LEGAL UPDATE

June

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Outline designed to update police officers on recent changes in criminal law and procedure. Material includes search and seizure, admissions and confessions, OWI law, crimes against persons and property, miscellaneous, laws of evidence and civil liability.

Legal Update for Police Officers

by,

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SEARCH AND SEIZURE

Paper plate stop

People v Simmons, C/A No. 331116 (July 19, 2016)

An officer pulled over a vehicle because it did not have a metal registration plate attached at the rear. When the officer pulled over the car, he saw that there was a piece of paper on the left side of the rear window, but he could not read the piece of paper. The officer looked at the paper again from approximately 3 or 4 feet away as he approached the driver's side of the vehicle, but he could not see any of the letters or numbers. **He did not stop to read the paper. He explained that he did not do so for safety reasons, as there was a potential that the occupants of the car could harm him, get out of the car, or flee the scene. However, he admitted that he did not have a reason to fear his safety at that time and that it would have taken approximately five seconds to verify the temporary license plate.** He approached the vehicle, and asked defendant, who was driving the car, for his identification, registration, and proof of insurance. Defendant provided a state identification card, but not a driver's license. He also did not provide the registration. A computer search with regard to defendant showed that defendant's driver's license was suspended. Defendant was arrested for driving with a suspended license. The officer searched the vehicle with the permission of the owner, who was a passenger in the car, and found a firearm. He later determined that the paper was a valid temporary license plate. From that traffic stop, defendant was charged with carrying a concealed weapon, possession of a firearm by a person convicted of a felony (felon-in-possession), possession of ammunition by a person convicted of a felony, receiving and concealing a stolen firearm, possession of a firearm during the commission of a felony and operating a motor vehicle with a suspended license. Defendant filed a motion to suppress physical evidence. The trial court agreed on the basis that the officer should have taken five seconds to verify the validity of the temporary paper plate in the rear window.

A traffic stop is justified if the officer has "an articulable and reasonable suspicion that a vehicle or one of its occupants is subject to seizure for a violation of law." This includes a violation of a traffic law. The determination whether a traffic stop is reasonable must necessarily take into account the evolving circumstances with which the officer is faced.

HELD – "The officer's stop was based on a reasonable suspicion that traffic laws were being violated. Under the Michigan Vehicle Code, a vehicle registration plate should be attached to the rear of the vehicle. MCL 257.225(1). The plate must be in a clearly visible position, 'in a clearly legible condition,' and 'shall be maintained free from foreign materials that obscure or partially obscure the registration information.' MCL 257.225(2). The officer testified that he could not see a plate before pulling over the vehicle. He could not read the paper in the window when he approached the vehicle from 3 or 4 feet away, and its writing was very dim. Thus, he was justified in pulling over the vehicle for a violation of MCL 257.225(2) as the plate was not in a clearly visible position or in a clearly legible condition. Defendant asserts that the search and seizure became unreasonable when the officer asked defendant for his license, registration, and insurance, rather than taking five seconds to examine the paper plate affixed to the rear window of the vehicle and determine its validity. **The officer's actions were reasonably related in scope to the circumstances of the stop. Even had the officer taken the time to examine the paper plate more closely to determine whether it appeared to be a valid temporary registration**

plate, the plate would still have been in violation of MCL 257.225(2). The officer's questions regarding defendant's license and registration were reasonable questions concerning the violation of the law. When defendant produced a Michigan identification card rather than a driver's license and failed to provide registration, the officer had a justification for running a computer check. Furthermore, a computer check is a routine and generally accepted practice by the police during a traffic stop.

Scope of Consent

People v Mahdi, C/A No. 327767 (October 11, 2016)

Officers obtain a search for an apartment in a complex. The affidavit had stated that on two occasions an informant entered the apartment, purchased drugs inside, left the apartment, and turned over the drugs to police. The detective testified that defendant in this case was the subject of the investigation and was observed entering and exiting the apartment on multiple occasions. However, the affidavit did not name a particular individual. Before executing the warrant, the detective conducted surveillance of the area. He observed defendant standing behind a Buick Regal in the parking lot of the apartment complex. Defendant moved around items in the trunk of the vehicle, closed the trunk, and walked into another apartment in the complex, carrying a small bag in his hand. Following this surveillance, officers executed the search warrant. Detectives also looked inside the Buick and noticed a small bag of marijuana in or near the center console. The officers went to the other apartment and knocked on the door. Defendant answered and stepped outside of the apartment. He was arrested for possession of marijuana and placed in the back of a police car. The detectives then spoke to defendant's mother who was in the apartment and asked for permission to search. The detective explained that the officers were investigating her son for drug trafficking and wanted to make sure that he did not have any drugs hidden in her house that she did not know about. He asked her if she would mind if we looked around and made sure there was nothing there. The mother gave them permission to conduct the search.

During the search, the detectives saw men's clothing piled on the toilet seat and a cell phone next to the clothing. There were shoes on the floor, and a travel bag was open. The officers seized the cell phone and confiscated a wallet and a set of keys from the couch in the living room. The wallet contained a receipt for AutoZone, various cards and receipts with defendant's name on them, and $971 in cash. The keychain included keys that could unlock bot apartments and the Buick in the parking lot. Officers used a key on the keychain to unlock the Buick and retrieve the marijuana inside. They also found paperwork with defendant's name and the address at the apartment where the search warrant was occurring.

During the execution of the search warrant, officers found marihuana, heroin, cocaine and paraphernalia used to distribute the drugs. While the detective was writing his police report, he kept the cell phone by him and responded to text messages that were being sent to it. For example, a message stated, "Need 20, have cash, call me. ASAP." The detective asked, "Boy or girl?" The response was "girl, how long and will you do the pill deal for me, it's for that long haired beauty you like." The detective responded that he was "waiting on some more." The officer testified that boy is "street slang" for heroin, and girl is "street slang" for cocaine.

Before trial, defense counsel filed a motion to suppress the wallet, keys, and cell phone.

Standing

HELD – "The totality of the circumstances in this case establishes that defendant had a legitimate expectation of privacy in his mother's apartment that society recognizes as reasonable. The police officers recovered from the Buick several items indicating that defendant resided at 44 Cherry Hill with his mother, including tax paperwork listing defendant's name and the address of 44 Cherry Hill. The detectives also recovered a collections notice for defendant at 44 Cherry Hill, and Friend of the Court paperwork for defendant, which also listed 44 Cherry Hill as his address. Finally, the officers found a land sale registration form signed by defendant listing Cherry Hill as his address. Defendant answered the door when the police officers arrived at 44 Cherry Hill, indicating that he had control over the apartment and the ability to regulate its access. Additionally, the officers found defendant's personal belongings in 44 Cherry Hill after arresting defendant. **The totality of the circumstances of this case, therefore, indicates that defendant had a legitimate expectation of privacy with regard to 44 Cherry Hill that was objectively reasonable because he resided at the residence with his mother and had the ability to control the area searched and items seized. Accordingly, defendant had standing to challenge the search of 44 Cherry Hill and the seizure of the wallet, keys, and cell phone.**

Seizure of keys, wallet, cell phone

HELD – "We next turn to the issue whether the police violated defendant's Fourth Amendment right against unreasonable searches and seizures when the officers searched 44 Cherry Hill and seized the wallet, keys, and cell phone. It is uncontested that the officers did not have a warrant to search 44 Cherry Hill. Thus, the search was unreasonable per se, and an exception to the warrant requirement was necessary in order for the search to be reasonable. The consent exception permits a search and seizure if the consent is unequivocal, as well as specific and freely and intelligently given. **The consent must be given by the person whose property is searched or from a third party possessing common authority over the property.** The parties do not contest that defendant's mother had the authority to give consent to search her apartment. **Instead, the parties dispute whether the items seized were within the scope of the consent. At trial, Detective Main testified as follows: I told Ms. Howard why we were there. Uh, I told her that we were investigating her son for, for drug trafficking. I told her that I wanted to make sure that he didn't have any drugs hidden in her house that she didn't know about and I asked her if she mind [sic] if we looked around and made sure there was nothing there. The testimony establishes that a reasonable person would have believed that the scope of the search pertained to illegal drugs hidden in the apartment.** Howard's consent to search her apartment for the limited purpose of uncovering illegal drugs did not constitute consent to seize any item. The seizure of the wallet, keys, and cell phone, therefore, fell outside the scope of Howard's consent."

Plain View

HELD – "The officers were not entitled to seize the wallet, keys, and cell phone under the plain view exception to the warrant requirement because the incriminating character of the items seized was not immediately apparent. 'The plain view exception to the warrant requirement allows a police officer to seize items in plain view if the officer is lawfully in the position to have that view and the evidence is obviously incriminatory.' **The prosecution's argument that the items were properly seized under the plain view exception is without merit because the incriminating nature of the wallet, keys, and**

cell phone was not immediately apparent. Instead, further investigation was necessary in order to establish a connection between the items and the suspected criminal activity."

Probationer Status

HELD – "Since the defendant was on probation at the time, the prosecutor also argues on the United States Supreme Court's decision in United States v Knights, 534 US 112 (2001), for the proposition that the officers were only required to have reasonable suspicion that criminal activity was occurring in order to conduct the search of the apartment and seize the wallet, keys, and cell phone. This case is distinguishable from Knights, however, because the prosecution did not submit evidence regarding the conditions of defendant's probation in the trial court. In this case, we cannot examine defendant's probation conditions because the probation conditions are not contained in the record. Without the probation conditions, there is insufficient evidence in the record to conclude that the officers had reasonable suspicion that a probationer subject to a search condition was engaged in criminal activity."

"We decline to expand the holding in Knights to permit the seizure of any item found in a probationer's home if there is reasonable suspicion of criminal activity permitting a search of the home. In Knights, the incriminating nature of the items seized, which included "a detonation cord, ammunition, liquid chemicals, instruction manuals on chemistry and electrical circuitry, bolt cutters, telephone pole-climbing spurs, drug paraphernalia, and a brass padlock stamped with the name of the company that was the victim of arson was immediately apparent in light of the circumstances in that case, and thus would have been subject to seizure under the plain view exception to the warrant requirement when the officers searched the home. In this case, as discussed above, the items seized from 44 Cherry Hill were not obviously incriminating, and thus did not fall under the plain view exception to the warrant requirement. **Even if the officers were only required to have reasonable suspicion that the items were used for illegal drug activities in order to seize the items, the officers had nothing more than a hunch that the cell phone, wallet, and keys were connected with drug activity based on their experiences with similar items in the past, and the officers lacked any particularized suspicion with regard to the specific items seized."**

Inevitable Discovery

HELD – "We also agree with defendant that the cell phone, keys, and wallet do not fall under the scope of the inevitable discovery doctrine. The inevitable discovery rule permits the admission of evidence obtained in violation of the Fourth Amendment if the prosecution establishes by a preponderance of the evidence that the information inevitably would have been discovered through lawful means. There is no indication that the officers would have inevitably discovered the wallet, keys, and cell phone through legal means. Even assuming that the officers had probable cause to obtain a warrant for the keys, wallet, and cell phone, the officers were not in the process of obtaining a warrant when they seized the items. Therefore, the inevitable discovery doctrine does not apply to the seizure of the cell phone, wallet, and set of keys."

