



MICHIGAN STATE POLICE LEGAL UPDATE

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CRIMINAL LAW AND PROCEDURE MANUAL

The 2009 edition of *Michigan Criminal Law and Procedure: A Manual for Michigan Police Officers* is now available for purchase.

The manual is now published by [Kendall Hunt Publishing Co.](http://www.kendallhunt.com) Copies may be ordered by calling Kendall Hunt Customer Service at (800) 228-0810, or through their [online catalog](#) (search by title or ISBN: [978-0-7575-6473-4](http://www.kendallhunt.com/ISBN/978-0-7575-6473-4)).

VEHICLE CODE

Inevitable discovery and suppression of OWI blood test results

In *People v. Hyde*, the defendant – a diabetic - was arrested for OWI. The arresting officer advised Hyde of his chemical test rights and asked for a blood sample. The officer was unaware that the implied consent statute ([MCL 257.625a](#)) does not apply to diabetics and erroneously told Hyde his license would be suspended if he refused to provide the blood sample. Based on this information, Hyde consented to the blood test and was ultimately convicted of operating a vehicle with a bodily alcohol content of .08% or more.

On appeal, Hyde argued that his consent to the blood test was not truly consensual because it was coerced and the implied consent statute did not apply to him as a diabetic. The prosecutor argued that despite the officer's error, the blood test results should be admissible under the inevitable discovery doctrine; meaning, had the officer known about the implied consent exception for diabetics, he would have asked for a breath or urine test, or obtained a search warrant.

The Michigan Court of Appeals agreed with Hyde and overturned his conviction. The

Court held that the inevitable discovery doctrine cannot apply to this case because there is no way to know if Hyde would have given consent to the other tests.

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.

Hot pursuit exception to the search warrant requirement

In order to enter a building without an arrest or search warrant under the hot pursuit exception, officers must be able to articulate two elements:

1. Pursuit of a fleeing *felon*
2. Exigent circumstances requiring immediate arrest

Officers must have probable cause to arrest the pursued person for a *felony*. The Michigan Court of Appeals has held that it is unlawful to enter a building to make a warrantless misdemeanor arrest (*People v. Reinhardt*).

According to the U.S. Supreme Court, exigent circumstances justifying use of the exception include: imminent destruction of evidence, the need to prevent escape, or danger to police or others (*Minnesota v. Olson*).

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