Michigan
Law Revision Commission

THIRTEENTH ANNUAL REPORT
1978

MICHIGAN
LAW REVISION COMMISSION

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MICHIGAN LAW REVISION COMMISSION
Thirteenth Annual Report to the Legislature

To the Members of the Michigan Legislature:

The Law Revision Commission hereby presents its thirteenth annual report pursuant to Section 14(e) of Act No. 412 of the Public Acts of 1965.

The Commission, created by Section 12 of that Act, consists of the chairman and ranking minority members of the Committees on Judiciary of the Senate and the House of Representatives, the Director of the Legislative Service Bureau, being the five ex-officio members, and four members appointed by the Legislative Council. Terms of appointed Commissioners are staggered. The Legislative Council designates the Chairman of the Commission.

The members of the Commission during 1978 were Senator Basil W. Brown of Highland Park, Senator Donald E. Bishop of Rochester, Representative Paul A. Rosenbaum of Battle Creek, Representative Richard D. Fessler of Pontiac, A.E. Reyhons, Director of the Legislative Service Bureau, as ex-officio members; Tom Downs, Jason L. Honigman, David Lebenbom, and Richard C. Van Dusen as appointed members. The Legislative Council appointed Jason L. Honigman Chairman and Tom Downs Vice Chairman of the Commission. Professor Jerold Israel of the University of Michigan Law School served as Executive Secretary.

The Commission is charged by statute with the following duties:

1. To examine the common law and statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reform.

2. To receive and consider proposed changes in law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, any bar association or other learned bodies.

3. To receive and consider suggestions from justices, judges, legislators and other public officials, lawyers and the public generally as to defects and anachronisms in the law.

4. To recommend, from time to time, such changes in the law as it deems necessary in order to modify or eliminate antiquated and inequitable rules of law, and to bring the law of this state, civil and criminal into harmony with modern conditions.

The problems to which the Commission directs its studies are largely identified by a study of statute and case law of Michigan and legal literature by the Commission members and Executive Secretary. Other subjects are brought to the attention of the Commission by various organizations and individuals, including members of the Legislature.

The Commission's efforts during the past year have been devoted primarily to three areas. First, the Commission met with legislative committees to secure disposition of some 25 bills under Committee consideration upon recommendation of the Commission. Fourteen of these bills were enacted into law during the year. In addition, one proposal was incorporated in the newly adopted Probate Code and legislation was enacted based upon the Commission's Study Report on Juvenile Obscenity Statutes. Meetings with legislature members also have focused upon possible subjects for future study.

Second, the Commission examined suggested legislation proposed by various groups involved in law revision activity. These proposals included legislation advanced by the Council of State Governments, the National Conference of Commissioners on Uniform State Laws, and the Law Revision Commissions of various jurisdictions within and without the United States (e.g., California, New York, and British Columbia).

Finally, the Commission considered various problems relating to special aspects of current Michigan law suggested by its own review of Michigan decisions and the recommendations of others. From this group, the Commission has prepared recommendations and proposed statutes on the following topics.

(1) Appeals to the Tax Tribunal

(2) Commercial Mortgage Foreclosure

(3) In Rem Jurisdiction by Attachment or Garnishment Before Judgment

(4) Disclosure Of Treatment As An Element Of The Psychologist/Physchiatrist-Patient Privilege

(5) Technical Revision of the Code of Criminal Procedure

Recommendations and proposed statutes on the above topics accompany this report.

In addition to the new recommendations contained in this report, the Commission recommends favorable consideration of the following recommendations of past years upon which no final action was taken in 1978.

(1) Condemnation Procedures Act -- Former S.B. 618, before Senate Committee on Judiciary. During an earlier legislative session, an earlier version of this bill passed the Senate. After extensive hearing before the House and extensive consultation with various objecting groups, a substitute bill, with substantial revisions, was proposed. This is the proposal incorporated in Former S.B. 618. The original proposal is contained in the Recommendations of the 1968 Annual Report, page 11.

(2) Construction Debt -- Former S.B. 630, before Senate Committee on State Affairs. See Recommendations of 1976 Annual Report, page 10.

(3) Unlawful Assessments -- Former H.B. 5184, before House Committee on Taxation; Former S.B. 633, before Senate Committee on Finance. See Recommendations of 1976 Annual Report, page 44.

(4) Marital Agreements/Probate Amendment -- Former H.B. 5006, before House Committee on Judiciary; Former S.B. 631, before Senate Committee on Judiciary. S.B. 631 passed the Senate in 1978 and was before the House Committee on the Judiciary. See Recommendations of 1976 Annual Report, page 38.

(5) Marital Agreements/Divorce Amendment -- Former H.B. 5007, before House Committee on Judiciary; Former S.B. 632, before Senate Committee on Judiciary. S.B. 632 passed the Senate in 1978 and was before the House Committee on Judiciary. See Recommendations of 1976 Annual Report, page 38.

(6) Elimination of Reference to the Justice of the Peace -- Provision on the Sheriff's Service of Process. Former H.B. 4790, before the House Committee on Judiciary. H.B. 4790 passed the House in 1978 and was before the Senate Committee on Municipalities and Elections. See Recommendations of 1976 Annual Report, page 74.

Topics on the current study agenda of the Commission are:

(1) Amendments to Article 8 -- Uniform Commercial Code
(2) Class Action Suits
(3) Eliminating Statutory References to Justice of the Peace and Other Abolished Courts
(4) Enforcement of Administrative Agency Subpoenas
(5) Non-Profit Corporation Act
(6) Punitive Damages
(7) Special Assessments on Property
(8) Uniform (Debtor) Exemptions Act
(9) Transfer of A Business Having Liquor Sales As A Minor Portion of Its Activities
(10) Holding of Title By Joint Ventures
(11) The Relationship Between Asset Sales and Product Liability
(12) Responsibilities Of Finders In Dealing With Lost Items
(13) Compensation For The Use of Items That Are The Subject Of A Claim and Delivery Action

The Commission continues to operate with its sole staff member, the part-time Executive Secretary, whose offices are in the University of Michigan Law School, Ann Arbor, Michigan 48109. The use of consultants has made it possible to expedite a large volume of work and at the same time give the Commission the advantage of expert assistance at relatively low cost. Faculty members of the several law schools in Michigan continue to cooperate with the Commission in accepting specific research assignments.

The Legislative Service Bureau has generously assisted the Commission in the development of its legislative program. The Director of the Legislative Service Bureau, who acts as Secretary to the Commission, continues to handle the fiscal operations of the Commission under procedures established by the Legislative Council.

The following Acts have been adopted to date pursuant to recommendations of the Commission and in some case amendments thereto by the Legislature:

1967 Legislative Session

Subject	Commission Report	Act No.
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Dead Man's Statute	1966, p. 29	263
Corporation Use of Assumed Names	1966, p. 36	138
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Corporations as Partners	1966, p. 34	288
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1969 Legislative Session

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Recognition of Acknowledgments	1968, p. 61	57
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1970 Legislative Session

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Minor Students Capacity to Borrow Act	1969, p. 51	107
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1971 Legislative Session

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Constitutional Amendment re Juries of 12	1969, p. 65	HJR "M"

1973 Legislative Session

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1974 Legislative Session

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Extension of Personal Jurisdiction in Domestic Relations Cases	1972, p. 53	90
Technical Amendments to the General Corporations Act	1973, p. 38	140
Technical Amendments to the Revised Judicature Act	1971, p. 7	297
1974 Technical Amendments to the Business Corporation Act	1974, p. 30	303
Attachment Fees Act	1968, p. 23	306
Amendment of "Dead Man's" Statute	1972, p. 70	305
Contribution Among Joint Tort-feasors Act	1968, p. 57	318
District Court Venue in Civil Actions	1970, p. 42	319
Elimination of Pre-judgment Garnishment	1972, p. 7	371

1975 Legislative Session

Subject	Commission Report	Act No.
Amendment of Hit-Run Provisions to Provide Specific Penalty	1973, p. 54	170
Uniform Child Custody Jurisdiction Act	1969, p. 22	297
Insurance Policy in Lieu of Bond Act	1972, p. 59	290
Uniform Disposition of Community Property Rights At Death Act	1973, p. 50	289
Equalization of Income Rights of Husband and Wife in Entirety Property	1974, p. 30	288

1976 Legislative Session

Due Process in Replevin Actions	1972, p. 7	79
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Revision of Revised Judicature Act Venue Provisions	1975, p. 20	375
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The Commission continues to welcome suggestions for improvement of its program and proposals.

Respectfully submitted,

Jason L. Honigman, Chairman
Tom Downs, Vice Chairman
David Lebenbom
Richard C. Van Dusen

Ex-Officio Members
Sen. Basil W. Brown
Sen. Donald E. Bishop
Rep. Paul A. Rosenbaum
Rep. Richard D. Fessler
A.E. Reyhons, Secretary

Date: January 29, 1979

RECOMMENDATION RE APPEALS TO TAX TRIBUNAL

A recent decision of the Court of Appeals held that upon appeal by a taxpayer to the Tax Tribunal from an assessment which he deems excessive, the Tax Tribunal may not merely reject the request for reduction in the assessment, but can instead adjudicate that the assessment was too low and order an increase in the assessment. See Consumers Power Co. v. Big Prairie Twp., 81 Mich.App. 120 (1978). The decision in that case appears to stretch the statutory language to arrive at the conclusion that such a result is available under the present statute.

As a matter of fairness, the result of that decision appears unwarranted. With all of the present impediments in the appeal process and the cost of litigation to secure a reduction of assessment, it does not seem fair to impose on the taxpayer the additional risk that his appeal of an assessment might result in increasing the assessment rather than its reduction. To hold that threat over the taxpayer is to discourage a good faith disagreement of the taxpayer with the decision of the taxing authority.

The rule as enunciated by that decision seems based on the concept of in terrorem. On principles of fair play, the taxpayer should be able to object to an assessment without being subjected to the fear that his appeal may lead to an increase in his assessment. In our opinion, the present framework of the statute does not fairly indicate such an intent. To correct that ruling it is recommended that Section 35 of the present act, being Section 205.735 of the Compiled Laws of 1970, be amended, by the addition of a new subsection (5).

The proposed bill follows:

APPEALS TO TAX TRIBUNAL

A bill to amend Act 186 of the Public Acts of 1973, being §205.701-205.779 of the Compiled Laws of 1970, being known as the Tax Tribunal Act by amending Section 205.735.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Section 735 of Act 186 of the Public Acts of 1973, as amended, being Section 205.735 of the Compiled Laws of 1970 is amended to read as follows:

Sec. 35. (1) A proceeding before the tribunal shall be original and independent and shall be considered de novo. In the case of an assessment dispute as to the valuation of the property or where an exemption is claimed, the assessment must be protested before the board of review before the tribunal may acquire jurisdiction of the dispute, except that for the 1976 tax year only in a county whose state equalized valuation set by the state tax commission exceeds its assessed valuation and its equalized valuation set by the county board of commissioners for that year by at least 10%, a taxpayer may appeal directly to the tax tribunal.

(2) The jurisdiction of the tribunal shall be invoked by the filing of a written petition by a party in interest, as petitioner, within 30 days after the final decision, ruling, determination, or order which he seeks to review or within 30

days after the receipt of a bill for a tax he seeks to contest. The unit of government shall be named as respondent. Service of the petition on the respondent shall be by certified mail.

(3) Beginning January 1, 1977, the jurisdiction of the tribunal in an assessment dispute shall be invoked by the filing of a written petition by a party in interest, as petitioner, not later than June 30 of the tax year involved. In all other matters the jurisdiction of the tribunal shall be invoked by the filing of a written petition by a party in interest, as petitioner, within 30 days after the final decision, ruling, determination, or order which the petitioner seeks to review. An appeal of a contested tax bill shall be made within 60 days after mailing by the assessment district treasurer and the appeal shall be limited solely to correcting arithmetic errors or mistakes and shall not be a basis of appeal as to disputes of valuation of the property, its exempt status, or the equalized value resulting from equalization thereof by the county board of commissioners of the state tax commission. Service of the petition on the respondent shall be by certified mail to the assessor of that governmental unit. Except for petitions filed under chapter 6, a copy of the petition shall also be sent to the secretary of the school board in the local school district in which the property is located and any county which may be affected.

(4) The petition or answer may be amended at any time by leave of the tribunal and in compliance with its rules. It a tax was paid while the determination of the right thereto is pending before the tribunal, the taxpayer may amend his petition to seek refund of the tax.

(5) IN THE ABSENCE OF A TIMELY PROTEST BY A UNIT OF GOVERNMENT TO THE BOARD OF REVIEW FOLLOWED BY A TIMELY APPEAL BY SUCH UNIT OF GOVERNMENT TO THE TRIBUNAL, THE TAX ASSESSMENT SHALL NOT BE INCREASED BY THE TRIBUNAL.

RECOMMENDATION RE COMMERCIAL MORTGAGE FORECLOSURE ACT

Financial institutions have historically classified Michigan mortgages to be less attractive as investments than those of other states, thereby depriving the Michigan economy of the benefits which additional construction would entail. Their denigration of Michigan mortgages stems basically from our complex and dilatory foreclosure laws.

The completion of a mortgage foreclosure presently requires a minimum of 15 months in foreclosures by advertisement and about 1-1/2 years or more in circuit court foreclosures. Foreclosures by advertisement preclude granting possessory rights or rentals to the mortgagee during the pendency of the foreclosure. Moreover, the mortgagor has 12 months in which to redeem the property after the foreclosure sale.

In circuit court foreclosures, the mortgagee's right to possession or rentals is narrowly delineated to special situations and through appointment of a receiver. The fees of the receiver and his counsel become a lien against the property and its proceeds having superiority to the mortgage. The achievement of such possessory rights entails great delays and substantial expenditures for legal services which are an additional cost to the mortgagee. After the case has come to trial and foreclosure sale has been ordered by the court, at least 6 additional weeks must elapse for advertising of the foreclosure sale. Thereafter, title to the property is in abeyance for an additional 6 months during which the mortgagor can exercise a right of redemption. On the whole, these procedures are time consuming and expensive making mortgage investment less attractive in Michigan than in most other states.

The Michigan economy can be benefitted by providing for less restrictive barriers to foreclosure, particularly in relation to commercial mortgages. The proposed act is limited in its application so that it does not apply to single family residences or to loans under $100,000. There is no basic injustice in liberalizing the foreclosure of commercial real estate mortgages to more nearly equate with the process of foreclosure of other collateral. Proceedings for foreclosure on stocks or bonds held as collateral or to foreclose on chattel mortgages are both simple and peremptory, with minimal elapse of time and generally require no need for legal expenses.

The proposed act provides for foreclosure of a commercial mortgage through circuit court proceedings. The mortgagee's right to possession and rentals upon default is made mandatory. There are no time limitations for completion of the sale, although all steps in the foreclosure, including the actions of the receiver and the timing, price and terms of sale are subject to the court's scrutiny and control to assure fairness to all interested parties. The mortgagee may choose to act as receiver and thereby minimize the costs thereby as well as by elimination of the need for additional counsel for the receiver.

The act provides for no equity of redemption after the sale has been confirmed by court order. As a compensating factor for the mortgagor, the mortgagee may not pursue the mortgagor or his guarantor for any deficiency payments on the mortgage debt.

Further explanation of the proposed statutory provisions appears in the comments under each of the sections.

The proposed bill follows:

COMMERCIAL MORTGAGE FORECLOSURE

A bill to provide for foreclosure of commercial mortgages.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. This act shall be known and may be cited as the "commercial mortgage foreclosure act."

Sec. 2. As used in this act, "commercial mortgage" means a mortgage securing an indebtedness of $100,000 or more secured by real property other than a single family residence and the mortgage instrument provides that the mortgagee may elect to have the mortgage foreclosed under the provisions of this act.

Comment: The right to foreclose under this act is limited to mortgages securing $100,000 or more encompassing real property other than single family residences. Thus mortgages of $100,000 or more on multiple family residences such as apartment buildings, condominiums, motels and hotels would qualify as commercial mortgages. Foreclosure under this act is limited to mortgages in which the instrument specifies that the mortgagee may elect to foreclose under the provisions of the Commercial Mortgage Foreclosure Act. Thus such mortgagee may at his option choose to foreclose under the provisions of other mortgage foreclosure statutes. In such event, the provisions of this act become inapplicable.

Section 3. Foreclosure of a commercial mortgage under this act shall be made by an action in equity alleging foreclosure under this act and all parties claiming any interest of record in the property secured by the mortgage shall be named parties defendant.

Comment: Foreclosure proceedings under this act are civil actions governed by procedures under the Supreme Court's General Court Rules. Owners of the property and those having liens or encumbrances thereon which appear in the record title must be joined as parties defendant in the foreclosure proceeding. As defendants, they will receive notice of all steps in the proceedings and will have an opportunity for a hearing before the court for the protection of their rights.

Sec. 4. In a foreclosure pursuant to this act, the mortgagee may petition the court for appointment of a receiver for the property encumbered by the mortgage. The petition shall be heard as a motion and a receiver shall be appointed as a matter of right upon a finding by the court that the mortgagor is in default. The receiver shall be the mortgagee or the designated agent of the mortgagee and the mortgagee's attorney may act as attorney for the receiver. The mortgagee shall be liable for the actions of his designated agent. The receiver shall be entitled to possession of the property and the rents and profits thereof, and unless otherwise ordered by the court, the receiver shall have all powers generally exercised by a receiver in a court of equity, including the right to be compensated for services which the receiver renders and the services of the agents and attorneys of the receiver in such reasonable sums as approved by the court.

Comment: Upon proof of default, the mortgagee is entitled to the appointment of a receiver under motion procedures. Thus the delays incident to awaiting a full trial are eliminated.

The mortgagee's right to have a receiver take possession of the property and collect the rentals is made mandatory. While proof of default is required, it is rare that there is any dispute as to whether or not the mortgage payment has been made.

To limit the expenditures normally incurred under a receivership, the mortgagee is entitled to be appointed receiver as a matter of right. Moreover, his own attorney can then act as attorney for the receiver and thereby eliminate additional expense. The receiver will operate in accordance with the long established standards for receivers in equity and will be governed by standards of fairness and other rules of law applicable thereto.

Sec. 5. If the property secured by the mortgage reasonably requires further construction, remodelling or repair, the receiver may, upon approval of the court, expend all sums necessary for such construction, remodelling or repair and may advance or borrow funds for that purpose.

Comment: Where a mortgage loan is made for construction purposes, default often occurs before the construction has been completed. By giving the receiver the right to advance or borrow funds for that purpose, which under Sec. 6 take priority over the mortgage, the likelihood of obtaining additional funds for the purpose of completing construction is greatly enhanced. The granting of immediate possession to the receiver along with the opportunity to advance or borrow funds to complete construction should mitigate the losses which often ensue through deterioration of property during foreclosure.

Sec. 6. Funds expended by the receiver, including the fees and attorney's fees of the receiver, shall be paid from the proceeds of the sale of the property in priority to any other sums owing under the mortgage or any liens or encumbrances subordinate to the mortgage.

Comment: The funds advanced or borrowed by a receiver to complete construction become a prior lien as against the indebtedness owing under the mortgage. Such funds are also a prior lien as against any liens or encumbrances which are subordinate to the mortgage. Such priority of position will enhance the availability of funds for completion of construction or in appropriate situations, to meet the expense of necessary repairs or remodelling.

Sec. 7. Upon authorization by order of the court, the receiver may at any time during the pendency of the proceedings sell the property under foreclosure by public or private sale for cash or upon terms and in the manner that is ordered by the court. The mortgagee may purchase the property under foreclosure and may apply on the purchase price any sums which will be payable to the mortgagee from the proceeds of the sale of the property. Sale by the receiver shall convey all rights of ownership in the property, except for the liens, mortgages, encumbrances, easements, leases, or ownership rights which have a priority superior to the mortgage under foreclosure. The sale shall become final upon entry of an order of confirmation. In the absence of a timely application for leave to appeal from the order of confirmation, a subsequent appeal shall not question the title of the purchaser. The proceeds of the sale of the property shall be distributed to the parties in the order of priority of their rights or encumbrances on the property.

Comment: To sell the property under foreclosure hereunder, provisions of present law calling for publication notices will be inapplicable. Instead the court can instruct the receiver to sell the property at either public or private sale with or without published or other notice. Since real estate is generally sold at private sale, it is likely that the court would normally permit such sale upon a showing that the proposed selling price represents the fair market value of the property. If the mortgagee seeks to purchase the property, it would be incumbent upon him to demonstrate to the court that the proposed selling price represents the fair market value of the property or that the sale to the mortgagee at the proposed price will not unfairly prejudice the rights of other parties in interest.

After a sale agreement has been entered into, it must be confirmed by the court after notice to all parties in interest before title can effectually pass to the purchaser. If the mortgagor or anyone else having an interest in the property seeks to contest the sale, he must file a timely appeal by application for leave to appeal to the Court of Appeals from the order of confirmation.

Sec. 8. The owner or a person claiming under the owner does not have a right of redemption if the property is sold by the receiver pursuant to this act. In foreclosure under this act, there shall be no right to a deficiency judgment against the mortgagor, his grantee, successors or assigns or any guarantor or other person who assumed the indebtedness secured by the mortgage.

Comment: In foreclosures, under this act there will be no right to redemption on the part of the owner or others claiming an interest in the property. The owner or other parties in interest will be entitled to an opportunity to be heard by the court as to any objections they might have either to the entry of the order of sale or the order of confirmation. The court will be found by principles of fairness in adjudicating the time of sale, the terms of sale and the sales price.

Counterbalancing the elimination of the right of redemption is the provision eliminating the right to a deficiency judgment against the mortgagor or other parties who have assumed the indebtedness. The lender mortgagee by seeking foreclosure under this act will have to look for repayment solely to the property rather than to the personal liability of the mortgagor or others who assumed or guaranteed the indebtedness. Since typically, real property mortgage lending is entered into with primary reliance on the value of the property as security for payment, the elimination of the right to a deficiency judgment should not be a serious deterrent to lenders.

Section 9. Upon completion of the sale, the receiver shall file a final accounting for approval by the court and the court shall enter a final judgment directing the distribution of all funds or other assets held by the receiver. Except for the final judgment set forth in this section, all other orders entered in the proceedings shall be considered interlocutory orders for purposes of determining a right to appeal from the order and shall not be appealable except by timely application for leave to appeal.

Comment: Since only a final judgment in a civil action is appealable as a matter of right, it is specifically provided that all other orders entered in the foreclosure proceeding are deemed to be interlocutory orders and therefore are appealable only by leave of the Court of Appeals. Thus, unless an appeal by leave is taken from any other orders, they cannot be reviewed by appeal from the final order. The appeal from the final judgment will normally relate only to matters of the accounting for funds held by the receiver and the priorities in the distribution thereof if they were not adjudicated by a prior order.

Sec. 10. No provisions of any other statutes governing foreclosures of mortgages shall be applicable to foreclosure proceedings under this act. No provisions of the General Court Rules specifically made applicable to foreclosures under this act. Thus, in order to be applicable to foreclosures under this act, the General Court Rules must specifically refer to foreclosures under this act.

Comment: It is intended that only the provisions of this act shall be applicable to foreclosures hereunder and thus other statutory provisions as to foreclosures are made inapplicable. Likewise, various sections of the General Court Rules which refer to mortgage foreclosures are not intended to be applicable to foreclosures under this act. Thus, in order to be applicable to foreclosures under this act, the General Court Rules must specifically refer to foreclosures under this act.

RECOMMENDATION RE IN REM JURISDICTION BY ATTACHMENT OR GARNISHMENT BEFORE JUDGMENT

In a recent decision of the U.S. Supreme Court, it was held that quasi in rem jurisdiction obtained through attachment or garnishment must follow the same standards of fairness and minimum contact as is applicable for in personam jurisdiction. See Shaffer v. Heitner, 433 U.S. 186 (1977).

In Michigan, it has been held that the long-arm statute "goes to the limits of due process," i.e., creates jurisdiction whenever it is constitutional to do so. See Schneider v. Linkfield, 389 Mich. 608 (1973).

When prejudgment attachment and garnishment was eliminated by the recent statutory amendment (Act 371, P.A. 1974), it was still retained to grant in rem jurisdiction against non-resident persons. Unless the relationship of the defendant to this State is such as to make him subject to personal jurisdiction in the courts of this State, he cannot be subjected to in rem jurisdiction based solely on his ownership of intangibles situated within this State. Under the Shaffer holding, it is clear that such jurisdiction and the statutory grant thereof is unconstitutional.

While attachment and garnishment before judgment could legally be made available as against non-resident defendants, provided constitutional notice requirements were provided, there seems no justification for permitting it. Since a resident defendant cannot be tied up by garnishment before judgment, there is no sound basis for imposing such burden on a non-resident. To sue a non-resident in this State, he must have sufficient contact to subject him to personal jurisdiction in this State. In fairness, the plaintiff should have no greater rights against him to garnishee or attach before judgment than is available against resident defendants.

To meet the constitutional limitation of Shaffer, it is necessary to repeal the present statutory provisions that permit garnishment and attachment before judgment as to non-residents.

The proposed bill follows:

ATTACHMENT AND GARNISHMENT

A bill to amend Act 236 of the Public Acts of 1961, as amended, being §600.101-600.9930 of the Compiled Laws of 1970, by amending §4011 and §8306 and by repealing §4001 and §4021.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Sections 4011 and 8306 of Act 236 of the Public Acts of 1961, as amended, being Sections 600.4011 and 600.8306 of the Compiled Laws of 1970 are amended to read as follows:

Sec. 4011. (1) Except as otherwise provided in ~~(3), (4) and (5), (6) and (7) of~~ this section, the circuit courts of the state shall have power by garnishment to apply to the satisfaction of a claim evidenced by ~~contact,~~ judgment of this state, or foreign judgment.

(a) personal property belonging to the person against whom the claim is asserted but which is in the possession or control of a third person if the third person is subject to the judicial jurisdiction of the state and the personal property to be applied is within the boundaries of this state;

(b) an obligation owed to the person against whom the claim is asserted if the obligor is subject to the judicial jurisdiction of the state; whether or not the state has jurisdiction over the person against whom the claim is asserted.

(2) The courts may exercise the jurisdiction granted in this section only if action is taken in accordance with court rules promulgated to protect the parties. Except as otherwise provided by court rule, the state of Michigan and every governmental unit herein, including but not limited to a public, municipal, quasi-municipal, or governmental corporation, unincorporated board, public body, or political subdivision, may be proceeded against as garnishees in the same manner and with like effect as individuals.

(3) No writ of garnishment may be issued before judgment. ~~except upon ex parte application showing that the person against whom the claim is asserted is not subject to the judicial jurisdiction of the state or after diligent effort cannot be served with process as required to subject him to the judicial jurisdiction of the state, in which case a copy of the writ of garnishment shall be served upon the person against whom the claim is made by the same means provided by court rules for service of process in other cases in which personal jurisdiction over the defendant is not required.~~

~~(4) No garnishment proceedings are to be commenced against the state of Michigan or any governmental unit therein, including but not limited to a public, municipal, quasi-municipal, or governmental corporation, unincorporated board, public body, or political subdivision, until after the plaintiff's claim has been reduced to judgment.~~

~~(5) No garnishment proceedings are to be commenced against any person for money owing to a principal defendant on account of labor performed by the principal defendant until after the plaintiff's claim has been reduced to judgment.~~

(4) ~~(6)~~ A sheriff or other public officer is not subject to garnishment for any money or things received or collected by him by virtue of an execution or other legal process in the favor of the principal defendant or because of any money in his hands for which he is accountable merely as a public officer to the principal defendant.

(5) ~~(7)~~ No garnishment proceedings are to be commenced if the commencement of such proceedings is forbidden by a statute of this state.

Sec. 8306. (1) Subject to the limitations of jurisdictional amount and venue otherwise applicable in the common pleas, municipal and district courts, such courts shall have the same power with respect to ~~attachment and~~ garnishment as the circuit court.

(2) The substantive grounds upon which such relief is available shall be as determined ~~in section 4001 with respect to attachment and as determined~~ in section 4011. ~~with respect to garnishment.~~

(3) The common pleas, municipal and district courts may exercise the jurisdiction granted by this section only if action is taken in accordance with supreme court rules promulgated to protect the parties.

(4) All garnishment proceedings shall be treated as auxiliary actions to the principal action. The party commencing such a proceeding shall not be required to pay an additional filing fee or jury fee with respect to that garnishment proceeding but shall pay to the clerk the sum of $5.00 as a service fee for the issuance of every writ of garnishment except a writ issued by the small claims division of the district court.

(5) No other fees shall be required with respect to ~~attachment and~~ garnishment except as otherwise provided by law.

Section 2. Sections 401 and 421 of Act 236 of Public Acts of 1961, as amended, being Sections 600.4001 and 600.4021 of the Compiled Laws of 1970 are repealed.