Fruit of the Poisonous Tree

HELD – "We next conclude that the text messages obtained from the cell phone fell under the exclusionary rule as products of the illegal seizure of the cell phone. "[T]he exclusionary rule prohibits the introduction into evidence of materials and testimony that are the products or indirect results of an illegal search, the so-called 'fruit of the poisonous tree' doctrine."

CIVIL LIABILTY

For liability, the violation of rights must be clearly established.

White v Pauly, U.S. Sup Ct. No. No. 16–67 (January 9, 2017)

Officers were dispatched to a possible OWI driver on the freeway. Two woman had reported that a driver of a car had been driving recklessly and provided a license plate number. The state police dispatcher identified the plate as being registered to the Pauly brothers' address. Based on the information, the officers agreed that there was insufficient probable cause to arrest the driver but still wanted to contact him to (1) get his side of the story, (2) make sure nothing else happened, and (3) find out if he was intoxicated. **Two officers went to the house and a third, Officer White stayed at the off-ramp in case the driver returned.**

When officers arrived at the address, they approached it in a covert manner to maintain officer safety. Both used their flashlights in an intermittent manner. The officers found the vehicle and radioed White, who left the off-ramp to join them. At approximately 11 p.m., the Pauly brothers became aware of the officers' presence and yelled out, "Who are you?" and "What do you want?" In response, the officers laughed and responded, "Hey, (expletive), we got you surrounded. Come out or we're coming in." The Pauly brothers heard someone yelling, "We're coming in. We're coming in." Neither brother heard the officers identify themselves as state police. The brothers armed themselves and one brother yelled, "We have guns."

Officer White had parked his car and was walking up to its front door when he heard shouting and, "We have guns." When White heard that statement, he drew his gun and took cover behind a stone wall 50 feet from the front of the house. Just a few seconds after the "We have guns" statement, Daniel Pauly stepped part way out of the back door and fired two shotgun blasts while screaming loudly. A few seconds after those shots, Samuel opened the front window and pointed a handgun in Officer White's direction. Officer Mariscal fired immediately but missed. Four to five seconds later, Officer White shot and killed Samuel. The family sued Officer White because he failed to identify himself and give warning before he fired.

HELD – "**Qualified immunity attaches when an official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known**. While this Court's case law does not require a case directly on point for a right to be clearly established, existing precedent must have placed the statutory or constitutional question beyond debate. **In other words, immunity protects 'all but the plainly incompetent or those who knowingly violate the law.'** This is not a case where it is obvious that there was a violation of clearly established law under *Garner* and *Graham*. Of note, the majority did not conclude that White's conduct—such as his failure to shout a warning—constituted a run-of-the-mill Fourth Amendment violation. Indeed, it recognized that this case presents a unique set of facts and circumstances in light of White's late arrival on the scene. This alone should have been an important indication to the majority that White's conduct did not violate a clearly established right. Clearly established federal law does not prohibit a reasonable officer who arrives late to

an ongoing police action in circumstances like this from assuming that proper procedures, such as officer identification, have already been followed. No settled Fourth Amendment principle requires that officer to second-guess the earlier steps already taken by his or her fellow officers in instances like the one White confronted here."

ADMISSIONS AND CONFESSIONS

Custody under Miranda

People v Barritt, C/A No. 333206 (February 14, 2017)

An agency was investigating a missing person complaint. The agency contacted another agency to see if they could locate her boyfriend. Officers went to the subject's house and suspecting foul play obtained a search warrant. While executing the warrant, the suspect arrived at the house and police asked him to accompany them to the police department for an interview. At the station, he was questioned for approximately 90 minutes by detectives but was not given *Miranda* warnings at any time. At the conclusion of the interrogation, he was handcuffed and transported to the primary agency.

He was charged with multiple crimes related to the death of his girlfriend, and he brought a pretrial hearing to suppress evidence of statements he made during the questioning because he was subject to custodial interrogation without *Miranda* warnings.

HELD – "In order to determine whether someone was in custody or otherwise deprived of his freedom of action a court is to consider the totality of the circumstances, with the key question being whether the defendant reasonably believed that he was not free to leave." In this case, the trial court based its decision on MCL 763.7(f) which states a place of detention is a "a police station, correctional facility, or prisoner holding facility or another governmental facility where an individual may be held in connection with a criminal charge that has been or may be filed against the individual." The Court of Appeals held that this was not the proper test but should have been the totality of circumstances test. "**The totality of the circumstances inquiry requires us to examine all of the facts surrounding the interview to determine how a reasonable person in defendant's position would have gauged the breath of his or her freedom of action. The prosecution used the case of Oregon v Mathiason to argue that the defendant was not in custody.** The Court of Appeals disagreed.

"First, in *Mathiason*, the officers informed the defendant that they could meet where it would be convenient for him, while in this case the officers specifically asked defendant to go to the police station, which they told him would be a 'better area' for the interview. Second, in *Mathiason*, the defendant drove himself to the police station, and the officers met him there, while in this case defendant was driven to the police station in the back seat of a fully marked patrol car that was one of several in a long line of police vehicles. While officers testified that they did not force defendant to ride in the patrol car, they acknowledge that he was not given the option to ride with his friend. Third, in *Mathiason*, upon arrival at the police station, the defendant was immediately informed that he was not under arrest and the pre-*Miranda* questioning lasted no more than five minutes after defendant had come to the office. In the instant case nearly all the questioning occurred before the police said to defendant that he was not under arrest. Fourth, in this case the pre-*Miranda* interview was far longer and was marked by confrontational questioning unlike *Mathiason*. Fifth, the *Mathiason* Court noted that at the conclusion of the interview, the defendant did in fact leave the police station without hindrance, while in the instant case, defendant was handcuffed and transported to another police department."

"The prosecution points out that the door to the interview room was not locked. However, even assuming that a reasonable person would have been aware of that fact, it is clearly outweighed by other circumstances: defendant was never told that he was free to leave, the officers were armed and in uniform, the questioning was at times aggressive and included repeated accusations of lying and demands that defendant change his statement. An officer did eventually tell defendant that he was not under arrest, but this was very late in the interview. Further, when told he was not under arrest, defendant responded 'then why am I here?' This reaction is consistent with our objective reading of the officers' prior actions as custodial. **When defendant indicated that he did not want to continue the interview, the officer continued to question him and again repeatedly accused him of lying. When defendant said for a second time that he wanted a lawyer and did not want to continue the interview, a different officer, accompanied by a police dog, entered the room and continued the questioning during which he said that the dog would 'blow you right off your feet if I send him.' Ultimately, as soon as the police decided to end the interview, defendant was handcuffed and transported to another police department."**

Defendant was subject to custodial interrogation without having been provided *Miranda* warnings. Although the trial court's legal analysis was in part erroneous, it reached the correct result, and we affirm.

PROPERTY CRIMES

Home Invasion does not apply to where person is allowed into the house

People v Bush, C/A No. 326658 (April 21, 2016)

Defendant was invited into the victim's home by the victim's adult son, who also resided in the home. While Bush was in the home, the victim barricaded herself in an upstairs bedroom because Bush had sent her threatening text messages. Bush then kicked the bedroom door open, forced a dresser out of the way, entered the room and assaulted the victim. Bush was arrested and charged with first-degree home invasion pursuant to MCL 750.110a.

HELD - **Once a defendant enters a dwelling with permission, he cannot unlawfully enter the same dwelling where he is already lawfully present.** The Court noted that MCL 750.110a(1)(a) defines the word "dwelling" to mean "a structure or shelter that is used permanently or temporarily as a place of abode, including an appurtenant structure attached to that structure or shelter," but the statute does not further define the terms "structure," "shelter," or "abode." The Court reviewed the dictionary definitions of the undefined terms and found that it was evident that the term "dwelling" as defined by MCL 750.110a(1)(a) refers to the whole of a structure or shelter used as a place of residence.

Larceny applies to property of another

People v Marsh, MSC No. 151342 (June 23, 2016)

Defendant was charged with committing larceny in a dwelling house, MCL 750.360, and receiving, possessing, or concealing stolen goods worth more than $200 but less than $1,000, MCL 750.535(4)(a), for removing fixtures from a home that had been sold at a sheriff's sale after a foreclosure proceeding. The home had been owned by defendant's father, who had given defendant a power of attorney that included the right to possess and dispose of his father's real property. Defendant took the fixtures from the home during the six-month period in which he could have redeemed the property under MCL 600.3240(8).

HELD – "MCL 750.360 adopted the common law of larceny, which protects possessory rights. Defendant could not have committed larceny by taking the fixtures because, given that defendant had the right to possess the fixtures at the time of the alleged larceny, they did not constitute the 'property of another.' Absent a proper larceny charge, the fixtures were necessarily not stolen goods, and the charge of receiving or possessing stolen goods therefore failed as well. Fixtures intentionally annexed to real property become part of the mortgage security, and, upon foreclosure sale, title to them passes with the realty. **Therefore, whatever rights the buyer had in the fixtures arose from his foreclosure purchase. A foreclosure-sale purchaser receives a deed at purchase that vests title at the end of the six-month redemption period if the mortgagor fails to redeem the property by paying the amount of the successful bid, interest on that amount, and various fees."** The charges were dismissed.

MDOP to traffic control device

P.A No. 111 of 2016 (August 8, 2016) – MCL 750.377d.

(1) A person who willfully and maliciously damages, destroys, injures, defaces, dismantles, tampers with, or removes a traffic control device is guilty of a crime as follows:

1st offense = 93 day misd.

2nd offense = 180 days misd.

3rd offense = 1 year misd.

As used in this section, "traffic control device" means a sign, signal, electronic traffic control sign or signal, marking, light post, railroad sign or signal, or device not inconsistent with the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic, maintaining highway safety, or providing information to motor vehicle operators.

CRIMES AGAINST PERSONS

Child sexually abusive material and use of a computer to commit a crime.

People v Sardy, C/A No. 319227 (December 29, 2015)

Based on a complaint of CSC, a detective retrieved two suspicious videos, created seven minutes apart, that had been filmed using defendant's iPhone 4. These videos were additionally stored on the iMac and an external hard drive, and they formed the basis of the CSAA and computer-crime charges. The victim was clothed in both videos, and in one video, the child is observed, as described by the detective, "grinding . . . on the couch," with defendant "focusing the camera on her rear end." The detective opined that the child's act entailed manual manipulation of the genitals, and the prosecution characterized the victim's actions as constituting masturbation for purposes of the charges. In the video, defendant is heard asking the child why she was engaging in the act, and she responded, "because it's comfortable." When defendant then asked her why it was comfortable, the child expressed that it felt good. With respect to the second video, the child is seen grinding against the couch with one hand under her body on her genitals. Defendant was convicted of producing child sexually abuse material and use of a computer to commit a

crime and argues the offense of CSAA is unconstitutionally vague as applied to him under the circumstances in this case.

HELD – "MCL 750.145c(2) provides that 'a person who . . . knowingly allows a child to engage in a child sexually abusive activity for the purpose of producing any child sexually abusive material . . . is guilty of a felony.' 'Child sexually abusive activity' means a child engaging in a listed sexual act.' A listed sexual act includes masturbation. Masturbation is defined as follows: The real or simulated touching, rubbing, or otherwise stimulating of a person's own clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breasts, or if the person is a child, the developing or undeveloped breast area, either by manual manipulation or self-induced or with an artificial instrument, for the purpose of real or simulated overt sexual gratification or arousal of the person. 'Child sexually abusive material' means any depiction, whether made or produced by electronic, mechanical, or other means, including a . . . video . . . which is of a child . . . engaging in a listed sexual act.' Finally, MCL 752.796(1) provides that "[a] person shall not use a computer program, computer, computer system, or computer network to commit . . . a crime."

