



# 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.](#) 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

### Carrying a dangerous weapon with unlawful intent, MCL 750.226

In [People v. Parker](#), the defendant was charged with felonious assault, [MCL 750.82](#), and carrying a dangerous weapon with unlawful intent, [MCL 750.226](#). The defendant's charges arose from an incident in which the defendant produced a knife with the blade out after being told by a pub owner to leave the premises.

MCL 750.226 states, "Any person who, with intent to use the same unlawfully against the person of another, goes armed with a pistol or other firearm or dagger, dirk, razor, stiletto, or knife having a blade over 3 inches in length, or any other dangerous or deadly weapon or instrument, shall be guilty of a felony...."

At trial, the knife used was admitted into evidence, the jury saw it, and one witness testified that it was roughly the size of a hand with the blade open. The trial court provided the jury with instructions that focused on the dangerousness of the weapon based on whether it was used in a way that was likely to cause physical injury or death. The defendant was convicted of violating MCL 750.82 and MCL 750.226.

The defendant appealed his convictions. In regard to the conviction for MCL 750.226, the defendant argued that the statute

requires that a knife have a blade length of at least three inches in order to qualify as a dangerous weapon. The prosecutor argued that the trial court correctly focused on the dangerousness of the knife, as opposed to blade length.

The Michigan Court of Appeals agreed with the defendant and held that under MCL 750.226 involving a knife, an element of the crime is that the knife's blade be over three inches in length. The Court determined the prosecutor did not introduce adequate evidence to prove the knife's blade length was over three inches, therefore, the Court vacated the defendant's conviction for violation of MCL 750.226.

Officers investigating complaints regarding a violation of MCL 750.226 involving a knife must include evidence that the knife's blade length was over three inches in order to obtain successful prosecution of the complaint. The Court also noted MCL 750.226 does not prohibit the carrying of any weapon (including a knife with a blade over three inches in length) for purposes of self-defense.

## VEHICLE CODE

### Texting while driving

Effective: July 1, 2010

Public Act 60 of 2010 added [MCL 257.602b](#) to the Michigan Vehicle Code. The new subsection prohibits a person from reading, manually typing, or sending a text message on a wireless 2-way communication device, including a cell phone, that is located in the person's hand or in the person's lap while operating a motor vehicle that is moving on a highway or street in this state. Global positioning or navigation systems affixed to motor vehicles are not considered a wireless 2-way communication device for purposes of the subsection.

The subsection includes exceptions for operator's reporting traffic crashes, crimes, and other emergencies. Additionally, there is an exception for police officers, law enforcement officials, fire department members (paid and volunteer), and operators of emergency vehicles when using a 2-way communication device to carry out their official duties.

MCL 257.602b is a primary enforcement law; a violation is a civil infraction punishable by a civil fine.

Officers are reminded they cannot obtain a search warrant or an investigative subpoena solely for a violation of MCL 257.602b because a violation is a civil infraction. Officers may seek to obtain consent from an individual to examine his or her 2-way communication device; however, absent consent, officers may not lawfully seize an individual's device and examine the contents.

[Public Act 60 of 2010](#)

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