



# LEGAL UPDATE

## MICHIGAN STATE POLICE TRAINING DIVISION

Legal Training Section  
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### *False impersonation of a police officer statute rewritten - MCL 750.215 P.A. 15 of 2003 (September 1, 2003)*

An individual who is not a peace officer or a medical examiner shall not do any of the following:

- Perform the duties of a peace officer or a medical examiner.
- Represent to another person that he or she is a peace officer or a medical examiner for any unlawful purpose.
- Represent to another person that he or she is a peace officer or a medical examiner with the intent to compel the person to do or refrain from doing any act against his or her will.

#### Penalties

- 1 year misdemeanor.
- 4 year felony if commits or attempt to commit a crime.

"Peace officer" means any of the following:

- A sheriff or deputy sheriff.
- Local officer.
- A marshall.
- A constable.
- An officer of the Michigan state police.
- A conservation officer.
- Capitol security officer.
- A motor carrier officer.
- Public safety officer of a community college, college, or university.
- A park and recreation officer commissioned pursuant to MCL 324.1606.
- A state forest officer commissioned pursuant to MCL 324.83107.
- A federal law enforcement officer.
- An investigator of the state department of attorney general.

### *Registration violations are civil infractions – MCL 257.255 P.A. 9 of 2003 (September 1, 2003)*

Except as otherwise provided in this chapter, a person shall not operate, nor shall an owner knowingly permit to be operated, upon any highway, a vehicle required to be registered under this act unless there is attached to and displayed on the vehicle, as required by this chapter, a valid registration plate issued for the vehicle by the department for the current registration year. A registration plate shall not be required upon any wrecked or disabled vehicle, or vehicle destined for repair or junking, which is being transported or drawn upon a highway by a wrecker or a registered motor vehicle.

#### Penalties

- **Civil infraction.**
- If the vehicle is a commercial vehicle which is required to be registered according to the schedule of elected gross vehicle weights under section 801(1)(k), the person is guilty of a 90 day misdemeanor.
- A vehicle licensed under the international registration plan and does not have a valid registration due to nonpayment of the apportioned fee is guilty of a 90 day.

### *Assisting a subject does not automatically render liability.*

Officers were going to a prisoner pick up when they observed a subject walking on the foggy, unlit shoulder of the roadway. The officers stopped to see if he was o.k. and offered him a ride to a gas station. The subject agreed. In the patrol vehicle officers could smell intoxicants, but did not notice any other signs of intoxication. He was left at the store where he tried to buy beer. The clerk refused and gave him a cup of coffee instead. He then left the store and two hours later was run over and killed while lying in the middle of the road. The autopsy

report showed his blood alcohol level was .27 percent and the pathologist estimated that at the time he was with the police officers he would have been in excess of .30. His estate sued the police officers violated his substantive due process rights under 42 USC 1983.

HELD – The Sixth Circuit held that there was no liability. “Plaintiff argues that a special relationship existed between Cartwright and the officers, because the officers had an affirmative duty to help plaintiff, and because such duty was created by state statute. The relationship only arises ‘when the state restrains an individual,’ and in this case, decedent was never in custody. The defendants did not suspect Cartwright was guilty of wrongdoing; they merely offered to give him a ride. Also, Cartwright’s inebriation was not ‘imposed or created’ by the state.”

The family also argued that the officers should have taken the subject into protective custody. “The facts of this case presented a Catch-22 for officers. If they had decided to take Cartwright into protective custody under § 333.6501 of Michigan Compiled Laws, they, too, may have faced another lawsuit based on charges of false imprisonment, on the theory that Cartwright was not really ‘incapacitated’ and the officers had no legal authority to detain him under the statute.” Cartwright v City of Marine PD, 2003 FED App. 0237P (6<sup>th</sup> Cir.)

***Statutory right to polygraph extends until the verdict.***

Defendant and a fourteen-year-old girl were observed by an officer in the back seat of a car that was parked in a secluded area. The officer noticed that both subjects were unclothed from their waist down and that the male subject’s hand was between the girl’s legs. The officer interviewed them privately and the girl stated that the subject had digitally penetrated her. The subject also admitted to digitally penetrating the victim after being advised of his rights. Before trial, the defendant requested a polygraph under MCL 776.21(5). The first scheduled test was canceled by the defendant and at the second one the examiner refused to test the subject without a medical release from the subject’s doctor due to his heart condition. The polygraph issue was not raised again until the jury was deliberating his case. He was convicted and

argued that his conviction should be overturned because he was denied the polygraph.

HELD – The Court of Appeals held that the defendant had forfeited his right to a polygraph. The Michigan Supreme Court disagreed. “MCL 776.21(5) extends the right to demand a polygraph examination to a defendant ‘who allegedly has committed’ an enumerated criminal-sexual-conduct violation.” However, even though there was an error in the Court of Appeals decision, a new trial was not ordered. Given the strength of the prosecution’s case, it was not likely that the error would change the outcome. “The police officer saw defendant remove his hand from between the victim’s legs and the victim told the officer that defendant had digitally penetrated her. In addition, defendant confessed to the crimes charged and provided a complete and detailed description of his conduct and his relationship to the victim. Further, even if defendant had taken and passed a polygraph test, the results would not have been admissible at trial.” People v Phillips, MSC No. 121545 (August 7, 2003)

***Eavesdropping charges may be brought against a subject who hides a camera in his own bedroom.***

A subject hid a video camera in his bedroom and would then videotape his sexual relations with his girlfriends without their knowledge. The videos were discovered and the girlfriends brought suit against the subject based on the eavesdropping statute. MCL 750.529d creates a two-year felony for anyone who installs in a “private place, without the consent of the person or persons entitled to privacy there, a device for observing, photographing, or eavesdropping upon the sounds or events in such place.”

HELD – “A bedroom in a private home in which a couple engages in intimate relations fulfills the definition of a ‘private place’ under MCL 750.539a(1). Plaintiffs’ consenting to have sex with defendant in a private place does not preclude them from maintaining an action and recovering substantial damages upon learning that defendant had surreptitiously photographed intimacy that plaintiffs reasonably expected be kept private.” Lewis v Legrow, C/A No. 234723 (August 21, 2003).