

Magistrate Specialty Seminar

August 3, 2017
Michigan Hall of Justice, Lansing, Michigan

Statutory, Court Rule, and Caselaw Update

Presented by

Ms. Michele Muscat
Management Analyst
Trial Court Services
State Court Administrative Office
Michigan Supreme Court
Lansing, MI 48909
muscatm@courts.mi.gov

Mr. Andrew Smith
Management Analyst
Trial Court Services
State Court Administrative Office
Michigan Supreme Court
Lansing, MI 48909
smitha@courts.mi.gov



State Court Administrative Office Update

Magistrate Specialty Seminar



August 3, 2017

Bobbi Morrow
Management Analyst
Trial Court Services
(517)373-2173
morrow@courts.mi.gov

Michele Muscat
Management Analyst
Trial Court Services
(517)373-3756
muscatm@courts.mi.gov

Andrew Smith
Management Analyst
Trial Court Services
(517)373-0954
smitha@courts.mi.gov

Magistrate Specialty Seminar
August 3, 2017
SCAO Update

Directives, Resources, and Information

- [Quarterly Update on Trial Court Records Retention and Disposal Project.](#)
- [Article on Statewide E-filing Implementation: Input from Legal Community Will Maximize Benefits for Both Filers and Courts and Facilitate Rollout.](#)
- [Memo](#) regarding annual court reporting certification.
- [Memo](#) from Department of Treasury regarding garnishment fees.
- [Memo](#) regarding ImageSoft being chosen as statewide vendor for E-Filing and EDMS.
- The [Manual for District Court Probation Officers](#) has been updated. See the [2017 Updates](#).
- [Memo](#) regarding MC20a, Order Regarding Suspension of Prisoner Fees/Costs.
- [Memo](#) regarding MC 240, Pretrial Release Order.
- [Memo](#) regarding juror summons.
- Problem Solving Court Program Certification: In FY 2018, certification goes into effect for all adult drug court programs, DWI court programs, drug/DWI hybrid programs, RDWI programs, and family dependency drug court programs. Since it starts in FY 2018, those program types will apply for certification from April 24 to June 2, 2017. Certification will go into effect for mental health courts and veterans treatment courts in FY 2019.
 - [Certification of Problem-Solving Courts Webcast](#)
 - [Exemplary Programs](#) - Dr. Jessica Parks MATCP Conference Presentation, 2017
 - [Certification FAQ](#)
 - [Training Calendar](#)
 - [Adult Drug Court Standards, Best Practices, and Promising Practices](#)
 - [Adult Mental Health Court Standards, Best Practices, and Promising Practices](#)
 - [Veterans Treatment Court Standards, Best Practices, and Promising Practices](#)
- State Bar's [Notice of Suspension for Non-Payment of Dues](#) as of February 22, 2017.
- Statewide results of the [2016 Trial Court Public Satisfaction Survey](#) are posted.
- A new [Ability to Pay Bench Card](#) is now available. The bench card, developed by staff from the Michigan Judicial Institute (MJi) and Trial Court Services, includes hyperlinks to all relevant authorities.
- [Memo](#) regarding Ability to Pay court rule amendments.
- [SCAO Administrative Memorandum 2017-01](#): Surety Bond Process (replaces 2016-03).
- [Memo](#) regarding Notice to Sureties of Defendant's Failure to Appear.
- Updated [District Court Magistrate Benchbook](#) is now available.
- [Memo](#) regarding Interstate Compact for misdemeanants.

- [Memo](#) regarding Screening, Assessment, Referral, and Follow-Up (SARF) licenses and the Designated Courts Facility Survey.
- [Alternative Dispute Resolution Best Practices for Judges](#) lays out SCAO best practices for ADR.
- [Nonpublic and Limited Access to Court Records](#) chart has been updated.
- [Ability to Pay webcast](#) has been posted.
- SCAO announces the [SCAO in Brief](#), a series of short presentations on topics of interest to judges, court administrators, and other court staff.

Court Rules and Administrative Orders

Proposed

- MCR Cite:** 2.602
ADM File No: [2014-29](#)
Comment expires: January 1, 2017
Staff Comment: The proposed amendments of MCR 2.602(B) would provide procedural rules regarding entry of consent judgements. ***Pending results of 1/1/17 public hearing.**
- MRE Cite:** 404(b)
ADM File No: [2015-11](#)
Comment expires: March 1, 2017
Staff Comment: This proposed amendment would require the prosecution to provide reasonable notice of other acts evidence in writing or orally in open court. ***Pending results of 5/17/17 public hearing.**
- MRE Cite:** 404(b)
ADM File No: [2015-11](#)
Comment expires: September 1, 2017
Staff Comment: This proposed amendment would require the prosecution to provide reasonable notice of other acts evidence in writing at least 14 days before trial or orally in open court on the record.
- MCR Cite:** 9.200, *et seq.*
ADM File No: [2015-14](#)
Comment expires: December 1, 2016
Staff Comment: The proposed amendments rearrange and renumber the rules applicable to the JTC to provide clarity and facilitate navigation. The proposed amendments also include new rules and revisions of current rules regarding costs and sanctions, as well as other substantive proposed changes. ***Pending results of 1/17/17 public hearing.**

MCR Cite: 6.425
ADM File No: [2015-15](#)
Comment expires: August 1, 2017
Staff Comment: The proposed amendments of MCR 6.425 would expressly provide for a procedure under which appointed counsel may withdraw in light of a frivolous appeal in a way that protects a plea-convicted criminal defendant's right to due process. This amendment would ensure that a plea-convicted defendant could obtain the type of protections expressed in *Anders v California*, 386 US 738 (1967), even if the defendant's appeal proceeds by application and not by right. In such a case, a motion to withdraw may be filed in the trial court, which does not currently have a rule establishing the procedure like that in the Court of Appeals at MCR 7.211(C)(5). The timing of the procedure is intended to ensure that if an attorney's motion to withdraw is granted, the defendant would have sufficient time to file an application for leave to appeal under MCR 7.205(G).

