

Jury Waiver/Bench Trial Checklist¹

- Swear in the defendant.
- Advise the defendant of his/her constitutional right to a jury trial. [MCL 763.3](#); [MCR 6.402\(B\)](#).
- Address the defendant personally and determine whether:
 - He/she understands his/her right to have a jury trial;
 - He/she has consulted with his/her attorney or had an opportunity to consult with an attorney;
 - He/she is voluntarily giving up his/her right to a jury trial and chooses to be tried by the court. [MCL 763.3](#); [MCR 6.401](#); [MCR 6.402](#).
- Ask the following questions:
 - Has anyone promised you anything to get you to waive a jury trial?
 - Has anyone threatened you to get you to waive a jury trial?
 - Is it your free choice to waive a jury trial in this case?
- Note:** [MCL 763.3](#) provides language for a written waiver form, which has been incorporated into [SCAO Form MC 260, Waiver of Trial by Jury and Election to be Tried Without Jury](#). A written waiver is not required by the court rule, [MCR 6.402](#), which supersedes the statute. 1989 Staff Comment to [MCR 6.402](#). However, it is good practice to use a written waiver.
- Obtain the consent of the prosecutor. [MCL 763.3](#); [MCR 6.401](#).
- Make a record of the court's prior involvement with the case and consider disqualification if the court is too familiar with the file. [MCR 2.003](#). Consider obtaining express approval of parties to proceed if the court has had prior involvement. The case should be reassigned if the court has significant information regarding the case which would not be in evidence during the trial, such as defendant's failure of a lie detector test.
- Determine whether the defendant has been arraigned or has waived an arraignment on the information, or, in a court where arraignment on the information has been eliminated under

¹ For more detailed information on this topic, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*.

[MCR 6.113\(E\)](#), after the defendant has otherwise been provided with a copy of the information, and has been offered an opportunity to consult with a lawyer. [MCL 763.3](#); [MCR 6.402\(A\)](#).

- Determine whether the defendant has been properly advised of his/her right to a jury trial. [MCL 763.3](#); [MCR 6.402\(B\)](#).
- Determine whether the defendant has had an opportunity to consult with counsel. [MCL 763.3](#); [MCR 6.402\(A\)](#).
- Determine whether the waiver has occurred in open court as required by law. [MCL 763.3](#); [MCR 6.402\(B\)](#).
- Determine whether the waiver has been made knowingly, voluntarily, and intelligently. [MCL 763.3](#); [MCR 6.402\(B\)](#).
- If all of the above-listed requirements have been met, accept the waiver. [MCL 763.3](#); [MCR 6.402\(B\)](#).
- When trial by jury has been waived, the court with jurisdiction must proceed with the trial. [MCR 6.403](#).
- Make a statement of the case.
- State the issues in the case.
- State the applicable statutes, if any.
- Rule on all objections to the competency, relevancy, or materiality of testimony or evidence offered. In all cases where testimony offered is incompetent, irrelevant, or immaterial, exclude it from the record. [MCL 600.2101](#).
- State the applicable jury instructions, including elements of the offense(s).
- State the burden of proof.
- State any applicable presumptions.
- State analysis.
- Make specific findings of fact. [MCR 6.403](#).
- Make separate conclusions of law. [MCR 6.403](#).
- Direct entry of the appropriate judgment. [MCR 6.403](#).

- State findings and conclusions on the record or in a written opinion made a part of the record. [MCR 6.403](#).