HELD - "As relevant to the CSAA charge brought against defendant, and under the definitions recited above, including the definition of 'masturbation,' a person is subject to criminal penalty for knowingly allowing a child to engage in an act, while videotaping the act, wherein the child rubs or otherwise stimulates the child's own clothed genitals by manual manipulation or with an artificial instrument for the purpose of real or simulated overt sexual gratification or arousal. **On the basis of this plain and unambiguous statutory language, a person of ordinary intelligence would reasonably know that filming the child's actions that were specifically depicted in the videos and described earlier is prohibited, absent the need to speculate regarding the meaning of masturbation as defined in the statute.** The meaning of the statutory language can easily and fairly be ascertained by reference to dictionaries or the commonly accepted definitions of words."

Defendant also argues that the evidence was insufficient to support the CSAA and computer-crime convictions, considering the lack of evidence showing that the child was indeed engaged in acts of masturbation as videotaped by defendant.

HELD – "**We conclude that a rational juror could find that the prosecution proved beyond a reasonable doubt that defendant knowingly videotaped the child while she was engaged in a 'listed sexual act,' i.e., masturbation**. The evidence supporting our conclusion included the videos themselves and the acts depicted therein as described earlier, the detective's characterization of the behavior seen in the videos, defendant's suggestive questions to the child during the videotaped conduct, the child's responses to defendant while being filmed, the inappropriate photographs of the child taken by defendant, the child's mother's testimony about a similar masturbatory act, and expert testimony about normal sexual behavior by children. The evidence supported both the CSAA and computer-crime convictions."

Armed Robbery

People v Henry, C/A No. 325144 **(**April 19, 2016)

Defendant entered a Halo Burger and approached the woman working at the counter and demanded all the money that was in the till. Defendant's hands were in his pockets, but the pocket was, as she described it, "bulged forward." The victim was not sure whether defendant actually had a weapon, but did not take any chances and turned the money over to defendant.

Defendant argues that there was insufficient evidence to support his conviction for armed robbery because there was no evidence that defendant possessed a weapon or verbally indicated that he had a weapon.

HELD - A defendant is guilty of armed robbery if he engages in conduct under MCL 750.530, and:

1. **He actually possesses a dangerous weapon, *or***
2. He possesses some article that would lead a person to reasonably believe that the article is a dangerous weapon, *or*
3. He orally represents that he possesses a dangerous weapon, *or*
4. He otherwise represents that he possesses a dangerous weapon.

"There was sufficient evidence to support defendant's armed robbery conviction where defendant 'otherwise' represented that he was armed with a dangerous weapon. Although no weapon was displayed and defendant did not orally represent that he was armed, he 'otherwise' represented that he was armed by placing his hands in his pockets and pushing them forward and there was sufficient evidence to support defendant's armed robbery conviction."

Sexual contact

People v Deleon, C/A No. 329031 (November 15, 2016)

The victim testified that defendant used his hands and fingers to touch her from her vagina to her buttocks before penetrating her with his penis. The contacts occurred over a number of years while the victim was between the ages of 7 to 12. The actor was the victim's mother boyfriend. The victim also described defendant intentionally touching either her genital area or buttock with his penis and her inner thigh with his stomach.

"Sexual contact" means the intentional touching of the victim's or actor's intimate parts if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification or, done for a sexual purpose. "Intimate parts" include a person's genital area, groin, inner thigh, buttock, or breast.

HELD - Any one of these contacts would have supported a conviction for CSC-II. **Given this testimony, a rational jury could objectively find that defendant's touching of the victim's intimate parts with his hand or fingers was both intentional and "for the purpose of sexual arousal or gratification."**

Sexual Penetration

People v Solloway, C/A No. 324559 (June 30, 2016)

Defendant's nine-year-old son "MM" fell asleep in the bedroom of defendant's one-bedroom apartment with his pajamas on, and defendant went to bed in the living room. According to MM, he woke up during the night with defendant on top of him and MM no longer had his pajamas on. MM testified that defendant was facing him and "shaking up and down." MM told defendant to get off, but defendant said, "No." Eventually, MM saw defendant unzip his pants and "stick his peebug out." Defendant then "flipped MM over" and "put his peebug in MM's butt." Although MM testified that he experienced pain "on his butt" that day, he did not tell anyone what happened.

Two days after the incident, MM noticed some rectal bleeding after he went to the bathroom at school. MM told his teacher that he was bleeding. His teacher sent him to the principal, who thereafter called MM's mother and police.

HELD - Defendant was charged with CSC first but argued there was not sufficient evidence to establish beyond a reasonable doubt that he engaged in sexual penetration with MM. "MM testified that defendant 'put his peebug in MM's butt.' MM explained that he could feel defendant's 'peebug' in his body. **Given MM's testimony, the evidence, was sufficient to support the trial court's finding that sexual penetration occurred beyond a reasonable doubt."** There was also evidence presented that corroborated MM's testimony. The sexual assault nurse examiner who examined MM at the hospital, testified that MM suffered tearing and rawness in his anal area that was consistent with his claims, and DNA evidence revealed that defendant's semen was located on a white fleece blanket taken from MM's bed. Further, there was testimony by defendant's nephew, that when he had resided with defendant for several years, defendant had touched him inappropriately in his genital area many times with his hand and his body.

Disseminating Sexually Explicit Material

P.A. Act 89 (July 25, 2016) – MCL 750.145e

(1) A person shall not intentionally and with the intent to threaten, coerce, or intimidate disseminate any sexually explicit visual material of another person if all of the following conditions apply:

(a**) The other person is not less than 18 years of age.**

(b) The other person is identifiable from the sexually explicit visual material itself or information displayed in connection with the sexually explicit visual material. This subdivision does not apply if the identifying information is supplied by a person other than the disseminator.

(c) The person obtains the sexually explicit visual material of the other person under circumstances in which a reasonable person would know or understand that the sexually explicit visual material was to remain private.

(d) The person knows or reasonably should know that the other person did not consent to the dissemination of the sexually explicit visual material.

(2) Subsection (1) does not apply to any of the following:

(a) To the extent content is provided by another person, a person engaged in providing:

(*i*) An interactive computer service as that term is defined in 47 USC 230;

(*ii*) An information service, telecommunications service, or cable service as those terms are defined in 47 USC 153;

(*iii*) A commercial mobile service as defined in 47 USC 332;

(*iv*) A direct-to-home satellite service as defined in 47 USC 303(*v*); or

(*v*) A video service as defined in 2006 PA 480, MCL 484.3301 to 484.3315.

(b) A person who disseminates sexually explicit visual material that is part of a news report or commentary or an artistic or expressive work, such as a performance, work of art, literary work, theatrical work, musical work, motion picture, film, or audiovisual work.

(c) A law enforcement officer, or a corrections officer or guard in a correctional facility or jail, who is engaged in the official performance of his or her duties.

(d) A person disseminating sexually explicit visual material in the reporting of a crime.

(3) This section does not prohibit a person from being charged with, convicted of, or punished for another violation of law committed by that person while violating or attempting to violate this section.

(4) A person who violates subsection (1) is guilty of a crime and punishable as provided in section 145f.

(5) As used in this section:

(a) "Disseminate" means post, distribute, or publish on a computer device, computer network, website, or other electronic device or medium of communication.

(b) "Nudity" means displaying a person's genitalia or anus or, if the person is a female, her nipples or areola.

(c) "Sexually explicit visual material" means a photograph or video that depicts nudity, erotic fondling, sexual intercourse, or sadomasochistic abuse.

Penalties –

- 93 day misd for first offense.
- 1 year misd for a second or subsequent violation.

Pointing Lasers – MCL 750.43a – P.A. 29 of 2017

A person shall not intentionally aim a beam of directed energy emitted from a directed energy device at an aircraft or into the path of an aircraft or a moving train.

- 5 year felony.

This section does not apply to any of the following:

- An authorized individual in the conduct of research and development or flight test operations conducted by an aircraft manufacturer, the Federal Aviation Administration, or any other person authorized by the Federal Aviation Administration to conduct research and development or flight test operations.

- Members of the United States Department of Defense or the United States Department of Homeland Security acting in an official capacity for the purpose of research, development, operations, testing, or training.
- A person using a laser emergency signaling device to send an emergency distress signal.

As used in this section, "directed energy device" means any device that emits highly focused energy and is capable of transferring that energy to a target to damage or interfere with its operation. The energy from a directed energy device includes, but is not limited to, the following forms of energy:

- Electromagnetic radiation, including radio frequency, microwave, lasers, and masers.
- Particles with mass, in particle-beam weapons and devices.
- Sound, in sonic weapons and devices.

Child Abuse

People v Jones, C/A No. 332018 (September 29, 2016)

Defendant pleaded guilty to first-degree child abuse after her baby tested positive for methamphetamine at birth. The baby was weak, had trouble feeding, and required an IV to receive nutrition. Defendant did not participate in any prenatal care. CPS arrived at the hospital after being informed of the baby's condition and that the baby tested positive for methamphetamine. After speaking with the CPS worker, defendant took out her IVs and left the hospital with her boyfriend against the advice of hospital staff and against the recommendation of CPS. Defendant was charged with child abuse arising out of her prenatal conduct.

The question before us is one of first impression, namely, whether a mother's prenatal drug use can support a conviction for first-degree child abuse where the statute requires the victim to be a "child" and does not specifically include fetuses within the statutory definition of "child."

HELD – "**Here, it is clear from the statutory language that a fetus is not a 'child' for purposes of the first-degree child abuse statute.** Neither the definition of 'child' in the child abuse statute, nor the general definition of 'person' in the Michigan Penal Code make any reference to fetuses. And the Legislature has consistently refrained from expanding the definition of person to include fetuses. Rather, when the Legislature has created protection for fetuses, it has done so by clearly and specifically including embryo, fetus, unborn quick child, or other similar term in the statutory language. We hold that a fetus is not a 'child' for purposes of MCL 750.136b.

Child abuse – Violation of Child Care Licensing Act

P.A. No. 487 of 2016 (April 6, 2017) - MCL 722.125

If a person, family child care home, group child care home, agency, or representative or officer of a firm, corporation, association, or organization intentionally violates a licensing rule for family and group child care homes promulgated under this act and in effect on January 1, 2017, and that violation causes the death of a child, the person, family child care home, group child care home, agency, or representative or officer of a firm, corporation, association, or organization is **guilty of second degree child abuse described in section 136b of the Michigan penal code,** 1931 PA 328, MCL 750.136b, and punishable as provided in that section. In addition to any other penalty imposed, its license or certificate of registration shall be permanently revoked.

A fetus may be a victim for sentencing purposes

People v Ambrose, C/A No. 327877 (October 25, 2016)

Defendant pleaded guilty to feloniously assaulting his pregnant girlfriend, including wrestling her out of her wheelchair, threatening her with a knife, punching her in the abdomen, and holding her head under water. At sentencing, the trial court gave him a higher sentenced based on two victims which included the unborn child.

