



THE DOCKET

The Newsletter of the Michigan Association of District Court Magistrates

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MAGISTRATE ARRAIGNMENT AUTHORITY - UPDATE

SCAO Opinion, Part 2 *by James Pahl,
Magistrate, 55th District Court, based upon materials
provided by SCAO.*

Just prior to the last board meeting of the association, MADCM President Tom Bleau and Vice President Jim Pahl, met with Mark Gates, attorney for SCAO. We discussed with him, his opinion as to magistrate authority to conduct arraignments.

We learned the opinion from his office was not an official position of SCAO, but was his opinion only as to the intent and meaning of the statute that authorized magistrates to conduct arraignments for the "first appearance" in court.

He further stated that District Judges were free to disagree with him on this point and could instruct magistrates that such authority did exist. He recommended such instruction should be in writing.

As a result of that meeting, the board of directors decided to table any action proposed to have the state legislature look at this issue.

The bottom line is: be careful of what questions you ask and whom you ask. Sometimes the answer may not be what you want to hear.

This association is a great place to voice those questions. We have several very experienced magistrates that are very willing to help our fellow magistrates, as they struggle with questions.

Please register for the restricted area of the MADCM web site and post your questions there. We can all together work through an issue and help you find an answer. Once into the members only area (use the password LAF2), register for the bulletin board. Only other magistrates can gain access to this area.

2006 Conference

Mark your calendars now - September 27, 28 and 29 at Crystal Mountain. My spies report the educational committee is hard at work to put together another fine program - along with the

fellowship you can enjoy with other magistrates. See you there!

LOCAL DIVERSION PROGRAMS

*By Sandi Hartnell
Management Analyst, State Court Administrative Office*

Effective January 1, 2006, district courts will no longer be able to report cases disposed in Caseload, Part Two, using "Local Diversion" as a method of disposition. This change will also impact Caseload, Part Four, reporting, and the Delay of Criminal Proceedings report (formerly known as the Speedy Trial report). Following is an explanation of the reporting implications for cases in a court-monitored local diversion program.

Reporting Dispositions, Caseload, Part Two: Caseload, Part Two, is a quarterly report submitted to SCAO of all cases disposed during the reporting period. A case is reported disposed if the court has entered a plea of guilty, a finding of guilt, a dismissal, or any other disposition included in the report instructions. A case not yet reported as disposed is considered pending.

Reporting Cases Pending and Disposed, Caseload, Part Four: Caseload, Part Four, is an annual report of the age of all cases pending on December 31st, and all cases disposed during the year. A pending case is reported according to its age on December 31st. A disposed case is reported according to its age at the time of disposition. Cases are reported according to bar number. Cases assigned to a non-attorney magistrate and cases unassigned are reported together in a separate category.

Reporting Cases Pending Trial – Delay of Criminal Proceedings Report: MCR 8.110(C)(5) requires each court to report monthly to SCAO any case pending trial if the

age of the case exceeds a specified age. The report is designed as an internal tool for courts to manage its oldest misdemeanor and ordinance cases, as well as for the SCAO regional administrator to consider whether additional judicial resources or caseload management intervention is warranted.

Effective January 1, 2006, reporting under this rule was reduced from cases over 180 days old to cases over 91 days old. This change reflects the case processing time guidelines in Supreme Court Administrative Order 2003-7. This report was known as the Speedy Trial Report prior to 2006.

Local Diversion

Local diversion programs are not addressed in statute. Placing defendants on diversion is a local decision. A district court magistrate who assigns defendants to a local diversion program should be aware that if a disposition is not reported in Caseload, Parts Two and Four, the case is likely to age sufficiently to be reportable on the Delay of Criminal Proceedings report, and the age of the case will be reflected in Caseload, Part Four. Two alternatives to local diversion which allow the court to monitor defendant behavior while reporting the case as disposed include Delay of Sentence and Deferred Judgment of Guilt.

Delay of Sentence, MCL 771.1

Pursuant to this statute, after accepting and entering a guilty plea, the magistrate may delay sentence for up to one year if the underlying offense is within the magistrate's authority. The case is reported disposed in Caseload, Part Two, by Plea. The case will also be reported as disposed in Caseload, Part Four, according to its age at the time the plea was entered. The final disposition after the delay, whether a conviction or a dismissal, is not reflected on Caseload, Part Two or Part Four. Once a delay of sentence is

reported as a conviction it is not reportable under MCR 8.110.

