



# MICHIGAN STATE POLICE LEGAL UPDATE

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## CRIMINAL LAW

**Michigan Penal Code and Firearms Act amended to allow for possession and reasonable use of Tasers by Michigan Concealed Pistol License holders.**

**Public Act 122 of 2012** amended **MCL 750.224a** effective August 6, 2012. MCL 750.224a(1) prohibits a person from selling, offering for sale, or possessing a portable device or weapon from which an electrical current, impulse, wave or beam may be directed, which current, wave, or beam is designed to incapacitate temporarily, injure, or kill.

As discussed in [Legal Update No. 99](#), the Michigan Court of Appeals limited its decision in the case of [People v. Yanna](#) to only the complete ban of Tasers and stun guns implemented by the prior version of MCL 750.224a, not the partial ban in the amended statute.

MCL 750.224a(2)(b) allows the possession and reasonable use of a device that uses electro-muscular disruption technology (EMD device) by a Michigan Concealed Pistol License (CPL) holder who has been trained in the use, effects, and risks of the device. Reserve peace officer, as defined in MCL 28.421, was added to the definition of peace officer in MCL 750.224a(7)(c), therefore, a reserve peace officer may possess and use an EMD device in performance of his or her duties.

MCL 750.224a(6) prohibits all persons, including peace officers, who are allowed to possess and use an EMD device from using the device against another person except under circumstances that would justify the person's lawful use of physical force. Violation of this section is punishable as a two-year misdemeanor.

MCL 750.224a(5) requires an authorized dealer or other person who sells an EMD device to a Michigan CPL holder to verify the person's identity and verify that the person holds a valid Michigan CPL. The dealer or seller must provide the Michigan CPL holder with training on the use, effects, and risks of the EMD device at the time of sale.

Note, to qualify as an EMD device, MCL 750.224a(7)(a) requires that the device contain an identification and tracking system that when the device is initially used, dispenses coded material traceable to the purchaser through records kept by the manufacturer, and the manufacturer of the device has a policy of providing that identification and tracking information to a police agency upon written request by that agency (e.g., Taser). Therefore, devices that do not dispense this material are not lawful to possess (e.g., stun guns, stun batons, stun canes, stun flashlights).

**Public Act 123 of 2012** amended various sections of the **Firearms Act** that apply to a CPL holder when carrying a concealed pistol to also apply when the CPL holder is carrying an EMD device. Violations are punishable by the listed penalties that apply to carrying a concealed pistol under the same circumstances.

**MCL 28.425f** was amended to require the following of a CPL holder when he or she is carrying an EMD device:

- The CPL holder shall have his or her CPL in possession at all times he or she is carrying the EMD device.
- The CPL holder shall show his or her CPL and driver license or Michigan personal identification card to a peace officer upon request.
- When carrying a concealed EMD device, the CPL holder shall immediately disclose to the peace officer that he or she is carrying an EMD

device concealed upon his or her person or in his or her vehicle.

MCL 28.425f(7) provides an EMD device carried in violation of the above disclosure and identification provisions is subject to immediate seizure in the same manner for concealed pistols.

[MCL 28.425g](#) subjects an EMD device carried in violation of the Firearms Act to seizure and forfeiture in the same manner for concealed pistols.

[MCL 28.425k](#) prohibits a CPL holder from carrying an EMD device while under the influence of alcoholic liquor or a controlled substance or while having any bodily alcohol content of .02 or more. A peace officer who has probable cause to believe the CPL holder is carrying an EMD device in violation of this section may require the person to submit to a chemical analysis of his or her breath, blood, or urine in the same manner pertaining to persons suspected of carrying a concealed pistol under the same conditions. This section does not prohibit a CPL holder who has any bodily alcohol content from transporting the EMD device:

- In the locked trunk of his or her motor vehicle or a vehicle in which he or she is a passenger. If the vehicle does not have a trunk, the EMD device may be transported in a locked compartment or container.
- In a locked compartment or container on a vessel.

[MCL 28.425o](#) prohibits a CPL holder, unless exempt, from carrying an EMD device on the premises listed in [MCL 28.425o\(1\)](#) (e.g., school, stadium, hospital). CPL holders who are court officers were added to the list of people who may carry a concealed pistol or an EMD device on the prohibited premises listed in [MCL 28.425o\(1\)](#) and (2).

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**Michigan Penal Code amended to make it a crime to lie or conceal material facts from a peace officer conducting certain criminal investigations.**

[Public Act 104 of 2012](#) added [MCL 750.479c](#) to the Michigan Penal Code effective July 20, 2012.

[MCL 750.479c](#) prohibits a person who is informed by a peace officer that the officer is conducting a criminal investigation from knowingly and willfully doing any of the following:

- Concealing from the peace officer, by trick, scheme, or device, any material fact relating to that criminal investigation.
- Making any statement to the peace officer the person knows is false or misleading regarding a material fact in that criminal investigation.
- Issuing or otherwise providing any writing or document to the peace officer the person knows is false or misleading regarding a material fact in that criminal investigation.

[MCL 750.479c](#) does not prohibit a person from invoking his or her [Fifth Amendment](#) rights under the U.S. Constitution or [Article 1, Section 17](#) of the State Constitution (self-incrimination) or declining to speak or to otherwise communicate with a peace officer concerning the criminal investigation.

[MCL 750.479c](#) does not apply to either of the following:

- Any statement made or action taken by an alleged victim of the crime being investigated by the peace officer.
- A person acting under duress or out of a reasonable fear of physical harm to himself or herself or another person from a spouse, former spouse, a person with whom he or she has or has had a dating relationship, as defined in [MCL 750.479c\(5\)\(a\)](#), a person with whom he or she had a child in common, or a resident or former resident of his or her household.

The penalty for a violation of [MCL 750.479c](#) depends on the crime being investigated and ranges from being a misdemeanor to a four-year felony.

Note, not all crimes being investigated are covered by this statute. If the crime being investigated is a misdemeanor punishable by one-year or less imprisonment, the investigation must be of a "serious misdemeanor" as that term is defined in [MCL 780.811](#) in order to be a punishable under [MCL 750.479c](#) (e.g., assault and

battery, domestic violence, illegal entry, contributing to the delinquency of a minor, child abuse fourth degree, indecent exposure, stalking, leaving the scene of a personal injury accident). MCL 750.479c does not prescribe a penalty for violating the section if the crime being investigated is a misdemeanor punishable by one-year or less imprisonment and the crime does not qualify as a “serious misdemeanor” (e.g., DWLS first offense, use of marihuana, transporting or possession of open intoxicants in a motor vehicle).

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