HELD – "**We conclude that MCL 777.39 allows a trial court, when scoring OV 9, to count as a 'victim' one that is acted on by defendant's criminal conduct and placed in danger of loss of life, bodily injury, or loss of property. In this case, the trial court noted conduct by defendant that placed the fetus at risk of bodily injury or loss of life, not only as an indirect result of the risk of death or harm to the mother but also as a direct result of blows to the mother's abdominal area.** Under the circumstances of this case, and without declaring the fetus in this case to be a "person" under the law, we conclude the trial court did not err in counting the fetus as a victim for purposes of sentencing.

Assault upon a pregnant individual

P.A Act No. 87 (July 25, 2016) – MCL 750.81

An individual who assaults or assaults and batters an individual who is pregnant and who knows the individual is pregnant is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $500.00, or both.

Coercion to commit an abortion

P.A. 149 of 2016 (September 7, 2016) - MCL 750.213a

(1) A person having actual knowledge that a female individual is pregnant shall not do any of the following with the intent to coerce her to have an abortion against her will:

(a) Commit, attempt to commit, or threaten to commit any of the following violations against her or any other person:

(*i*) A violation of section 411h or section 411i.

(*ii*) An assaultive crime. As used in this subparagraph, "assaultive crime" means that term as defined in section 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL 770.9a.

(b) **After being informed by a pregnant female that she does not want to obtain an abortion, engage in coercion as that term is defined in section 462a.**

(2**) For purposes of subsection (1)(b), information that a pregnant female does not want to obtain an abortion includes any fact that would clearly demonstrate to a reasonable person that she is unwilling to comply with a request or demand to have an abortion.**

(3) A person who violates this section is guilty of a crime as follows:

(a) For a violation of subsection (1)(a), the person is guilty of a crime punishable in the same manner as for the underlying offense committed, attempted, or threatened.

(b) Except as provided in subdivision (c), for a violation of subsection (1)(b), the person is guilty of a misdemeanor punishable by a fine of not more than $5,000.00.

(c) If the person is the father or putative father of the unborn child, the pregnant individual is less than 18 years of age at the time of the violation, and the person is 18 years of age or older at the time of the violation, the person is guilty of a misdemeanor punishable by a fine of not more than $10,000.00.

(4) This section does not prohibit the person from being charged with, convicted of, or punished for any other violation of law committed while violating this section.

(5) As used in this section:

(a) "Course of conduct" means a pattern of conduct composed of a series of 2 or more separate noncontinuous acts evidencing a continuity of purpose.

(b) "Threaten" means to make 2 or more statements or to engage in a course of conduct that would cause a reasonable person to believe that the individual is likely to act in accordance with the statements or the course of conduct. Threaten does not include constitutionally protected speech or any generalized statement regarding a lawful pregnancy option.

(c) "Unborn child" means a live human being in utero regardless of his or her gestational stage of development.

Identity theft

People v Perry, C/A No. (October 27, 2016) 328409

Montay Lee had his bag containing a variety of items, including his wallet, identification, and a $1,100 paycheck stolen while he was at a basketball tournament. That same day, defendant cashed the stolen check at a party store. The party store owner, testified that defendant showed him identification and had taken his thumbprint. Michael Bourdon, the victim in this case, posted for sale a 1998 Pontiac Firebird on Craigslist for $2,500. Defendant test drove the car and agreed to the $2,500 purchase price and handed Bourdon an envelope consisting of a $100 bill, several $50 bills, and approximately $150 to $200 worth of $10 bills. After defendant left, Bourdon noted that the money looked funny. Bourdon determined that there were no holograms on some of the bills and noticed that the bills were too thick. Bourdon immediately called the police. A police officer accompanied Bourdon to a bank where it was determined that all of the money was counterfeit except for a $100 bill. The Firebird was entered into LEIN as stolen. The vehicle was located and the defendant was arrested for possession of stolen property. A few days later, while he was still in custody, detectives who were investigating the other charges completed a photo display identification without an attorney being present and he was identified. During an interview with the police, defendant admitted to passing a check at the party store, but that "somebody" offered him money to cash the check and that he did not know that the check was stolen. Defendant had no

knowledge of passing any counterfeit money and denied being part of that transaction. The jury found defendant guilty of identity theft, two counts of uttering counterfeit notes, and one count of false pretenses.

Photographic Lineup

Defendant argues that the trial court should have suppressed the evidence of his identification in the photographic lineup because he was in custody and an attorney did not represent him.

HELD – "In the Anderson case, the Michigan Supreme Court ruled that when a suspect is in custody, investigators should not use a photographic identification procedure, and that a defendant has as much right to counsel during a photographic identification as he or she would during a corporeal identification. But the Michigan Supreme Court subsequently overruled Anderson, stating that a defendant's right to counsel 'attaches only to corporeal identification conducted at or after the initiation of adversarial judicial proceedings.' **Because adversarial judicial criminal proceedings for the instant case were not initiated when the photographic lineup occurred, defendant did not have a right to counsel."**

Sufficiency of Evidence

Defendant argues that the evidence was insufficient to support his conviction of identity theft. We disagree. In pertinent part, MCL 445.65(1) prohibits a person from using the identifying information of another person to obtain property with the intent to defraud or violate the law. Identifying information includes "a person's name, address, telephone number, driver license or state personal identification card number." **In this case, Bourdon testified that defendant identified himself as "Montay Lee" and presented Lee's drivers license when Bourdon was filling out the car's title information. Defendant presented the identification simultaneously with counterfeit money.** Accordingly, a rational jury could find beyond a reasonable doubt that defendant used Lee's name and license with the intent to defraud Bourdon or, at the very least, an intent to violate the law.

Human Trafficking

P.A. 485 of 2016 (April 6, 2017) MCL 750.459

(1) A person shall not knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, by any means of conveyance, into, through, or across this state, any person for the purpose of prostitution or with the intent and purpose to induce, entice, or compel that person to become a prostitute. A person who violates this subsection is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than $20,000.00, or both.

(2) A person shall not knowingly sell or offer to sell travel services that include or facilitate travel for the purpose of engaging in what would be a violation of this chapter, concerning prostitution, or of chapter LXVIIA, concerning human trafficking, if the violation occurred in this state. Except as provided in subsection (3), a person who violates this subsection is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than $10,000.00, or both.

(3) If a person violates subsection (2) and the violation involves conduct against a minor, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than $15,000.00, or both.

(4) A person who violates this section may be prosecuted, indicted, tried, and convicted in any county or city in or through which he or she shall transport or attempt to transport any person in violation of this section.

(5) As used in this section, "travel services" means transportation by air, sea, or ground, hotel or other lodging accommodations, package tours, or the provision of vouchers or coupons to be redeemed for future travel, or accommodations for a fee, commission, or other valuable consideration.

Vulnerable Adult Abuse

P.A. 480 of 2016 (April 6, 2017) - MCL 750.145n

(1) A caregiver is guilty of vulnerable adult abuse in the first degree if the caregiver intentionally causes serious physical harm or serious mental harm to a vulnerable adult. Vulnerable adult abuse in the first degree is a felony punishable by imprisonment for not more than 15 years or a fine of not more than $10,000.00, or both.

(2) A caregiver or other person with authority over the vulnerable adult is guilty of vulnerable adult abuse in the second degree if the reckless act or reckless failure to act of the caregiver or other person with authority over the vulnerable adult causes serious physical harm or serious mental harm to a vulnerable adult. Vulnerable adult abuse in the second degree is a felony punishable by imprisonment for not more than 4 years or a fine of not more than $5,000.00, or both.

(3) A caregiver is guilty of vulnerable adult abuse in the third degree if the caregiver intentionally causes physical harm to a vulnerable adult. Vulnerable adult abuse in the third degree is a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than $2,500.00, or both.

(4) A caregiver or other person with authority over the vulnerable adult is guilty of vulnerable adult abuse in the fourth degree if the reckless act or reckless failure to act of the caregiver or other person with authority over a vulnerable adult causes physical harm to the vulnerable adult **or the caregiver or other person with authority over the vulnerable adult knowingly or intentionally commits an act that under the circumstances poses an unreasonable risk of harm or injury to a vulnerable adult, regardless of whether physical harm results. Vulnerable adult abuse in the fourth degree is a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both.**

WEAPONS

PBTs are admissible for Possession of Firearm while Intoxicated

People v Booker, C/A No. 329055 (February 18, 2016)

"Officers were dispatched to an apartment complex to investigate a robbery. While searching the parking lot of the complex for the suspect, they observed two individuals, defendant and an unidentified woman,

seated in the backseat of a vehicle. When the officers asked defendant and the woman to exit the vehicle, they observed multiple alcoholic beverages in the vehicle. Defendant advised that he had a concealed pistol license and directed officers to a firearm located in the pocket on the back of the driver's seat. The officers subsequently administered a preliminary breath test (PBT) to defendant. The results of the test showed 0.15 grams of alcohol per 210 liters of breath. Shortly thereafter, the officers received a call regarding the robbery they were investigating and had to leave the scene. Before they left, the officers confiscated defendant's weapon. Defendant was informed of the charge against him when he later went to the police station to retrieve his weapon."

Defendant filed a motion to suppress the results of his PBT in the district court. Defendant argued that the results of the test were inadmissible as proof of his intoxication at the time he possessed his firearm. Defendant reasoned that because MCL 750.237 requires that PBTs are to be administered in the manner set forth in the Michigan vehicle code, the vehicle code's rule prohibiting the admission of PBT results as proof of a defendant's intoxication must apply to MCL 750.237.

HELD – "As the prosecution points out, MCL 750.237(8) only states that the 'collection and testing' methods are to be adopted from the Michigan vehicle code; the statute does not speak to the admissibility of the tests taken. More significantly, MCL 257.625a(2)(b) specifically states that its admissibility rules only apply to criminal prosecutions for those crimes enumerated in MCL 257.625c(1) or in an administrative hearing for specified purposes. These enumerated crimes consist solely of drunk driving offenses and do not include possession of a firearm while under the influence. While the circuit court was correct that this Court deemed PBTs to be 'comparatively unreliable' to breath, blood, and urine tests, the Court was clear that despite any potential unreliability, **PBTs are admissible in cases involving offenses other than drunk driving.**

Self-defense is a defense to carrying an other dangerous weapon under CCW

People v Triplett, MSC No. 151434 (March 28, 2016)

Defendant was tried for domestic violence, MCL 750.81(2), carrying a concealed weapon (CCW), MCL 750.227(1), and felonious assault, MCL 750.82. The charges arose after he threatened to use his utility knife to escape from two men who had stopped their vehicle when they spotted defendant and his wife fighting on the side of the road. The court instructed the jury that self-defense was a defense to the charge of felonious assault but that it was not a defense to the charge of CCW. Defendant was acquitted of felonious assault, but he was convicted of domestic violence and CCW.