Any misdemeanor is eligible for delay of sentence, although a consideration in choosing that option is whether the charge is one for which the court is required to report the conviction to the Department of State (DOS) pursuant to MCL 257.732. This statute requires the court to report all traffic convictions and some non-traffic convictions at the time of plea; an exception to this reporting requirement is drug offenses. However, the court is not precluded from amending its initial report to DOS based upon the final resolution of the case.

Deferred Judgment of Guilt

There are numerous statutes which allow a court to accept but not enter a plea of guilty or finding of guilt and defer judgment. The only ones applicable to district court magistrates are:

Judgment Deferred based upon a Guilty Plea:

MCL 436.1703 Minor in Possession of Alcohol
MCL 762.11 Assignment of Individuals
17 to 21 to Status of Youthful Trainee
MCL 600.1070 Drug Court, if the offense has a
penalty of 90 days or less
MCL 333.7411 Drug Offenses; Public Health
Code, if the offense has a penalty of
90 days or less

For each case in which the magistrate accepts a guilty plea and defers judgment pursuant to the statute, the court reports the case as disposed by Plea in Caseload, Part Two. The court would also report the case as disposed in Caseload, Part Four, according to the age of the case at disposition. Once a deferred judgment of guilt case is reported in Caseload, Part Two, it is not reportable under MCR 8.110.

Prosecutorial Diversion

Prosecutorial diversion prior to the filing of a complaint and warrant with the court eliminates a great deal of paperwork and staff processing for both the prosecutor and the court.

Scheduling and holding hearings is costly for everyone. Prosecutorial diversion would eliminate the cost of preparation of charging documents, attendance at pre-trial hearings, providing discovery material to defense attorneys, etc. Courts would not receive or process new cases. Law enforcement officers would not attend court hearings. Defendants would not be incarcerated awaiting arraignment or trial.

While prosecuting officials may not wish to assume responsibility for a diversion program, the cost to state and local government increases as soon as the court becomes involved.

Assignment to a local diversion program within the court often occurs after a pre-trial hearing. By this time the court has opened a file, conducted an arraignment, may have appointed an attorney, and scheduled a pre-trial hearing. After assignment to a court diversion program, court staff may be responsible to monitor compliance with diversion requirements, including whether the defendant has additional criminal activity.

In times of shrinking budgets and close scrutiny of non-mandated functions, the costs associated with court processing of diversion cases may be more than it can justify. Estimating the court's time and cost of processing a case from the filing of a complaint to the disposition of a case on local diversion may prove helpful prior to discussing diversion program alternatives.

Magistrate Appointed to Wayne Circuit bench:

Gov. Jennifer M. Granholm appointed Charlene M. Elder as a judge of the Wayne County Circuit Court. Elder of Dearborn most recently served as city of Dearborn magistrate for the 19th District Court and as a lawyer in private practice. She

replaces Judge Edward M. Thomas, who resigned. Congratulations Charlene.

Magistrate Activity Reports,

*By Sandi Hartnell
Management Analyst, State Court Administrative Office*

With the advent of computers and the ability to create reports and statistics, SCAO requested that the Supreme Court rescind MCR 8.205(A)(1) and (2). Section (1) required each magistrate to maintain a docket of magisterial action on a SCAO form and file a certified copy with the district court clerk at the end of each year. The form was DC 21. Section (2) required each magistrate to file a quarterly report with the chief judge on a SCAO form. The form was DC 22. These sections of the rule were eventually rescinded in 1999 in conjunction with the adoption of Case File Management Standards, and SCAO discontinued these DC 21 and DC 22 at that time.

In recent clean-up to the Revised Judicature Act, the legislature repealed MCL 600.8555, which required magistrates to maintain a docket on forms approved by the Supreme Court.

Unless specifically requested by the chief judge of the court, there is no requirement for a district court magistrate to maintain records of magistrate activity which duplicate other records kept by the court.

Traffic Safety, *from information provided by Alicia Sledge, Occupant Protection Program Coordinator, Office of Highway Safety Planning*

NHTSA's new planner for use in promoting Child Passenger Safety is now available on the web. Please feel free to use the planner materials for any child passenger safety events or activities that you have planned or share with others that may use this information. You can find this material at:

http://www.nhtsa.dot.gov/people/injury/childps/CPSPlanner_2006/CPSPlanner2006/index.cfm

ID & License Checking Guide,

from material provided by Sandra Aguirre, SOS District Court liaison.

Ever feel frustrated concerning the out of state or foreign driver licenses and other documents presented to you at a hearing?

The answer is the "International I.D. Checking Guide." This book has sample colored pictures of the licenses and a description of the license and where the license type, issue date and expiration date is on the license. This "International I.D. Checking Guide" is the book you want.

