



## Michigan Supreme Court

State Court Administrative Office

### Trial Court Services Division

Michigan Hall of Justice

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Jennifer Warner  
Director

September 11, 2018

TO: Michigan Court Forms Committee, Delinquency and Designated Workgroup

FROM: Rebecca A. Schnelz, Forms and Resources Analyst

RE: Agenda and Materials for **September 27, 2018 Meeting**

PLACE: **Michigan Hall of Justice**, 925 West Ottawa St., Lansing, MI 48915

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Below is the agenda for the September 27, 2018, meeting of the Michigan Court Forms Committee, Delinquency and Designated Workgroup. The meeting will be held in room 1S-69 and begin at 9:30 a.m. **If you cannot attend, please contact me at least two days before the meeting.** Please note that our office is located at 925 W. Ottawa St., Lansing, MI 48915.

Please bring these agenda materials to the meeting. Although documentation is provided with the agenda, it would also be helpful to bring a copy of the Michigan Court Rules and any other resources you believe are necessary.

1. **MC 70, Request for Reasonable Accommodations and Response**  
**MC 70a, Review of Request for Reasonable Accommodations and Response**

Modifications have been suggested to clarify that these are the forms to be used to request a sign language interpreter. The suggested modification is the addition of a use note to both forms to clarify that individuals needing a foreign language interpreter, except sign language, should utilize form MC 81.

It was also suggested that the forms should be corrected by moving the parenthetical language in subparagraph 3 to the end of subparagraph 4 because the parenthetical language defines the accommodation being requested, not the impairment.

In addition, it was suggested that the header language for the response section on MC 70a be revised to read “Response to Request for Review” to more accurately reflect the form’s purpose.

Drafts provided.

2. **MC 81, Request and Order for Interpreter**  
**MC 81a, Review of Request for Interpreter and Order**

Modifications have been suggested to insert the words “Foreign Language” before “Interpreter” in the title and section headers of each form to clarify that the form is only for foreign language interpreters. In addition, it was suggested to add a use note to both forms to clarify that individuals needing a sign language interpreter should utilize form MC 70.

It was also suggested that language should be added to paragraph 1 to clarify the time period for which the interpreter is appointed under MCR 1.111(B)(1).

Drafts provided.

3. **Hearing Location and Jurist**

It has been suggested that the notice of hearing section on court orders include a writing space for the jurist (judge or referee) and the location, including courtroom. The suggestor states that many parties in their court report to the judge’s courtroom for a hearing, but are scheduled before a referee.

This suggestion would impact a number of forms including: JC 10, JC 14a, JC 14b, JC 59 and JC 89.

Should this suggestion be adopted? If the court includes a notice of hearing in an order, is another notice of hearing (form JC 45) generated?

4. **JC 04a, Petition (Delinquency Proceedings)**

A. A suggestion was made to remove the option to authorize a petition (item 9) from this form. The suggestor states that including this provision on the form is not necessary and can cause courts to neglect producing JC 10, Order After Preliminary Hearing/Inquiry (Delinquency/Personal Protection). The suggestor states that the court MUST complete JC 10 because of the specific authorization language contained on the form.

Should the authorization language be removed from JC 04a?

- B. It has been suggested that the title of the form include an indication whether the petition is amended and the number of the amendment.

Should this suggestion be adopted?

Draft provided.

Public Comments:

- I have started the process of reviewing proposed changes to the court rules for delinquency and child neglect cases. The first one that caught my attention was the comment about eliminating the court authorization line on delinquency petitions. The proposer stated that courts should instead use the JC 10 to authorize delinquency cases. I disagree.

JC 10 is a cumbersome and redundant form when the court is authorizing a case after a preliminary inquiry. In Oakland County, most of our delinquency cases are not accompanied by an overnight detainment or even a request to detain a child. We therefore handle most cases by simply authorizing the petition (required by MCR 3.932(D), if the formal calendar is chosen) with our signatures in the current line. If we do, the next hearing is a pretrial. We send the parties a copy of a SUMMONS or a NOTICE OF HEARING and the authorized petition. We do not do JC 10s for these cases. Using the JC 10 is not required by statute or court rule. It is also inadequately and confusingly worded for preliminary inquiries. The JC 10 is primarily a preliminary hearing form. Ninety-five percent of the wording applies to preliminary hearings. I can't imagine sending this order out to a parent for every pretrial we set after simply authorizing the petition without detaining a child. It is confusing and would alarm the parent, in my opinion.

