



## Michigan Supreme Court

State Court Administrative Office

### Trial Court Services Division

Michigan Hall of Justice

P.O. Box 30048

Lansing, Michigan 48909

Phone (517) 373-4835

Jennifer Warner  
Director

### MEMORANDUM

DATE: September 15, 2016

TO: Circuit Court Administrators  
Family Division Administrators  
Juvenile Registers

FROM: Noah A. Bradow, Management Analyst

RE: Public Act 185 of 2016: Codification of Consent Calendar Procedures

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On June 20, 2016, Senate Bill 251 was signed into law by the Governor ([2016 PA 185](#)). Public Act 185 codifies the consent calendar process for juvenile delinquency proceedings,<sup>1</sup> authority for which previously existed only in the Michigan court rules.<sup>2</sup> As a result of the changes, SCAO will seek amendments to MCR 3.932(C). The following is a summary of the consent calendar process as codified by PA 185. The changes are effective September 19, 2016.

#### I. Transfer to the Consent Calendar

Under PA 185, the court now has broader discretion regarding the types of cases that may be transferred to consent calendar. Previously, courts were restricted to placing cases on consent calendar that did not include an assaultive offense under the Juvenile Diversion Act.<sup>3</sup> PA 185 does not restrict the types of offenses that may be transferred to consent calendar. However, the statute retains the requirement that a case involving an alleged offense as defined in [MCL 780.781\(g\)](#) may only be transferred to the consent calendar upon compliance with the procedures set forth in section 36b of the Crime Victim's Rights Act.<sup>4</sup>

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<sup>1</sup> Public Act 185 creates section 2f within chapter XII of the probate code. [MCL 712A.2f](#).

<sup>2</sup> MCR 3.932.

<sup>3</sup> MCR 3.932(C).

<sup>4</sup> [MCL 780.786b](#) requires the court to provide written notice to the prosecuting attorney of the court's intent to remove the case from the adjudicative process and allow the prosecutor an opportunity to address the court on the matter. Before any formal or informal action is taken on the case, the prosecutor must provide notice to the victim of the time and place for the hearing regarding the placement of the case on the consent calendar. The victim has a right to attend and address the court at the hearing.

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If a court determines that formal jurisdiction should not be acquired<sup>5</sup> over a juvenile, and the juvenile, parent, guardian, or legal custodian, and prosecutor all agree, the court may proceed with placing the case on consent calendar.<sup>6</sup> The case may be transferred to the consent calendar any time before the dispositional hearing, including before the petition is authorized.<sup>7</sup> If the petition is authorized, the court should use [SCAO form JC 89 - Order Transferring Petition from Formal Calendar to Consent Calendar \(Delinquency\)](#) to transfer the case to the consent calendar. No order is required if the petition was not authorized before the determination to place the case on consent calendar.

## II. Consent Calendar Procedures

### a. Case Conference

After the court has decided to transfer a case to the consent calendar, the court must schedule and conduct a consent calendar conference to discuss the allegations.<sup>8</sup> The conference must include the juvenile; the juvenile's attorney, if any; and the juvenile's parent, guardian, or legal custodian. The prosecutor and victim may be present, but are not required to attend the conference.<sup>9</sup>

### b. Case Plan

If it appears to the court that the juvenile engaged in conduct that would otherwise subject them to the jurisdiction of the court, the court must issue a written consent calendar case plan.<sup>10</sup> This is a change from the discretionary language in the current MCR 3.932(C)(4). The written case plan is not an order of the court, but simply part of the consent calendar case records. Additionally, the court may not enter an order of disposition while a case is on the consent calendar.<sup>11</sup>

When preparing the case plan, the court should consider the following:

- The case plan shall not include a provision removing a juvenile from the custody of their parent, guardian, or legal custodian.<sup>12</sup>
- The case plan shall include a provision that a juvenile pay restitution, if applicable.<sup>13</sup>
- The court may include a provision requiring the juvenile, parent, guardian, or legal custodian to reimburse the court for the cost of consent calendar services for the juvenile.<sup>14</sup> Consent calendar services are not defined under the act, but should be construed to include services similar to those that would be ordered under MCL 712A.18(3).

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<sup>5</sup> MCL 712A.2f(1).

<sup>6</sup> MCL 712A.2f(2).

<sup>7</sup> MCL 712A.2f(3); MCL 712A.11(1).

<sup>8</sup> MCL 712A.2f(6).

<sup>9</sup> *Id.*

<sup>10</sup> MCL 712A.2f(7).

<sup>11</sup> MCL 712A.2f(8).

<sup>12</sup> MCL 712A.2f(7)(b); MCR 3.932(C)(5).

<sup>13</sup> MCL 712A.2f(7)(a).