HELD – "**The common-law affirmative defense of self-defense is available to a defendant who carries an instrument that becomes an 'other dangerous weapon,' for purposes of the CCW statute, when the defendant uses the instrument as a weapon.** In this case, the trial court improperly instructed the jury that the affirmative defense of self-defense did not apply to the charge of CCW. Defendant's utility knife became an 'other dangerous weapon' when defendant used it as a weapon, and defendant was entitled to present the affirmative defense of self-defense to justify his use of the utility knife. The Supreme Court held that a defendant's use or purpose for carrying an 'other dangerous weapon' is always relevant to determining a defendant's guilt of CCW. The defendant was not alleged to have possessed any of the weapons specifically identified in the statute; instead, the prosecution had to prove that the utility knife carried by defendant was an 'other dangerous weapon.' We are convinced that the legislature intended the words 'other dangerous weapon,' as used in section 227, to mean any concealed article or instrument which the carrier used, or carried for the purpose of using, as a weapon for bodily assault or defense. **The parties do not dispute that the defendant was charged with CCW under MCL 750.227(1) for possessing an instrument that was an 'other dangerous weapon' only because it was**

used as a weapon. Likewise, there is no dispute that, absent a viable affirmative defense, the evidence supported the defendant's conviction for CCW; the defendant concedes that he used the utility knife as a weapon but insists that his use was justified. As a general matter, a defendant who asserts the affirmative defense of self-defense admits the crime but seeks to excuse or justify its commission."

Current Michigan police officers do not have to obtain a license to purchase.

P.A. No. 6 of 2016 (May 2, 2016) - MCL 28.422a

(1) The following individuals are not required to obtain a license under section 2 to purchase, carry, possess, use, or transport a pistol:

(a) An individual licensed under section 5b, except for an individual who has an emergency license issued under section 5a(4) or a receipt serving as a concealed pistol license under section 5b(9) or 5*l*(3).

(b) A federally licensed firearms dealer.

(c) An individual who purchases a pistol from a federally licensed firearms dealer in compliance with 18 USC 922(t).

(d) An individual currently employed as a police officer, certified under the commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.616.

(2) If an individual described in subsection (1) purchases or otherwise acquires a pistol, the seller shall complete a record in triplicate on a form provided by the department of state police. The record shall include the purchaser's concealed weapon license number, **the number of the purchaser's certificate issued under the commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.616,** or, if the purchaser is a federally licensed firearms dealer, his or her dealer license number……..

Open carry in Schools

Michigan Open Carry v Clio Schools, C/A No. 329418 (December 15, 2016)

Clio schools passed the following policy - The Board of Education prohibits visitors from possessing, storing, making, or using a weapon in any setting that is under the control and supervision of the Board including, but not limited to, property leased, owned, or contracted for by the Board, a school-sponsored event, or in a Board-owned vehicle.

* * *

The term "weapon" means any object which, in the manner in which it is used, is intended to be used, or is represented, is capable of inflicting serious bodily harm or property damage, as well as endangering the health and safety of persons. Weapons include, but are not limited to, firearms, guns of any type, including spring, air and gas-powered guns, (whether loaded or unloaded), that will expel a BB, pellet, or paint balls knives, razors, clubs, electric weapons, metallic knuckles, martial arts weapons, ammunition, and explosives or any other weapon described in 18 U.S.C. 921.

This prohibition applies regardless of whether the visitor is otherwise authorized by law to possess the weapon, including if the visitor holds a concealed weapons permit. The following are the exceptions to this policy:

A. weapons under the control of law enforcement personnel;

B. items approved by a principal as part of a class or individual presentation under adult supervision, if used for the purpose of and in the manner approved (working firearms and ammunition shall never be approved);

C. theatrical props that do not meet the definition of "weapon" above, used in appropriate settings;

D. starter pistols used in appropriate sporting events.

The plaintiff, Kenneth Herman, attempted to visit his child's elementary school while openly carrying a pistol for which he possessed a concealed pistol license. Herman claimed he was denied access to the school on several occasions for his open pistol possession. The school also threatened to summon authorities if Herman again attempted to enter the building with his weapon.

As a result of these incidents, Herman and plaintiff, Michigan Open Carry, Inc., filed suit against the district and certain district officials. Plaintiffs' complaint asserts that Michigan law allows Herman to openly carry a pistol on school property because state law preempts a local unit of government from regulating the possession of firearms. According to plaintiffs, the CASD qualifies as a "local unit of government."

HELD – "**Among the statutes regulating firearms complied by the legislative service bureau are 26 different laws specifically referencing 'weapon free school zones.' These four words telegraph an unmistakable objective regarding guns and schools; indeed, we find it hard to imagine a more straightforward expression of legislative will.** The Legislature contemplated that this repeatedly invoked phrase would be interpreted to mean exactly what it says—no weapons are allowed in schools. Viewing the AAPS policies against this statutory backdrop, we infer that firearm policies consistent with the 'weapon free school zone' concept are unobjectionable. Given that, the Legislature has never expressly reserved to itself the ability to regulate firearms in schools, our evaluation of this factor requires us to weigh policy choices. Plaintiffs insist that a 'patchwork' of differing school policies will create 'confusion' and will 'burden' the police and the public. We find no merit in this argument. The Legislature has broadly empowered school districts to provide for the safety and welfare of pupils while at school or a school sponsored activity or while en route to or from school or a school sponsored activity. The AAPS policy ensures that the learning environment remains uninterrupted by the invocation of emergency procedures which would surely be required each and every time a weapon is openly carried by a citizen into a school building."

CONTROLLED SUBSTANCES

Delivery within 1000 feet of school

People v English, People v Smith, C/A/ No. 330389 (October 27, 2016)

During a drug raid at the home of defendant English, the police discovered about 14 grams of cocaine, marijuana, a digital scale, sandwich bags, and a handgun. Officers determined that English's property was within 1,000 feet of a high school. As a result, the charges against English included one count of possessing with the intent to deliver less than 50 grams of cocaine within a school zone under MCL 333.7410(3). Similarly, during a drug raid on the apartment and car of defendant Smith, the police discovered 2.2 grams of heroin, baggies, a digital scale, rubber gloves, and a handgun. The officers determined that, at the time of the raid, Smith's heroin was within 1,000 feet of a high school.

HELD - Under MCL 333.7410(3), "An individual 18 years of age or over who possesses with intent to deliver to another person on or within 1,000 feet of school property or a library a controlled substance shall be imprisoned for not less than 2 years or more than twice that authorized. **We construe MCL 333.7410(3) as requiring proof that the defendant specifically intended to deliver a controlled substance to a person on or within 1,000 feet of school property or a library."** In the cases now before us, it is undisputed that such evidence was lacking and charges were dismissed.

Seeking medical assistance for drug overdose – P.A. No. 307 of 2016 (January 4, 2017)

A person shall not knowingly or intentionally possess a controlled substance, a controlled substance analogue, or a prescription form unless the controlled substance, controlled substance analogue, or prescription form was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this article.

(3) The following individuals are not in violation of this section:

(a) **An individual who seeks medical assistance for himself or herself or who requires medical assistance and is presented for assistance by another individual if he or she is incapacitated because of a drug overdose or other perceived medical emergency arising from the use of a controlled substance or a controlled substance analogue** that he or she possesses or possessed in an amount sufficient only for personal use and the evidence of his or her violation of this section is obtained as a result of the individual's seeking or being presented for medical assistance.

(b) **An individual who in good faith attempts to procure medical assistance for another individual or who accompanies another individual who requires medical assistance for a drug overdose or other perceived medical emergency arising from the use of a controlled substance or a controlled substance analogue that he or she possesses or possessed in an amount sufficient only for personal use** and the evidence of his or her violation of this section is obtained as a result of the individual's attempting to procure medical assistance for another individual or as a result of the individual's accompanying another individual who requires medical assistance to a health facility or agency.

(7) As used in this section:

(a) "**Drug overdose" means a condition including, but not limited to, extreme physical illness, decreased level of consciousness, respiratory depression, coma, mania, or death, that is the result of consumption or use of a controlled substance** or a controlled substance analogue or a substance with which the controlled substance or controlled substance analogue was combined, or that a layperson would reasonably believe to be a drug overdose that requires medical assistance.

(b) **"Seeks medical assistance" includes, but is not limited to, reporting a drug overdose or other medical emergency to law enforcement, the 9-1-1 system, a poison control center, or a medical provider, or assisting someone in reporting a drug overdose or other medical emergency.**

Maintaining a drug house and possession

People v Norfleet, C/A No. 328968 (November 8, 2016)

Defendant was convicted of keeping and maintaining a drug house and possession with intent to deliver. Officers found heroin in a hotel room where the defendant was not located but individuals at the hotel testified against him. He argued there was insufficient evidence for the conviction in that no heroin was found in his home or Jeep.

HELD: "**There was sufficient evidence of continuous use of his home and Jeep to keep and sell heroin and the evidence that a substantial purpose of his home and Jeep was to keep and sell heroin was the testimony of various witnesses indicating that the Jeep was used to make heroin deliveries and that the home was used to store both the heroin and the proceeds of the heroin's sale."**

Defendant also argues that there was insufficient evidence to support his conviction of possession with the intent to deliver less than 50 grams of heroin because he was not in the hotel room when police found it.

HELD: A person need not have actual physical possession of a controlled substance to be guilty of possessing it. "**Possession is a term that signifies dominion or right of control over the drug with knowledge of its presence and character**." Both people at the hotel testified that the substance recovered from their motel room by the police was heroin and that defendant had control over it at the time because he was the one that directed them who to deliver it to.

What is a marihuana plant?

People v Ventura, C/A No. 327289 (August 16, 2016)

This case presents an issue of first impression in Michigan, namely what constitutes a marijuana plant. The Grand Rapids Police Department executed a search warrant at defendant's residence. Officers found 21 marijuana plants plus 22 so-called "clone" plants. It is the clone plants that are at issue in this case. One of the officers involved in the search testified that a "clone" is a portion of a mature plant which is used to start a new plant. The officer testified that he pulled the clones out of the "grow material" that they were placed in and that some of the clones had hair-like fibers growing off the main root, with those fibers visible to the naked eye.

Defendant was charged, and convicted following a bench trial, of one count of possessing with intent to deliver marijuana and one count of manufacturing marijuana.

HELD – "**We think it clear that in ordinary usage, the word "plant" contemplates the presence of a root structure. In common parlance, one plant does not immediately become many plants as soon as it is cut into pieces, even if those pieces have been placed in soil or a growing medium**. Therefore, we hold that for a cutting to achieve plant status, it must have readily observable evidence of root

formation. For these reasons, the trial court correctly concluded that defendant possessed a total 43 marijuana plants, which was more than the 24 allowed him under the MMMA. "

Defendant also argues that the affidavit failed to mention that he was a qualifying patient under the MMMA as well as a caregiver. Thus, defendant argues, the delivery observed by the informant could have been defendant giving his patient a supply of marijuana. "We conclude that to establish probable cause, a search-warrant affidavit need not provide facts from which a magistrate could conclude that a suspect's marijuana related activities are specifically not legal under the MMMA."

Transporting of Marihuana statute is not valid

People v Latz, C/A No. 328274 (December 20, 2016)

Defendant, a medical marijuana patient, was convicted of unlawfully transporting marihuana in his vehicle under MCL 750.474. MCL 750.474 states provides:

> (1) A person shall not transport or possess usable marihuana as defined in section 26423 of the public health code, 1978 PA 368,1 MCL 333.26423, in or upon a motor vehicle or any self-propelled vehicle designed for land travel unless the usable marihuana is 1 or more of the following:
> (a) Enclosed in a case that is carried in the trunk of the vehicle.
> (b) Enclosed in a case that is not readily accessible from the interior of the vehicle, if the vehicle in which the person is traveling does not have a trunk.

