



THE DOCKET

The Newsletter of the Michigan Association of District Court Magistrates

Fall, 2004

NEW MIP SENTENCING LAW

MIP - Highlights

By Sandi Hartnell, SCAO

The MIP law has been in effect since September 1, 2004. In case you missed any of the SCAO publications, here are some highlights:

- * A deferred sentence is permissive, not mandatory. YES, magistrates may place a person on deferred sentence.
- * The plea must occur on or after September 1, 2004; date of offense may be before that date.
- * Under a deferred sentence a fine and costs MAY be ordered. Minimum state cost of \$40 is required IF a combination (2 or more) other assessments, such as fine and court cost, is ordered.
- * The defendant MUST be placed on probation, although it may be non-reporting.
- * The court MAY assess probation supervision costs.
- * The court MUST report deferred sentence to SOS as 1360R. The court MUST report the result of probation to SOS as 1360; either dismissed (dismissal code "M" on the sentencing abstract), or convicted if probation is unsuccessful.
- * The court record of a deferred sentence is non-public ONLY while deferred and on probation.
- * The court MUST make the file public after probation is completed, regardless of the end

result. The SOS record of a deferred sentence will remain non-public after probation is completed, regardless of the end result.

- * YES, SOS will reject a 1360R (deferred) abstract if the record indicates the person is ineligible because they have already received a deferment or there is a conviction on the record.
- * The court MUST resubmit the offense as a conviction.

President's Message

by Thomas Bleau, Magistrate, 74th District Court and President of MADCM

First of all, I want to thank you for your vote of confidence in electing me your new president. I believe our association is vital to promoting the professionalism of district court magistrates and providing continuing education for our members. I will try to build on the foundation made by past presidents and boards to further these goals.

Secondly, I want to thank all the board members who made the annual conference such a success, especially Dennis Hall, Tom Truesdell, Krista Krause, and Charlie Pope for working on the facilities and Dena Altheide for the educational program as well as for her overall leadership on the board for the past two years.

There are three initiatives that I intend to see the association pursue in the coming year:

1. Increase the communication between our members and the board
2. Continue to monitor the state legislature for legislation which impacts district courts
3. Further the education of district court magistrates

In support of the first goal we are now publishing the newsletter on line and will continue to publish it quarterly thanks to the efforts of Jim Pahl. Included in the publication will be agency reports of significance to the membership. We are also updating our lists of magistrates and will be updating our web site to incorporate the new information so you can contact your fellow magistrates directly. If your court had not been contacted please call Charlie Pope at (734) 483-6343 or email him at Popcec@washtenaw.org and let him know the relevant information for your court.

In support of the second goal we have had input and helped shape legislation dealing with fax search warrant revisions, the minor in possession of alcohol law, the no proof of insurance revision, and the new reckless driving statute. We were able to do this because the state agencies and our members have notified us of bills under consideration by the legislature. Also, some of the board members are on the email lists for the house and senate judiciary committees to further increase our chances of identifying legislation of importance before it is too late. Although we have done fairly well in reacting to legislation, I want to be more proactive and actually try to get legislation introduced and passed which will advance the interests of magistrates, and not just react to legislation which has been introduced by others.

Finally, I want to continue our education programs. We are a strong organization because

we try and continually educate our magistrate on new laws, services and techniques. This allows our members to perform our jobs better and hopefully perform them more efficiently. With your help we can find educational programs that you need to help you understand the issues and improve your work environment.

All three of these initiatives need your communication with us to be successful. If you can think of legislation that would benefit magistrates, let us know, if you have a court form or procedure you use that makes your job easier, share it with us, if you have a problem or issue that concerns you, contact us. You can reach me by phone at (989) 895-4231 or email me at tbleaut@baycounty.net. I am looking forward to the coming year and to hearing from you.

I was Stopped Because I Drive a Red Car

by James B. Pahl, Magistrate, 55th District Court & Vice President of MADCM

How many times have we heard this? Wondering if there was any truth to the statement, I conducted a survey during August of 2004. I looked at the color of the car for every speeding ticket that passed across my desk. The color of car not to be driving in Ingham County if you want to avoid speeding tickets is White.

More motorists driving White cars were cited for speeding than any other color (28). Following is Black (24), then Red (23), Blue (22), Silver (14), Green (13), Brown/Tan (9), Grey (6), Burgundy (4), Yellow (2), Orange (1) and Gold (1). Color was not recorded on eight of the citations.

I believe this shows that color of the vehicle does not matter, or whether it is a bright or subdued color. My conclusion is the main factor that draws an officer's attention to a speeding vehicle is excessive speed.

Caseload Part 4 Highlights – Time Guidelines

Sandi Hartnell, SCAO

January 1, 2005 Caseload Part 4 reporting requirements begin to be accumulated by the courts. Part 4 is the reporting of each disposed case during 2005 by case type code and age of case at disposition. In addition, each case pending on December 31, 2005 will be reported by case type code and age on that date. All data will be reported once, after December 31, 2005.