If we do not authorize a petition, no order is completed. We send a diversion letter to the family (and to the prosecutor, if it is a victim's rights case) scheduling a diversion conference if applicable. We only do orders for cases that are going to formal court or for cases dismissed or diverted after on-the-record preliminary hearings.

If you really want to leave off the (very convenient) authorization line on petitions, then you should come up with a separate yet simple ORDER AFTER PRELIMINARY INQUIRY by itself and not put the inquiry language in the preliminary hearing order.

Thanks for the opportunity to comment. I am strongly against removing the authorization language on petitions unless you come up with a separate order for preliminary inquiries.

Sincerely,

Scott T. Hamilton  
Manager, Judicial Support/Judicial Assistant  
6th Judicial Circuit Court – Family Division

- Thank you for offering an opportunity to comment on these changes. Our administrative team reviewed the proposed changes to the SCAO forms for the juvenile courts and have the following comment to offer:

Concur with the comments made with JC 04a.

Sandra K. Metcalf, MS, CCE  
Juvenile Court Director  
20th Circuit Court, Ottawa County

**5. JC 05a, Order to Apprehend and Detain (Delinquency Proceedings/Minor Personal Protection)**

A request has been received to modify the identifying information section of this form to provide only one line for the Name/Race/Sex information instead of four lines.

Should the form be modified?

Draft provided.

Public Comments:

- Thank you for offering an opportunity to comment on these changes. Our administrative team reviewed the proposed changes to the SCAO forms for the juvenile courts and have the following comment to offer:

Concur with changes to JC 05a but maybe add alias names.

Sandra K. Metcalf, MS, CCE  
Juvenile Court Director  
20th Circuit Court, Ottawa County

**6. JC 08, Bond for Appearance**

**JC 10, Order After Preliminary Hearing/Inquiry (Delinquency/Personal Protection)**

A. It has been suggested that this form be modified to more specifically include the findings and conditions that must be addressed at a preliminary hearing pursuant to MCR 3.935(B)(7)(b). These findings and conditions are laid out in MCR 3.935(C) – (F). Currently, the form does not include any finding under subsection (C) regarding whether to release or detain the juvenile. In addition, the form contains only a general “other” space that can be used to provide details on release and bail conditions under subsections (E) and (F). There is reason to believe some courts are using only JC 08, Bond for Appearance, to list the conditions for release and bond information and not including the information in an actual order.

Should JC 10 be modified to include a finding under MCR 3.935(C) as to whether release or detain the juvenile?

Should JC 10 be modified to include detailed information regarding conditions for release and bond information so that the information is in an order? What would this mean for JC 08?

B. Regarding JC 10, it was suggested that item 10, item 11C, and item 16 do not apply and should be removed from the form. 25 USC 1903(1) and MCL 712B.3(b)(vi) state that placement of a juvenile based on an act that would be a crime if committed by an adult are not “child-custody proceedings.” ICWA and MIFPA apply to child custody proceedings.

MCR 3.935(B)(5) requires the court to make an inquiry regarding whether a child or a parent is a member of an Indian tribe when the juvenile is charged with a status offense.

Should items 10, item 11c, and item 16 be on the form? How should MCR 3.935(B)(5) be addressed?

**Public Comments:**

- For juvenile delinquency cases, only status offenses are to be considered under ICWA. However, MIFPA, specifically carved out, not only MCL 712A.2(a)(2)-(4) which are status offenses, but also (d), presumably (1)-(5).

My take on (d) is if a child is in court on a non-status offense or other proceeding, the juvenile/probate court can take concurrent jurisdiction of the child due to (d) and even remove the child from the home for those specific reasons. If the child was an Indian child and the tribe wished to intervene when the child is engaging in the behaviors in (d), I think the tribe can intervene. If I were the judge in such a proceeding, and I

had reason to know the child was an Indian child, I would want to have a QEW testify regarding the active efforts and risk of harm prior to placing the child out of the home.

I do not believe (d) is characterizing offenses for which the child has been charged, I think it is dealing with the "addicted to," "associating with," where "found," and "incurability" behaviors that arise during a case. It seems clear to me by the context of the provision--"if the court finds on the record. . ." there is already a case; and now the court is being directed that if in the one case you find these issues arise, you may have concurrent jurisdiction over the juvenile for other purposes to deal with those issues. I do not pretend to be the expert on this, though. These are just my thoughts and how I explain Sault Tribe's position to judges on a case by case basis when these issues crop up in other cases.