RECOMMENDATION RELATING TO DISCLOSURE OF TREATMENT AS AN ELEMENT OF THE PSYCHOLOGIST/PHYSCHIATRIST-PATIENT PRIVILEGE

Traditionally, the physician-patient privilege extends only to information acquired by the physician in the course of treatment. It does not extend to the fact of the physician's employment or the identity of the patient. Thus, a doctor may testify that a person was his patient and had a certain number of professional visits even though the privilege applies as to what occurred during those visits. See McCormick On Evidence, pp. 215-16 (2d ed. 1973); Polish Roman Catholic Union of America v. Palen, 302 Mich. 557 (1942); McKinney v. Liberty Life Insurance of Illinois, 263 Mich. 490 (1933); Briesenmeister v. Supreme Lodge Knights of Pythias of the World, 81 Mich. 525 (1890). This "limitation" on the traditional privilege presents difficulties when extended to the psychotherapist-patient privilege. As Professor Slovenko has noted, disclosure of the relationship between the therapist and patient carries special connotations, which may dramatically affect that relationship:

> "It is vital to maintain confidentiality as to the fact of treatment as well as to communications made in treatment. By and large, people in the community, even those who are well-informed on other matters, consider a person's treatment by a psychiatrist as evidence of his 'queerness' or even insanity. A person may hesitate to visit a psychiatrist out of fear that he will be set apart from his fellow men. * * * It is significant to observe the efforts by which psychiatrists maintain out-of-courtroom confidentiality. * * * The profession requires that confidentiality be maintained even as to the fact that a patient is in therapy. Psychiatrists, unlike other physicians, hesitate to engage the services of bill-collecting agencies, but instead at the beginning of therapy discuss financial matters with the patient. Quite frequently, patients are recorded by number in the psychiatrist's ledger, so that their names will not be known to accountants or internal revenue agents. * * * In scientific writing and in teaching, psychiatrists disguise their clinical data to avoid the recognition of the patient, often to the detriment of the scientific value of the material. * * *"[1]

Of course, there may be rare instances in which a patient's treatment by a physician other than a psychiatrist will also carry some stigma, but such physicians generally treat a wide variety of ailments, most of which carry no stigma. The psychotherapists covered by the Michigan

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1. Slovenko, Psychiatry and a Second Look at the Medical Privilege, 6 Wayne L.Rev. 175, 188 (1960).

privilege provision, on the other hand, are dealing only with patients treated "for a mental condition." M.C.L. §330.1750. Acknowledgment of treatment or even examination by a psychotherapist almost invariably presents the stigma noted by Professor Slovenko and interferes with the treatment or examination process. Where the privilege otherwise applies, the same balancing of interests which justifies a prohibition against forced disclosure of the content of the treatment also justifies prohibiting forced disclosure of the fact of treatment or examination. Avoiding the negative impact of the disclosure of the fact of treatment or examination upon the psychotherapist-patient relationship outweighs the value of such disclosure in much the same manner as avoiding the negative impact of disclosure of the content of the treatment outweighs the value of disclosing that information. For this reason, the model statute proposed by Robert M. Fisher, in The Psychotherapeutic Professions and the Law of Privileged Communications, 10 Wayne L.Rev. 609, 643 (1964), extends the privilege to bar "disclosure of . . . facts tending

to show that the patient and a psychotherapist have entered into a psychotherapeutic relationship." The proposed legislation, set forth below, would adopt this extension of the traditional privilege through amendment of the privilege provision of the Mental Health Code of 1974.[2/]

2./ The psychologist-patient privilege set forth in the Public Health Code (M.C.L. §333.18237) is not amended. That privilege is not limited to treatment of patients for a mental condition. Also, the list of exceptions to that privilege is much narrower than the list in the Mental Health Code and therefore may not provide ample room for proper disclosure of the fact of treatment or examination. M.C.L. §333.18237 provides:

> "A psychologist licensed or allowed to use the title under this part or individual under his or her supervision shall not be compelled to disclose confidential information acquired from an individual consulting the psychologist in his or her professional capacity and which information is necessary to enable the psychologist to render services. Information may be disclosed with the consent of the individual consulting, or if the individual consulting is a minor, with the consent of the minor's guardian. In a contest on the admission of a deceased individual's will to probate, an heir at law of the decedent, whether a proponent or contestant of the will, and the personal representative of the decedent may waive the privilege created by this section."

In M.C.L. §330.1750(3), set forth infra, the Mental Health Code includes a far broader range of proceedings exempt from the privilege.

It should be noted that, under the proposed amendment, disclosure of the fact of treatment or examination only is barred where the privilege otherwise applies -- i.e., where the content of the treatment or examination, as revealed through communications made in connection with the treatment or examination, could not be disclosed. There are several exceptions under subsection (3) of the current provision which permit disclosure of the content of the treatment or examination and therefore would permit disclosure of the fact of treatment or examination.[3/] Thus, the fact of

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3./ These exceptions are somewhat broader than the current provisions relating to the physician-patient privilege. M.C.L. §600.2157, the physician-patient privilege provides:

> "No person duly authorized to practice medicine or surgery shall be allowed to disclose any information which he may have acquired in attending any patient in his professional character, and which information was necessary to enable him to prescribe for such patient as a physician, or to do any act for him as a surgeon: Provided, however, That in case such patient shall bring an action against any defendant to recover for any personal injuries, or for any malpractice, if such plaintiff shall produce any physician, as a witness in his own behalf, who has treated him for such injury, or for any disease or condition, with reference to which such malpractice is alleged, he shall be deemed to have waived the privilege hereinbefore provided for, as to any or all other physicians who may have treated him for such injuries, disease or condition: Provided further, That after the decease of such patient, in a contest upon the question of admitting the will of such patient to probate, the heirs at law of such patient, whether proponents or contestants of his will, shall be deemed to be personal representatives of such deceased patient for the purpose of waiving the privilege hereinbefore created."

treatment or examination would not be protected by the privilege in a civil or administrative proceeding in which the patient's mental condition has been placed in issue as an element of the patient's claim or defense. See subsection 3(a). Neither would it be protected in a malpractice action. See subsection 3(d). The basic function of the proposed amendment simply is to prevent a litigant from seeking to raise doubts about the patient's stability by pointing to the patient's treatment where the content of the treatment itself would be privileged and not subject to disclosure.

The proposed bill follows:

PSYCHOLOGIST/PHYSCHIATRIST-PATIENT PRIVILEGE

A bill to amend Act 258 of the Public Acts of 1974, entitled "The Mental Health Code," as amended, being sections 330.1001 to 330.2106 of the Compiled Laws of 1970.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. Section 750 of Act No. 258 of the Public Acts of 1939, being section 330.1750 of the Compiled Laws of 1970, is amended to read as follows:

(1) For the purpose of this section:

(a) "Psychiatrist" means a person licensed to practice medicine or osteopathic medicine in Michigan, or someone under his supervision, while engaged in the examination, diagnosis, or treatment of a patient for a mental condition.

(b) "Psychologist" means a person certified as a consulting psychologist or psychologist pursuant to Act No. 257 of the Public Acts of 1959, as amended; a person with training and experience equivalent to that necessary for certification as a consulting psychologist or psychologist; or a person employed by a public agency as a psychologist; or someone under the supervision of such a person, while engaged in the examination, diagnosis, or treatment of a patient for a mental condition.

(c) "Privileged Communication" means a communication made to a psychiatrist or psychologist in connection with the examination, diagnosis, or treatment of a patient, or to other persons while they are participating in such examination, diagnosis, or treatment.

(2) Privileged communications shall not be disclosed in civil, criminal, legislative, or administrative cases or proceedings, or in proceedings preliminary to such cases or proceedings, unless the patient has waived the privilege, except in the circumstances set forth in this section.

(3) Privileged communications shall be disclosed upon request:

(a) When the privileged communication is relevant to a physical or mental condition of the patient which the patient has introduced as an element of his claim or defense in a civil or administrative case or proceeding or which, after the death of the patient, has been introduced as an element of his claim or defense by a party to a civil or administrative case or proceeding.

(b) When the privileged communication is relevant to a matter under consideration in a proceeding governed by this act but only if the patient was informed that any communications could be used in such proceeding.

(c) When the privileged communication is relevant to a matter under consideration in a proceeding to determine the legal competence of the patient or his need for a guardian but only if the patient was informed that any communications made could be used in such a proceeding.

(d) In actions, civil or criminal, against the psychiatrist or psychologist for malpractice.

(e) When the communications were made during an examination ordered by the court, prior to which the patient was informed that any communications made would not be privileged, but only with respect to the particular purpose for which the examination was ordered.

(f) When the communications were made during treatment which the patient was ordered to undergo to render him competent to stand trial on a criminal charge, but only with respect to issues to be determined in proceedings concerned with the competence of the patient to stand trial.

(4) IN ANY PROCEEDING IN WHICH SUBSECTIONS (2) AND (3) OF THIS SECTION PROHIBITS DISCLOSURE OF A COMMUNICATION MADE TO A PSYCHIATRIST OR PSYCHOLOGIST IN CONNECTION WITH THE EXAMINATION, DIAGNOSIS, OR TREATMENT OF A PATIENT, THE FACT OF EXAMINATION, DIAGNOSIS, OR TREATMENT OF THE PATIENT ALSO SHALL NOT BE DISCLOSED.

TECHNICAL REVISION OF THE CRIMINAL PROCEDURE CODE

The Commission has been engaged in an on-going project designed to remove references to abolished courts, particularly references to the justice of the peace. (The office of justice of the peace was abolished in 1969 [M.C.L. §600.9921] pursuant to the constitutional mandate of Article VI, Section 26). In the 10th Annual Report (1975), the Commission proposed, as part of this project, a technical revision of the Code of Criminal Procedure, designed to eliminate references to the justice of the peace in that Code. Upon review of that proposal, the District Judges Association suggested that the technical revision should not be limited to eliminating references to the abolished courts, but should include various other needed technical amendments. Accordingly, an Ad Hoc Committee was formed to work on this project. The following proposal is a modified version of the 1975 draft based upon the comments and suggestions of that committee. It encompasses technical revisions throughout the Code of Criminal Procedure. In general, the changes relate to form rather than substance. There are a few minor substantive changes, which are clearly noted in the commentary.[1/]

Most of the technical changes fall into one of twelve categories. First, as in the 1975 proposal, references to actions to be taken by a justice of the peace (J.P.) have been amended by substitution of a reference to those courts which currently exercise the jurisdiction formally exercised by the J.P. -- the district court, municipal courts, the Recorder's Court of Detroit, and the Traffic and Ordinance Division of the Recorder's Court of Detroit.

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1. The Ad Hoc Committee included Jerold Israel, The Commission's Executive Secretary; District Court Judge John Hammond; Bruce Timmons, House Judiciary Counsel; James Bonfiglio, Assistant Senate General Counsel; Don Atkins, Assistant Wayne County Prosecutor; Tim Konieczny, Office of Criminal Justice Programs; and John Mayer of the State Court Administrative Office.

Second, provisions distinguishing between misdemeanors "cognizable" and "not cognizable" by a "justice of the peace" have been amended to refer to the traditional dividing line between "J.P." and "non-J.P." misdemeanors. That dividing line is drawn at misdemeanors carrying a maximum possible imprisonment of 92 days and a fine of $500.00.[2/]

Third, certain clearly unconstitutional provisions were deleted from the Code of Criminal Procedure. See, e.g., M.C.L. §765.29 (seeking to repeal "all laws contravening this section"); M.C.L. §765.30 (distinguishing between married and unmarried women with respect to the posting of recognizance by another person).

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2. Originally, a misdemeanor was cognizable by a justice of the peace if punishable by no more than 90 days in jail or a fine of $100.00 or both. See M.C.L. §774.1. The maximum fine for many of these J.P. misdemeanors was later changed to $500.00, as was the maximum fine for ordinance violations. This change in the jurisdictional limit was made in the provisions dealing with municipal courts, but no change was made in the provision dealing with justice courts because they had been abolished. See the 10th Annual Report, p. 38; M.C.L. §§41.183, 730.551. The $500.00 limit has been used in subsequent changes in the Code of Criminal Procedure which distinguish between J.P. and non-J.P. misdemeanors. See M.C.L. §§764.90, 765.20.

Although the traditional J.P. dividing line was drawn at a 90 day maximum jail sentence, there exist various misdemeanors that are punishable by sentences of 3 months and apparently were within J.P. jurisdiction. See, e.g., M.C.L. §462.20 (failure to file reports required of common carriers); M.C.L. §287.286 (public servant failure to comply with requirements of act relating to livestock loss); M.C.L. §340.966 (school official violations of school code). With the right combination of months, the sentences for these offenses could exceed 90 days (92 days is the maximum). Accordingly, the distinction between J.P. and non-J.P. offenses is drawn at 92 days rather than 90 days. A similar line of division has been drawn in other technical revisions designed to eliminate references to abolished courts. See, e.g., Public Act 538 of 1978; Public Act 616 of 1978.

Fourth, cross-references in the current Code have been refined. Where a current cross-reference is to a provision that has been repealed (as in M.C.L. §765.19), the cross-reference is deleted. Where new provisions have replaced the cross-referenced provision, the cross-reference has been altered to refer to the new provision. (See, e.g., M.C.L. §764.9b). In other instances, where the cross-reference is made to a chapter, but actually refers to a specific provision in that chapter, the cross-reference has been amended to refer specifically to that provision. (See, e.g., M.C.L. §770.12).

Fifth, in those instances where essentially identical statutes were adopted to treat J.P. and non-J.P. offenses, those statutes have been consolidated so that the treatment of a particular subject (e.g., issuance of a warrant) is covered in a single place in the Code. (See, e.g., the treatment of M.C.L. §§764.4-764.7 and 764.9-764.12).

Sixth, various repetitive provisions have been eliminated. In particular, current provisions describing an action commonly taken by a magistrate sometimes also refer to the exercise of such authority by Supreme Court Justices, Circuit Court Judges, and judges of "courts of record jurisdiction of criminal causes." For example, the provisions on the issuance of arrest warrants in felony cases refer to the issuance of those warrants by these judges as well as by magistrates. See M.C.L. §764.1. This reference is superfluous and confusing. It is superfluous because all of the judges listed retain under another provision the power to exercise "in their discretion, the authority of magistrates." See M.C.L. §761.1(f). It is confusing because Supreme Court judges and Circuit judges do not ordinarily exercise such authority; the issuance of arrest warrants is the function of the courts that typically act as magistrates -- district court, municipal court, and parts of Recorder's Court. Moreover, many other provisions discussing actions ordinarily taken by magistrates refer only to magistrates, although here also Supreme Court justices and Circuit judges could exercise that power if they so desired. See, e.g., M.C.L. §774.4. The proposed bill accordingly deletes references to Supreme Court justices, Circuit Court judges, and "courts of record having jurisdiction of criminal causes," from those provisions dealing with actions commonly taken by magistrates. Section 761.1(f) properly preserves their authority in those areas without the repetitive references to that authority in each provision referring to magistrates.

Seventh, the proposed bill amends several provisions relating to recording procedures and other procedures no longer utilized by magistrate courts. The current code provisions, for example, were tied to a system in which the J.P. reduced testimony to writing by his own hand. Where courts now use a recording system, as in the district courts, the provisions have been amended to refer to the transcription of testimony by the newer recording methods.

Eighth, the code provisions have been updated to take account of the current appellate structure, which includes a Court of Appeals, and provides for appeal by trial de novo only from the municipal court. Current provisions were written prior to the establishment of the Court of Appeals and the adoption of the District Court Act (providing for review of district court misdemeanor cases on the record). The provisions on appeal also have been amended to make them consistent with the Court Rules and to provide appropriate cross-references to the Court Rule provisions that now govern appeals.

Ninth, various provisions have been changed so as to accord with current practice. In particular, following an arrest without a warrant, a magistrate currently will review the complaint (and any attached affidavits) and issue a warrant. This procedure is required by People v. Burrill, and, to some extent, by Gerstein v. Pugh, 420 U.S. 103 (1975). The current warrant provisions, however, are drafted as if all warrants were issued prior to the arrest. The proposed bill recognizes the practice of issuing warrants after an arrest has been made without a warrant. Similarly, the code provisions often are ambiguous (especially in their use of the term "offense") as to their application to ordinance violations. In practice, however, prosecutions for ordinance violations generally are treated in the same manner as prosecutions for misdemeanors. The proposed bill also recognizes this practice by adding a reference to ordinance violations in various provisions.

Tenth, consistent with the format adopted in recent revisions of the Code of Criminal Procedure, new definitions have been added so as to avoid repetition of extensive phrases within the text. Thus, rather than refer in each provision to the judicial district of the particular court (e.g., the city of Detroit for Recorder's Court, the municipality for municipal courts, the district as defined in M.C.L. §600.8312 for the district court), a definition is added of "judicial district" which defines the district for each of these courts. Cf. the amendment of the term "magistrate" in Public Act No. 63 of 1974.

Eleventh, an attempt is made to provide uniform treatment of misdemeanor and ordinance cases tried in the district court and the few remaining principal courts. Accordingly, statutes applicable to municipal court procedure have been brought into line with those applicable to the district courts except where current statutes evidence a clear legislative policy to the contrary. Thus, the time period for new trial motions in municipal courts and appeals from municipal court convictions have been amended to match those applicable to the district court. On the other hand, the more significant distinctions as to mode of appeal (by trial de novo in municipal courts) and jury selection (governed by Chapter 14 of the Code of Criminal Procedure for municipal courts) have been retained. Perhaps, these areas also should be altered to follow district court procedure, but such substantial changes were viewed as beyond the scope of a technical revision.

Finally, the various stylistic changes were made in accordance with the recommendations of the Legislative Service Bureau (e.g., eliminations of "provided, however" clauses, etc.).

The specific changes in the proposed bill are noted in the commentary following each of the sections amended. In addition, an appendix includes all of the provisions to be repealed and an explanation of the reasons for the repeal.

The proposed bill follows:

TECHNICAL AMENDMENTS TO THE CODE
OF CRIMINAL PROCEDURE

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Section 1 of Chapter 1; section 3 of Chapter 3; sections 1, 4, 5, 6, 7, 9a, 9b, 9c, 13, 14, 15, and 28 of Chapter 4; sections 1, 3, 7, 8, 20, 29, and 30 of Chapter 5; section 19 of Chapter 6; section 35 of Chapter 7; section 1 of Chapter 9; sections 1, 2, and 3 of Chapter 10; sections 7 and 12 of Chapter 11; sections 1, 2, 4, 8, 9, 10, 11, 12, 14, and 15 of Chapter 12; sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, and 15 of Chapter 13; sections 2, 2a, 2b, 3, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 26, 26a, 26b, 26c, 26d, 28, 34, 42, 43, 44, 46, 47, and 48 of Chapter 14; sections 13, 13a, 14, 16, 19, and 19a of Chapter 15 of Act No. 175 of the Public Acts of 1927, being sections 760.1, 763.3, 764.1, 764.4, 764.5, 764.6, 764.7, 764.9a, 764.9b, 764.9c, 764.13, 764.14, 764.15, 764.28, 765.1, 765.3, 765.7, 765.8, 765.20, 765.29, 765.30, 766.19, 767.35, 769.1, 770.1, 770.2, 770.3, 771.7, 771.12, 772.1, 772.2, 772.4, 772.8, 772.9, 772.10, 772.11, 772.12, 772.14, 772.15, 773.1, 773.2, 773.3, 773.4, 773.5, 773.6, 773.7, 773.8, 773.9, 773.11, 773.15, 774.2, 774.2a, 774.2b, 774.3, 774.9, 774.10, 774.12, 774.13, 774.14, 774.15, 774.16, 774.17, 774.18, 774.19, 774.20, 774.21, 774.22, 774.26, 774.26a, 774.26b, 774.26c, 774.26d, 774.28, 774.34, 774.42, 774.43, 774.44, 774.46, 774.47, 774.48, 775.13, 775.13a, 775.14, 775.16, 775.19, and 775.19a of the Compiled Laws are amended, and new sections 1a of Chapter 2, 1a, 1b, 1c, 1d, and 1e of Chapter 4, and 1a, 1b, 1c, 1d, 1e, 3a, and 49 of Chapter 14 are hereby added, to read as follows:

Chapter 1

Sec. 1. As used in this act:

(a) "Person;", "accused;", and similar words include, unless a contrary intention appears, public and private corporations, copartnerships, unincorporated or voluntary associations.

(b) "Act" or "doing of an act" includes "omission to act~~,~~".

(c) "Property" includes any matter or thing upon or in respect to which any offense may be committed.

(d) "Indictment" includes information, presentment, complaint, warrant, and any other formal written accusation and unless a contrary intention appears, includes any count thereof.

(e) "Writing~~,~~", "written~~,~~", and any term of like import includes words printed, painted, engraved, lithographed, photographed or otherwise copied, traced, or made visible to the eye.

(f) "Magistrate" includes judges of the recorder's court of THE CITY OF Detroit and of the traffic and ordinance division of that court who are assigned by the presiding judge of the respective court or division to exercise the powers and duties of magistrate as prescribed in this act; judges of the district court; and judges of municipal courts. The term "magistrate" does not include district court magistrates ~~except as otherwise explicitly provided by law~~ EXCEPT THAT A DISTRICT COURT MAGISTRATE MAY EXERCISE THE POWERS, JURISDICTION, AND DUTIES OF A MAGISTRATE WHERE EXPLICITLY PROVIDED IN THIS ACT, IN ACT NO. 236 OF THE PUBLIC ACTS OF 1961, AS AMENDED, BEING SECTIONS 600.101 TO 600.9934 OF MICHIGAN

COMPILED LAWS, OR IN ANY OTHER STATUTE. Nothing in this definition shall be construed as limiting the power of justices of the supreme court and circuit judges and judges of courts of record having jurisdiction of criminal causes under this act or depriving them of the power to exercise in their discretion the authority of magistrates.

(g) "Felony" means ~~an offense~~ A VIOLATION OF A PENAL LAW OF THIS STATE for which the offender, upon conviction, may be punished by death or by imprisonment for more than 1 year or an offense expressly designated by law to be a felony.

(H) "MISDEMEANOR" MEANS A VIOLATION OF A PENAL LAW OF THIS STATE WHICH IS NOT A FELONY, OR A VIOLATION OF AN ORDER, RULE OR REGULATION OF A STATE AGENCY THAT IS PUNISHABLE BY IMPRISONMENT OR A FINE THAT IS NOT A CIVIL FINE.

(I) "ORDINANCE VIOLATION" MEANS EITHER OF THE FOLLOWING:

(i) A VIOLATION OF AN ORDINANCE OR CHARTER OF A CITY, VILLAGE, TOWNSHIP, OR COUNTY WHICH IS PUNISHABLE BY IMPRISONMENT OR A FINE THAT IS NOT A CIVIL FINE.

(ii) A VIOLATION OF AN ORDINANCE, RULE OR REGULATION OF ANY OTHER GOVERNMENTAL ENTITY AUTHORIZED BY LAW TO ENACT ORDINANCES, RULES OR REGULATIONS PUNISHABLE BY IMPRISONMENT, IF THE VIOLATION IS PUNISHABLE BY IMPRISONMENT OR BY A FINE THAT IS NOT A CIVIL FINE.

(J) "MINOR OFFENSE" MEANS A MISDEMEANOR OR ORDINANCE VIOLATION FOR WHICH THE MAXIMUM PERMISSIBLE IMPRISONMENT DOES NOT EXCEED 92 DAYS OR THE MAXIMUM PERMISSIBLE FINE DOES NOT EXCEED $500.00.

(K) "PROSECUTING ATTORNEY" MEANS THE PROSECUTORY ATTORNEY FOR A COUNTY, AN ASSISTANT PROSECUTING ATTORNEY FOR A COUNTY, THE ATTORNEY GENERAL, THE DEPUTY ATTORNEY GENERAL, AN ASSISTANT ATTORNEY GENERAL, A SPECIAL PROSECUTING ATTORNEY APPOINTED PURSUANT TO SECTION 3 OF CHAPTER 7 OF THIS ACT, AND, IN CONNECTION WITH THE PROSECUTION OF AN ORDINANCE VIOLATION, AN ATTORNEY FOR THE POLITICAL SUBDIVISION OR GOVERNMENTAL ENTITY WHICH ENACTED THE ORDINANCE, CHARTER, RULE OR REGULATION.

(L) "JUDICIAL DISTRICT" MEANS THE FOLLOWING:

(i) WITH REGARD TO THE CIRCUIT COURT, THE COUNTY.

(ii) WITH REGARD TO THE RECORDER'S COURT OF THE CITY OF DETROIT OR THE TRAFFIC AND ORDINANCE DIVISION OF THAT COURT, THE CITY OF DETROIT.

(iii) WITH REGARD TO MUNICIPAL COURTS, THE CITY IN WHICH THE MUNICIPAL COURT FUNCTIONS OR THE VILLAGE WHICH IS SERVED BY A MUNICIPAL COURT PURSUANT TO SECTION 9923(3) OF ACT NO. 236 OF THE PUBLIC ACTS OF 1961, BEING SECTION 600.9928 OF THE MICHIGAN COMPILED LAWS.

(iv) WITH REGARD TO THE DISTRICT COURT, THE COUNTY, DISTRICT OR POLITICAL SUBDIVISION IN WHICH VENUE IS PROPER FOR CRIMINAL ACTIONS IN ACCORDANCE WITH SECTION 8312 OF ACT NO. 236 OF THE PUBLIC ACTS OF 1961, AS AMENDED, BEING SECTION 600.8312 OF THE MICHIGAN COMPILED LAWS.

(M) "COMPLAINT" MEANS A WRITTEN ACCUSATION, UNDER OATH OR UPON AFFIRMATION, THAT A FELONY, MISDEMEANOR, OR ORDINANCE VIOLATION HAS BEEN COMMITTED AND THAT THE PERSON NAMED OR DESCRIBED THEREIN IS GUILTY THEREOF.

(N) "CLERK" MEANS THE CLERK OR A DEPUTY CLERK OF THE COURT.

Comment on Section 1 [761.1]. Several definitions are added or amended. The definition of magistrate has been amended to make specific reference to the two statutory sources authorizing a district court magistrate to exercise the authority of a magistrate -- the provisions of this code and the District Court Act. This makes more specific the general cross-reference in the current definition to laws that permit the district court magistrate to exercise such authority.

Because the term "offense" is used in an ambiguous fashion -- usually referring to ordinance violations as well as violations of state law -- the definition of felony is amended to delete the term offense and to describe felonies as violations of the penal law of the state.

A definition of misdemeanor is added to compliment the definition of felony. The definition includes those violations of state law which are not felonies under the definition in paragraph (g). Violations of state agency rules are not always clearly designated as misdemeanors in statutes providing for penalties of imprisonment or penal fines, but they are treated procedurely as misdemeanors (the penalties are always in the misdemeanor range). Accordingly, paragraph (h) includes them within the definition of misdemeanors.

As noted in the introductory comments, the procedural provisions applicable to J.P. misdemeanors often apply as well to ordinance violations. The typical statutory reference is to "local ordinances." See, e.g., M.C.L. §764.9f. However, not all local law violations carrying criminal penalties are identified by state law as "ordinances." See, e.g., M.C.L. §600.8311 referring to charter violations. Also, ordinances are not limited to local units of governments such as cities, villages, and townships. See, e.g., M.C.L. §46.11 (counties); 390.591 (university); 213.327 (state agencies); 281.542 (all political subdivisions). The proposed definition of "ordinances" in paragraph (i) is worded so as to encompass all such violations punishable by criminal sanctions. This is consistent with current practice, if not the current statutory language in all instances.

The definition of "minor offense" in paragraph (j) provides a short-hand reference to offenses "cognizable by a justice of the peace." See the introductory comments at page 38 supra.

The definition of "prosecuting attorney" includes all officials who act as a prosecutor, including the assistant prosecutor, the attorney general, and an assistant attorney general. See M.C.L. §§14.35, 49.41. The reference to section 3 of Chapter 8 includes the special prosecutor appointed to assist a one-person grand jury. See M.C.L. §767.3. Paragraph (k) also includes the attorney for the political subdivision on prosecutions under local ordinances. Current provisions referring to the prosecutor usually are viewed as applicable to all of these officials.

The definition of judicial district is discussed at p. 40 of the introductory comments. The reference in the municipal court district to a village served by the court encompasses the municipal court for Gross Point Shores. No reference is made to the Common Pleas Court of Detroit since that court no longer regularly exercises criminal jurisdiction.

The definition of "complaint" is designed to supplement Chapter 4, section 1 (764.1) and other provisions that refer to the complaint. It is consistent with current references to the complaint, except that it does not permit an oral complaint. M.C.L. §§766.2, 766.3 apparently permit oral complaints for felony offenses. See People v. Clements, 72 Mich. 116 (1888). Oral complaints are no longer used in practice, however. Moreover, M.C.L. §774.4 specifically requires a written complaint for J.P. offenses.

The definition of "clerk" is designed to avoid constant reference to the deputy clerk each time mention is made of the duties of the clerk.

Chapter 2

SEC. 1A. JUSTICES OF THE SUPREME COURT, JUDGES OF THE COURT OF APPEALS, JUDGES OF THE CIRCUIT COURT, JUDGES OF THE RECORDER'S COURT OF THE CITY OF DETROIT, JUDGES OF THE TRAFFIC AND ORDINANCE DIVISION OF THE RECORDER'S COURT OF THE CITY OF DETROIT, JUDGES OF A COMMON PLEAS COURT, JUDGES OF THE DISTRICT COURT, AND JUDGES OF MUNICIPAL COURTS ARE CONSERVATORS OF THE PEACE WITHIN THEIR RESPECTIVE JURISDICTIONS.

Comment on Section 1A [762.1A]. This is a new section. Article 6, §29 of the Constitution declares to be conservators of the peace, supreme court justices, court of appeals judges, circuit court judges, and such "other judges as provided by law." Judges of all courts which inherited the civil or criminal jurisdiction of the justice of the peace apparently are conservators under the last clause, although there are no statutes that specifically state that they are conservators of the peace. These courts commonly have been given all of the "powers" of the justice of the peace. See, e.g., M.C.L. §§725.10; 600.9922; 117.28. Since justices of the peace formerly were conservators of the peace, the judges of these courts exercising former J.P. jurisdiction have been viewed as retaining that status. See Lincoln Park v. Sigler, 28 Mich.App. 410 (1970). Section 1A directly recognizes the conservator status of the judges of these courts.

Chapter 3

Sec. 3. In all criminal cases arising in the courts of this state ~~whether cognizable by justices of the peace or otherwise~~, the defendant shall have the right to waive a determination of the facts by a jury and may, if he ~~so elect~~ ELECTS, be tried before the court without a jury. Except in

cases ~~cognizable by a justice of the peace, such~~ OF MINOR OFFENSES, THE waiver and election by a defendant shall be in writing signed by the defendant and filed in ~~such~~ THE cause and made a part of the record ~~thereof~~. It shall be entitled in the court and cause and in substance as follows: "I, ..., defendant in the above cause, hereby voluntarily waive and relinquish my right to a trial by jury and elect to be tried by a judge of the court in which ~~said~~ THE cause may be pending. I fully understand that under the laws of this state I have a constitutional right to a trial by jury."

