

**Michigan Association of District Court Magistrates**  
**Hall of Justice**  
**July 29, 2016**  
**SCAO Update**

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**Directives, Resources, and Information**

- The [district court fee and assessments table](#) has been updated
- [Memo](#) regarding surety bond process (amends 2007-05)
- [Memo](#) regarding E-filing update
- [Update](#) of SCAO of approved court forms
- Updated [Manual for District Court Probation Officers](#) available
- [Memo](#) regarding amendment to MC 240 – Pretrial Release
- [Manual for District Court Magistrates](#) being updated
- The interest rate for money judgments effective July 1, 2016, including the statutory 1 percent, is 2.337 percent. [Click here for additional information and the history of interest rates.](#)
- [SCAO Regional Map updated](#)

**Court Rules and Administrative Orders**

**Proposed**

**MCR Cite:** 2.004, 3.705, 3.708, 3.804, 3.904, 4.101, 4.202, 4.304, 4.401, 5.119, 5.140, 5.402, 5.404, 5.738a, 6.006, and 6.901

**ADM File No:** [2013-18](#)

**Comment expires:** July 1, 2016                   **\*Pending public hearing date**

**Staff Comment:** The proposed amendments would permit courts to expand the use of videoconferencing technology in many court proceedings.

**ADM File No:** [2014-03](#) (rescission of Adm. Order 1996-11)

**Comment expires:** July 1, 2016                   **\*Pending public hearing date**

**Staff Comment:** The proposed new administrative order would provide a clearer and simplified version of the antinepotism policy to be used by courts in Michigan.

**Adopted**

**MCR Cite:** 2.305 – Subpoena for Taking Deposition

**ADM File No:** [2014-27](#)

**Effective Date:** September 1, 2016

**Staff Comment:** The adopted rule clarifies that subpoenas issued for the production of documents may occur only after the defendant has had reasonable time after the complaint is filed and served to obtain an attorney, as described in MCR 2.306(A)(1).

**MCR Cite:** 3.605, 3.606, 3.928, 3.956, 6.001, 6.425, 6.445, 6.610, 6.933  
**ADM File No:** [2015-12](#)  
**Effective Date:** September 1, 2016  
**Staff Comment:** The adopted rule revisions establish procedures for determining ability to pay in the various court rules. The United States Supreme Court and the Michigan Supreme Court have recognized that it is unconstitutional to incarcerate someone for failure to pay fines, costs, fees, or restitution simply because the person is unable to pay.

**MCR Cite:** Minimum Standards for Appointed Counsel (by MIDC)  
**ADM File No:** [2015-27](#) and [Administrative Order 2016-2](#)  
**Effective Date:** June 1, 2016  
**Staff Comment:** The standards include:  

1. **Education and Training of Defense Counsel** – this standard would require counsel to have knowledge of the law, scientific evidence and applicable defenses, technology, and annual continuing education.
2. **Initial Interview** – this standard would require counsel to conduct a client interview as soon as practicable after appointment in a private and confidential setting, obtain copies of all relevant document available, evaluate the client’s competence to participate in their representation, and ensure that the client is able to communicate despite any language or communication differences.
3. **Investigation and Experts** – this standard would require counsel to conduct an independent investigation of the charges as practicable including requesting funds for an investigator and/or expert.
4. **Counsel at First Appearance and other Critical Stages** – this standard would require counsel to be assigned as soon as the defendant is determined to be eligible for indigent criminal defense services and be available for arraignment, pretrial proceedings, during plea negotiations, and at other critical stages.

**MCR Cite:** 3.925, 8.119, and 8.302 and proposed new MCR 5.133  
**ADM File No:** [2016-06](#)  
**Effective Date:** January 1, 2017  
**Staff Comment:** The adopted amendments of MCR 3.925, 8.119, and 8.302 and adopted new MCR 5.133 are an expected progression in the development of policies and procedures arising from a larger project that was initiated, in part, through the Access to Records Committee in 2009. These policies and procedures are intended to standardize management of court records and to provide a uniform basis for developing parameters on the use of technology in creating, accessing, routing, maintaining, and disposing of court records. These particular amendments will assist in implementing the goals of 2013 PA 199 and 201 and improving the policies and procedures adopted by the Court in 2012 under Administrative File No. 2006-47.