I think because MI added it to their law, it should not just be ignored, but how it is dealt with by the courts should be a discussion with those folks who make those decisions. I do not think the answer is an easy bright line answer.

Elizabeth Eggert  
Tribal Attorney  
Sault Ste. Marie Tribe of Chippewa Indians

Thank you for offering an opportunity to comment on these changes. Our administrative team reviewed the proposed changes to the SCAO forms for the juvenile courts and have the following comment to offer:

Concur with comments.

Sandra K. Metcalf, MS, CCE  
Juvenile Court Director  
20th Circuit Court, Ottawa County

**7. JC 57, Supplemental Order of Disposition (Delinquency Proceedings)**

- A. It has been suggested that a modification to this form would be helpful in order to include a finding whether the juvenile did or did not violate probation. The form currently only includes a checkbox to indicate the hearing was for a violation of probation, but there is no related option to indicate whether a violation was found or not.

Should a specific finding regarding violation of probation be added to the form? Are there any additional options that would need to be added to the order portion of the form?

- B. References to MCR 3.944 and MCL 712A.18a will be added to the footer.

Draft provided.

Public Comments:

- Thank you for offering an opportunity to comment on these changes. Our administrative team reviewed the proposed changes to the SCAO forms for the juvenile courts and have the following comment to offer:

Concur with comments on JC 57.

Sandra K. Metcalf, MS, CCE  
Juvenile Court Director  
20th Circuit Court, Ottawa County

**8. JC 59, Order of Adjudication (Delinquency Proceedings)**

- A. A suggestion has been made to revise the form to remove references to “probation officer” and replace them with “caseworker” because the juvenile would not be working with a probation officer at this point in the proceedings.

Should the phrase “caseworker” be substituted for “probation officer” on the form?

- B. A suggestion has also been made to strike the language in item 15b regarding the probation officer approving parenting time. It is argued that the provision would apply to dual wards because the court could only place a child into foster care in a delinquency case as a dispositional tool. Therefore, this provision is to be used where the juvenile is already placed with MDHHS for care and supervision. If the child is a dual ward, parenting time is controlled through the child protective proceeding case.

Should the parenting time language be removed from item 15b?

- C. It has been suggested that the language in item 13 should be reviewed to determine whether the adjournment options for “additional testimony” and “other good cause” are necessary on an order adjudicating the case. It is argued that item 14 should be combined with item 13 and simply state the date and time of the disposition hearing.

Should reference to any hearing except the disposition hearing be removed from item 13 and the hearing date from item 14 be moved to item 13?

Draft provided.

Public Comments:

Thank you for offering an opportunity to comment on these changes. Our administrative team reviewed the proposed changes to the SCAO forms for the juvenile courts and have the following comment to offer:

We would suggest using juvenile court officer instead of caseworker or leave it as probation officer.

Note: Can CTN's be added to #5 as a column on the grid so the form can adequately address the adjudication of multiple petitions? SCAO has approved including multiple petitions without CTN identifying charges, but it is difficult to differentiate between offenses.

Sandra K. Metcalf, MS, CCE  
Juvenile Court Director  
20th Circuit Court, Ottawa County

**9. JC 71, Judgment of Sentence/Commitment to Jail (Designated Case)  
JC 72, Judgment of Sentence/Commitment to Department of Corrections (Designated Case)  
JC 74, Order of Probation (Designated Case)**

- A. It has been suggested by Street Democracy, a non-profit legal services organization serving the Detroit area, that multiple forms be revised to include language about payment alternatives under MCR 6.425(E)(3)(b). Pursuant to MCR 3.955, the language regarding payment alternatives would apply to delinquency cases where the juvenile is being sentenced as an adult.

Street Democracy states that many criminal court forms only advise defendants that payments are due at the time of assessment (MCR 1.110), but fail to mention the exceptions listed in MCR 6.425(E)(3). The emphasis on immediate payment perpetuates the perception that it is better to avoid court than to show up with at least some money.

Should language regarding payment alternatives be added to forms used when juveniles are sentenced as adults in designated cases?

- B. Item 14 on JC 71 will be modified to remove the reference to a specific Crime Victim's Rights fund payment amount.

Drafts provided.

