



# MICHIGAN STATE POLICE LEGAL UPDATE

**No. 82**

**FEBRUARY 8, 2010**

This update is published by the Michigan State Police Executive Division. Questions and comments may be directed to [MSPLegal@michigan.gov](mailto:MSPLegal@michigan.gov). Past editions can be found at [www.michigan.gov/msp-legal](http://www.michigan.gov/msp-legal).

## 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](#)).

## CRIMINAL LAW

### Homeless not required to register

In [People v. Dowdy](#), the defendant was convicted in 1984 of five counts of CSC First Degree and one count of kidnapping. The defendant was placed on the Michigan Public Sex Offender Registry (PSOR) while still incarcerated. Upon the defendant's release from prison in 2002, he was homeless, so the defendant registered his address as a shelter in Lansing. In November 2006, the defendant was no longer allowed to stay at the shelter; however, he did not change his address.

The defendant was charged with several violations of the [Sex Offenders Registration Act \(SORA\)](#) for failing to comply with the registration and reporting requirements of the SORA. The trial court determined it was impossible for a homeless person to comply with the requirements of the SORA and dismissed the charges against the defendant. The prosecutor appealed.

The Court of Appeals analyzed the SORA and its purpose in assisting law enforcement officers and the people in preventing and protecting against the commission of further criminal acts by convicted sex offenders. The Court noted convicted sex offenders are

required by the SORA to register if they have a domicile or residence in Michigan.

The Court held a homeless person does not have a domicile or residence therefore; he or she does not have to register under the SORA.

Officers investigating a complaint involving a sex offender claiming to be homeless should contact the local prosecutor for guidance.

## 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.

### Request for an attorney prior to chemical test

If an OWI suspect asks to consult an attorney prior to taking a chemical test, and the officer refuses to allow the suspect a reasonable opportunity to contact an attorney, the criminal case should not be affected. However, the Secretary of State, Driver's License Appeal Division (DLAD) hearing may be affected.

[MCL 257.625f](#) provides that the DLAD hearing shall cover whether or not the person's refusal to submit to the test upon the request of the officer was reasonable. An officer's refusal to allow a person a reasonable opportunity to make a phone call to his or her attorney, if requested prior to taking a test, may result in the officer losing the DLAD hearing.

## SUBSCRIPTIONS

In order to receive the Update via e-mail, click [here](#) or go to [www.michigan.gov/msp-legal](http://www.michigan.gov/msp-legal) and click on "subscribe to legal updates."