.....

Signature of defendant.

~~Such~~ EXCEPT IN CASES OF MINOR OFFENSES, THE waiver of trial by jury ~~must~~ SHALL be made in open court after the ~~said~~ defendant has been arraigned and has had opportunity to consult with counsel.

Comment on Section 3 [763.3]. The initial phrase referring to cases cognizable by a J.P. is deleted as redundant. The provision for a jury trial in "all criminal cases" clearly includes both J.P. and non-J.P. offenses. Section 3 requires that a jury trial waiver take a certain form except in cases of J.P. offenses. It also requires that the waiver take place under certain conditions except in J.P. cases. Neither requirement is changed, but the phrase "minor offenses" is substituted for the reference to J.P. offenses in the description of the exceptions. While the definition of minor offenses includes ordinance violations as well as misdemeanors, and section 3 initially refers to "criminal cases," ordinance violations have been viewed as criminal prosecutions for this purpose. See People v. Burnett, 55 Mich.App. 649 (1974).

Chapter 4

Sec. 1. For the apprehension of persons charged with A FELONY, MISDEMEANOR, OR ORDINANCE VIOLATION, ~~offenses punishable by imprisonment for more than 92 days, the justices of the supreme court, the several circuit judges, courts of record having jurisdiction of criminal causes, district judges, municipal judges, and mayors~~ MAGISTRATES may issue processes to carry into effect this chapter except that they shall not issue warrants ~~in any criminal cases,~~ FOR OFFENSES THAT ARE NOT MINOR OFFENSES until an order in writing allowing the warrant is filed with the ~~public official~~ MAGISTRATE and signed by the ~~appropriate~~ prosecuting ~~authority~~ ATTORNEY, or unless security for costs is filed with the ~~public official~~ MAGISTRATE. MAGISTRATES SHALL NOT ISSUE WARRANTS FOR MINOR OFFENSES UNTIL AN ORDER IN WRITING ALLOWING THE ISSUANCE OF THE WARRANT IS FILED WITH THE MAGISTRATE AND SIGNED BY THE PROSECUTING ATTORNEY, OR UNLESS SECURITY FOR COSTS IS FILED WITH THE MAGISTRATE, EXCEPT WHERE THE WARRANT IS REQUESTED BY ANY OF THE FOLLOWING OFFICIALS FOR THE FOLLOWING OFFENSES:

(A) AGENTS OF THE DEPARTMENT OF STATE HIGHWAYS AND TRANSPORTATION, A COUNTY ROAD COMMISSION, OR OF THE PUBLIC SERVICE COMMISSION FOR VIOLATIONS OF ACT NO. 254 OF THE PUBLIC ACTS OF 1933, AS AMENDED, BEING SECTIONS 475.1 TO 479.20 OF THE MICHIGAN COMPILED LAWS, OR ACT NO. 181 OF THE

PUBLIC ACTS OF 1963, AS AMENDED, BEING SECTIONS 480.11 TO 480.19 OF THE MICHIGAN COMPILED LAWS, THE ENFORCEMENT OF WHICH HAS BEEN DELEGATED TO THEM.

(B) THE DIRECTOR OF CONSERVATION, OR ANY SPECIAL ASSISTANT OR CONSERVATION OFFICER APPOINTED BY HIM AND DECLARED BY STATUTE TO BE A PEACE OFFICER, FOR A VIOLATION OF ANY OF THE LAWS OR STATUTES MENTIONED IN SECTION 1 OF ACT NO. 192 OF THE PUBLIC ACTS OF 1929, BEING SECTION 300.11 OF THE MICHIGAN COMPILED LAWS.

Comment on Section 1 [764.1]. Two provisions currently deal with the issuance of warrants. Section 764.1 governs the issuance of warrants for all non-J.P. offenses. Section 774.4 governs the issuance of a warrant for a J.P. offense. This section consolidates the two provisions. Initially, the proposed amendment provides for the issuance of warrants by a magistrate. Section 764.1 currently lists a variety of judges, including all of those who are magistrates, as officials who may issue warrants. Section 774.1 refers only to the J.P., who has been replaced by the magistrate. For reasons noted in the introductory material (p. 39 supra), there is no need to list the various judges other than magistrates. Arrest warrants commonly are issued only by magistrates, and the other judges, if they desire to issue warrants, may do so by acting as a magistrate as authorized by M.C.L. §761.1(f). Of course, the term magistrates does not encompass mayors, and the amendment would alter §764.1 in this regard. However, mayors no longer issue warrants and their constitutional authority to do so is doubtful. See Shadwick v. Tampa, 407 U.S. 345 (1971).

Section 764.1 as amended by Public Act 616 of 1978, requires written authorization of the warrant by the prosecutor in all non-J.P. cases except where security for costs are posted. That provision is reworded in the proposed amendment but the substance remains the same.

Section 774.4, as amended by Public Act 616, has a similar provision relating to prosecutor authorization of warrants for J.P. offenses, but recognizes certain exceptions. It provides:

> "Except where warrants are requested by agents of the state highway department, a county road commission or of the public service commission for violations of Act No. 254 of the Public Acts of 1933, as amended, being sections 475.1 to 479.20 of the Compiled Laws of 1948; or Act No. 181 of the Public Acts of 1963, being sections 480.11 to 480.19 of the Compiled Laws of 1948, the enforcement of which has been delegated to them, a judge shall not issue a warrant in a criminal case until an order in writing allowing the warrant is filed with the court and signed by the appropriate prosecuting authority or unless security for costs is filed with the court."

This paragraph is restated as new matter added to section 764.1. Initially, the basic warrant authorization requirement is set forth. Then exception (a) restates the current exception for Motor Carrier Act and Motor Carrier Safety Act violations. A further exception, for conservation violations, currently located outside the Code, is included in paragraph (b). See M.C.L. §§300.16, 300.12, 300.11, 1969. Atty. Gen. Op., 1969, No. 4655, p. 78.

The proposed new material does institute one major change. It applies the prosecutorial authorization requirement to ordinance violations as well as minor misdemeanors. Section 774.4 currently is viewed as not applicable to ordinance violations by some city attorneys, al-

though others regularly follow an authorization procedure.*/ Since ordinance violations and minor misdemeanors are treated alike with regard to other aspects of warrants, there seems to be no reason for creating a distinction here.

SEC. 1A. (1) A MAGISTRATE SHALL ISSUE A WARRANT UPON PRESENTATION OF A PROPER COMPLAINT ALLEGING THE COMMISSION OF AN OFFENSE AND A FINDING OF REASONABLE CAUSE TO BELIEVE THAT THE PERSON ACCUSED IN THE COMPLAINT COMMITTED THE OFFENSE ALLEGED IN THE COMPLAINT. THE COMPLAINT SHALL BE SWORN TO BEFORE A MAGISTRATE OR CLERK.

(2) THE FINDING OF REASONABLE CAUSE BY THE MAGISTRATE MAY BE BASED UPON 1 OR MORE OF THE FOLLOWING:

(A) FACTUAL ALLEGATIONS OF THE COMPLAINANT CONTAINED IN THE COMPLAINT.

(B) THE COMPLAINANT'S SWORN TESTIMONY.

(C) THE COMPLAINANT'S AFFIDAVIT.

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*/ Section 774.4 refers initially to "any offense punishable by imprisonment for not more than 92 days." The provision on warrant authorization then refers to "criminal cases." Whether these references include ordinance violations is unclear. Compare People v. Burnett, 55 Mich.App. 649 (1974); Village of Vicksburg v. Briggs, 85 Mich. 502, 508 (1891); and Attorney General's Opinion No. 4878 (1975). In some instances, the law clearly does require prosecutorial authorization in ordinance cases. Thus, M.C.L. §600.8511, dealing with district court magistrates, notes their authority "to issue warrants for the arrest of any person upon the written authorization of the prosecuting or municipal attorney (emphasis added). Consider also M.C.L. §§67.7, 90.5 (providing that warrants for violations of village and fourth-class city ordinances shall "be issued upon complaint made as provided by law in criminal cases"; by drawing an analogy to "criminal cases," this standard arguably also requires prosecution approval of the complaint).

(D) ANY SUPPLEMENTAL SWORN TESTIMONY OR AFFIDAVITS OF OTHER PERSONS PRESENTED BY THE COMPLAINANT OR REQUIRED BY THE MAGISTRATE.

(3) THE MAGISTRATE MAY REQUIRE SWORN TESTIMONY OF THE COMPLAINANT OR OTHER PERSONS. SUPPLEMENTAL AFFIDAVITS MAY BE SWORN TO BEFORE ANY PERSON AUTHORIZED BY LAW TO ADMINISTER OATHS. THE FACTUAL ALLEGATIONS CONTAINED IN THE COMPLAINT, TESTIMONY, OR AFFIDAVITS MAY BE BASED UPON PERSONAL KNOWLEDGE, INFORMATION AND BELIEF, OR BOTH.

(4) A WARRANT MAY BE ISSUED UNDER THIS SECTION ONLY UPON COMPLIANCE WITH THE REQUIREMENTS OF SECTION 1 OF THIS CHAPTER.

Comment on Section 1a [764.1a]. This is a new section, replacing sections 766.2, 766.3 (non-J.P. offenses) and section 774.4 (J.P. offenses). Initially the proposed section consolidates these J.P. offense and non-J.P. offense provisions on warrant issuance procedure and relocates the consolidated provision in a more appropriate place -- immediately after the basic provision on warrant issuance.

Section 766.2 provides that a justice of the peace, upon receipt of a complaint, shall examine the complainant and any witnesses produced by him. Section 766.3 then provides for the issuance of a warrant if it appears that the offense "has been committed." While neither section refers to "probable cause" or "reasonable cause," that is the constitutionally required standard for issuance of the warrants. See Article I, §11.*/ Moreover, M.C.L. §774.4, the counterpart provision in J.P. offenses, does refer to probable cause in describing the

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*/ The standards "reasonable cause" and "probable cause" have been viewed as identical by the Michigan courts, see e.g., People v. Harper, 365 Mich. 494 (1962), and both terms are used in arrest statutes. Compare M.C.L. §774.4 and §764.15.

prerequisite for issuing a warrant.*/ Section 1a(1) accordingly includes a reasonable cause requirement, using the term "reasonable cause," rather than "probable cause," because the former term is used in the other arrest provisions. See M.C.L. §764.15.

Section 1a(2) provides that the finding of reasonable cause may be based on affidavits or statements made in the complaint as well as upon the testimony of the complainant. This is consistent with current practice approved by the Michigan Supreme Court (although arguably contrary to the language of §766.2 and §774.4, as was recognized by the Court). See, People v. Burrill, 39 Mich. 124 (1974). See also Detroit v. Recorder's Court Judge, 85 Mich.App. 284 (1978). Section 1a(2) also complies with federal constitutional requirements. See Gerstein v. Pugh, 420 U.S. 103 (1975). Section 1a(2) does not deprive the magistrate of authority to hear witnesses presented by the complainant when desirable. That authority, as granted in M.C.L. §§766.2 and 774.4, is retained in paragraph (d). The magistrate's authority to insist upon the presentation of witnesses also is recognized in paragraph (d). That authority is implicit under §766.2 and §774.4.

Section 1a(3) recognizes that the factual allegations contained in the complaint, affidavits, or testimony producing reasonable cause may be based on personal knowledge

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*/ As amended by Public Act 616, section 774.4 provides: "Upon complaint made to any judge, by any constable or other person that any offense punishable by imprisonment for not more than 92 days has been committed within the county, the judge shall examine the complainant on oath and witnesses produced. The complaint shall be reduced to writing and subscribed by the complainant, and if there is probable cause to believe that the offense has been committed, the judge shall issue a warrant reciting the substance of the complaint, and requiring the officer to whom it is directed forthwith to arrest the accused and bring the accused before the court to be dealt with according to law. In the same warrant the judge may require the officer to summon such witnesses as are named in the warrant, to appear and give evidence at the trial. A judge who is by law provided with a clerk may issue warrants for offenses, which are punishable by imprisonment for not more than 92 days, on the basis of a complaint taken and signed before the clerk or any deputy clerk of the court. A clerk or deputy clerk has the same power and authority to take complaints for offenses punishable by imprisonment for not more than 92 days as is possessed by the judge, and upon such a complaint being presented to the judge, that judge may take the testimony of other witnesses or further testimony of the complaining witness; and the procedure thereafter shall be the same as in other cases."

or information and belief (hearsay). See People v. Andriacci, 11 Mich.App. 482 (1969). Cf. Gooch v. Wachowiak, 352 Mich. 347 (1958).

Section 1a(4) merely provides a cross reference to section 1, thereby incorporating the prosecutorial authorization requirements of that section.

Section 774.4 currently includes a provision noting that the complaint may be taken before the clerk. That provision no longer is needed since the complaint is defined in proposed section 761.1(m) simply as a statement made under oath. There is no suggestion that it must be sworn to before the court. See also §766.2 (which does not contain a special provision relating to complaints sworn to before clerks). See also proposed section 764.1e, infra.

SEC. 1B. A WARRANT ISSUED PURSUANT TO SECTION 1A SHALL RECITE THE SUBSTANCE OF THE ACCUSATION CONTAINED IN THE COMPLAINT. EXCEPT AS PERMITTED IN SECTION 1C OF THIS CHAPTER, THE WARRANT (1) SHALL BE DIRECTED TO A PEACE OFFICER, (2) SHALL COMMAND THE PEACE OFFICER IMMEDIATELY TO ARREST THE PERSON ACCUSED AND TO TAKE THAT PERSON, WITHOUT UNNECESSARY DELAY, BEFORE A MAGISTRATE OF THE JUDICIAL DISTRICT IN WHICH THE OFFENSE IS CHARGED TO HAVE BEEN COMMITTED, TO BE DEALT WITH ACCORDING TO LAW, AND (3) SHALL DIRECT THAT THE WARRANT, WITH A PROPER RETURN NOTED THEREON, BE DELIVERED TO THE MAGISTRATE BEFORE WHOM THE ARRESTED PERSON IS TAKEN. THE WARRANT MAY ALSO REQUIRE THE PEACE OFFICER TO SUMMON SUCH WITNESSES AS ARE NAMED THEREIN.

Comment on Section 1b. This is a new section that replaces sections 764.8, 766.3, and 774.4. Again it consolidates the non-J.P. offense and J.P. offense provisions and relocates them in a more logical place. Section 766.3 provides that, upon finding grounds for issuing a warrant, "the magistrate shall issue a warrant directed to the sheriff, chief of police, constable or any peace officer of the county, reciting the substance of the accusation and commanding him forthwith to take the person accused of having committed the offense and bring him before the appropriate

court to be dealt with according to law, and in the same warrant may require the officer to summon such witnesses as are named therein." A similar description of the warrant is contained in section 774.4 (quoted in the footnote at p. 55 supra).

As in section 774.4, section 1b simply notes that a warrant may be directed to a peace officer, rather than listing the various officers. The list in 766.3, in effect, covers all peace officers.

Section 1b commands the officer to bring the person before a magistrate of the district in which the offense was committed, which is consistent with current law and practice. Section 764.8, applicable to non-J.P. offenses, provides that persons arrested pursuant to a warrant shall be brought before the magistrate who issued the warrant, who almost always would be a magistrate of the district in which the offense was committed. Section 774.4, applicable to J.P. offenses, contains a similar provision, noting that the warrant shall direct the officer to present the accused "before the court" from which the warrant issued. The individual is not always presented before the particular magistrate who issued the warrant. Section 764.8 recognizes this possibility in providing that the accused shall be taken before another magistrate "of the same county" if the issuing magistrate is "absent or unable to attend." Section 774.4 simply requires that the person be taken before any magistrate of the same court. Section 1b rephrases the §774.4 standard. It requires that the person be taken before "a magistrate" of the judicial district in which the offense is alleged to have been committed.

By describing the appropriate court in terms of where the offense was committed rather than in terms of who issued the warrant. Section 1b will accommodate the rare situation in which the magistrate issuing the warrant was not of the district in which the offense was committed. It also should be noted that, notwithstanding the direction in the warrant, the individual may be taken before another magistrate when arrested outside the county. This procedure is covered by M.C.L. §§764.4-764.7, but is not referred to in the warrant itself.

Sections 766.3 and 774.4 both refer to a direction that the officer "forthwith" present the arrested person before the magistrate. Section 1b substitutes the phrase "without unnecessary delay," which comes from M.C.L. §764.13 and M.C.L. §§780.581, 780.582. (M.C.L. §780.581 and 780.582 requires presentment "without unnecessary delay" for persons arrested with or without warrants for a misdemeanor or ordinance violation and 764.13 requires presentment "without unnecessary delay" where the person is arrested without a warrant on a felony charge). There is no reason why the standard for prompt presentment should be stated differently in the various provisions and the "without-unnecessary-delay" phrasing is the more familiar one. See, e.g., People v. Farmer, 380 Mich. 198 (1968).

Section 764.8 provides that "the warrant, with a proper return thereon, signed by the person who made the arrest, shall be delivered to the magistrate." This requirement is continued in section 1b, although the section does not require that the return be signed by the officer making the arrest. That officer may not have the warrant in his possession (and, indeed, may be located in a different district). In such cases, the return may be noted by a fellow officer based on information received from the arresting officer.

SECTION 1C. (1) WHERE THE ACCUSED IS ALREADY IN CUSTODY UPON AN ARREST WITHOUT A WARRANT, A MAGISTRATE, UPON FINDING REASONABLE CAUSE AS PROVIDED IN SECTION 1A OF THIS CHAPTER, SHALL DO EITHER OF THE FOLLOWING:

(A) ISSUE A WARRANT AS PROVIDED IN SECTION 1B OF THIS CHAPTER.

(B) ENDORSE UPON THE COMPLAINT A FINDING OF REASONABLE CAUSE AND A DIRECTION TO TAKE THE ACCUSED BEFORE A MAGISTRATE OF THE JUDICIAL DISTRICT IN WHICH THE OFFENSE IS CHARGED TO HAVE BEEN COMMITTED.

(2) AS ENDORSED PURSUANT TO SUBSECTION (1)(B), THE COMPLAINT SHALL CONSTITUTE BOTH A COMPLAINT AND WARRANT.

Comment on Section 1c. Under standard Michigan practice, as recognized in Burrill, the magistrate will review the complaint and issue a warrant for a person already arrested without a warrant shortly before that person is presented before the magistrate. This post-arrest warrant issuance procedure provides the review of reasonable cause constitutionally required by Gerstein v. Pugh (see p. 40 supra). The warrant also is used to present the charges to the accused at the first appearance. See M.C.L. §774.5. Section 1c simply permits a simplified procedure as to the paperwork in issuing the warrant. Since the person arrested is already in custody, there

is no need to issue a complete warrant form directing an officer to take the accused into custody, etc.. The important function of the process is that a determination of reasonable cause be made and noted. Section 1c would permit the magistrate to note the finding of reasonable cause on the complaint rather than formally issue a warrant. The endorsed complaint would then serve the same functions as a complaint and a warrant with respect to further proceedings. Since this process usually would take place before the accused is brought before the magistrate, section 1c also requires that the court include on the endorsed complaint a direction to present the accused before the appropriate magistrate. This will usually be the same magistrate who makes the reasonable cause finding. But note M.C.L. §764.4, etc..

SEC. 1D. A COMPLAINT SHALL RECITE THE SUBSTANCE OF THE ACCUSATION AGAINST THE ACCUSED. THE COMPLAINT MAY BUT NEED NOT CONTAIN FACTUAL ALLEGATIONS ESTABLISHING REASONABLE CAUSE.

Comment on Section 1d [764.1d]. This provision merely restates the requirement, also applicable to the warrant, that the complaint state the substance of the accusation. See M.C.L. §§766.3, 774.4. It also notes that the complaint need not contain the factual allegations establishing reasonable cause. Those allegations, as noted in section 1a, may be provided by an affidavit or testimony before the magistrate.

SEC. 1E. (1) FOR PURPOSES OF SECTIONS 1A TO 1D OF THIS CHAPTER, A COMPLAINT SIGNED BY A PEACE OFFICER SHALL BE TREATED AS MADE UNDER OATH IF THE OFFENSE ALLEGED THEREIN IS A MINOR OFFENSE WHICH WAS COMMITTED IN THE SIGNING OFFICER'S PRESENCE AND IF THE COMPLAINT CONTAINS THE FOLLOWING STATEMENT IMMEDIATELY ABOVE THE DATE AND SIGNATURE OF THE OFFICER: "I DECLARE UNDER THE PENALTIES OF PERJURY THAT THE STATEMENTS ABOVE ARE TRUE TO THE BEST OF MY INFORMATION, KNOWLEDGE AND BELIEF."

(2) A PEACE OFFICER WHO KNOWINGLY MAKES A FALSE DECLARATION IN A COMPLAINT SIGNED PURSUANT TO SUBSECTION (1) IS GUILTY OF A FELONY SUBJECT TO THE SAME PENALTIES AS PERJURY, AND IN ADDITION TO THE FOREGOING PENALTY, IS IN CONTEMPT OF COURT.

Comment on Section 1e [764.1e]. This section provides a simplified procedure for minor offenses that would permit an officer to submit a complaint without swearing to the complaint before a clerk. Because there are so many of these offenses, it often becomes burdensome to swear to each individually before a clerk. The acknowledgment that the statement is made subject to the penalties of perjury serves the same function as the oath. See New York Criminal Procedure Law §100.30 utilizing the same procedure.

Sec. 4. ~~In all cases where the offense charged in the warrant is not punishable with death, or imprisonment in the state prison, and not cognizable by a justice of the peace,~~ IF (1) A PERSON IS ARRESTED PURSUANT TO A WARRANT WHICH CHARGES AN OFFENSE OTHER THAN TREASON OR MURDER, ~~if~~ (2) the arrest ~~shall be~~ IS made in ~~any other~~ A county OTHER than that ~~where~~ IN WHICH the offense is charged to have been committed, and ~~if~~ (3) the person arrested ~~shall request~~ REQUESTS that he be brought before a magistrate of the ~~county~~ JUDICIAL DISTRICT in which the arrest was made, ~~it shall be the duty of the officer or person arresting him to bring such prisoner~~ THEN THE PERSON ARRESTED SHALL BE TAKEN before a magistrate of that ~~county~~ JUDICIAL DISTRICT.

Comment on Section 4 [764.4]. This provision is the first of several dealing with the disposition of a person arrested outside the county in which the offense was committed. Currently, two separate sets of provisions deal with this situation. The first set, M.C.L. §§764.4-764.7, applies to non-J.P. offenses. The second set, §§764.9-764.12, applies to J.P. offenses. The two sets of provisions provide for essentially the same procedures and therefore are consolidated in §§764.4-764.7.

Section 764.4 currently applies to all non-J.P. offenses except those punishable with "death, or imprisonment in the state prison." The quoted language must be read in light of the procedure authorized by sections 764.4-764.7. Those sections permit the magistrate in the county of arrest to release the person on bail. The exception for offenses punishable by "death or imprisonment" therefore apparently refers to offenses formerly subject to capital punishment and therefore not bailable. Today, with capital punishment abolished, those offenses are murder and treason. See Mich. Const. Art. I, §15. The proposed amendment therefore refers directly to those offenses. A broader interpretation of "death or imprisonment" as including all offenses subject to imprisonment would exclude from the statute's coverage all felony offenses. This would be inconsistent with language in other provisions (e.g., the M.C.L. §764.5 exemption of felonies punishable by imprisonment exceeding 5 years) and the general structure of §§764.4-764.7. The reference to "imprisonment" apparently was designed only to refer to the alternative punishment for capital cases.

Sec. 5. Such magistrate may take from the person arrested, a recognizance with sufficient sureties, for his appearance WITHIN 10 DAYS THEREAFTER before ~~the~~ A magistrate ~~who issued such warrant~~ OF THE JUDICIAL DISTRICT IN WHICH THE OFFENSE IS CHARGED TO HAVE BEEN COMMITTED ~~within 20 days thereafter. Provided, however, That this section shall not apply in cases~~ **where the maximum punishment for the offense charged is** ~~imprisonment for 5 years or more, or for life.~~

Comment on Section 5 [764.5]. This section is a companion to section 764.4. The time period for appearance is reduced to 10 days, rather than 20 days. The ten day period is more appropriate in light of the current emphasis on providing a speedy trial. The special exception for offenses punishable by imprisonment for more than 5 years has been eliminated as inconsistent with general coverage of this series of provisions. Section 764.4 provides for presentation of persons arrested in all non-capital felony offenses, and the purpose of that presentation is to permit the possible release of the person on bail in the county of arrest. As originally adopted, section 764.5, providing for release on bail, extended to all persons who came within section 764.4. A 1929 amendment included the current §764.5 exception for offenses punishable by more than 5 years imprisonment, but did not amend §764.4. The two provisions, as they currently exist, are therefore inconsistent in coverage. Either section 764.4 should be amended to exclude non-capital felonies punishable by more than 5 years imprisonment or section 764.5 should be amended to repeal the special exception added in 1929. The proposed amendment follows the latter course.

Sec. 6. Such magistrate shall certify on the ~~warrant~~ RECOGNIZANCE the fact of his having let the defendant to bail ~~,~~ and shall deliver ~~the same, together with~~ the recognizance ~~taken by him,~~ to the person who made the arrest, who shall cause the same to be delivered without unnecessary delay to ~~the~~ A magistrate or clerk of the court IN THE JUDICIAL DISTRICT before which the accused was recognized to appear.

Comment on Section 6 [764.6]. This section is a companion to sections 764.4 and 764.5. The only change is to require that magistrate's certification be placed on the recognizance. In some instances, the officer making the arrest will not have the warrant, and the warrant itself will not be before the magistrate.

Sec. 7. If such magistrate refuses to let to bail the person so arrested and brought before him, or if no sufficient bail be IS NOT offered or the offense be not bailable by such magistrate, the person OFFICIAL having him THE PERSON ARRESTED in charge shall take him before the A magistrate who OF THE JUDICIAL DISTRICT IN WHICH THE OFFENSE IS CHARGED TO HAVE BEEN COMMITTED issued the warrant, or before some other magistrate of the same county, as in the next section prescribed.

Comment on Section 7 [764.7]. This section is a companion provision to M.C.L. §§764.4-764.6. It applies where the arrested person is not released on bail. As in proposed section 1b, the officer is directed simply to take the person before a magistrate of the district in which the offense is alleged to have been committed rather than before the magistrate who issued the warrant. See comment to proposed section 1b. The reference to non-bailable offenses is eliminated as unnecessary. The section applies when the individual is not released on bail, no matter what the reason. Under current law, all of the offenses not excluded under M.C.L. §764.4 would be bailable under some circumstances.

Sec. 9a. (1) As an alternative to filing an order allowing a warrant as provided in section 1, if the arrest is to be for A MINOR OFFENSE an offense, violation of a city, village or township ordinance cognizable by a justice of the peace or a municipal judge, the prosecuting attorney for the county may issue a written order for a summons addressed to a defendant, directing the defendant to appear before a magistrate or other judicial officer at a designated future time for proceedings as are hereinafter set forth.

(2) A summons shall designate the name of the issuing court, the offense charged in the underlying complaint, AND the name of the defendant to whom it is addressed, and SHALL be subscribed by the issuing ~~judicial officer~~ MAGISTRATE.

(3) A summons may be served in the same manner as a warrant.

Comment on Section 9a [764.9a]. This is the first provision in a series dealing with the use of a summons or appearance ticket as an alternative to an arrest for J.P. offenses. Throughout these provisions, the description of offenses cognizable before a justice is replaced by a reference to "minor offenses." See p. 47 supra. References to judicial officers similarly are replaced by references to "magistrate." Since the summons procedure may be used for ordinance violations, prosecuted by the city attorney, the exclusive current reference to the prosecuting attorney of the county is inappropriate. The term "prosecuting attorney," as defined in proposed section 761.1, will cover all relevant prosecuting officials.

Sec. 9b. When ~~any~~ A person is arrested without a warrant for A MINOR OFFENSE, ~~any misdemeanor, violation of a city, village or township ordinance cognizable by a justice of the peace or a municipal judge, the defendant need not be taken to~~ AS AN ALTERNATIVE TO TAKING THE PERSON ARRESTED BEFORE a magistrate as provided in section 13 9, ~~but in the alternative,~~ a police officer may issue and serve an appearance ticket upon the ~~defendant~~ PERSON ARRESTED and release him from custody as prescribed in section 9c.

Comment on Section 9b [764.9b]. See also the comment to section 764.9a. M.C.L. §780.581 is the current provision directing that a person arrested on a J.P. offense be taken before a magistrate, rather than section 9 (which deals only with persons arrested outside the county). M.C.L. §780.581 is combined with M.C.L. §764.13 to cover all offenses in the proposed amendment of M.C.L. §764.13. Accordingly, the reference to section 9 in section 9b is replaced by a reference to section 13. A reference to "minor offenses" is substituted for the current reference to J.P. offenses and other stylistic changes also are made.

Sec. 9c. (1) Whenever a police officer has arrested a person without a warrant for A MINOR OFFENSE ~~any misdemeanor, violation of a city, village or township ordinance cognizable by a justice of the peace or a municipal judge, pursuant to section 15,~~ in lieu of taking ~~such~~ THE person ~~to~~ BEFORE a ~~local criminal court~~ MAGISTRATE and promptly filing a complaint ~~therewith, he~~ AS PROVIDED IN SECTION 13, THE OFFICER may issue to and serve upon ~~such~~ THE person an appearance ticket as defined in section 9f.

(2) A public servant other than a police officer, who is specially authorized by law to issue and serve appearance tickets with respect to a particular class of offenses of less than felony grade, may issue and serve upon a person an appearance ticket when he has reasonable cause to believe that the person has committed such an offense.

Comment on Section 9c [764.9c]. This is a companion provision to M.C.L. §764.9b. Indeed, it largely repeats that section, but is phrased in terms of the officer's authority. The reference to section 15 is deleted as unnecessary and confusing. Section 15 is the general section governing arrests without a warrant.

