PROSECUTING ATTORNEYS ASSOCIATION OF MICHIGAN

The Green Light News

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Strategies in Playing "Cops & Prosecutors"

By: Jared Olson

Less than a week into my new position as a Traffic Safety Resource Prosecutor (TSRP) I was invited at the last minute to attend a multi-agency law enforcement meeting.

The agencies were trying to reach an understanding of how to work together in injury/fatality crashes. Glaringly absent from the meeting were local prosecutors. Upon introductions and an explanation of the role of a TSRP, the response I received was, "Fantastic, if you could just train our prosecutors on how to handle an impaired driving crash that would be great."

Later in the week, I met with prosecutors representing these agencies. After introductions and another explanation of my role as a TSRP, the prosecutors said, "Fantastic, if you could just train our cops on how to investigate an impaired driving case that would be great."

Upon discussing this with my colleagues in other states, I found that these responses are all too common. Successfully investigating and prosecuting impaired driving and other traffic crimes requires a team approach. A good working relationship between cops and prosecutors lightens the workload and increases convictions. Having worked on both sides of the fence, as a law enforcement officer and as a prosecutor, I offer the following strategies in developing a multidisciplinary approach.

Five Strategies for Prosecutors

Work with the Officer in the Field. An officer once approached me and asked that I ride along with him. "Until I have worked with you, "he said, "I don't trust you. "Working in the field with officers

goes a long way in establishing credibility. This is your chance to understand how your cases develop on the street before hitting your desk. Road patrol and/or task force shifts are excellent opportunities to

A good working relationship between cops and prosecutors lightens the workload and increases convictions.

ride along with officers. Go with a student mentality and learn as much as you can from that officer. Don't hesitate to ask questions and engage in conversation. By doing this, you will both learn something.

Be observant and see if you can find indicators of impairment or traffic violations before the officer does. Not likely, but you will make a good impression by showing interest in their work. Ask them to describe what they are observing to you. Discussing the elements now may ease the officer's anxiety later when preparing for trial. Ride-a-longs are also a non-threatening time to check the relationship temperature between your office and their department.

Invite Officers To Be Your Shadow. Even though your desk is not as exciting as a police officer's, you can still invite officers for a courthouse ride-a-long.

After shadowing you for a day, officers will have a newfound respect for the caseloads and pressures you deal with as a prosecutor. Do not bring them in on a slow day. Just as you desire to see the real action on the streets, they need to see the real action in the courthouse. If a courthouse ride-a-long is impossible due to the officers' shift work, then look for impromptu opportunities for them to watch you work. Many times they are subpoenaed only to wait outside the courtroom, on a bench, without ever taking the stand. Instead, let them experience your interactions with defense counsel, judges, victims and pro se defendants.

After an officer testifies, take a few moments to find out if they have any questions or concerns. Ask them, "How did this go for you?" "What can I do better? "They will inevitably respond by asking you the same questions. Be

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Inside this Issue

Distracted Driving Causing Concern On Michigan Roads

By: Kenneth Stecker and Kinga Gorzelewski

Distracted driving is making headlines around the state these days. In August, a driver rear ended a minivan on I-196 in Ottawa County. A 13-year-old boy in the minivan was killed in that collision. The driver told police he was eating a sandwich and looking down at his GPS at the time of the crash. Nine other people were injured, six seriously, in that five-vehicle chain reaction crash. In October, a 17-year-old boy died on an Ottawa County road when his car crossed the center line and struck a vehicle heading the opposite direction. Police said the boy was texting at the time of the crash.

Distracted driving is more than just texting. It's any activity that takes your attention away from driving and puts you at a greater risk of being involved in a crash. Other activities that distract drivers include the following:

1. Using a cellphone
2. Eating and drinking
3. Talking to passengers
4. Grooming
5. Reading
6. Using a navigation system
7. Adjusting a radio or MP3 player

There are three main types of distraction:

Visual—taking your eyes off the road.
Manual—taking your hands off the wheel.
Cognitive—taking your mind off of driving.

While all of the above activities endanger the driver and others sharing the same road, texting while driving is especially dangerous because it combines all three types of distractions. Five seconds is the average time your eyes are off the road while texting. That's enough time to cover the length of a football field when traveling at 55mph.

In 2013, 3,154 people were killed in motor vehicle crashes around the country involving distracted drivers. Ten percent of all drivers under the age of 20 involved in fatal crashes were reported as distracted at the time of the crash.

WHAT ARE THE STATES AND THE FEDERAL GOVERNMENT DOING?

Talking on a hand-held cellphone while driving is banned in 14 states and the District of Columbia.[1]

Text messaging is banned for all drivers in 44 states and the District of Columbia. Thirty eight of these states have primary enforcement, meaning police officers can issue tickets for texting while driving even though they do not charge the driver with another offense. In addition, novice drivers are banned from texting in six states and school bus drivers are banned from text messaging in three states.[2]

On September 30, 2009, President Barack Obama issued an executive order prohibiting federal employees from texting while driving on government business or with government equipment.[3] Additionally, on October 27, 2010, the Federal Motor Carrier Safety Administration enacted a ban that prohibits commercial vehicle drivers from texting while driving.[4]

WHAT IS MICHIGAN DOING?

In 2010, Michigan enacted a texting ban that reads in pertinent part as follows:

"Except as otherwise provided in this section, a person shall not read, manually type, or send a text message on a wireless two-way communication device that is located in the person's hand or in the person's lap, including a wireless telephone used in cellular telephone service or personal communication service, while operating a motor vehicle that is moving on a highway or street in this state." [5]

Fines are $100 for a first offense, $200 for a subsequent offense, and it is a civil infraction.[6] However, the law does not cover such activities as reading and writing

emails, checking Facebook, or watching a streaming Detroit Tigers baseball game.

In March 2013, Governor Rick Snyder signed into law "Kelsey's Law" that reads in pertinent part as follows:

"Except as provided in this section, an individual issued a level 1 or level 2 graduated license under section 310e shall not use a cellular telephone while operating a motor vehicle upon a highway or street. For purposes of this subsection, 'use' means to initiate a call; answer a call; or listen to or engage in verbal communication through the cellular telephone." [7]

A violation of the law is a civil infraction and carries a $100 fine, court costs, and potential license suspension or extension of the probationary period.[8]

The law is named after Kelsey Raffaele, a teenager from Sault St. Marie, who died in a 2010 car crash while talking on her cell phone.