HELD – "There is no dispute that defendant was in compliance with the MMMA. The MMMA defines medical use as the 'acquisition, possession, use, delivery, transfer, or transportation of marihuana . . . relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition.' The illegal transportation of marijuana statute expressly refers to this provision and unambiguously seeks to place additional requirements on the transportation of medical marijuana beyond those imposed by the MMMA. **Thus, MCL 750.474 clearly subjects persons in compliance with the MMMA to prosecution despite that compliance, and it is therefore impermissible."**

Medical Marihuana

P.A. 282 of 2016 (December 20, 2016) - 333.27901

This act shall be known and may be cited as the "marihuana tracking act".

New definitions

P.A. 283 of 2016 (December 20, 2016) – MCL 333.26423

"Usable marihuana" means the dried leaves, flowers, **plant resin, or extract of the marihuana plant**, but does not include the seeds, stalks, and roots of the plant.

"**Usable marihuana equivalent" means the amount of usable marihuana in a marihuana-infused product** that is calculated as provided in section 4(c).

"Marihuana-infused product" means a topical formulation, tincture, beverage, edible substance, or similar product containing any usable marihuana that is intended for human consumption in a manner other than smoke inhalation. Marihuana-infused product shall not be considered a food for purposes of the food law, 2000 PA 92, MCL 289.1101 to 289.8111.

MCL 333.26424.

Sec. 4. (a) A qualifying patient who has been issued and possesses a registry identification card is not subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the medical use of marihuana in accordance with this act, provided that the qualifying patient possesses an amount of marihuana that **does not exceed a combined total of 2.5 ounces of usable marihuana and usable marihuana equivalents**, and, if the qualifying patient has not specified that a primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility. Any incidental amount of seeds, stalks, and unusable roots shall also be allowed under state law and shall not be included in this amount. The privilege from arrest under this subsection applies only if the qualifying patient presents both his or her registry identification card and a valid driver license or government-issued identification card that bears a photographic image of the qualifying patient.

(b) A primary caregiver who has been issued and possesses a registry identification card is not subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for assisting a qualifying patient to whom he or she is connected through the department's registration process with the medical use of marihuana in accordance with this act. The privilege from arrest under this subsection applies only if the primary caregiver presents both his or her registry identification card and a valid driver license or government-issued identification card that bears a photographic image of the primary caregiver. This subsection applies only if the primary caregiver possesses marihuana in forms and amounts that do not exceed any of the following:

(1) For each qualifying patient to whom he or she is connected through the department's registration process, a combined total of 2.5 ounces of usable marihuana and usable marihuana equivalents.

(2) For each registered qualifying patient who has specified that the primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility.

(3) Any incidental amount of seeds, stalks, and unusable roots.

(c) For purposes of determining usable marihuana equivalency, the following shall be considered equivalent to 1 ounce of usable marihuana:

(1) 16 ounces of marihuana-infused product if in a solid form.

(2) 7 grams of marihuana-infused product if in a gaseous form.

(3) 36 fluid ounces of marihuana-infused product if in a liquid form.

(m) A person shall not be subject to arrest, prosecution, or penalty in any manner or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for manufacturing a marihuana-infused product if the person is any of the following:

(1) A registered qualifying patient, manufacturing for his or her own personal use.

(2) A registered primary caregiver, manufacturing for the use of a patient to whom he or she is connected through the department's registration process.

(n) A qualifying patient shall not transfer a marihuana-infused product or marihuana to any individual.

(o) A primary caregiver shall not transfer a marihuana-infused product to any individual who is not a qualifying patient to whom he or she is connected through the department's registration process.

333.26424b - Transporting or possessing marihuana-infused product

(1) Except as provided in subsections (2) to (4), a qualifying patient or primary caregiver shall not transport or possess a marihuana-infused product in or upon a motor vehicle.

(2) This section does not prohibit a qualifying patient from transporting or possessing a marihuana-infused product in or upon a motor vehicle if the marihuana-infused product is **in a sealed and labeled package that is carried in the trunk of the vehicle or, if the vehicle does not have a trunk, is carried so as not to be readily accessible from the interior of the vehicle.** The label must state the weight of the marihuana-infused product in ounces, name of the manufacturer, date of manufacture, name of the person from whom the marihuana-infused product was received, and date of receipt.

(3) **This section does not prohibit a primary caregiver from transporting or possessing a marihuana-infused product in or upon a motor vehicle if the marihuana-infused product is accompanied by an accurate marihuana transportation manifest and enclosed in a case carried in the trunk of the vehicle or, if the vehicle does not have a trunk, is enclosed in a case and carried so as not to be readily accessible from the interior of the vehicle.** The manifest form must state the weight of each marihuana-infused product in ounces, name and address of the manufacturer, date of manufacture, destination name and address, date and time of departure, estimated date and time of arrival, and, if applicable, name and address of the person from whom the product was received and date of receipt.

(4) **This section does not prohibit a primary caregiver from transporting or possessing a marihuana-infused product in or upon a motor vehicle for the use of his or her child, spouse, or parent who is a qualifying patient if the marihuana-infused product is in a sealed and labeled package that is carried in the trunk of the vehicle or, if the vehicle does not have a trunk, is carried so as not to be readily accessible from the interior of the vehicle.** The label must state the weight of the marihuana-infused product in ounces, name of the manufacturer, date of manufacture, name of the qualifying patient, and, if applicable, name of the person from whom the marihuana-infused product was received and date of receipt.

(5) For purposes of determining compliance with quantity limitations under section 4, there is a rebuttable presumption that the weight of a marihuana-infused product listed on its package label or on a marihuana transportation manifest is accurate.

(6) A qualifying patient or primary caregiver who violates this section is responsible for a civil fine of not more than $250.00.

Prohibitions on use/possession of marihuana

This act does not permit any person to do any of the following:

(1) Undertake any task under the influence of marihuana, when doing so would constitute negligence or professional malpractice.

(2) Possess marihuana, or otherwise engage in the medical use of marihuana at any of the following locations:

(A) In a school bus.

(B) On the grounds of any preschool or primary or secondary school.

(C) In any correctional facility.

(3) Smoke marihuana at any of the following locations:

(A) On any form of public transportation.

(B) In any public place.

(4) Operate, navigate, or be in actual physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat while under the influence of marihuana.

(5) Use marihuana if that person does not have a serious or debilitating medical condition.

(6) Separate plant resin from a marihuana plant by butane extraction in any public place or motor vehicle, or inside or within the curtilage of any residential structure.

(7) Separate plant resin from a marihuana plant by butane extraction in a manner that demonstrates a failure to exercise reasonable care or reckless disregard for the safety of others.

R and O

R and O - The requisite physical action to prevent a police officer from performing his lawful duties.

People v Morris, C/A No. 323762 (February 11, 2016)

Officers were dispatched to a gas station in response to a report that a potentially suicidal man was at the gas station armed with a gun. Officers arrived at the station and, once inside, saw defendant near the cash register. As the officers approached defendant they had their guns drawn until they realized that defendant did not have a gun in his hands. They grabbed defendant and placed his hands behind his back. Both officers knew that defendant did not have a gun in either hand, but in light of the initial call they

remained concerned that he may still have a gun in his clothing. Both officers testified that once outside the gas station's enclosed building, defendant stiffened up and broke their grip. A struggle ensued in which the officers commanded defendant to go to the ground, and when defendant did not comply, the officers forced him down. According to both officers, defendant also refused to comply with commands.

Defendant raises an unpreserved challenge to the verdict based upon a great-weight of-the-evidence challenge. To convict a defendant under MCL 750.81d(1), plaintiff must prove: "(1) the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered a police officer, and (2) the defendant knew or had reason to know that the person the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered was a police officer performing his or her duties." To convict defendant it was not necessary for the jury to find that defendant actually ran away from the officers or physically assaulted them. **All that was necessary was to find that he was taking the requisite physical action to prevent a police officer from performing his lawful duties. Additionally, the duration of the resistance or the mental state of defendant at the time is of no import, as resistance can occur in even the briefest of moments, and the statute does not require that defendant be found to be free of any mitigating motivation.** The jury apparently found credible both the officer's testimony that defendant refused to comply with loud and clear commands, and defendant's admission that he quite probably was uncooperative with the officers. The jury also presumably believed the officers when they testified that, in response to their commands, defendant tightened his body and pulled his arm away, at which time we both have to grab him. In light of all this evidence, it cannot be said that the jury's verdict was against the great weight of the evidence.

R and O can apply to resisting a reserve officer

People v Feeley, MSC 152534 (June 29, 2016)

Defendant was charged with resisting and obstructing after he ran from a reserve police officer and then failed to comply with the reserve police officer's order to stop. The incident giving rise to this case occurred at a bar after the police were called to assist with an intoxicated person there. The reserve police officer and a full-time police officer responded. According to the reserve police officer, the reserve police officer asked to speak with defendant, who was identified on the scene by defendant's wife as the troublemaker, and defendant turned and ran away. The reserve police officer testified that he gave chase, identified himself as a police officer, and ordered defendant to stop. The reserve police officer added that defendant stopped after the reserve police officer's second command, looked at the reserve police officer, swore, and began reaching behind his back. The reserve police officer testified that he pulled his weapon and ordered defendant to the ground at that point. Defendant complied and was taken into custody. The Court of Appeals had held that reserve officers are not listed under the R and O statute and dismissed the charges. The Michigan Supreme Court reverses.

HELD – **"The Court of Appeals incorrectly concluded that a reserve police officer is not among the persons contemplated in MCL 750.81d, the statute prohibiting an individual from resisting or obstructing the persons specified in the statute. Police officers are expressly listed in MCL 750.81d(7)(b)(i) as an occupation to which the prohibition against resisting and obstructing applies, and 'reserve police officers' are a subset of 'police officers.' 'Reserve police officers' are thus 'police officers' for purposes of the resisting and obstructing statute."**

TOBACCO TAX CASES

People v Shami, C/A No. 327065 (December 15, 2016)

MCL 205.426(1) requires a retailer to keep a true copy of all required invoices "at the location where the tobacco product is offered for sale for a period of 4 months from the date of purchase or acquisition." During the administrative tax inspection, defendant could not produce all of the invoices because they were not kept at the retail store where the tobacco was offered for sale. Therefore, the evidence showed that defendant failed to keep a true copy of the invoices "at the location where the tobacco product is offered for sale for a period of 4 months from the date of purchase or acquisition."

Defendant was also criminally charged under MCL 205.428(3), which states that "[a] person who possesses, acquires, transports, or offers for sale contrary to this act, tobacco products other than cigarettes with an aggregate wholesale price of $250.00 or more is guilty of a felony." MCL 205.422(o) defines a "person" as "an individual, partnership, fiduciary, association, limited liability company, corporation, or other legal entity." Therefore, **under the plain language of the TPTA, an individual can be criminally liable for violations of the Act. A person who manages the day-to-day operations of a tobacco retail store is obligated to comply with the recordkeeping requirements.**

Finally, the prosecutor argues that the circuit court erred by dismissing the manufacturing charge against defendant because he improperly possessed tobacco as a manufacturer without a license. **Defendant manufactured or produced tobacco for purposes of the TPTA when he repackaged and mixed different flavors of tobacco because he changed, however slightly, the form and delivery method of the tobacco. Specifically, defendant admitted that he mixed two or three blends, flavors of tobacco together to come up with a special blend." These activities amounted to manufacturing a new product that defendant held out for sale as defendant's own brand.**

People v Assy, C/A No. 326274 (July 14, 2016)

Tpr Berdan conducted an administrative tobacco inspection at a business. Assy arrived during the inspection and told Berdan that he was the store's manager. Berdan informed Assy that there did not appear to be invoices for more than $250 worth of tobacco. Berdan also asked Assy about the bulk tobacco on the counter and Assy informed him that he makes the bulk stock by combining two or three different flavors of tobacco, which he then sells by weight. Assy agreed to help produce the invoices for the tobacco, but could not produce them. Berdan determined that neither King's Hookah nor Assy had a license to manufacture tobacco products.