MCR Cite: 8.110 and 8.111
ADM File No: [2015-20](#)
Comment expires: October 1, 2017
Staff Comment: The proposed amendments would explicitly provide that corrective action may be taken by the State Court Administrator, under the Supreme Court's direction, against a judge whose actions raise the question of the propriety of the judge's continued service. Such corrective action may include relieving a judge of the judge's caseload, and reassigning such cases to another judge or judges. The proposed amendments also would provide explicit authority for a chief judge (with approval from the state court administrator) to order a judge to submit to an independent medical examination if there is a good faith doubt as to the judge's fitness that prompted the chief judge's report.

MCR Cite: MCR 6.008
ADM File No: [2016-35](#)
Comment expires: May 1, 2017
Staff Comment: The proposed addition of Rule 6.008 would establish procedures for a circuit court to follow if a defendant bound over to circuit court on a felony either pleads guilty to, or is convicted of, a misdemeanor in circuit court, and would eliminate the practice of circuit courts remanding cases to district court except where otherwise provided by law. Remand to district court would remain a possibility in certain limited circumstances, including where the evidence is insufficient to support the bindover, *People v Miklovich*, 375 Mich 536, 539 (1965); *People v Salazar*, 124 Mich App 249, 251-252 (1983), or where there was a defect in the waiver of the right to a preliminary examination, *People v Reedy*, 151 Mich App 143, 147 (1986); *People v Skowronek*, 57 Mich App 110, 113 (1975), or where the prosecutor adds a new charge on which the defendant did not have a preliminary examination, *People v Bercheny*, 387 Mich 431, 434 (1972), adopting the opinion in *People v Davis*, 29 Mich App 443, 463 (1971), aff'd *People v Bercheny*, 387 Mich 431 (1972). See also MCR 6.110(H). The proposal is intended to promote greater uniformity and

address a practice that varies among courts. ***Pending results of 5/17/17 public hearing.**

MCR Cite: 2.625 and 3.101
ADM File No: [2016-40](#)
Comment expires: April 1, 2017
Staff Comment: The proposed amendments, submitted by the Michigan Creditor’s Bar Association, would address recent amendments of MCL 600.4012, would clarify the authority and process for recovering postjudgment costs, and would provide clearer procedure for garnishment proceedings. ***Pending results of 5/17/17 public hearing.**

MCR Cite: 2.107, 2.117, and 6.001
ADM File No: [2016-41](#)
Comment expires: August 1, 2017
Staff Comment: Proposed amendments of Rules 1.0, 1.2, 4.2, and 4.3 of the Michigan Rules of Professional Conduct and Rules 2.107, 2.117, and 6.001 of the Michigan Court Rules were submitted to the Court by the State Bar of Michigan Representative Assembly. The proposed rules are intended to provide guidance for attorneys and clients who would prefer to engage in a limited scope representation. The proposal, which limits these types of “unbundled” arrangements to civil proceedings, describes how such an agreement is made known to the court and other parties, what form of communication should be conducted with clients in a limited scope representation, and how the agreement is terminated. The proposed rules also would explicitly allow attorneys to provide document preparation services for a self-represented litigant without having to file an appearance with the court.

Adopted

MCR Cite: 2.116 and 2.119
ADM File No: [2015-24](#)
Effective date : September 1, 2017
Staff Comment: The amendments, originally submitted in a slightly different form by the State Bar of Michigan Representative Assembly, amend the rules regarding motions for summary disposition to allow for the filing of reply briefs only in summary disposition proceedings.

ADM File No: [2002-37](#)
Adm. Order Num.: 2016-3
Effective Date: November 2, 2016
Staff Comment: The new administrative order authorizes the Michigan Supreme Court to implement a Prisoner Electronic Filing Program with the Michigan Department of Corrections. Filings by prisoners in the initial phase of the program will be limited to applications for leave to appeal and related documents in criminal cases. At the present, only Carson City Correctional Facility and St. Louis Correctional Facility are participants.

ADM File No: [2014-03](#)
Adm. Order Num.: 2016-5
Staff Comment: The new administrative order provides a clearer and simplified version of the anti-nepotism policy to be used by courts in Michigan. Effective December 2016, [SCAO Form 75, Nepotism Waiver](#) requires a chief judge to sign and send to the appropriate regional administrator SCAO Form 75 indicating the circumstances of a prospective employee for a position.

Legislation

Statute Cite: **MCL 257.312a**
P.A. Number: [2016 PA 318](#)
Effective Date: February 7, 2017
What it Does: Amends the Michigan Vehicle Code to prescribe a misdemeanor penalty for an individual who operates a motorcycle without an endorsement on his or her license. The first violation is punishable by imprisonment for up to 90 days or a maximum fine of \$500, or both. A second or subsequent violation is punishable by imprisonment for up to one year or a maximum fine of \$1,000, or both.

Statute Cite: **MCL 338.1087 and 338.1089**
P.A. Number: [2016 PA 324](#)
Effective Date: November 22, 2016
What it Does: Amends the Private Security Business and Security Alarm Act to allow a private college security officer appointed under the Act to be sworn and fully empowered by a local chief of police or deputized by a county sheriff. Allows for a private college security officer who is sworn and fully empowered to exercise the authority and power of a peace officer. Specifies that, unless sworn and fully empowered, a private college security officer would have the limited arrest authority otherwise allowed under the Act.

Statute Cite: **MCL 764.2a**
P.A. Number: [2016 PA 326](#)
Effective Date: February 20, 2017
What it Does: Amends the Code of Criminal Procedure to include a public airport authority peace officer in provisions that allow peace officers to exercise their authority and power outside the geographical boundaries of their employing entity under certain circumstances. Permits a peace officer to exercise his or her authority and powers outside the geographical boundaries, if a public airport authority peace officer witnessed a violation that occurred within the airspace above the airport authority but while the person committing the violation was outside the public airport authority. Also defines "Public Airport Authority."

Statute Cite: **MCL 780.621**
P.A. Number: [2016 PA 336](#)
Effective Date: March 14, 2017
What it Does: Amends the act that governs the setting aside of criminal convictions to allow someone to apply for the expunction of a conviction for violating a prostitution-related local ordinance that was substantially similar to a state law, as currently

permitted, if a person is convicted for violating the state law as a direct result of being a victim of a human trafficking violation. (Includes: soliciting, accosting, or enticing prostitution; admitting another person to a place of prostitution; and aiding, assisting, or abetting prostitution.)