Sec. 13. A peace officer who has arrested a person for a ~~felony~~ AN offense without a warrant ~~must~~ SHALL, without unnecessary delay, take the person arrested before ~~the most convenient~~ A magistrate of the ~~county~~ JUDICIAL DISTRICT in which the offense ~~was~~ IS CHARGED TO HAVE BEEN committed, and ~~must make before~~ SHALL PRESENT TO the magistrate a complaint ~~,~~ stating the ~~offense for which~~ CHARGE AGAINST the person ~~was~~ arrested.

Comment on Section 13 [764.13]. This provision deals with the prompt presentment of persons arrested without a warrant. (Section 1b uses the same standard in requiring prompt presentment of persons arrested with a warrant). There is a gap in the current statutes dealing with this subject. M.C.L. §780.581 deals with persons arrested for J.P. offenses, while section 13 deals only with felonies. This leaves no provision governing arrests for non-J.P. misdemeanors other than section 9 (which deals only with arrests outside the county). So as to provide for coverage of all offenses in a single provision, section 13 is amended to cover all offenses. Section 780.581 will not be repealed, however, since that section includes various other provisions that are not duplicated in the Code of Criminal Procedure. The first section of 780.581 should be amended, however, to match the language of section 13.

Section 13 now refers to presentment before the "most convenient magistrate in the county in which the offense was committed." This standard is universally interpreted as requiring presentment before a magistrate of the judicial district in which the offense was committed. Accordingly, language referring to the district of the offense is substituted for the current language.

Sec. 14. A private person who has made an arrest ~~must~~ SHALL, without unnecessary delay, ~~take the person arrested before the most convenient magistrate in the county in which the offense was committed or~~ deliver ~~him~~ THE PERSON ARRESTED to a peace officer, who ~~must~~ SHALL without unnecessary delay take ~~him~~ THAT PERSON before ~~such~~ A magistrate OF THE JUDICIAL DISTRICT IN WHICH THE OFFENSE IS CHARGED TO HAVE BEEN COMMITTED. The peace officer or private person ~~so taking the person arrested before such magistrate must lay before~~ SHALL PRESENT TO the magistrate a complaint stating the ~~offense for which~~ CHARGE AGAINST the person ~~was~~ arrested.

Comment on Section 14 [764.14]. This provision is the counterpart to section 13 dealing with citizen arrests. The current law permits the private person to take the arrestee before the magistrate, but the common practice is to deliver the person to a police officer. Police officers are more readily available and can more readily provide proper processing of the arrestee. Accordingly, the alternative of presentment by the private person is deleted.

Sec. 15. (1) A peace officer may, without a warrant, arrest a person in the following situations:

(a) When a felony, ~~or~~ misdemeanor, OR ORDINANCE VIOLATION is committed in the peace officer's presence.

(b) When the person has committed a felony although not in the presence of the peace officer.

(c) When a felony in fact has been committed and the peace officer has reasonable cause to believe that the person has committed it.

(d) When the peace officer has reasonable cause to believe that a felony has been committed and reasonable cause to believe that the person has committed it.

(e) When the peace officer has received positive information by written, telegraphic, teletypic, telephonic, radio, or other authoritative source that another peace officer holds a warrant for the arrest.

(f) When the peace officer has received positive information broadcast from a recognized police or other governmental radio station, or teletype, as may afford the peace officer reasonable cause to believe that a felony has been committed and reasonable cause to believe that the person has committed it.

(g) When the peace officer has reasonable cause to believe that the person is an escaped convict, or has violated a condition of parole from a prison, or has violated a condition of probation imposed by a court, or has violated a condition of a pardon granted by the executive.

(h) When the peace officer has reasonable cause to believe that the person was, at the time of an accident, the driver of a motor vehicle involved in the accident and was driving the vehicle upon a public highway of this state while under the influence of intoxicating liquor.

(2) An officer in the United States customs service or the immigration and naturalization service, without a warrant, may arrest a person if all of the following circumstances exist:

(a) The officer is on duty.

(b) One or more of the following situations exist:

(i) The person commits an assault or an assault and battery punishable under section 81 or 81a of Act No. 328 of the Public Acts of 1931, as amended, being section 750.81 or 750.81a of the Michigan Compiled Laws, against the officer.

(ii) The person commits an assault or an assault and battery punishable under section 81 or 81a of Act No. 328 of the Public Acts of 1931, as amended, on any other person in the presence of the officer, or commits any felony.

(iii) The officer has reasonable cause to believe that a felony has been committed and reasonable cause to believe that the person has committed it, and the reasonable cause is not founded on a customs search.

(iv) The officer has received positive information by written, telegraphic, teletypic, telephonic, radio, or other authoritative source that a peace officer holds a warrant for the person's arrest.

(c) The officer has received training in the laws of this state equivalent to the training provided for an officer of a local police agency under Act No. 203 of the Public Acts of 1965, as amended, being sections 28.601 to 28.616 of the Michigan Compiled Laws.

Comment on Section 15 [764.15]. Michigan courts have long held the provisions of M.C.L. §764.15(a) applicable to ordinance violations. See, e.g., Odinetz v. Budds, 315 Mich. 512 (1946). For this purpose, ordinance violations are treated in the same manner as misdemeanors. The proposed amendment is in keeping with the attempt to make more specific the applicability of key Code provisions to ordinance provisions. See p. 40 supra.

Sec. 28. When ~~any~~ A person under recognizance on an appeal in a criminal proceeding from a conviction and judgment of a ~~justice of the peace,~~ MAGISTRATE shall not appear according to the condition of ~~such~~ THE recognizance, and the ~~said~~ recognizance ~~shall have become~~ IS forfeited by reason of the breach of the condition thereof, and ~~such~~ THE forfeiture ~~shall have been~~ IS entered on THE record by order of the ~~circuit~~ court THEN HAVING JURISDICTION OF THE CASE, ~~it shall be lawful for said~~ THAT court ~~to~~ MAY issue a capias OR OTHER PROCESS for the arrest of the appellant or defendant named in ~~such~~ THE recognizance, to bring him before the court. ~~to answer to the complaint or prosecution against him in the proceedings in which appeal was taken.~~

Comment on Section 28 [764.28]. This provision was written at a time when an appeal on a J.P. offense was by trial de novo to the circuit court. It has been amended to fit the various appeal alternatives available today. An appeal today may be on the record (from the district court and recorder's court or by trial de novo (from municipal courts). It may be to the circuit court (from the district court and municipal courts) or to the court of appeals (from the recorder's court).

Chapter 5

Sec. 1. ~~Officers before whom persons charged with crime shall be brought, shall have power to let them to bail as follows:~~

~~(a)~~ ~~Any justice of the supreme court,~~ (1) EXCEPT AS PROVIDED IN SECTION 5, A judge of a THE circuit court, OF THE RECORDER'S COURT OF THE CITY OF DETROIT, OF THE TRAFFIC AND ORDINANCE DIVISION OF THE RECORDER'S COURT OF THE CITY OF DETROIT, OF THE DISTRICT COURT, AND OF A MUNICIPAL COURT, ~~judge of any court of record having jurisdiction of criminal causes, circuit court commissioners, in all cases except for offenses enumerated in section 5 of this chapter,~~ AND A DISTRICT COURT MAGISTRATE, MAY LET TO BAIL ACCUSED PERSONS BROUGHT BEFORE THE JUDGE OR DISTRICT COURT MAGISTRATE.

~~(b)~~ ~~Any justice of the peace, judge of a police or municipal court, mayor of a city, in all cases where the punishment for the offense charged shall be less than imprisonment for life, in the state prison: Provided, That in courts in cities, in which the justice or judge, or justices or judges, as the case may be, have the criminal jurisdiction of a justice of the peace, or the jurisdiction to try and sentence for violations of city ordinances, or both, and having a clerk, recognizances~~

(2) RECOGNIZANCES for the appearance of ACCUSED persons ~~charged with a criminal offense~~ may be taken and entered into by and before the clerks of ~~such~~ THE courts LISTED IN SUBSECTION (1), subject to the direction of the court, when the amount of bail has been set by the ~~justice or~~ judge.

(3) AN ACCUSED PERSON MAY BE LET TO BAIL AS PROVIDED IN THIS CHAPTER, IN ACT NO. 257 OF THE PUBLIC ACTS OF 1966, [AS AMENDED,] BEING SECTIONS 780.61 TO 780.73 OF THE MICHIGAN COMPILED LAWS, OR IN ACT NO. 44 OF THE PUBLIC ACTS OF 1961, [AS AMENDED,] BEING SECTIONS 780.531 TO 780.588 OF THE MICHIGAN COMPILED LAWS.

Comment on Section 1 [765.1]. The current provision includes two subsections. The first permits circuit court judges and judges of any court of record having criminal jurisdiction to grant bail in any criminal case (except for the capital offense exceptions noted in section 5 -- murder and treason). The second provides that J.P. courts can grant bail in any cases punishable by less than life imprisonment. The first provision currently covers the district court and recorder's court since both are courts of record. See also M.C.L. §765.2. It also includes district court magistrates since they have authority to grant bail on the same terms as district court judges as specified in M.C.L. §600.8511. Accordingly, no change is made by the addition of references to the recorder's court, district court, and district court magistrate are added. The reference to the Supreme Court is deleted since the justices of that court do not commonly set pretrial bail. Of course the justices retain the power to do so under their general authority to exercise any power excised by a magistrate.

Municipal courts are the only remaining courts that would be subject to subsection two of the current provision. In this area, however, separate treatment of municipal courts is inappropriate. Those courts serve essentially the same function as the district courts in handling the first appearance and preliminary hearing on all felonies committed within their

judicial district. Since setting bail is an important aspect of those proceedings, the proposed amendment adds the municipal courts to the list of courts that can grant bail in all cases.

With municipal courts removed from its coverage, the second subsection is deleted since the remaining references are to abolished courts and to mayors (who do not exercise this judicial function).

The current proviso for taking of recognizances by the clerk is placed in a separate subsection. A new subsection is added to refer to the provisions in the Supplemental Chapter governing bail for minor offenses, ordinance violations, and traffic offenses. Since section 1 applies to "accused persons," it includes persons charged with ordinance violations as well as violations of state law.

Sec. 3. ~~Any justice of the supreme court, circuit court commissioner or any~~ A judge of ~~any~~ THE circuit court ~~for any county,~~ or of the recorder's court of the city of Detroit, OF THE TRAFFIC AND ORDINANCE DIVISION OF THE RECORDER'S COURT OF THE CITY OF DETROIT, ~~or the superior court of the city of Grand Rapids, or of any court of record having jurisdiction of criminal causes~~ OF THE DISTRICT COURT, OR OF A MUNICIPAL COURT, on application of ~~any~~ A prisoner committed for ~~any~~ A bailable offense, and after due notice to the prosecuting attorney for the county, may inquire into the case and admit ~~such~~ THE prisoner to bail. ~~, and any~~ A person committed for not finding ~~such~~ sureties to recognize for him, may be admitted to bail by any of the ~~said officers~~ JUDGES LISTED IN THIS SECTION.

Comment on Section 3 [765.3]. This section is amended in accordance with the proposed amendment of section 1. It does not refer to the district court magistrate since the section concerns the extra-ordinary situation where bail is set apart from a defendant's regular appearance before the judge.

Sec. 7. In all cases where a ~~writ of error shall be~~ AN APPEAL IS taken by or on behalf of the people of the state of MICHIGAN from any court of record ~~to the supreme court~~, the defendant shall be admitted to bail on his own recognizance, pending the prosecution and determination of ~~said writ~~ THE APPEAL, unless the trial court ~~shall determine~~ DETERMINES and ~~certify~~ CERTIFIES that the character of the offense, of the respondent, and of the questions involved in ~~such review~~ THE APPEAL, render it advisable that bail be required.

Comment on Section 7 [765.7]. Stylistic changes are needed since the writ of error is no longer used in the appellate process.

Sec. 8. ~~No~~ A practicing attorney or counselor shall NOT become A SURETY ~~security~~ or POST bail for the appearance of ~~any~~ A person charged with a felony, ~~or~~ a misdemeanor ~~in any criminal action~~ OR AN ORDINANCE VIOLATION, and any such surety or bail ~~for appearance~~ taken by a judge~~, circuit court commissioner, justice of the peace~~ or other officer authorized by law to take ~~security or bail~~ A RECOGNIZANCE, shall be void.

Comment on Section 8 [765.8]. The prohibition in this section is specifically made applicable to ordinance violations. References to the justice of the peace and circuit court commissioner are deleted. The phrase "judge or other officer" covers all persons authorized by law to take bond or bail under section 1. It is assumed that the provision does not apply where the attorney is posting bail for himself or a relative. The last reference to taking "security or bail" is changed to taking a "recognizance" which ties in with the language of section 5.

Sec. 20. ~~In every court in this state having criminal jurisdiction, each judge thereof shall have power in his discretion to~~ A JUDGE LISTED IN SECTION 1(1) OF THIS CHAPTER OR A DISTRICT COURT MAGISTRATE MAY administer an oath to ~~any~~ A proposed surety upon ~~any~~ A recognizance given for the release of a person accused ~~of any crime, offense, misdemeanor, or violation of any city or village ordinance,~~ OF A FELONY, MISDEMEANOR, OR ORDINANCE VIOLATION, to ascertain his financial condition. ~~Each of the judges of any such court shall have power in his discretion~~ THE JUDGE OR DISTRICT COURT MAGISTRATE MAY require ~~any~~ A surety upon ~~any~~ A criminal recognizance taken before him, to pledge to the people of the state ~~of~~ Michigan, real estate owned by ~~said~~ THE surety and located in the county in which ~~such~~ THE court is established, the value of the interest of ~~said~~ THE surety in ~~said~~ THE real estate being at least equal to the penal amount of the ~~said~~ recognizance. ~~Whenever such a~~ WHEN THE pledge of real estate ~~shall be~~ IS required, ~~by any such court or by any of the judges thereof, of any proposed surety, there shall be executed by said surety~~ THE SURETY SHALL EXECUTE the usual form of recognizance, and in addition there shall be included in ~~said~~ THE recognizance, as a part ~~thereof~~ OF IT, an affidavit of justification in substantially the following form. ~~Such~~ THE affidavit shall be executed by the proposed surety under an oath administered by the clerk, DISTRICT COURT MAGISTRATE, or any judge of ~~said~~ THE court.

STATE OF MICHIGAN

ss.

COUNTY OF

..... residing at ..... who offers himself as surety for ..... being first duly sworn, deposes and says that he owns in his own right real estate subject to levy of execution located in the county of ..... state of Michigan, consisting of ..... and described as follows, to wit: .....; that the title to the same is in his name only; that the value of the same is not less than $..... and is subject to no encumbrances whatever except ..... mortgage of $.....; that he is not surety upon any unpaid or forfeited recognizance and that he is not party to any unsatisfied judgment upon any recognizances; that he is worth in good property no less than $..... over and above all debts, liabilities, and lawful claims against him and all liens, encumbrances, and lawful claims against his property.

.....

Subscribed and sworn to before me this

..... day of ..... 19..

.....

Judge ~~of the court of the city of~~ /DISTRICT COURT MAGISTRATE/ CLERK OF THE ..... court.

~~Each of the judges of any such court may, in his discretion~~ and ~~in~~ THE JUDGE OR DISTRICT COURT MAGISTRATE MAY IN addition to the above affidavit, require the proposed surety to depose under oath that he is not at the time of executing ~~said~~ THE recognizance and affidavit surety upon ~~any other~~ ANOTHER recognizance and that there are no unsatisfied judgments or executions against him. ~~Each of the judges of any such court~~ THE JUDGE OR DISTRICT COURT MAGISTRATE may ~~, in his discretion,~~ require ~~such~~ THE proposed surety to depose to any other fact which is relevant and material to a correct determination of the proposed surety's sufficiency to act as bail, ~~: Provided, That no~~ EXCEPT THAT A lien upon real estate shall NOT be required for A MINOR OFFENSE. ~~any offense cognizable by a justice of the peace.~~

Comment on Section 20 [765.20]. This section is amended to accommodate the amendment to section 1 listing those officials who may set bail. The description of J.P. offenses is replaced by "minor offenses." See p. 47 supra. Other changes are stylistic.

Sec. 29. It shall not be necessary in ~~any~~ A criminal case for ~~any~~ A witness to give bail for his appearance as a witness in ~~such~~ THAT cause unless required to do so by the order of a judge of a court of record. ~~or a circuit court commissioner; all laws contravening this section are hereby repealed.~~

Comment on Section 29 [765.29]. The reference to circuit court commissioners is deleted. The phrase attempting to repeal all contravening laws is deleted since it is invalid.

Sec. 30. When ~~any married woman or~~ A minor is a material witness, any other person may be allowed to recognize for the appearance of ~~such~~ THE witness.

Comment on Section 30 [765.30]. The separate treatment of married women, as opposed to unmarried women, is unnecessary and probably unconstitutional.

Chapter 6

Sec. 19. When ~~any~~ A person brought before a ~~justice of the peace~~ MAGISTRATE shall be committed to jail, or shall be under recognizance to answer to ~~any~~ A charge of assault and battery or other misdemeanor for which the injured party shall have a remedy by civil action, ~~if~~ AND the injured party ~~shall appear~~ APPEARS before the magistrate having cognizance of the offense, who made the commitment or took the recognizance, and ~~acknowledge~~ ACKNOWLEDGES in writing that he has received satisfaction for the injury, the magistrate may in his discretion, on payment of the costs which have accrued, discharge the accused and the recognizance, or supersede the commitment by an order under his hand.

Comment on Section 19 [766.19]. The proposed amendment substitutes "magistrate" for "justice of the peace," and makes certain stylistic changes.

Chapter 7

Sec. 35. ~~Whenever it shall appear to any~~ WHEN IT APPEARS TO A court of record that ~~any~~ A person is a material witness in ~~any~~ A criminal case pending in ~~any~~ A court in the county and that there is a danger of the loss of testimony of ~~such~~ THE witness unless he ~~be~~ IS required to furnish bail or ~~be~~ IS committed in the event that he fails to furnish ~~such~~ bail, ~~said~~ THE court ~~, or a circuit court commissioner in the absence of a judge of any court of record,~~ shall require ~~such~~ THE witness to be brought before ~~him~~ IT and after giving him an opportunity to be heard, if it ~~shall appear that such~~ APPEARS THAT THE witness is a material witness and that there is danger of the loss of his testimony unless he ~~furnish~~ FURNISHES bail or ~~be~~ IS committed, ~~said~~ THE court may require ~~such~~ THE witness to enter into a recognizance with ~~such~~ sureties ~~and~~ in ~~such~~ AN amount as the court may determine for his appearance at ~~any~~ AN examination or trial of ~~said~~ THE cause. All witnesses who fail to so recognize, shall be committed to jail by ~~said~~ THE court, ~~there to remain~~ until they comply with ~~such~~ THE order or are discharged by future order of ~~said~~ THE court.

Comment on Section 35 [767.35]. The proposed amendment deletes the reference to circuit court commissioners and makes certain stylistic changes.

Chapter 9

Sec. 1. ~~The justices of the supreme court, or any of them, or any of the several circuit judges in the respective circuits, or any judge of a court of record~~ A JUDGE OF A COURT having jurisdiction ~~of criminal cases, in this state, are hereby~~ IS authorized and empowered to pronounce judgment against and pass sentence upon all persons ~~heretofore convicted, or that may hereafter be~~ convicted OF AN OFFENSE in any court held by THAT JUDGE. ~~said justices, or judges, or any of them, for any offense heretofore committed or that may hereafter be committed against the laws of this state: Provided, That such~~ THE sentence shall NOT, HOWEVER, BE IN EXCESS OF THAT PROVIDED ~~in no case or respect be greater than the penalty now or that may be prescribed hereafter~~ by law.

Comment on Section 1 [769.1]. Judges of the municipal courts should be subject to the provisions of Chapter 9, but this first section of Chapter 9 creates some question on that point because it refers only to courts of record. The proposed amendment deletes the reference to a court of record and expands the provision to include judges of all courts, provided the court has jurisdiction. The phrase criminal cases also is deleted since it might suggest that only felony or misdemeanor cases (as opposed to ordinance violations) are included. When this provision was enacted, it was important to recognize the validity of past sentences as well as future sentences, and the statute referred to persons convicted "heretofore" or "hereafter." That authority is now established over the years the statute has been in existence (since 1857), and the statute now can simply refer to persons "convicted of an offense." The statement on excess sentences is supplemented by M.C.L. §769.24, which treats the legal effect of such a sentence.

Chapter 10

Sec. 1. The JUDGE OF A court ~~of record~~ in which the trial of ~~any indictment shall be had~~ AN OFFENSE OCCURS may grant a new trial to the defendant, for any cause for which by law a new trial may be granted, or when it ~~shall~~ appear~~s~~ APPEARS to the court that justice has not been done, and on such terms or conditions as the court ~~shall~~ direct~~s~~ DIRECTS.

Comment on Section 1 [770.1]. This is the first of two provisions dealing with the trial court's authority to grant a new trial. Such authority is not limited to cases prosecuted by indictment nor is it limited to felonies. Thus provisions governing new trials are found in the General Court Rules (GCR 528), the District Court Rules (DCR 527) and the Uniform Municipal Court Act (M.C.L. §730.516).*/ The other major statutory provisions relating to the motion for new trial also assumes that the motion may be granted by all trial courts. See, e.g., M.C.L. §769.26 (prohibiting the grant of a new trial "by any court" of this state except upon a "miscarriage of justice").

Sec. 2. (1) ~~Motions for new trials~~ IN FELONY OR MISDEMEANOR CASES APPEALABLE AS OF RIGHT TO THE COURT OF APPEALS, A MOTION FOR A NEW TRIAL shall be made

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*/ These Court Rules are made applicable to criminal cases except where statute or court rule otherwise provides or it "clearly appears" that the rule applies only to civil cases. See GCR 785; DCR 785.

within ~~30~~ 60 days after ~~verdict, and not afterwards~~ ENTRY OF JUDGMENT OR WITHIN SUCH FURTHER TIME AS MAY BE ALLOWED BY THE TRIAL COURT DURING SUCH 60-DAY PERIOD.

(2) IN MISDEMEANOR OR ORDINANCE VIOLATION CASES APPEALABLE AS OF RIGHT FROM A COURT OF RECORD TO THE CIRCUIT COURT, A MOTION FOR A NEW TRIAL SHALL BE MADE WITHIN 20 DAYS AFTER ENTRY OF JUDGMENT.

(3) IN MISDEMEANOR OR ORDINANCE VIOLATION CASES APPEALABLE DE NOVO TO THE CIRCUIT COURT, A MOTION FOR A NEW TRIAL SHALL BE MADE WITHIN 20 DAYS AFTER ENTRY OF JUDGMENT.

(4) IF THE APPLICABLE PERIOD OF TIME PRESCRIBED IN SUBSECTION (1) OR (2) HAS EXPIRED, A COURT OF RECORD MAY ALLOW AND GRANT A MOTION FOR A NEW TRIAL FOR GOOD CAUSE SHOWN. IF THE APPLICABLE TIME PERIOD PRESCRIBED IN SUBSECTION (3) HAS EXPIRED AND THE DEFENDANT HAS NOT APPEALED, A MUNICIPAL COURT MAY ALLOW AND GRANT A MOTION FOR NEW TRIAL FOR GOOD CAUSE SHOWN.

Comment on Section 2 [770.2]. This amendment would incorporate the time provisions of the court rules.

Subsection (1) deals with appeals to the court of appeals. It is not limited to felonies since misdemeanors tried before recorder's court also may be appealed to the court of appeals. See GCR 806. GCR 803, governing appeals to the court of appeals, provides: "In criminal proceedings, appeal as of right shall be taken . . . within 60 days after the entry of any order denying a motion for new trial, provided such motion is made and served (a) within 60 days after the entry of the judgment . . . or (b) within such further time as may be allowed by the trial court during such 60-day period." GCR 527.2 uses a 20 day period for new trial motions generally, but the 60 day period of GCR 803 supersedes in criminal cases.

Subsection (2) deals with appeals to the circuit court from the district court and traffic and ordinance division of recorder's court. See GCR 806. Such appeals are governed by GCR 701.2, which provides for an appeal as of right "20 days after the entry of an order denying a motion for new trial . . . if the motion was filed within the original 20-day period." See also DCR 527 (20 day period for new trial motions).

Subsection (3) applies to cases appealable by trial de novo from the municipal court. The procedure for such appeals is prescribed in Chapter 14. The current provisions in this chapter do not refer to a new trial motion. The Uniform Municipal Act does recognize such a motion, but sets a 5 day period for making the motion. GCR 702, providing for appeals from municipal courts, refers to Rule 701.2 as the applicable timing provision. That provision recognizes a 20 day period for new trial motions. The proposed amendment also would utilize a 20 day period, consistent with the objective of providing uniformity in municipal court and district court cases unless there is a clear legislative policy to the contrary.

Subsection (4) recognizes the discretionary authority of a court of record to grant a motion for new trial at any time for good cause shown. See People v. Barrows, 358 Mich. 267, 272-73; People v. Parker, 393 Mich. 531, 541 (1975). Because of the special trial de novo review procedure for municipal court proceedings, that court may not grant a delayed new trial motion if the case was removed to the circuit court for a trial de novo. The delayed motion must then be made to the circuit court.

Sec. 3. (1) ~~Writs of error in criminal cases shall issue only in the discretion of the supreme court or any justice thereof, on proper application therefore.~~ SUBJECT TO THE LIMITATIONS IMPOSED BY SECTION 12 OF THIS CHAPTER, AN AGGRIEVED PARTY SHALL HAVE A RIGHT OF APPEAL FROM ALL FINAL JUDGMENTS OR TRIAL ORDERS AS FOLLOWS:

(2) APPEALS FROM INTERLOCUTORY JUDGMENTS OR ORDERS IN ANY FELONY, MISDEMEANOR OR ORDINANCE VIOLATION SHALL BE TAKEN, IN THE MANNER PROVIDED BY SUPREME COURT RULE, BY APPLICATION FOR LEAVE TO APPEAL TO THE SAME COURT TO WHICH A FINAL JUDGMENT IN THAT CASE WOULD BE APPEALABLE AS A MATTER OF RIGHT UNDER SUBSECTION (1).

(3) AFTER EXPIRATION OF THE PERIOD PRESCRIBED IN SUBSECTION (1) FOR TIMELY APPEAL, THE APPELLATE COURT MAY GRANT LEAVE TO APPEAL FROM ANY ORDER OR JUDGMENT FROM WHICH TIMELY APPEAL WOULD HAVE BEEN AVAILABLE AS OF RIGHT, OR BY LEAVE, UPON CONDITIONS PRESCRIBED BY SUPREME COURT RULE.

(4) FURTHER REVIEW OF MATTERS APPEALED TO THE CIRCUIT COURT UNDER SUBSECTIONS (1)(B), (1)(C), OR UNDER SUBSECTION (2) MAY BE HAD ONLY UPON APPLICATION FOR LEAVE TO APPEAL GRANTED BY THE COURT OF APPEALS.

(5) FURTHER REVIEW OF ANY MATTER APPEALED TO THE COURT OF APPEALS UNDER THIS SECTION MAY BE HAD ONLY UPON APPLICATION FOR LEAVE TO APPEAL GRANTED BY THE SUPREME COURT.

(6) APPEALS AS OF RIGHT AND APPEALS BY APPLICATION FOR LEAVE TO APPEAL TAKEN PURSUANT TO THIS SECTION SHALL BE TAKEN IN ACCORDANCE WITH AND WITHIN THE TIME PRESCRIBED BY SUPREME COURT RULE.

Comment on Section 3 [770.3]. This provision restates current law governing appeals in criminal cases. M.C.L. §§770.3-770.7 spell out a procedure for review that has been inapplicable since the creation of a court of appeals in 1964. New section 3 will replace those provisions. Subsection 1(a) is taken from GCR 801.3, 803.1, 806.1. See also M.C.L. §600.308(1). Subsection 1(b) is taken from GCR 701, 701.3(1). Subsection 1(c) merely makes a cross-reference to the provisions on appeal by trial de novo in Chapter 14. See also GCR 806. Subsection (2) follows GCR 801.3(2), 803.2, 806.2(5). See also M.C.L. §600.308(2), 600.8342. Subsection (3) follows GCR 803.3, 701.2. Subsection (4) follows GCR 801.3(1). Subsection (5) also follows GCR 853. Subsection (5) provides a cross-reference to the Supreme Court Rules, evidencing the purpose of the amendment to incorporate the rule provisions.

