January 2006

Update: Domestic Violence Benchbook (3rd ed)

CHAPTER 1

Understanding Domestic Abuse

1.5 Abusive Tactics

Effective January 1, 2006, 2005 PA 184 amended MCL 780.811(1)(a). The amendment expanded the list of "serious misdemeanors" to include misdemeanor violations of MCL 750.145d, using the internet or a computer to make a prohibited communication, and violations of MCL 750.233, intentionally aiming a firearm without malice. MCL 780.811(1)(a)(*vii*) and (*viii*). On page 15, add these offenses to the cross-reference, indicated with *, addressing MCL 780.811(1)(a).

CHAPTER 4

Promoting Safety in Criminal Proceedings

4.6 Contents of Conditional Release Orders

A. Statutory and Court Rule Requirements

Effective January 1, 2006, MCR 6.106(D)(2) was amended. Insert the following new provision "(m)" in the quoted text near the top of page 131, and reletter the existing "(m)" and "(n)" accordingly.

> "(m) comply with any condition limiting or prohibiting contact with any other named person or persons. If an order under this paragraph limiting or prohibiting contact with any other named person or persons is in conflict with another court order, the most restrictive provision of each order shall take precedence over the other court order until the conflict is resolved."

CHAPTER 4

Promoting Safety in Criminal Proceedings

4.6 Contents of Conditional Release Orders

B. Promoting Pretrial Safety in Cases Involving Allegations of Domestic Violence

Effective January 1, 2006, MCR 6.106 was amended to add a new sub-subsection (D)(2)(m) addressing conflicting court orders. The amended court rule provides that if a pretrial release order under MCR 6.106(D)(2)(m) limiting or prohibiting contact with any other named person conflicts with another court order, "the most restrictive provision of each order shall take precedence over the other court order until the conflict is resolved." On page 133, conflicting court orders are addressed under the second bullet. Add consideration of MCR 6.106(D)(2)(m) to the existing text.

CHAPTER 4

Promoting Safety in Criminal Proceedings

4.9 Modification of Conditional Release Orders

A. Modification of Release Orders in Felony Cases

Effective January 1, 2006, MCR 6.004(C) was amended. Near the bottom of page 138, change the second sentence of the third bullet to read:

This rule requires pretrial release on personal recognizance in felony cases where the defendant has been incarcerated for a period of 180 days or more to answer for the same crime or for a crime based on the same conduct or arising from the same criminal episode, "unless the court finds by clear and convincing evidence that the defendant is likely either to fail to appear for future proceedings or to present a danger to any other person or the community."

B. Modification of Release Orders in Misdemeanor Cases

Effective January 1, 2006, MCR 6.004(C) was amended. Near the bottom of page 139, change the second sentence of the first bullet to read:

This rule requires pretrial release on personal recognizance in misdemeanor cases where the defendant has been incarcerated for a period of 28 days or more to answer for the same crime or a crime based on the same conduct or arising from the same criminal episode, "unless the court finds by clear and convincing evidence that the defendant is likely either to fail to appear for future proceedings or to present a danger to any other person or the community."

Effective January 1, 2006, 2005 PA 184 eliminated MCL 780.815(2). In the second bullet on page 139, delete the reference to MCL 780.815(2). 2005 PA 184 also added misdemeanor violations of MCL 750.145d, using the internet or computer to make a prohibited communication, and violations of MCL 750.233, intentionally aiming a firearm without malice, to the list of "serious misdemeanors" in MCL 780.811(1)(a). In the second bullet on page 139, add those offenses to the end of the second sentence.

CHAPTER 4

Promoting Safety in Criminal Proceedings

4.10 Enforcement Proceedings After Warrantless Arrest for an Alleged Violation of a Release Condition

C. Hearing Procedures

Effective January 1, 2006, MCR 6.106(I)(2)(a) was amended. In the middle of page 143, replace the quotation of MCR 6.106(I)(2)(a) with the following:

> "(a) The court must mail notice of any revocation order immediately to the defendant at the defendant's last known address and, if forfeiture of bail or bond has been ordered, to anyone who posted bail or bond."

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Promoting Safety in Criminal Proceedings

4.11 Enforcement Proceedings Where the Defendant Has Not Been Arrested for the Alleged Violation

Effective January 1, 2006, MCR 6.106(I)(2)(a) was amended. Near the bottom of page 145, replace the quotation of MCR 6.106(I)(2)(a) with the following:

> "(a) The court must mail notice of any revocation order immediately to the defendant at the defendant's last known address and, if forfeiture of bail or bond has been ordered, to anyone who posted bail or bond."