The prosecutor charged Assy with possessing, acquiring, transporting, or offering for sale tobacco products other than cigarettes with an aggregate wholesale price of $250 or more without proper invoices and with manufacturing tobacco products without a license. "If a tobacco product other than cigarettes is found in a place of business or otherwise in the possession of a retailer without proper substantiation by invoices or other records as required by this section, the presumption shall be that the tobacco product is kept in violation of this act." MCL 204.426(6). The possession of "tobacco products other than cigarettes with an aggregate wholesale price of $250.00 or more" contrary to the Tobacco Act is a felony." MCL 205.428(3).

The Court of Appeals held that the law was valid and constitutional. Assy argues on appeal that the term "operates" necessarily refers to the owner or owners of the store, and he should not be charged as the manager. Although the owner of a business may directly control or manage a business, the owner may also delegate that responsibility to another person or entity. Thus, by defining retailer to mean a person

who "operates" the place of business, as opposed to a person who "owns" the business, the Legislature indicated that the person or entity who actually directs or manages the day-to-day operations is the party responsible for ensuring compliance with the Tobacco Act.

DRONES

P.A. 436 of 2016 – (April 4, 2017)

This act shall be known and may be cited as the "unmanned aircraft systems act".

As used in this act:

(a) "Person" means an individual, partnership, corporation, association, governmental entity, or other legal entity.

(b) "Political subdivision" means a county, city, village, township, or other political subdivision, public corporation, authority, or district in this state.

(c) "Unmanned aircraft system" means an unmanned aircraft and all of the associated support equipment, control station, data links, telemetry, communications, navigation equipment, and other equipment necessary to operate the unmanned aircraft.

(d) "Unmanned aircraft" means an aircraft flown by a remote pilot via a ground control system, or autonomously through use of an on-board computer, communication links, and any additional equipment that is necessary for the unmanned aircraft to operate safely.

(1) Except as expressly authorized by statute, a political subdivision shall not enact or enforce an ordinance or resolution that regulates the ownership or operation of unmanned aircraft or otherwise engage in the regulation of the ownership or operation of unmanned aircraft.

(2) This act does not prohibit a political subdivision from promulgating rules, regulations, and ordinances for the use of unmanned aircraft systems by the political subdivision within the boundaries of the political subdivision.

(3) This act does not affect federal preemption of state law.

(4) If this act conflicts with section 40111c or 40112 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.40111c and 324.40112, those sections control.

A person that is authorized by the Federal Aviation Administration to operate unmanned aircraft systems for commercial purposes may operate an unmanned aircraft system in this state if the unmanned aircraft system is operated in a manner consistent with federal law.

A person may operate an unmanned aircraft system in this state for recreational purposes if the unmanned aircraft system is operated in a manner consistent with federal law for the operation of a model aircraft.

Sec. 21. An individual shall not knowingly and intentionally operate an unmanned aircraft system in a manner that interferes with the official duties of any of the following:

(a) A police officer.

(b) A firefighter.

(c) A paramedic.

(d) Search and rescue personnel.

Sec. 22. (1) A person shall not knowingly and intentionally operate an unmanned aircraft system to subject an individual to harassment. As used in this subsection, "harassment" means that term as defined in section 411h or 411i of the Michigan penal code, 1931 PA 328, MCL 750.411h and 750.411i.

(2) A person shall not knowingly and intentionally operate an unmanned aircraft system within a distance that, if the person were to do so personally rather than through remote operation of an unmanned aircraft, would be a violation of a restraining order or other judicial order.

(3) A person shall not knowingly and intentionally operate an unmanned aircraft system to violate section 539j of the Michigan penal code, 1931 PA 328, MCL 750.539j, or to otherwise capture photographs, video, or audio recordings of an individual in a manner that would invade the individual's reasonable expectation of privacy.

(4) An individual who is required to register as a sex offender under the sex offender's registration act, 1994 PA 295, MCL 28.721 to 28.736, shall not operate an unmanned aircraft system to knowingly and intentionally follow, contact, or capture images of another individual, if the individual's sentence in a criminal case would prohibit the individual from following, contacting, or capturing the image of the other individual.

Sec. 23. (1) An individual who violates section 21 or 22 is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both.

ALCOHOL VIOLATIONS

MIP 1st offense is a civil infraction

P.A. 357 of 2016 (January 1, 2018)

(1) A minor shall not purchase or attempt to purchase alcoholic liquor, consume or attempt to consume alcoholic liquor, possess or attempt to possess alcoholic liquor, or have any bodily alcohol content, except as provided in this section. A minor who violates this subsection is responsible for a state civil infraction or guilty of a misdemeanor as follows and is not subject to the penalties prescribed in section 909:

- 1st offense - A **state civil infraction** and shall be fined not more than $100.00.
- 2nd offense - 30 day misd.
- 3rd or more - 60 day misd.

OWI in a driveway

People v Rea, C/A No. 324728 (April 19, 2016)

Defendant had a lot to drink and withdrew to his Cadillac sedan to listen to loud music. A neighbor objected to the noise and called the police. Two officers responded. They found defendant seated in his car, the driver's door ajar. The vehicle was parked deep in defendant's driveway, next to his house. An officer instructed defendant to turn down the music. The neighbor complained a second time, and one of the officers returned to the scene. The officer heard no music and could not see the Cadillac.

When the third noise dispatch issued, the officer parked on the street near defendant's home and began walking up defendant's driveway. The door to the detached garage opened and defendant's vehicle backed out for "about 25 feet" before stopping. At that point the car was still in defendant's side or backyard. Defendant then pulled the car back into the garage. He was arrested for OWI as he walked toward his house.

HELD – "**Had the Legislature wanted to criminalize driving while intoxicated in one's own driveway, it could have outlawed the operation of a motor vehicle in any place accessible to motor vehicles, omitting the adverb 'generally.' But the statute uses the word 'generally' to modify the word 'accessible,' and the combined modifier to further describe 'other place.'** The commonly understood and dictionary-driven meanings of the term 'generally' in this context compel the conclusion that the Legislature meant to limit the reach of MCL 257.625(1). On this record, no one could reasonably conclude that defendant drove in an area open to the public or generally accessible to motor vehicles, other than to defendant and the members of his household.

We note that our analysis would be different had defendant driven intoxicated in the driveway of an apartment building or other community living center, if defendant's property shared its driveway with the neighboring property, or if defendant proceeded to an area of his driveway where he could encounter a member of the general public.

SERVICE ANIMALS

Service animals - P. A. No. 144 of 2015 - MCL **750. 50a (January 18, 2016)**

(1) An individual shall not do either of the following:

(a) **Willfully and maliciously assault, beat, harass, injure, or attempt to assault, beat, harass, or injure a service animal that he or she knows or has reason to believe is a service animal used by a person with a disability**.

(b) Willfully and maliciously impede or interfere with, or attempt to impede or interfere with, duties performed by a service animal that he or she knows or has reason to believe is a service animal used by a person with a disability.

(2) An individual who violates subsection (1) is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both.

(3) In a prosecution for a violation of subsection (1), evidence that the defendant initiated or continued conduct directed toward a service animal described in subsection (1) after being requested to avoid or discontinue that conduct or similar conduct by a person with a disability being served or assisted by the service animal shall give rise to a rebuttable presumption that the conduct was initiated or continued maliciously.

(4) A conviction and imposition of a sentence under this section does not prevent a conviction and imposition of a sentence under any other applicable provision of law.

(5) As used in this section:

(a) "Harass" means to engage in any conduct directed toward a service animal described in subsection (1) that is likely to impede or interfere with the service animal's performance of its duties or that places the person with a disability being served or assisted by the service animal in danger of injury.

(b) "Injure" means to cause any physical injury to a service animal described in subsection (1).

(c) "Maliciously" means any of the following:

(*i*) With intent to assault, beat, harass, or injure a service animal described in subsection (1).

(*ii*) With intent to impede or interfere with duties performed by a service animal described in subsection (1).

(*iii*) With intent to disturb, endanger, or cause emotional distress to a person with a disability being served or assisted by a service animal described in subsection (1).

(*iv*) With knowledge that the individual's conduct will or is likely to harass or injure a service animal described in subsection (1).

(*v*) With knowledge that the individual's conduct will or is likely to impede or interfere with duties performed by a service animal described in subsection (1).

(*vi*) With knowledge that the individual's conduct will or is likely to disturb, endanger, or cause emotional distress to a person with a disability being served or assisted by a service animal described in subsection (1).

(d) "Person with a disability" means a person who has a disability as defined in section 12102 of the Americans with disabilities act of 1990, 42 USC 12102, and 28 CFR 36.104.

(e) As used in subdivision (d), "person with a disability" includes a veteran who has been diagnosed with 1 or more of the following:

(*i*) Post-traumatic stress disorder.

(*ii*) Traumatic brain injury.

(*iii*) Other service-related disabilities.

(f) "Service animal" means all of the following:

(*i*) That term as defined in 28 CFR 36.104.

(*ii*) A miniature horse that has been individually trained to do work or perform tasks as described in 28 CFR 36.104 for the benefit of a person with a disability.

(g) "Veteran" means any of the following:

(*i*) A person who performed military service in the armed forces for a period of more than 90 days and separated from the armed forces in a manner other than a dishonorable discharge.

(*ii*) A person discharged or released from military service because of a service-related disability.

(*iii*) A member of a reserve branch of the armed forces at the time he or she was ordered to military service during a period of war, or in a campaign or expedition for which a campaign badge is authorized, and was released from military service in a manner other than a dishonorable discharge.

Sec. 502c. (1) Except as otherwise provided in subsection (2), a public accommodation shall modify its policies, practices, and procedures to permit the use of a service animal by a person with a disability**. If the service animal is a miniature horse, a public accommodation may use the following assessment factors to determine whether the miniature horse can be accommodated in its facility:**

(a) The type, size, and weight of the miniature horse and whether the facility can accommodate these features.

(b) Whether the handler has sufficient control of the miniature horse.

(c) Whether the miniature horse is housebroken.

(d) Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

(2) A public accommodation shall not ask a person with a disability to remove a service animal from the premises due to allergies or fear of the animal. A public accommodation may only ask a person with a disability to remove his or her service animal from the premises if either of the following applies:

(a) The service animal is out of control and its handler does not take effective action to control it.

(b) The service animal is not housebroken.

(3) If a public accommodation properly excludes a service animal under subsection (2), it shall give the person with a disability the opportunity to obtain goods, services, or accommodations without having the service animal on the premises.

