

# The GREEN LIGHT NEWS

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## Officers Issue 23,000 Safety Belt Citations

Law enforcement officers in Michigan issued more than 23,000 safety belt citations during the recent *Buckle Up or Pay Up, Click It or Ticket* enforcement period, 27 percent fewer than during last year's mobilization. The number of agencies reporting statistics was down by about 10 percent from 2005, but law enforcement officers arrested more drunk drivers and made more felony arrests.

Statewide, safety belt citations fell by a little more than 8,600, from 31,665 in May 2005 to 23,062 in May 2006. Officers wrote 14,626 of these citations in grant-funded safety belt enforcement zones. The Michigan Office of Highway Safety Planning (OHSP) administered federal traffic safety funds to agencies in 55 counties for the enforcement activity.

"Anecdotal evidence from the zones suggests that safety belt citations are down because more people are buckling up, and that's the entire goal of the campaign," said Michael L. Prince, OHSP division director. "We hope the results of the safety belt observation studies will confirm that belt use has risen again this year."



The campaign also featured two new television ads, including one targeted to teens, and educational materials to reach the goal of 95 percent safety belt use in Michigan. The current rate is 92.9 percent. New figures for 2006 will be available in mid-July.

Officers set up safety belt enforcement zones between May 22 and June 4 to cite motorists who were not properly buckled. Of the 23,062 restraint citations issued, 656 were for children under 4 years old who were not properly restrained in a child safety seat.

Many other law enforcement agencies voluntarily agreed to make safety belt enforcement a priority during that period. Across the state, 340 agencies

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## Michigan's Unique Weight Law

Michigan has the most unique weight laws in the entire country and allows the heaviest vehicles in all of North America. Unlike most jurisdictions, Michigan does not have a gross weight limit. Michigan is an "axle weight state," which means

that weights are controlled by the axle, as compared to controlling weights by the gross weight of the vehicle. In Michigan, any excess on an axle is a violation of the statute (257.716, 257.722). There is no "misload" or "overgross" distinction, except in the fine assessment (257.724(4)).



It is commonly stated that Michigan limits trucks to 164,000 lbs. The U.S. Department of Transportation "grandfathered" Michigan's weight law in 1975, when the Federal Bridge Formula was adopted. One of the provisions of

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## For Your Information

### MICHIGAN TRUCK SAFETY COMMISSION

The Michigan Truck Safety Commission (MTSC) is unique, the only organization in the nation dedicated to commercial truck driver education and training supported not with tax dollars but solely by the industry it serves. What was born of modest beginnings has grown to become a renowned safety advocate for the state's trucking industry. The Michigan Truck Safety Commission is committed to enhancing truck and truck driver safety by providing truck driver education and training, heightening all drivers' awareness of the operational characteristics and limitations of trucks, initiating data collection and research, and supporting enforcement of motor carrier safety laws.

Its mission is to improve truck safety by providing Michigan's trucking industry and the citizens of Michigan with effective educational programs, and by addressing significant truck safety issues.

The 11-member Commission meets bimonthly. There are also several committees which focus on individual program areas.

Funding is provided by a Truck Safety Fund, established by Public Act 348 of 1988, and administered by the Office of Highway Safety Planning, a division of the Michigan Department of State Police.



Much of the mission of the Michigan Truck Safety Commission is accomplished through 2 primary grants. One is to the Michigan Center for Truck Safety, which provides education and training to truck drivers and the motoring public ([www.truckingsafety.org](http://www.truckingsafety.org)). The other is to the Motor Carrier Division of Michigan State Police, which provides enforcement of truck safety laws. Additional grants are also occasionally awarded for research and other truck safety activities.

For more information on the MTSC go to: [www.michigan.gov/msp/0,1607,7-123-1593\\_3504\\_22760-10315--,00.html](http://www.michigan.gov/msp/0,1607,7-123-1593_3504_22760-10315--,00.html).