Cases will be reported **by bar number** for each judge and attorney magistrate. Cases unassigned, or assigned to a non-attorney magistrate or a court clerk, will be reported in a lump sum under a fictitious "bar number" assigned by SCAO.

Time Guidelines Highlights (See Supreme Court Administrative Order 2003-7):

Small Claims: 100% adjudicated within 126 days from date of case filing.

Misdemeanors: 100% adjudicated within 126 days from arraignment.

Civil Infractions: 100% adjudicated within 84 days from date of case filing.

SCAO Weekly Distribution

by Sandi Hartnell, SCAO

Are you receiving weekly information from SCAO? If not, and if you have e-mail, you may be added to the SCAO e-mail weekly distribution "ASD Mail." Simply send an e-mail to boernerm@courts.mi.gov with your full name, court number, and position title and request to be added to ASD Mail.

You can also see most items as they are posted to the SCAO web site even if you don't have e-mail. The SCAO web home page is www.courts.mi.gov/scao. At that location click on the link "Recent Communications." Then click on the "District/Muni" link to see those

items we have identified as impacting district and municipal courts.

Sometimes items are identified as not appropriate for the viewing public, so these items are not posted on the web site and only come as an attachment in ASD mail. A recent example is a LEIN news update; LEIN has requested we not post their publications on the internet.

Consumer Law Issues in the District Court

based upon materials provided by MJI and the 2004 annual judicial conference, authored by attorney Ian Lyngklip. Used with permission of MJI.

Motor Vehicle Service & Repair Act, MCL 257.1301 et seq.

This statute regulates car repairs and car repair facilities and contains provisions for licensing, regulation, administrative enforcement and civil liability.

The major provisions of the statute require that facilities provide a written estimate of all repairs prior to commencing work. Once the estimate is given, the facility may not charge more than 10% more than the estimate for the repairs without authorization from the consumer. That authorization may be either verbal or written. Upon completion of the repairs, the facility must provide a statement of the repairs containing a summary of the repairs that were effected and a certification that all repairs were completed properly.

Regulations issued under this act have been promulgated by the Secretary of State's Bureau of Automotive regulations, MAC §§ 257.101-257.173. In addition to providing processes for licensing, these rules have enumerated several dozen unfair, deceptive and coercive practices,

including most of the practices listed in the Michigan Consumer Protection Act. MAC §257.131-137.

The liability provisions of the statute permit consumer to recover actual damages, or two times actual damages for willful violations. All successful consumers may recover attorney fees. Owners and operators of repair facilities are jointly and personally liable. MCL §257.1337. When raised as an affirmative defense, this statute prohibits a facility that violates this act from collecting for repair work or asserting any form of lien against the consumer. MCL §257.1331.

Motor Carrier Violations: Obtaining information on trucking companies

provided by Sandra Hartnell, SCAO

USDOT has unveiled a new layout for the Safer web site. The address is <http://safer.fmcsa.dot.gov>

It has been updated to be more user friendly and has more links to other sites. The "carrier profile" has been changed to the "company snapshot." The information on Safer will be updated weekly, and there are links to the Companies Ordered to Cease Operations page, to search for companies under OOS orders.

The site also will also now indicate a response for USDOT numbers that have been inactivated. The old site just indicated the number did not exist.

To locate a resident agent in Michigan for an out-of-state company, at the home page click on "Licensing and Insurance." Enter the USDOT Number, or the name of the company. Hit the "Search" button.

At the next screen click on "Screen" under View Details. Scroll down the resulting page to the

area labeled "Blanket Company". If there is a name to the right, click on that link. At the next page scroll down for a Michigan (MI) reference in the left column.

Federal Motor Carrier Safety Administration Rules and Regulations

provided by Sandra Hartnell, SCAO.

For those who do a number of motor carrier hearings, you can find the Federal Motor Carrier Safety Regulations (FMCSRs) at the following web site:

<http://www.fmcsa.dot.gov/rulesregs/fmcsr/fmcsrguide.htm>

Future Magistrate Training

by Peter Stathakis, MJI

MJI is seeking our input as to potential topics to be covered in proposed experienced magistrate seminars. Please communicate your ideas directly to Peter at stathakisp@courts.mi.gov or call him at (517) 373-7607 or fax at (517) 373-7615.

Legal Update *by Jim Pahl, Magistrate, 55th District Court.*

Effective November 1, 2004 is PA 331. Maximum penalty for Reckless Driving is 93 days in the county jail or fines of up to \$500.00, plus costs. Points, suspensions, driver responsibility fees and embarrassment all remain the same.