#### **10. JC 88, Order Appointing Next Friend**

Modifications have been suggested to JC 88, Order Appointing Next Friend, to accommodate the appointment of a next friend for a minor respondent in a PPO case.

MCR 3.707(C) requires that for motions to modify, terminate, or extend a PPO, both petitioners and respondents who are minors must proceed through a next friend, as provided in MCR 3.703(F).

Currently, the language on JC 88 only accommodates the appointment of a next friend for the petitioner.

Should JC 88 be modified for use to appoint a next friend for both minor petitioners and minor respondents in PPO cases?

#### **11. JC 01, Complaint (Request for Action, Delinquency Proceedings)**

**JC 10, Order after Preliminary Hearing/Inquiry (Delinquency/Personal Protection)**

**JC 14a, Order of Disposition, In-Home (Delinquency Proceedings)**

**JC 14b, Order of Disposition, Out-of-Home (Delinquency Proceedings)**

**JC 16, Request and Order for Fingerprinting/Photographing/Lineup**

**JC 59, Order of Adjudication**

**JC 70, Judgment of Conviction (Designated Case)**

**JC 71, Judgment of Sentence/Commitment to Jail (Designated Case)**

**JC 72, Judgment of Sentence/Commitment to Department of Corrections (Designated Case)**

**JC 73, Order Delaying Sentence (Designated Case)**

**JC 74, Order of Probation**

**JC 105, Order on Application to Set Aside Adjudication**

**MC 228, Order on Application to Set Aside Conviction**

**MC 233, Order for Fingerprints**

**MC 235, Motion for Destruction of Fingerprints and Arrest Card**

**MC 262, Order of Acquittal/Dismissal or Remand**

**MC 263, Motion/Order for Nolle Prosequi**

**MC 392, Order Regarding Destruction of Fingerprints and Arrest Card**

2018 PA 58 modified MCL 712A.18(10) to require that the court ensure a juvenile's "biometric data" has been collected and forwarded before entry of disposition or judgment of sentence. Biometric data is defined in MCL 28.241a.

The forms listed above include a reference to fingerprints or are used at disposition.

Take note regarding the following forms:

JC 10: MCL 712A.11 and MCR 3.935(B)(7) specifically reference fingerprinting

JC 105: MCL 712A.18e(13) specifically references fingerprints

Should the language on these forms be modified to reflect the term “biometric data” rather than “fingerprints”? Are there other forms that require modification?

**12. 2018 PA 58 and amendments to MC 712A.18(1)**

2018 PA 58 amended 712A.18(1) to require the following:

...Except as otherwise provided in subsection (10), the court shall order the juvenile returned to his or her parent if the return of the juvenile to his or her parent would not cause a substantial risk of harm to the juvenile or society...

Should language be added to any juvenile forms to address this requirement? If so, which forms would require modification? Would this apply to designated cases?

**13. New Form Request – Order After Arraignment (Designated Case)**

A suggestion was made to create a new form order for use after arraignment in a designated case because it would be useful to document the arraignment. A draft was reviewed by the committee in 2017. The form was placed on hold for further review regarding options that should be on the form pertaining to release, detention and bond.

MCR 3.951 requires the court to make certain determinations regarding detention and release pursuant to MCR 3.935(C) and (D). MCR 3.951 does not make reference to determining release or bail conditions found in MCR 3.935(E) and (F) for cases where the juvenile is not being sentenced as an adult.

How do courts currently address release and bail conditions on designated cases?

Should the determinations in MCR 3.935(C) and (D) be specifically included on the form?

Draft provided.

**14. New Form Request – Publication of Notice of Hearing, Name Change**

A suggestion has been made to develop a new form for use in the required publishing of notice in name change cases.

MCR 3.613 includes specific requirements for the notice that must be published in a name change proceeding. The rule also includes required notice language in relation to non-custodial parents whose address is unknown.

Some courts currently use PC 563, Publication of Notice of Hearing, for name change cases. This is a generalized form for use in probate proceedings when publication is necessary.

Creation of a specific publication form for name changes was considered by the Michigan Court Forms Committee in 2007. At that time, the committee felt PC 563 was sufficient and declined to develop a new form.

However, concern was recently expressed by a petitioner in a name change case that requiring the use of PC 563 resulted in the publication of information that personally identified her, including her address and cell phone number, because this information is listed on the form for publication.

Given current concerns regarding the privacy and availability of personal information, should this matter be revisited and a specific form be developed for the publication of notice in name change cases?