



LEGAL UPDATE

MICHIGAN STATE POLICE TRAINING DIVISION

Legal Training Section
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Making a false report now includes false report to 911 operator - MCL 750.411a

[A]person who intentionally makes a false report of the commission of a crime, or intentionally causes a false report of the commission of a crime to be made, to a peace officer, police agency of this state or of a local unit of government, **9-1-1 operator, or any other governmental employee or contractor or employee of a contractor who is authorized to receive reports of a crime**, knowing the report is false, is guilty of a crime as follows.....(same penalties as before)

Urine can be considered a harmful substance for adulterated food charge

Defendant, who worked at a computer store, had an argument with the neighboring owner of a pet store. The victim left her store but when she returned the shop was filled with an overwhelming stench. It was later determined that defendant kept a two liter pop bottle full of stale urine for anyone who "disrespected" him. "During the cleanup, the victim absentmindedly took a partially rolled-up bag of pretzels from a six-foot shelf and popped one of the pretzels into her mouth. It was wet. She immediately knew that the suspect had placed urine in the pretzels and hysterically ran to the bathroom to wash out her mouth. According to her testimony, the urine-soaked pretzel made her 'kind of sick, kind of real sick.'"

HELD: According to MCL 750.397(a), "a person who places a **harmful substance** in any food, with intent to harm the consumer of the food ... is guilty of a felony...." Defendant argued that there was insufficient evidence presented to show that the urine was a harmful substance. "An expert witness testified that urine can transmit disease through viruses or bacteria that it may contain. The witness

also testified that the sample of urine from the pretzel bag contained bacteria. Therefore, a rational trier of fact could have found that the urine poured on the pretzels was a harmful substance." People v Guthrie, C/A No. 245891 (June 15, 2004)

Perjury does not require proof of materiality

Defendant was charged with perjury after a statement made during a divorce proceeding. He argued that the statement was not material to the outcome as required by the statute. The Michigan Supreme Court reviewed the statute and held that there is no requirement for materiality as was previously held. "The plain language of our perjury state alters the common law and does not require proof of materiality." People v Lively, MSC No. 123145 (June 16, 2004).

Eavesdropping statute amended to restrict taking pictures of private areas. - MCL 750.539j

A person **shall not** do any of the following:

- Surveil or photograph another individual who is clad only in his or her undergarments, the unclad genitalia or buttocks of another individual, or the unclad breasts of a female individual under circumstances in which the individual would have a reasonable expectation of privacy.
- Distribute, disseminate, or transmit for access by any other person a recording, photograph, or visual image the person knows or has reason to know was obtained in violation of this section.

This section does not prohibit security monitoring in a residence if conducted by or at the direction of the owner or principal occupant of that residence unless conducted for a lewd or lascivious purpose.

*This update is provided for informational purposes only.
Officers should contact their local prosecutors for their interpretations.*

Carjacking statute rewritten – MCL 750.529a

A person who in the **course of committing a larceny** of a motor vehicle uses force or violence or the threat of force or violence, or who puts in fear any operator, passenger, or person in lawful possession of the motor vehicle, or any person lawfully attempting to recover the motor vehicle, is guilty of carjacking, a felony punishable by imprisonment for life or for any term of years.

As used in this section, “in the course of committing a larceny of a motor vehicle” includes acts that occur in an attempt to commit the larceny, or during commission of the larceny, or in flight or attempted flight after the commission of the larceny, or in an attempt to retain possession of the motor vehicle.

Armed Robbery Statute Rewritten - 750.529

A person who engages in conduct proscribed under section 530 and who in the course of engaging in that conduct, possesses a dangerous weapon or an article used or fashioned in a manner to lead any person present to reasonably believe the article is a dangerous weapon, **or who represents orally or otherwise that he or she is in possession of a dangerous weapon**, is guilty of a felony punishable by imprisonment for life or for any term of years. If an aggravated assault or serious injury is inflicted by any person while violating this section, the person shall be sentenced to a minimum term of imprisonment of not less than 2 years.

Unarmed Robbery statute rewritten - 750.530

- (1) A person who, **in the course of committing a larceny** of any money or other property that may be the subject of larceny, uses force or violence against any person who is present, or who assaults or puts the person in fear, is guilty of a felony punishable by imprisonment for not more than 15 years.
- (2) As used in this section, “in the course of committing a larceny” includes acts that occur in an attempt to commit the larceny, or during commission of the larceny, or in flight or

attempted flight after the commission of the larceny, or in an attempt to retain possession of the property.

Officers may arrest for OWI if they have probable cause to believe the subject operated under the influence.

Responding to an anonymous call, a police officer discovered defendant asleep in his truck at the parking area of the county fairgrounds. The truck was wedged on a parking log, with the tires barely touching the ground. Defendant was in the passenger seat covered by a sleeping bag. The truck’s engine was not running, the automatic transmission was in park, and the keys to the truck were inside the defendant’s pocket. The police officer awakened the defendant and observed that he smelled strongly of intoxicants and he was confused and unaware of his surroundings. Defendant explained that he had been at a bar that evening, had too much to drink, and drove to the fairgrounds to sleep because he was too intoxicated to drive home. Defendant explained that he struck the parking log while trying to leave the fairgrounds and that after unsuccessfully attempting to free the truck from the log, he turned off the engine and went to sleep. The police officer arrested defendant for OWI and operating a vehicle with a restricted license.

HELD: “Here, defendant's arrest was clearly valid because a peace officer may arrest a person without a warrant if the officer has reasonable cause to believe a misdemeanor punishable by **more than ninety-two days'** imprisonment occurred, and reasonable cause to believe the person committed it. [MCL 764.15\(1\)\(d\)](#).. An officer does not have to observe a defendant operating a vehicle for the defendant to be arrested and prosecuted for OWI under this exception. Defendant both looked and smelled intoxicated when the arresting officer arrived at the scene. The officer also administered field sobriety tests. Based on defendant's admissions and other evidence, the officer had reasonable cause to arrest defendant for OWI.” People v. Stephen, C/A No. 251190 (June 1, 2004).