 750.552c states, in part, that; "A person shall not intentionally and without authority or permission enter or remain in or upon premises or a structure belonging to another person that is a key facility if the key facility is completely enclosed by a physical barrier of any kind, including, but not limited to, a significant water barrier that prevents pedestrian access, and is posted with signage as prescribed under subsection (2)". This continues on to define "key facilities", and section (g) goes on to state that "A transportation facility, including, but not limited to, a port, railroad switching yard, or trucking terminal" is a "key facility". Railroad police attempt to alleviate injuries, fatalities, burglaries and vandalism by aggressive and consistent enforcement of these Michigan trespass laws.

Burglary and Theft continue to be a major crime problem on the railroad. A train you see today carries everything imaginably needed for modern day life. From clothing, electronics, vehicles and vehicle parts, food, liquor and beer, train cars and containers are

targets to not only juveniles and "petty thieves", but to street gangs and organized groups including militia and terrorist elements as well.

Vandalism to the railroads is yet another crime that can have disastrous results. Unlike trains of yesteryear, modern trains transport hazardous materials and a "simple" act of vandalism by a trespasser can cause fatal train crashes costing millions of dollars in damage, the evacuation of entire communities and even the loss of human lives. Railroad employees have been blinded, paralyzed and even killed by objects thrown or shot at trains. Tampering with switches or signals or other rail equipment, placing obstructions on tracks, and other acts of vandalism can be tragic to railroad employees, their families, and the surrounding communities they serve.

Trains today are heavier, faster and more sophisticated than ever before. With the advancement of the automobile and the construction of roads and highways, vehicle versus train incidents have become an added issue to the railroad police officer. A collision involving a vehicle and train is 40 times more likely to result in a fatality than a crash involving only motor vehicles. A fully loaded freight train today of 100 cars, weighing approximately 6,000 tons and traveling at 55 mph requires a mile and one half to stop after brake application, and yet motorists continue to challenge approaching trains by attempting to "beat the train" in a dangerous and sometimes fatal game of chicken by disregarding the most modern signal and gate systems in place. Motorists who disregard traffic control devices near grade crossings and speed limits posted on surface roads increase conflicts with trains at grade crossings. With aggressive and consistent enforcement of traffic laws, railroad police attempt to alleviate crashes, fatalities and injuries at railroad crossings.

While the unique days of outlaw gangs on horseback stopping a train with dynamite for a gold shipment may be gone, present day criminals continue to target railroads. Modern day railroad police officers are still in force and working hard to face the challenges that all modern day law enforcement officers face. Railroad police officers strive to keep the railroad infrastructure and employees safe, and keep rail lines, property and freight secure. And while Magistrates may not regularly see tickets or handle cases from railroad police departments, your role is just as vital in keeping our international railroad infrastructure; its employees, and the public it serves, safe. *Special Thanks to: Dave Sprankle, Assistant Chief, and Charles Krane, Inspector - Eastern U.S. Region, CN Railroad Police Dept. - U.S.*

## TRAFFIC CONTROL DEVICES

By Sgt. Lance Cook, MSP Traffic Safety  
Division, (517) 336-6660 or  
cooklr@michigan.gov

There seems to be some misunderstanding over the meaning of signs, signals, and pavement markings that lack a specific section of the Michigan Vehicle Code (MVC) providing clear guidance. In some cases, law enforcement may attempt to stretch some section or another to fit. In other cases, courts may dismiss valid citations because a device is not clearly defined in the MVC. With this in mind, the following is an overview of the statutory authority for traffic control devices and their application.

MCL 257.608 directs the Michigan Department of Transportation (MDOT) and the Michigan State Police (MSP) to "adopt a manual and specifications for a uniform system of traffic-control devices...for use upon highways within this state." The manual is aptly titled *Michigan Manual on [sometimes "of"] Uniform Traffic Control Devices*, or MMUTCD for short. The manual, last updated in 2005, is largely based on the 2003 federal manual of similar name, but with some sections amended due to specific requirements in Michigan traffic law. The federal manual is usually shortened to FMUTCD or simply MUTCD. Michigan's manual is required to be in substantial compliance with the federal manual, but the federal manual is not otherwise applicable to Michigan.