If your budget will not support this volume, several use the US & Canada edition. This includes ID cards, military ID, federal government ID, license plates and a whole host of other items.

The website to order this book is at:

<http://www.driverslicenseguide.com/html/intl-sub.html>.

Intersection Safety, *from information provided by Steve Schreier, Roadway Safety Program Coordinator, Office of Highway Safety Planning.*

You may remember to excellent presentation by Tim Colling at the last association training conference. His full seminar is available to magistrates. OHSP has provided a grant to this program, so the only cost to the participant is a small fee to cover lunch and facility costs (\$10.00). Register directly with Tim at Michigan Technological University.

April 25	- St. Ignace
April 26	- Traverse City
May 16	- Jackson
May 17	- Flint

Story of the Week, by Magistrate J. Kevin McKay, 66th District Court

Here is one truck driver's attempt to get out of a seat belt ticket.

After the motor carrier officer testified as to his observations, the Defendant requested that he be permitted to ask questions of the officer. I said "ok".

Defendant - "So is it true that you saw me not wearing my seatbelt?"

Officer - "Yes".

Defendant - "What was I driving?"

Officer - "A commercial motor vehicle."

Defendant - "So is it fair to say I was on the job as a truck driver?"

Officer - "Yes."

Defendant - "Is it also fair to say that the seat belt would restrain me in my seat while I am on the job?"

Officer - "Yes."

Defendant - "Your honor, I move for dismissal of this ticket based on the Emancipation Proclamation, which states that "no person shall be held in chains or restraints while working".

Initially, I thought he was joking, but he kept a straight face. I denied the motion because he was not "involuntarily" chained to his driver's seat, but had the freedom to release the seat belt [and in fact he had]. I thought it was a very clever argument, but later read the emancipation proclamation and it says no such thing.

Legislative Committee, by Tom Bleau, President, MADCM, based upon materials provided by Sandra Hartnell, SCAO.

Some bills dealing with Child Restraint seem to be moving. They are:

Vehicles; equipment; use of child safety restraint system or booster seat for certain children; require. Amends sec. 710e of 1949 PA 300 (MCL 257.710e). SB 0262 of 2005

Vehicles; equipment; waiver of fines for certain child car restraint system violations; provide for under certain circumstances. Amends sec. 907 of 1949 PA 300 (MCL 257.907). SB 0314 of 2005

Vehicles; equipment; child restraint safety seat; require to be in rear seat if vehicle has rear seat and remove nursing child exemption. Amends sec. 710d of 1949 PA 300 (MCL 257.710d). SB 0491 of 2005

Traffic control; violations; penalties for failure to properly restrain a child less than 16 years of age in a vehicle; increase for second or subsequent violations. Amends sec. 907 of 1949 PA 300 (MCL 257.907). TIE BAR WITH: HB 4787'05 SB 1041 of 2006

Vehicles; equipment; use of rear seat child safety restraint system for children 12 and under; require under certain circumstances. Amends sec. 710e of 1949 PA 300 (MCL 257.710e).

There is another bill introduced in the House; 4787. Nothing has happened with it yet.

The problem with SB 491 is that 50% of the fine for a 2nd or subsequent offense would be diverted to a new fund created in HB 4787, the Child Safety Education Fund. That means the court has to check on each violation to see if this is a second or subsequent offense, then somehow split the fine and put 50% on the state transmittal in a new account number that will be created and added to the form.

As a final afterthought: SB 1041 allows persons 12 years or less to be in the front seat only under certain situations.

Introduced on February 28 was Senate Bill 1098, which will allow the establishment of unmanned traffic monitoring devices at intersections and on highways. If passed as proposed, violations would be civil infractions to the registered owner of the vehicle, but no points would be assessed against a driving record.

This would be a three year pilot project in a limited number of selected zones. There would be a requirement for signs before each such zone, studies to be made and a period of written warnings before citations could begin to be issued.

Stay tuned to this channel!

MORE LAW UPDATES, *by Lt.*

David Ford, Department of State Police Motor Carrier Division

Scanner law (Act 39): Effective 5/31/06, possession of a police scanner in a vehicle will be illegal ONLY IF the person is engaged in the commission of a high misdemeanor (93 days) or a felony. MSP is no longer issuing scanner permits.

Truck speed (Act 19): Effective 11/9/06, trucks and truck tractors that were previously limited to 55 mph will be able to go 60 mph if the speed limit for other vehicles is 70 mph. Statute has been revised to include bobtail truck tractors. Passenger cars with trailers, including recreational doubles, will be able to drive the posted speed limit, including 70 mph on freeways so posted.