(4) A service animal shall be under the control of its handler, and shall have a harness, leash, or other tether, unless the handler is unable because of a disability to use a harness, leash, or other tether or the use of a harness, leash, or other tether would interfere with the service animal's safe and effective

performance of work or tasks, in which case the service animal shall be otherwise under the handler's control. As used in this subsection, "otherwise under the handler's control" includes, but is not limited to, voice control or signals.

(5) A public accommodation is not responsible for the care or supervision of a service animal.

(6) If it is not obvious what service a service animal provides, staff of a public accommodation shall not ask about a person with a disability's disability, require medical documentation, require a special identification card or training documentation for the service animal, or ask that the service animal demonstrate its ability to perform work or a task. Subject to subsection (7), staff may make the following 2 inquiries to determine whether an animal qualifies as a service animal:

(a) Whether the service animal is required because of a disability.

(b) What work or task the service animal has been trained to perform.

(7) A public accommodation shall not do either of the following:

(a) Require documentation when making an inquiry under subsection (6).

(b) Make an inquiry under subsection (6) if it is readily apparent that the service animal is trained to do work or perform tasks for an individual with a disability.

(9) **A public accommodation shall not isolate a person with a disability accompanied by his or her service animal, treat a person with a disability accompanied by his or her service animal less favorably than other patrons, or charge a fee to a person with a disability accompanied by his or her service animal that is not charged to other patrons without service animals.** A public accommodation shall not ask or require a person with a disability to pay a surcharge, regardless of whether people accompanied by pets are required to pay a surcharge, or to comply with other requirements that are not applicable to people without pets. If a public accommodation normally charges people for damage caused, the public accommodation may charge a person with a disability for damage caused by his or her service animal.

(10) A public accommodation that violates subsections (1), (3), or (6) to (9) is guilty of a misdemeanor.

Falsely claim to have service animal - P. A. Act No. 147 of 2015 (January 18, 2016)

A person shall not falsely represent that he or she is in possession of a service animal, or a service animal in training, in any public place.

A person who knowingly violates this act is guilty of a misdemeanor punishable by 1 or more of the following:

(a) Imprisonment for not more than 90 days.

(b) A fine of not more than $500.00.

(c) Community service for not more than 30 days.

Use of a support animal at trial

People v Johnson, C/A No. 325857 (April 19, 2016)

This appeal arises out of defendant's sexual contact with his six-year-old niece. According to the evidence supporting the jury's verdict, from 2011 to 2014, defendant occasionally provided babysitting services for his brother and sister-in-law when other family members were unavailable to babysit their two children. While babysitting, defendant would take the victim into the bathroom or another room and sexually abuse her.

During defendant's trial a black Labrador retriever named Mr. Weeber was permitted, without objection, to accompany the six-year-old victim and the victim's 10-year-old brother to the witness stand while they testified. Now, on appeal, defendant raises numerous arguments against the use of a support animal.

Held - Much like the use of a screen to make a witness more comfortable when testifying—but much less offensive to the Sixth Amendment Confrontation Clause—the use of a support animal allows the trial court to ease the situation for a young traumatized or fearful witness, while at the same time allowing the jury and the defendant to view the witness while testifying. We therefore hold that it is within the trial court's inherent authority to control its courtroom and the proceedings before it to allow a witness to testify accompanied by a support animal. Thus, any objection to the trial court's *authority* to allow the victim and victim's brother to be accompanied by the support animal while they testified would have been meritless.

Since the challenged practice is not inherently prejudicial, defendant is required to show that he was actually prejudiced by the practice. This he cannot do. The record indicates that Mr. Weeber was brought in by the victim and sat at her feet while she testified and the same procedure occurred when the victim's brother testified. There is no indication that Mr. Weeber was visible to the jury while the witnesses testified, or that he barked, growled, or otherwise interrupted the proceedings or made his presence known to the jury. Therefore, any objection on the basis that this practice violated defendant's right to due process would have been meritless. Defendant is not entitled to a new trial on this basis.

P.A. 353 of 2016 (January 20, 2017) - MCL 750.70a

(1) **An individual other than the owner or the authorized agent of the owner of a dog, or a law enforcement officer, an animal control officer, or an animal protection shelter employee acting in his or her official capacity, shall not willfully or maliciously remove a collar or a microchip from that dog with the intent to remove traceable evidence of the dog's ownership.**

(2) An individual who violates subsection (1) is responsible for a state civil infraction and shall be ordered to pay a civil fine of not less than $1,000.00 and not more than $2,500.00.

(3) Nothing in this section shall be construed to affect the civil or criminal liability of an individual under any other applicable law of this state.

(4) As used in this section, "authorized agent" means an individual who has the permission of the owner of a dog to remove that dog's collar.

Owning a dangerous animal casing serious injury

People v Ridge, C/A No. 333791 (April 25, 2017)

The dog at issue in this case was a possible pit bull, Shar-Pei mix named Roscoe. One day, an employee of Scott's Lawn Care was working at a house next to the yard where Roscoe was being held. As the employee was working, Roscoe was able to get under the chain link fence and attack the victim. A neighbor saw the attack and called 911. An officer arrived and was able to shoot the dog. The owners of the dog were charged with owning a dangerous animal causing serious injury. There was no evidence that the dog had attacked anyone else, however, the owner did admit that the dog previously attacked the neighbor's lawnmower and on one occasion punctured the tire of a lawnmower. Roscoe had also attacked the chain link fence he was enclosed in.

MCL 287.321(a) defines a dangerous animal as "a dog or other animal that bites or attacks a person, or a dog that bites or attacks and causes serious injury or death to another dog while the other dog is on the property or under the control of its owner." The statute requires proof that the owner knew that his or her animal was a dangerous animal within the meaning of the dangerous animal statute before the incident at issue.

HELD – "While the prosecution argues that Roscoe 'attacked' other persons when he attacked the fence and lawnmower tires, this evidence only demonstrated that Roscoe attacked other objects, not that he attacked other people. To be considered a dangerous animal, the statutory text requires a showing that the animal previously attacked a person, not that the animal threatened a person or attacked an object. Thus, Roscoe's actions against the fence and the lawnmower were not synonymous to an attack against a person sufficient to render him a 'dangerous animal' for purposes of MCL 287.321(a)."

EVIDENCE

Admissibility of prior bad acts

People v Kelly, C/A No. 331731 (November 8, 2016)

Defendant has been charged with kidnapping, three counts of first-degree criminal sexual conduct and assault with intent to commit CSC involving sexual penetration. These charges arise from the alleged sexual assault of SH in April of 2008. DNA collected during SH's sexual assault exam matches defendant's DNA profile. Defendant does not dispute that a sexual encounter with SH occurred but that SH consented to sex that evening as a prostitute in exchange for compensation. In contrast, according to the prosecution's theory of the case, this 2008 attack on SH is just one of eight sexual assaults committed by defendant. These eight sexual assault cases date from 1985 through 2010 and span four different states—Missouri, Tennessee, Michigan, and Virginia. In each case, defendant isolated the victims by selecting women who were alone and/or driving them to a more secluded location. Once the victims were isolated, defendant then forced them to engage in vaginal-penile penetration. If questioned by police, defendant would claim that the sex was consensual and he disparaged the victims, typically claiming that they were disgruntled prostitutes.

The prosecution wanted to use the evidence of the other acts during the defendant's trial. Given the similarities between the other acts and the alleged assault on SH, the prosecutor argued that the other acts

evidence was relevant and admissible under MRE 404(b) to establish defendant's intent and to demonstrate a common scheme, plan or system in doing an act.

HELD – "The evidence could be admissible but the trial court failed to consider the evidence's relevance in relation to the purposes for which it was offered under MRE 404(b). Without considering the evidence's legal relevance for a proper purpose, the trial court could not conclude that the evidence's probative value was substantially outweighed by unfair prejudice or any of the other concerns. By failing to follow the proper legal framework, the trial court neglected a fundamental responsibility in its MRE 404(b) evidentiary analysis and thus the trial court abused its discretion by excluding the proposed testimony."

FALSE STATEMENTS

Lying under Garrity

People v Hughes, MSC No. 149872 (June 22, 2016)

Hughes, a police officer, assaulted a person while on duty. The victim filed a complaint, resulting in an internal investigation. Hughes made statements during the investigation, under the threat of dismissal from his job, in which he denied the allegations. After a video recording of the incident came to light, Hughes was charged with felony misconduct in office, misdemeanor assault and battery, and obstruction of justice. His statements were used against him during his trial.

HELD – "Under the Disclosures by Law Enforcement Officers Act (DLEOA), any information provided by a law enforcement officer, if compelled under threat of any employment sanction by the officer's employer, cannot be used against the officer in subsequent criminal proceedings. The act does not distinguish between true and false statements. Therefore, even if false, the officer's statements cannot be used against the officer in a subsequent prosecution. The Legislature chose to use broad language in the DLEOA. The act does not expressly limit its protections to true statements, nor does it contain any express exception for perjury, lying, providing misinformation, or similar dishonesty. Applying this interpretation of the DLEOA's plain language, the obstruction-of-justice charges brought against defendants had to be dismissed. **Defendants provided statements regarding their encounter with the victim under threat of termination; these statements, though false, were protected by the DLEOA and, therefore, could not be used against defendants in a criminal proceeding."**

Knowingly providing false info to a police officer

People v Williams, C/A No. 330853 **(**December 6, 2016)

The police questioned defendant Jamari Williams after Williams discovered his pregnant girlfriend's murdered body in their shared apartment. Williams revealed that he and two friends passed the evening of his girlfriend's death by riding around in a car. The investigators probed Williams's exact whereabouts and the names of those who rode with him, extracting a timeline of the journey. Williams denied making any stops in addition to the several that he revealed. The police subsequently learned that the car had parked briefly at Williams's apartment complex during the timeframe in which the homicide likely occurred. They also determined that an

additional passenger had been present in the car. The prosecution charged Williams under MCL 750.479c, which makes it a felony to "knowingly and willfully make any statement to a peace officer that the person knows is false or misleading regarding a material fact in a criminal investigation."

"**Here, Williams knowingly provided his account of events to a peace officer with the actual knowledge that the officer was investigating his girlfriend's homicide. His omission of material facts, perhaps not a direct falsehood for the purposes of MCL 750.479c, temporarily misled the investigation as it excluded him as a suspect.** The plain language of the statute conveys the Legislature's intent to hold fully responsible for accuracy and candor those who provide information to peace officers in the course of a criminal investigation. Because the plain language of MCL 750.479c(1)(b) permits Williams's prosecution for withholding information, we affirm the decision to bind him over for trial."

FINGERPRINTING

Fingerprinting Child or Youth with Special Health Care Needs - P.A. 24 0f 2017

"Child or youth with special health care needs" means a single or married individual under 21 years of age whose activity is or may become so restricted by disease or specified medical condition as to reduce the individual's normal capacity for education and self-support.

A parent or guardian of a child or youth with special health care needs may submit a written request to a department-approved entity to take the fingerprints and photograph of the child or youth with special health care needs and add them to the automated fingerprint identification system (AFIS) database and the statewide network of agency photos maintained by the department. As used in this subsection and subsections (5), (6), and (8), "parent" means the natural or adoptive parent of a child or youth with special health care needs who has either or both sole or joint legal or physical custody of the child if a court order dictating custody is in place, or the natural or adoptive parent of a child or youth with special health care needs if there is no court order dictating custody in place.