Lastly, as of October 2013, a law prohibits commercial motor vehicle drivers and bus drivers from reading, manually typing, or sending a text message on a wireless two-way communication device that is located in the person's hand or in the person's lap, including a wireless telephone used in cellular telephone service or personal communication service.

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1 http://www.iihs.org/iihs/topics/laws/cellphonelaws

2 Id.

3 National Highway Traffic Safety Administration. Regulations. Available from: http://www.distraction.gov/dot-activities/regulations.html

4 Federal Motor Carrier Safety Administration. Limiting the Use of Wireless Communication Devices. Washington DC: US Department of Transportation, Federal Motor Carrier Safety Administration, 2011. Available from: www.fmcsa.dot.gov/

5 Michigan Compiled Law 257.602b

6 Id.

7 Michigan Compiled Law 257.602c

8 Id.

Collateral Consequence: Entry Into Canada with Criminal Convictions

By: Bill Lemons

A judge or prosecutor is likely, sooner or later, to be faced with a defendant claiming that a conviction will prevent the person from traveling to Canada. In the wake of the Padilla decision they might have reason to be concerned about the collateral consequences related to immigration.[1]

The United States border with Canada is the largest international border in the world. Officially known as the International Boundary, it is 5,525 miles long and touches 13 states, 3 oceans, and the Great Lakes. Seventy million travelers cross the border every year, including 35 million vehicles. Historically, travel between the United States and Canada has been relatively easy. The International Boundary is often referred to as the largest open border in the world. However, security on both sides of the border has tightened since the terrorist attacks on September 11, 2001.

United States citizens and permanent residents of the United States are exempt from the requirement of a visa to enter Canada for up to 180 days.[2] As recommended by the 9/11 Commission, legislation was enacted requiring passports, enhanced driver's licenses, military orders, or other acceptable documentation to cross the International Boundary beginning June 1, 2009.[3] Consequently, more people are becoming aware of the difficulties entering Canada with criminal convictions.

Inadmissibility Based Upon Criminality

In 2001, the Canadian Parliament passed the Immigration and Refugee Protection Act (IRPA).[4] Under IRPA § 3(1) (i), one objective of the statute is "to promote international justice and security by fostering respect for human rights and by denying access to Canadian territory to persons who are criminals or security risks." The United States and Canadian governments recently released the United States-Canada Joint Border Threat and Risk Assessment.[5] In addition to the threat of terrorism, the assessment provides an overview of the criminal threat along the International Boundary. It includes drug, firearm, tobacco and bulk currency smuggling; intellectual property crimes; and human trafficking.

Seventy million travelers cross the border every year, including 35 million vehicles.

In 2007, the Supreme Court in Canada held that IRPA §§ 33, 77-85 were unconstitutional.[6] The decision involved inadmissibility into Canada based upon security grounds. It did not involve inadmissibility based upon criminality grounds and the statute was amended in 2009 to address the constitutionality problems.

IRPA § 36 provides criminality grounds for inadmissibility into Canada. IRPA § 36(1) provides inadmissibility of permanent residents and foreign nationals for "serious criminality" and §36(2) provides inadmissibility of foreign nationals for criminality. The statute covers offenses committed in Canada and those committed outside of Canada. It provides:

(2) A foreign national is inadmissible on grounds of criminality for:

(a) having been convicted in Canada of an offence under an Act of Parliament punishable by way of indictment, or of two offences under any Act of Parliament not arising out of a single occurrence;

(b) having been convicted outside Canada of an offence that, if committed in Canada, would constitute an indictable offence under an Act of Parliament, or of two offences not arising out of a single occurrence that, if committed in Canada, would constitute offences under an Act of Parliament;

(c) committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an indictable offence under an Act of Parliament; or

(d) committing, on entering Canada, anoffence under an Act of Parliament prescribed by regulations.

A foreign national is defined under IRPA § 2(2) as "a person who is not a Canadian citizen or permanent resident, and includes a stateless person." Under IRPA § 21(1), a foreign national becomes a permanent resident through approval of their application by an immigration officer.

To ascertain the immigration consequences of a conviction, the

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1. Padilla v. Kentucky, 130 S. Ct. 1473 (2010).
2. Citizenship and Immigration Canada, *Countries and territories whose citizens require visas in order to enter Canada as visitors,* http://www.cic.gc.ca/english/visit/visas.asp (Date Modified: July 11, 2011).
3. *Intelligence Reform and Terrorism Prevention Act of 2004*,Pub.L. 108-458, Title VII, § 7209, Dec. 17 2004, 118 Stat. 3823.
4. *Immigration and Refugee Protection Act*, S.C. 2001, c 27, available at http://laws.justice.gc.ca/PDF/I-2.5.pdf
5. United States-Canada Joint Border Threat and Risk Assessment (July 2010), available at http://www.publicsafety.gc.ca/prg/le/oc/_fl/jbtra-eng.pdf
6. *Charkaoui v. Canada* (Minister of Citizenship and Immigration), [2007] 1 S.C.R. 350 (Can.), available at https://www.dhs.gov/xlibrary/assets/us-canada-jbtra.pdf

Effective, December 4, 2015, Under Federal Law, Court Orders/Search Warrants Necessary for Black Box Data

On December 4, President Obama signed the transportation bill ("Fixing America's Surface Transportation Act.") Part of the act, the "Driver Privacy Act of 2015" provides that court orders (i.e., search warrants) are necessary to download information from a vehicle "black box" (formally known as "Event Data Recorders.")

The law found at https://www.whitehouse.gov/briefing-room/signed-legislation

provides that data in the black box "is the property of the owner" or lessee of a motor vehicle and that such data "may not be accessed by a person other than an owner or a lessee" unless authorized by "a court or other judicial or administrative authority" or unless the owner or lessee provides "written, electronic, or recorded audio consent to the retrieval of the data." Once retrieved, data is subject to the normal rules for admission of this type of evidence.

The act also provides rulemaking authority for the National Highway Traffic Safety Administration and directs that the agency report to Congress on "the amount of time event data recorders installed in passenger motor vehicles should capture and record for retrieval vehicle-related data in conjunction with an event in order to provide sufficient information to investigate the cause of motor vehicle crashes."

UD-10 Changes are Coming in January 2016

Starting on January 1, 2016, the State of Michigan will be implementing a revised UD-10 Traffic Crash Report.