By: John Kwasnoski

Perhaps the most troubling defense in a motor vehicle homicide case can be one involving operator identification. A prosecutor calls or e-mails me with a panic tone because the superb collision reconstruction showing the alleged operator to be traveling at an excessive speed, or crossing the center line, or yawing off the road into a tree causing death to a passenger is challenged with regard to who was operating. Proving who was operating was not a part of the investigation, because investigators at the scene had concluded that they "knew" who was operating. Knowing something and proving it are two different things. Some of the investigative activities that make the operator ID defense less effective might include:

## Defeating the Operator ID Defense

- anticipating the operator ID defense in every case, immediately, at the scene
- process the scene with regard for proof of operation
- produce a scale drawing
- do a reconstruction showing vehicle motion to final rest
- do a vehicle inspection, including interior of the vehicle
- photograph the vehicle interior
- do a forensic examination of the vehicle, if there is any indication of operator identify problems
- do an autopsy
- collect samples of blood, hair, etc. from the alleged passenger
- identify, and question, all of the witnesses who could identify the defendant as the operator that were not identified, or were not questioned with regard to who was operating
- obtain the 911 records as part of the investigation
- get the EMS records showing who had contact with the occupants of the vehicle
- save the clothing of the victim and defendant
- take photographs of the alleged operator's injuries or lack of injuries
- secure and protect the vehicle
- do not release the vehicle without the prosecutor's authorization
- check for potential evidence such as video cameras at gas stations, stores, etc.
- check for any evidence of purchases that might identify the operator
- include operator ID as part of every statement taken at the time of the crash

As just one example, look at some of the forensic evidence associated with the vehicle that might be available to identify the operator, if investigators were aware of the potential need for proof:

- "pattern injury" on chest from steering wheel
- left side of head contact with A-pillar

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# Abandoned Vehicle Summary

By Sandy Aquire and Peggy Leece,  
Michigan Department of State

Since October 6, 2005, law enforcement and towing agencies now partner with the Michigan Department of State (MDOS) to expedite the abandoned vehicle removal and notification process.

How it works:

- If a vehicle is abandoned on public property (18-48 hours), law enforcement or their designee may tag the vehicle for removal and/or arrange for a tow.

Or,

If the vehicle is abandoned on private property, the property owner may arrange for immediate removal of the vehicle.

- Once a vehicle is towed and taken into custody, law enforcement conducts a stolen vehicle check and within 24 hours notifies MDOS via LEIN that a vehicle has been abandoned.
- Within 7 days, MDOS makes information available on the new abandoned vehicle website and sends

a notice and court petition to the last titled owner and a notice to any secured party on record that their vehicle has been reported abandoned. A pre-printed Bill of Sale/Ownership Transfer (TR-52) document will be sent to law enforcement.

- The owner has 20 days from the date on the notice to redeem the vehicle or file an appeal. If the vehicle is not redeemed and there is no appeal within 20 days, law enforcement (if abandoned on public property) or the custodian (if abandoned on private property) may offer the vehicle for sale at a public auction.
- If the vehicle is redeemed or sold at auction, the custodian and law enforcement will notify MDOS of the disposition. MDOS will update the new abandoned vehicle website and process an EFT from the custodian in the amount of \$25 (new abandoned



vehicle fee \$40, the remaining \$15 goes to the tower).

- If the vehicle has been deemed scrap or ownership of the vehicle is transferred to the custodian to cover their costs, the disposition will be reported, updated to the website, and no fee will be collected.
- In addition to establishing an abandoned vehicle website and notifying vehicle owners, MDOS will modify title documents on the proper vehicle ownership transfer process, and insert information into all registration renewal and title mailings about new abandoned vehicle civil infractions and penalties.
- Upon receipt of a court abstract that a vehicle owner did not comply with their civil judgment for "Failure to Redeem Abandoned Vehicle" or "Failure to Show Proof of Vehicle Sale," MDOS will indefinitely suspend the license until payment is made.

## Michigan's Unique Weight Law *(Continued from page 1)*

the grandfather clause was to limit a truck tractor and two semitrailers ("doubles") to a gross weight of 164,000 lbs. However, other vehicles, such as a truck and trailer combination used for logging, can legally operate at around 170,000 lbs. The 164,000 lbs. restriction only applies to a specific vehicle combination, that of a truck tractor and two semitrailers.



Michigan uses its length law to restrict the gross weight of a vehicle. Each axle is allowed a certain weight depending upon how far apart other axles are spaced. The

more distance between axles, the more weight an axle is allowed. The length law for the vehicles limits the overall length of the vehicle, and therefore the spacing between the axles.

Michigan uses a prorated fine schedule (257.724) to assess weight fines. The cents-per-pound structure has not been amended since 1990. The prorated schedule is intended to deter trucking companies from operating overweight vehicles. The largest known overweight vehicle was stopped in 2003 in Lenawee County. The vehicle had a gross weight of 438,700 lbs., over by 291,900 lbs., with a potential fine of \$57,685.

