



LEGAL UPDATE

MICHIGAN STATE POLICE TRAINING DIVISION

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For charges of “felon in possession of firearm,” the firearm does not have to be operable.

A judge in this case dismissed felon in possession of firearm charges because the firearm was inoperable. The Court of Appeals reversed. “We cannot find that the Legislature intended that the felon-in-possession statute apply only to operable firearms. The statute provides that a convicted felon ‘shall not possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm in this state . . .’ MCL 750.224f(1). The statutory language is broad, and is clearly intended to keep any and all handguns out of the hands of convicted felons. In our opinion, a handgun need not be currently operable in order to qualify as a ‘firearm’ for purposes of the felony-firearm statute.” People v Brown, C/A No. 231354 (January 22, 2002)

Local officers who are deputized by the County Sheriff have authority within the County even if it is outside their local jurisdiction.

Hope College Public Safety officers stopped a subject for erratic driving on a public street in the city of Holland. The Ottawa County Sheriff’s Department had deputized the officers. The subject was subsequently arrested for OUIL and challenged whether the officers had the authority to make the stop and arrest because the incident had not occurred on college property and was outside the scope of the officer’s authority. The Court of Appeals disagreed.

“We conclude that it is permissible under state law for the Ottawa County sheriff to appoint Hope College public safety officers as deputy

sheriffs with the power and authority to enforce the laws of the state on public property.” The Court also held that it did not violate the establishment of religion clauses of the United States or Michigan Constitutions for the sheriff to appoint employees of a religiously affiliated college as deputy sheriffs with full police powers extending to violations on public streets. People v VanTubbergen, C/A No. 226082 (January 22, 2002)

Prisoners giving testimony in court cannot be shackled unless they pose a threat of escape or to security.

During a robbery trial, a witness for the defense was called to testify. The witness was in prison at the time. The court asked the officer in charge of the witness if he should remain in handcuffs. The officer stated that he preferred that they stay on. The subject then testified. The Court of Appeals held that a mere preference from law enforcement was not enough reason to maintain a witness in handcuffs. The officer never testified that the witness posed a threat of escape or threat to security to others in the courtroom. The court must present a compelling reason to maintain a witness in handcuffs. People v Banks, C/A No. 225052 (January 15, 2002)

Gross indecency includes acts of masturbation in a public place.

Security guards at a Meijer store peered under the handicapped stall in the public restroom and observed a subject kneeling on the floor with his pants and underwear around his ankles. Another subject was sitting on the toilet in the adjacent stall. The second subject was “moving his arm up and down near the

bottom of the handicapped stall” where the other subject was kneeling. The officer did not actually see the two touch each other and did not see either defendant’s penis. They were both charged with gross indecency.

The question presented was whether masturbation in public between consenting adult males is grossly indecent. The court held that following previous case law gross indecency includes an “ultimate sex act committed in a public place.” The court remanded the case to the trial judge and held that if the facts alleged by the prosecutor were true then the conduct would fall under gross indecency. The court also modified the jury instructions for gross indecency to include acts of masturbation. People v Bono, C/A No. 227278 (January 4, 2001)

Proving the offense of “carrying a firearm while under the influence” now requires similar procedures to proving OUIL.

P.A. 135 of 2001 (Effective 2-1-2002) – MCL 750.237

An individual shall not carry, have in possession or under control, or use in any manner or discharge a firearm under any of the following circumstances:

- The individual is **under the influence** of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance.
- The individual has an alcohol content of **0.08 or more** grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
- Because of the consumption of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance, the individual's ability to use a firearm is **visibly impaired**.

A peace officer that has probable cause to believe an individual violated this section may

require the individual to submit to a chemical analysis of his or her breath, blood, or urine. However, an individual who is afflicted with hemophilia, diabetes, or a condition requiring the use of an anticoagulant under the direction of a physician is not required to submit to a chemical analysis of his or her blood.

Before an individual is required to submit to a chemical analysis, the peace officer *shall* inform the individual that they may refuse to submit to the chemical analysis, but if he or she refuses, the officer may obtain a court order. The subject may also obtain a chemical analysis from a person of his or her own choosing.

The penalties are:

- **93-day misdemeanor**
- **5-year felony** if causes **serious impairment of a body function** of another
- **15-year felony** if causes the **death** of another individual by the discharge or use in any manner of a firearm

(Subject may be charged with other violations that arise out of the same transaction.)

Felonious driving now applies to all places open to the general public, in addition to public highways.

P.A. 134 of 2001 (Effective date 2-1-2002) - MCL 257.626c

A person who operates a vehicle upon a highway or **other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles**, carelessly and heedlessly in willful and wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner that endangers or is likely to endanger any person or property resulting in a serious impairment of a body function of a person, but does not cause death, is guilty of felonious driving punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.