



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.

The manual is published by [Kendall Hunt Publishing Co.](http://www.kendallhunt.com). Copies may be ordered online at https://www.kendallhunt.com/michigan_criminal_law/ or by calling Kendall Hunt Customer Service at (800) 228-0810.

STATUTES

Amendments to the Firearms Act Affecting Access to Firearms Records

Effective December 21, 2014

Public Act 202 of 2014 added **MCL 28.421b** to the **Firearms Act** (MCL 28.421 through MCL 28.435). Under this new section, "firearms records" may only be accessed and disclosed by a peace officer or an authorized system user for one of following purposes:

1. The individual whose firearms records are the subject of disclosure poses a threat to himself or herself or other individuals, including a peace officer.
2. The individual whose firearms records are the subject of disclosure has committed an offense with a pistol that violates a law of this state, another state, or the United States.
3. The pistol that is the subject of the firearms records search may have been used during the commission of an offense that violates a law of this state, another state, or the United States.
4. To ensure the safety of a peace officer.
5. For purposes of the Firearms Act.
6. A peace officer or an authorized user has reason to believe that access to the firearms records is necessary within the commission of his or her lawful duties. The peace officer or authorized system user shall enter and record the specific reason in the system.

A person who intentionally accesses a firearms record in violation of this restriction is responsible for a state civil infraction.

Public Act 203 of 2014 amended **MCL 28.421** to define the term "firearms records" to mean any form,

information, or record required for submission to a government agency under sections MCL 28.422 (License to Purchase a Pistol), 28.422a (Pistol Sales Record), 28.422b (Entry of Certain Orders in LEIN), and 28.425b (CPL Application and License), or any form, permit, or license issued by a government agency under the Firearms Act.

Public Act 204 of 2014 amended **MCL 28.425e** to specify that information contained in the CPL database shall only be accessed and disclosed according to an access protocol that includes the following requirements:

1. That the requestor of the firearms records uses LEIN or another system that maintains a record of the requestor's identity, time, and date that the request was made.
2. Requires the requestor in an intentional query by name of the firearms records to attest that the firearms records were sought under one of the six lawful purposes previously listed.

As a result of these amendments, police officers will no longer automatically receive information regarding a person's CPL status when running a registration plate or a person by name, operator's license number, or social security number in LEIN. Police officers who want to query the CPL database will be required to specify the purpose for the query and attest that the query is for one of the six purposes previously listed.

DID YOU KNOW?

Handcuffing a person unduly tight or excessively forceful is a violation of the Fourth Amendment

The Fourth Amendment to the United States Constitution prohibits unduly tight or excessively forceful handcuffing during the course of a seizure of a person. As a result, police officers can be held civilly liable for claims of excessive force regarding handcuffing of suspects.

When reviewing handcuffing claims against police officers, the Sixth Circuit Court of Appeals will consider a number of factors, including the following:

1. Whether the person complained the handcuffs were too tight.
2. Whether the officer ignored those complaints.
3. The length of the detention.
4. Whether the person experienced some physical injury.

While the Court has not required police officers to stop and investigate every claim of discomfort and make a new judgment as to whether the handcuffs are too tight, the Court will examine whether the police officer acted reasonably in responding to complaints of pain, discomfort or injury.

Accordingly, police officers are encouraged to reevaluate handcuff tightness when a person has been handcuffed for a significant period of time. Police officers are also encouraged to document complaints of pain, discomfort or injury and all actions taken in response to such complaints.

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