Arrest of Foreign Nationals *by* *Jim Pahl, Magistrate, 55th District Court.*

When a foreign national is arrested in this county, he is entitled to contact his consular office and the law enforcement agency making the arrest needs to advise the foreign national of certain rights he has in making that contact. In some cases, the law enforcement agency is required to notify the foreign national's consular office. What role does the court play? For many courts, the chances of you seeing a foreign national is minimal, however, in college communities such as mine, you will see foreign nationals on a regular basis.

I believe the court needs to take a proactive role in ensuring that the consular office has been notified if the foreign national is from a mandatory notification country. If they are not, I still believe the foreign national needs to be advised that their consular office will be contacted if they so desire. I recommend the court make an enquiry of the defendant and of law enforcement during the arraignment, to ensure there has been proper notification or offer.

The following are recommended steps to follow when a foreign national is arrested or detained:

1. Determine the foreign national's country.
2. If the foreign national's country is not on the mandatory notification list, offer without delay to notify the foreign national's consular official of the arrest/detention. If the foreign national asks that consular notification be given, ensure law enforcement notifies the nearest consular official without delay.
3. If the foreign national's country is on the mandatory notification list, ensure law enforcement notifies the nearest consular official without delay. Inform the foreign national this notification is being made.
4. Maintain a written record of the notification.

Mandatory Notification Countries:

Algeria	Armenia
Antigua & Barbuda	Bahamas
Azerbaijan	Belarus
Barbados	Brunei
Belize	China (not Taiwan)
Bulgaria	Cyprus
Costa Rica	Dominica
Czech Republic	Gambia
Fiji	Ghana
Georgia	Guyana
Grenada	Hungary
Hong Kong	Kazakhstan
Jamaica	Malta
Malaysia	Moldova
Mauritius	Nigeria
Mongolia	Poland
Philippines	Russia
Romania	Saint Lucia
Saint Kitts & Nevis	Seychelles
Saint Vincent/Grenadines	Singapore
Sierra Leone	Tajikistan
Slovakia	Tonga
Tanzania	Tunisia
Trinidad and Tobago	Tuvalu
Turkmenistan	United Kingdom
Ukraine	
U.S.S.R. (Some passports still in use)	
Uzbekistan	Zambia
Zimbabwe	

Questions may be addressed to:

Office of Policy and Public Affairs
CA/P, Room 4800
Bureau of Consular Affairs
U.S. Department of State
Washington, DC 20520
telephone: (202) 647-4415
fax: (202) 736-7559

Urgent after-hours inquiries may be directed to the State Department Operations Center at (202) 647-1512.

A detailed publication is available in .pdf format at: <http://travel.state.gov/notify.html>

(Note: The day after writing this article, I arraigned a foreign national who had not been advised by law enforcement of his right to contact his consulate. I offered to make that call for him and notify his government of his arrest. He declined, but thanked me very much for the information and offer. Another international incident avoided!)

Speed Measurement Task

Force by Roberta Wray, Magistrate, 67-3 District Court, and MADCM Representative to the Task Force.

The Speed Measurement Task Force has a new Chairman. Former Chair, Vince Lauria, of MADCM, has retired. His position was taken up temporarily by Dr. David Fisher, who was vice-chair. Dr. Fisher had retired from Michigan State, and has resigned from the Speed Measurement Task Force. He is taking his efforts with regard to speed measurement technology to the next level. He will be involved with working at getting uniformity of standards and techniques at the national level.

His successor as Chair of the MSMTF is another Michigan State University Professor, Dr. Dennis Bryde of the School of Criminal Justice, who will serve with distinction and enthusiasm. Discussions as to the possible downsizing of the Task Force and/or its possible demise are, therefore, premature. The Task Force did discuss the possibility of eliminating one or more of the groups represented on the Task Force, but the consensus is that the representative of each entity considers the Task Force still has an important function to perform and each considers their membership an opportunity to contribute to the continuing concerns relating to Speed Measurement.

It was also brought to my attention that Radar Operator Training Courses no longer provide their trainees with a certificate of training as they once did. However, there may be a new form of certificate being developed, at least in some courses. I believe, therefore, that it is up to us as magistrates to determine whether the officer has had radar/laser/lidar training and where and when it was completed in our hearing process, just as we do the currency of training through testimony about the number of hours spent using the speed measurement devices in question.

Another issue that came up is the distance at which a laser reading was obtained. Officers are not trained that they have to put a distance on their tickets. While many do, and while it is useful in determining the specificity of the reading to the vehicle at greater than 500 feet, the distance at which the reading was obtained is not a necessary factor in determination of responsibility.

I submit this information as my report on the Task Force meeting I attended on October 8, 2004. Another meeting is tentatively scheduled for April. Meanwhile, the Task Force Standing Committees continue as follows: Technical committee chair: Sgt. Kevin Beasley, MSP; also webmaster of the MSMTF website; Training committee chair: George Zeeff, Grand Rapids Community College; Adjudicative Committee chair: Peter Strathakis, MJI. I have agreed to serve on the Adjudicative Committee.