Statute Cite: **MCL 750.451 and 750.462f**
P.A. Number: [2016 PA 338](#)
Effective Date: March 14, 2017
What it Does: Amends the act so that it also applies in local ordinance cases. In any prosecution of a person under 18 for certain prostitution-related offenses, there is a rebuttable presumption that the person was coerced into child sexually abusive activity or commercial sexual activity, or was otherwise forced into committing the offense by another person engaged in human trafficking. This amendment requires that the presumption also would apply in a prosecution of a person under 18 for a substantially corresponding local ordinance.

Statute Cite: **New act**
P.A. Number: [2016 PA 350](#)
Effective Date: March 21, 2017
What it Does: Creates the "Impaired Driving Safety Commission Act" to establish the Commission and do the following (in pertinent part):

- Specify the Commission's responsibilities; including funding a university research program, subject to appropriation, to determine the appropriate threshold of THC bodily content to provide evidence of per se impaired driving.
- Require the Commission to file a final report with the governor and legislative leaders within two years after the bill's effective date.

Statute Cite: **MCL 750.70a**
P.A. Number: [2016 PA 353](#)
Effective Date: January 20, 2017
What it Does: Amend the Michigan Penal Code to prohibit an individual (other than the owner or the authorized agent of the owner of a dog, or a law enforcement officer, an animal control officer, or an animal protection shelter employee acting in his or her official capacity), from willfully or maliciously removing a collar from that dog with the intent to remove traceable evidence of the dog's ownership. An individual who violated the bill would be responsible for a **state civil infraction** and would have to be ordered to pay a civil fine of not less than \$1,000 and not more than \$2,500.

Statute Cite: **MCL 436.1703**
P.A. Number: [2016 PA 357](#)
Effective Date: January 1, 2018
What it Does: Amends the statute to lower a first violation of minor in possession (MIP) from a misdemeanor to a state civil infraction with a maximum fine of \$100. A second violation is a misdemeanor punishable by imprisonment for not more than 30 days, a maximum fine of \$200, or both. A third offense is a misdemeanor punishable by imprisonment for not more than 60 days, a fine of

not more than \$500, or both. An individual can still have the second offense (or first misdemeanor offense) deferred.

Statute Cite: **MCL 257.319**
P.A. Number: [2016 PA 358](#)
Effective Date: January 1, 2018
What it Does: Defines a “prior conviction” for purposes of a license suspension and indicates that it includes either a misdemeanor or a civil infraction determination. So, if a person has one prior conviction (either a state civil infraction or a misdemeanor), SOS must suspend the license for 90 days and can issue a restricted license after 30 days. If the person has two or more convictions for MIP, SOS must suspend the license for 1 year, and can issue a restricted license after 60 days.

Statute Cite: **MCL 287.331**
P.A. Number: [2016 PA 392](#) and [393](#)
Effective Date: March 29, 2017
What it Does: Creates the Animal Adoption Protection Act and allows an animal control shelter to consider an individual’s criminal history (e.g., conduct an ICHAT search) when deciding whether to allow that individual to adopt an animal. The shelter may choose not to allow an individual who has been convicted of an animal abuse offense to adopt an animal unless a period of five years has elapsed since the date of the conviction.

Statute Cite: **MCL 333.7523 and 333.7524**
P.A. Number: [2016 PA 418](#)
Effective Date: April 4, 2017
What it Does: Amends civil forfeiture provisions in Article 7 of the Public Health Code (controlled substances) that allow local units of government and the state to seize property related to criminal activity connected with controlled substances. Applies in cases where property is seized without process. Eliminates the requirement that a bond be provided by a person claiming interest in property subject to forfeiture proceedings to cover the costs and expenses of those proceedings.

Statute Cite: **MCL 780.983, et seq.,**
P.A. Number: [2016 PA 439](#), [440](#), [441](#), [442](#), and [443](#)
Effective Date: January 4, 2017
What it Does: Amend the Michigan Indigent Defense Commission Act, which creates the Michigan Indigent Defense Commission (MIDC) within the judicial branch of state government; requires the MIDC to propose minimum standards for the local delivery of indigent criminal defense services providing effective assistance of counsel; and establishes procedures for approval of the standards by the Michigan Supreme Court.

- Reestablishes the MIDC in the Department of Licensing and Regulatory Affairs.
- Prohibits the minimum standards from infringing on the Supreme Court's authority over practice and procedure in the courts of the State.

- Revises the definition of "indigent criminal defense system" to refer to local units of government that fund trial courts, rather than such local units combined with trial courts.
- Requires the MIDC to submit proposed standards to the Department, rather than the Supreme Court, for approval or rejection.
- Specifies that an approved minimum standard would not be a rule under the Administrative Procedures Act.
- Specifies that an approved minimum standard would be considered a final department action subject to judicial review to determine whether it was authorized by law, and vest jurisdiction for review in the Court of Claims.
- Revises MIDC principles regarding continuing legal education of defense counsel, and the review of defense counsel.
- Requires a defendant's indigence to be determined by the indigent criminal defense system, rather than by the court, and state that a trial court could play a role in determining indigence.
- Deletes requirements concerning the collection of data by the MIDC from individual attorneys who provide indigent criminal defense services.
- Approval of a standard would be by the department, rather than the Supreme Court.
- Deletes a requirement that every trial court that is part of an indigent criminal defense system comply with an approved plan under the Act.

Statute Cite: **MCL 257.629 and 257.629c**
P.A. Number: [2016 PA 445](#)
Effective Date: January 5, 2017
What it Does: Amends the Michigan Vehicle Code to revise, establish, or modify current speed limits across Michigan.

Statute Cite: **MCL 257.627a and 257.633**
P.A. Number: [2016 PA 446](#)
Effective Date: January 5, 2017
What it Does: Amends the Michigan Vehicle Code to modify and or delete provisions relating to school zone speed limits. Allows louvered signs, digital message signs, and flashing lights to supplement or replace permanent signs. Revises the definition of "school" and "school zone" and states that an individual who violates a school zone speed limit is responsible for a civil infraction.

Statute Cite: **MCL 257.628**
P.A. Number: [2016 PA 447](#)
Effective Date: January 5, 2017
What it Does: Amends the Michigan Vehicle Code to set requirements for the modification of speed limits on roads across Michigan.