The purpose of the revision is to allow Michigan to become more federally compliant in our crash reporting in order to provide the most accurate and complete crash data.

The revised UD-10 has remained a single page, two-sided report. New fields have been added and several were redesigned.

Contributing Circumstances. This new field consists of several external factors outside of the vehicle that may have contributed to the crash. It also allows the officer to make up to two choices if needed.

The choices include:

- Prior crash
- Backup due to regular congestion
- Backup due to other incident
- Glare
- Traffic control device inoperative/missing
- Shoulders (none, low, soft, high)

Driver Distracted By. This new field was created to capture several different areas that may have caused the driver to become distracted. It covers both internal and external distractions that may have contributed to the crash.

The choices include:

- Operating an electronic communication device (texting, typing, dialing)
- Talking on hands-free electronic device
- Talking on hand-held electronic device
- Other activity electronic device (book player, navigation aid)
- Passenger
- Other activity inside the vehicle (eating, personal hygiene)
- Outside the vehicle (includes unspecified external distractions)

Deleted fields. The following areas are no longer required and have been removed from 2016 UD-10:

- Incident disposition
- Special study
- Access control
- Driveable (captured under extent of damage)
- Person advised of damaged traffic control
- Carrier source
- Interstate/intrastate
- Restrictions for CDL's
- Truck/bus vehicle type
- Type & axles per unit

For training opportunities, brochure requests, or information on the 2016 UD-10, please contact Sgt. Scott Carlson, MSP Criminal Justice Information Center, at (517) 241-1312 or carlsons1@michigan.gov.

MADD Honors Law Enforcement Officers

Through the Lifesavers Law Enforcement Recognition Awards, Mothers Against Drunk Driving (MADD) Michigan honored law enforcement officers for their commitment to impaired driving enforcement. Nearly 100 nominations were submitted.

The 2015 MADD Michigan Lifesavers Award recipients included:

OLIVIA CLEVELAND GRATITUDE AWARD

Trooper. **Matthew Unterbrink**, *MSP* Metro Post *Oakland County Sheriff's* **Alcohol Enforcement Unit**

OUTSTANDING TROOPER

Tpr. **Christopher Carns**, *MSP Paw Paw Post*

Tpr. **John Janicki**, *MSP St. Ignace Post*

Tpr. **Ryan Kirkpatrick**, *MSP Metro Post*

Tpr. **Jim Tompkins**, *MSP Lakeview Post*

Tpr. **Eric Whitcomb**, *MSP Metro Post*

OUTSTANDING DEPUTY

Dep. **Eric Calhoun**, *Van Buren County Sheriff's Office*

Dep. **Nathan Kaminski**, *Charlevoix County Sheriff's Office*

Dep. **Mark Osos**, *Macomb County Sheriff's Office*

Dep. **Andrew Wiswasser**, *Clinton County Sheriff's Office*

OUTSTANDING OFFICER

Ofcr. **Gary Abair**, *Detroit Police Department*

Ofcr. **Timothy Anderson**, *Ypsilanti Police Department*

Ofcr. **Matt Bowyer**, *Zeeland Police Department*

Ofcr. **Dustin Brown**, *Lowell Police Department*

Ofcr. **Damon Bryant**, *Southfield Police Department*

Ofcr. **Dave DeKorte**, *East Lansing Police Department*

Ofcr. **Frank Gregory**, *Detroit Police Department*

Ofcr. **Zachary Gregory**, *Greenville Police Department*

Cpl. **Jason Otter**, *Romulus Police Department*

Ofcr. **Mindy Weingart**, *Troy Police Department*

OUTSTANDING ROOKIE

Ofcr. **Mark Aldrich**, *Belleville Police Department*

Tpr. **Casey Allison**, *MSP Metro Post*

Ofcr. **Jason Bergtold**, *Novi Police Department*

Ofcr. **James Briggs**, *Adrian Township Police Department*

Ofcr. **Sean Brown**, *Oxford Police Department*

Ofcr. **Bradley Clair**, *Dearborn Police Department*

Ofcr. **Sonila Kalanxhi**, *Southfield Police Department*

Ofcr. **Sean Leathers**, *Imlay City Police Department*

Tpr. **David Skeans**, *MSP Metro Post*

Ofcr. **Robert Smith**, *Troy Police Department*

OUTSTANDING LAW ENFORCEMENT AGENCY

Clinton County Sheriff's Office

RECOGNITION OF EXCELLENCE

Ofcr. **Tom Danielson**, *Beverly Hills Police Department*

Dep. **Brian Matthews**, *Van Buren County Sheriff's Office*

Tpr. **Greg Primeau**, *MSP Iron Mountain Post*

Ofcr. **Kenneth Rochon**, *Southfield Police Department*

Ofcr. **Jason Tonti**, *Detroit Police Department*

MADD CAREER ACHIEVEMENT (DEPUTY LEW TYLER) AWARD

Dep. **Rick Cigile**, *Oakland County Sheriff's Office*

Traffic Tuesdays – The National TSRP Webinar Series

The National TSRP Webinar Series, "Traffic Tuesdays," is a wonderful resource made possible by the Missouri Office of Prosecution Services. These webinars focus on issues of impaired driving and traffic safety and are crafted to be relevant to a nationwide audience of prosecutors, law enforcement, and traffic safety professionals. If you missed any of the 2015 webinars, you may still view the following recordings:

January - The Myth of the DWI Defense: Rising BAC
https://attendee.gotowebinar.com/recording/8022338466263077634

February - Defending a Blood Test Result
https://attendee.gotowebinar.com/recording/1293661556428391938

March - Synthetic Marijuana: From the Road to the Lab, presented by Melissa Shear, District of Columbia Traffic Safety Resource Prosecutor; Chief Toxicologist Lucas Zarwell, Office of the Chief Medical Examiner for the District of Columbia; and Sergeant Adam Zielinski, a Drug Recognition Expert with the United States Park Police:
https://attendee.gotowebinar.com/recording/2922174617224776194

April - State to State Enforcement Issues, presented by Peter Grady, Iowa Traffic Safety Resource Prosecutor:
https://attendee.gotowebinar.com/recording/5258096966813214978

May - Properly Preserving Cell Phone and Mobile Device Evidence in a Traffic Crash, presented by Kinga Gorzelewski, Michigan Traffic Safety Resource Prosecutor, and Corporal Erin Diamond, an electronic forensic examiner with the Wayne County (MI) Sheriff's Office:
https://attendee.gotowebinar.com/recording/4263366598782103298
(recording only)

