

## CONCERNS WITH PRE- AND POST-PLEA DRUG TREATMENT COURT TRANSFER METHODS

The State Court Administrative Office issued an Administrative Memorandum on February 11, 2013, recommending that drug courts transfer supervision of drug court participants rather than transferring the case pre- or post-plea. If a court chooses to transfer a drug court case pre- or post-plea, the court should be aware of the following issues that may be encountered.

### Pre-Plea Transfers

Prior to a plea, the transferring court enters an order transferring the case to the drug treatment court and disposes of the case in its case management system as a transfer.

#### Concerns:

- There is no statutory authority for transferring the case to the drug court before a plea is taken, or addressing whether the drug treatment court should take the plea, enter the order deferring proceedings, or proceed to sentencing under MCL 600.1070.
- The transferring court will receive no payment for costs associated with preadmissions screening and evaluation assessment or other review performed to determine whether the individual is eligible for participation in a drug treatment court.
- If the transfer is between a circuit court and a district court, the receiving court may not have jurisdiction over the case type for purposes of trial and sentencing, should it be necessary because the individual is unsuccessful in the drug treatment court program. Additionally, the receiving court will not be able to enter the case into its case management system, causing difficulty with tracking the case, abstracting to the Secretary of State, and reporting criminal dispositions to the Michigan State Police.
- The transferring court counts a new filing and a transfer before the plea, but the originating court did not handle the plea. Therefore, the transferring court is receiving caseload and weighted caseload credit for very little work. The receiving court is also counting a new filing and a disposition. Consequently, the case is counted twice; once by each court.

### Post-Plea Transfers

The transferring court makes the findings required by MCL 600.1066, accepts the individual's plea pursuant to MCL 600.1070, and enters an appropriate order (order delaying sentence, order deferring judgment of guilt, or judgment of sentence and order of probation), including for the payment of fines, costs, assessments, and/or restitution, as warranted. The transferring court then transfers the case to the drug treatment court, specifying whether the case is to be transferred back after the individual completes the program (regardless of success), and closes the case in its case management system. The drug court opens a "post-judgment" transfer case in its case management system.

#### Concerns:

- It is not clear whether the transferring court has the authority to order the drug treatment court to transfer the case back upon completion of the program, or whether the statute allows the drug treatment court to do so.
- The receiving drug treatment court does not count a new filing or disposition when it receives the transferred case; therefore, it receives no caseload or weighted caseload credit for supervising the case.

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- If the transferring court orders the drug treatment court to transfer the case back upon discharge of the individual from the program, there is no clear statutory authority permitting the drug treatment court to use judicial authority to collect any outstanding fees.
- If the transferring court does not order the drug court to transfer the case back upon the individual's discharge from the program, then the transferring court will not be able to abstract to the Secretary of State or report criminal history to the Michigan State Police. If the drug treatment court abstracts to the Secretary of State or reports to criminal history to the Michigan State Police it creates a new record, making it appear that the individual had two cases, rather than one.