## Legislation

**Statute Cite:** **MCL 750.81**  
**P.A. Number:** [2016 PA 87](#)  
**Effective Date:** July 25, 2016  
**What it Does:** Amends the statute by adding language regarding the assault or assault and battery of an individual who is knowingly pregnant and establishes the penalties.

**Statute Cite:** **MCL 750.145e and 750.145f**  
**P.A. Number:** [2016 PA 89](#) and [90](#)  
**Effective Date:** July 25, 2016  
**What it Does:** Adds section 145e addressing the intentional posting of sexually explicit visual material of another person without consent and establishes conditions surrounding the material. Section 145f establishes the punishment of a person who violates section 145e. First, second, or subsequent violation are classified as misdemeanor offenses ranging from no more than 93 days to no more than 1 year imprisonment and \$500 to \$1000 in fines.

**Statute Cite:** **MCL 750.377d**  
**P.A. Number:** [2016 PA 111](#)  
**Effective Date:** August 8, 2016  
**What it Does:** Adds section 377d and repeals MCL 257.616. This act addresses the willful and malicious damage, destruction, injury, defacement, dismantlement, tampering or removal of a traffic control device. This act also establishes that crimes within this act are misdemeanor offenses carrying penalties ranging from no more than 93 days imprisonment for a first offense, not more than 180 days imprisonment if the person has one prior offense, and not more than 1 year imprisonment if the person has two or more prior offenses. It also establishes a fine ranging from \$500 to \$10,000.

**Statute Cite:** **MCL 333.7340c**  
**P.A. Number:** [2016 PA 125](#)  
**Effective Date:** August 23, 2016  
**What it Does:** Amends the Public Health Code to establish a misdemeanor penalty for attempting to solicit another person to buy or obtain ephedrine or pseudoephedrine for the purpose of manufacturing methamphetamine. The attempt is a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000, or both.

**Statute Cite:** **MCL 28.124**  
**P.A. Number:** [2016 PA 127](#)  
**Effective Date:** August 23, 2016  
**What it Does:** Amends the Methamphetamine Abuse Reporting Act to establish a 5 year stop-sale alert for a person convicted of attempting to solicit another to purchase ephedrine or pseudoephedrine to manufacture methamphetamine.

**Statute Cite:** **MCL 333.7410**  
**P.A. Number:** [2016 PA 128](#)  
**Effective Date:** August 23, 2016  
**What it Does:** Amends the Public Health Code to enhance the penalty for manufacturing methamphetamine in the vicinity of a school or library. A person 18 years or older who manufactures methamphetamine on or within 1,000 feet of school property or a library would have to be punished by a term of imprisonment or a fine, or both, **of up to twice** that authorized by law for the manufacturing offense.

**Statute Cite:** **MCL 750.221**  
**P.A. Number:** [2016 PA 132](#)  
**Effective Date:** August 24, 2016  
**What it Does:** Amends the language of the statute to prohibit falsely representing oneself as “blind, deaf, deafblind, or hard of hearing or as a person who has a disability” for the purpose of obtaining money or anything of value. The bill would also retain the classification of this behavior as a misdemeanor, but adds the penalty which includes imprisonment for not more than 90 days, or a fine of not more than \$500, or both. Also replaces references to “deaf and dumb” and “hearing impaired” with “Deaf, DeafBlind, and Hard of Hearing.”

**Statute Cite:** **MCL 257.302a**  
**P.A. Number:** [2016 PA 138](#)  
**Effective Date:** August 8, 2016  
**What it Does:** Rewrites the section of the Michigan Vehicle Code that addresses the conditions under which drivers from other countries can operate a passenger vehicle in Michigan without obtaining a driver’s license.

**Statute Cite:** **MCL 750.213a**  
**P.A. Number:** [2016 PA 149](#)  
**Effective Date:** September 7, 2016  
**What it Does:** Adds a new section to the Michigan Penal Code which makes it a criminal offense to intentionally coerce a pregnant woman to have an abortion against her will, creates penalties, and defines terms. The penalties vary depending upon circumstances and range from misdemeanor’s punishable by fines of not more than \$5,000 or \$10,00 if the offender were the father or putative father of the unborn child and the pregnant female was under 18 as well as punishments equal to the underlying offense committed (for example, stalking or assault and battery).

