



MICHIGAN STATE POLICE LEGAL UPDATE

No. 145

November 19, 2019

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CRIMINAL LAW AND PROCEDURE MANUAL

The fourth 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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CRIMINAL LAW

Statute criminalizing malicious use of a service provided by telecommunications service provider is a specific intent crime

In *In re JP*, a group of teenaged girls exchanged group texts through Snapchat about killing a boy, "S." The texts were not sent to S, and he never actually read them. He was, however, shown the title of the group chat referencing his name and "R.I.P." His mother reported the incident to the school principal, who contacted law enforcement. One of the girls, "JP," was subsequently charged with and found responsible for violating [MCL 750.540e\(1\)](#), which subjects those who send text messages intended to "terrorize, frighten, intimidate, threaten, harass, molest or annoy" another person to criminal punishment.

The Michigan Court of Appeals reversed. The Court found that [MCL 750.540e\(1\)](#) criminalizes the use of a telephonic device when the defendant harbors the specific intent to harass, terrorize, annoy, or otherwise interfere with the peace and quiet of another person. The Court stated the listener's perception of the nature of the call does not determine a defendant's liability, but rather "it is the malicious intent with which the transmission is made that establishes the criminality of the conduct." The Court noted the communication must be "deliberately aimed" at another person, and failing to send the communication to the other person is relevant to whether the sender specifically intended to disturb or otherwise negatively affect the other person. The Court ruled [MCL 750.540e\(1\)\(a\)](#) applied to JP only if she meant to communicate her threats to S and actually threatened him.

Although the messages in this case were violent, there was no evidence that JP intended S would ever read or see the texts or feel threatened by their existence. The Court explained that even if a recipient does receive the communication, his or her subjective perception does not establish a violation of the statute without the required specific intent of the sender to disturb or otherwise negatively affect the other person. Furthermore, the fact

that the texts may be "leaked" to S was insufficient to show that JP "meant to communicate her threats to S and actually threaten him," as required under [MCL 750.540e\(1\)\(a\)](#). The Court ruled there was no evidence that JP intended or carried out a threat, and it was unable to infer intent or an act from any of the testimony.

Officers are reminded that a violation of [MCL 750.540e](#) is punishable as a six-month misdemeanor. Additionally, the statute includes terms that are defined under [MCL 750.219a](#) (e.g., telecommunications service provider).

ADMINISTRATIVE RULES

Court stops enforcement of Administrative Rules involving retailers and resellers of vapor products and flavored nicotine vapor products

[Legal Update No. 144](#) discussed Administrative Rules (Rules) prohibiting certain conduct involving "retailers" and "resellers" of "vapor products" and "flavored nicotine vapor products." On October 15, 2019, the Court of Claims issued a preliminary injunction ordering enforcement of the Rules to stop until the court makes a final ruling fully addressing the merits of the case.

Officers are reminded to consult their local prosecutor before taking any enforcement action under the Rules to determine whether they are valid and effective at that time.

DID YOU KNOW?

Natural Resources and Environmental Protection Act's provisions on transporting, possessing, and carrying bows, crossbows, and slingshots were amended

[Public Act 272 of 2018](#) amended the permitted methods for transporting, carrying, and possessing a bow, crossbow, or slingshot under [MCL 324.40111\(6\)](#) and [MCL 324.43513\(1\)](#). These statutes, as amended, allow a person to transport or possess an "unloaded and uncocked" bow or crossbow in a vehicle operating on public land or road and transport, possess, or carry an "unloaded and uncocked" bow, crossbow, or slingshot without a hunting license. Definitions of "unloaded" and "uncocked" are established under [MCL 324.40111\(8\)](#) and [MCL 324.43513\(5\)](#).

Officers should be aware that the other permitted methods of transporting, possessing, and carrying a bow, crossbow, or slingshot in an enclosed case, trunk, or where it is not readily accessible to any vehicle occupant under [MCL 324.40111\(6\)](#) and [MCL 324.43513\(1\)](#), as applicable, have not changed. Violations are punishable as 90-day misdemeanors. [MCL 324.40118\(1\)](#); [MCL 324.43560](#).

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