MCL 257.609 requires MDOT to "place or require to be placed and maintain or require to be maintained such traffic-control devices, conforming to said manual and specifications, upon all state highways..." to guide and direct traffic. MCL 257.610 applies the same requirement to county road commissions and municipalities. Traffic control devices are defined by MCL 257.70 as "all signs, signals, markings, and devices **not inconsistent with this act** placed or erected by authority of a public body or official **having jurisdiction**, for the purpose of regulating, warning, or guiding traffic." Traffic control devices are illegal if they don't meet the requirements of the manual, or are placed by someone other than the specific road authority having jurisdiction over the particular highway. Remember that "highway" is any public road, including the rights-of-way on both sides; not to be confused with "freeway."

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## Should Important People Get Breaks?

Rev. Billy Graham was returning to Charlotte, NC after a speaking engagement and when his plane arrived there was a limousine there to transport him to his home. As he prepared to get into the limo, he stopped and spoke to the driver.

'You know' he said, 'I am 87 years old and I have never driven a limousine. Would you mind if I drove it for a while?' The driver said, 'No problem. Have at it.'

Billy gets into the driver's seat and they head off down the highway. A short distance away sat a rookie NC State Trooper operating his first speed trap. The long black limo went by him doing 70 in a 55 mph zone.

The trooper pulled out and easily caught the limo and he got out of his patrol car to begin the procedure. The young trooper walked up to the driver's door and when the glass was rolled down, he was surprised to see who was driving.

He immediately excused himself and went back to his patrol car and called his supervisor. He told the supervisor, 'I know we are supposed to enforce the law...but I also know that important people are given certain courtesies. I need to know what I should do because I have stopped a very important person.'

The supervisor asked, 'Is it the governor?' The young trooper said, 'No, he's more important than that.' The supervisor said, 'Oh, so it's the president.' The young trooper said, 'No, he's even more important than that.' The supervisor finally asked, 'Well then, who is it?'

The young trooper said, 'I think it's Jesus, because he's got Billy Graham for a chauffeur!'

## Work Zone Changes

*Re-print of the body of a Memo dated October 13, 2008 from Secretary of State to all Courts.*

Pursuant to Public Act 296 of 2008, section 257.601b has been amended. The language for

enhanced penalties no longer applies strictly due to the injury or death of a worker/s in a work zone, but to the injury or death of **any person** in a work zone.

Courts should use offense codes 1801 and 1802 for causing injury or death of a person in a work zone when submitting abstracts of conviction for these offenses.

In addition, pursuant to Public Act 298 of 2008, a new section MCL 257.611a has been added concerning **Disobeyed traffic regulator**. This Public Act allows an owner or employee of an entity performing construction, maintenance, surveying, or utility work within a work zone that has been authorized, properly trained, equipped, and attired in conformance with the manual of uniform traffic control devices to direct traffic in a work zone. The new crime is a civil infraction receiving 2 points and takes *immediate* effect. This offense is abstracted to Secretary of State under offense code 2500.

If you have any questions, please do not hesitate to contact Court Liaisons' Sandy Aguirre at 517-636-0129, Kari Ferri at 517-636-0962 or Peggy Leece at 810-762-0764.

## NEW WINDSHIELDS

*By Sgt. Lance Cook, MSP Traffic Safety Division,  
(517) 336-6660 or cooklr@michigan.gov*

There are windshields available on some newer vehicles that may at first glance appear to be in violation of MCL 257.709(1)(a). These windshields appear blue, and may appear somewhat reflective if viewed from certain angles or under certain lighting conditions. The treatment, however, is neither an aftermarket application nor a film. It is an integral part of the windshield. These windshields are factory installed and meet the requirements of 49 CFR 571.205, making them legal in all 50 states.

Attached is a letter from the manufacturer certifying their compliance with Federal Motor Vehicle Safety Standard #205, as well as a photograph of a vehicle with the windshield. Please feel free to contact me if you need additional information.

