PROSECUTING ATTORNEYS ASSOCIATION OF MICHIGAN

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The Red Light Alert

The Charge is Operating While Intoxicated

There has been a question on what language should be used when issuing a complaint or a ticket under the new Operating While Intoxicated law. I have been told that a few tickets that were written had the letters OWI for the charge and nothing else, or the tickets said OWI in violation of 257.625, with no subsection listed. Other tickets still use OUIL or UBAC or a combination of OWI and OUIL. There are also a few complaints that have gone to court charging a person with OUIL/UBAC and the offense date was after September 30, 2003.

First **Operating While Intoxicated** is now the charge, not OUIL/UBAC. Please make sure the information on the complaint or the ticket is clear. As far as charging a person with "drunk driving," the letters OUIL or UBAC or OUID should no longer exists in our vocabulary. For the crime of "drunk driving," the charge is now Operating While Intoxicated; that is the language that is used in the statute and should be the language used on the complaints and on the tickets. OUIL, UBAC, and OUID are the theories on which to prove Operating While Intoxicated.

As far as charging a person with "drunk driving," the letters OUIL or UBAC or OUID should no longer exists in our vocabulary.

"Drunk Driving" is now **Operating While Intoxicated.**

If you are going to charge a person that has refused to take a breath test but they are under the influence of alcohol, the charge is Operating While Intoxicated. Similarly, if the suspect has taken the breath test, and is also under the influence of alcohol, the charge is Operating While Intoxicated. Finally, if you believe the person is under the influence of a controlled substance, besides a schedule one controlled substance or cocaine, the charge is again Operating While Intoxicated. That language covers all three theories of drunk driving in Michigan.

When issuing a complaint in the prosecutor's offices, please make sure that the right charge was typed. When the anguage initially comes up on the computer, who ever is typing the complaint, will have a choice, since there are still warrants being issued with an offense date before September 30, 2003. Because of that, the old language will still be needed. They need to make sure that the write charging language is used.

Regarding tickets, if a ticket is written for the charge of Operating While Intoxicated, please make sure to write out "Operating While Intoxicated" not OWI. This is because some people are used to saying OWI for Operating While Impaired. However, while that is no

Consult your prosecutor before adopting practices suggested by reports in this newsletter.
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longer the case, we need to avoid any possible confusion. OWI should only be used for Operating While Intoxicated, and, to make it even clearer please write it out on the ticket.

Additionally, when writing a ticket, please include the section and subsection of the law being violated. In part, this is to eliminate any confusion with Operating While Impaired which **was** OWI (now being called Operating While Visibly Impaired or Impaired Driving). But even more important, it is only with the subsections being listed that a person is accurately told what he or she is charged with.

Examples are provided below:

- **Operating While Intoxicated,** 257.625(1) (This includes alcohol and any controlled substance not listed in subsection (8))
- **Operating While Visibly Impaired,** 257.625(3)
- **Operating – Minor With Any BAC**, 257.625(6)
- **Operating—Occupant less than 16,** 257.625(7)
- **Operating With Schedule One Controlled Substances or Cocaine** (any bodily amount) 257.625(8)

This complete description of the charge will eliminate any confusion as to the charge requested by the officer and will thereby assist the prosecutor and the courts in the adjudication of the appropriate charge.

I have been told that the courts are going to be looking at the tickets very closely and if they are not filled in completely they will be returned to the officer or agency. If you have any questions, please don't hesitate to give me a call at 517-334-6060 ext. 827 or email at: **wallaced@michigan.gov**.

Michigan Sets New Record For Seat Belt Use

Safety belt use rose to a record high 85 percent following the Labor Day holiday, according to figures just released by the Michigan State Police, Office of Highway Safety Planning (OHSP). The rate was determined by a direct observation survey conducted by the University of Michigan Transportation Research Institute (UMTRI).

"This increase in safety belt use proves that our traffic safety programs are succeeding," said Colonel Tadarial J. Sturdivant, director of the Michigan State Police. "This is great news because it will ultimately mean fewer traffic deaths and fewer injuries on our roadways."

Michigan's safety belt use jumped to 83.5 percent in March of 2000 when the primary enforcement law took effect. Until this year, belt use has been hovering just below that rate.

Safety belt enforcement zones were piloted in eight counties at the start of the summer to make enforcement efforts more visible to the public, and encourage greater compliance. In addition, the state has begun to use federal traffic safety funds for paid advertising to further increase awareness of enforcement programs.

A similar survey a year ago recorded safety belt use at 83 percent. The increase represents an 11 percent conversion rate, meaning that more than one out of every 10 drivers who was unbuckled last Labor Day is now wearing his or her safety belt.

Michael L. Prince, OHSP division director said, "We give credit to the many groups that continue support of safety belt education messages, and strict enforcement efforts by police agencies, sheriff departments and Michigan State troopers."

UMTRI will provide a more detailed report of its findings later in November.

Motorist will hear and see more about Buckle Up or Pay Up, Click It or Ticket as well as You Drink & Drive. You Lose. Safety belt mobilizations will run from November 17-30 and May 24-June 6, 2004. Drunk driving crackdowns are scheduled for December 19, 2003, through Jan. 4, 2004, and June 25-July 11, 2004.

Safety belt use rose to a record high 85%

During the last fiscal year, law enforcement agencies participating in the four statewide safety belt and drunk driving mobilizations wrote 48,229 safety belt citations, made 4,654 drunk driving arrests, 3,001 felony arrests and 15,714 misdemeanor arrests.

Counties that will share federal traffic safety funds for additional traffic enforcement are: Bay, Berrien, Calhoun, Delta, Genesee, Grand Traverse, Ingham, Jackson, Kalamazoo, Kent, Livingston, Macomb, Monroe, Muskegon, Oakland, Ottawa , Saginaw, St. Clair, Wayne and Washtenaw.

Information from Press Releases from OHSP, dated October 22, 2003 and October 27, 2003.