



**Michigan Supreme Court
State Court Administrative Office
Trial Court Services Division
Michigan Hall of Justice
P.O. Box 30048
Lansing, MI 48909
Phone: (517) 373-4835**

M E M O R A N D U M

DATE: October 20, 2005

TO: Circuit, District, and Municipal Court Judges
cc: Court Administrators and District Court Magistrates

FROM: Nial Raaen, Director
Trial Court Services

SUBJ: Defendant Bound-Over to Circuit Court on Multiple Counts;
Impact on Case Management Systems and Implications for Caseload Reporting

Absent a motion and order to sever offenses as prescribed by Michigan Court Rule 6.120, if the district court binds a defendant over to the circuit court in a case in which the complaint contains both a felony offense and a misdemeanor offense, both the felony offense and the misdemeanor offense come under the jurisdiction of the circuit court because the court is binding the defendant over, not the individual offenses. MCL 766.13 provides that:

“If it shall appear to the magistrate at the conclusion of the preliminary examination that a felony has been committed and there is probable cause for charging the defendant therewith, the magistrate shall forthwith bind the **defendant** [emphasis added] to appear before the circuit court of such county, or other court having jurisdiction of the cause, for trial.”

Further, MCL 766.14 provides that:

“(1) If the court determines at the conclusion of the preliminary examination of a person charged with a felony that the offense charged is not a felony **or that an included offense that is not a felony has been committed** [emphasis added], the accused shall not be dismissed but the magistrate shall proceed in the same manner as if the accused had initially been charged with an offense that is not a felony.”

Unless the court first severs the offense that is not a felony as prescribed by MCR 6.120(C), if the complaint contains both a felony offense and a misdemeanor offense, the district court shall not bind the defendant over on the felony offense and proceed on the misdemeanor offense included in the felony complaint as though it were a separate misdemeanor case. Once the defendant has been bound over, the district court no longer has jurisdiction over the defendant. That means the district court no longer has jurisdiction to make findings of guilt on any of the offenses charged in the complaint that have not first been severed by order of the court.

Once the defendant has been bound over to the circuit court and the circuit court has found the defendant guilty, the circuit court must sentence on both the felony offense and the misdemeanor offense. The circuit court should not remand the misdemeanor offense to the district court for sentencing because the district court no longer has jurisdiction and should not sentence on an offense for which it has not made a finding of guilt. MCL 769.1(1) provides that:

“A judge of a court having jurisdiction may pronounce judgment against and pass sentence upon a person convicted of an offense in that court. The sentence shall not exceed the sentence prescribed by law. . .”

If the district court severs the misdemeanor offense(s) prior to binding the defendant over to the circuit court, it is creating a new case with a misdemeanor case type code in addition to the felony case. The case management system must be capable of recording this action without showing a disposition of the misdemeanor offense under the case with the felony case type code. The district court may then proceed on the new misdemeanor case. The felony case must be recorded as disposed by a bind over to the circuit court. Upon disposition, the new misdemeanor case shall be reported disposed under the misdemeanor case type code.