

# Conditional Release Pending Bench Warrant Hearing Checklist

A hearing on the merits of a bench warrant must be held as set out in [MCL 552.632\(1\)](#); [MCR 3.221\(B\)](#). See the Michigan Judicial Institute's *Hearing on the Merits of the Bench Warrant Checklist* for more information. The court may adjourn the hearing where necessary to provide another party with notice of the proceedings or to receive additional evidence. See [MCR 3.221\(B\)](#). If the hearing is adjourned, the court must release the payer on condition that the payer will appear for the hearing. See [MCR 3.221\(B\)](#); [MCR 3.221\(F\)](#).

Proceedings to follow when issuing a conditional release:

- Consider relevant information and all of the following when deciding what terms and conditions to impose in the conditional release:
  - the payer's record for reporting information to the Friend of the Court (FOC) and complying with court orders;
  - the payer's record of appearance or nonappearance at court proceedings;
  - the payer's history of substance abuse or addiction;
  - the amount of support owed;
  - the payer's employment status and history and financial history insofar as these factors relate to the ability to post bond;
  - the availability of responsible members of the community who would vouch for or monitor the person;
  - facts indicating the payer's ties to the community, including family ties and relationships, and length of residence; and

- any other facts bearing on the risk of nonappearance.<sup>1</sup>  
[MCR 3.221\(H\)\(1\)](#).
- Set terms of release on adjournment of hearing:
  - Payer is being released on condition he/she will appear for hearing on the merits of the bench warrant.
  - May also include any of the following conditions if desired to ensure the payer's appearance:
    - make reports to a court agency as required by the court or the agency.
    - comply with restrictions on personal associations, place of residence, place of employment, or travel.
    - surrender driver's license or passport.
    - comply with specified curfew.
    - continue or seek employment or participate in a work program.
    - continue or begin an educational program.
    - remain in the custody of a responsible member of the community who agrees to monitor the person and report any violation of any release condition to the court.
    - post a bond at the person's option, executed by the payer, or by another who is not a licensed surety, and secured by a cash deposit for the full bond amount, OR by a surety approved by the court.<sup>2</sup>
      - reasons for requiring bond MUST be stated on the record. [MCR 3.221\(H\)\(2\)](#).
    - any other conditions that are appropriate to ensure that the person will appear. See [MCR 3.221\(B\)](#); [MCR 3.221\(F\)](#); [MCR 3.221\(G\)](#).
- Reschedule hearing on the merits of the bench warrant, and provide notice to the payer.

**Payer fails to comply with condition(s) of release.** If the payer fails to comply with any of the conditions set in the conditional release, the court

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<sup>1</sup> "A finding on each of the enumerated factors is not necessary." [MCR 3.221\(H\)\(2\)](#).

<sup>2</sup> See [MCR 3.221\(J\)](#) for information concerning termination of release order.

that issued the original bench warrant MAY issue a new bench warrant for the payer's arrest AND enter an order revoking the release order and declaring the bond, if any, forfeited. [MCR 3.221\(J\)\(2\)](#). The court must mail notice of the revocation order IMMEDIATELY to the payer at his/her last known address and, if forfeiture of bond has been ordered, to anyone who posted bond. [MCR 3.221\(J\)\(2\)\(a\)](#).

Within 28 days after the revocation order, the payer must surrender to the court OR satisfy the court of his/her compliance with the conditions set in the conditional release or that compliance was impossible through no fault of the payer. [MCR 3.221\(J\)\(2\)\(b\)](#). The payer's FAILURE to do so within the 28-day period permits the court to continue the revocation order and enter judgment forfeiting the bond against the individual and anyone who posted bond for the entire amount of the bond and costs of the court proceedings and costs associated with the arrest. *Id.*

**Termination of release order.** The court MUST vacate the release order if the payer appears for the hearing on the merits of the bench warrant. See [MCR 3.221\(J\)\(1\)](#). If a bond was set, discharge anyone who posted bond and return the cash posted. See [MCR 3.221\(J\)\(1\)](#).

If the payer deposited money with the court, the court MAY require the payer to forfeit all or a portion of the amount deposited to pay support, fines, fees, costs, and sanctions. See [MCR 3.221\(J\)\(1\)](#).

For court forms related to domestic relations actions, see the One Court of Justice [website](#).

For additional domestic relations resources, see the Friend of the Court Bureau [website](#).

