



MICHIGAN STATE POLICE LEGAL UPDATE

No. 58

NOVEMBER 6, 2007

This update is published by the Michigan State Police Executive Division. Questions and comments may be directed to MSPLegal@Michigan.gov. Past editions can be found on the Legal Update archives [web page](#).

SEARCH & SEIZURE

Full citations have been omitted.

A reasonable protective property check does not violate the Fourth Amendment

In *Taylor v. Department of Natural Resources*, a DNR officer went to Taylor's residence to investigate a report of illegal fencing. After finding no problems with the fencing, the officer observed tire tracks and footprints in the snow leading toward the house. Believing that the house was not occupied during the winter, the officer went to the house to ensure that it had not been broken into.

The officer called out to determine if anyone was home, and then checked doorknobs and peered into windows. Finding no evidence of a break-in, the officer left a business card and departed. Taylor then sued the officer, claiming the officer had violated his Constitutional rights by conducting an illegal search.

The United States Sixth Circuit Court of Appeals held that the officer's actions did not violate the Fourth Amendment. The Court noted that police may enter a residence when they believe a burglary is in progress. Here, the officer took the reasonable – and less intrusive – steps of checking to ensure that Taylor had not been the victim of a break-in.

In assessing the reasonableness of the officer's actions, the Court considered the following: the officer had experience with break-ins of seasonal homes; the short duration (five minutes) of the property check; the officer left a business card; the officer did not enter the home; the check was done during the day; and the officer's observations were made with the naked-eye.

CRIMINAL LAW

Full citations have been omitted.

Injunction prevents enforcement of statute requiring non-driving minors to submit to a PBT

The United States District Court for the Eastern District of Michigan has issued an injunction prohibiting the MSP and Thomas Township PD from enforcing [MCL 436.1703\(6\)](#). This statute makes refusal to submit to a PBT a state civil infraction when the person refusing the test is a minor suspected of having consumed alcohol.

While the injunction is only binding upon the parties to the case (the MSP and Thomas Township), it appears to be based upon sound reasoning. Therefore, all departments should consult with their prosecutors before enforcing the statute in the future.

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. The body of the e-mail must include:

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