Chapter 11

Sec. 7. The circuit court ~~of~~ IN each ~~of the several~~ judicial ~~circuits~~ CIRCUIT may recommend a chief probation officer, AND may also recommend assistant probation officers, who may be appointed by the Michigan corrections commission~~;~~. EACH ~~each of whom~~ THE APPOINTED OFFICERS shall act as ~~such~~ A probation officer in the judicial circuit in which, or the probation district to which, he ~~shall have been~~ IS appointed, and ~~who~~ shall receive ~~such~~ THE compensation as WHICH the COUNTY boards of ~~supervisors of the several counties~~ COMMISSIONERS shall provide. In cities having a municipal court, OR A recorder's court ~~or police court~~, the judge or judges of ~~said~~ THOSE courts may recommend a chief probation officer and may also recommend assistant probation officers, each of whom may be

appointed by the Michigan corrections commission, and shall act as ~~such~~ A probation officer within the limits of the territorial jurisdiction of ~~such~~ THE RESPECTIVE courts, or in the probation district to which ~~he shall have been~~ appointed, and who shall receive ~~such~~ THE compensation as WHICH the ~~board of supervisors of the several counties~~ COUNTY BOARD OF COMMISSIONERS or the common councils of the ~~several~~ cities may provide. ~~In cities where there are 2 or more courts each having different jurisdiction the judge of each court may recommend the probation officer or officers for his own court, and where there are 2 or more judges of any such court, they~~ THE JUDGES OF THE RECORDER'S COURT OF THE CITY OF DETROIT, THE TRAFFIC AND ORDINANCE DIVISION OF THE RECORDER'S COURT OF THE CITY OF DETROIT, AND THE JUDGES OF EACH JUDICIAL CIRCUIT HAVING 2 OR MORE JUDGES SHALL JOINTLY RECOMMEND THE PROBATION OFFICER OR OFFICERS FOR THEIR OWN COURT, DIVISION, OR CIRCUIT. In counties where ~~the provisions of~~ Act No. 370 of the Public Acts of 1941, as amended, being sections 38.401 to ~~38.427~~ 38.428 of the MICHIGAN Compiled Laws, ~~of 1948, are~~ IS in force, the probation officers of the recorder's court and of the circuit court, after appointment, shall be subject to ~~such~~ THE rules as now apply or may be adopted respecting vacations and sick leave of classified employees. ~~; such~~ THE probation officers shall

neither be considered in the classified or unclassified civil service but shall be exempt from Act No. 370 of the Public Acts of 1941, as amended, ~~being sections 38.401 to 38.427 of the Compiled Laws of 1948,~~ except for the purposes of this act. In counties adopting the provisions of Act No. 370 of the Public Acts of 1941, as amended, ~~being sections 38.401 to 38.427 of the Compiled Laws of 1948,~~ each probation officer of the recorder's court and of the ~~circuit courts~~ CIRCUITS shall be credited with an accumulated sick leave reserve in the same manner as the classified employees of the county, based on the date of original appointment subsequent to December 1, 1937, if there is no break in service. ~~; probation~~ PROBATION officers with a break in service shall be credited with accumulated sick leave reserve from date of appointment following their last break in service. The term of office of probation officers presently serving or appointed in accordance with the provisions of this section shall be until removed for cause by the appointing judges after a hearing.

Comment on Section 7 [771.7]. Reference to police courts is deleted. County commissioners are referred to by that title. The provisions on appointment of probation officers for different courts located in the same city and for courts with more than one judge are altered to refer to the specific courts that fall within those provisions. (This amendment is necessary in part because the circuit court technically is all one court, divided into separate circuits. The reference to participation by all of the judges of the circuit court obviously is meant to apply to all of the judges of the circuit.) No mention is made of the district court since M.C.L. §600.8314 governs district court probation departments.

Sec. 12. The salary and necessary expenses of the chief probation officer and each assistant probation officer shall be paid monthly out of the treasury or treasuries of the county or counties composing the circuit within which ~~such~~ THE probation officer or officers shall act, where provision has been made by the ~~board of supervisors of such~~ COUNTY BOARD OF COMMISSIONERS OF THE county or counties for their payment; if ~~such~~ THE probation officer is appointed by a criminal court of record of general jurisdiction of ~~any~~ A city, out of the treasury of the county in which ~~said~~ THE city is located, where provision for their payment has been made by the ~~board of supervisors~~ COUNTY BOARD OF COMMISSIONERS of the county in which ~~said~~ THE city is located; if ~~said~~ THE probation officer is appointed by a municipal ~~or police~~ court, out of the treasury of the city in which ~~such~~ THE municipal ~~or police~~ court is located, where provision for payment has been made by the commission or common council of ~~such~~ THE city. ~~Said~~ THE salary and expense shall be paid by the city or county treasurer upon an order of the clerk of the court, properly audited by the officer or board of the city or county in whom the power or duty of auditing accounts is vested.

Comment on Section 12 [771.12]. Changes in this section are similar to those made in Section 7.

Chapter 12

Sec. 1. ~~The justices of the supreme court, the several circuit judges, judges of courts of record having jurisdiction of criminal causes, circuit court commissioners, all mayors and recorders of cities, and all justices of the peace,~~ MAGISTRATES shall have power to cause all the laws made for the preservation of the public peace to be kept and in the execution of their power may require persons to give security to keep the peace in the manner provided in this chapter.

Comment on Section 1 [772.1]. This is the first in a series of sections dealing with peace bonds. The listing of the various courts is replaced by a reference to "magistrates." Peace bond authority commonly is exercised only by magistrates, and other provisions in this series refer only to magistrates. See M.C.L. §772.4. Of course, judges of the circuit court, justices of the supreme court, and recorder's court judges not assigned to magistrate duties may still exercise such authority pursuant to section 761.1(f). See p. 39 supra. Mayors have no need for peace bond authority in light of the availability of magistrates. [Though excluded from this provision, mayors may retain peace bond authority as conservators of the peace, M.C.L. §87.2, who traditionally have such authority. See In re Sanderson, 289 Mich. 165 (1939)].

Sec. 2. ~~Whenever~~ IF A complaint ~~shall be~~ IS made in writing and on oath to ~~any such~~ A magistrate that ~~any~~ A person has threatened to commit ~~any~~ AN offense against the person or property of another, it shall be the duty of ~~such~~

THE magistrate to examine ~~such~~ ON OATH THE complainant and any witnesses who may be produced. ~~; an oath, to reduce such examination to writing and to exam the same to be subscribed by the parties so examined.~~

Comment on Section 2 [772.2]. Since a complaint must be in writing, see proposed section 761.1(m), there is no need for a provision directing the magistrate to reduce it to writing.

Sec. 4. When the party complained of is brought before the magistrate, he may demand that the truth of the accusation shall be determined either by a trial before ~~such~~ THE magistrate, or a jury; and the trial ~~thereof,~~ and the selection of a jury shall be as in ~~criminal cases, which justices of the peace are authorized to try; and if~~ MINOR OFFENSES IN THE SAME COURT. IF the magistrate or jury upon ~~such~~ THE trial shall find the accused guilty, the magistrate may require the accused to enter into a recognizance, with sufficient sureties, to be approved by ~~such~~ THE magistrate, in ~~such~~ THE sum as he shall direct, to keep the peace towards all the people of this state, and especially towards the person requiring ~~such~~ THE sureties, for ~~such~~ THE term as he ~~may order~~ ORDERS not exceeding 2 years. ~~; and it~~ IT shall be competent for the magistrate or the jury to find and return a special verdict that the complaint and accusation are groundless or malicious,

and if they shall so find, ~~it shall be the duty of~~ the magistrate ~~to~~ SHALL enter ~~such~~ THE finding or verdict upon his docket.

Comment on Section 4 [772.4]. To provide some point of reference for determining the appropriate procedure in peace bond cases, section 4 refers to the use of the procedures employed for J.P. offenses. The proposed amendment would substitute "minor offenses," which describes those offenses formerly cognizable before a J.P.. See p. 47 supra.

Sec. 8. When ~~no~~ AN order respecting the costs is NOT made by the magistrate, ~~they~~ COSTS shall be allowed and paid in the same manner as costs ~~before justices in criminal~~ prosecutions~~, but in all~~ FOR MINOR OFFENSES IN THE SAME COURT. IN cases where a person is required to give security to keep the peace, the ~~court or~~ magistrate may further order that the costs of prosecution, or any part thereof, shall be paid by ~~such~~ THAT person, who shall stand committed until ~~such~~ THE costs are paid or ~~he~~ THE PERSON is otherwise legally discharged.

Comment on Section 8 [772.8]. The proposed change is similar to that proposed in section 772.4.

Sec. 9. ~~Any~~ A person aggrieved by the order of ~~any justice of the peace, requiring~~ A MAGISTRATE THAT REQUIRES him to recognize as ~~aforesaid~~ PROVIDED IN THIS CHAPTER may, on giving the recognizance to keep the peace required by ~~such~~ THE order, appeal ~~to the circuit court for the same county~~ IN THE SAME MANNER AS PROVIDED BY STATUTE AND SUPREME COURT RULE FOR APPEALS FROM JUDGMENTS ON ORDINANCE VIOLATIONS ENTERED IN THE SAME COURT.

Comment on Section 9 [772.9]. This section, like section 772.4, is designed to tie the procedures used in peace bond cases to those in J.P. criminal cases. The section accordingly provides for appeals in the same manner as an appeal was to be taken from a conviction before a J.P.. At the time the section was adopted, all appeals were by trial de novo. That procedure now applies only to the municipal court. Accordingly, the proposed amendment follows the pattern of §772.4 in simply describing the appeals procedure as the same as that which would apply to a minor offense conviction. Reference is made to ordinance violations, rather than "minor offenses" generally, because minor offenses include both misdemeanors and ordinance violations and appeals from convictions in the Traffic and Ordinance Division of Recorder's Court are different for misdemeanors and ordinance violations. See M.C.L. §770.3 supra. The appellate route for ordinance violation was viewed as the proper analogy, since such violations are appealable to the circuit court rather than the court of appeals.

Sec. 10 The court before which ~~such~~ THE appeal is prosecuted may affirm the order of the ~~justice~~ MAGISTRATE or discharge the appellant or may require the appellant to enter into a new recognizance with sufficient sureties, in

~~such~~ THE sum and for ~~such~~ THE time, not exceeding 2 years, as the court shall think proper and may also make ~~such~~ AN order in relation to the costs of the prosecution as may be deemed just.

Comment on Section 10 [772.10]. See the comment on section 772.1.

Sec. 11. If ~~any~~ A party appealing ~~shall fail~~ FAILS to prosecute his appeal, his recognizance shall remain in full force and effect, as to ~~any~~ A breach of the condition, without an affirmation of the judgment or order of the ~~justice~~ MAGISTRATE, and shall also stand as a security for ~~any~~ THE costs which shall be ordered by the court appealed to, to be paid by the appellant. ~~;~~ ~~a~~ A condition to that effect ~~to~~ SHALL be incorporated in all recognizances given under section 8 of this chapter.

Comment on Section 11 [772.11]. See the comment on M.C.L. §772.1.

Sec. 12. ~~Any~~ A person committed for not finding sureties, or refusing to recognize, as required by the ~~court or~~ magistrate, may be discharged FROM CUSTODY by ~~any judge;~~ THE MAGISTRATE WHO ENTERED THE ORDER OR ANY OTHER

MAGISTRATE OF THE SAME COURT AND JUDICIAL DISTRICT, ~~circuit court commissioner or justice of the peace~~ on giving ~~such~~ THE security as was required.

Comment on Section 12 [772.12]. See the comment on M.C.L. §772.1. Since the district court is a single court, the authority to release the person committed is limited to magistrates of the same court and judicial district.

Sec. 14. Whenever upon a suit brought on any recognizance entered into in pursuance of this chapter, the penalty thereof shall be adjudged forfeited, the ~~court~~ MAGISTRATE may remit such portion of the penalty on the petition of any defendant, as the circumstances of the case shall render just and reasonable.

Comment on Section 14 [772.14]. See the comment on M.C.L. §772.1.

Sec. 15. **Any** A surety in a recognizance to keep the peace, shall have the same authority and right to take and surrender his principal as in other criminal cases, and upon ~~such~~ surrender shall be discharged and exempt from all liability for **any** AN act of the principal subsequent to ~~such~~ THE surrender, except as to costs on any appeal taken by the principal in the recognizance, which would be a breach of the condition of the recognizance. ~~; and the~~

THE person so surrendered may recognize anew, with sufficient sureties, before ~~any justice of the peace or circuit court commissioner~~ A MAGISTRATE OF THE SAME COURT for the residue of the term, and shall thereupon be discharged FROM CUSTODY.

Comment on Section 15 [772.15]. See the comment on M.C.L. §772.1.

Chapter 13

Sec. 1. ~~Justices of the peace shall, subject to the provisions of this chapter, take inquests upon the view of the dead bodies of such persons as shall have come to their death suddenly, or by violence, and of such persons as shall have died in prison.~~ A MAGISTRATE HOLDING AN INQUEST IN ACCORDANCE WITH ACT NO. 181 OF THE PUBLIC ACTS OF 1953, AS AMENDED, BEING SECTIONS 52.201 TO 52.216 OF THE MICHIGAN COMPILED LAWS, SHALL ADHERE TO PROCEDURES PROVIDED IN THIS CHAPTER.

Comment on Section 1 [773.1]. As noted in the Commission's 10th Annual Report (1975), pp. 35-36, the authority of justices of the peace to conduct inquests, was superseded by Act No. 181 of 1953, as amended by M.C.L. §52.213c and interpreted by Lipiec v. Zawadzki, 346 Mich. 197 (1956). Lipiec viewed the legislative intent of P.A. 181 as abolishing inquests by justices of the peace in all counties in which medical examiners were appointed. In 1969, all counties were required to have medical examiners under M.C.L. §52.213c, thereby eliminating all J.P. authority granted by this section, M.C.L. §773.1. However, M.C.L. §52.207 provided

that inquests "shall" be held by a district court judge or municipal judge upon "determination" of the prosecutor or the medical examiner. The Medical Examiners Act did not, however, specify the procedure to be used in conducting such inquests, presumably leaving the procedure to that prescribed in Chapter 14 of the Code of Criminal Procedure. Accordingly, while section 1 of the chapter no longer has effect in authorizing magistrates to conduct inquests, the remaining sections prescribing procedure still are significant.

The proposed amendment would provide a cross reference to M.C.L. §52.207, which determines when an inquest shall be held. It also notes the continuing effect of the remaining provisions in Chapter 14 in prescribing the appropriate procedures. The amendment refers to "magistrates" since the judges of the courts specified M.C.L. §52.207 are magistrates under the definition of section 761.1(f). (While M.C.L. §52.207 does not refer specifically to the recorder's court, its reference to a "municipal court judge" presumably was intended to include the recorder's court as a municipal court of record).

Sec. 2. ~~As soon as any justice of the peace shall have notice of the dead body of any person found or lying within the county, who is supposed to have come to his death in any manner described in the preceding section and the petition of not less than 5 citizens, none of whom shall be a constable or deputy sheriff of the township, city or village, in which the dead body may be lying, shall have been filed with said justice praying that an inquest be had in such case or on the written request of the prosecuting attorney of the county or the attorney general, he shall forthwith~~ ON DETERMINATION THAT AN INQUEST SHALL BE HELD, ~~summon~~ 6 ~~good and lawful men,~~

~~electors of the county to appear before him, at such place as he shall appoint within said county~~ A JURY OF 6 PERSONS SHALL BE SELECTED IN THE SAME MANNER AS JURIES ARE SELECTED FOR PROSECUTIONS FOR MINOR OFFENSES IN THE SAME COURT.

Comment on Section 2 [773.2]. The prerequisites for holding an inquest are now established solely by M.C.L. §52.207. Accordingly, the provisions of this section describing the procedures for initiating an inquest are replaced by a general reference to "a determination that an inquest be held." While section 2 requires that a jury of six persons be selected, it does not specify how that jury should be selected. The apparent intention was to follow the selection procedure commonly used in the J.P. court. The proposed amendment therefore requires that the jury be selected in the same manner as jurors selected in cases formerly cognizable before the J.P. ("minor offenses") in the particular court. See also the commentary to chapter 14 on the selection of jurors in municipal courts.

Sec. 3. When the jurors ~~thus~~ summoned have appeared, the ~~justice of the peace~~ MAGISTRATE ~~shall call over their names and there, in view of the dead body,~~ shall administer to them an oath or affirmation in substance as follows: "You do solemnly swear (or affirm) ~~as the case may be,~~ that you will diligently inquire in behalf of the people of this state, when, in what manner and by what means, the ~~person whose body lies here dead,~~ DECEASED came to his death and that you will make a true inquest thereof according to your knowledge and such evidence as shall be laid before you." THE JURORS NEED NOT VIEW THE BODY OF THE DECEASED.

Comment on Section 3 [773.3]. In addition to substituting "magistrate" for "justice of the peace," the proposed amendment would eliminate the requirement that the jury view the body. Although this requirement is set forth in section 3, it is not clear that it would be applicable to inquests conducted under M.C.L. §52.207. Chapter 13 sets forth two separate inquest procedures, one for J.P. inquests and the other for coroner inquests, which are largely similar. Arguably, the governing procedure under §52.207 might follow either set of provisions.*/ The provision relating to coroner's inquests, M.C.L. §773.21 specifically provides that the jurors "need not view the body." This procedure is followed since there is no need for the jury to view the body in all cases.

Sec. 4. The ~~justice of the peace~~ MAGISTRATE may issue subpoenas for witnesses returnable ~~forthwith~~ IMMEDIATELY or at ~~such~~ THE time and place as ~~he shall therein direct; and~~ ~~the~~ PRESCRIBED IN THE SUBPOENA. THE attendance of the persons served with ~~such~~ THOSE subpoenas may be enforced in the same manner, and ~~they~~ THE PERSONS shall be subject to the same penalties, as if they had been served with a subpoena in behalf of the people of this state, to attend a ~~justice's court: Provided, That in all such cases it shall be lawful for the~~ TRIAL BEFORE THAT MAGISTRATE. A magistrate holding ~~any such~~ AN inquest ~~, to~~ MAY require by subpoena the attendance of a competent physician or surgeon for the purpose of making a ~~post mortem~~ POSTMORTEM examination and of testifying as to the result of the same. ~~, and he~~ THE MAGISTRATE may

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*/ The proposed amendments to Chapter 13 work with the earlier set of provisions, those formerly applicable to J.P. inquests. The provisions formerly applicable to the coroner's inquests will be repealed.

also employ a chemist in cases affording reasonable ground of suspicion that death has been produced by poison and the amount of compensation for the attendance and services of ~~such~~ THE physician, surgeon, or chemist shall be audited and allowed by the ~~board of supervisors~~ COUNTY BOARD OF COMMISSIONERS of the proper county, or board of county auditors in counties having such A board.

Comment on Section 4 [773.4]. The subpoena authority of a justice of the peace was more limited than that of the magistrates who may now conduct an inquest. See commentary to M.C.L. §774.9. However, since section 4 was dealing only with the J.P., the purpose apparently was to give the judge conducting the inquest the same subpoena authority as could be exercised over other cases before that judge. Accordingly, the proposed amendment describes the subpoena as equivalent to that served to attend a trial before the same magistrate. Other changes are stylistic.

Sec. 5. An oath or affirmation to the following effect shall be administered to each witness by the ~~justice of the peace~~ MAGISTRATE: "You do solemnly swear (or affirm) that the evidence you shall give at this inquest, concerning the death of the ~~person here lying dead~~ DECEASED, shall be the truth, the whole truth, and nothing but the truth."

Comment on Section 5 [773.5]. See the comment on M.C.L. §773.3.

Sec. 6. In all cases where ~~any~~ A murder, ~~or~~ manslaughter OR ASSAULT is supposed to have been committed, the testimony of all witnesses examined before the inquest, shall be ~~reduced to writing by the justice of the peace, or some other person by his direction and subscribed by the witnesses~~ RECORDED BY A STENOGRAPHER OR DISTRICT COURT RECORDER. A WRITTEN TRANSCRIPT OF THE TESTIMONY NEED NOT BE PREPARED, UNLESS REQUESTED BY THE PROSECUTING ATTORNEY, MEDICAL EXAMINER, THE MAGISTRATE, OR A JUDGE OF THE COURT AND JUDICIAL DISTRICT IN WHICH THE OFFENSE COULD BE TRIED.

Comment on Section 6 [773.6]. The requirement that the testimony be reduced to writing is no longer applicable since recording devices or stenographers are available in all of the current magistrate courts. See the introductory comments on p. 40 supra. The provision relating to transcription parallels that in M.C.L. §766.15, relating to the transcription of the preliminary hearing. M.C.L. §766.15 provides that "a written transcript of the testimony of the preliminary examination need not be prepared" except upon demand of the prosecuting attorney, defense counsel, defendant acting pro se, or "as ordered sua sponte by the trial judge." Because the circuit court is a single court, the potential trial judge must be described as the judge of the "court and judicial district" in which the crime could be tried. This will include recorder's court where the offense occurred in Detroit. Recordation where an assault may have been committed is added so as to comply with the requirement of section 9, described infra at p. 103. That section includes assaults as well as criminal homicides.

Sec. 7. The jury, ~~upon the inspection of the dead body,~~ and after hearing the testimony of the witnesses and making all needful inquiries, shall draw up and deliver to the ~~justice of the peace~~ MAGISTRATE their inquisition ~~under their~~

~~hands~~, in which they shall find and certify when, in what manner, and by what means the deceased came to his death, and his name, if known, together with all the material circumstances attending his death. ~~;~~ ~~and if appear~~ IF IT APPEARS that ~~he~~ THE DECEASED came to his death by unlawful means, the jurors shall ~~forthwith~~ IMMEDIATELY state who, if known, ~~was~~ IS BELIEVED TO BE guilty, either as principal or accessory, or ~~was~~ IS BELIEVED TO HAVE BEEN, in any manner, the cause of ~~his~~ THE death.

Comment on Section 7 [773.7]. See the comment on M.C.L. §773.3.

Sec. 8. ~~Such~~ THE inquisition ~~to~~ SHALL be called a ~~coroner's~~ MAGISTRATE'S inquest, AND may be in substance in the following form:

County of ....., ss.

An inquisition taken at ....., in said county, on the ..... day of ....., before ....., ~~one of the justices of the peace of the said county, upon the view of the body of .....~~ (INSERT REFERENCE TO THE COURT OF THE MAGISTRATE, AND WHERE APPROPRIATE, THE JUDICIAL DISTRICT), by the oaths of the jurors whose names are ~~hereto~~ subscribed ON IT, who being

sworn to inquire on behalf of the people of this state, when, in what manner and by what means ~~the said .....~~ ~~(or person)~~ came to his OR HER death, upon their oaths, say (then insert when, where, in what manner, and by what means, persons, weapons, or instruments he or she was killed or came to his or her death). In testimony ~~whereof~~ OF WHICH the ~~said justice of the peace~~ MAGISTRATE and the jurors of this inquest, have ~~hereunto set their hands~~ SIGNED the day and year ~~aforesaid~~ AS PROVIDED IN THIS SECTION.

Comment on Section 8 [773.8]. See the comment on M.C.L. §773.3.

Sec. 9. If the jury ~~find~~ FINDS that ~~any~~ A murder, manslaughter, or assault ~~had been~~ WAS committed upon the deceased, the ~~justice of the peace~~ MAGISTRATE shall ~~forthwith~~ IMMEDIATELY return to the circuit court ~~of said~~ IN THE county, OR TO THE RECORDER'S COURT OF THE CITY OF DETROIT IF THE OFFENSE WAS COMMITTED IN DETROIT, the inquisition, ~~written~~ ANY PHYSICAL evidence, and ~~examinations by him taken~~ THE TRANSCRIPT, IF REQUESTED UNDER SECTION 6, OF THE TESTIMONY AND PROCEEDINGS BEFORE THE MAGISTRATE.

Comment on Section 9 [773.9]. Where the crime was committed in the city of Detroit, the inquisition should be presented before the recorder's court since it has jurisdiction to try the offense. The submission of a transcript is tied to section 6. See the comment on M.C.L. §773.6.

Sec. 11. ~~When any justice of the peace shall take an inquest upon the dead body of a stranger, or being called for that purpose shall not think it necessary on view of such body that an inquest should be taken, he shall then notify the county department of social welfare, who shall cause the body to be decently buried as that of an indigent person.~~ All ~~other~~ expenses and fees OF THE INQUEST shall be paid from the general fund of the county in which the inquisition was taken. When an inquest is held on the body of ~~any~~ A person who dies in ~~any~~ A prison or public reformatory of this state, the expense of ~~such~~ THE inquest shall be audited and paid by the institution, as other charges against the institution are audited and paid.

Comment on Section 11 [773.11]. The first sentence of this section is no longer applicable since medical examiners are now directed to take charge of the body. See M.C.L. §52.05.

Sec. 15. ~~Whenever~~ UPON PRESENTATION TO A MAGISTRATE OF A WRITTEN REQUEST OF THE PROSECUTING ATTORNEY OR THE MEDICAL EXAMINER AND A WRITTEN complaint, UNDER OATH, ~~in writing and upon oath shall be made to any justice of the peace~~ STATING that ~~any~~ A DECEASED person ~~has died and that such person was~~ IS buried ~~in~~ WITHIN the ~~county where such justice resides~~

MAGISTRATE'S JUDICIAL DISTRICT, ~~and~~ specifying in what township or city ~~said~~ THE person ~~was~~ IS buried, and ~~containing a further statement~~ STATING that the complainant knows or has good reason to believe that the ~~said~~ deceased person came to his or her death by means of poison or violence, or in consequence of ~~any~~ A criminal act, ~~committed by any person known or unknown; it shall be the duty of such justice to~~ THE MAGISTRATE SHALL examine, UNDER OATH, the complainant and ~~such witnesses as may be produced by him on oath and reduce the same to writing~~ ANY WITNESSES WHICH THE COMPLAINANT MAY PRODUCE. THE TESTIMONY OF THE COMPLAINANT AND ANY WITNESSES SHALL BE RECORDED BY A STENOGRAPHER OR DISTRICT COURT RECORDER. ~~and if such justice shall be~~ IF THE MAGISTRATE IS satisfied from ~~such~~ THE examination that there is just cause to believe that the deceased person named or described in ~~such~~ THE complaint came to his or her death by means of poison or violence, or in consequence of ~~any~~ A criminal act, and that a ~~post mortem~~ POSTMORTEM examination of the body of ~~such~~ THE deceased person is necessary or will materially aid in the prosecution of any person charged or who may be charged with ~~any~~ A criminal act resulting in the death of ~~such~~ THE deceased person, ~~it shall be the duty of such justice of the peace to~~ THE MAGISTRATE SHALL issue an order ~~under his hand~~, directed to the sheriff of the county, commanding ~~such~~ THE sheriff, in the name of the people of the state, ~~of Michigan; forthwith~~

IMMEDIATELY to proceed with his undersheriff, or 1 of his deputies, to the place where ~~sueh~~ THE body was buried, and to disinter and remove the body to THE COUNTY MORGUE OR some suitable and convenient place in the ~~township or city where sueh body was buried~~ COUNTY for the purposes of holding A POSTMORTEM EXAMINATION. ~~an inquest over the same; and said justiee shall also proeeed at onee to summon a jury of inquest in the same manner as is in this aet provided and as soon as the sheriff shall have removed sueh body to a suitable plaee as above; provided, the justiee as well as the jury so summoned, shall proeeed in the same manner and shall have and exereise the same powers and duties as preseribed in this aet.~~

Comment on Section 15 [773.15]. Since M.C.L. §52.201 limits inquest applications to the medical examiner and prosecutor, the same limitation should apply disinterments, which will be followed by inquests. However, in light of the disruptive impact of a disinterment, the proposed amendment retains the requirement that the magistrate make his own determination that there is just cause to believe that the deceased was murdered. The current requirement that the body be taken to a convenient place in the local community (township or city) is changed to permit the body to be taken to the county morgue or to any other appropriate facility located in the county but outside of the township or city.

Chapter 14

Introductory comments on Chapter 14. Chapter 14 currently covers the jurisdiction and procedure of J.P. courts in criminal cases. It treats basically the following subjects: dockets; arrest warrant issuance; arraignment; pleas; subpoena authority; selection of a jury; judgments; costs; fines; and appeals. With respect to most of these subjects, the J.P.

provisions have relevance only to municipal courts. The district court and the recorder's court, as courts of record, are governed by a variety of other provisions, located primarily in the Revised Judicature Act, with respect to such matters as jury selection, subpoena power, dockets, and appeals. The municipal courts are still dependent upon the Chapter 14 provisions, however, since the Municipal Court Acts tie the authority of these courts to the provisions governing justices of the peace (where there are not specific provisions to the contrary). See M.C.L. §§117.28, 730.508; 730.101-730.103; 730.351, 600.9928. Thus, most of the provisions in Chapter 14 must be amended simply to substitute a reference to the municipal court for the current reference to the justice of the peace. There are several provisions in Chapter 14, however, that set forth the procedure for handling all J.P. offenses, whether before a municipal court, district court, or the recorder's court. Unfortunately, these sections have been scattered throughout the chapter. To avoid confusion, these provisions of general application have been relocated so that all of the provisions relating to municipal courts alone are separated from the provisions governing all magistrates. The provisions governing arrest warrants for J.P. offenses have been moved to the arrest warrant chapter. See the proposed amendment of section 764.1. The remaining provisions governing all J.P. prosecutions have been moved to the start of Chapter 14.

One problem posed by the trial and pretrial procedural provisions of Chapter 14 is that they refer only to offenses cognizable by a J.P. (i.e., minor offenses). The procedural line drawn by more current statutes, with respect to trial and pretrial procedures, is between felonies and misdemeanors. Thus, provisions relating to such matters as preliminary hearings and pleadings either refer directly to the felony/misdemeanor distinction or refer to cases prosecuted by information (which includes only felony cases). This is consistent with the current division of jurisdictions; the current magistrate courts have jurisdiction to try all misdemeanor offenses. Accordingly, if the general procedural provisions in Chapter 14 were made applicable only to J.P. offenses, there would be no coverage of higher misdemeanors that are tried by magistrates. As a matter of practice, the procedural provisions in Chapter 14 have been followed in magistrate courts without distinguishing between J.P. and non-J.P. misdemeanors. In light of this practice and the need to avoid a gap in coverage, the various provisions of Chapter 14 have been amended to make them applicable to all misdemeanor and ordinance violation prosecutions.

SEC. 1A. AT THE ARRAIGNMENT OF AN ACCUSED CHARGED WITH A MISDEMEANOR OR AN ORDINANCE VIOLATION, THE MAGISTRATE SHALL READ TO THE ACCUSED THE CHARGE AS STATED IN THE WARRANT OR COMPLAINT. THE ACCUSED SHALL BE REQUIRED TO PLEAD TO THE CHARGE, WHICH PLEA SHALL BE ENTERED IN THE COURT'S MINUTES. IF THE ACCUSED REFUSES TO PLEAD, THE MAGISTRATE SHALL ORDER THAT A PLEA OF NOT GUILTY BE ENTERED ON BEHALF OF THE ACCUSED.