Statute Cite: **MCL 257.320, et seq.**
P.A. Number: [2016 PA 448](#)
Effective Date: December 31, 2016
What it Does: Amends the Michigan Vehicle Code to modify the number of points assigned to a person's driving record for speeding. Allows the SOS, after being notified, to conduct an investigation or reexamination of a person if they have a total of six or more points charged within two years, and permits the restriction, suspension, revocation, or the imposition of other terms and conditions based upon that investigation or reexamination.

Statute Cite: **MCL 257.724**
P.A. Number: [2016 PA 450](#)
Effective Date: April 5, 2017
What it Does: Amends the Michigan Vehicle Code to do the following:

- Require, rather than permit, the court to impose a misload fine of \$200 per axle, if an overweight vehicle or vehicle combination would be lawful by proper distribution of the load, but one or more axles exceeded the maximum weight by more than 1,000, but less than 4,000 pounds.
- Require the court to impose a per-pound fine for pounds exceeding the permitted axle weight under a special permit, if the court determined that a vehicle or vehicle combination would meet specified loading restrictions by a proper distribution of the load, but one of the axles exceeded the permitted weight by more than 1,000 pounds.
- Revise a provision requiring a per-pound fine to be imposed if the court determines that a vehicle or vehicle combination would be lawful by a proper distribution of the load, but at least one axle exceeded the permitted axle weight by more than 4,000 pounds, to refer to between 4,000 and 8,000 pounds and require a misload fine of \$400 per axle, up to three axles.
- Require the court to impose a fine according to the per-pound schedule, if a vehicle or vehicle combination would be lawful by a proper distribution of the load, but at least one axle exceeded the permitted weight by more than 8,000 pounds.

Statute Cite: **MCL 257.710e**
P.A. Number: [2016 PA 460](#)
Effective Date: April 5, 2017
What it Does: Adds an additional exemption to the Motor Vehicle Code allowing the operator of a motor vehicle performing road construction or maintenance in a work zone to wear a lap belt but not a shoulder harness.

Statute Cite: **MCL 324.43516, 324.43523a, 324.43545, 324.43516, et seq.**
P.A. Number: [2016 PA 461](#), [2016 PA 462](#), [2016 PA 463](#)
Effective Date: March 29, 2017
What it Does: Amends the Natural Resources and Environmental Protection Act to require the DNR to develop electronic licenses and kill tags that individuals could display using electronic devices, no later than March 1, 2018.

Statute Cite: **MCL 750.145n**
P.A. Number: [2016 PA 480](#)
Effective Date: April 6, 2017
What it Does: The Penal Code provides that a caregiver or other person with authority over a vulnerable adult is guilty of fourth-degree vulnerable adult abuse if his or her reckless act or reckless failure to act causes physical harm to the vulnerable adult. A violation is a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$1,000. Under the bill, a caregiver or other person with authority over a vulnerable adult also would be guilty of that offense if he or she knowingly committed an act that, under the circumstances, posed an unreasonable risk of harm or injury to the vulnerable adult, regardless of whether physical harm resulted.

Statute Cite: **600.1987**
P.A. Number: [2016 PA 519](#)
Effective Date: January 9, 2017
What it Does: Extends, for one year, a sunset date in the Revised Judicature Act so that courts can continue to collect certain existing electronic filing fees.

Statute Cite: **333.26427**
P.A. Number: [2016 PA 546](#)
Effective Date: April 10, 2017
What it Does: Amends the Michigan Medical Marihuana Act (MMMA) to specify that the Act could not be construed to require a private property owner to lease residential property to a person who smoked or cultivated marihuana on the premises, if a written lease prohibited smoking or cultivating marihuana.

Statute Cite: **330.1748**
P.A. Number: [2016 PA 559](#)
Effective Date: April 10, 2017
What it Does: Amends the Mental Health Code to authorize the disclosure of information in the record of a recipient as necessary for the delivery of mental health services in accordance with Federal privacy law. It would also allow disclosure as necessary for treatment, coordination of care, or payment in accordance with the Health Insurance Portability and Accountability Act.

Statute Cite: **MCL 761.1 and 776.21a**
P.A. Number: [2017 PA 2](#)
Effective Date: June 29, 2017
What it Does: Amends the Code of Criminal Procedure to define "recidivism," "technical parole violation," and "technical probation violation," and requires data regarding recidivism rates collected under those laws to be separate from data concerning technical violations from data concerning new convictions.

Statute Cite: **771.4b**
P.A. Number: [2017 PA 9](#)
Effective Date: June 29, 2017
What it Does: Adds Section 4b to the Code of Criminal Procedure, which will limit the days a probationer may be sentenced to temporary incarceration for a technical probation violation to a maximum of 30 days for each technical violation, which may be extended if the probationer meets one of the exceptions which include:

- Does not apply to a probationer who has committed three or more technical probation violations during the course of his or her probation.
- Does not apply to a probationer who is on probation for a domestic violence violation of section 81 or 81a, or a violation of section 411h or 411i of the Michigan penal code, 1931 PA 328, MCL 750.81, 750.81a, 750.411h, and 750.411i.

Statute Cite: **780.904**
P.A. Number: [2017 PA 15](#)
Effective Date: June 29, 2017
What it Does: Amends Public Act 196 of 1989, which created the Crime Victim's Rights Fund. Specific amendments include adding minor crime victims as among those who could receive compensation. Further, it would require reporting on the funds going to minor crime victims, beginning December 31, 2017, and annually after that date.

Statute Cite: **MCL 771A.3**
P.A. Number: [2017 PA 17](#)
Effective Date: June 29, 2017
What it Does: Creates the Swift and Sure Probation Supervision Fund within the state treasury. Allows SSSPPs to accept transfers from other jurisdictions and lays out transfer procedures for these cases. Lays out new eligibility criteria for swift and sure programs and provides a list of sanctions and remedies approved by SCAO to effectively address probation violations.

Statute Cite: **MCL 750.1-750.568**
P.A. Number: [2017 PA 29](#)
Effective Date: 8/7/2017
What it Does: Makes aiming a beam of directed energy emitted from a directed energy device at an aircraft or a moving train a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$100,000, or both.

Statute Cite: **MCL 750.451c**
P.A. Number: [2017 PA 34](#)
Effective Date: May 23, 2017
What it Does: Allows the court to defer proceedings on certain prostitution-related offenses for human trafficking victims. The court can dismiss the charge upon the defendant fulfilling the terms of their probation. This act removes the restriction that a person may be eligible only if there were no prior convictions.