July - Oral Fluid Analysis in Impaired Driving Investigations, presented by Amy Miles, the Forensic Toxicology Section Director from the Wisconsin State Laboratory of Hygiene, and Dr. Christine Moore, the Vice President of Toxicology Research and Development for Immunalysis Corporation:
https://attendee.gotowebinar.com/recording/1100724769047518 73

August - The Seven Deadly Sins in the Impaired Driving Case, presented by Jared Olson, Idaho Traffic Safety Resource Prosecutor:
https://attendee.gotowebinar.com/recording/4055689745511560450

September - Turning the Sword into a Shield: Using the NHTSA Manual to Cross Examine a Defense Expert, presented by Tim Wilson, the Chief Deputy of the Jasper County (MO) Sheriff's Office:
https://attendee.gotowebinar.com/recording/1922478858066692610

October – The DRE as an Expert Witness, presented by Sarah Garner, North Carolina Traffic Safety Resource Prosecutor:
https://attendee.gotowebinar.com/recording/5990303545217155330

November – Checking the Checkpoints, presented by Joe McCormack, New York Traffic Safety Resource Prosecutor:
https://attendee.gotowebinar.com/recording/3911510787270550274

Distracted Driving Causing Concern On Michigan Roads (continued from page 2)

WHAT STEPS CAN YOU TAKE TO BE SAFE ON MICHIGAN ROADWAYS?
The Centers for Disease and Control Prevention makes the following recommendations:

STEPS FOR ALL DRIVERS:

- Model safe behavior behind the wheel—never text and drive.
- Always stay focused and alert when driving.
- Take the pledge—commit to distraction-free driving.
- Speak out if the driver in your car is distracted.
- Encourage friends and family to designate their cars a "no phone" zone when driving.

STEPS FOR PARENTS OF TEEN DRIVERS:

- Know and obey the laws in your state.
- Discuss what it means to be a safe driver with your teen and set ground rules for when they are behind the wheel.
- Make a family pledge and have other members in your family commit to distraction-free driving.
- Set a positive example by putting your cell phone away every time you drive.[9]

CONCLUSION
Using a cell phone on the roadways in Michigan is unsafe at any age. The bottom line is that texting while driving is illegal. The best advice is that if an individual receives a cell phone call while driving, she/he should let voicemail answer it and/ or call back when she/he can stop at a safe area. Common sense always should dictate paying attention to the road while driving!

Editor's Note: Kenneth Stecker and Kinga Gorzelewski are Michigan Traffic Safety Resource Prosecutors.

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.

9 http://www.cdc.gov/motorvehiclesafety/Distracted_Driving/

For Your Information

Expert Witness Problems?

No problem. If it is late in the game and you have to prepare to cross examine an expert, or if you simply want to do some research on an expert witness, you have several resources.

The National District Attorneys Association's National Traffic Law Center (NTLC), maintains a database of individualized outlines intended to aid prosecutors in preparing to cross examine expert witnesses. Traffic Safety Resource Prosecutors (TSRP) from around the country have contributed their time and energy to compile information on experts into a concise outline for each expert. If you need information on an expert witness, contact Rachel Smith (Louisiana TSRP) at LDAA Headquarters (225.343.0171) for assistance.

The New York Prosecutors Training Institute (NYPTI) has created Prosecutors' Encyclopedia (PE), a free wiki website exclusively for prosecutors. Among the many resources available on PE, there are several thousand comprehensive pages devoted to expert witnesses from a wide array of professions. A few examples are toxicologists, accident reconstructionists, neurologists, and pathologists. Each expert has their own page which contains helpful information such as videos and transcripts of testimony, background information, cases and articles where the expert is cited, curriculum vitae, and other useful items that fellow prosecutors have contributed, such as their contact information and experience with the expert. All criminal prosecutors may register at WWW.MYPROSECUTOR.COM.

NHTSA Releases 2014 FARS Statistics

On November 24, 2015, NHTSA formally released the 2014 highway crash fatality figures from the agency's FARS database (FARS is the Fatality Analysis Reporting System). The 2014 figures show that 32,675 people died in motor vehicle crashes in 2014, a 0.1-percent decrease from the previous year. The fatality rate fell to a record-low of 1.07 deaths per 100 million vehicle miles traveled.

But estimates for the first six months of 2015 show a troubling increase in the number of fatalities. The 2015 fatality estimate is up 8.1 percent from the same period last year, and the fatality rate rose by 4.4 percent. NHTSA experts cautioned that while partial-year estimates are more volatile and subject to revision, the estimated increase represents a troubling departure from a general downward trend.

NHTSA posted a news release regarding the 2014 FARS Data and two Crash Stats. One of the Crash Stats includes details on the 2014 statistics, and the other examines the trend thus far in 2015:

- 2014 Crash Data Key Findings (DOT HS # 812 219)
- Early Estimate of Motor Vehicle Traffic Fatalities for the First Half (Jan – Jun) of 2015 (DOT HS # 812 217)

Highlights of the 2014 data relevant to occupant protection and distracted driving include:

- In 2014, 32,675 people were killed in motor vehicle crashes on U.S. roadways. An additional 2.3 million people were injured in crashes in 2014.
- While showing slight fluctuation in recent years, fatalities and injuries have been in a general decline. Fatalities have decreased 25 percent from 2005 to 2014 and the number of people injured has decreased 13 percent from 2005 to 2014.
- In 2014 there were 21,022 passenger vehicle occupants who lost their lives. Despite the large number, it is the lowest number of passenger vehicle occupant deaths since 1975 (when HTSA created the FARS system). Unfortunately, however, forty-nine percent of these people were not restrained.
- In 2014, 1,678 young drivers 16 to 20 years old died in crashes. An additional 581 young passengers 16 to 20 years old died in crashes in which they were riding with young drivers.
- Distracted driving was reported in crashes that killed 3,179 people (10% of all fatalities).

Need Help Preparing for Your OWI Case? Or Just Need Some Quick Reference Guides?

The National District Attorneys Association provides many publications that are free to download on their site at http://www.ndaa.org/publications.html. These publications include everything from Alcohol and Drug Toxicology for Prosecutors, to helpful trial manuals such as Overcoming Impaired Driving Defenses, and many more.