**Statute Cite:** **MCL 600.8501**  
**P.A. Number:** [2016 PA 165](#)  
**Effective Date:** September 7, 2016  
**What it Does:** Amends Chapter 85 of the RJA to allow a person to be appointed magistrate in a district of the third class if the person is a registered elector in the district where appointed *or* in an adjoining district **if the appointment is made under a plan of concurrent jurisdiction** adopted under Chapter 4 of the RJA.

**Statute Cite:** MCL 600.1200  
**P.A. Number:** [2016 PA 215](#)  
**Effective Date:** September 20, 2016  
**What it Does:** Amends Public Act 190 of 1965 to define the term “veteran” for purposes of all the state laws relative to veterans. The new definition would be: an individual who served in the United States Armed Forces, including the reserve components, and was discharged or released under conditions other than dishonorable.” The term would also include an individual who died while on active duty in the United States Armed Forces.

**Statute Cite:** MCL 257.1 to 257.923  
**P.A. Number:** [2016 PA 242](#) & [2016 PA 243](#)  
**Effective Date:** September 22, 2016  
**What it Does:** Amends the Michigan Vehicle Code to allow MSP to establish a one-year, five-county pilot program under which a saliva test could be given (in a similar manner as a breathalyzer test for alcohol) to detect if a driver was under the influence of a controlled substance. It would also allow peace officers who have completed specialized training as a drug recognition expert (DRE) to require, with reasonable cause, a driver suspected of driving drugged to take a saliva test, make a warrantless arrest based on the test’s outcome, make it a civil infraction to refuse a saliva test, order a commercial driver out of service for driving drugged or for refusing to submit to the saliva test, and make it a misdemeanor for a commercial driver to refuse a saliva test.

### **Case Law**

[People v Rea](#), \_\_\_ Mich App \_\_\_ (2016). Rea was arrested for Operating While Intoxicated after the police were summoned to his home in reference to a loud music complaint. Officers located Rea inside of his vehicle with the driver’s door ajar listening to music. The vehicle was parked deep in the defendant’s driveway, next to his house. Officers were subsequently called to the house on loud music and the officer parked on the street and walked up the defendant’s driveway. The detached garage door opened and the defendant’s vehicle backed out for “about 25 feet” before stopping. The vehicle never left the side or backyard. **The court of appeals granted the defendant’s motion to quash the information, ruling that the “upper portion of the defendant’s private residential driveway” does not constitute an area “generally accessible to motor vehicles.”**

[People v Mysliwiec](#), \_\_\_ Mich App \_\_\_ (2016). Defendant was convicted of criminal contempt for violating a condition of his bond to refrain from the use of alcohol (related to his OWI charge) and was subsequently sentenced to 68 days in jail with credit for 68 days served. Defendant appealed arguing that a violation of his bond condition was not punishable by criminal contempt because bond conditions are not court orders. The Court of Appeals rejected the defendant’s argument holding that under Michigan law, a court’s decision in setting bond is a court order. Additionally, the court held that the defendant’s due process rights were not violated because he had notice of and a hearing on his contempt charge wherein he was allowed to provide a defense. **Therefore, defendant’s bond condition prohibiting the use of alcohol**

**was a court order punishable by contempt and because defendant failed to comply with the conditions of his release, the trial court was proper in entering an order revoking his bond.**

*People v Feeley*, \_\_\_ Mich \_\_\_, (2016). Defendant was arrested and charged with resisting and obstructing a police officer under MCL 750.81d after police responded to a ruckus at a Brighton area bar. The two officers (one a sworn police officer and the other a reserve police officer), both arrived in a marked police unit, both wearing police uniforms and possessing a gun. Defendant fled the scene after being approached by the reserve officer, who pursued defendant and subsequently took him into custody. Defendant objected to the prosecution's request for a bindover arguing that the reserve police officer was not a "police officer" within the meaning of MCL 750.81d. Accepting defendant's argument, the district court denied the request for a bindover and therefore concluded sua sponte that the stop of the defendant was unlawful and invalid because the reserve officer "lacked authority to make a stop of a person." The prosecutor appealed to the circuit court who denied the application for leave to appeal for lack of merit in grounds presented. The Court of Appeals affirmed the district and circuit court ruling and the prosecutor appealed to the Supreme Court. **The Supreme Court held that the lower courts incorrectly concluded that a reserve police officer was not a police officer contemplated in MCL 750.81d and reversed the decision.** Because the COA did not address whether the district court correctly concluded that the reserve officer lacked authority to conduct a stop of the defendant, MSC remanded the case to the COA to address that issue, including whether the defendant knew or had reason to know that the reserve officer was performing his duties at the time of the charged conduct, and, if so, whether the reserve officers command to stop was lawful.