Statute Cite: MCL 600.1344
P.A. Number: [2017 PA 51](#)
Effective Date: September 13, 2017
What it Does: Amends section 1344 of the Revised Judicature Act, beginning April 1, 2018, to increase from .10 per mile to .20 per mile the mileage reimbursement rate for jurors. Also increases the minimum compensation for jurors provided sufficient funds were available in the Juror Compensation Reimbursement Fund, as determined by the State Court Administrator.

Statute Cite: MCL 600.151e
P.A. Number: [2017 PA 52](#)
Effective Date: September 13, 2017
What it Does: Amends the Revised Judicature Act to authorize the State Court Administrator to allocate money from the Juror Compensation Reimbursement Fund to enter into a contract for jury management software. Also authorizes the State Court Administrator to provide money from the fund for a position within the State Court Administrative Office that provides technical assistance to all state trial courts on jury management. Eliminates a \$40,000 annual cap on expenses for which the State Court Administrator must be reimbursed and provides for court funding units to receive reimbursement from the fund for the increase in the statutory minimum compensation rate under Section 1344 of the act, excluding certain amounts.

Statute Cite: MCL 750.462g
P.A. Number: [2017 PA 53](#)
Effective Date: September 13, 2017
What it Does: Amends Chapter 67A (Human Trafficking) of the Michigan Penal Code to specify that expert testimony as to the behavior patterns of human trafficking victims and the manner in which a victim's behavior may deviate from societal expectations would be admissible as evidence in court in a prosecution under Chapter 67A, of the testimony were otherwise admissible under the rules of evidence and law of the state.

Statute Cite: MCL 257.676
P.A. Number: [2017 PA 61](#)
Effective Date: September 26, 2017
What it Does: Amends the Michigan Vehicle Code to require a person to remove and take the ignition key when allowing a motor vehicle to stand on a highway unattended. This does not apply to a vehicle that is standing in place and is equipped with a remote start feature, if the remote start feature were engaged. Violation of this section is a civil infraction.

Statute Cite: MCL 769.1k
P.A. Number: [2017 PA 64](#)
Effective Date: June 30, 2017
What it Does: Amends the Code of Criminal Procedure to extend the authority of courts to impose costs related to the actual costs incurred by trial courts for court operations. This authority is extended until October 17, 2020.

Statute Cite: **New Act**
P.A. Number: [2017 PA 65](#)
Effective Date: September 28, 2017
What it Does: Enacts the “Trial Court Funding Act” to create the Trial Court Funding Commission within the Department of Treasury. The commission is required to review and recommend changes to the trial court funding system in light of *People v. Cunningham*. The commission is also required to review and recommend changes to the methods by which courts impose and allocate fees and costs, suggest statutory changes necessary to implement suggested changes, and file a final report with the Governor, the Senate Majority Leader, and the Speaker of the House of Representatives regarding its activities. The report will have to include the results of the commission’s review and its recommendations. The commission exists until the report is filed, with would have to occur within two years after the effective date of this act.

Statute Cite: **MCL 600.2534**
P.A. Number: [2017 PA 82](#)
Effective Date: September 28, 2017
What it Does: Amends the Revised Judicature Act to require the Department of Treasury to adjust the fees that a newspaper may charge for certain legal notices published after this amendment’s effective date to reflect percentage increases in the United States Consumer Price Index.

Statute Cite: **MCL 436.1909**
P.A. Number: [2017 PA 87](#)
Effective Date: September 28, 2017
What it Does: Amends the Michigan Liquor Control Code to prescribe penalties for violation of Section 203(1). A person, whether or not a licensee, who sells, delivers or imports beer or wine in violation of Section 203(1) is guilty of the following: if the amount of beer or wine is at least 45,000 milliliters but less than 225,000 milliliters the violation is a misdemeanor punishable by imprisonment for up to 93 days or a maximum fine of \$2,500, or both. If the amount of beer or wine is less than 45,000 milliliters, the violation is a state civil infraction and the person responsible can be ordered to pay a civil fine of up to \$500.

Statute Cite: **MCL 436.1703**
P.A. Number: [2017 PA 89](#)
Effective Date: September 28, 2017
What it Does: Amends the Michigan Liquor Control Code to prohibit the administration of a preliminary chemical breath analysis if a minor did not consent to it, and allows a peace officer to seek a court order for the test.

Case Law

Noll v Ritzer, __ Mich App __ (2016). Plaintiff sold a motorcycle to a third party for cash, but failed to maintain documentation to prove that the sale had taken place. The person who purchased the motorcycle was subsequently involved in an accident with the motorcycle that involved a fatality. MSP towed the motorcycle from the scene and then stored it for nearly a year while the police investigated the incident. The towing fee and storage fees of \$35 per day charged by defendant during that time totaled over \$11,000. Plaintiff was eventually sent a Notice of Abandoned Vehicle and he submitted a petition requesting a hearing to challenge the reasonableness of the towing and storage fees pursuant to MCL 257.252a(6), but did not post the \$40 bond. The district court held the hearing and eventually limited the storage company to only \$1,000 in damages. Defendant appealed. The circuit court determined that, because plaintiff was not seeking release of the vehicle, he did not have to post the bond and affirmed. The Court of Appeals reversed and held that “the district and circuit courts erred in determining that MCL 257.252a allowed a hearing challenging the reasonableness of towing and storage fees where [the] plaintiff did not post a bond in the amount of those towing and storage fees[;]” “the amendment of the statutory language by 2008 PA 539 reveals the Legislature’s intent that **posting of a bond in the amount of \$40 plus accrued towing and storage fees must accompany a request for a hearing under MCL 527.252a, unless the fees have already been paid (or bond posted).**”

People v Mahdi, __ Mich App __ (2016). Detectives conducted a warrantless search of defendant’s mother’s apartment with her consent. They had arrested her son for possession of marijuana and they told her that they wanted to make sure that her son didn’t have any drugs hidden in her house that she didn’t know about. During the search, the officers confiscated a wallet, a set of keys, and a cell phone, in addition to marijuana, cocaine, a digital scale, and heroin. While the cell phone was in the detective’s possession, the phone received a number of calls and some text messages. The detective began to respond to the text messages in order to learn more information about the defendant’s drug trafficking activities. Before trial, the defendant filed a motion to suppress the wallet, keys, and cell phone. The prosecutor argued that those items were legally taken through a consent search and the items were in plain view. The trial court concluded that the consent exception to the warrant requirement applied in this circumstance. Evidence stemming from the search of the wallet, keys, and cell phone was admitted into evidence at trial. Defendant appealed. The Court of Appeals held [in pertinent part] that:

