



MICHIGAN STATE POLICE
LEGAL UPDATE
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This update is published by the Michigan State Police Executive Division. Questions and comments may be directed to the Executive Resource Section at MSPLegal@Michigan.gov.

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STATUTES

To read the full text of these statutes go to www.michiganlegislature.org, or click on the public act or statute citation following each summary.

MCL 750.199

Harboring a Fugitive statute amended to include persons for whom there are arrest warrants

Effective September 28, 2006

PA 242 of 2006 amends MCL 750.199 by making it a crime to harbor a person for whom there are certain arrest warrants. The previous version of the statute only criminalized the act of harboring a person who escaped custody.

The amended section makes it a crime to knowingly or willfully conceal or harbor, for the purpose of concealment from a peace officer, a person wanted on warrants as follows:

Misdemeanor Harboring (93 days) –

1. Arrest warrant for a misdemeanor
2. Bench warrant in a civil case (except civil infractions)
3. Bench warrant in a criminal case where the crime charged is a misdemeanor

Felony Harboring (4 years) –

1. Arrest warrant for a felony
2. Bench warrant in a criminal case where the crime charged is a felony

[Public Act 242 of 2006](#)

MCL 600.2922b, MCL 600.2922c, & MCL 777.21c

The Self-Defense Act

Effective October 1, 2006

Public Acts 309 – 314 of 2006 comprise the “Self-Defense Act.” The Act affects criminal and civil liability for those who use force to defend themselves or others. Prior to this Act, the law of self-defense was gleaned primarily from the common law (judge-made law).

General Provisions of the Act

A person may use *deadly force* with no duty to retreat if (PA 309):

1. They are not engaged in a crime
2. They are in a place they have a legal right to be
3. They honestly and reasonably believe deadly force is necessary
4. The deadly force is used to prevent imminent death, great bodily harm, or sexual assault of the person or another

A person may use force *other than deadly force* if (PA 309):

1. They are not engaged in a crime
2. They are in a place they have a legal right to be
3. They honestly and reasonably believe force is necessary
4. The force is used to prevent imminent unlawful force against the person or another

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Self-Defense Act, continued

Honest and Reasonable Belief

The Act (PA 311) creates a rebuttable presumption that a person using force has an honest and reasonable belief that imminent death, great bodily harm, or sexual assault will occur if the person using force honestly and reasonably believes the person against whom force is used is any of the following:

1. In the process of breaking and entering a dwelling or business
2. In the process of committing a home invasion
3. Has committed a breaking and entering or home invasion and is still present in the dwelling or business
4. Is attempting to unlawfully remove a person from a dwelling, business, or vehicle against his or her will

The presumption created by the Act does not apply in the following circumstances:

1. The person against whom force was used has a legal right to be in the dwelling, business, or vehicle
2. The person being removed from a dwelling, business, or vehicle is a child in the lawful custody of the person removing the child
3. The person using force is engaged in a crime or using the business, dwelling, or vehicle to further a crime
4. The person against whom force is used is a police officer attempting to enter a dwelling, business, or vehicle in the performance of his or her duties
5. The person against whom force was used has a domestic relationship with the person using force and the person using force has a history of domestic violence as the aggressor

Effect on the Common Law

In circumstances not addressed in the Act, the common law of self-defense still applies with one exception: There is no longer a duty to retreat when a person is "in his or her own dwelling or within the curtilage of that dwelling." This exception applies even in cases where the rest of the Act doesn't apply (PA 313).

Civil Liability

A person who uses force in accordance with the Act is immune from civil liability for damages caused by the use of such force (PA 314). Additionally, courts must award attorney fees and costs to an individual who has been sued for using force and the court finds that the force was in accordance with the Act (PA 312).

Criminal Liability

Under the Act (PA 310), no crime has been committed when a person uses force as authorized. If a prosecutor believes that the force is not justified, he or she must provide evidence that the force used was not in accordance with the Act. Such evidence must be presented at the time of warrant issuance, preliminary examination, and trial.

Effect on Law Enforcement

The overall effect of the Act on police practice is minimal. Officers should still process suspected crime scenes as in the past. However, because of the duty imposed upon prosecutors by PA 310, officers should immediately consult with their prosecutor when investigating a case where self-defense has been claimed by the suspect or where the circumstances indicate that such a defense might be used at trial.

In the absence of guidance from a prosecutor, officers should attempt to gather circumstantial or direct evidence that might show that use of force was unjustified, i.e., the circumstances listed in PA 309 did not exist.