**Editor Note: The mentioned letter will be posted on the MADCM website.**

## Traffic Control *Continued from page 4*

There are a number of sections in Chapter VI of the MVC that clearly indicate the specific meanings and driver requirements for certain traffic control devices. For example, MCL 257.612 provides the meanings for traffic control signals, while MCL 257.649 provides similar meaning for stop and yield signs. MCL 257.612(5) is so specific that it requires “no turn on red” signs to be placed in certain locations in order to be enforceable.

Many other signs, signals, and pavement markings don't have clearly indicated meanings in the MVC. Compliance, enforcement, and adjudication can become tricky in some cases when the parties involved aren't aware of the source or application of the meanings of these devices. For example, there is a great deal of confusion about the meaning of the center left-turn-only lanes. These are not specifically mentioned in the MVC. Drivers are often confused about how to use these lanes, and law enforcement officers are often confused about which section to cite for a violation. Courts may dismiss citations written under various sections on lane use, turning, or passing, as they don't adequately address the behavior.

MCL 257.611 provides a catch-all for this dilemma, instructing that a driver “shall not disobey the instructions of a traffic control device placed in accordance with this chapter unless at the time otherwise directed by a police officer.” This language requires drivers to obey the devices as they are defined or specified in the manual.

In the example above, a center left-turn-only lane is defined by Section 3B.03 as consisting of “a normal broken yellow line and a normal solid yellow line to delineate the edges of a lane that can be used by traffic in either direction as part of a left-turn maneuver **and shall not be used for passing and overtaking or travel** by a driver except to make an immediate left turn. Figure 3B-7 shows an example of the lane as described.

Similarly, Section 3B.06 describes the white “fog line” as “a normal solid white line **to delineate the right edge of the roadway.**” This definition becomes important when applied to MCL 257.637, which prohibits passing on the right if it involves “driving off the pavement or main-traveled portion of the roadway” or MCL 257.642(1)(a), which requires drivers to stay “as nearly as practicable entirely within a single lane...” This second section is often used to substantiate a traffic stop for a driver suspected of operating while intoxicated.

Signs can be confusing as well. Regulatory signs are black

and white (except for stop and yield signs), must be obeyed by drivers, and can be enforced if violated. Warning signs, which are yellow and black, notify drivers of potential hazards requiring caution, and can't be enforced alone. They can, however, be used to build a case for careless or reckless driving, or violation of the basic speed law. Other signs provide information, direction, or guidance, and are aptly called guide signs. My personal favorite misapplication of a sign is a black and white sign posted along some freeways that states “these trees were cut illegally.”

A copy of the MMUTCD is available on MDOT's website:

[http://mdotwas1.mdot.state.mi.us/public/tands/Details\\_Web/mmutcdcompleteinteractive.pdf](http://mdotwas1.mdot.state.mi.us/public/tands/Details_Web/mmutcdcompleteinteractive.pdf). It is a very large .pdf file (11.7 MB), and can take a minute or two to download over a T1 or DSL connection. It can be intimidating at first, but it's fairly well organized and logically sequenced.

A couple of final comments from my frequently asked questions related to traffic control devices. (1) Boulevard turnarounds are a single lane unless otherwise marked. They widen at the end to accommodate trucks. Drivers are required to obey MCL 257.647(1)(d), keeping to the extreme left when completing these turns. (2) Drivers may turn left on red onto a one-way street per MCL 257.612(1)(c)(ii), including a freeway entrance ramp, unless prohibited by a sign per (5). (3) Drivers must obey the turning/lane use pavement markings or signs per MCL 257.611.

## New Laws - End of Last Session

**PA 568 of 2008** The driver improvement course bill - was revised to put the burden on SOS to handle getting rid of the points. Effective: Oct. 2010.

**PA 463 of 2008** Increased penalties for accidents; defines “**moving violation**”; moving violation resulting in at fault collision with person, vehicle or object will be 4 points with SOS. Effective: Oct. 31, 2010.

**PA 461 & 462 of 2008** High BAC of .17; first offense 45 days hard suspension, 320 days restricted, ignition interlock. Effective: Oct. 31, 2010.