<sup>14</sup> *Id.*

- The court may include a provision requiring the juvenile, or the person responsible for the juvenile's support, to pay attorney costs for an attorney that was appointed before or during the consent calendar proceedings.<sup>15</sup>

**c. Transfer to Formal Calendar**

The court may transfer a case to the formal calendar at any time if it determines that placement on the consent calendar is no longer in the best interest of either the juvenile or the public. A party may use the [SCAO form JC 15 – Motion and Authorization/Denial](#) – when requesting transfer of the case to the formal calendar.<sup>16</sup> If the petition was not authorized, the court may, without hearing, transfer the case to the formal calendar for determination whether the original petition should be authorized. If a petition was authorized before placement on the consent calendar, PA 185 now requires the court to hold a hearing before transferring the case back to the formal calendar.<sup>17</sup> The statute does not impose any procedural requirements for this hearing; however, it is recommended that the court do the following:

- i. give notice of the hearing to the juvenile; the juvenile's parents, guardian, or legal custodian; the juvenile's attorney, if any, and the prosecutor;
- ii. conduct the hearing on the record;
- iii. inform the juvenile that any statements made during the consent calendar proceedings cannot be used against them at trial on the same charge;<sup>18</sup>
- iv. allow the juvenile the opportunity to address the court and state why the case should not be transferred to the formal calendar;
- v. state the reasons for transferring the case to the formal calendar;
- vi. if transferring to the formal calendar, provide the juvenile with the necessary documents to request appointment of counsel in the formal calendar proceeding.

**III. Record Access**

Consent calendar case records shall continue to be maintained in a nonpublic manner. However, PA 185 permits specified individuals and organizations access to the nonpublic record, including other courts.<sup>19</sup> PA 185 also specifically forbids federal agencies and military recruiters from having access to these records.<sup>20</sup>

**IV. Record Retention of Consent Calendar Cases**

PA 185 directs the courts to destroy records of consent calendar cases “in accordance with the records management policies and procedures of the state court administrative

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<sup>15</sup> MCL 712A.17c(8).

<sup>16</sup> Item 3 on the form includes an option to request transfer of the case to the formal calendar.

<sup>17</sup> MCL 712A.2f(10)(b).

<sup>18</sup> MCL 712A.2f(11); MCR 3.932(C)(8).

<sup>19</sup> MCL 712A.2f(5)(a) stating “[a]ccess to consent calendar case records shall be provided to the juvenile; the juvenile's parents, guardian, or legal custodian; the guardian ad litem; counsel for the juvenile; the department of health and human services if related to an investigation of neglect and abuse; law enforcement personnel; prosecutor; and other courts.”

<sup>20</sup> MCL 712A.2f(5).

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office....”<sup>21</sup> Under the [SCAO General Records Retention and Disposal Schedule #16](#), consent calendar case records must be retained until “the date the juvenile becomes age 17, or until dismissal from court supervision, whichever is later.”<sup>22</sup> As directed PA 185, consent calendar records should only be destroyed in accordance with SCAO General Records Retention and Disposal Schedule #16.

#### **V. Reporting to Michigan State Police (MSP)**

PA 185 now requires that upon the judicial determination that a juvenile has completed the terms of the consent calendar case plan, the court shall report the successful completion to the Michigan State Police. MSP will maintain a nonpublic record of the case and subject to inspection those individuals listed in MCL 712A.2f(12).<sup>23</sup> Generally, MSP only maintains a juvenile criminal history record based upon fingerprints. However, PA 185 does not make an exception regarding the reporting of consent calendar cases for which a juvenile is not fingerprinted according to law.

Due to current technical limitations, the reporting process will be different depending on whether the offense alleged in the petition referred to the consent calendar is an offense for which a juvenile must be fingerprinted.<sup>24</sup> Additionally, if a petition alleges multiple offenses and at least one of the offenses requires a juvenile to be fingerprinted, the court should follow the process for reporting a consent calendar case for an offense for which a juvenile must be printed.

##### **a. Reporting a Consent Calendar Case for an Offense Requiring a Juvenile to be Fingerprinted**

Courts should report the consent calendar disposition to the Michigan State Police as normal. For courts with a JIS-based case management system, this occurs when the case is disposed of as placed on the consent calendar. Although PA 185 directs that reporting to MSP should occur upon **completion** of consent calendar, courts should not attempt to make another report to MSP. Unless subsequently notified otherwise, MSP will assume that the juvenile has successfully completed the terms of their consent calendar case plan.

##### **i. Fingerprinting of Juvenile Before Placement on Consent Calendar**

If the petition contains an offense for which a juvenile must be fingerprinted, the juvenile must be fingerprinted **before** placing the case on the consent calendar. Failure to ensure the juvenile is fingerprinted before placement on consent calendar will result in an error when reporting the consent calendar disposition to MSP.

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<sup>21</sup> MCL 712A.2f(9).

<sup>22</sup> See General Records Retention and Disposal Schedule #16, Record Series 16.057B, available at [http://courts.mi.gov/Administration/SCAO/Resources/Documents/standards/cf\\_schd.pdf](http://courts.mi.gov/Administration/SCAO/Resources/Documents/standards/cf_schd.pdf)

<sup>23</sup> MCL 712A.2f(12) stating “[t]his record shall be open to the courts of this state, another state, or the United States, the department of corrections, law enforcement personnel, and prosecutors only for use in the performance of their duties or to determine whether an employee of the court, department, law enforcement agency, or prosecutor's office has violated his or her conditions of employment or whether an applicant meets criteria for employment with the court, department, law enforcement agency, or prosecutor's office.”