1. **Consent Exception.** “The seizure of [a] wallet, keys, and [a] cell phone[from the defendant’s mother’s apartment] . . . fell outside the scope of [the mother’s] consent” where “[t]he testimony establishe[d] that a reasonable person would have believed that the scope of the search pertained [only] to illegal drugs hidden in the apartment[;]” the “consent to search her apartment for the limited purpose of uncovering illegal drugs did not constitute consent to seize any item.”
2. **Plain View Exception.** Police officers conducting a warrantless search of the defendant’s mother’s apartment “were not entitled to seize [a] wallet, keys, and [a] cell phone under the plain view exception to the warrant requirement because the incriminating character of the items seized was not immediately apparent” and “further investigation was necessary in order to establish a connection between the items and the suspected criminal activity[;]”
3. **Cell Phone Text Messages and Fruit of the Poisonous Tree.** Where a cell phone was improperly seized during a warrantless search and a detective thereafter “searched the phone and even engaged in several conversations via text message in order to obtain additional

incriminating evidence against [the] defendant[.]" "the text messages obtained from the cell phone fell under the exclusionary rule as products of the illegal seizure of the cell phone[;]" "[t]he process through which the text messages were obtained . . . was not sufficiently distinguishable to be purged of the primary taint of the illegal seizure of the cell phone, and the text message evidence constituted a fruit of the original illegal actions of the police."

People v Turn, ___ Mich App ___ (2016). Defendant admitted during his guilty plea that he stabbed the victim several times in the back and side. During his recovery, the victim used approximately 112 hours of sick, personal, and vacation time to recuperate from his injuries. At sentencing, the trial court ordered defendant to pay \$17,744.44 in restitution. Defendant challenged the restitution order and the court held a restitution hearing. Following the hearing, the court ordered the defendant to pay restitution to the victim's insurer for actual medical expenses, for the loss of the victim's jacket, and for the loss of his accumulated leave time. The economic benefit of the lost time was \$2,153.77. Defendant appealed. **The Court of Appeals held that the time the victim used to recuperate from his injuries falls within the definition of "income loss" even though he was paid by his employer for the time he used.** By using 112 hours of accumulated leave time, the victim lost the ability to use and be paid for taking that time in the future, and he lost the ability to be paid for that time upon termination of his employment. Thus, when the victim used his time he suffered a monetary loss.

People v Latz, ___ Mich App ___ (2016). The defendant was a medical marijuana patient who was cited for Illegal Transportation of Marijuana written under MCL 750.474. The defendant appealed to the Court of Appeals by leave from an order affirming the denial of his motion to dismiss his charges, which he asserts was an unconstitutional amendment of the Michigan Medical Marijuana Act, MCL 333.26521, *et seq.*, and was superseded by the MMMA. The "defendant, as a compliant medical marijuana patient, [could not] be prosecuted for violating" MCL 750.474, concerning the illegal transportation of marijuana, because "MCL 750.474 is not part of the [MMMA]" and "unambiguously seeks to *place additional requirements* on the transportation of medical marijuana beyond those imposed by the MMMA[;]" "**if another statute is inconsistent with the MMMA such that it punishes the proper use of medical marijuana, the MMMA controls and the person properly using medical marijuana is immune from punishment.**"

People v Jose, ___ Mich App ___ (2016). The defendant was convicted of first-degree CSC and later appealed his conviction and moved to remand his case for a *Ginther*¹ hearing, which was granted. The circuit court granted the defendant's request for a new trial, concluding that the trial counsel's failure to properly authenticate evidence denied the defendant the effective assistance of trial counsel.² The COA denied the prosecutor's application for leave to appeal and so did the Michigan Supreme Court. In February 2014, the circuit court appointed an attorney to represent the defendant on retrial and ordered that he "repay the county for this court-appointed attorney and any other costs incurred by the county in this case." The prosecutor decided not to proceed with a retrial and entered a nolle prosequi. Although the defendant was free from criminal charges, the county sent him notice that he owed \$900 for the cost of his appointed counsel. He filed a motion to vacate that order requiring that he reimburse for his court appointed counsel relying on MCL 768.34 and the circuit court denied his motion. "MCL 768.34 precludes a trial court from ordering reimbursement of any costs—including the

¹ *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

² Defendant withdrew his appeal in Docket No. 311478 after the circuit court granted his motion for a new trial. *People v Terrence Lamontt Jose*, unpublished order of the Court of Appeals, entered September 20, 2013 (Docket No. 311478).

cost of appointed counsel—for a defendant whose prosecution is suspended or abandoned.” Additionally, MCR 6.005(C) did not provide authority for the trial court to order reimbursement for the work appointed counsel performed before trial; “[t]he court never determined that [the] defendant was ‘able to pay part of the cost of a lawyer’ and never ‘require[d] contribution[.]’” under MCR 6.005(C). The Court noted that **there is a difference “between an order for ‘contribution’ (which suggests an ongoing obligation during the term of the appointment) and ‘reimbursement’ (which suggests an obligation arising after the term of appointment has ended)”**).