Comment on Section 1a [774.1a]. This amendment relocates and revises section 5 of the current Chapter 14. Section 5 provides:

> "Sec. 5. The charge made against the accused, as stated in the warrant of arrest, shall be distinctly read to him at the time of his arraignment and he shall be required to plead thereto, which plea the court shall enter in its minutes; if the accused refuse to plead, the court shall enter the fact with a plea of not guilty in behalf of such accused in its minutes."

The section is restructured to refer initially to the time of arraignment and then to the reading of the charge. CF. DCR 785.4. The section is amended to permit the charge to be read from the warrant or from the complaint, to accommodate those cases in which there is no warrant as such. See proposed section 764.1c (permitting endorsement of complaint, which then serves as a complaint and warrant); 764.9a (use of summons); 764.9b-764.9d (use of appearance ticket). Under proposed M.C.L. 764.1d, the complaint will recite the substance of the accusation in the same manner as the warrant.

The language describing the entry of the plea has been altered to take account of the fact that the magistrate does not himself make the entry into the minutes. The language used is taken from M.C.L. §767.37 dealing with felonies ("the court shall order a plea of not guilty to be entered" when the accused refuses to plead).

SEC. 1B. IF THE ACCUSED PLEADS NOT GUILTY OR REFUSES TO PLEAD TO THE CHARGE, THE MAGISTRATE SHALL SET A DATE FOR TRIAL. THE ACCUSED IS ENTITLED TO TRIAL BY JURY UNLESS HE OR SHE EXPRESSLY ELECTS TO BE TRIED BY THE COURT WITHOUT A JURY, AS PROVIDED IN SECTION 3 OF CHAPTER 3.

Comment on Section 1b [774.1b]. This section relocates and revises section 6 of current Chapter 6. That section provides:

> "Sec. 6. If the plea of the accused be not guilty, and he waive trial by jury the said court shall proceed to try such issue and to determine the same according to the evidence which may be produced against and in behalf of such accused."

The current provision was adopted at a time when the J.P. would go directly to the trial of the case if the defendant plead not guilty at the first appearance. In accord with current practice, the revised provision merely notes that the court shall set the date for trial. (There is no need for the further language authorizing the court to try the case "according to the evidence produced for and against the accused"). The last sentence makes clear the implication of the current language: there is a right to jury trial unless the accused elects to have a bench trial as provided in M.C.L. §763.3.

SEC. 1C IF THE ACCUSED ENTERS A PLEA OF GUILTY OR NOLO CONTENDERE, THE MAGISTRATE SHALL RENDER JUDGMENT ON THAT PLEA.

Comment on Section 1c [774.1c]. This section relocates and revises section 7 of current Chapter 14. That section provides:

> "Sec. 7. If the accused shall plead guilty to such charge the court shall thereupon render judgment thereon."

Reference to the plea of nolo contendere is added. See DCR 785.4(d); M.C.L. §600.8511. Pursuant to section 600.8511, district court magistrates may arraign and enter judgment on guilty pleas or nolo contendere pleas in some cases. There is no need to refer to them separately, however, since §761.1(f) would include district court magistrates for those cases where they have that authority.

SEC. 1D. WHENEVER THE ACCUSED IS ACQUITTED IN ANY MISDEMEANOR OR ORDINANCE VIOLATION CASE, THE ACCUSED SHALL BE IMMEDIATELY DISCHARGED. IF THE COURT BEFORE WHOM THE TRIAL IS HELD FINDS AND CERTIFIES IN ITS MINUTES THAT THE COMPLAINT WAS WILFUL AND MALICIOUS AND WITHOUT PROBABLE CAUSE, IT SHALL BE THE DUTY OF THE COMPLAINANT TO PAY ALL OF THE COSTS THAT ACCRUED TO THE COURT, INCLUDING THE WITNESS AND JURY COSTS, IN THE PROCEEDINGS HAD UPON THE COMPLAINT.

Comment on Section 1d [774.1d]. This section relocates and revises section 23 of Chapter 14. That section provides:

> "Sec. 23. Whenever the accused shall be acquitted, he shall be immediately discharged; and if the court before whom the trial is had shall certify in its minutes that the complaint was wilful and malicious and without probable cause, it shall be the duty of the complainant to pay all the costs that shall have accrued to the court and the sheriff or constable and jury in the proceedings had upon such complaint, or to give satisfactory security by bond to the people of the state, with 1 or more sureties to pay the same in 30 days after the said trial."

The proposed revision refers only to costs accrued to the court since the fees for witnesses are viewed as part of the court costs rather than the costs of the sheriff or other peace officer serving process. The same is true of the jury costs. The posting of a bond for the costs is unnecessary in light of section 1e.

SEC. 1E. IF THE COMPLAINANT REFUSES OR NEGLECTS TO PAY THE COSTS ACCRUED UNDER SECTION 1D, THE COURT MAY IMMEDIATELY ENTER JUDGMENT AGAINST THE COMPLAINANT FOR THE AMOUNT OF THOSE COSTS AND ISSUE EXECUTION ON THAT JUDGMENT, IN THE SAME MANNER AND WITH THE LIKE EFFECT AS IN CASE OF AN EXECUTION ISSUED BY THE CIRCUIT COURT ON A JUDGMENT IN A CIVIL ACTION. MONEYS COLLECTED UNDER THIS SECTION SHALL BE PAID TO THE TRIAL COURT AND SHALL BE APPLIED TO THE PAYMENT OF THE COSTS FOR WHICH THE JUDGMENT WAS RENDERED.

Comment on Section 1e [774.1e]. This is a companion provision to section 1d. It is based upon section 24 of Chapter 14, which provides:

> "Sec. 24. If the complainant shall refuse or neglect to pay such cost or to give such security, the court may forthwith enter judgment against him for the amount of such costs and forthwith issue execution thereon, in the same manner and with the like effect as in case of an execution issued by a justice of the peace on a judgment in an action for a trespass or other wrong; and such moneys when collected shall be paid over to such court and be applied to the payment of the costs for which the judgment was rendered."

The provision on execution of the judgment is retained since it is questionable whether M.C.L. §600.4815 (providing for execution for the collection of "fines and costs" for criminal offenses) covers the costs imposed under section 23. The description of the manner of execution as in the case of a circuit court civil judgment provides a short-hand reference that avoids examination of the statutes governing the particular court. Under M.C.L. §600.6001, the same manner of execution is used for all courts of record. Thus, the manner

of execution for recorder's court judgments and the district court judgments would be the same as that for circuit court judgments. Under M.C.L. §600.6502, the execution of judgments in civil cases in the municipal court is tied to the statutes applicable to district courts, so execution of the municipal court judgment is also the same as that for circuit court judgments.

Sec. 2. (1) Every ~~justice of the peace~~ JUDGE OF A MUNICIPAL COURT shall keep a loose-leaf docket made up of printed docket sheets numbered consecutively by the printer, in which he shall enter all completed criminal cases, which shall contain the following information:

(a) Name and address of the defendant.

(b) Operator or chauffeur license and vehicle registration or vessel number, if available for motor vehicle or vessel violations.

(c) Date and place of offense, and offense.

(d) Date of complaint and name of complainant.

(e) Date and warrant return and by whom, or if voluntary appearance, the date of said voluntary appearance.

(f) Plea of defendant.

(g) If trial, the date, and whether or not by court or jury, and the verdict.

(h) Sentence of the court and the date thereof.

(i) Date of all adjournments and the date adjourned to.

(j) Name of prosecuting attorney or his assistant, and name of attorney who appeared for the defendant in the case, if any.

(k) Names of witnesses sworn for the people and the defendant.

(l) If jury, the names of the jurors.

(m) Date of appeal and date return was made in circuit court, if any.

(2) Dockets shall be in such form that exact carbon copies can be made, and a true copy of the docket shall be filed on or before the last day of the month following the month in which the case was completed, with each of the following:

(a) The prosecuting attorney of the county.

(b) The board of auditors, or the board of ~~supervisors~~ COMMISSIONERS of the county if ~~no~~ A board of auditors ~~exists~~ DOES NOT EXIST.

(c) The secretary of state and the county clerk for all motor vehicle or traffic cases involving moving violations and the director of the department of ~~conservation~~ NATURAL RESOURCES for all violations involving a vessel. The county clerk, secretary of state and the director of the department of ~~conservation~~ NATURAL RESOURCES shall receive only copies of dockets where the defendant was convicted. The copy filed with the county clerk shall be a

certificate of conviction, and the copy filed with the secretary of state or the director of the department of ~~conservation~~ NATURAL RESOURCES shall be an abstract of court and record of conviction. The copy for the secretary of state or the director of the department of ~~conservation~~ NATURAL RESOURCES need contain only the information required by secretary of state or the director of the department of ~~conservation~~ NATURAL RESOURCES and the form shall be approved by the secretary of state except that in cases of violations involving a vessel the form shall be approved by the director of the department of ~~conservation~~ NATURAL RESOURCES.

(3) The copies of the docket shall be filed in all cases regardless of the disposition of the case. If examination is held by the ~~justice~~ MUNICIPAL JUDGE instead of a trial, the docket shall also contain information pertaining to whether or not probable cause was ~~determined~~ FOUND by the ~~justice~~ MUNICIPAL JUDGE and the date the return on examination was filed in circuit court. The ~~justice of the peace~~ MUNICIPAL JUDGE may enter any other information in the docket that ~~he~~ THE JUDGE deems necessary.

Comment on Section 2 [774.2]. The recordkeeping requirements applicable to the district court and the recorder's court are prescribed in court rules, and the statutory provisions applicable to courts of record. See, e.g., DCR 522. Since there are no similar comprehensive regulations applicable to the operation of the municipal courts, they would still be subject to the provisions applicable to the J.P. court. Accordingly, section 2, dealing with the court's docket, simply is amended to refer to the municipal court.

Sec. 2a. (1) A suitable cover or binder shall be used to preserve the docket sheets, which shall not exceed 1,000 loose leaf docket sheets for each cover or binder.

(2) An alphabetical index containing the names of all defendants and the number of each case as it appears in the docket shall be maintained by each ~~justice of the peace~~ MUNICIPAL JUDGE.

(3) All forms and dockets necessary for the operation of the ~~justice of the peace~~ MUNICIPAL courts shall be furnished by the county without charge to the ~~justice~~ COURT.

Comment on Section 2a [774.2a]. See the comment on M.C.L. §774.2.

Sec. 2b. Every ~~justice of the peace~~ MUNICIPAL COURT shall have a file for each criminal case. The file shall be in a suitable envelope, jacket or folder, and shall contain the complaint, the warrant when returned, and any other papers filed in the case.

Comment on Section 2b [774.2b]. See the comment on M.C.L. §774.2.

Sec. 3. The dockets, files and indexes shall be public records and subject to inspection and examination during court hours. When a ~~justice of the peace~~ MUNICIPAL COURT does not maintain regular hours or where the hours are less than 4 hours during the day, the dockets, files and indexes shall be available for inspection and examination for at least 4 hours each day, Monday through Friday, except legal holidays. Completed dockets shall be delivered to the county clerk along with the indexes when the ~~justice~~ MUNICIPAL JUDGE deems it advisable, but not before 1 year and not later than 4 years from the date of the last case in the docket. Files may be destroyed by the ~~justice of the peace~~ MUNICIPAL JUDGE when ~~he~~ THE JUDGE deems it advisable any time after 6 years from the date the case was completed.

Comment on Section 3 [774.3]. See the comment on section 774.2.

SEC. 3A. EACH MUNICIPAL COURT DOCKET MADE AND FILED UNDER SECTION 2 OR A TRUE COPY OF THAT DOCKET, SHALL BE EVIDENCE IN ALL COURTS AND PLACES OF THE FACTS CONTAINED IN THE DOCKET.

Comment on Section 3a [774.3a]. This section relocates and revises section 31 of Chapter 14. That section provides:

> "Sec. 31. Every certificate of conviction made and filed under the foregoing provisions, or a duly certified copy thereof, shall be evidence in all courts and places of the facts therein contained."

Section 31 was part of a series of 3 provisions which specified the content of a J.P.'s certificate of conviction. Public Act 274 of 1975 repealed the other 2 provisions [former sections 29 and 30] and rewrote sections 2 and 3 of Chapter 14. Section 31 was left intact, apparently for the purpose of tying it to the section 2 docket entry which replaced the certificate of conviction. The proposed amendment would relocate section 31 so that it follows section 2 and amend section 31 to refer specifically to the docket entry. It does not limit the use of the docket to establishing convictions or facts relating thereto. Under some circumstances, there may be a need to establish other dispositions and the docket should serve as equally acceptable evidence for that purpose.

Sec. 9. ~~Any justice of the peace~~ A JUDGE OF A MUNICIPAL COURT SHALL HAVE THE SAME AUTHORITY TO ~~may~~ issue subpoenas to compel the attendance of witnesses and ~~may~~ TO administer all necessary oaths IN MISDEMEANORS OR ORDINANCE VIOLATION CASES TRIED IN A MUNICIPAL COURT AS A DISTRICT COURT JUDGE HAS IN MISDEMEANOR OR ORDINANCE VIOLATION CASES TRIED IN THE DISTRICT COURT.

Comment on Section 9 [774.9]. This section may expand the subpoena power of municipal courts. If it does so, such expansion is consistent with the policy of providing for uniform treatment of misdemeanor and ordinance violation cases tried in municipal and district courts except where current statutes evidence a clear legislative policy to treat municipal courts separately. (See introductory comments at p. 41 supra). Subpoena authority for justices of the peace in criminal cases was the same as that in civil cases. M.C.L. §774.10. That civil authority was limited to witnesses within the same county or within 30 miles of trial if in another county. See M.C.L. §600.7001 (repealed by P.A. 1974, No. 297, §2). Arguably, the subpoena authority of the municipal courts is so limited, although it could be argued that M.C.L. §600.6502 (giving municipal courts the same subpoena authority as district courts in civil cases) carried through to criminal

cases via M.C.L. §774.10. In any event, municipal courts were given the same subpoena authority as circuit courts (and hence district courts) in conducting preliminary examinations in Public Act 155 of 1978. The same policy should carry forward to trials. The subpoena authority of district courts is statewide. See M.C.L. §§600.8317, 600.1455.

Sec. 10. ~~In case any~~ IF A person summoned to appear before ~~any~~ A MUNICIPAL court ~~held by a justice of the peace~~ pursuant to the provisions of this chapter, as a juror or witness ~~shall fail~~ FAILS to appear, or if ~~any~~ A witness ~~appearing shall refuse~~ APPEARS BUT REFUSES to be sworn or to testify, ~~he~~ THAT PERSON shall be liable to the same penalties and may be proceeded against in the same manner as provided by law in respect to jurors and witnesses in ~~justices' courts in civil proceedings~~ THE DISTRICT COURT.

Comment on Section 10 [774.10]. This is a companion provision to sections 9 and 12 of Chapter 14. See the commentaries on those provisions. For courts of record (including the district court), M.C.L. §600.1701 currently governs the power to punish as contempt the failure to comply with a subpoena.

Sec. 12. After the joining of issue, and before the MUNICIPAL court ~~shall proceed to an investigation of the merits of the cause, and~~ PROCEEDS TO TRY THE CASE IN AN INSTANCE WHEN the accused ~~shall~~ HAS not

have waived his OR HER right to a trial by jury, ~~thereupon~~ the court shall PROCEED TO SUMMON A JURY OF 6 PERSONS AS FOLLOWS:

(A) IF ANOTHER STATUTE SPECIFIES THE METHOD FOR SUMMONING JURORS FOR THE MUNICIPAL COURT, THAT COURT SHALL COMPLY WITH THAT STATUTE.

(B) IF ANOTHER STATUTE GOVERNING THE MUNICIPAL COURT DOES NOT SPECIFY A METHOD FOR SUMMONING JURORS, THAT COURT SHALL COMPLY WITH SECTIONS 13 TO 21 AND SHALL INITIALLY direct the ~~sheriff, or any constable of the county,~~ CHIEF OF POLICE OR ANY POLICE OFFICER OF THE CITY to make a list in writing of the names of 18 inhabitants of the ~~county~~ CITY, qualified to serve as jurors in the ~~courts of record in this state~~ CIRCUIT COURT, from which list the ~~complainant~~ PROSECUTING ATTORNEY and accused may each strike out 6 names: ~~Provided, That no such~~ HOWEVER, SUCH AN officer shall NOT make out ~~said~~ THE list if ~~he be~~ THE OFFICER IS THE complainant in ~~said cause~~ THE CASE or in any ~~wise~~ WAY interested. ~~, nor shall the jury consist of less than 6 persons.~~

Comment on Section 12 [774.12]. This is the first in a series of provisions on the selection of juries in the J.P. court. Jury selection in the recorder's court and district court is governed by M.C.L. §600.1301 et. seq.. Municipal court authority in selecting juries appears to be dependent upon Chapter 14. M.C.L. §730.251 et seq. has an extensive jury selection procedure but it applies only to municipal courts that were formerly justice courts and were converted to municipal courts under M.C.L. §730.351. See also M.C.L. §730.23. As of 1979, none of the remaining municipal courts

will come under this act. The Juries in Justice Courts Act, M.C.L. §730.401, provides an optional method for selecting juries "in any court having the civil and criminal jurisdiction of justices of the peace, in cities, and having a clerk." However, that act apparently is not used in current practice, perhaps because it draws jurors from outside the municipality. The municipal court practice apparently has been to follow the procedure designated in Chapter 14. Accordingly, while the Chapter 14 provisions appear somewhat antiquated, and vary from the practice in district court (see, e.g., the commentary on section 17), they have been retained and amended by substituting references to the municipal courts for the current references to the justice of the peace. The possibility that the municipal court might be made subject to the provisions of some other act also is recognized through paragraph (a) of section 12. See also M.C.L. §600.1372 (providing that "any court in this state may adopt a one day, one trial jury system").

Sec. 13. ~~In case~~ IF the ~~complainant~~ PROSECUTING ATTORNEY or the accused ~~shall neglect~~ NEGLECTS to strike out ~~such~~ 6 names PURSUANT TO SECTION 12(B), the MUNICIPAL court shall direct some suitable disinterested person to strike out the names for either or both OF the parties so neglecting~~,~~ ~~and upon such~~ AFTER THE names ~~being struck out~~ HAVE BEEN STRIKEN, the ~~justice~~ MUNICIPAL JUDGE shall issue a venire, directed to ~~the sheriff, or any constable of the county,~~ ANY POLICE OFFICER OF THE CITY, requiring ~~him~~ THE OFFICER to summon the 6 persons whose names ~~shall~~ remain upon ~~such~~ THE list to appear before ~~such~~ THE court, at the time and place ~~to be~~ named ~~therein~~ IN THE VENIRE, to make a jury for the trial of ~~such~~ THE offense.

Comment on Section 13 [774.13]. See the comment to M.C.L. §774.12.

Sec. 14. The officer to whom ~~such~~ THE venire ~~shall~~ be IS delivered shall summon ~~such~~ THE jurors personally~~;~~ and shall make a list of the persons summoned. ~~;~~ ~~which~~ he THE OFFICER shall certify THAT LIST, ~~and~~ annex IT to the venire, and return ~~the same~~ IT with THE venire to the MUNICIPAL court within the time ~~therein~~ specified IN THE VENIRE.

Comment on Section 14 [774.14]. See the comment on section 774.12.

Sec. 15. If any of the jurors named in ~~such~~ THE venire ~~shall fail~~ FAILS to attend ~~in pursuance thereof~~, or if there ~~shall be~~ IS any legal objection to any JUROR that ~~shall appear~~ APPEARS, the MUNICIPAL court shall supply the deficiency by directing ~~the sheriff or any constable~~ ANY POLICE OFFICER OF THE CITY who may be present and disinterested, to summon any of the bystanders or others who may be competent and against whom ~~no~~ A cause of challenge ~~shall~~ DOES NOT appear, to act as jurors in the ~~cause~~ CASE.

Comment on Section 15 [774.15]. See the comment on M.C.L. §774.12.

Sec. 16. It ~~shall be~~ IS a good cause ~~of~~ FOR challenge ~~to~~ OF any juror in any ~~justice or police~~ MUNICIPAL court ~~in any city, township or village in this state~~, in addition to the other causes of challenge allowed by law, that ~~such~~ THE person has served as a juror in any ~~justice or police~~ MUNICIPAL court ~~in any such city, township or village~~ in this state 2 times within 1 year previous to ~~such~~ THE challenge.

Comment on Section 16 [774.16]. See the comment on section 774.12.

Sec. 17. In ~~all criminal cases~~ ANY MISDEMEANOR OR ORDINANCE VIOLATION CASE IN A MUNICIPAL COURT, the PROSECUTING attorney ~~appearing for the people~~ may challenge 5 jurors peremptorily and the defendant may challenge 5 jurors peremptorily~~, and~~ . IN ADDITION, the PROSECUTING attorney ~~appearing for the people~~ may challenge 5 talesmen peremptorily and the defendant may challenge 5 talesmen peremptorily.

Comment on Section 17 [774.17]. See generally the comment to M.C.L. §774.12. The definition of prosecuting attorney covers both the county prosecutor in misdemeanor violations and the city attorneys in ordinance violation prosecutions. See proposed §761.1(j). Section 17 gives each side 5 peremptory challenges and then an additional 5 against any talesmen (bystanders) who are called to fill out the jury under section 15. This compares with 3 peremptory challenges per side provided by DCR 511.5 and RCR 7.6(c). M.C.L. §730.267, governing former justice courts in cities, grants the prosecutor 2 challenges and the defendant 4

challenges. M.C.L. §730.416, The Juries in Justice Court Act, which may be used by municipal courts at their option, provides for 4 peremptory challenges for both sides. Of course, none of the other provisions allow for challenges to talesmen because talesmen are not used. See M.C.L. §600.1341.

Sec. 18. If the officer to whom the venire ~~shall have~~ been IS delivered ~~shall fail~~ FAILS to return the same as ~~thereby~~ required BY THE VENIRE, or if the jury ~~shall fail~~ FAILS to agree and ~~shall be~~ IS discharged by the MUNICIPAL court, a new jury shall be selected and summoned in the same manner and the same proceedings shall thereupon be had, as ~~herein~~ prescribed IN SECTIONS 12 TO 17 in respect to the first jury, unless the accused ~~shall consent~~ CONSENTS to be tried by the court, in which case the MUNICIPAL court shall proceed to the trial of the issue~~;~~ as if ~~no~~ A jury had NOT been demanded.

Comment on Section 18 [774.18]. See the comment on M.C.L. §774.12.

Sec. 19. ~~To each juror~~ THE MUNICIPAL JUDGE shall administer SUBSTANTIALLY the following oath or affirmation TO THE JURORS IN A MISDEMEANOR OR ORDINANCE VIOLATION CASE TRIED IN A MUNICIPAL COURT: "You do solemnly swear (or~~;~~ ~~"You~~

do solemnly and sincerely declare and affirm", as the case may be) that you will well and truly try this cause between the people of the state of Michigan and ....., the accused, and a true verdict give according to law and the evidence given you in court, unless discharged by the court, so help you god."

Comment on Section 19 [774.19]. See the comment on M.C.L. §774.12.

Sec. 20. After the jury shall have been IS sworn they shall sit together and hear the proofs and allegations in the case, which shall be delivered in public and in the presence of the accused, and after. AFTER hearing such THE proofs and allegations, the jury shall be kept together in some convenient place, until they agree on a verdict, or are discharged by the MUNICIPAL court, and a sheriff or constable AN OFFICER shall be sworn to take charge of the jury, in like manner as upon trials in justices' MUNICIPAL courts in civil proceedings.

Comment on Section 20 [774.20]. This section deals with aspects of jury procedure that are well established and need not be treated by statute. There is no similar provision, for example, in Chapter 8, which generally governs trials. However, since section 20 is part of a series relating to municipal court juries and the remaining provisions have been retained, it too has been retained.

Sec. 21. When the jurors have agreed on their verdict, they shall deliver ~~the same~~ THAT VERDICT PUBLICLY to the MUNICIPAL court, ~~publicly,~~ ~~who~~ WHICH shall enter it in the minutes of its proceedings; ~~and the~~ . THE jurors shall each be entitled to the same fees as are or may be provided by law for jurors sworn in civil cases ~~before justices of the peace; and a~~ IN MUNICIPAL COURTS. IN A MISDEMEANOR CASE A certificate ~~thereof~~ OF SERVICE AND FEES from the ~~justice~~ MUNICIPAL JUDGE in whose court ~~such~~ THE jurors served, countersigned by the prosecuting attorney of the county, given to each of ~~said~~ THOSE jurors, shall authorize the county clerk of the county to draw an order upon the county treasurer for the payment of the fees of ~~such~~ EACH juror, which order shall be paid in ~~like~~ THE SAME manner as jurors' fees in ~~courts of record~~ DISTRICT COURT are paid.

Comment on Section 21 [774.21]. The last sentence deals only with payment of jury fees in misdemeanor cases. In ordinance violation cases, payment apparently will be made by the city (or the village) serviced by the court. Since the first sentence states that the juries must be paid and the last clearly indicates the county's limited responsibility, an additional statement as to the source of payment in ordinance violation cases is unnecessary. The provision governing payment of fees in district courts are found in the R.J.A.. See M.C.L. §600.1344. Actually, the same provision applies to all courts of record, but it is easier to draw a comparison to a single court since the R.J.A. provisions refer to the specific courts rather than to all courts of record.

Sec. 22. Whenever the accused ~~shall be~~ IS tried and found guilty IN A MUNICIPAL COURT, either by the court or by a jury, or ~~shall be~~ IS convicted ~~of the charge made against him~~ upon a plea of guilty, the court shall render judgment thereon and inflict such punishment, either by a fine or imprisonment or both as the nature of the case may require, together with such costs of prosecution and such other reasonable costs and expenses, direct and indirect, as the public has been put to in connection with ~~said~~ THE offense, not to exceed $15.00 in criminal cases, as the ~~justice of the peace shall order~~, MUNICIPAL JUDGE ORDERS, but ~~such~~ THE punishment shall ~~in no case~~ NOT exceed the limit fixed by law for the offense charged~~, and in rendering such judgment and inflicting such punishment the court may award against such offender a conditional sentence and order him to pay a fine with or without the costs of prosecution, within a limited time of not more than 6 months, to be expressed in the sentence, and in default thereof to suffer such imprisonment as is provided by law and awarded by the court in all cases where the offender shall be convicted of an offense punishable at the discretion of the court, either by fine or imprisonment or both.~~

Comment on Section 22 [774.22]. The authority of the municipal court to impose sentence probably exists without regard to this section (although the key sentencing authority provision in Chapter 9, M.C.L. §769.1, currently is limited to courts of record). The provision relating

to costs is essential, however, since limits on costs are prescribed separately for each court. See, e.g., M.C.L. §§600.8575; 600.8381; 600.2451; 600.2461. See also DCR 526, GCR 526. The $15.00 limit seems outdated and should, perhaps, be reconsidered, but including a new limit was viewed as beyond the scope of a technical revision.

The conditional sentence provision of this section is largely the same as that authorized in M.C.L. §769.3, except for the six month limitation. Since a defendant before a municipal court should not be subject to more restrictive sentencing alternative than a defendant before a district court, the six month limitation should not apply in one court and not the other. Since the provisions of Chapter 9 will apply to municipal courts (see the commentary to M.C.L. §769.1), the elimination of the language in this section concerning conditional sentences will leave M.C.L. §769.3 applicable.

Sec. 26. All fines and costs imposed by ~~any such~~ A MUNICIPAL court IN A CASE CHARGING A STATE LAW VIOLATION~~, if paid before the accused is committed,~~ shall be received by ~~the magistrate who constituted~~ the court ~~before which the accused was convicted,~~ and ~~by such magistrate~~ paid over to the county treasurer, on or before the last day of the month following receipt ~~thereof, the~~ . THE county treasurer ~~to~~ SHALL reimburse ~~said~~ THE MUNICIPAL court for ~~his~~ ITS lawful fees within 15 days after auditing pursuant to law, and ~~such~~ THE fines shall be distributed according to law.

Comment on Section 26 [774.26]. This provision has continuing significance insofar as it controls the disposition of fines and costs received by the court. Only fines and costs for state law violations are covered. In local ordinance cases, fines and costs go to the city. See M.C.L. §117.28 re home rule cities (which includes all of the cities that still have municipal courts). Cf. M.C.L. §§66.2, 66.13, 90.6, 90.13, 90.15. The reference is made to "state law violations" rather than simply to "misdemeanors" since some

ordinance violations may involve violations of ordinances of state agencies. See proposed M.C.L. §767.1(i). Such violations should be viewed as violations of "penal law of this state." For the purpose of distribution of fines and costs, see M.C.L. §600.8379. In order to include costs assessed against the complainant pursuant to section 23, the proposed amendment refers to costs imposed in a case charging a state law violation rather than costs imposed for the violation itself.

The current provision assumes that fines and costs would be paid to the court if paid before the person was committed to custody. If paid afterwards, the payment was to be made to the sheriff. This procedure is no longer needed. When a justice of the peace moved from community to community, the defendant who did not make immediate payment might find it more convenient to make payment to the sheriff. The same was true where a person was sentenced to jail unless he paid a certain fine and was able to make the payment only after he was committed. Today, the municipal courts are open and available to receive payment and "30 dollars or 30 days" sentences are prohibited. Accordingly, section 27, governing payment to the sheriff, will be repealed and section 26 is amended to require the court to receive all fines and costs whether paid before or after the person is committed.

Sec. 26a. The county treasurers shall provide all ~~justices of the peace~~ MUNICIPAL COURTS within their respective counties with blank forms which have been approved by the auditor general. The forms shall provide space for recording the following information with respect to all sums of money which the ~~justices shall~~ MUNICIPAL COURTS receive in criminal cases on account of any forfeiture of bail, bond, recognizance, fine, penalty, or taxation of costs: (1) receipt number, (2) docket number, (3) nature of offense, (4) amount of the fine, (5) amount of ~~justice~~ STATUTORY COURT fees, (6) officers' fees, (7) other receipts such as forfeited bond, (8) total receipts,

(9) disposition of the case, (10) name of defendant, (11) the name of the ~~justice~~ MUNICIPAL JUDGE, and (12) the name of the ~~township or~~ city ~~in which he is elected~~ . Each ~~justice~~ MUNICIPAL JUDGE shall complete the forms, ~~and~~ shall furnish 1 copy to the county treasurer, AND 1 COPY EITHER to the county clerk or TO THE controller or board of auditors in counties having a controller or board of auditors, and ~~he~~ shall retain 1 completed form FOR THE MUNICIPAL COURT FILES.

