State Court Administrative Office Update

MADCM

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Michigan Association of District Court Magistrates
Annual Conference – Grand Rapids
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SCAO Update

Directives, Resources, and Information

- The district fee and assessments tables have been updated
- Memo regarding surety bond process (amends 2007-05)
- Memo regarding E-filing update
- Update of SCAO of approved court forms
- Memo regarding amendment to MC 240 – Pretrial Release
- Memo regarding Ability to Pay court rule amendments
- SCAO has reformed the Judicial Resources Advisory Committee
- Memo regarding MiCourt
- Memo outlining new rules for ASL interpreters
- Memo regarding MDOC Writ of Habeas Corpus Processing
- Manual for District Court Magistrates in the process of being updated
- Updated State Civil Infraction list
- 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: 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.

ADM File No: 2016-XX (rescission of Adm. Order 1996-11)
Comment expires: July 1, 2016 ***Public hearing on 9-14-16**
Staff Comment: The proposed new administrative order would provide a clearer and simplified version of the anti-nepotism 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 amendment of MCR 2.305 clarifies that subpoenas requesting the production of documents shall be issued only after 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 rule revisions are intended to provide clarity and guidance to courts regarding what courts would be required to do before incarcerating a defendant for failure to pay. 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.

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
Effective Date: January 1, 2017
Staff Comment: The proposed amendments would permit courts to expand the use of videoconferencing technology in many court proceedings.

Legislation

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 export (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 civil infraction for a commercial driver to refuse a saliva test.

Statute Cite:	**MCL 600.101-600.9947**
P.A. Number:	2016 PA 269 & 2016 PA 270
Effective Date:	September 29, 2016
What it Does:	Amends the statute by adding a section that would allow the court to order a wireless telephone service provider to transfer the billing responsibly and rights to the wireless telephone number to the petitioner, if the respondent has been ordered in a PPO or separate criminal case to have no contact with the petitioner and the petitioner is not the named customer on the account. It requires the wireless telephone service provider to notify the petitioner within 72 hours if it cannot effectuate the order.

Statute Cite:	**MCL 333.7411**
P.A. Number:	SB 94 (2016 PA ____)
Effective Date:	XX (Ordered Enrolled 9/8/16)
What it Does:	Allows the Michigan Commission on Law Enforcement Standards (MCOLES) to have access, for certain purposes, to a nonpublic record of a discharge and dismissal of a controlled substance violation maintained by the Michigan State Police.

Statute Cite:	**Creates new act**
P.A. Number:	2016 PA 281
Effective Date:	December 20, 2016
What it Does:	Creates the Medical Marihuana Facilities Licensing Act to establish a licensing and regulation framework for medical marihuana growers, processers, secure transporters, provisioning centers, and safety compliance facilities.

Statute Cite:	**Creates new act**
P.A. Number:	2016 PA 282
Effective Date:	December 20, 2016
What it Does:	Creates the Marihuana Tracking Act to require the establishment of a system to track marihuana grown, processed, transferred, stored, or disposed of under the Medical Marihuana Facilities Licensing Act (HB 4209).

Statute Cite:	**MCL 333.26423 et seq.**
P.A. Number:	2016 PA 283
Effective Date:	December 20, 2016
What it Does:	Amends the Michigan Medical Marihuana Act to allow for the manufacture and use of marihuana-infused products by qualifying patients and manufacture and transfer of such products by primary caregivers to their patients.

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 publishable 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 guns. 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 heard 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.

People v Lopez, __ Mich App __ (2016). The defendant was charged with murder. At the preliminary examination a witness testified that both Lopez and his co-defendant had admitted to participating in the murder. On the morning of jury selection, the prosecutor learned that the witness made a comment to the defendants to the effect that, "I've got you covered, bro." The prosecutor confronted the witness and threatened the witness that deviation from his preliminary examination testimony would result in prosecution for perjury and life imprisonment on conviction. (The prosecutor failed to mention that telling an untruth during a preliminary examination is not life in prison). Subsequently, the witness invoked his Fifth Amendment privilege and refused to testify. The prosecutor then filed a motion to declare the witness unavailable and admit his preliminary examination testimony pursuant to MRE 8054(b)(1). The preliminary examination testimony was presented to the jury. Defendant appealed and argued that the prosecutor should have been precluded from using the preliminary examination testimony because the prosecutor's conduct procured the witnesses unavailability. The Court of Appeals held that because the prosecutor improperly silenced the witness, the court was required to exclude the witness's preliminary examination testimony. By admitting prior testimony in clear violation of the evidentiary rules designed in part to protect a defendant's right to confront the witnesses against him, the trial court violated the defendant's fundamental right to a fair trial, abusing its evidentiary discretion. The conviction and sentence was vacated. "No principled basis exits for distinguishing between the intimidation of defense witness and the silencing of prosecution witness."

Does v Snyder, __ F3d __ (CA 6, 2016). Plaintiffs sued Michigan Governor Richard Snyder challenging the Sex Offender Registration Act's (SORA) validity on a number of different grounds.

The following is a brief history of changes to the (SORA) over the years:

- 1994 – The non-public registry was maintained solely for use by law enforcement.
- 1999 – Sex offenders must register in person and the sex offenders' names, address, and biomentric data are available to the public.
- 2004 – Sex offenders' photographs are also made available to the public.
- 2006 – Sex offenders are prohibited from living, working, or loitering within 1,000 feet of school.
- 2011 – Sex offenders are divided into three tiers based on the crime of conviction and must appear in person immediately to update information such as new vehicle information and new email accounts.
- The 2006 and 2011 amendments apply retroactively to all who were required to register under SORA.

After considering five factors regarding whether SORA's actual effects are punitive, the court held that "SORA imposes punishment[,]" and "[t]he retroactive application of SORA's 2006 and 2011 is unconstitutional[]" under the Ex Post Facto Clause. The court acknowledged that "while many (certainly not all) sex offenses involve abominable, almost unspeakable, conduct that deserves severe legal penalties, punishment may never be retroactively imposed or increased."

NOTE: This case is included because of the questions it raises regarding the applicability of these provisions; however, **decisions of lower federal courts, although they may be persuasive, are not binding on Michigan courts**. See People v Gillam, 479 Mich 253, 261 (2007); Abela v Gen Motors Corp, 469 Mich 603, 606-607 (2004); People v Bosca, 310 Mich App 1, 76 n 25 (2015).