[Public Act 309 of 2006](#) [Public Act 310 of 2006](#)

[Public Act 311 of 2006](#) [Public Act 312 of 2006](#)

[Public Act 313 of 2006](#) [Public Act 314 of 2006](#)

LEGAL RESOURCES

[Municode.com](#) is a commercial web site that offers access to municipal codes from throughout the country, including criminal and traffic ordinances. The site includes a free database of codes that can be searched online. It also offers for sale print copies of codes and advanced research options.

MCL 333.7340

New statute prohibits the sale of ephedrine and pseudoephedrine through the mail or electronically

Effective October 1, 2006

Public Act 261 of 2006 adds MCL 333.7340 to the Public Health Code. The new section makes it a felony to furnish ephedrine or pseudoephedrine through the mail, internet, telephone, or other electronic means. Exceptions include: Pediatric products, products that cannot be converted to methamphetamine, and transactions connected to businesses as authorized by law.

[Public Act 261 of 2006](#)

New law requires reporting of activity related to methamphetamine

Effective October 1, 2006

Public Act 262 of 2006, known as the "methamphetamine reporting act," requires law enforcement and other agencies to report information regarding the manufacture, use, possession, and distribution of methamphetamine in Michigan. Such report must be made to the MSP and must include all of the following:

1. The name and address of the reporting agency
2. Whether the incident involved manufacture, use, possession, or distribution
3. The location of the incident, and
4. Whether a person under 18 years old was present

The Act requires the MSP to designate the method of reporting. EPIC Form 143 has been selected as the reporting method, and that form can be found at www.michigan.gov/meth-response.

[Public Act 262 of 2006](#)

MCL 722.623, MCL 722.628, & MCL 722.637

Police are now required to include incidents involving methamphetamine when reporting child abuse or neglect

Effective July 6, 2006

Public Acts 256 and 264 of 2006 amended child abuse reporting requirements ([DHS-3200](#)) by adding child exposure or contact with methamphetamine production to the list of events triggering the reporting requirements. Under the amended statutes, child exposure or contact with meth production alone requires reporting; no other abuse or neglect is required.

Procedures for reporting child abuse and neglect cases have not otherwise changed except that if the person exposing the child is a childcare provider, law enforcement must report the exposure to the regulatory agency with authority over the child care provider's organization.

[Public Act 256 of 2006](#)

[Public Act 264 of 2006](#)

SEARCH & SEIZURE

Full citations have been omitted.

Checking a license plate in LEIN does not constitute a search into an area protected by the Fourth Amendment.

In *United States v. Ellison*, a police officer conducted a LEIN check of a license plate on an illegally parked vehicle. The check indicated that the vehicle's owner was wanted. When the vehicle departed, the officer stopped the vehicle and arrested the owner pursuant to the warrant and for firearms violations discovered during a subsequent search.

The United States Court of Appeals for the Sixth Circuit held that motorists do not have a reasonable expectation of privacy in information contained on a license plate, or in the Secretary of State records accessed through LEIN.

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LEIN check, continued

The Court further made clear that the act of conducting a check of a law enforcement database does not constitute the type of search that would implicate the Fourth Amendment. The Court also reiterated the rule that there is no expectation of privacy in a VIN.

DID YOU KNOW?

Note: The following material does not represent new law. Instead, it addresses issues raised by worksites throughout the state.

A parole violator may be arrested without a warrant.

[MCL 791.239](#) allows a police officer to arrest a parolee based upon reasonable grounds that the parolee has violated the terms of his or her parole. Such arrests may be made *with or without a warrant*. The statute further provides that a parolee arrested pursuant to this statute may be lodged "in any jail."

Prior to making an arrest under this statute, police officers should ensure that they know the parolee's conditions of parole. When practical (and safe), police officers should contact the Department of Corrections (DOC) prior to making an arrest. After an arrest has been made under this statute, officers should notify the DOC as soon as possible so that the DOC can process the violator. For parole related issues, the DOC can be reached at 800-877-5664.

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.

Advice of rights must be given when a person is in custody *and* subjected to interrogation.

The requirement that police advise a suspect of his or her rights is a judicially created rule established by the United States Supreme Court in the 1966 case *Miranda v. Arizona*. The court held that custodial interrogations are an "inherently coercive environment" and confessions made in such an environment are only admissible if police explain a suspect's rights and the suspect waives those rights.

The Michigan Supreme Court further detailed law enforcement responsibility concerning advice-of-rights in *People v. Hill* (1987). In that case, the Court held that Miranda warnings are required only when the person is in custody *and* subject to interrogation. Miranda warnings are not required simply because a person has been arrested, nor are they required when an officer focuses on a person as a criminal suspect.

SUBSCRIPTIONS

It is the intent of the Executive Division to provide the Legal Update to all interested law enforcement officers. Officers from any agency are welcome to subscribe, and may do so by sending an e-mail to MSPLegal@Michigan.gov. The body of the e-mail must include:

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