Comment on Section 26a [774.26a]. See the comment on M.C.L. §774.26.

Sec. 26b. The county treasurer shall also provide to each ~~justice of the peace~~ MUNICIPAL COURT blank serially numbered receipt forms in triplicate to be used whenever the ~~justice~~ COURT receives any moneys on account of any cash bail, bond, fine, penalty, or taxation of costs. The receipt forms shall provide space for recording the following information: (1) the name of the defendant and payor, (2) the name of the ~~justice~~ MUNICIPAL JUDGE, (3) the docket number, (4) the date, (5) the amount of any fine received, (6) the amount of costs received, (7) amount and nature of any other

sum received, and (8) total amount received. One copy of the receipt form shall be for the payor, 1 for the ~~justice~~ COURT, and 1 for the county treasurer. ~~The justice shall retain his copies as long as he serves and shall deliver them to his successor as provided in section 3 of this chapter.~~

Comment on Section 26b [774.26b]. See the comment on M.C.L. §774.26.

Sec. 26c. Every ~~justice of the peace~~ MUNICIPAL COURT shall maintain a separate bank account for criminal case receipts. ~~at a bank of his selection.~~ All criminal case receipts shall be deposited in this account daily if ~~such~~ THE receipts exceed $500.00 or whenever ~~such~~ THE receipts exceed $500.00. Withdrawals from this account shall be made only by check and only for the purposes of making deposits with the county treasurer, making refunds or transfers of cash bail bonds, making payments for restitution, or ~~for~~ making refunds to defendants in case of an error. ~~: Provided, however, That a bank account need not be maintained where receipts are less than $500.00 per month.~~

Comment on Section 26c [774.26c]. This provision supplements M.C.L. §774.26. The proviso for accumulated receipts of less than $500.00 is eliminated. Since receipts of $500.00 or more are a distinct possibility for any municipal court, there should always be a separate account for these funds.

Sec. 26d. ~~Any~~ A person who fails to comply with sections 26, 26a, 26b ~~and~~ OR 26c ~~of this chapter shall be~~ IS guilty of a misdemeanor.

Comment on Section 26d [774.26d]. Insofar as this section applies to the official who fails to pay over receipts to the treasurer as provided in section 26, there is an overlap between this provision and section 28 discussed below. It is assumed that the more specific penalties of that provision would apply.

Sec. 28. (1) If ~~any~~ A person who ~~shall have~~ HAS received any ~~such~~ fine or costs of any part thereof, ~~shall neglect~~ NEGLECTS to pay over the same pursuant to ~~the foregoing provisions~~ SECTIONS 22 OR 26, it shall be the duty of the county treasurer immediately to commence a suit ~~therefor~~ FOR THE UNPAID AMOUNT, in the name of the people of the state of Michigan, and to prosecute the same diligently to effect.

(2) ~~Any~~ A person neglecting to pay over such A fine to the county treasurer within 60 days after receiving the same, ~~shall be deemed~~ IS guilty of a misdemeanor and ~~on conviction thereof shall pay~~ SHALL BE PUNISHED BY a fine of not less than ~~50~~ $50.00 nor more than ~~100 dollars~~ $100.00 or ~~be imprisoned in the county jail of such county~~ IMPRISONMENT FOR not less than 30 nor more than 90 days, or both. ~~; in the discretion of the court: Provided, That all justices of the peace~~

(3) EACH MUNICIPAL JUDGE shall keep an exact record of all proceedings had before ~~them~~ HIM OR HER, and failing to do so, shall be liable to the same penalties as ~~above~~ PROVIDED IN THIS SECTION.

Comment on Section 28 [774.28]. The current reference to the "foregoing provisions" may include sections 23 and 24 as well as 22 and 26. However, since costs collected from a complainant under sections 23 and 24 (see proposed sections 1d and 1e) would fall within costs received under section 26, the section will still apply when such costs are not paid over to the treasurer as required in section 26. The overlap between the penalty provisions of this section and 26d are noted in the commentary to section 26d. Presumably this section would apply where funds were not paid over and section 26d would apply to other violations of section 26 (e.g., the county treasurer's failure to reimburse the court).

Sec. 34. ~~The person~~ A DEFENDANT charged with and convicted ~~by any justice of the peace of any offense,~~ OF A MISDEMEANOR OR ORDINANCE VIOLATION IN A MUNICIPAL COURT may appeal to the circuit court FOR A TRIAL DE NOVO even ~~though~~ IF the sentence ~~may have~~ HAS been suspended or the fine ~~and~~ OR costs, OR BOTH, have been paid. TO APPEAL OF RIGHT, THE DEFENDANT SHALL FILE, WITHIN 20 DAYS AFTER THE ENTRY OF THE JUDGMENT, A CLAIM OF APPEAL WITH THE CIRCUIT COURT CLERK, A COPY OF THE CLAIM OF APPEAL WITH THE MUNICIPAL COURT, AND EACH APPLICABLE FEE REQUIRED BY SECTIONS 2529 AND 6536 OF ACT NO. 236 OF THE PUBLIC ACTS OF 1961, [AS AMENDED,] BEING SECTIONS 600.2529 AND 600.6536 OF THE MICHIGAN COMPILED LAWS. The ~~person~~ DEFENDANT shall ALSO enter into a recognizance to the people of the state in a sum not less than $50.00 nor more than $500.00 within ~~10~~ 20 days after the ~~rendition~~ ENTRY of the judgment, ~~with 1 or more sureties,~~ conditioned ~~to appear before the court on the first day of the next term thereof to prosecute his~~ UPON THE DEFENDANT'S PROSECUTING THE appeal to effect and ~~to abide~~ ABIDING BY the orders and judgment of the court. ~~The justice~~ IF THE DEFENDANT ENTERS INTO SUCH A RECOGNIZANCE, THE MUNICIPAL JUDGE from whose judgment an appeal is taken shall thereupon discharge the ~~person so convicted~~ DEFENDANT or order ~~his~~ THE DEFENDANT'S discharge, shall

make a special return of the proceedings had before him, and shall file the complaint, warrant and the return together with the recognizance ~~and the testimony taken by him in~~ WITH the circuit court. ~~on or before the first day of the circuit court next held for the county. If there are any objections to the complaint, warrant or other proceedings and the decision of the justice thereon which would not be allowed to be made on the trial of the appeal, the same may be set forth specifically in such recognizance. Such justice shall in addition to his return as required by this section, make a full and complete return as to all matters specifically mentioned in such recognizance, and the same shall be deemed issues of law for the determination of such circuit court.~~ THE PRACTICE AND PROCEDURE IN APPEALS FROM MUNICIPAL COURTS SHALL BE AS PROVIDED BY SUPREME COURT RULE.

Comment on Section 34 [774.34]. This is the primary section governing appeals from a justice court to the circuit court by a trial de novo procedure. Appeals from municipal court are still subject to this trial de novo procedure. See M.C.L. §§735.523; 730.136. See also M.C.L. §§600.7701-600.7735 (retaining the R.J.A. provisions for appeals from justice courts in civil cases because of their application to municipal courts).

The proposed amendment of section 34 refers specifically to the municipal court and to convictions for both misdemeanors and ordinance violations. A sentence is added as to filing a claim of appeal with the circuit court clerk as required by GCR 702 (incorporating the requirements of 701.2 and 701.3). Since a 20 day period is

now permitted for filing the appeal, the period for entering into a recognizance also is extended to 20 days. See also the proposed amendment of M.C.L. §770.2. The requirement that the person agree to appear before the circuit court on the first day of the next term is deleted since the appellate calendar is not set in this manner. The requirement that objections to the warrant be noted in the recognizance also is deleted. The recognizance does not serve as a claim of appeal but simply as an appeal bond. The contents of the claim of appeal, procedure for raising objections, etc., will be governed by Supreme Court Rule. See also proposed M.C.L. §770.3(b).

Sec. 42. The circuit court IN THE COUNTY ~~in~~ TO which ~~the person recognized shall be bound to appear, shall have power to~~ A DEFENDANT FILED AN APPEAL FROM A MUNICIPAL COURT PURSUANT TO SECTION 34 MAY continue ~~such~~ THE recognizance ENTERED UNDER SECTION 34 or ~~to~~ require a new recognizance with further or other security until a decision ~~shall be~~ IS had in ~~such~~ THE case ~~; and in~~ . IN default ~~thereof~~ OF SUCH A RECOGNIZANCE, the same court may commit the ~~party to convicted to close confinement~~ DEFENDANT TO JAIL.

Comment on Section 42 [774.42]. This is another in the series of provisions governing municipal court appeals. It is a companion to a series of provisions (sections 35-41) governing appeal by certiorari -- a procedure no longer available. While the sections describing that procedure will be repealed, sections 42-44 will be retained because they deal with matters that also are relevant to the trial de novo appeal procedure. They will be modified, however, to fit that procedure alone. The proposed amendment of section 42 thus makes a specific reference to section 34 and provides for commitment to jail rather than to "close confinement." Various stylistic changes also are made.

Sec. 43. If the ~~conviction and judgment of the justice be reversed~~ DEFENDANT WHO APPEALS A CONVICTION IN MUNICIPAL COURT IS FOUND NOT GUILTY ON APPEAL IN CIRCUIT COURT, the circuit court shall discharge the defendant~~, but if the judgment of such justice be affirmed~~ . IF THE DEFENDANT IS CONVICTED ON APPEAL TO CIRCUIT COURT, the ~~said~~ circuit court ~~shall order that such sentence be executed, and if~~ HAS THE SAME AUTHORITY AND POWER TO ENTER JUDGMENT, INFLICT PUNISHMENT, AND IMPOSE COSTS AS COULD THE MUNICIPAL COURT UNDER SECTION 22. If the defendant ~~shall have been let out of prison~~ WAS RELEASED ON RECOGNIZANCE AS ~~hereinbefore~~ provided IN SECTION 34 OR 43 AND IS SENTENCED TO JAIL BY THE CIRCUIT COURT, ~~he~~ THE DEFENDANT shall be remanded back to ~~such prison~~ THE COUNTY JAIL for the length of time ~~that remained unexpired of his sentence at the period he was so let out of prison~~ DETERMINED BY THE CIRCUIT COURT, LESS ANY TIME SERVED UNDER THE SENTENCE IMPOSED BY THE MUNICIPAL COURT AND LESS ANY TIME SPENT IN JAIL AWAITING TRIAL. THE DEFENDANT SHALL ALSO BE GIVEN CREDIT FOR ANY FINE PAID UNDER SENTENCE IN THE MUNICIPAL COURT AGAINST ANY FINE IMPOSED BY THE CIRCUIT COURT ON APPEAL.

Comment on Section 43 [774.43]. This section has been modified to fit the trial de novo procedure as opposed to the appeal by certiorari. Since there is a trial de novo, the circuit court, upon a conviction, has authority to impose a new sentence [i.e., the circuit judge does not simply reinstate the municipal court's sentence]. However, consistent

with current statutory requirements, credit must be given for time served on the municipal court sentence or time served while awaiting trial. See M.C.L. §§769.11a, 769.11b. While these limits are automatically incorporated in the section 22 limitations on sentencing authority, they are repeated so that their applicability to the sentence following a trial de novo is clear. Also added is a requirement that credit be given for any fine paid to the municipal court.

Sec. 44. If ~~at any time it shall appear to the said circuit court that the person prosecuting such certiorari has unreasonably delayed bringing on such cause for argument,~~ A DEFENDANT TAKING AN APPEAL FROM A MUNICIPAL COURT WITHDRAWS THE APPEAL OR IF THE CIRCUIT COURT DISMISSES THE APPEAL LEAVING THE MUNICIPAL COURT CONVICTION IN EFFECT, the CIRCUIT court may enter an order ~~to quash such certiorari,~~ REVOKING ANY RECOGNIZANCE and may also direct THAT the sentence of the ~~justice to~~ MUNICIPAL COURT be carried into effect.

Comment on Section 44 [774.44]. This section also is modified to fit the trial de novo appeal procedure. See the comment on M.C.L. §774.12. It spells out the circuit court's authority to reinstate the municipal court's sentence if the appeal is withdrawn or dismissed for other reasons.

Sec. 46. ~~Justices of the peace shall~~ MUNICIPAL JUDGES have power to issue such writs and process as may be necessary in criminal AND ORDINANCE VIOLATION cases to carry into effect their orders and sentences~~: Provided, however, That the provisions of~~ . HOWEVER, this section shall not be construed to eliminate the requirement of SECTION 1 OF CHAPTER 4 relative to the approval of the prosecuting attorney prerequisite to the issuance of a warrant in criminal cases.

Comment on Section 46 [774.46]. This section is amended to include a specific reference to ordinance violations and a specific cross-reference to the provision relating to prosecutor approval of warrants. The basic authority noted in this provision is also recognized in M.C.L. §730.551 granting municipal courts jurisdiction in all misdemeanor cases and authority "to issue all lawful writs and process . . . which may be necessary and proper to carry into effect the jurisdiction given by this act."

Sec. 47. In ~~any city~~ A MUNICIPAL COURT having more than 1 ~~justice of the peace, or other judicial officer having the criminal jurisdiction of a justice of the peace~~ JUDGE, whenever a warrant ~~shall be~~ IS issued for the arrest of ~~any~~ A person charged with ~~any~~ AN offense against the laws of the state, or for the violation of a city ordinance, any ~~justice or other judicial officer of said city shall have~~ MUNICIPAL JUDGE OF THAT COURT HAS jurisdiction to arraign, set bail,

adjourn, try, take testimony in, conduct a preliminary examination, dismiss, hold for trial in circuit court, and to do any act or acts in connection with the trial and disposition of any such case brought before ~~any such justice of the peace: Provided, however, That this shall apply only to the court or courts of justices of the peace in cities where said justices are paid a salary in lieu of fees,~~ THE MUNICIPAL COURT.

Comment on Section 47 [774.47]. This provision, dealing with multiple judge justice courts, is modified to refer specifically to municipal courts.

Sec. 48. Every ~~justice of the peace~~ MUNICIPAL JUDGE shall deliver to his OR HER successor in office all files, indexes and dockets. Upon the death of ~~any justice of the peace~~ A MUNICIPAL JUDGE, or when for any other reason ~~his~~ THAT office becomes vacant, and also at the end of each term, the board of auditors of the county or the board of ~~supervisors~~ COMMISSIONERS of the county shall cause the records of the ~~justice of the peace~~ JUDGE to be audited immediately. The audit shall be completed within 30 days from the date of vacancy or end of the term. Where a ~~justice of the peace~~ MUNICIPAL JUDGE has been reelected to

office, the audit shall be completed within 6 months from the date of expiration of office or his OR HER previous term. The audit report shall set forth the amount due the ~~justice of the peace, his executor or administrator, as well as~~ MUNICIPAL COURT AND the amount due the county for fines and costs collected by the ~~justice~~ JUDGE. The board of auditors or board of ~~supervisors~~ COMMISSIONERS shall issue to the ~~justice of the peace,~~ JUDGE OR his OR HER executor or administrator, a certificate stating that all amounts required to be paid to the county during ~~his~~ THE JUDGE'S term of office have been ~~so~~ paid, if the audit so determines. This certificate shall NOT be of ~~no~~ ANY effect if it is later determined that there was fraud, embezzlement, or other criminal concealment or acts involved in the funds collected by the ~~justice of the peace~~ MUNICIPAL JUDGE.

Comment on Section 48 [774.48]. This provision is amended to make specific its application to municipal courts.

SEC. 49. (1) IN ALL MATTERS OF SUBSTANCE, AUTHORITY, AND JURISDICTION WITH REGARD TO FELONY, MISDEMEANOR OR ORDINANCE VIOLATION CASES, MUNICIPAL COURTS SHALL BE GOVERNED BY THE STATUTES APPLICABLE TO THE DISTRICT COURT, EXCEPT WHERE THOSE PROVISIONS CONFLICT WITH STATUTES SPECIFICALLY APPLICABLE TO THE PARTICULAR MUNICIPAL COURT OR TO MUNICIPAL COURTS GENERALLY.

(2) IN ALL MATTERS OF PRACTICE AND PROCEDURE IN THE EXERCISE OF JURISDICTION WITH REGARD TO FELONY, MISDEMEANOR OR ORDINANCE VIOLATION CASES, MUNICIPAL COURTS SHALL BE GOVERNED BY THE STATUTES AND SUPREME COURT RULES APPLICABLE TO THE DISTRICT COURT, EXCEPT WHERE THOSE PROVISIONS CONFLICT WITH STATUTES OR SUPREME COURT RULES SPECIFICALLY APPLICABLE TO MUNICIPAL COURTS.

Comment on Section 49 [774.49]. This is a new provision. The statutes governing municipal courts, even with Chapter 14, are not as complete as the statutes governing district courts and the recorder's court. M.C.L. §730.551 provides that municipal courts may "issue all lawful writs and process and do all lawful acts which may be necessary and proper to carry into effect" the municipal court jurisdiction in misdemeanor cases, but does not provide specific standards found, for example, in the R.J.A. provisions on district courts. Similarly, while Chapter 14 provides for a jury trial and states that the jury must "agree on a verdict" [M.C.L. §774.20], it does not specifically state that the jury verdict must be unanimous. Compare M.C.L. §600.8355 applicable to district courts. Additionally, Chapter 14 does not contain a provision as to the court's authority to subpoena records and documents. Compare M.C.L. §600.8317.

When the R.J.A. was revised to eliminate J.P. provisions, a new provision was added to cover gaps in the provisions governing municipal courts. That provision, M.C.L. §600.6502 provides:

> "All matters relating to the organization and financing of courts of limited jurisdiction or to the selection, terms, compensation, and duties of their judges and other officers and personnel and to limitations on jurisdiction shall be governed by the statutes respectively applicable to the courts. In all other matters of civil jurisdiction, including pleadings and motions, forms of action, joinder of claims and parties, issuance, service and enforcement of

writs, subpoenas and other process, contempts, taxation of costs, and entry and enforcement of judgments, the municipal and common pleas courts shall also be governed by statutes and supreme court rules applicable to the district court, except where the provisions conflict with the provisions of statutes or supreme court rules specifically applicable to the municipal or common pleas courts. In the statutes specifically applicable to municipal or common pleas courts, all references to the powers or proceedings of justice courts or justices of the peace in matters of civil jurisdiction shall be construed to refer to the powers or proceedings of the district court or district court judges."

Section 49 is designed to serve the same objective as M.C.L. §600.6502 with respect to the felony, misdemeanor, and ordinance violation jurisdiction of municipal courts. Unlike §600.6502, section 49 separates jurisdiction and procedure. Subsection 1 applies to jurisdiction and refers only to statutes since matters of jurisdiction are not a proper subject for court rules. Subsection 2 governs procedure and refers to both statutes and court rules. There is no need for a provision stating that references to justice courts shall be read as applicable to municipal courts since references to J.P. courts have been replaced by references to municipal courts throughout the Code of Criminal Procedure. (This was not done in the R.J.A.. See, e.g., M.C.L. §§600.7701-600.7735).

Chapter 15

Sec. 13. **Whenever any** WHEN A person **shall attend any** ATTENDS A court as a witness in behalf of the **people of this state** PROSECUTION upon request of the **public prosecutor,** PROSECUTING ATTORNEY, or upon a subpoena, or by virtue of

~~any~~ A recognizance for that purpose, he shall be entitled to the following fees: For attending in a court of record, $12.00 for each day and $6.00 for each half day; for attending in a ~~justice~~ MUNICIPAL court or upon an examination, $10.00 for each day and $5.00 for each half day; and for traveling, at the rate of 10 cents per mile in going to and returning from the place of attendance, to be estimated from the residence of ~~such~~ THE witness if within the state; if without the state, from the boundary line which witness passed in going to attend the court.

~~No~~ A peace officer shall NOT receive ~~any~~ A fee as a witness in behalf of the people of this state if he is on duty at the time he ~~shall attend~~ ATTENDS court, nor shall he receive compensation going to the place of attendance unless he ~~shall travel thereto~~ TRAVELS TO THE COURT at his own expense.

Comment on Section 13 [775.13]. This provision is part of the general chapter on fees in criminal cases. The district court and recorder's court are governed by the provision as to courts of record. The municipal court is subject to the provision as to justice courts and that provision is amended to refer specifically to justice courts. The fee schedule provided in this section should be applicable to ordinance violation cases as well as misdemeanor cases. Cf. M.C.L. §775.13a (which is not limited to state cases). The description of the witness as a witness on behalf of the prosecution will cover both state and ordinance violation cases. Under M.C.L. §761.1(k), the prosecuting attorney includes the local attorney in ordinance violation cases.

Sec. 13a. ~~Whenever any~~ WHEN A person ~~shall attend any~~ ATTENDS A court, ~~including justice or municipal court,~~ as a witness in a ~~criminal~~ FELONY, MISDEMEANOR OR ORDINANCE VIOLATION case upon request of the ~~public prosecutor, city attorney,~~ PROSECUTING ATTORNEY or defendant by virtue of ~~any~~ A recognizance or subpoena for that purpose, whether at the trial of the case or ~~any~~ other proceedings in the case, to testify as an expert witness, he may be paid as compensation for his services a sum in excess of the ordinary witness fees provided by law. The sum to be awarded shall be determined by the judge before whom the witness appears.

Comment on Section 13a [775.13a]. There is no need for the phrase "including a justice or municipal court" since the provision refers initially to all courts. The provision appears to be designed to include ordinance violation cases since it refers to witnesses appearing upon request of the city attorney. However, the phrase "criminal case" raises a question as to whether ordinance violation cases are included. Accordingly, the phrase "felony, misdemeanor, or ordinance violation case" is substituted.

Sec. 14. ~~In courts of record such~~ A witness ENTITLED TO A FEE UNDER SECTION 13 shall prove his attendance and travel in open court before the clerk OF THE COURT, ~~and in justice courts before the justice, on the day of trial, or upon an examination, and a certificate thereof from the justice,~~

~~countersigned by the prosecuting attorney of the county, shall authorize the county clerk to draw an order upon the county treasurer for the payment of the fees of such witnesses attending such justice court as aforesaid, which order shall be paid by the said county treasurer in like manner as witness fees in courts of record are paid,~~ and an order ~~therefor~~ from the clerk of ~~such~~ court of record shall authorize ~~the county treasurer to pay the fees of witnesses attending such court of record as aforesaid~~ PAYMENT in the same manner as the fees of jurors attending ~~such~~ THE courts are paid.

Comment on Section 14 [775.14]. This provision is a companion to section 13 rather than section 13a. It refers to the standard witness fee rather than the special fee for the expert, which is set by the judge. Accordingly, the provision is amended to refer specifically to section 13. The different procedures to be used in a court not of record were based on the premise that such a court would not have a clerk. Since the remaining municipal courts will have a clerk, that procedure can be eliminated. The requirement that the county treasurer pay the witness fee is inappropriate as applied to ordinance violation cases. The amendment simply requires that payment shall be made in the same manner as the fees of jurors are paid. See the commentary to M.C.L. §774.21.

Sec. 16. ~~Whenever any~~ WHEN A person charged with having committed ~~any~~ A felony ~~or misdemeanor not cognizable by a justice of the peace or magistrate and who~~ appears before

~~such justice of the peace or~~ A magistrate without counsel, and ~~who shall~~ HAS not ~~have~~ waived examination upon the charge upon which he appears, ~~such~~ THE ACCUSED ~~person~~ shall be advised of his right to have counsel appointed for ~~such~~ THE examination. ~~; and if such~~ IF THE person states that he is unable to procure counsel, the ~~justice or~~ magistrate shall notify the presiding judge of the circuit court ~~in~~ FOR the ~~jurisdiction of~~ JUDICIAL DISTRICT IN which the offense is alleged to have occurred OR THE PRESIDING JUDGE OF RECORDER'S COURT OF THE CITY OF DETROIT, IF THE OFFENSE IS ALLEGED TO HAVE OCCURRED IN THE CITY OF DETROIT. ~~; and upon proper shewing the~~ THE presiding judge shall appoint OR DIRECT THE MAGISTRATE TO APPOINT, UPON A PROPER SHOWING, some attorney to conduct the accused's examination ~~before a justice court or examining magistrate~~ and to conduct the ACCUSED'S defense. ~~; and the~~ THE attorney ~~so~~ appointed shall be entitled to receive from the county treasurer on the certificate of the presiding judge that ~~such~~ THE services have been duly rendered, ~~such an~~ THE amount ~~as the~~ THAT presiding judge ~~shall~~ in his discretion ~~deem~~ DEEMS reasonable compensation for the services performed.

Comment on Section 16 [775.16]. This section deals with the right to counsel at the preliminary examination and payment for appointed counsel. It is limited in application to felony cases since examinations are only available in such cases. See M.C.L. §766.4. References to justices of the peace are deleted and certain stylistic changes are made. The recorder's court has been inserted for cases in Detroit. Also,

since it is common practice for the presiding judge to delegate appointment to the magistrate according to previously established standards for appointment, the provision is amended to recognize the presiding judge's authority to direct the magistrate to make the appointment. Also, the requirement of a proper showing has been relocated so as not to suggest that the showing must be made before the presiding judge.

Sec. 19. ~~Whenever any~~ WHEN A person ~~shall attend any~~ ATTENDS A court as an interpreter for the purpose of interpreting the testimony of ~~any~~ A witness given in behalf of ~~the people of~~ THE PROSECUTION ~~this state~~, or for the purpose of translating or interpreting ~~any~~ A writing or document introduced or used in ~~any~~ A court in behalf of the PROSECUTION ~~people of this state~~, either upon request of the prosecuting attorney or by ~~and with the consent of the presiding judge or justice of the peace;~~ APPOINTMENT OF THE COURT PURSUANT TO SECTION 19a, ~~he~~ THAT PERSON shall receive ~~such~~ compensation as ~~shall be~~ ordered by ~~said~~ THE COURT. ~~presiding judge or justice of the peace.~~ The compensation for such interpreter in the ~~justice~~ MUNICIPAL court shall not exceed the sum of $25.00 for each day and the sum of $15.00 for each half day actually employed. The certificate of the clerk of ~~a~~ THE court of record ~~or of a justice of the peace~~ stating the amount ordered to be paid ~~as hereinbefore provided~~ BY THE COURT shall authorize

PAYMENT IN THE SAME MANNER AS THE FEES OF WITNESSES ~~the county treasurer to pay the amount therein stated.~~

Comment on Section 19 [775.19]. This provision also is altered to be applicable to all cases (including ordinance violations). See also the comment to section 14. In general, the fees to be paid in the district court and the recorder's court are covered by special provisions applicable to courts of record. See M.C.L. §§600.2552, 600.8323 (specifically tying district court fees to the applicable circuit court fees). Accordingly, the limitation imposed on justice courts is viewed as applicable only to the municipal court. The reference to an interpreter who appears "by and with the consent" of the court is replaced by a reference to section 19a providing for appointment by the court. (The current language cannot be read literally as applicable to any interpreter who appears with the consent of the judge since all interpreters, appearing on the request of the defense and the prosecution, must be approved by the court). Because the phrase "presiding judge" has usually been used with reference to only the chief judge of the circuit, the fee is described simply as having been ordered by "the court."

Sec. 19a. If ~~any~~ AN ACCUSED person ~~is accused of any crime or misdemeanor and~~ is about to be examined or tried ~~before any justice of the peace, magistrate or judge of a court of record~~ and it appears to the magistrate or judge that ~~such~~ THE person is incapable of adequately understanding the charge or presenting his defense ~~thereto~~ because of a lack of ability to understand or speak the English language or inability adequately to communicate by reason of being deaf ~~and/~~ or mute, or that ~~such~~ THE person suffers from a speech defect or other physical defect which handicaps ~~such~~ THE person in maintaining his rights in ~~such~~ THE CASE ~~cause~~,

the ~~justice of the peace;~~ magistrate or judge shall appoint a qualified person to act as an interpreter. The interpreter so appointed shall be compensated for his services in the same amount and manner as is provided for interpreters in section 19 of this chapter.

Comment on Section 19a [775.19a]. Since the examination is generally described as before a magistrate, the phrase "magistrate or judge" is retained. There is no need to distinguish between courts of record and those not of record. The reference to an "accused person" will encompass ordinance violations as well as felony and misdemeanor cases.

Section 2. Section 2 of Chapter 2; sections 3, 8, 10, 11, and 12 of Chapter 4; sections 2, 10, 11, and 19 of Chapter 5; sections 2 and 3 of Chapter 6; sections 4, 5, 6, 7, 10, 11, 13, 14, and 15 of Chapter 10; sections 10, 12, 13, 14, 17, 19, 20, and 21 of Chapter 13; sections 1, 4, 5, 6, 7, 8, 11, 23, 24, 25, 27, 31, 35, 36, 37, 38, 39, 40, 41, and 45 of Chapter 14; and section 2 of Chapter 15 of Act No. 175 of the Public Acts of 1927, being sections 762.2, 764.3, 764.8, 764.10 to 764.12, 765.2, 765.10, 765.11, 765.19, 766.2, 766.3, 770.4 to 770.7, 770.10, 770.11, 770.13 to 770.15, 773.10, 773.12 to 773.14, 773.17, 773.19 to 773.21, 774.1, 774.4 to 774.8, 774.11, 774.23 to 774.25, 774.27, 774.31, 774.35 to 774.41, 774.45 and 775.2 of the Compiled Laws, are repealed.

APPENDIX: PROVISIONS TO BE REPEALED

762.2 Jurisdiction; justice of the peace.

Sec. 2. Any justice of the peace is empowered and authorized to perform all official acts and duties and to exercise jurisdiction in criminal causes in any township or city situate in the county within which the justice of the peace was elected and qualified, with the same rights and powers as though performed and exercised within the city or township in which such justice of the peace was elected and qualified.