*Birchfield v North Dakota*, 579 US \_\_\_, \_\_\_(2016). Defendant was arrested on drunk-driving charges and the state trooper who arrested him advised him of his obligation under North Dakota law to undergo BAC testing and told him that refusing to submit to a blood test could lead to criminal punishment. Defendant refused to let his blood be drawn and was charged with a misdemeanor violation under the refusal statute. He argued that the Fourth Amendment prohibited criminalizing his refusal to submit to the test. North Dakota State District Court rejected his argument, and the State Supreme Court affirmed. Defendant appealed to the US Supreme Court. The USSC held that the Fourth Amendments permits warrantless breath tests incident to arrests for drunk driving but not **warrantless blood tests**. The court reasoned that breath tests do not implicate significant privacy concerns, is a minimal physical intrusion, and only yield a BAC reading but the same cannot be said about blood tests. **The Supreme Court concluded that motorists may not be criminally punished for refusing to submit to a blood test based on legally implied consent to submit to them.**

*Utah v Strieff*, 579 US \_\_\_, \_\_\_ (2016). Someone called the South Salt Lake City police's drug-tip line to report "narcotics activity" at a particular residence. A narcotics detective investigated the tip and over the course of about a week, observed visitors who left a few minutes after arriving at the house and believed the occupants were dealing drugs. During the investigation, the detective observed defendant exit the house and walk toward a nearby convenience store. In the store's parking lot, the detective detained defendant and requested his identification. Dispatch reported that defendant had an outstanding arrest warrant for a traffic violation. Defendant was arrested, searched as incident to the arrest, and the detective discovered a baggie of methamphetamine and drug paraphernalia. The State charged defendant with unlawful possession of methamphetamine and drug paraphernalia and defendant moved to suppress the evidence, arguing that the evidence was inadmissible because it was derived from an unlawful

investigatory stop. At the suppression hearing, the prosecutor conceded that the detective lacked reasonable suspicion for the stop but argued that the evidence should not be suppressed because the existence of a valid arrest warrant attenuated the connection between the unlawful stop and the discovery of the contraband. The trial court agreed with the State and admitted the evidence. The Utah Court of Appeals affirmed. The Utah Supreme Court reversed and ordered the evidence suppressed. The State appealed to the US Supreme Court. The USSC held that the “attenuation doctrine applies when an officer makes an unconstitutional investigatory stop; learns during that stop that the suspect is subject to a valid arrest warrant; and proceeds to arrest the suspect and seize incriminating evidence during a search incident to that arrest[;] . . . **the evidence the officer seized as part of the search incident to arrest is admissible because the officer’s discovery of the arrest warrant attenuated the connection between the unlawful stop and the evidence seized incident to arrest.**”

*People v Taylor*, \_\_\_ Mich App \_\_\_, \_\_\_ (2016). In this case a preliminary exam was held and the district court articulated its findings on the record and bound the defendants over for trial. In the circuit court, the defendants moved to quash the information but the motion was denied. Both defendants moved to remand the case to the district court for a further preliminary exam on the ground that a MSP ballistics report prepared after the preliminary exam showed that at least three guns were used during the incident for which the defendants were charged. Defendants argued that the ballistics report could have been used to cross-examine prosecution witnesses, including one witness who testified that he her only one gun fired during the incident. The circuit court granted the motion to remand. The prosecutor appealed to the Court of Appeals. The Court of Appeals held that the circuit court erred when it remanded the case for continued preliminary exam because the defendants did not establish any of the appropriate grounds for remanding the case. **Once a criminal case has been bound over and jurisdiction has been vested in the circuit court, there are only limited circumstances in which the circuit court may properly remand the case for a new or continued preliminary examination** (e.g., the evidence is insufficient to support the bindover, the defendant waived the right to a preliminary exam and there is a defect in the waiver, and the prosecutor adds a new charge on which the defendant did not have a preliminary exam.) The Court of Appeals indicated that “the emergence here of potentially favorable evidence after the preliminary examination does not by itself entitle a defendant to a second or continued preliminary examination. Instead, the trial is generally the appropriate forum in which to present such evidence. The purpose of a preliminary examination is to determine whether a crime was committed and whether there is probable cause to believe that the defendant committed it.” Reversed and remanded.