



MICHIGAN STATE POLICE
LEGAL UPDATE
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Questions and comments may be directed to the Executive Resource
Section at MSPLegal@Michigan.gov.

IN THIS ISSUE...

<i>Statutes</i>	
Kidnapping	1
Unlawful Imprisonment	1
Human Trafficking	1
<i>OWI Law</i>	
Independent Test Requirement	2
<i>Criminal Law</i>	
Definition of "Firearm"	3
<i>Did You Know?</i>	
Non-resident Pistol Possession	3
<i>Back to Basics</i>	
Inventory Searches	3

STATUTES

To read the full text of these statutes go to www.michiganlegislature.org, or click on the public act or statute citation following each summary.

**MCL 750.349 and 750.349b
Kidnapping statute amended, Unlawful
Imprisonment statute created
Effective August 24, 2006**

Public Acts 159 and 160 of 2006 are companion acts that separate the elements of kidnapping and the newly created crime of unlawful imprisonment.

Kidnapping

The crime of kidnapping will continue to be codified in MCL 750.349 and is punishable by imprisonment for life or any term of years. Under the amended statute, a person has committed kidnapping when he or she knowingly restrains another with the intent to do one or more of the following:

1. Hold that person for ransom or reward.
2. Use the person as a hostage or shield.
3. Engage in criminal sexual conduct.
4. Take the person outside of Michigan.
5. Hold the person in involuntary servitude.

In this section, restrain means to "restrict the person's movements or to confine the person so as to interfere with that person's liberty...without legal authority." The definition of 'restrain' contained in this section does *not* require the use of force and it explicitly excludes a length of time requirement.

Unlawful Imprisonment

The crime of unlawful imprisonment is codified in the newly created MCL 750.349b and is punishable by a term of 15 years. Under the new statute, a person commits unlawful imprisonment when he or she knowingly restrains another person under any of the following circumstances:

1. The restraint is by means of a weapon or dangerous instrument.
2. The person was secretly confined.
3. The restraint was used to facilitate the commission of, or flight from, another felony.

In this section, 'restrain' is defined the same as in the kidnapping section except that *force must be used* to accomplish the restraint.

'Secretly confined' is defined as:

1. To keep the confinement secret or
2. To keep the location of the person secret.

[Public Act 159 of 2006](#)

[Public Act 160 of 2006](#)

**MCL 750.462a – 750.426i
Human trafficking statutes created
Effective August 24, 2006**

Public Act 162 of 2006 creates a new chapter of Michigan's Penal Code containing nine new statutes criminalizing human trafficking.

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Human trafficking, continued

The new statutes prohibit a person from knowingly subjecting or attempting to subject another person to forced labor or services by:

1. Causing or threatening physical harm to another person (750.462b).
2. Physically restraining or threatening to physically restrain another person (750.462c).
3. Abusing or threatening to abuse the law or legal process (750.462d).
4. Destroying, concealing, removing, confiscating, or possessing an actual or purported passport or other government identification (750.462e).
5. Using blackmail, threatening or causing financial harm, or exerting or threatening to exert financial control (750.462f).

It is also now illegal to facilitate human trafficking, to benefit financially, or to receive anything of value from a venture engaged in human trafficking (750.462h).

Under those sections, human trafficking is punishable by a term of 10 years except if a person is injured (15 years) or killed (life).

When the trafficking involves obtaining a minor for the purposes of child sexually abusive activity, it is punishable by a term of 20 years (750.462g).

[Public Act 162 of 2006](#)

OWI LAW

Full citations have been omitted.

Police failure to provide a driver with an independent chemical test does not require dismissal of the case.

In *People v. Anstey*, the defendant was arrested for OUIL and asked for independent tests at distant locations. The officer refused, but offered to take the defendant to a closer hospital, which the defendant declined.

The county trial court ultimately dismissed the case as a result of the officer's refusal to take the defendant to the hospital of his choice. The Michigan Supreme Court disagreed and held that dismissal is not the appropriate remedy when police deny an independent test.

However, the Court made it clear that the right to an independent test still exists under [MCL 257.625a\(6\)\(d\)](#). In fact, the Court crafted a jury instruction for use by trial courts. The instruction (found on page 14 of the opinion) allows the trial judge to inform the jury that a defendant was denied the opportunity for an independent test. The instruction also allows a jury to decide for itself the significance of the denial.