While such a fine may seem excessive to the uninitiated, it is necessary to ensure that weight fines are not just the

cost of doing business, and to minimize the damage to Michigan's roadways inflicted on a daily basis. An 80,000 lb. truck (the normal national legal gross weight) causes 11,000 times the damage as a passenger car does. Strict enforcement of the weight law by the judiciary is a vital link to protecting Michigan's vulnerable infrastructure.

For more information on Michigan's weight law, contact Lt. David Ford of the Michigan State Police Motor Carrier Division at 517-336-6449, or [forddw@michigan.gov](mailto:forddw@michigan.gov). A listing of all known Michigan Court of Appeals and Supreme Court decisions regarding size and weight enforcement has been posted on the PAAM Traffic Safety Forum site, under the "Commercial Vehicles" folder.

## Safety Belt Citations *(Continued from page 1)*

in 75 counties reported their statistics to OHSP. The Michigan State Police Motor Carrier Division also focused additional enforcement on commercial truck drivers.

In addition to writing safety belt citations, law enforcement officers arrested 1,054 motorists for drunk driving and 649 individuals on felony charges. They also made 3,464 other misdemeanor arrests and issued 13,704 speeding

citations, and found 2,159 drivers with suspended or revoked licenses.

**In addition to writing safety belt citations, law enforcement officers arrested 1,054 motorists for drunk driving and 649 individuals on felony charges**

OHSP is providing federal funds for safety belt and drunk driving enforcement throughout the summer.

The summer enforcement will end with a drunk driving crackdown Aug. 18-Sept. 4.

For a citation breakdown by county, visit [www.michigan.gov/ohsp](http://www.michigan.gov/ohsp).

*Editor's Note: Press Release by the Office of Highway Safety Planning, dated June 15, 2006.*

## Defeating the Operator ID Defense *(Continued from page 2)*

- blood smears on interior of vehicle
- fingerprints on steering wheel
- fingerprint on key
- fingerprints on control levers, light switch
- fingerprints on rear-view mirror
- eye witnesses before or after crash
- blood spatter on driver's side of vehicle
- knee injury from contact with dash
- seat belt marks consistent with belt use
- shoulder belt abrasions
- fabric fusion onto seat belt
- forensics on deployed air bag
- abrasion on forehead from contact with head liner
- forensics from windshield "spider web" fracture
- seat position
- damage to brake pedal consistent with leg injury
- pedal impression on bottom of shoe
- clothing fusion onto seat belt
- clothing fusion onto seat
- fabric fusion imprint on dash
- shoe transfer onto console (left-to-right ejection)
- inability of passenger to operate manual transmission
- clothing fibers in broken parts of dash, controls
- injuries to ribs consistent with striking door panel
- lacerations on face from windshield contact
- "dicing" from side glass implosion
- teeth impressions on vinyl dash material
- damage to rear-view mirror consistent with head injury
- "pattern injury" on leg from shift lever
- "pattern injury" on leg from door handle
- personal belongings under seat
- gas purchase receipts
- hair embedded in fractured windshield
- blood spatter evidence

Of course the investigator should not expect to find every item on the list or even many of them in any individual collision, but one or more could help corroborate other evidence of operation. Not finding any of them should certainly not be interpreted as proof of any kind.

This is a situation that prosecutors and law enforcement can work on ahead of time. Realizing that every case may be vulnerable to such a defense attack the prosecutor should meet with local law enforcement to establish policies to overcome some of the shortfalls in the standard investigation protocol; additionally, the prosecutor can ask that during training, investigators be made aware of the critical nature of obtaining proof of operation in every case. Over time the operator ID defense should become less and less problematic, but it won't happen by itself.