People v Williams, ___ Mich App ___ (2016). The defendant was questioned by police after he discovered his pregnant girlfriend murdered in their shared apartment. Investigators probed the defendant’s whereabouts and extracted a timeline from him. He denied straying from the timeline he provided. Police subsequently learned that the defendant had made an additional stop at his apartment during the time that the homicide likely occurred and that there was an additional passenger in his vehicle. Prosecution charged Williams under MCL 750.479c, which makes it a felony to make “statements that omit material information that may qualify as false or mislead an investigating officer[.]” and also “permits the prosecution of people who deliberately mislead the police by withholding material information[.]” there was “probable cause to believe that [the defendant] violated MCL 750.479c(1)(b)” where the defendant provided “statements omitting information that [led] the interrogator in the wrong direction.” “While nonassertive omissions may not qualify as ‘statements’ under MRE 801(a), in general parlance ‘statements’ include verbal and written expressions of something[; a]n answer to a question necessarily represents an expression[, and i]t may mislead the listener by omitting relevant information.” Defense counsel opposed a bind over and the circuit court denied the defense motion to quash the bind over and dismiss the case. The COA granted leave to appeal. **The COA held that because the plain language of MCL 750.479c(1)(b) permits William’s prosecution for withholding information, the COA affirms the decision to bind him over for trial.**

Manuel v City of Joliet, Illinois, 580 US ___, ___ (2017). During a traffic stop, police searched Manuel’s vehicle and found a vitamin bottle containing pills. Suspecting the pills to be illegal drugs, the officers conducted a field test, which came back negative for any controlled substance. Still, they arrested Manuel. An evidence technician further tested the pills and got the same negative result, but claimed in the report that one of the pills tested “positive for the probable presence of ecstasy.” App. 92. An arresting officer also reported that, based on his “training and experience,” he “knew the pills to be ecstasy.” *Id.*, at 91. On the basis of those false statements, another officer filed a sworn complaint charging Manuel with unlawful possession of a controlled substance. Relying exclusively on that complaint, a county court judge found probable cause to detain Manuel pending trial. While Manuel was in custody, the Illinois police laboratory tested the seized pills and reported that they contained no controlled substances. But Manuel remained in custody, spending a total of 48 days in pre-trial detention. More than two years after his arrest, but less than two years after his criminal case was dismissed, Manuel filed a 42 U. S. C §1983 lawsuit against the city of Joliet and several of its police officers (collectively, the City), alleging that his arrest and detention violated the Fourth Amendment. The US District Court dismissed Manuel’s suit, holding, first, that the applicable two-year statute of limitations barred his unlawful arrest claim, and second, that under binding circuit precedent, pre-trial detention following the start of legal process (here, the judge’s probable-cause determination) could not give rise to a Fourth Amendment claim. Manuel appealed the dismissal of his unlawful detention claim to the Seventh Circuit Court of Appeals, who affirmed. As reflected in *Gerstein v. Pugh*, 420 U.S 103 (requiring a judicial finding of probable cause following a warrantless arrest to impose any significant pre-trial restraint on liberty) and *Albright v. Oliver*, 510 U. S. 266, pre-

trial detention can violate the Fourth Amendment not only when it precedes, but also when it follows, the start of legal process. The judge relied exclusively on the criminal complaint—which in turn relied exclusively on the police department’s fabrications—to support a finding of probable cause. Based on that determination, he sent Manuel to the county jail to await trial. In the somewhat obscure legal lingo of this case, Manuel’s subsequent detention was thus pursuant to “legal process”—because it followed from, and was authorized by, the judge’s probable-cause determination.³ **Reversed and remanded** for further proceedings consistent with USSC opinion.

Nelson v Colorado, 581 US __, __ (2017). The petitioner was convicted by a Colorado jury of two felonies and three misdemeanors arising from the alleged sexual and physical abuse of her four children. The trial court imposed a prison term of 20 years to life and ordered her to pay \$8,192.50 in court costs, fees, and restitution. On appeal, Nelson’s conviction was reversed for trial error, and on retrial, she was acquitted of all charges. Another petitioner, Madden, was convicted by a Colorado jury of attempting to patronize a prostituted child and attempted sexual assault. The trial court imposed an indeterminate prison sentence and ordered him to pay \$4,413.00 in costs, fees, and restitution. After one of his convictions was reversed on direct review and the other vacated on post-conviction review, the state elected not to appeal or retry the case. The Colorado Department of Corrections withheld \$702.10 from Nelson’s inmate account between her conviction and acquittal, and Madden paid the State \$1,977.75 after his conviction. In both cases, the funds were allocated to costs, fees, and restitution. Once their convictions were invalidated, both petitioners moved for return of the funds. Nelson’s trial court denied her motion outright, and Madden’s post-conviction court allowed a refund of costs and fees, but not restitution. The Colorado Court of Appeals concluded that both petitioners were entitled to seek refunds of all they had paid, but the Colorado Supreme Court reversed. It held that Colorado’s Certain Exonerated Persons statute provided the exclusive authority for refunds and that there was no due process problem under that Act. The United State Supreme Court held that the Exoneration Act’s scheme does not comport with the Fourteenth Amendment’s guarantee for due process. Pp. 5-11. When a criminal conviction is invalidated by a reviewing court and no retrial will occur, . . . the state [is] obliged to refund fees, court costs, and restitution exacted from the defendant upon, and as a consequence of, the conviction[;] the retention of such conviction-related assessments following the reversal of a conviction, where the defendant will not be retried, “offends the Fourteenth Amendment’s guarantee of due process.” (holding that a Colorado statute requiring a petitioner to “prove [his or] her innocence by clear and convincing evidence to obtain [a] refund of costs, fees, and restitution paid pursuant to an invalid conviction . . . does not comport with due process”). The judgements of the Colorado Supreme Court are **reversed, and the cases are remanded** for further proceedings not inconsistent with this opinion.

People v Bryant, ___ Mich App ___, ___ (2017). The defendant pleaded guilty to possession of a firearm during the commission of a felony, second offense (felony-firearm 2d), MCL 750.227b(1), pursuant to a plea and sentencing agreement. The trial court sentenced the defendant to serve five years in prison, concurrently with the sentence imposed in another case and consecutively to existing parole. Defendant was also ordered to pay costs and fees and \$1,000 in restitution. Defendant applied for leave to appeal, challenging the restitution order and arguing that his trial counsel was ineffective for failing to object to the restitution order at sentencing. The COA denied his application.¹ Defendant

³ Although not addressed in Manuel’s complaint, the police department’s alleged fabrications did not stop at this initial hearing on probable cause. About two weeks later, on March 30, a grand jury indicted Manuel based on similar false evidence: testimony from one of the arresting officers that “[t]he pills field tested positive” for ecstasy. App. 96 (grand jury minutes).

