

Records Management

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Appendix

Records Management

8-01 MAINTAINING RECORDS

Every probation department should have a program for managing the creation, maintenance, and disposition of all relevant court records. Any records management program instituted should consider the handling of a case file from initiation to eventual destruction.

For details on records management, see Section 8 of the *Michigan Court Administration Reference Guide* at http://courts.michigan.gov/scao/resources/publications/manuals/carg/rg_sec8.pdf. See also the *Michigan Trial Court Case File Management Standards*, which can be accessed at http://courts.michigan.gov/scao/resources/standards/cf_stds.pdf.

A. Authority

MCR 8.119 governs records and entries kept by the district court clerk, as well as by a district court probation department.

B. Responsibility

The district court probation department shall keep in a probation case file, in such a form as may be prescribed by the district court, a copy of a probation order, as well as any other necessary forms or documents that may be relevant to the probation order.

C. Types of Records and Contents of Files

Probation case files may include the following items: probation order, community service referral forms, monthly report forms, relevant reports from substance abuse agencies, psychological or psychiatric reports, sex offender registration forms, and notes relevant to the probationer's standing and progress, among others.

8-02 RIGHT TO ACCESS RECORDS

A. Authority and Procedure for Accessing Information

Generally, unless access to a file is restricted by statute, court rule, or an order sealing records according to MCR 8.119(F), any person may inspect pleadings and other papers in the clerk's office and may obtain copies as provided in MCR 8.119(E)(2) and (E)(3). Every court shall adopt an administrative order to make reasonable regulations necessary to protect its public records and prevent excessive and unreasonable interference with the discharge of its functions. (MCR 8.119[E][4])

Access to an entire file may be restricted by court rule, statute, or a judicial order under certain circumstances. Case folders and related records (register of actions, indexes, court reporter notes, audio/video recordings, calendars, etc.) of certain types should be clearly marked as confidential. For a list of restricted-access records, see “Nonpublic and Limited-Access Court Records” at http://courts.michigan.gov/scao/resources/standards/cf_chart.pdf.

The area containing restricted-access files that are frequently accessed should be away from the area accessible to the general public and unauthorized personnel and should be supervised. Each folder should be clearly identified to warn court personnel that access to the folder is restricted. The procedures and policies for restricted-access files should be explicitly stated in the court rules or clerk of the court's manual and periodically reviewed with all staff who come into contact with such files. The clerk of the court must also take precautions to maintain the confidentiality of pieces of information in restricted-access case files and other court records. This information includes confidential information regulated by Michigan or federal statute, federal regulation, or Michigan court rule.

When access to any court record or probation case file is restricted by statute, court rule, or order, the trial court should clearly mark the record "NONPUBLIC RECORD."

For more information on accessing records, see Section 1-03 of this manual. See also Section 8-03 of the *Michigan Court Administration Reference Guide*, which can be accessed on-line at http://courts.michigan.gov/scao/resources/publications/manuals/carg/rg_sec8.pdf, and see the *Michigan Trial Court Case File Management Standards*, which can be accessed on-line at http://courts.michigan.gov/scao/resources/standards/cf_stds.pdf

B. Access to Nonpublic Records and Privileged Information

When a court has ordered, or has pending before it a request to order, a limitation on the access of the public to court proceedings or records of those proceedings that are otherwise public, any person may file a motion to set aside the order or an objection to entry of the proposed order. If the court denies a motion to set aside the order or enters the order after objection is filed, the moving or objecting party may file an application for leave to appeal in the same manner as a party to the action. (MCR 8.116[D])

When public inquiry is made about a record the access to which is restricted by court rule or court order, court personnel should respond that “no public record exists.”

C. Disclosure of Probation Records, Reports, and Case Histories

MCL 791.229 clearly makes all circuit court probation records and reports privileged and confidential. The records are not open to public inspection. Access is authorized only for judges, probation officers, the attorney general, auditor general, and law enforcement agencies. The overriding purpose is to protect the confidential relationship between the probation officer and the defendant. There is no similar protection or requirement for district court probation in statute.