*Editor's Note: John B. Kwasnoski is Professor Emeritus of Forensic Physics at Western New England College, Springfield, MA after 31 years on the faculty. He is a certified police trainer in more than 20 states and is the crash reconstructionist on the "Lethal Weapon - DWI Homicide" team formed by the National Traffic Law Center to teach prosecutors how to utilize expert witness testimony and cross examine adverse expert witnesses. He is the author of the book, "Investigation and Prosecution of DWI and Vehicular Homicide" and his recently published book "From Crash to Courtroom: Collision Reconstruction for Lawyers and Law Enforcement." Prof. Kwasnoski has reconstructed over 650 crashes.*





## Some Issues Around the State

By: David Wallace

Recently a national study was done on Michigan's procedures in obtaining blood in an OWI case where the person arrested has refused to take a police requested test. Michigan is being shown as a shining star in this process as many states do not allow, or just don't do, a search warrant when there is a refusal. However, the one concern that came up again and again during the study was the time it can take an officer to take a person to the hospital to draw blood. Everyone recognizes that the process is important, but it would be better if the officer could get the blood sample and get back on the road quicker. Arizona, another model state, is doing it a different way. They have law enforcement officers that are trained to draw blood on duty and at the station. This way there is no transporting the suspect to the hospital, waiting for the nurse to obtain the equipment, everything is done at the police station. A few agencies in Michigan are trying variations of that theme. They have a nurse or EMT with a local fire department, or ambulance service, come to the jail and do the blood draw. Whatever your process, make sure it is the most efficient for your needs. Consider if it would work using an EMT or other similar person.

It is important to note that independent testing requests in OWI cases seem to be on the increase. More and more defendants are taking advantage of their absolute right to a test of their own choosing after taking a test chosen by the officer. A recent unpublished case brought that point home very sharply. In *People vs Quada*, (unpublished) case number 256068, released January 10, 2006, the court of appeals looked at a request by a defendant made after an extended amount of time had passed. Defendant was arrested at 1:56 a.m. He took a blood draw at the request of the officers, and then requested an independent blood test. To do the test, he requested his mother-in-law to draw the blood. She

arrived at the jail at approximately 5:45 a.m. (Because of other issues, she was not called until shortly after 4 a.m.) She then requested that a local hospital allow her to draw the defendant's blood using the hospital's equipment.

At first the hospital refused. Later arrangements were made and then the law enforcement agency refused to transport the defendant. At that point, it was between 7 and 9 a.m. **In dismissing the case**, the court of appeals stated:

'To the extent that the passage of time reduces the probative value of the test, the diminution goes to weight, not admissibility, and it is for the parties to argue before the finder of fact.' **This pronouncement militates against recognizing some right of the police to deny a suspect a requested independent chemical test because the police feel that too much time has elapsed.** (emphasis added)

In other words, the court said it is not up to the law enforcement community to determine if too much time has passed; it is up to the courts, after a test has been done. Then the parties are free to argue it in the courtroom. **NOTE: The Prosecutor's Office in that case requested Leave to Appeal to the Michigan Supreme Court. The Supreme Court ordered the appeal to be held in abeyance pending the resolution of the case of *People vs Anstey* which is expected by the end of July.**

A third issue to remind everyone about is the change for a person that holds a CMV (Commercial Motor Vehicle) license. Public Act 362 of 2004 (effective 10/4/2004) made several changes to the OWI Law when it was implemented, but



one of those changes didn't take effect until October 1, 2005.

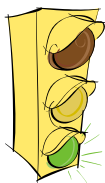
Specifically, if a person has a CMV license and commits certain motor vehicle offenses in their

own private motor vehicle, they lose their CMV license. In other words, driving their private motor vehicle is treated as if they were driving the commercial motor vehicle. These offenses include OWI, Refusing to Submit to a Chemical Test, Leaving the Scene of an Accident, and Using a Vehicle to Commit a Felony. So if a commercial driver gets convicted, he or she will lose the CMV license for one year—mandatory. What does this mean for us? While it may have an impact on a relatively few number of cases, on those particular ones, you should be prepared that the defendant will vigorously fight these charges in an attempt to keep their CMV license, as this could seriously affect their livelihood.

The other big issue of late is "Daubert." Daubert is the U.S. Supreme Court Case (*Daubert v. Merrell Dow Pharmaceuticals*) which determines the guidelines for the admissibility of scientific evidence in the court. Before October 2004, Daubert did not apply to the courts in Michigan. Now it does, and as a result the defense bar is challenging anything with a scientific background using this new rule. A recent example of this is in Wayne County. There, a Daubert challenge was made to the DataMaster Instrument. After taking testimony for over a year, the Circuit Court ruled that the DataMaster Instrument does not meet the requirements under Daubert and the Michigan Rules of Evidence.