then applied for leave to appeal in the Michigan Supreme Court. The Supreme Court remanded the case back to the COA “for consideration as on leave granted of the defendant’s issue regarding the propriety of the Wayne Circuit Court’s restitution award in light of *People v McKinley*, 496 Mich 410; 852 NW2d 770 (2014).” *People v Bryant*, 499 Mich 896; 876 NW2d 821 (2016). **The COA found that where the defendant, who broke into a home and stole items including firearms, pleaded guilty of possession of a firearm during the commission of a felony, second offense, in exchange for the dismissal of a charge of second-degree home invasion, the defendant was properly ordered to pay restitution under MCL 780.766(2) and MCL 769.1a(2) for all of the homeowner’s losses associated with the entire course of criminal conduct.** *People v McKinley*, 496 Mich 410 (2014), and *People v Corbin*, 312 Mich App 352 (2015). The felony-firearm conviction “was necessarily based on the predicate felony of second-degree home invasion[;] . . . [w]hile the home invasion charge was dismissed, its *commission* was part and parcel of the felony-firearm conviction, and the course of conduct for the home invasion included stealing the victim’s belongings.” *Bryant*, ___ Mich App at ___ (quotation marks omitted). “The law simply does not require that when a conviction results from a plea, a defendant must specifically reference each stolen item in order for the prosecution to obtain a restitution order for stolen goods[;]” rather, “[o]nce [the] defendant was properly convicted[,] . . . the prosecution was then allowed to prove the amount of restitution related to [the] defendant’s course of conduct by a preponderance of the evidence and by reference to the PSIR[,]” and “[t]he course of conduct necessarily included the circumstances relating to the required predicate offense of second-degree home invasion.” *Id.* at ___.

People v Maggit, ___ Mich App ___, ___ (2017). The defendant was charged with possession of a controlled substance analogue, resisting and obstructing, and possession with the intent to distribute an imitation controlled substance after being arrested in a parking lot in Grand Rapids. The arresting officer witnessed the defendant traverse by a “no trespassing” sign in the parking lot, which was being watched for illegal activity, but could not see whether or not he engaged in any narcotics transaction. The officer notified dispatch that he was going to stop someone for trespassing and approached the two men. When he instructed the men to stop, one man did, but the defendant continued to walk, even after the officer announced to the defendant he was being arrested for trespassing. The defendant ran from the officer and was detained after a foot chase. The question arose as to whether this was an unreasonable search and seizure. **The Michigan Court of Appeals ruled there was no probable cause to arrest the defendant. “There was no probable cause to arrest [the] defendant for trespassing under [a] city ordinance” where the defendant walked through a parking lot “that was open to the public, during business hours, for a very brief period of time, and during that brief time, no indication was given that [the] defendant was told to leave or that he annoyed or disturbed anyone[;]” “[t]he fact that the officer knew the parking lot . . . was often used for illegal drug transactions and other illicit purposes [did] not change the analysis.”**

People v Frederick, ___ Mich ___, ___ (2017). Michael Frederick and Todd Van Doorne were separately charged in the Kent Circuit Court with various drug offenses after seven officers from the Kent Area Narcotics Enforcement Team made unscheduled visits to the defendants’ respective homes during the predawn hours on March 18, 2014. Officers knocked on Frederick’s door around 4:00 a.m. and on Van Doorne’s door around 5:30 a.m. Officers woke defendants and their families for the purpose of questioning each defendant about marijuana butter that they suspected the defendants possessed. Both defendants subsequently consented to a search of their respective homes, and marijuana butter and other marijuana products were recovered from each home. Defendants moved to suppress the evidence, but the court denied their motions,

concluding that the officers had not conducted a search by knocking on defendants' doors during the predawn hours and that the subsequent consent searches were valid. Defendants sought interlocutory leave to appeal, which the Court of Appeals denied in separate unpublished orders entered October 15, 2014 (Docket Nos. 323642 and 323643). Defendants sought leave to appeal in the Supreme Court. The Supreme Court, in lieu of granting leave to appeal, remanded the cases to the Court of Appeals for consideration as on leave granted and directed the Court of Appeals to address whether the "knock and talk" procedure conducted in these cases was consistent with the Fourth Amendment. The Supreme Court ruled that the scope of the implied license to approach a house and knock is time-sensitive; it generally does not extend to predawn approaches. While approaching a home with the purpose of gathering information is not, standing alone, a Fourth Amendment search, when information-gathering is conjoined with a trespass, a Fourth Amendment search has occurred. In these cases, the police conduct exceeded the scope of the implied license to knock and talk because the officers approached the defendants' respective homes during the predawn hours; therefore, the officers trespassed on Fourth-Amendment-protected property. And because the officers trespassed while seeking information, they performed searches in violation of the Fourth Amendment. **The case was reversed and remanded to the Kent Circuit Court to determine whether defendants' consent to search was attenuated from the officers' illegal search.**

People v Parker, ___ Mich App ___, ___ (2017). The defendant was charged with OWI, but argued the lab results presented at his probable cause hearing were inadmissible under MCR 6.110. The defendant argued that the court rule trumped MCL 76611b although the court rule appeared to render the lab report admissible. The circuit court agreed, but the prosecution sought a leave of appeal. The Michigan Court of Appeals found the district court properly admitted the laboratory report pursuant to the statutory hearsay exception in MCL 766.11b. MCL 766.11b(1), created a statutory exception to this rule, whereby "[t]he rules of evidence apply at the preliminary examination except" that the hearsay rule does not preclude certain laboratory reports from being admitted, among other things. When a court rule irreconcilably conflicts with a statute, the conflict is resolved in the rule's favor if it is a matter of procedure, but in the statute's favor if it is matter of substance. The court ruled MCL 766.11b is an enactment of a substantive rule of evidence, not a procedural one. It was found substantive because, "MCL 766.11b continues the Legislature's long-adopted goal of reducing the number of times a laboratory professional has to testify in a criminal case by suspending the hearsay rule during the preliminary examination. This policy conserves local and state law-enforcement resources, and while there may be some similar savings to district courts, the policy does, in fact, go beyond mere court administration or the dispatch of judicial business." **The circuit court abused its discretion by remanding defendant's case to the district court for continuation of the preliminary examination. We reverse the circuit court's order and remand this action for continuation of the proceedings before the circuit court.**

ⁱ *People v Bryant*, unpublished order of the Court of Appeals, entered August 31, 2015 (Docket No. 328512)



MICHIGAN JUDICIAL INSTITUTE

Michigan Hall of Justice
P.O. Box 30048
Lansing, Michigan 48909
(517) 373-7171
mjieducation.mi.gov

© 2017 Michigan Judicial Institute