COMMENT: The geographical limits upon the jurisdiction of justices of the peace are not relevant to the jurisdiction of any surviving court. See, e.g., M.C.L. §600.9928 (3) (municipal courts); M.C.L. §726.11 (recorder's court); M.C.L. §600.8312 (district courts venue limitations).

764.3 Warrant; return, jurisdiction of justice.

Sec. 3. A warrant for the arrest of an accused person, when issued by any justice of the peace in any township or city other than the township or city in which the justice of the peace was elected and qualified, may be returned to and the accused brought before such justice of the peace in the city or township in which the offense was committed, or at the office of such justice of the peace in the city or township in which such justice of the peace was elected and qualified: Provided, That any such justice of the peace may in such warrant direct that the accused person be brought before another qualified justice of the peace within the same county, and in the absence of the justice of the peace who issued the warrant or in case of his inability to attend, the accused person may be brought before another qualified justice of the peace within the same county, which latter justice of the peace may proceed to hear or try the cause and have full jurisdiction thereof.

COMMENT: This provision relates only to justices of the peace and therefore should be repealed. As amended, M.C.L. §761.1b adequately will provide for the return of a warrant and the presentation of the person arrested pursuant to the warrant. See generally the comment to proposed section 761.1b.

764.8 Other offense not cognizable by justice; prisoner before magistrate issuing warrant; absence or inability to attend.

Sec. 8. Persons arrested under any warrant issued for any offense not cognizable by a justice of the peace, shall where no provision is otherwise made, be brought before the magistrate who issued the warrant; or if he be absent or unable to attend, before some other magistrate of the same county; and the warrant, with a proper return thereon, signed by the person who made the arrest, shall be delivered to the magistrate.

COMMENT: This provision is replaced by proposed M.C.L. §764.1b. See the commentary to that section.

764.10 Offense cognizable by justice; recognizance for appearance; liberation.

Sec. 10. Such magistrate may take from the person arrested a recognizance with sufficient sureties for his appearance before the magistrate having cognizance of the offense within 20 days thereafter, and the person arrested shall thereupon be liberated.

COMMENT: This is one of a series of provisions consolidated in the proposed amendment of M.C.L. §§764.4-764.7. See the commentary to M.C.L. §764.4.

764.11 Offense cognizable by justice; warrant, certification to bail; disposal.

Sec. 11. Such magistrate shall certify on the warrant the fact of his having let the defendant to bail and shall deliver the same, together with the recognizance taken by him, to the person who made the arrest, who shall cause the same to be delivered without unnecessary delay to the magistrate or clerk of the court before which the accused was recognized to appear.

COMMENT: This is one of the series of provisions consolidated in the proposed amendment of M.C.L. §§764.4-764.7. See the commentary to M.C.L. §764.4.

764.12 Offense cognizable by justice; insufficient bail; records, disposition of prisoner.

Sec. 12. If such magistrate determines that no sufficient bail has been offered, he shall make a note of the same in his records and the person having the person arrested in charge shall take him before the magistrate who issued the warrant or before some other magistrate of the same county, as hereinbefore provided.

COMMENT: This is one of the series of provisions consolidated in the proposed amendment of M.C.L. §§764.4-764.7. See the commentary to M.C.L. §764.4.

765.2 Admission to bail; courts of record having power.

Sec. 2. The several circuit courts, the recorder's court of the city of Detroit, the superior court of the city of Grand Rapids, and all courts of record having jurisdiction over criminal causes, shall have power to let to bail any person committed, in all cases in which a justice of the supreme court is authorized to let such person to bail.

COMMENT: The remaining courts which would be covered by this provision now have authority to release a person on bail pursuant to M.C.L. §765.1. See the commentary in M.C.L. §765.1.

765.10 Recognizance in case of offense against municipal ordinance; power of clerk.

Sec. 10. All recognizances for the appearance of offenders in the several municipal courts of this state, to answer for offenses committed against the by-laws and ordinances of any municipal corporation, may be taken and entered into by and before the clerks of said courts: Provided, however, That if the party or parties becoming recognized shall not be satisfied with the sum fixed therein by the clerk, the same shall be fixed by the judge of the court, if demanded by the party or parties becoming recognized.

COMMENT: The authority of municipal courts to set bail in ordinance violation cases [which includes charter violations under M.C.L. §761.1(i)], are now governed by M.C.L. §765.1, and M.C.L. §§780.61-780.73, 780.531-780.588 (cross-referenced in M.C.L. §765.1(3). These provisions require that the court set the bail, but permit the bail to be received by the clerk. See M.C.L. §765.1(2).

765.11 Cash in lieu of bond; justice court cause; acceptance, forfeiture, discharge.

Sec. 11. When under the laws of this state any bond is required in any cause, in any justice court in this state, it shall be lawful for the party from whom such bond is required to deposit cash in lieu thereof. Such security shall be taken and accepted by the justice of the peace and be forfeited or discharged in the same manner as the bond required.

COMMENT: This section is unnecessary, as the posting of cash is authorized by other sections "in any criminal cause or proceeding where bond or bail of any character is required or permitted for any purpose ...." M.C.L. §765.12. See also M.C.L. §§780.581-780.586.

765.19 Construction of act.

Sec. 19. Nothing in this chapter shall be construed to repeal any of the provisions of Act No. 332 of the Public Acts of 1919, so far as the same may apply to commissions or bodies other than courts having jurisdiction of criminal cases.

COMMENT: Act No. 332 of the Public Acts of 1919 has been repealed. That act referred to the posting of bonds in civil actions before certain commissions, a subject now covered in the R.J.A..

766.2 Complaint of certain offense; examination.

Sec. 2. Whenever complaint shall be made to any magistrate named in section 1, chapter 4, of this act, that a criminal offense not cognizable by a justice of the peace has been committed, he shall examine on oath the complainant and any witnesses who may be produced by him.

COMMENT: This provision is replaced by the proposed section 764.1a. See the commentary to that section.

766.3 Warrant; issuance, contents.

Sec. 3. If it appears from such examination that any criminal offense not cognizable by a justice of the peace has been committed, the magistrate shall issue a warrant directed to the sheriff, chief of police, constable or any peace officer of the county, reciting the substance of the accusation and commanding him forthwith to take the person accused of having committed the offense and bring him before the appropriate court to be dealt with according to law, and in the same warrant may require the officer to summon such witnesses as are named therein.

COMMENT: This provision is replaced by the proposed sections 764.1a and 764.1b. See the commentaries to these sections.

770.4 Writs of error; statement, time; notice of statement.

Sec. 4. Any person desiring to secure a writ of error under the provisions of this act shall, within 20 days after judgment, or within 10 days after denial of a motion for new trial, prepare a concise statement of what is involved in the case and the errors relied upon, and shall notice the same upon the prosecuting attorney for settlement before the trial judge, so that such statement may be amended, settled and signed by the trial judge within 30 days after judgment or denial of motion for a new trial.

COMMENT: This section applies to an appellate procedure no longer is use. Provisions applicable to current appellate practice are set forth in proposed M.C.L. §770.3. See the commentary to that section.

770.5 Writ of error; noticing and securing settlement, extension of time.

Sec. 5. The time for noticing and securing the settlement of such statement may, upon good cause shown, be extended by the trial court, upon proper application therefor and notice to the prosecuting attorney. The order granting such extension shall be returned to the supreme court together with the application for the writ of error.

COMMENT: This section applies to an appellate procedure no longer in use. Provisions applicable to current appellate practice are set forth in proposed M.C.L. §770.3. See the commentary to that section.

770.6 Writ of error; presentation of statement to supreme court.

Sec. 6. Such statement when settled and signed shall be presented to the supreme court or any justice thereof within 10 days after the same is so settled and signed, and shall be the basis of the application to the supreme court for a writ of error.

COMMENT: This section applies to an appellate procedure no longer in use. Provisions applicable to current appellate practice are set forth in proposed M.C.L. §770.3. See the commentary to that section.

770.7 Writ of error; notice of court's decision.

Sec. 7. Notice of the decision of the supreme court on such application for a writ of error shall forthwith be transmitted by the clerk of the supreme court to the prosecuting attorney and to the attorney for the defendant.

COMMENT: This section applies to an appellate procedure no longer in use. Provisions applicable to current appellate practice are set forth in proposed M.C.L. §770.3. See the commentary to that section.

770.10 Bill of exceptions; settlement, time and manner.

Sec. 10. Bills of exceptions in criminal cases shall be settled only within the time and in the manner hereinafter provided.

COMMENT: This section applies to an appellate procedure no longer in use. Provisions applicable to current appellate practice are set forth in proposed M.C.L. §770.3. See the commentary to that section.

770.11 Bill of exception; time of settlement, extension.

Sec. 11. If the application for such writ of error is granted, the appellant shall have not less than 20 days thereafter in which to settle a bill of exceptions. Further time for settlement of a bill of exceptions may be granted by the trial judge in the same manner as is now provided in civil cases; such time, however, shall not exceed in all 3 months from the date of the order granting application for a writ of error by the supreme court: Provided, Upon proper application before expiration of the time and for good cause shown, the supreme court or any justice thereof may extend such time not to exceed 1 year from the date of judgment.

COMMENT: This section applies to an appellate procedure no longer in use. Provisions applicable to current appellate practice are set forth in proposed M.C.L. §770.3. See the commentary to that section.

770.13 Writ of error in criminal cases; issuance, time and manner.

Sec. 13. Writs of error granted by the supreme court under the provisions of this act shall be issued after the settlement of the bill of exceptions, and in the same manner as is now provided in civil cases.

COMMENT: This section applies to an appellate procedure no longer in use. Provisions applicable to current appellate practice are set forth in proposed M.C.L. §770.3. See the commentary to that section.

770.14 Rules of practice; court to adopt.

Sec. 14. As soon as practicable after the passage of this act the supreme court shall adopt such rules of practice as may be necessary to carry out the provisions of said act.

COMMENT: This section applies to an appellate procedure no longer in use. Provisions applicable to current appellate practice are set forth in proposed M.C.L. §770.3. See the commentary to that section.

770.15 Repeal.

Sec. 15. All acts and parts of acts relative to exceptions before sentence in criminal cases, and all other provisions of law inconsistent with the provisions of this chapter, are hereby expressly repealed.

COMMENT: This section applies to an appellate procedure no longer in use. Provisions applicable to current appellate practice are set forth in proposed M.C.L. §770.3. See the commentary to that section.

773.10 Inquest by justice of the peace; issuance of warrant for accused.

Sec. 10. If any person charged by the inquest with having committed any such offense shall not be in custody, the justice of the peace shall have power to issue process for his apprehension, and such warrant shall be made returnable before him or any other magistrate or court having cognizance of the case, who shall proceed thereon in the manner that is required of magistrates in like cases.

COMMENT: The authority of a magistrate to issue arrest warrants is governed by proposed M.C.L. §§764.1-764.1b. These provisions provide ample authority to deal with the situation treated in M.C.L. §773.10. Moreover, reliance upon these provisions is preferrable to reliance upon M.C.L. §773.10, since §773.10 fails to include any of the standard prerequisites for warrant issuance found in §§764.1-764.1b (e.g., prosecutor authorization).

773.12 Inquest by coroner; powers.

Sec. 12. Any coroner shall have power to hold inquests anywhere within the county for which he shall be elected, and all provisions of law relating to the holding of inquests and the disinterment of dead bodies for the purpose of holding inquests thereon by justices of the peace, are hereby made applicable to inquests so held by coroners; and all powers by the general laws of this state conferred upon justices of the peace relative to such inquests are hereby conferred upon such coroners. All powers conferred upon peace officers by the general laws of this state are hereby conferred upon such coroners.

COMMENT: The office of coroner has been abolished, M.C.L. §52.2130, and the authority to hold inquests currently is given solely to district court and municipal court judges. See M.C.L. §52.207; M.C.L. §52.213; Lipiec v. Zawadzki, 346 Mich. 197 (1956). See also the commentary to M.C.L. §773.1.

773.13 Inquest by coroner; surgeon, chemist; employment, compensation.

Sec. 13. Any coroner or justice of the peace holding such inquest, shall have power to summon the attendance of a competent surgeon, whenever he shall deem such attendance necessary, and a chemist may be employed in cases affording reasonable ground of suspicion that death has been produced by poison. Any chemist or surgeon so employed shall, upon the certificate of the coroner acting in the case, receive such compensation for his or their services as shall be allowed by the county auditors of counties having a board of auditors or the supervisors of other counties, as is otherwise provided by law.

COMMENT: This section was added to Chapter XIII to govern inquests held by coroners. It largely duplicates M.C.L. §773.4 (which governed inquests conducted by justices of the peace). There is no need to have both provisions, since either, with the proper amendments, will describe adequately procedures to be followed in inquests now conducted pursuant to the authority granted in M.C.L. §52.201. See the commentary to M.C.L. §773.3. M.C.L. §773.4 has been retained and amended and M.C.L. §773.13 therefore may be repealed.

773.14 Inquest in incorporated city; coroner's jury.

Sec. 14. It shall not be competent for justices of the peace, within the incorporated cities of this state in which a county coroner resides, to hold inquests on the view of dead bodies unless both of the coroners of the county in which they are situate shall be absent, or incapacitated to act from illness or otherwise; but such inquests, within said city, shall be held by one of the coroners elected for the county in which such cities are severally situate, whenever in the judgment of such coroner, an inquest shall be necessary and that the coroners' juries shall consist of 6 persons only.

COMMENT: This provision, dividing authority between the justice of the peace and the coroner, should be repealed since both offices have been abolished. See M.C.L. §600.9921; M.C.L. §52.213a.

773.17 Property of value found on unknown decedent; delivery to county clerk.

Sec. 17. Whenever any money or valuable property shall be found upon the body of an unknown deceased person within this state, it shall be the duty of the coroner or justice holding the inquest over said body, or of any person who shall come into possession of said money or valuable property, to deliver all of said money or valuable property so found to the county clerk of the county where said body shall be found or be at the time of death, within 10 days after said money or property shall have come into his possession.

COMMENT: M.C.L. §52.208 now provides that the police or medical examiner shall care for property found on the unknown deceased person.

773.19 Certain kinds of deaths; notice to coroner, right to remove body.

Sec. 19. It shall be the duty of any physician and of any person in charge of any hospital or institution, or of any person who shall have first knowledge of the death of any person who shall have died suddenly, accidentally, violently or as the result of any suspicious circumstances or without medical attendance up to and including at least 36 hours prior to the hour of death, or in any case of death due to what is commonly known as an abortion, whether self-induced or otherwise, to immediately notify the coroner of the death. It shall be unlawful for any undertaker, embalmer or other person to remove any body from the place where such death occurred, or to prepare same for burial or shipment, without first notifying the coroner and receiving permission to remove the body.

COMMENT: M.C.L. §52.203 now requires that the medical examiner be notified of deaths of the type described in this statute.

773.20 Property found on decedent; delivery to coroner, record, disposal.

Sec. 20. All moneys or effects that shall be upon the person of the deceased at the time of death or prior to the death, shall be turned over to the coroner whose duty it shall be to make a record of the sums and a listing of other effects in the property book and retain the same in the coroner's office until the coroner shall be able to deliver such property and effects to the personal representatives of the deceased or dispose of the same as otherwise provided by law.

COMMENT: M.C.L. §52.208 now provides that the police or medical examiner shall take possession of all property of value (in the absence of next of kin) and shall make proper disposition thereof.

773.21 Coroner's inquest upon order of prosecutor; jury.

Sec. 21. Where, in the discretion of the prosecuting attorney, an inquest is deemed necessary, the coroner upon the written order of the prosecuting attorney, shall summon 6 men all of whom shall be citizens of the United States, residents of the county, and shall administer the oath as provided for by this chapter except that the jurors need not view the body of the deceased.

COMMENT: The initial provision of this section, requiring the coroner to conduct an inquest upon the determination of the prosecutor, has been replaced by M.C.L. §52.207. The provision describing the selection of jurors duplicates M.C.L. §773.2, which has been retained and amended to apply to inquests conducted pursuant to M.C.L. §52.207. The provision that the jurors need not examine the body has been added to M.C.L. §773.2.

774.1 Justice of the peace; powers, jurisdiction; effect of excessive penalty.

Sec. 1. Any justice of the peace shall have power to hold a court subject to the provisions hereinafter contained, to hear and determine charges for all offenses arising within his county punishable by fine not exceeding $100.00, or punishable by imprisonment in the county jail not exceeding 3 months, or punishable by both said fine and imprisonment; and any justice of the peace is empowered and authorized to perform all official acts and duties and to exercise jurisdiction in criminal causes in any township or city situate in the county within which the justice of the peace was elected and qualified, with the same rights and powers as though performed and exercised within the city or township in which such justice of the peace was elected and qualified: Provided, That whenever in any criminal case, tried before any justice of the peace, the defendant shall be adjudged guilty and punishment by fine or imprisonment shall be imposed in excess of that allowed by law, the judgment shall not for that reason alone be adjudged altogether void nor be wholly reversed and annulled, but the same shall be valid and effectual to the extent of the lawful penalty and shall be reversed and annulled only in respect to the unlawful excess: Provided further, That for all offenses arising under the provisions of section 724 of Act No. 300 of the Public Acts of 1949, as amended, being section 257.724 of the Compiled Laws of 1948, any justice of the peace shall have power to impose the several fines therein provided.

COMMENT: The office of justice of the peace is abolished, M.C.L. §600.9921. The jurisdiction of municipal courts, the district court, and the recorder's court is not dependent upon this provision since these courts are granted broader trial jurisdiction in separate provisions. See M.C.L. §§726.11 (recorder's court), 730.551 (municipal courts), 600.8311 (district courts). See also the Commission's 10th Annual Report (1975) at pp. 25-31. The provision relating to sentences in excess of the law is not needed in light of a similar provision, applicable to all courts, in M.C.L. §769.24. See the commentary to M.C.L. §774.22.

774.4 Complaint; authority of clerk; warrant, issuance, request.

Sec. 4. Upon complaint made to any justice of the peace, by any constable or other person that any offense cognizable by a justice of the peace has been committed within the county, he shall examine the complainant on oath and witnesses produced by him. He shall reduce the complaint to writing and cause the same to be subscribed by the complainant, and if it shall appear that such offense has been committed, the justice shall issue his warrant reciting the substance of the complaint, and requiring the officer to whom it is directed forthwith to arrest the accused and bring him before such justice or some other justice of the same county, to be dealt with according to law. In the same warrant he may require the officer to summon such witnesses as shall be named therein, to appear and give evidence at the trial. Any justice of the peace who is by law provided with a clerk may issue warrants for offenses cognizable by the justice based upon a complaint taken and signed before the clerk or any deputy clerk of the court. A clerk or deputy clerk has the same power and authority to take complaints for offenses cognizable by the justice as is possessed by such justice, and upon such a complaint being presented to the justice he may in his discretion take the testimony of other witnesses or further testimony of the complaining witness; and the procedure thereafter shall be the same as in other cases.

A justice of the peace shall not issue warrants in criminal cases except where warrants are requested by (a) a sheriff or his deputy, a village marshal, an officer of the police department of an incorporated city or village or an officer of the Michigan state police for traffic or motor vehicle violations, or (b) agents of the state highway department, a county road commission or of the public service commission for violations of Act No. 300 of the Public Acts of 1949, as amended, being sections 257.1 to 257.923 of the Compiled Laws of 1948; Act No. 254 of the Public Acts of 1933, as amended, being sections 475.1 to 479.20 of the Compiled Laws of 1948; or Act No. 181 of the Public Acts of 1963, being sections 480.11 to 480.19 of the Compiled Laws of 1948, the enforcement of which has been delegated to them, until an order in writing allowing the same is filed with such justice and signed by the prosecuting attorney of the county or unless security for costs shall have been filed with the justice.

COMMENT: The provisions of this section are replaced by proposed sections 764.1-764.1d. See the commentaries to those sections.

774.5 Charge read to accused; arraignment; entry of plea.

Sec. 5. The charge made against the accused, as stated in the warrant of arrest, shall be distinctly read to him at the time of his arraignment and he shall be required to plead thereto, which plea the court shall enter in its minutes; if the accused refuse to plead, the court shall enter the fact with a plea of not guilty in behalf of such accused in its minutes.

COMMENT: This provision is relocated at proposed section 764.1a. See the commentary to that section.

774.6 Plea of not guilty; waiver of jury; trial.

Sec. 6. If the plea of the accused be not guilty, and he waive trial by jury the said court shall proceed to try such issue and to determine the same according to the evidence which may be produced against and in behalf of such accused.

COMMENT: This provision is relocated at proposed section 764.1b. See the commentary to that section.

774.7 Plea of guilty; judgment rendered.

Sec. 7. If the accused shall plead guilty to such charge the court shall thereupon render judgment thereon.

COMMENT: This provision is relocated at proposed section 774.1c. See the commentary to that section.

774.8 Plea of not guilty; trial; time, continuance.

Sec. 8. On the return of the warrant with the accused, if he shall plead not guilty or refuse to plead to the charge in the warrant, the said justice shall proceed to hear, try and determine the cause within 10 days after the return of the same, unless the absence of witnesses from the county without the fault or connivance of the party seeking such continuance shall render such continuance necessary, or unless the sickness of witnesses or of the accused shall render a continuance of such cause necessary; in which case it shall and may be competent for the justice to adjourn or continue the same for such time as may be necessary to secure the ends of justice: Provided, That in case of the absence of witnesses the party seeking to obtain a continuance for that cause shall further show to the satisfaction of the court that he has used due diligence to obtain the testimony of such witness. Such showing shall be the same as is required in civil cases.

COMMENT: Insofar as this section provides for trial upon entry of a plea of guilty or refusal to plead, it duplicates the proposed section 774.1b. The provision for trial within 10 days was geared to justice court practice and jurisdiction. Timing on trials in the district court is governed by DCR 789, restricting delay in criminal cases. By administrative order of January 28, 1974, that court rule is also made applicable to municipal courts. Recorder's court follows a similar rule. See GCR 789.

774.11 Disposition of accused before trial; bail, commitment.

Sec. 11. From the time of the return of the warrant until the time of the trial the accused may give bail with 1 or more sufficient sureties for his appearance at the time fixed for the trial, or in the event of failure so to do, may be committed to jail for safe keeping by warrant of said justice, or left in custody of the arresting officer.

COMMENT: The general bail provisions (see M.C.L. §765.1) apply to all courts and all bailable offenses. Accordingly, there is no need for a special provision applicable to municipal courts.

774.23 Acquittal; discharge; complainant, payment of cost, time.

Sec. 23. Whenever the accused shall be acquitted, he shall be immediately discharged; and if the court before whom the trial is had shall certify in its minutes that the complaint was wilful and malicious and without probable cause, it shall be the duty of the complainant to pay all the costs that shall have accrued to the court and the sheriff or constable and jury in the proceedings had upon such complaint, or to give satisfactory security by bond to the people of the state, with 1 or more sureties to pay the same in 30 days after the said trial.

COMMENT: This section has been relocated to section 774.1d. See the commentary on that section.

774.24 Complainant failure to pay costs; judgment, execution.

Sec. 24. If the complainant shall refuse or neglect to pay such cost or to give such security, the court may forthwith enter judgment against him for the amount of such costs and forthwith issue execution thereon, in the same manner and with the like effect as in case of an execution issued by a justice of the peace on a judgment in an action for a trespass or other wrong; and such moneys when collected shall be paid over to such court and be applied to the payment of the costs for which the judgment was rendered.

COMMENT: This section has been relocated to section 774.1e. See the commentary on that section.

774.25 Judgment; execution, warrant.

Sec. 25. The judgment of every such court shall be executed by the sheriff or any constable of the county where the conviction shall be had, by virtue of a warrant under the hand of the justice who held the court, to be directed to such officers and specifying the particulars of such judgment.

COMMENT: The obligation of the sheriff to execute the sentence of a municipal court is established by other provisions applicable to all courts. See, e.g., M.C.L. §§769.16-769.17, §600.6001 et. seq..

774.27 Fines and costs; payment after commitment; sheriff; disposition.

Sec. 27. If the accused be committed, payment of any fine or costs imposed on him shall be made to the sheriff of the county who shall, within 30 days after the receipt thereof, pay over the same to the county treasurer for the purpose aforesaid.

COMMENT: For reasons noted in the commentary to M.C.L. §774.26, all fines imposed by the court may be paid to the court, whether fines are paid before or after commitment. Accordingly, there is no need to provide for payment to the sheriff.

774.31 Certificate of conviction; status as evidence.

Sec. 31. Every certificate of conviction made and filed under the foregoing provisions, or a duly certified copy thereof, shall be evidence in all courts and places of the facts therein contained.

COMMENT: This provision has been relocated at section 774.3a. See the commentary to that section.

774.35 Writ of certiorari; persons to allow, time of application, affidavit.

Sec. 35. A writ of certiorari to remove into the circuit court of the proper county a conviction had before a justice of the peace, may be allowed by the circuit judge or the circuit court commissioner on the application of the party convicted. The party desiring such certiorari or someone in his behalf, shall apply for the same within 20 days after such conviction shall have been had and shall make an affidavit specifying the alleged error or errors complained of.

COMMENT: This section is the first in a series of sections providing for appellate review by writ of certiorari. This procedure for review is no longer available, review today being exclusively by trial de novo. Accordingly, these provisions (§§774.35-774.41, 774.45) should be repealed. See the commentary to section 774.42.

774.36 Writ of certiorari; indorsement of allowance on affidavit.

Sec. 36. If the person to whom application for such certiorari be made, shall be satisfied that error has been committed in the proceedings or judgment, he shall indorse upon the affidavit his allowance thereof.

COMMENT: See the comment on the repeal of M.C.L. §774.35.

774.37 Writ of certiorari; service on justice, return by justice.

Sec. 37. The writ of certiorari and affidavit shall be served upon the justice before whom such conviction was had within 10 days after said allowance, and the justice shall make a return to all the matters specified in such affidavit and shall cause such writ, affidavit and return to be filed in the office of the county clerk of the county within 10 days after the service of such writ.

COMMENT: See the comment on the repeal of M.C.L. §774.35

774.38 Writ of certiorari; suspension of sentence, release of prisoner, deposit of recognizance.

Sec. 38. After the service of the writ of certiorari as provided in the preceding section, if the party convicted shall enter into recognizance with surety or sureties satisfactory to such justice or to the person allowing the certiorari, conditioned that he will appear at the next term of the circuit court to be held in and for said county and abide the order and determination of the court, the justice shall order that the sentence be suspended; and if the defendant shall have been committed to jail on such sentence, the justice shall order the jailer to set such prisoner at liberty, who is hereby required to comply with such order. The person receiving such recognizance shall within 20 days thereafter, cause the same to be deposited with the county clerk.

COMMENT: See the comment on the repeal of M.C.L. §774.35.

774.39 Writ of certiorari; power to compel return.

Sec. 39. The circuit court shall have power to compel a return or an amended or further return to all writs of certiorari issued under the provisions of this act.

COMMENT: See the comment on the repeal of M.C.L. §774.35.

774.40 Writ of certiorari; appearance of defendant or assignment of error; hearing, judgment.

Sec. 40. It shall not be necessary for the defendant to appear in the said circuit court upon the prosecution of such certiorari unless the court otherwise direct; nor shall any assignment or rejoinder in error be necessary but the said court shall proceed to hear the parties and give judgment on the return made to such writ of certiorari as the right of the matter may appear.

COMMENT: See the comment on the repeal of M.C.L. §774.35.

774.41 Writ of certiorari; notice of argument to prosecutor, time.

Sec. 41. At least 4 days' notice of argument upon any such matter shall be given to the prosecuting attorney of the county where the offense was committed, before the time at which a hearing is intended to be had.

COMMENT: See the comment on the repeal of M.C.L. §774.35.

774.45 Writ of certiorari; fee for making return.

Sec. 45. The following fees shall be allowed and paid under the provisions of this chapter for the services herein named: For making return to writ of certiorari, 2 dollars.

COMMENT: See the comment on the repeal of M.C.L. §774.35.

775.2 Fees; services of justice of the peace.

Sec. 2. A justice of the peace shall be allowed for taking a complaint on oath, 60 cents; a warrant, 60 cents; for entering any cause upon the docket, 60 cents; a bond or recognizance, 60 cents; for approving the same, 25 cents; issuing a subpoena, not exceeding 10 in any 1 case, 25 cents; for certifying cause to other magistrates or court, 40 cents; for commitment or mittimus, 60 cents; for an adjournment, 25 cents; for making and filing return on appeal, or where a party is bound over to the circuit court, or any other court having concurrent jurisdiction, $2.00; for making and filing report in a criminal case to the prosecuting attorney, 40 cents; for making and filing a copy of the docket to the board of auditors or the board of supervisors of the county, 60 cents; for making and filing a copy of the abstract of court record to the secretary of state for all motor vehicle or traffic cases involving moving violations, 60 cents; for notifying county agent for the care of juvenile offenders of the pendency of the case against any juvenile offender, 40 cents; for each arraignment and receiving a plea of guilty, in case such plea is entered, $1.50; for each arraignment where the plea of not guilty is entered, or where examination is waived or demanded, $1.50; for holding examinations, including the taking of testimony and swearing of witnesses, and for the trial of any cause which shall include the swearing of all witnesses, the constable and jury, if one be called, also the judgment and record of any exceptions or motions made during the trial, $10.00 per day for each day and $5.00 for each half day while actually engaged in such examination or trial, or while engaged in hearing any motion relative to such trial or examination, or final disposition of any cause, but such per diem shall not be allowed until such examination or trial shall have been actually begun, and no justices of the peace shall receive any other fee or compensation for any services rendered in any criminal case than such as are hereinbefore provided.

COMMENT: This provision should be repealed since it applies only to justices of the peace. The section providing for fees for justices in civil cases, M.C.L. §600.7651, has been repealed. Judges of all the courts exercising jurisdiction formerly exercised by the justices of the peace are salaried.