<sup>24</sup> A juvenile must be fingerprinted by law as directed by MCL 28.243 and MCL 28.727.

**ii. Subsequent Notice to MSP Due to Transfer to Formal Calendar.**

If a juvenile does not successfully complete the terms of the consent calendar and the petition is moved to the formal calendar, the court will need to notify MSP of the change in disposition for the petition. This is accomplished by the court modifying the original disposition of the petition from Consent Calendar Probation (JCC Michigan State Police Court Disposition Code) to the new MSP Court Disposition Code (usually ADJ or DIS)

Please contact your system provider if you have any questions regarding submitted or modifying criminal history records.

**b. Reporting a Consent Calendar Case for an Offense Not Requiring the Juvenile to be Fingerprinted**

Due to technical limitations, courts are currently unable to electronically report completion of consent calendar cases to MSP for cases exclusively involving an offense for which a juvenile is not required to be printed. Instead, courts must fax or mail written notice of completion of the consent calendar case plan to MSP. There is currently no mandated-use form for reporting this information to MSP. However, we suggest the court report this information in a format similar to the sample report attached to this memo.

Use the following fax number or mailing address when making a written report to MSP for these cases:

Michigan State Police  
Criminal History Section  
Attn: Juvenile Consent Calendar Reporting  
Fax #: 517-241-0866

If you have any procedural questions, please contact me at [TrialCourtServices@courts.mi.gov](mailto:TrialCourtServices@courts.mi.gov) or 517-373-2451, or Robin Eagleson at [TrialCourtServices@courts.mi.gov](mailto:TrialCourtServices@courts.mi.gov) or 517-373-5542. If you have questions related to your case management system, please contact your system provider. The PCS helpdesk can be reached at [pcshelpdesk@courts.mi.gov](mailto:pcshelpdesk@courts.mi.gov) or 888-339-1547, option 2. The TCS helpdesk may be reached at [tcshelpdesk@courts.mi.gov](mailto:tcshelpdesk@courts.mi.gov) or 888-339-1547, option 4.

# [SAMPLE REPORT]

## Report of Successful Completion of Juvenile Consent Calendar For Non-Fingerprintable Offenses

**Send to:**

Michigan State Police  
Criminal History Section  
Attn: Juvenile Consent Calendar Reporting  
Fax #: 517-241-0866

<u>Court and Case Information</u>	<u>Juvenile Information</u>
<b>Court:</b> [INSERT COURT NAME]	<b>First Name:</b> [INSERT]
<b>Case No.</b> [INSERT CASE #]	<b>Middle Name:</b> [INSERT]
<b>Petition No.</b> [INSERT PETITION #]	<b>Last Name:</b> [INSERT]
<b>Jurist Name:</b> [INSERT ASSIGNED JURIST ]	<b>DOB:</b> [INSERT]
<b>Jurist P#:</b> [INSERT ASSIGNED JURIST ]	<b>Race:</b> [INSERT]
<b>Filing Date:</b> [INSERT]	<b>Sex:</b> [INSERT]
<b>Authorization Date:</b> [INSERT, if applicable]	<b>Height:</b> [INSERT]
<b>Adjudication Date:</b> [INSERT, if applicable]	<b>Weight:</b> [INSERT]
<b>Consent Calendar Referral Date:</b> [INSERT]	<b>Hair Color:</b> [INSERT]
<b>Consent Calendar Completion Date:</b> [INSERT]	<b>Eye Color:</b> [INSERT]
<b><u>Offense #1:</u></b>	<b>Address 1:</b> [INSERT]
<b>PAAC Code:</b> [INSERT]	<b>Address 2:</b> [INSERT]
<b><u>Offense #2:</u></b>	<b>City:</b> [INSERT]
<b>PAAC Code:</b> [INSERT]	<b>State:</b> [INSERT]
<b><u>Offense #3:</u></b>	<b>Zip:</b> [INSERT]
<b>PAAC Code:</b> [INSERT]	<b><u>Juvenile's Mother Information:</u></b>
	<b>First Name:</b> [INSERT]
	<b>Last Name:</b> [INSERT]
	<b>Address 1:</b> [INSERT]
	<b>Address 2:</b> [INSERT]
	<b>City:</b> [INSERT]
	<b>State:</b> [INSERT]
	<b>Zip:</b> [INSERT]
	<b><u>Juvenile's Father Information:</u></b>
	<b>First Name:</b> [INSERT]
	<b>Last Name:</b> [INSERT]
	<b>Address 1:</b> [INSERT]
	<b>Address 2:</b> [INSERT]
	<b>City:</b> [INSERT]
	<b>State:</b> [INSERT]
	<b>Zip:</b> [INSERT]

**Record Submission Information:**

**Date of Submission:** [INSERT]

**Printed Name:**

\_\_\_\_\_

**Signature:**

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