



**Michigan Supreme Court
State Court Administrative Office
Trial Court Services Division**
Michigan Hall of Justice
P.O. Box 30048
Lansing, MI 48909

February 27, 2015

TO: Michigan Court Forms Committee, Criminal Work Group
FROM: Colin F. Boes, Forms and Manuals Analyst
RE: Agenda and Materials for **March 5, 2015 Email Meeting**
PLACE: **Via Email**

Below is the agenda for the March 5, 2015 meeting of the Michigan Court Forms Committee, Criminal Work Group. Due to a lack of agenda items, this meeting will be conducted by email. Materials are included with the agenda for your consideration of the below items. Please respond by **Thursday March 12, 2015** with your comments, if any, regarding each item and whether a change should be made.

1. **Minor Correction(s)**

- A. **MC 229, Motion, Affidavit, and Bench Warrant**: It does not appear that the bench warrant is required to be under seal. See Case File Management Standards, Component 10. Therefore, the "(seal)" on this form will be removed.
- B. **CC 291, Advice of Rights (Circuit Court Plea)**: This form will be modified so that its style is consistent with a similar form, DC 213. Specifically, a line for defendant's address and telephone number will be added under the line where defendant signs. Further, a use note similar to that on DC 213 will be added to indicate that if defendant is provided a foreign language version of this form, both the English version and the foreign-language version must be filed in the case.

2. **Deferrals in Cases Involving Victims of Human Trafficking**

MCL 750.451c allows an individual who is a victim of human trafficking to defer proceedings after a plea of guilty or being found guilty of a first offense of MCL 750.448, MCL 750.449, MCL 750.450 or MCL 750.462. Should MC 245, Motion and Order for Discharge from Probation and DC 243, Order of Probation (Misdemeanor) be revised to add a reference to a deferred judgment of guilty under MCL 750.451c?

3. **Forfeitures – Changes Made by 2014 PA 333**

A number of changes were made to forfeiture statutes, which require modifications to some forms:

A. **DC 43, Notice of Seizure and Intent to Forfeit and Dispose of Property**

The note on the second page indicating when the notice must be served should be changed from 7 days to 28 days, consistent with the change made to MCL 600.4704(1).

B. **DC 44, Order for Return of Property or Discharge of Lien in Forfeiture Proceedings**

Item 1 needs to be modified to reflect that the time frame is now 28 days for both references, not 7 days, consistent with the changes made to MCL 600.4706(1)(a).

C. **DC 46, Order Following Forfeiture Proceedings**

MCL 600.4707 was modified to restructure what the plaintiff must prove. What is currently a. and b. on the form must now be combined as the amended statute combines the references to real and personal property in MCL 600.4707(6)(a) to require a showing “that the property is the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime.”

Additionally, another option must be added under (2), to cover circumstances under MCL 600.4707(6)(c), which provides: “If a person, other than the person convicted of the crime, claims an ownership or security interest in the property under section 4703(7), that the transfer occurred subsequent to the criminal conduct that gave rise to forfeiture.” MCL 600.4703(7) provides that title to property subject to forfeiture vests with plaintiff upon commission of the conduct giving rise to forfeiture. Subsequent property transfers are void unless the transferee can establish that: (a) the transferee has an interest of record in the property; (b) the transferee purchased the property in good faith and for fair value; and (c) the property interest was acquired without notice of the forfeiture proceeding or the facts that gave rise to the proceeding.

D. **DC 47, Order of Distribution in Forfeiture Proceedings**

A new section (3) was added to MCL 600.4708 that provides:

If any property included in the order of forfeiture under this chapter cannot be located or has been sold to a bona fide purchaser for value, placed beyond the jurisdiction of the court, substantially diminished in value by the conduct of the defendant, or commingled with other property that cannot be divided without difficulty or undue injury to innocent persons, the court may order forfeiture of any other reachable property of the owner up to the value of the property that is unreachable as described in this subsection. This subsection only applies against an owner that is also the person convicted of the crime underlying the forfeiture action.

Should the form be modified to add a provision specific to MCL 600.4708(3)?

E. Other Forms Relating to Forfeiture Proceedings that May Be Affected by 2014 PA 333

Also consider whether any of the following forms need to be modified in light of the changes made:

DC 40, Notice of Seizure of Personal Property Subject to Forfeiture without Process and Order

DC 41, Motion and Order to Seize Personal Property Subject to Forfeiture

DC 42, Application and Ex Parte Order to File Lien on Real Property Subject to Forfeiture

DC 45, Notice of Intent to Forfeit and Dispose of Property

Do any of these forms need to be modified?

4. **MC 06, Notice to Appear**

A district court employee has suggested that a checkbox option for the probable cause conference should be added to this form. Recent legislation added the probable cause conference as an event that must occur or be waived before the preliminary examination takes place. See MCL 766.4 and MCR 6.108. Should a new option for the probable cause conference be added to the form?

Public Comment: 54-A District Court strongly supports this proposal and requests it be placed above the box for preliminary exams.

5. **MC 240, Order for Pretrial Release/Custody**
MC 241, Bond

It has been suggested that additional conditions should be added to the list on these forms. 2014 PA 316 amended MCL 765.6b to add certain provisions, found in subsections (7)-(10), which allow for conditions to be placed on an individual relating to

operation of a motor vehicle in certain circumstances. Should the forms be modified to list this as a condition that may be placed on the defendant?

6. **MC 393, Certification to Department of State (Interlock Pilot Project)**

- A. It has been suggested that this form be modified to more closely track the language of MCL 600.1084. Specifically, consistent with MCL 600.1084(5), it is suggested the phrase “or both” should be added after the word “operated” in item 1.

It has also been suggested that item 3 be reworked. One reason for this is that the language on the form currently appears to necessitate removal of the individual from the program if one of the required notifications under item 3 occurs. However, while MCL 600.1084(6) requires the reporting of these events and action on the individual’s license under MCL 600.1084(7), it does not appear to necessitate that individual being removed from the program. Instead, it has been suggested that item 3 be set up to more closely track MCL 600.1084(6) by providing:

3. Under MCL 600.1084(6), the Secretary of State is informed that:
- a. The court ordered that the defendant be removed from the DWI/sobriety court program before he or she successfully completed it.
 - b. The court became aware that the defendant operated a motor vehicle that was not equipped with an interlock device.
 - c. The court became aware that the defendant tampered with, circumvented, or removed a court-ordered interlock device without prior court approval.
 - d. The defendant was charged with a new violation of section 625 of the Michigan vehicle code, 1949 PA 300, MCL 257.625.

Should the form be modified as suggested above?

- B. It has been suggested by the Secretary of State that an “Other” item be added to the form. Secretary of State notes that there are circumstances that would explain why the interlock was removed that are not accounted for specifically in the statute or on the form, such as the vehicle with the interlock being repossessed. However, an “Other” item may also suggest that the options appropriate for this order are more open ended than they really are and possibly cause misuse of the form. Should the form be modified to add an “Other” item as part of the order?
- C. Beginning January 1, 2015, pursuant to MCL 600.1084(1), the DWI/Sobriety Court interlock project is no longer a pilot project and is now a program. The references on the form to it being a pilot project will be removed.