



MICHIGAN STATE POLICE LEGAL UPDATE

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CRIMINAL LAW AND PROCEDURE MANUAL

The third edition of *Michigan Criminal Law and Procedure: A Manual for Michigan Police Officers* is now available for purchase in print and eBook formats.

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INTERVIEW & INTERROGATION

A general warning that a person has a "right to a lawyer" does not comply with Miranda

In [People v Mathews](#), Mathews' boyfriend was shot and killed in her apartment. Mathews called 911 and stated that she shot and killed him. Mathews was taken into custody and interviewed twice at the police station. During the first interview, she signed a written advice of rights form stating, "Before any questions are asked of you, you should know: (1) you have a right to remain silent; (2) anything you say may be used against you; (3) you have a right to a lawyer, and (4) if you cannot afford a lawyer, one will be provided free." Mathews agreed to talk with the officer and stated she shot the victim.

After she was bound over for trial, Mathews filed a motion to suppress her statements, asserting that her *Miranda* warnings were inadequate because she was not advised of the right to an attorney before and during the interrogation. The trial court granted the motion, and following the prosecutor's appeal, the Court of Appeals affirmed.

The Court of Appeals explained that while *Miranda* does not require a verbatim recitation, "the essential information required by *Miranda* includes a temporally-related warning regarding the right to consult an attorney and to have an attorney present during the interrogation, not merely general information regarding the 'right to an attorney.'" Stated differently, "to comply with *Miranda*, police must impart more than a broad warning regarding the right to counsel; that is, the warning must . . . explicitly inform a suspect of the right to the presence of counsel before and during the interrogation." The Court held that the statements made in this case are inadmissible because Mathews was not adequately informed of her right to the presence of counsel before and during the custodial interrogation.

Officers are reminded that if the accused unequivocally invokes the right to counsel under the Fifth Amendment during a custodial interrogation, all questioning must stop until counsel is present, even questions about an unrelated offense. However, the Fifth Amendment is not violated if the accused voluntarily initiates further conversation and knowingly, voluntarily, and intelligently waives the right to counsel after a fresh set of *Miranda* warnings; or if a later custodial interrogation is initiated by an officer after a sufficient break in custody of at least two weeks from the initial custodial interrogation in which the accused returns to normal life, including a normal life while incarcerated, and the accused is provided a fresh set of *Miranda* warnings and provides a valid waiver.

If the right to remain silent under the Fifth Amendment is unequivocally invoked, questioning must stop but may be reinitiated after a reasonable time by a police officer as long as the right was scrupulously honored, and there were no repeated efforts to get the accused to change his or her mind.

VEHICLE CODE

The Michigan Vehicle Code (MVC) amended to increase maximum height of moped or motorcycle handlebars

[Public Act 160 of 2018](#) amended [MCL 257.661a](#) to prohibit the operation on a public highway of a "motorcycle or moped equipped with handlebars that are higher than 30 inches from the lowest point of the undepressed saddle to the highest point of the handle grip of the operator." Previously, the prohibited height of the handlebars was higher than 15 inches.

The MVC amended to define and regulate "electric bicycles"

Definition

[Public Act 139 of 2017](#) amended the MVC by adding [MCL 257.13e](#), which defines "electric bicycle" as a device equipped with a seat or saddle, fully operable pedals for human propulsion, and an electric motor of not greater than 750 watts, and falls within one of the classes defined below.

"Class 1" means it has an electric motor providing assistance only when the rider is pedaling and stops when it reaches 20 mph.

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“Class 2” means it has a motor allowing not more than 20 mph, whether the rider is pedaling or not, and stops when the brakes are applied.

“Class 3” means it has a motor assisting the rider only when pedaling and stops when it reaches 28 mph.

General operating rules

An electric bicycle may be operated on any part of a highway that is open to a bicycle, except as otherwise provided. [MCL 257.662a\(6\)](#). An individual riding an electric bicycle is subject to the same requirements as an individual riding a bicycle and, except as otherwise provided, as the driver of a vehicle. [MCL 257.662a\(1\)](#); [MCL 257.657](#).

Operating on linear-surfaced trail or rail trail

Class 1 electric bicycles are permitted, unless prohibited by the state agency or local authority having jurisdiction, and may be regulated. [MCL 257.662a\(8\)](#). Class 2 and 3 electric bicycles are not permitted unless authorized by the state agency or local authority having jurisdiction. [MCL 257.622a\(9\)](#).

Operating on nonmotorized natural-surface trail

Electric bicycles are not permitted, unless the state agency or local authority having jurisdiction allows it. [MCL 257.622a\(10\)](#).

Operating in a city prohibiting motor vehicles

Electric bicycles are not permitted in a city that prohibits non-emergency motor vehicles, unless approved by a resolution of the city, or in the Mackinac Island State Park, unless authorized or the individual obtained permission. [MCL 257.662a\(7\)](#).

Minor operating Class 3 electric bicycle

An individual less than 14 years old shall not operate a Class 3 electric bicycle, but may ride as a passenger if it is designed to accommodate a passenger. [MCL 257.662a\(4\)](#).

Minors must wear helmet while operating or riding

An individual less than 18 years old must wear a fitted and fastened bicycle helmet meeting certain safety standards. [MCL 257.662a\(4\)](#).

Must comply with federal safety requirements

Electric bicycles must comply with applicable equipment and manufacturing requirements established under

federal law, including [16 CFR part 1512](#). [MCL 257.662a\(5\)](#).

Must have permanent label in prominent location

The permanent label must state the class, top assisted speed, and motor wattage. [MCL 257.662a\(2\)](#). A person shall not change the manufactured motor-powered speed capability or motor engagement without replacing the required label. A device is not an “electric bicycle” if the motor is modified and it no longer meets the criteria described in [MCL 257.13e](#). [MCL 257.662a\(3\)](#).

Electric bicycle violations

A violation of the MVC is punishable as a 90-day misdemeanor unless otherwise provided. [MCL 257.901](#). The MVC does not provide otherwise for violations of [MCL 257.662a](#). However, there may be other violations of the MVC where an electric bicycle is regulated as a bicycle which are civil infractions.

STATUTES

The Michigan Penal Code amended to increase the amount of oleoresin capsicum (OC) and allow ultraviolet dye in self-defense spray or foam devices

[Public Act 98 of 2018](#) amended the definition of “self-defense spray or foam device” under [MCL 750.224d](#). The maximum amount of allowed OC was changed from a solution containing not more than 10 percent OC to a solution containing not more than 18 percent OC. Also, [Public Act 98](#) added to the definition of “self-defense spray or foam device” a solution containing an *ultraviolet dye* that is not more than 18 percent OC.

Officers are reminded that using a self-defense spray or foam device to eject, release, or emit orthochlorobenzalmalononitrile or OC at another person is guilty of a misdemeanor. [MCL 750.224d\(2\)](#). However, [MCL 750.224d\(5\)](#), as amended, provides an exception for the following individuals’ “reasonable use” of a self-defense spray or foam device:

- An employee of a county sheriff or chief of police who has prior written authorization and training on its use, effects, and risks, while performing official duties, if the solution contains not more than 18 percent OC.
- A person in the protection of a person or property under circumstances that would justify use of physical force if the solution contains not more than 18 percent OC or contains not more than 18 percent OC and an ultraviolet dye.