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Promoting Safety in Criminal Proceedings

4.12 Forfeiture of Bond Where Defendant Violates a Release Condition

Effective January 1, 2006, MCR 6.106(I)(2) was amended. Near the middle of page 147, replace the two bullets with the following:

- If the court revokes its release order and declares the surety bond or bail forfeited, it must mail notice of the revocation order immediately to the defendant at his or her last known address and to anyone who posted bail or bond. MCR 6.106(I)(2)(a).
- "If the defendant does not appear and surrender to the court within 28 days after the revocation date or does not within the period satisfy the court that there was compliance with the conditions of release or that compliance was impossible through no fault of the defendant, the court may continue the revocation order and enter judgment for the state or local unit of government against the defendant and anyone who posted bail or bond for an amount not to exceed the full amount of the bail, or if a surety bond was posted an amount not to exceed the full amount of the surety bond, and costs of the court proceedings. If the amount of a forfeited surety bond is less than the full amount of the bail, the defendant shall continue to be liable to the court for the difference, unless otherwise ordered by the court." MCR 6.106(I)(2)(b).

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Promoting Safety in Criminal Proceedings

4.13 Denying Bond

Effective January 1, 2006, MCR 6.106(G)(1) was amended. Near the bottom of page 148, replace the first sentence of the last full paragraph with the following text:

No hearing is required to deny bond under MCR 6.106(B) unless the defendant is held in custody and a custody hearing is requested by either the defendant or the prosecutor.

CHAPTER 5

Evidence in Criminal Domestic Violence Cases

5.2 Former Testimony or Statements of Unavailable Witness

B. Statements by Witnesses Made Unavailable by an Opponent

Insert the following text after the May 2005 update to page 165:

See also *People v Bauder,* ___ Mich App ___, ___ (2005), affirming that the use of a murder victim's non-testimonial statements did not violate defendant's Confrontation Clause rights. Concurring with *United States v Garcia-Meza,* 403 F3d 364 (CA 6, 2005), the *Bauder* Court determined that defendant's admission that he killed the victim resulted in the forfeiture of his constitutional right to confront the victim.

CHAPTER 5

Evidence in Criminal Domestic Violence Cases

5.12 Evidence of Other Crimes, Wrongs, or Acts Under MRE 404(b)

A. Admissibility of Evidence Under MRE 404(b)

Effective January 1, 2006, 2005 PA 135 enacted MCL 768.27a. At the bottom of page 228, immediately before subsection (B), insert the following text:

MCL 768.27a governs the admissibility of evidence of sexual offenses against minors. MCL 768.27a(1) states in part:

> "(1) Notwithstanding [MCL 768.27], in a criminal case in which the defendant is accused of committing a listed offense against a minor, evidence that the defendant committed another listed offense against a minor is admissible and may be considered for its bearing on any matter to which it is relevant."

"Listed offenses" are contained in MCL 28.722. MCL 768.27a(2)(a).

B. Procedure for Determining the Admissibility of Evidence of Other Crimes, Wrongs, or Acts; Limiting Instructions

Newly enacted MCL 768.27a also contains a notice requirement. On page 229, insert the following text after the quotation of MRE 404(b)(2) near the top of the page:

MCL 768.27a, which governs the admissibility of evidence of sexual offenses against minors, also contains a notice requirement. MCL 768.27a(1) requires the prosecuting attorney to disclose evidence admissible under that statute to the defendant "at least 15 days before the scheduled date of trial or at a later time as allowed by the court for good cause shown, including the statements of witnesses or a summary of the substance of any testimony that is expected to be offered."

CHAPTER 10

Case Management for Safety in Domestic Relations Cases

10.4 Confidentiality of Records Identifying the Whereabouts of Abused Individuals

C. Confidentiality of Information Disclosed in Responsive Pleadings, Motions, and Court Judgments or Orders

Effective January 1, 2006, MCR 3.211(D) was amended. At the bottom of page 440, replace the second bullet with the following text:

MCR 3.211(D)(1) requires all orders for child support or spousal support be prepared and submitted on the standard Uniform Support Order form. MCR 3.211(F) requires the use of a "Judgment Information Form," which includes sensitive personal information regarding parties and their families. The Staff Comment to the amended rule indicates that MCR 3.211(F) "allows personal information concerning a party to be provided to the friend of the court in a document separate from the court order, which is a public document."

CHAPTER 13

Custody Proceedings Involving Multiple Jurisdictions

13.5 Jurisdiction Under the UCCJEA

Near the middle of page 534, immediately before subsection (A), insert the following text:

Filing a child support complaint under the Uniform Interstate Family Support Act (UIFSA), MCL 552.1101 et seq., does not constitute initiation of a "child custody proceeding" under the UCCJEA. *Fisher v Belcher,* ___ Mich App ___, ___ (2005). In *Fisher*, the Court noted that the definition of "child custody proceeding" in MCL 722.1101(d) does not include support actions, and that the definition of "child custody determination" in MCL 722.1101(c) specifically precludes "order[s] relating to child support . . . ." Thus, because the support action filed in Michigan was not a "child custody proceeding," and because a paternity action and request for custody was filed in Missouri, the Michigan court properly dismissed the petition for jurisdiction under the UCCJEA pursuant to MCL 722.1206(2). *Fisher, supra,* at ___.