

Michigan Association of District Court Magistrates
Hall of Justice
August 4, 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](#).

Court Rules & 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. ***Public hearing to be scheduled.**
- 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; 134 NW2d 720 (1965); *People v Salazar*, 124 Mich App 249, 251-252; 333 NW2d 567 (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; 390 NW2d 215 (1986); *People v Skowronek*, 57 Mich App 110, 113; 226 NW2d 74 (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; 196 NW2d 767 (1972), adopting the opinion in *People v Davis*, 29 Mich App 443, 463; 185 NW2d 609 (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: 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.

Legislation

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: **600.11101 – 600.11105**
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

[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 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)