

Felony Plea Update

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It was just one year ago, in accord with newly implemented Michigan Court Rule 6.111, that the Waterford District Court began taking pleas on felony cases. The Rule provided that a district court judge could conduct a defendant's arraignment on charges over which the circuit court has trial jurisdiction. The Rule also authorized a district court judge to take a defendant's plea to offenses cognizable in the circuit court.

Since the time this program was initially piloted in Waterford, every district court in Oakland County has implemented the program.* At this point it would be appropriate to thank the judges, court administrators and criminal division employees in each court for their collaboration and assistance in making this program happen. A hearty "thank you" to the defense bar and Prosecutor's Office is also appropriate, as this program would have floundered without their support.

A few procedural reminders are in order. Felony pleas may only be taken after the conclusion or waiver of the preliminary exam and immediately subsequent to the bindover of the defendant to circuit court. Pleas are voluntary and may only be entered upon agreement of the defendant, defense attorney and assistant prosecutor. The court possesses the right to refuse a defendant's plea so long as the court's refusal is in accordance with the applicable court rules.

Each district court has been provided with felony plea packets that contain the necessary forms to effectuate the plea. A waiver form should be signed by the defendant acknowledging that he or she will be sentenced by a circuit judge and not the judge who accepted the plea. The packets also contain a plea form, a DNA Order, and a probation referral form. These forms should be completed just as they

would if the defendant was pleading in circuit court. For further procedural elements, please visit our Web site at <http://www.oakgov.com/circuit/> and refer to the December 2005 *LACHES* article in which a detailed explanation of the felony plea procedural issues is addressed.

Having just passed the one-year anniversary of the implementation of the felony plea program, I thought a status report complete with statistical tidbits would be in order. Please bear in mind that the data provided below is as of November 20, 2006 – the date that this article is being written.

The number of felony pleas taken since inception is 214. Half of the defendants entering pleas were incarcerated. The underlying charges range from bank robbery to retail fraud. Some of the more common offenses include U&P, forgery, financial transaction device, possession of a controlled substance, home invasion, breaking & entering and OUIL 3.

Of the number of sentences imposed, 17 percent received prison terms, 39 percent were sentenced to jail, 29 percent were placed on probation, and 15 percent were given deferred status under YTA or 7411.

The program provides that a district judge may enter into a sentencing agreement with a defendant at the time a plea is taken. If the circuit judge cannot abide by the agreement at the time of sentencing, the defendant is able to withdraw his or her plea. To date, the circuit judges have found the sentencing agreements to be acceptable as evidenced by the fact that not a single plea has been withdrawn.

I should also point out that a defendant may enter a plea upon conclusion of the preliminary exam. We find that most defendants who want to enter a plea waive their exams, but if an exam is held and upon its conclusion the defendant wishes to enter a plea, he or she may do so as long as the defense attorney and assistant prosecutor concur.

*In the Southfield District Court, the program is being piloted exclusively by Chief Judge Stephen Cooper at the current time.

Every district court in Oakland County has taken a felony plea. Nearly four percent of felony defendants enter a plea at district court. As the program is still relatively new, with many of the district courts having implemented the program in the last several months, we expect the percentage of felony defendants who enter pleas at district court to rise significantly.

There is evidence to suggest that the program is beginning to build momentum. I conducted a brief analysis of the time frames in which the 214 felony pleas were taken. The first one-fourth of the pleas was taken over a period of 4.5 months; the second one-fourth was taken over a period of 2.5 months; and the third one-fourth occurred over a seven-week period. The last one-fourth was taken in merely five weeks. Put another way, it took five weeks to obtain the last one-fourth of the felony pleas as compared

to nearly 20 weeks to obtain the first one-fourth.

You may recall that the program was initiated largely as a means by which to move in-custody defendants through the jail faster to alleviate chronic jail overcrowding problems. The data for the first year yields about 12 jail beds saved daily. But if one can safely assume that the last quarter is a predictor of future progress, the number of jail beds saved each day stands to increase substantially.

This presents a brief snapshot of the program through the first year. As always, we welcome constructive suggestions from criminal law practitioners who have been involved in the program. Ideas and suggestions may also be submitted to the Oakland County Bar Association's Criminal Law Committee under the chairpersonship of Ms. Amy Bowen-Krane.

Until next time...



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