Strategies in Playing "Cops & Prosecutors" (continued from page 1)

ready to tell them specific things they did well. If there happens to be an area needing improvement, share it with them, but only after first explaining their strengths.

Invite Officers to Observe a Jury Trial From Start to Finish. If the officer has never been a witness before, invite them to observe a hearing or trial before their event is scheduled. This will give them an opportunity to watch a direct and cross examination, the judge's rulings and interactions with lawyers and witnesses and even observe the layout of the courtroom itself.

Find moments to explain what is happening and share the strategies being employed. Do not assume they understand the trial process. I was once surprised when a sergeant with 12 years experience told me this was his first jury trial.

True, most cases resolve long before trial. This creates a misperception that prosecutors are not pushing hard enough. Viewing an actual trial will reveal the procedural hoops and potential pitfalls that must be overcome for a judge or jury to convict. Upon recognizing this, officers will begin to collect their evidence with the judge and jury in mind.

Give Credit When Credit Is Due. After your officer testifies at trial, take a moment to write a letter to their supervising officer. Include in the letter a description of the case, the specific strengths in the investigation and how well the officer did on the witness stand. These letters will be placed in the officer's permanent file, and I guarantee they will be appreciated. This simple act tends to foster a relationship wherein the officer will put forth extra effort into bringing you good cases.

Communicate When Reducing Charges. Make it a personal habit to notify officers before you reduce or dismiss an impaired driving charge as part of a plea agreement. While you don't need to ask permission to negotiate a plea, a simple email explaining your actions will foster a great deal of goodwill. Impaired driving cases require a great deal of investigation time and lots of paperwork. Because of this, officers become invested in these cases, more so than many others. Your email may save your reputation as their prosecutor. Officers will also begin calling you when they recognize potential problems in their cases, which will save you time.

Five Strategies for Officers

Testifying in court was not something I envisioned when I chose to become a police officer. Yet, within a month of being sworn in, I found myself in the witness box. I had met with the prosecutor beforehand and told him it was my first time testifying. "You will do fine, "he said. "This is just a routine preliminary hearing."

It felt like I spent three years in the box, that afternoon, being grilled by a defense lawyer. This was not the adrenaline rush I signed up for. What was routine for the prosecutor was very much foreign to me. For my first time on the witness stand, I felt very much used, lied to and taken advantage of, despite the judge ruling in my favor. I was upset with the prosecutor for not having warned or prepared me for that dreadful experience.

Shadow Your Prosecutor for a Day. The key to avoiding the courtroom, or at least making it less traumatic, is developing a good working relationship with your prosecutor. As mentioned above, take time to shadow your prosecutor for a day. Watching your prosecutor work will give great insight into how to investigate and develop your own cases with an eye for trial. You will see the prosecutor negotiate with defense counsel, advocate cases in front of a judge and meet with victims. It will become crystal clear how much your prosecutor relies on well-written police reports.

Come Prepared With Questions. Whether it is a courtroom ride-a-long, or your turn to testify in court, come prepared with lots of questions. Ask the prosecutor such things as: "Where do you think defense counsel will attack? What are the weak points in the case? The strengths? What could have been done better?" If you make this a habit, your prosecutor will likely develop a habit of having the answers before you arrive. Both of you will then be prepared for courtroom battle.

Invite Your Prosecutor to the Crime Scene. During your investigation, contact your prosecutor with any questions you may have. Be cognizant of opportunities to invite prosecutors to the crime scene. Good prosecutors will roll out of bed at 3 AM to come to the scene of an alcohol-related crash. They realize how much better they will present the case in court having seen it firsthand. They will watch you work and translate it into better questions when you become the state's witness.

Share Your Concerns. For various reasons, there are certain cases you become attached to and are concerned with the outcome. When this happens, remember that your prosecutor is reviewing hundreds of cases from various officers. Therefore, be sure to contact your prosecutor early in the process and give your input as to how you would like the case to be resolved. Your input is important and usually will be given great consideration. It will certainly generate an explanation if the resolution is different from your expectations.

Give Credit When Credit Is Due. Finally, when your prosecutor is doing a good job, take the time to approach their supervisor to express your approval. This will eventually get back to that prosecutor and from then on your name will jump off your reports. Greater attention and special care will likely be given to your cases. The end result is better investigation on your part and better prosecution on their part.

The invitation is to try at least one of these strategies. See if it works. Playing cops and prosecutors takes a coordinated effort to successfully reduce impaired driving and other traffic crimes.

Editor's Note: Jared Olson is the Idaho Traffic Safety Resource Prosecutor.

Collateral Consequence: Entry Into Canada With Criminal Convictions (continued from page 3)

prosecutor can check the Canadian Criminal Code to determine whether it is an indictable offense and compare the elements of the crime with the crime they are prosecuting.[7] For example, a review of Canada's impaired driving statute shows that it would qualify as an indictable offense in Canada. The Canadian impaired driving law provides:

(1) Every one commits an offence who operates a motor vehicle or vessel or operates or assists in the operation of an aircraft or of railway equipment or has the care or control of a motor vehicle, vessel, aircraft or railway equipment, whether it is in motion or not,

> (a) while the person's ability to operate the vehicle, vessel, aircraft or railway equipment is impaired by alcohol or a drug; or
> (b) having consumed alcohol in such a quantity that the concentration in the person's blood exceeds eighty milligrams of alcohol in one hundred millilitres of blood.[8]

In Canada, impaired driving is an offense that may be prosecuted either by indictment or summarily.[9] Under IRPA § 36(3)(a), "an offence that may be prosecuted either summarily or by way of indictment is deemed to be an indictable offence, even if it has been prosecuted summarily." Consequently, a foreign national convicted of DWI is deemed inadmissible into Canada, whether convicted in Canada or convicted in the United States provided the conviction is equivalent with Canadian law.

Under IRPA § 36(3)(b), inadmissibility can not be based upon a crime if the defendant is acquitted of a Canadian offense. For offenses committed outside of Canada, however, the person may still be deemed inadmissible if they are not convicted.[10] Under IRPA § 36(2)(c), a foreign national is inadmissible for committing an act that constitutes an indictable crime in Canada.

Generally, impaired driving would not constitute "serious criminality" under IRPA § 36(1), making it applicable to permanent residents of Canada. IRPA § 36 (1) requires a maximum term of imprisonment of 10 years. In Canada, the maximum sentence for impaired driving is 5 years.[11] However, impaired driving causing bodily harm or death of another person would constitute serious criminality.[12] Consequently, permanent residents of Canada would be deemed inadmissible under the IRPA for those crimes.