This opinion should not change police practice. Officers should continue to offer independent tests as required by MCL 257.625a. If a request for a test seems unreasonable enough to deny, officers should contact their prosecutor for guidance, rather than make an independent decision to deny the test.

LEGAL RESOURCES

Many of Michigan's state agencies have authority, granted by statute, to promulgate administrative rules. Promulgated rules have the full force of statutory law.

The [State Office of Administrative Hearings and Rules](#) web site offers links to each department with rule promulgation authority. Clicking on the department name will take the user to a list of rules promulgated by that department or its subordinate divisions or agencies.

Several departments promulgate rules that have a direct impact upon law enforcement. They include the Departments of State Police, Natural Resources, and Labor and Economic Growth.

CRIMINAL LAW & PROCEDURE

Full citations have been omitted.

A firearm does not have to be operable in order to support a conviction for *felon in possession of a firearm* or *possession of a firearm during the commission of a felony* (felony firearm).

In *People v. Peals*, the defendant found a gun in two pieces and placed it in his pocket, believing that the gun was inoperable. At trial, a police officer testified that the gun would not function.

The Michigan Supreme Court held that the definition of firearm contained in [MCL 750.222](#) does not require that “the weapon be operable or reasonably or readily repairable” (internal quotations omitted). Instead, the Court held that the definition of firearm focuses on what the weapon was *designed* to do, rather than whether it can actually do it.

DID YOU KNOW?

Note: The following material does not represent new law. Instead, it addresses issues raised by work sites throughout the state.

Generally, persons from other states may not possess a pistol in Michigan unless they are a police officer or a concealed pistol license holder.

[MCL 28.422](#) requires a person to obtain a License to Purchase before they purchase, transport, or carry a pistol in Michigan. [MCL 28.422\(3\)\(c\)](#) requires that a person be a “legal resident of this state” in order to obtain a license (which begins the registration process). The only exception in that statute is for active-duty military members, who have 30 days after returning to Michigan to register a pistol.

Other exceptions to the registration requirement can be found in [MCL 28.432](#). That statute includes an exception for concealed pistol license holders from other states. Active and retired police officers are exempted from the registration requirements

by federal law (The Law Enforcement Officers Safety Act, [19 USC 926B, et seq.](#)). That Act allows active and retired police officers to transport a pistol anywhere in the United States notwithstanding state firearms laws, provided they meet the requirements of the Act.

The bottom line under these statutes is that persons from other states may not bring a pistol into Michigan unless they are a police officer or hold a CPL from their state of residence. There are no exceptions for persons who wish to bring a pistol to Michigan to hunt or target shoot.

BACK TO BASICS

Note: The following material does not represent new law. Instead, it is intended to reinforce basic rules of law that police officers frequently apply.

The inventory exception to the search warrant rule requires that officers conduct the inventory pursuant to a written department policy.

In 1976, the United States Supreme Court in *South Dakota v. Opperman* held that routine, warrantless inventory searches of lawfully impounded vehicles do not violate the Fourth Amendment’s search warrant requirement. In order to be lawful, the inventory must be required by a written department policy.

Inventory searches are reasonable because they help protect the owner’s property while in police custody, they help protect the police against property claims or disputes, and they protect the police from potential danger. The *Opperman* court also held that officers are not under an obligation to make alternative arrangements to avoid impoundment.

Searches of closed containers found in an inventoried vehicle must only be conducted if the department’s inventory policy requires it. Without such a policy, searches of closed containers are unlawful (*Florida v. Wells*). The U.S. Supreme Court has also extended the inventory exception to an arrestee’s personal effects during lodging (*Illinois v.*

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Inventory exception, continued

Lafayette), when the search is done pursuant to a departmental policy.

Police policies governing the inventory of impounded vehicles should: 1. clearly define circumstances under which a vehicle must be impounded, 2. define the scope of the inventory, and 3. be explicit enough so that inventories are conducted because they are required by policy, and not officer discretion.

SUBSCRIPTIONS

It is the intent of the Executive Division to provide the Legal Update to all interested law enforcement officers. Officers from any agency are welcome to subscribe, and may do so by sending an e-mail to MSPLegal@Michigan.gov. The body of the e-mail must include:

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