



By David Lee Wells

# LAW 4 BIKERS



## Infraction Not a Crime

It may look like a crime, it may walk like a crime, but it is not a crime, it is an infraction. In Missouri some things that were a crime are now merely a civil action. What happens if a policeman gives you an infraction ticket, can you be fined, Yes! But the State or City may not put you in jail, the fine is from \$5 to \$500. You do lose your right to a jury trial. This is a big deal if the police are writing tickets just to increase revenue to the City or State. The citizens are going to notice, hire lawyers and ask for justice. One of the fundamental rights you have is to be tried by your peers, 12 people on a jury, not some "educated expert—a judge". The statute says infractions are now just a civil matter and a conviction shall not give rise to any disability or legal disadvantage based on conviction of a crime [there is no provision that says employers or other parties will disregard that you were fined].

The Statute says you cannot be put in jail, before these acts were punishable by a year in jail. Also the State no longer has to prove that the defendant "beyond a reasonable doubt" did it, just that he probably did it, "preponderance of the evidence. The present "new infractions" result in no points violations on your driver's license.

\*\*\*

## First Bite Rule Abolished

The law used to be, if your dog bit someone, his first bite was free, as in no foul. The State or victim had to prove that the dog was known to be vicious and had done other anti-social acts, bite, barked, frightened people or had killed chickens. With the rise of guard and attack dogs in the population, now owners are strictly liable from day one, if the dog bites someone, the fine is up to \$1,000. If the dog causes physical injury the victim can recover for medical bills, pain and suffering, future medical expenses, etc.

\*\*\*

## Motorcycle Accident

The bike rider was stopped at a traffic light when she was rear-ended. The force of the collision flipped her onto the windshield of the car and the Plaintiff claimed neck and back injuries, dizziness and vertigo. She was claiming head injury but medical tests could not show any objection findings and the insurance company attorney argued her condition was improving. She was asking for \$400,000 but she got a verdict for only \$75,000. Apparently there is a discount for hitting a motorcycle rider, they don't cost so much.

\*\*\*

## Student Loans in Bankruptcy

A \$300,000 student loan for a masters degree in psychology was discharged because of undue hardship. The debtor had 5 children, which included 2 autistic sons who required extreme home care and could not work outside the home. Yes, that would be a hardship for that lady to repay the debt and so are you ready to unload your student loans. Better hold on, there had better be a real hardship. For example, a lawyer tried to avoid his law student loans of \$360,000. They were not discharged by the Court as the Court said the lawyer had the ability to make payments and was eligible for relief (longer terms to pay under) Contingent Repayment Plan. See your lender for relief if you are having trouble paying under that plan.

\*\*\*

## Tort Reform Damage Caps Illegal

The Supreme Courts in the States of Illinois and Georgia hold that an injured person has a constitutional right to a jury to determine their damages. These courts have held that a State Legislature setting a limit or a maximum that a person can sue and recover is wrong, one size does not fit all. Each case is different for example, should a person lose the use of a hand be paid the same for a person who has to have two good hands like an airline

pilot or plumber, do they have the same hardship as a man who does not use both his hands, like a lawyer, who talks and does not use his hands?

\*\*\*

## Right to Remain Silent, Demands Breaking of Silence

The United States Supreme Court watered down the right to remain silent, now a Defendant must break his silence under police questioning in order to invoke the right to remain silent. A person must say "I do not want to answer police questions" or "I want my constitutional right to remain silent" or "I want my 5th Amendment Right, I don't want to talk" or some such similar positive statement. The police gave the Defendant Miranda then began shooting questions at the Defendant until he cracked, after 3 hours the Defendant incriminated himself with one word, "yes". The policeman asked if he prayed for forgiveness for shooting the boy down. The U.S. Supreme Court split 5 to 4 against the ruling, (meaning this is a hot, legal issue and there are strong arguments on each side). New Justice Sotomayor was with the dissenting 4 saying that this "turns Miranda upside down." Supreme Court nominee Kagan as U.S. Solicitor General told the Court that the Constitution does not require that the police interpret ambiguous statements as invoking of Miranda Rights. So your "Mom Defense" when Mom (cop) asks you "did you do it?" you can't hang your head, not look at her and keep your mouth shut, it won't work!! You have to look at her in the eye and say "I do not want to talk to you, I got rights and I take the 5th."

\*\*\*

## The Government Takes the House, Barn and Farm

There is a US Statute (as well as similar statutes in some States) that the Government may take by "forfeiture" any property that was connected to a crime. Most common the forfeiture is in a drug case. You sell drugs out of

your car, the cops throw you in jail and keep your car and sell it. The money goes into their budget (all pursuant to Motions and Court orders). So your spouse had a stash of marijuana in a bedroom and the police found it. The police could seize and sell what, the drawer? The dresser? The bedroom? The house? The farm?

The 8th Circuit Federal Appeals Court (St. Louis) said that the statute requires that the whole farm be forfeited.

A man had child pornography on his computer and was convicted. The Government seized the house and 19 acres, the wife (and dumb husband) argued there was no connection to the crime (pervert watched pornography in his home office) to the land outside the house. The horse barn and pasture were not involved or allowed or helped him do the dirty act. The Court held that the Defendant took title to the place in one Deed so the definition of what was "property" was controlled by the description in the Deed. There was one real estate transaction; there was not a deed for the house and a separate deed for the barn and 19 acres. So the horses as well as the wife and (10 kids?) lost out. The whole farm is taken. In that case the U.S. Government allowed the wife to use non-tainted funds (cash) to buy back the farm. So the husband goes to jail, the Government gets the money, wife divorces him, life goes to hell. Remember Boy Scouts "crime does not pay".

Where would I rather be? I have just a few days left until I go to the Elbow Inn, ice down the drinks and let the band play.

Times are tough, protect yourself.  
Support Our Troops.

David Lee Wells practices law at  
329 Armour Road,  
North Kansas City, Missouri 64116  
(816) 842-2171 • toll free 1-866-LAW4BIKERS  
[www.law4bikers.com](http://www.law4bikers.com)

**ALL BIKERS WELCOME**  
**TWISTED BRISKET BBQ**  
**YOU CAN'T BEAT**  
**DAILY SPECIALS OUR MEAT HAPPY HOUR**  
**2-6 PM**  
**816-322-9100**  
**17027 Bel-Ray Blvd • Belton, MO**  
**2 Blocks N. of 58 Hwy.**  
**[www.TwistedBrisket.com](http://www.TwistedBrisket.com)**

**LARSON**  
**The Motor Man**  
All Harley Motors  
UPS Ship Daily  
Fast Turnaround  
Wrenching for  
Over 42 Years  
Transmissions  
Killer  
Horsepower  
or Stock -  
YOU PICK  
**Larson Machine**  
**816-322-1007**  
**Belton, MO**

**Caplinger Mills**  
**River Front Resort**  
• 3 Bedroom Civil War Mill House accomodates up to 8  
• 4 Cabins accomodates up to 6 each  
• RV Sites or Tent Camping  
**Events All Summer Long**  
July 4-Fireworks, Hogroast, Live Music  
July 24-"Roll in the Hay at Caplinger Dam"  
Freedom of the Road Riders Statewide Poker Run  
[www.caplinger Mills.net](http://www.caplinger Mills.net) for the latest event postings  
**417-276-5409**  
14630 E. 676 Rd. • Stockton, MO 65785  
Located along the beautiful & peaceful Sac River