Overcoming Inadmissibility

A foreign national deemed inadmissible due to criminality may still be able to enter Canada. There are three possibilities: rehabilitation status, temporary resident permit, or pardon.

Rehabilitation status permanently waives the inadmissibility.[13] The foreign national needs to apply for rehabilitation status and pay a $200 application fee.[14] The foreign national is eligible for rehabilitation status after 5 years following completion for their sentence, including probation. For purposes of impaired driving, it is important to note that the driver's license suspension or revocation period can impact the calculation of the five year period. Consider the following scenario addressed by Citizenship and Immigration Canada:

> **On June 3, 2003, I was convicted of driving under the influence and had my driver's license taken away from me for three years. When am I eligible to apply for rehabilitation?**
>
> The sentence imposed ends on June 3, 2006. Count five years from the end date of the suspension or the date your driver's license is reinstated. You would therefore be eligible to apply for rehabilitation on June 3, 2011.[15]

Offenders with one DWI conviction may be eligible for deemed rehabilitation status. For deemed rehabilitation status, the foreign national does not need to submit an application. Foreign nationals with only one criminal conviction creating the inadmissibility can be deemed rehabilitated 10 years following completion of their sentence and probation.

Foreign nationals not eligible for rehabilitation status can still enter Canada by applying for and obtaining a temporary resident permit.[16, 17] If granted, the foreign national is issued a temporary resident visa with their passport that temporarily waives the inadmissibility. The temporary resident visa restricts the length of

(Continued on page 10)

7 Criminal Code, R.S.C., 1985 c. C-46 (Can.), available at http://laws.justice.gc.ca/PDF/C-46.pdf

8 Criminal Code, R.S.C., 1985 c. C-46, § 253.

9 Criminal Code, R.S.C., 1985 c. C-46, § 255(1).

10 Citizenship and Immigration Canada, Rehabilitation For Persons Who Are Inadmissible to Canada Because of Past Criminal Activity, p.4 (2011), available at http://www.cic.gc.ca/english/pdf/kits/guides/5312E.PDF

11 Criminal Code, R.S.C., 1985 c C-46 § 255(1)(a).

12 Criminal Code, R.S.C., 1985 c C-46 § 255(2) – (3.2).

13 "the matters referred to in paragraphs (1)(b) and (c) and (2) (b) and (c) do not constitute inadmissibility in respect of a permanent resident or foreign national who, after the prescribed period, satisfies the Minister that they have been rehabilitated or who is a member of a prescribed class that is deemed to have been rehabilitated;" IRPA, § 36(3)(c).

14 Citizenship and Immigration Canada, Rehabilitation for Persons Who are Inadmissible to Canada Because of Past Criminal Activity, available at http://www.cic.gc.ca/english/information/applications/rehabil.asp (Date Modified: July 29, 2010).

15 Citizenship and Immigration Canada, Rehabilitation For Persons Who Are Inadmissible to Canada Because of Past Criminal Activity, p.7 (2011), available at http://www.cic.gc.ca/english/pdf/kits/guides/5312E.PDF

16 "A foreign national who, in the opinion of the officer, is inadmissible or does not meet the requirements of this Act becomes a temporary resident if the officer is of the opinion that it is justified in the circumstances and issues a temporary resident permit, which may be cancelled at any time." IRPA, § 22 (1).

17 Citizenship and Immigration Canada, Temporary Resident Visa Application Form, available at http://www.cic.gc.ca/english/information/applications/visa.asp (Date Modified: June 7, 2011).

Collateral Consequence: Entry Into Canada With Criminal Convictions (continued from page 9)

time that the foreign national may be in Canada and may impose other restrictions. The application fees for a temporary resident visa are $75 for a single entry, $150 for a multiple entry visa, or $400 for a family.

Under IRPA § 36(3)(b), a third way that a foreign national can enter Canada is to receive a pardon. Foreign nationals deemed inadmissible for a crime committed in Canada can apply for a pardon with the Parole Board of Canada. The Criminal Records Act allows the Parole Board of Canada to grant, deny, or revoke pardons for convictions under federal acts or regulations of Canada.[18]

Conclusion

Determining the immigration consequences of a criminal conviction can be a complex legal question. There is not a bright line rule about what crimes trigger immigration consequences and these consequences may be unavoidable through plea bargaining. In addition, the defendant has options available to overcome the inadmissibility that involve some discretion by the Canadian government. While an impaired driving conviction may deem someone inadmissible to travel into Canada, the offender does have options available to overcome the inadmissibility. These options are relatively simple and basically require completion of an application form and payment of a small fee. In addition, any attempt to "mask" criminal convictions would be contrary to efforts of both governments to work together to improve border security.

For more information about this subject, visit the Citizenship and Immigration Canada website[19]

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18 Criminal Records Act, R.S.C., 1985, c. C-47 (Can.), available at http://laws.justice.gc.ca/PDF/C-47.pdf.

19 Citizenship and Immigration Canada, http://www.cic.gc.ca/english/index.asp (Date Modified: July 5, 2011).

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PROSECUTING ATTORNEYS ASSOCIATION OF MICHIGAN

The Yellow Light Legal Update

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Clicking on case names (highlighted in blue text) will take you directly to the PDF version of the opinions online.

Published Cases

United States Supreme Court

In this 42 USC 1983 action, officers began to chase the plaintiff when he was contacted in his car concerning an arrest warrant. The plaintiff commenced a high-speed chase that continued for approximately 18 minutes at speeds between 85 and 110 miles per hour. Twice during the chase the plaintiff called police dispatch to say he had a gun and threatened to shoot police if they did not stop their pursuit. Tire spikes were set beneath an overpass. Officer Mullenix decided to shoot at the car to disable it. Mullenix communicated his plan. One officer responded 10-4, a supervisor indicated to stand-by, and stated "see if the spikes work." which may or may not have been heard by Mullenix.

Qualified immunity shields officials from civil liability as long as the official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.

Mullenix fired several shots at the vehicle. The car hit the spikes and flipped. It was determined that plaintiff died from the shots, not the accident. In court, Mullenix moved for summary judgment on the ground of qualified immunity - the motion was denied by the trial court and affirmed by the Court of Appeals. The Supreme Court reversed.