In *Howe v Detroit Free Press*, 440 Mich 203; 487 NW2d 374 (1992), the Michigan Supreme Court considered whether a district court probation record was privileged. The court found that MCL 791.229 applied, and held that the record was privileged (although the privilege was waived in the case before the court). This case was decided after amendments to MCL 791.229 and involved a district court probation record created after the amendments. With this background, the Supreme Court ruled that MCL 791.229 created a privilege and the court implied that the statute applied to district court probation records.

The privilege protects the probationer, to the exclusion of others. A waiver signed by the defendant would allow a probation record to be released. Prior to releasing a probation record, the probation officer should receive a copy of the signed waiver.

A waiver of privilege by a probationer applies only to information or documents directly relating to the probationer. The probation officer must review the waiver in light of the request and provide only what is requested. Information within the probation file to which the probationer would not have a right to access, such as victim address and phone number, should not be released, even if the request and the waiver cover the entire probation file. If there is any question as to the appropriateness of release, the probation officer should seek guidance from the chief judge.

The privileged status of probation records may be compromised if such records are contained within the case file under the custody of the clerk of the court. It is recommended that with the exception of the probation order, any amended order, and the order of discharge, all probation records be kept separately from the case file maintained by the clerk. Requests other than a subpoena for access to probation records that may be in the custody of the court clerk must follow the procedures outlined in MCR 8.119(F).

MCL 28.214 creates misdemeanor and felony penalties for misuse of LEIN by way of improper access, use, or disclosure of nonpublic information. A person who intentionally discloses information governed by the Criminal Justice Information Systems (CJIS) Act may be charged criminally. (MCL 28.214)

D. Freedom of Information Act

Probation records or court records are often requested by an individual citing the Freedom of Information Act. (MCL 15.231 *et seq.*) The judiciary is specifically excluded from the definition of public bodies subject to the act.

E. Probation Officer Testifying in Court

If a probation officer receives a subpoena for a probation record, it is appropriate for the officer to attend the court hearing with the record requested and to advise the presiding official that the record is protected pursuant to MCL 791.229 and *Howe*. A waiver signed by the probationer would allow a probation record to be released, but only as to documents directly relating to the probationer. An order of the court would allow those parts of the probation record to be released that are included in the court's order. For further information, see Section 1-03.

8-03 RETAINING AND DESTROYING RECORDS

A. Maintenance Standards and Regulations

Records may not be disposed of, mutilated, or destroyed, except as allowed by statute or court rule. Minimum record retention schedules for use by the trial courts have been approved by the State Administrative Board. (MCL 399.5, MCL 600.2137, MCL 691.1101, MCL 600.8344, MCL 720.551, MCR 3.925)

B. Records Retention and Destruction Schedule

<u>Records Title and Description</u>	<u>Minimum Retention Period</u>
16.083 - Probation files and presentence reports*	3 years after discharge from probation
16.001 - Accounting records including books, ledgers, journals, etc.	6 years
16.001 - Bank statements, reconciliations, deposit slips, etc.	6 years
16.002 - Check books and canceled checks	6 years
16.001 - Requisitions - all categories	6 years
16.001 - Vouchers - all categories	6 years
16.004 - Personnel files	6 years after employment discontinued
16.005 - Personnel - job applications (hired or not)	3 years after filling position
16.019 - Statistical reports and general correspondence	1 year

The approved disposal methods of records are transfer, shredding, and burning.

* Probation case files may include the following: probation order, report of substance abuse assessment, monthly report forms, relevant reports from substance abuse agencies, psychological or psychiatric reports, and notes relevant to the probationer's standing and progress.

(Excerpt from *Records Retention and Disposal Schedule #16 – Michigan Trial Courts*, which can be accessed on-line at http://courts.michigan.gov/scao/resources/standards/cf_schd.pdf.)

Where applicable, computer records are the work products of any district court probation department and are to be treated in the same manner as other applicable items or records on the retention schedule.

