

Frequently Asked Questions: Part 2

FELONY PLEAS TAKEN BY DISTRICT COURT

Q: Who is responsible for preparing the DNA orders?

A: If the sentencing date is known at the time the felony plea is accepted, the district court should prepare the Order for DNA Sample (MC 283). However, if the sentencing date is unknown at the time the felony plea is accepted, the circuit court should prepare the Order for DNA Sample as soon as it receives the file from district court and a sentencing date has been scheduled.

Q: Who is responsible for abstracting the felony conviction to the Michigan State Police (MSP) and Secretary of State (SOS)?

A: Because the district courts will enter an event code (as opposed to a disposition code) in their case management system when the felony plea is taken, the circuit court should continue to abstract the convictions to MSP and SOS at the time the circuit court enters the disposition. Most circuit court case management systems will automatically transmit disposition (i.e. conviction) information to MSP and SOS when the disposition codes are entered. It is important for district courts to transfer the file to circuit court as quickly as possible to minimize any delay between the date of taking the felony plea and the date of abstracting the conviction to MSP and SOS.

Q: Who is responsible for preparing the Notice to Appear (NTA) for sentencing?

A: If the sentencing date is known when the felony plea is accepted, the district court can provide the defendant with the date. However, absent an agreement regarding this procedure between the district court and circuit court, any Notice to Appear (NTA) should be generated by the circuit court. If the district court has agreed to generate the NTA for the circuit court, the district court may manually complete the Notice to Appear form (MC06) on the court's website at www.courts.mi.gov or create a Word document to serve this function. [If the district court uses JIS, the district court case management system can generate the NTA as long as the circuit court address is manually entered into the Alternate Court Address field to properly populate the form.]

Q: Can a district court judge take a felony plea and then delay sentence pursuant to MCL 771.1?

A: The district court should not accept any felony plea that is contingent upon a delayed sentence, because MCL 766.4(3) only gives the district court judge authority to accept a felony plea. There is no authority for the district court to delay the sentence unless the district judge is assigned as a circuit judge or there is an agreement between the circuit and district court judges about how to conduct this practice, including any delay of sentence during a defendant's participation in a problem solving court. Those cases should be bound over to circuit court and the assigned circuit judge should consider whether or not to delay sentence.

Q: Does the probable cause conference statute apply to municipal courts?

A: Yes, a municipal court is governed by the statutes and supreme court rules applicable to the district court. MCL 774.49.

Q: Can the defendant waive the right to have the information provided before or at the time of the guilty plea?

A: No, the prosecutor must give a copy of the information to the defendant before the defendant is asked to plead. MCR 6.113(B). The information can be completed as part of the felony set (MC 200) and amended as needed at the probable cause conference. Alternatively, the prosecutor could prepare an information in advance, based on the offer made to the defendant. MCR 6.112(H) allows for amendment of the information as long as it would not unfairly surprise or prejudice the defendant.

Q: Do courts still need to obtain a waiver from the defendant to be sentenced by a judge other than the one who took the plea?

A: No. Although *People v Pierce*, 158 Mich App 113, 115-116 (1987) provides that a defendant is entitled to be sentenced before the judge who accepts his plea, provided that judge is reasonably available, the recently enacted statute clearly states that “[s]entencing for a felony shall be conducted by a circuit judge, who shall be assigned and whose name shall be available to the litigants, pursuant to court rule before the plea is taken.”

Q: When does the prosecutor need to file the habitual offender notice if the felony plea is accepted in the district court?

A: The prosecutor must file the habitual offender notice with the information before the district court accepts the felony plea. Because the habitual offender enhanced maximum becomes the maximum possible prison sentence for the principal offense, the defendant must be provided notice of this enhancement before pleading guilty. The proper remedy for a plea that is defective under MCR 6.302(B)(2) is to allow the defendant the opportunity to withdraw his or her plea.

Q: Will SCAO be updating any forms with respect to the PCC legislation?

A: SCAO is considering updating the following forms:

- Bind Over/Transfer After Preliminary Examination form (MC 200) to include a signature line for the prosecuting attorney regarding the Examination Waiver.
- Notice to Appear (MC 06) to add probable cause conference to the list of events for which defendant must appear.

SCAO does not intend to create a new form regarding waiver of preliminary exam within 21 days. There is currently no approved SCAO form for such waiver. However, SCAO is aware that several courts have created their own 14-Day Waiver form for preliminary examinations.