In this per curium opinion, the Court held that the appropriate question was whether clearly established law concerning an officer's conduct where the person is avoiding capture through vehicular flight when persons in the area are at risk from the flight.

The opinion asks whether it was reasonable to kill the suspect. Qualified immunity shields officials from civil liability as long as the official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. To determine the issue, the Court looked to whether the act was unreasonable in circumstances beyond debate.

The Court held that in this situation the officer was not plainly incompetent nor did he knowingly violate the law. Therefore, the officer should be granted qualified immunity

Mullenix v. Luna, case no. 14-1143, decided November 9, 2015

Michigan Court of Appeals

The defendant went to the Soaring Eagle Casino and parked his car in the casino parking lot. Security personnel saw Carlton smoking what they believed to be marijuana inside his car. The security personnel called police officers and the officers went to the parking lot to investigate. Carlton admitted to the officers that he had been smoking marijuana and the officers saw a marijuana roach on the car's dashboard. The officers searched the car and found four bags of marijuana in a Styrofoam cooler that was on the floor board of the front passenger's seat. Carlton was the only person in the car at the time.

The issue was whether the immunity and defenses under MCL 333.26424 and 333.26428 of the Michigan Medical Marihuana Act (MMMA) apply to a person who smokes marijuana in his or her own car while that car is parked in the parking lot of a private business that is open to the general public. The prosecution relied on MCL 333.26427(b)(3)(B) which specifically reads that the MMMA does not "permit any person to smoke marijuana in any other place." Therefore, the defendant is not entitled to immunity because the defendant was smoking in a public place which is prohibited under MCL 333.26427(b)(3)(B).

The Court of Appeals agreed with the prosecution. The Court held "Because Carlton was smoking marijuana in a 'public place,' MCL 333.26427(b)(3)(B), he could not assert the immunity or defense provided under that act."

The Yellow Light Legal Update is an addition to The Green Light News.
With this insert, you can keep a notebook for just the traffic safety cases.

The Court reasoned "Because the electors chose to define the exception by reference to the character of the place rather than by the specifics attending the act, whether members of the general public might stumble upon the patient smoking the medical marijuana, or otherwise detect the patient's smoking, is not relevant to determining whether the exception applies."

The Court further stated "For similar reasons, the fact that a public place was intended to be used in private does not alter the public character of that place. A person who goes into a restroom that is generally open to

the public, enters a stall, and closes the door, does not thereby transform the stall from a public place to a private place.

Stated another way, even if a patient successfully conceals his or her smoking of medical marijuana from detection, the patient will not be entitled to the protections of the act if he or she smoked the marijuana in a public place. The relevant inquiry is whether the place at issue is generally open to use by the public without reference to a patient's efforts or ability to conceal his or her smoking of marijuana."

Reversed.

People v. Carlton, case no. 321630, decided November 24, 2015.

Police officers arrested the defendant, Feeley, for resisting and obstructing a police officer in violation of MCL 750.81d, when he failed to comply with the command of a reserve police officer.

At the conclusion of the preliminary examination hearing the district court denied the prosecution's bind-over request on the grounds that failure to comply with the command of a reserve police officer was not within the scope of the statute. The prosecution appealed.

The Michigan Court of Appeals, in a 2-1 decision, affirmed the decision of the district court. While recognizing that reasonable policy arguments may support the view that failing to obey the commands of a reserve police officer should result in some level of criminal liability, the Court noted that the decision whether to criminalize such actions and to define such punishment is a matter reserved for the legislature.

The Court held that "if the legislature had intended 'police officer' as used in the statute to be read so broadly, it would not have needed to include a lengthy list of law enforcement professionals (and firefighters, etc.) to whom the law applies, notably omitting reserve police officers."

Affirmed.

People v. Feeley, case no. 325802, decided September 15, 2015.

Unpublished Cases

(An unpublished opinion is not binding as precedent but may have persuasive value in court.)

Defendant was convicted by a jury of one count of second-degree fleeing and eluding, MCL 257.602a(4), and one count of furnishing an officer with false, forged, fictitious, or misleading information, MCL 257.324. Defendant also pled guilty to operating a vehicle while license suspended, MCL 257.904.

The evidence introduced at trial demonstrated that defendant was driving in Saginaw at approximately 2:30 a.m. on August 18, 2013. Michigan State Trooper Justin Kemerer saw that the license plate on defendant's vehicle was not properly illuminated as required by MCL 257.686(2). Kemerer attempted to initiate a traffic stop for an equipment violation by activating his police lights as a signal for defendant to stop, but defendant continued to drive and a police pursuit ensued, involving high rates of speed in excess of 90 miles per hour at times.

Based on the contention that the stop was illegal, defendant argued that he could lawfully resist Kemerer's efforts to stop the vehicle

Other patrol cars joined the pursuit and they eventually succeeded in stopping defendant's car by essentially pinning defendant's vehicle against the median of the freeway. At that time, defendant refused to cooperate with police commands to put his hands outside the vehicle and he then hid his hands under his body when police tried to handcuff him. Defendant then lied to police about his identity. A jury convicted defendant of the charge noted above. Defendant appealed as of right.

Defendant asserted that Kemerer lacked a lawful basis for the traffic stop. Specifically, defendant contended that the license plate on the vehicle was illuminated and that Kemerer's claim to the contrary was a pretext for effecting an illegal stop. Based on the contention that the stop was illegal, defendant argued that he could lawfully resist Kemerer's efforts to stop the vehicle and that the trial court erred by denying defendant's motion to suppress.

The Court of Appeals disagreed.

The Court noted that the statute that formed the basis for the traffic stop in this case, MCL 257.686(2), states:

> Either a tail lamp or a separate lamp shall be constructed and placed so as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of 50 feet to the rear. A tail lamp or tail lamps, together with any separate lamp for illuminating the rear registration plate, shall be wired so as to be lighted whenever the head lamps or auxiliary driving lamps are lighted.

Thus, if the license plate of the vehicle defendant was driving was not illuminated, it would constitute a violation of MCL 257.686(2) and this equipment violation would provide legal justification for the stop.

The Court held "Giving deference to the trial court's opportunity to assess credibility, based on Kemerer's description of events and his observation of an unlit license plate, we cannot conclude that the trial court's factual findings were clearly erroneous. Further, because Kemerer observed defendant driving a vehicle with an unlit license plate, he had reasonable suspicion justifying a traffic stop for a violation of MCL 257.686(2)."