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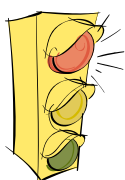
# Red Light, Green Light



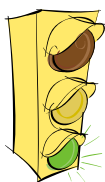
**Green Light: Macomb County, Michigan.** Macomb County police departments are working with the prosecutor's office to punish drunken drivers where it hurts most—their vehicles. Police departments, including those in Warren, Center Line, Fraser and St. Clair Shores, are taking advantage of a new state statute and teaming up with the county prosecutor's office to recoup time and money spent to take the cars of repeat offenders off the street.

The police are seizing vehicles of repeat drunken drivers and impounding them to get forfeiture fees to put back into the community through law enforcement technology, patrols and crime-fighting charities, Prosecutor Eric Smith said. "We see the same faces over and over again, and we want to stop that," Smith said. "We're taking away the cars of repeat offenders. They don't have the opportunity to go out and hurt someone."

The OWI Repeat Offender Crackdown began in Macomb in January. The initiative has generated more than \$70,000—at \$900 per incident. The proceeds are split equally between the prosecutor's office and the police department where the arrest took place, Smith said. *Detroit Free Press*



**Red Light: Lubbock, Texas.** Some West Texas men on probation are in trouble again, this time for using the Whizzinator to help them pass court-ordered urinalysis tests. In six months, five men on probation were caught using a realistic-looking prosthetic that dispenses synthetic drug-free urine, Lubbock county sheriff's officials said. One was caught by an alert officer who heard something unusual in the restroom. "A body part when it's up against a plastic cup isn't going to go 'clink.'" *M-Live – News Flash*.



**Green Light: Nassau County, New York.** Thanks to an inventor from Islip, bar patrons in Nassau County now face the possibility that when they enter a men's restroom they will be confronted at the most inopportune moment by a cheerful-sounding machine chiding them about driving drunk.

The device is placed at the bottom of a urinal and is sensitive to changes in light. The presence of a person standing before it sets it off. "Hey, you! Yeah, you. Having a few drinks?" a male voice intones. "Then listen up. Think you had one too many? Then it's time to call a cab or call a sober friend for a ride home."

The device is battery-powered and watertight, looks like a hockey puck with mesh wings, and replaces the usual deodorant cake. There are other versions. One warns about drinking while boating, and some of the cakes have a picture of a man in handcuffs with the words: "You Drink. You Drive. You Lose."

Nassau County officials said they loved the idea when they learned about it and paid \$2,200 for a hundred of the contraptions. Christopher Mistrion, the traffic safety educator for Nassau County, said that the reaction from friends and around the county has been mixed, but that the way he figures it, anything that gets people talking about the dangers of drunken driving is a good thing. "Trust me, someone comes back from the men's room after seeing one of these things," he said, "and says to his friends at the bar, 'You'll never believe what I saw in there.'"

*New York Times, May 25, 2006.*

## Did You Know?



When looking at out-of-state convictions to enhance a charge of OWI, city ordinances from other states also qualify. MCL 257.24c states: "Law of another state" means a law **or ordinance** enacted by another state or by a local unit of government in another state."

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## Issues Around the State *(Continued from page 6)*

Now before you go out to buy a new instrument or start doing blood tests on every defendant, this ruling does not mean the sky is falling. The impact of this ruling is that it is only binding on the Circuit Court that made the ruling. It is not binding on the District Courts, or the other Circuit Courts in the state. Will it be used by the defense bar to argue the exclusion of the DataMaster in other courts? Of course it will. But it is up to the various courts to decide if it is a valid decision or not. The case is being appealed to the Court of Appeals. Also a similar motion has been filed in Marquette

County on the DataMaster. At the time of this writing, there has been no decision since the hearing is still ongoing.

Finally, there has been a lot of "talk" lately about an issue that hit Florida and a few other states on their breath testing instruments. The issue is "source codes." Challenges over the software that powers breath-testing machines in Florida had blocked more than 1,000 DUI convictions over the past year and experts told Lawyers Weekly USA that similar

fighting are erupting across the country. **However, earlier this July, the Florida Court of Appeals reversed the lower courts that were dismissing those cases.** The court stated that the lower courts erred when they required the prosecutor to turn over material it did not have in its possession. Furthermore, this should **NOT** be an issue to the courts in Michigan. First, we have different discovery rules than Florida, second it is a different instrument than the one used in Florida which means a different company, and third and most importantly, the company here is willing to work with us and the courts to ensure that there are no similar problems. If you have this issue come up, do not hesitate to contact me at wallaced@michigan.gov or 517-334-6060 ext. 827.

