



MICHIGAN STATE POLICE  
**LEGAL UPDATE**  
DECEMBER 2006

This update is published by the Michigan State Police Executive Division.  
Questions and comments may be directed to the Executive Resource  
Section at [MSPLegal@Michigan.gov](mailto:MSPLegal@Michigan.gov).

**IN THIS ISSUE...**

**Statutes**

Self-Defense spray	1
Juvenile breath tests	1

**Search & Seizure**

Consent searches	1
------------------	---

**Interview & Interrogation**

Effective waivers of Miranda	2
------------------------------	---

**Did You Know?**

Armored vehicles	2
------------------	---

**Back to Basics**

Juvenile confessions	3
----------------------	---

**STATUTES**

To read the full text of these statutes go to [www.michiganlegislature.org](http://www.michiganlegislature.org), or click on the public act or statute citation following each summary.

**MCLs 750.224, 750.224d, 750.231**  
**Self-defense spray statutes amended to address foams and 10% oleoresin capsicum (OC) concentrations for police**  
**Effective December 28, 2006**

Public Act 401 of 2006 amends statutes relating to the possession and use of self-defense sprays. The Act makes the following changes to those statutes:

- Self-defense sprays now include foam emitting devices (not previously allowed)
- The maximum OC content increases from 2% to 10%
- The maximum OC content for sprays and foams possessed by the public remains at 2%
- Non-sworn police employees may use a 10% solution if:
  - The use is reasonable
  - The person has written authorization from their employer
  - The person has been trained in the use, effects, and risks of using the device

[Public Act 401 of 2006](#)

**MCL 436.1703**

**Courts may order breath tests of juveniles at the request of parents**  
Effective November 27, 2006

The "minor in possession" section of the Liquor Control Code has been amended to allow a court to order regular or random breath tests of minors convicted under that section. Such orders may be issued as part of sentencing or at the request of the minor's parents. Although this amendment has little effect on law enforcement procedure, officers should be aware that they may be asked to perform such tests pursuant to an order issued under this section.

[Public Act 443 of 2006](#)

**SEARCH & SEIZURE**

Full citations have been omitted.

**Consent to search does not extend to items in a vehicle owned by a third party**

In *People v. Labelle* a police officer obtained consent to search a vehicle during a traffic stop. Consent was given by the driver but not the passengers. Marijuana was found during a search of a backpack located on the passenger-side floor. The Court of Appeals held that the search was illegal and, as a result, the evidence was suppressed.

The court held that a person may only give consent to search property he or she owns or has authority over. A search may be valid when the consent giver lacks authority, but only if "it was reasonable for the police to believe that the person possessed the authority to consent." The burden to prove reasonableness rests with the government. In *Labelle*, the backpack was located at the passenger's feet at the time of the stop, and the government offered no evidence indicating that the driver had apparent authority over it.

*Continued next page...*

*Consent search, continued*

When conducting a consent search of a vehicle with multiple occupants, police officers should take steps to ensure that the consent giver has authority over containers to be searched. If an item searched is later found to be owned by a third party (i.e., a passenger), police officers must document the facts and circumstances which led them to believe the consent giver had authority over the item.

---

## INTERVIEW & INTERROGATION

Full citations have been omitted.

### **Police must ensure that a suspect understands his or her Miranda rights in order for a waiver to be effective**

In *People v. McBride* the Michigan Court of Appeals reiterated the general rule that to be effective, suspect waivers of Miranda rights must be made knowingly and intelligently. As the court put it, a suspect must "understand basically what those rights encompass and minimally what their waiver will entail." A suspect's understanding is measured by the totality of the circumstances surrounding the questioning.

In *McBride*, a deaf mute murder suspect was questioned with the aid of a sign language interpreter. Normally, a waiver is effective when made through an interpreter competent in the language of the suspect. However, in *McBride*, the court affirmed suppression of the suspect's confession because the record did not indicate that she knew what her rights were, and they were not adequately explained to her.

This case reminds us that in order to make sure that a Miranda waiver is effective, police should minimally:

- Completely read each right (don't skip portions)
- Look for and document suspect responses to the advice of rights (logical and appropriate responses)
- Answer requests for clarification

- Determine a suspect's level of education or other limitations which might indicate an ability to understand
- When an interpreter is used, ensure that the suspect and interpreter can effectively communicate
- Ensure that a suspect understands what it means to waive his or her rights

Officers should document their basis for believing that a suspect understands and intelligently waives his or her rights.

---

## DID YOU KNOW?

Note: The following material does not represent new law. Instead, it is intended to inform officers of infrequently used laws which might prove useful.

### **It is illegal to make, possess, or operate a vehicle equipped with armor**

**MCL 750.421** makes it a felony to construct, reconstruct, sell, possess, or operate a vehicle designed for the purpose of defense from explosives or firearms.

Traditional armored cars (i.e., those used to transport money from banks) are legal, and are regulated under a separate statutory scheme. This section is primarily aimed at those who retrofit a vehicle with armor or bullet-proof glass, or those who possess a vehicle manufactured with armor without a legitimate purpose.

---

### EDITOR'S NOTE...

If you receive the update in printed form, and wish to access the information for which we provide internet links, you may do so by visiting our web site and clicking on the links in the Updates posted on the internet.

1. Go to [www.michigan.gov/msp](http://www.michigan.gov/msp)
2. Click on 'Legal Resources for Police Officers' (in the light blue box on the right side of the page)
3. Click on 'MSP Legal Updates' (middle of the page)

## 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.

### Juvenile suspect interviews

Michigan statutes ([MCL 712A.14](#) and [MCL 764.27](#)) require that, when arrested, juveniles must be taken immediately before the family court or released to a parent. However, the courts have allowed interrogations of juveniles when their rights were adequately safeguarded by police.

As with adults, juvenile confessions must be voluntarily made and Miranda waivers must be made freely and intelligently. However, juvenile confessions are viewed with a somewhat higher standard, with an emphasis on parent involvement. Additionally, factors affecting admissibility of juvenile confessions apply to both custodial and non-custodial questioning.

When determining whether a juvenile confession should be admissible, courts will look at the totality of the circumstances under which it was made. Factors courts will consider include:

- Whether the juvenile was advised of his or her rights
- Whether the juvenile clearly understood those rights
- The degree of police compliance with statutes
- The presence of an adult (parent, custodian, or guardian)
- The juvenile's background
- The juvenile's age, intelligence, and education
- The extent of prior experience with police
- The length of detention prior to questioning
- The length, frequency, and nature of questioning

The best practice is to include parents in the interview process. When possible, parents should be present, but minimally police should seek parent permission to conduct an interview.

### SUBSCRIPTIONS

Officers from any agency are welcome to subscribe to receive the Update via e-mail, and may do so by sending an e-mail to [MSPLegal@Michigan.gov](mailto:MSPLegal@Michigan.gov). The body of the e-mail must include:

1. Name (first & last)
2. Rank
3. Department
4. Work phone
5. E-mail address