



LEGAL UPDATE

MICHIGAN STATE POLICE TRAINING DIVISION

Legal Training Section
(517) 322-6704



Child sexually abusive material is rewritten - MCL 750.145c (P.A. 629 of 2002)

New definitions for child pornography

Child pornography now includes material that “appears to include a child,” which means that the depiction appears to include, or conveys the impression that it includes, a person who is less than 18 years of age, and the depiction meets either of the following conditions:

- It was created using a depiction of any part of an actual person under the age of 18.
- It was not created using a depiction of any part of an actual person under the age of 18, but all of the following apply to that depiction:
 - The average individual, applying contemporary community standards, would find the depiction, taken as a whole, appeals to the prurient interest.
 - The reasonable person would find the depiction, taken as a whole, lacks serious literary, artistic, political, or scientific value.
 - The depiction depicts or describes a listed sexual act in a patently offensive way. (The above is the definition for obscene material)

New Penalties

A person who knowingly possesses any child sexually abusive material is guilty of a felony punishable by imprisonment for not more than **4 years** or a fine of not more than \$10,000.00, or both, if that person knows, has reason to know, or should reasonably be expected to know, that the sexually abusive material includes a child or that the depiction constitutes a child, or that person has not taken reasonable precautions to determine the age of the child.

Note – Officers should note that there are enhanced penalties for crimes that occur on a computer

program, computer, computer system or computer system under MCL 750.145d and MCL 752.796.

MCL 750.145d states a person shall not use the internet or a computer, computer program, computer network, or computer system to communicate with any person for the purpose of doing any of the following:

- Committing, attempting to commit, conspiring to commit, or soliciting another person to commit conduct proscribed under section 145a, 145c, 157c, 349, 350, 520b, 520c, 520d, 520e, or 520g, or section 5 of 1978 PA 33, MCL 722.675, in which the victim or intended victim is a minor or is believed by that person to be a minor. (CSC, child pornography, kidnapping, soliciting a minor)
- Committing, attempting to commit, conspiring to commit, or soliciting another person to commit conduct proscribed under section 411h or 411i. (stalking)
- Committing, attempting to commit, conspiring to commit, or soliciting another person to commit conduct proscribed under chapter XXXIII or section 327, 327a, 328, or 411a(2). (explosive violations)

MCL 752.796 states a person shall not use a computer program, computer, computer system, or computer network to commit, attempt to commit, conspire to commit, or solicit another person to commit a crime.

- This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law committed by that person while violating or attempting to violate this section, including the underlying offense.
- This section applies regardless of whether the person is convicted of committing, attempting to commit, conspiring to commit, or soliciting another person to commit the underlying offense.

Operating a locomotive under the influence – MCL 462.353 P.A. 658 of 2002 (April 1, 2003)

A person who is under the influence of alcoholic liquor or a controlled substance, or a combination of alcoholic liquor and a controlled substance, or whose ability to operate a locomotive engine is visibly impaired due to the consumption of alcoholic liquor or a controlled substance or both shall not operate a locomotive engine upon the railroad tracks of this state. A peace officer may, without a warrant, arrest a person when the peace officer has probable cause to believe that the person, at the time of an accident, was the operator of a locomotive engine involved in the accident and was operating the locomotive engine upon the railroad tracks of this state while impaired by or under the influence of alcoholic liquor or a controlled substance, or a combination of alcoholic liquor and a controlled substance. Follow OUIL/OUID procedures.

0.04 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine shall not operate a locomotive engine upon the railroad tracks of this state.

- 93 day misdemeanor
- 2nd within 7 years = 1 year misdemeanor
- 3rd within 10 years = felony
- If results in serious injury = 5 year felony
- If results in death = 15 year felony

CSC includes actions by teachers – P.A. 714 of 2002 (April 1, 2003)

CSC 1 and 2 now includes:

The victim is at least 13 but less than 16 years of age and any of the following:

- The actor is a member of the same household as the victim.
- The actor is related to the victim by blood or affinity to the fourth degree.
- The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

-
- ***The actor is a teacher, substitute teacher, or administrator of the public or nonpublic school in which that other person is enrolled.***

CSC 3 and 4 now includes:

The victim is at least 16 years but less than 18 years of age and a student at a public or nonpublic school, and the actor is a teacher, substitute teacher, or administrator of that public or nonpublic school.

Possession of counterfeit tax stamps for cigarettes requires knowledge that they are counterfeit.

The defendant was convicted for possessing counterfeit tax stamps in violation of MCL 205.428(6). The issue in this case was whether legislature intended to dispense with a mens rea or fault requirement when creating this offense.

HELD – “We hold that knowledge is an element of the offense for which defendant stands convicted. Therefore, in order to establish that a defendant is guilty of possessing or using counterfeit tax stamps, the people must prove that (1) the defendant possessed or used (2) a counterfeit stamp, or a writing or device intended to replicate a stamp, (3) that the defendant possessed or used the counterfeit tax stamps, or a writing or device intended to replicate a stamp, with knowledge that the stamps, writing, or device were not authentic tax stamps, and (4) that the defendant acted without authorization of the Michigan Department of Treasury. People v Nasir, C/A No. 225705 (January 14, 2003)

Note - Officers may review the above listed statutes and Public Acts in their entirety at www.michiganlegislature.org.