Affirmed.

People v. Dennis, case no. 321852, decided November 17, 2015.

Following a jury trial, defendant was convicted of the lesser included offense of operating a vehicle while visibly impaired (OWVI), and operating a vehicle with a suspended or revoked license (OWSL). Defendant was originally placed under arrest for Operating While Intoxicated (OWI) and refused a breath-alcohol test.

The deputy sought and secured a search warrant and defendant's blood was then drawn by a nurse employed by the jail who worked under the supervision of a physician. The blood-test results revealed that defendant's blood-alcohol content was 0.05 grams of alcohol per 100 milliliters of blood, and that defendant had tetrahydrocannabinol (THC), the active component of marijuana, alprazolam (Xanax), methadone, and zolpidem (Ambien) in his system.

When a blood sample is taken pursuant to a search warrant, the issue of consent is removed, and the implied consent statute is not applicable.

First, the defendant argued that the trial court erred in not excluding the results of his blood test, which was done in a room at the jail adjacent to the booking area, because MCL 257.625a(6)(c) required that the blood be drawn in a "medical environment" and the search warrant referenced a blood draw in "the most convenient medical facility."

The Court of Appeals disagreed.

The Court held "When a blood sample is taken pursuant to a search warrant, the issue of consent is removed, and the implied consent statute is not applicable. The warrant procedure exists independently of the testing procedure set forth in the implied consent statute."

The Court noted "The blood test was taken pursuant to a search warrant. Accordingly, noncompliance with MCL 257.625a(6)(c) does not provide defendant with grounds for relief. See People v. Callon, 256 Mich App at 323 (rejecting the defendant's argument that the test results should be excluded because MCL 257.625a(6)(c)'s requirement that the blood be drawn by a 'licensed physician, or an individual operating under the delegation of a licensed physician' was allegedly not followed and the blood was drawn pursuant to a search warrant)."

Further, the Court noted that "Even if, as under Callon, the court were to incorporate the statute into the warrant, the statute was satisfied where the blood was drawn by a nurse under a doctor's supervision. The trial court appropriately considered that defendant's blood was drawn in a room to the side of the Assessment room, i.e., the booking area, that the nurse performing the blood draw frequently does so and followed protocol, and that while there is a medical office within the jail, it is not uncommon for the nurses to provide treatment throughout the jail when necessary for the safety of inmates, arrestees, and the staff.

Thus, to the extent that the implied-consent statute's provisions were incorporated into the warrant, MCL 257.625a(6)(c) was not violated because the blood draw was performed in a 'medical environment."

Second, the defendant argued that the trial court erred in denying his motion to exclude the blood-test results as irrelevant and confusing

to the jury where the prosecution did not present expert testimony to explain how his levels of intoxicating substances could affect his ability to operate his vehicle for the purposes of establishing that he was driving under the influence of intoxicating substances, MCL 257.265(1)(a), or while visibility impaired due to such substances, MCL 257.625(3).

The Court of Appeals disagreed.

The Court held "The trial court properly determined that the lack of expert testimony went to the weight, not the admissibility, of the evidence. Even if the court were to accept the defendant's argument as to the need for expert testimony, any error 'would be harmless in light of the evidence of impaired driving independent of' the blood-test results."

Third, the defendant argued that the there was insufficient evidence to sustain his conviction under MCL 257.625(3).

The Court of Appeals disagreed.

The Court held "In a light most favorable to the prosecution, the jury could have reasonably inferred that defendant was operating his vehicle in a manner less than that of an ordinary, careful and prudent driver."

Lastly, the defendant argued the trial court erred in denying his request for an instruction that his consumption of marijuana be presumed legal based on protections afforded under the Michigan Medical Marihuana Act (MMMA).

The Court of Appeals disagreed.

The Court held "Based on the circumstances of this case, the trial court's refusal to provide the jury with the proposed instruction—that defendant's marijuana use be presumed lawful—was not error requiring reversal."

The Court noted "Section 7(b)(4) does not extend the MMMA's protections to any instance where a person is operating a vehicle and engaging in the 'medical use' of marijuana; rather, it limits the MMMA's protections where the person is 'under the influence' of marijuana."

Affirmed.

People v. Donaghy, case no. 322677, decided October 13, 2015.

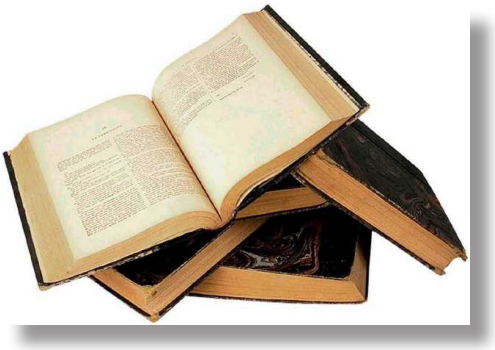
New Laws

Minors Under 21- Prescription Drugs

Public Act 220, signed by Governor Rick Snyder on December 16, 2015 (effective 90 days after Governor's signature), amends the Public Health Code to exempt a person under 21 years of age from prohibitions against possessing and using certain prescription drugs, if he or she sought medical assistance or accompanied another person who sought assistance for a drug overdose or other perceived medical emergency.

The exemptions would apply to an incident arising from the use of a prescription drug that was a controlled substance or controlled substance analogue that the person possessed in an amount sufficient only for personal use and if evidence of the violation were obtained as a result of the individual's seeking or being presented for medical assistance.
The exemptions would not prevent the investigation, arrest, charging, or prosecution of a person for any other violation of law or be grounds for suppression of evidence in the prosecution of any other criminal charges.

The law also would require a health facility or agency to develop a process for notification of the parent or parents, guardian, or custodian of a minor under the age of 18 who was not emancipated and who voluntarily presented himself or herself, or was



presented by another person if he or she were incapacitated, to a health facility or agency for emergency medical treatment, as described above. A health facility or agency could not notify a parent, guardian, or custodian of nonemergency treatment without obtaining the minor's consent.

Consult Your Prosecutor Before Adopting Practices Suggested by Reports in this Article.

The statutes and court decisions in this publication are reported to help you keep up with trends in the law. Discuss your practices that relate to these statutes and cases with your commanding officers, police legal advisors, and the prosecuting attorney before changing your practices in reliance on a reported court decision or legislative change.

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