C. SCAO-Approved Forms

The state court administrator, under the Supreme Court's supervision and direction, shall approve and publish forms as required by the Michigan Court Rules, and such other recommended forms as the administrator deems advisable. (MCR 8.103[9])

8-04 MANAGEMENT REPORTS

A. Authority and Responsibility

While there is no specific authority that requires a probation department to collect, maintain, and analyze statistical data regarding the preparation of management reports, there is, at least, an implied responsibility for this function under duties and responsibilities of district court probation departments.

Pursuant to MCL 600.8314, a district court probation officer, under the general direction of the chief judge, judge, or court administrator, shall prepare informational and demographic reports as may be needed and requested. Pursuant to this specific authority there is also an implied aspect of cooperation between a district court probation department and other integral members of the Michigan criminal justice system.

8-05 CRIMINAL RECORDS REPORTING

A. Authority

The Criminal Justice Information Center of the Michigan State Police is the state central repository for collecting and filing criminal history records. Local law enforcement agencies are required to take the fingerprints of any individual arrested for a felony or for a misdemeanor with a maximum penalty exceeding 92 days imprisonment or a fine of \$1000.00 or more. Courts have an obligation to review these criminal filings at arraignment and before sentencing to ensure that the individual's fingerprints have been taken and to report the criminal disposition to the Criminal Justice Information Center. (MCL 28.241-28.247, MCL 764.29, MCL 769.16a)

B. SCAO-Approved Forms

The district court probation department will be involved in the criminal records reporting process to varying degrees as prescribed by the district court. Forms that a probation department will most likely complete are:

- 1) Order of Probation (DC 243).
- 2) Motion and Order for Discharge from Probation (MC 245).

8-06 DESTRUCTION OF FINGERPRINTS

A. Authority

If a person is found not guilty of an offense, the arrest card and fingerprints of the accused shall be destroyed by the local arresting agency and the Criminal Justice Information Center of the Michigan State Police within 60 days.

However, there are two provisions restricting the destruction of fingerprints: (1) the offense or attempted offense was a violation with or against a child under 16 years of age, criminal sexual conduct in any degree, rape, sodomy, gross indecency, indecent liberties, or child abusive commercial activities, or (2) the person has a prior conviction (except a misdemeanor traffic offense). (MCL 28.243) In addition, fingerprints of a defendant who received a discharge and dismissal pursuant to the Holmes Youthful Trainee Act or a deferred judgment of guilt must be maintained for the purpose of linking the person to the nonpublic record. (MCL 333.7411, MCL 436.1703, MCL 750.430, MCL 769.4a, MCL 762.11)

B. SCAO-Approved Forms

If the destruction of fingerprints and related information is not restricted and the accused wants to ensure that the local arresting agency has destroyed them as well, the accused may obtain an order from the court having jurisdiction over the case which requires the local arresting agency to destroy the fingerprints and arrest card and to provide certification of that fact to the accused. See SCAO-Approved forms MC 235 and MC 392.

Forms that will result in destruction of fingerprint and arrest information, if eligible, are:

- 1) Motion/Order of Nolle Prosequi (MC 263).
- 2) Order of Acquittal/Dismissal or Remand (MC 262).
- 3) Commitment Order Not Guilty by Reason of Insanity (MC 207).

Forms that permit a local arresting agency to destroy the fingerprints and arrest card are:

- 1) Motion for Destruction of Fingerprints and Arrest Card (MC 235).
- 2) Order Regarding Destruction of Fingerprints and Arrest Card (MC 392).

For more details, see SCAO Administrative Memorandum 2004-12, which can be accessed at <http://courts.michigan.gov/scao/resources/other/scaoadm/2004/2004-12.pdf>.

APPENDIX 8

[Commitment Order, Not Guilty by Reason of Insanity \(MC 207\)](#)

[Motion for Destruction of Fingerprints and Arrest Card \(MC 235\)](#)

[Order of Acquittal/Dismissal or Remand \(MC 262\)](#)

[Motion/Order of Nolle Prosequi \(MC 263\)](#)

[Order Regarding Destruction of Fingerprints and Arrest Card \(MC 392\)](#)