



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

Michigan Hall of Justice

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Jennifer Warner
Director

February 21, 2019

TO: Michigan Court Forms Committee, Criminal Workgroup

FROM: Matthew Walker, Forms and Resources Analyst

RE: Agenda and Materials for **March 7, 2019 Meeting**

PLACE: **Michigan Hall of Justice**, 925 West Ottawa, downtown Lansing

Below is the agenda for the March 7, 2019 meeting of the Michigan Court Forms Committee, Criminal Workgroup. The meeting will be held in room 1S-69 and will begin at 9:30 a.m. Lunch reservations have been made for you. **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 Street, 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. Minor Changes

CC 401, MAACS Statement of Service and Order for Payment of Court Appointed Counsel

The address information for this form will be updated.

MC 205, Finding and Order on Competency

Citation to MCL 330.2050 will be corrected to MCL 330.2030.

MC 234, Order for Counseling and Testing for Disease/Infection

A spelling error will be corrected.

2. 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.

It was also 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. In addition, it was suggested to add a question to MC 70 about whether a person is represented by an attorney and what the attorney’s contact information is. The suggestor states that a number of parties who request accommodations do not notify their attorneys of the request, which becomes a problem when investigating the request.

Drafts provided.

3. 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.

**4. CC 243a, Order of Probation
DC 243, Order of Probation (Misdemeanor)
New form request: Combined Order of Probation for Felonies and Misdemeanors**

Under MCR 6.008(D), circuit courts are required to sentence all defendants bound over to circuit court on a felony that either plead guilty to, or are found guilty of, a misdemeanor. Prior to the existence of this rule, circuit courts remanded misdemeanors back to district court.

Forms CC 243a and DC 243, Orders of Probation were created prior to the existence of MCR 6.008. It has been suggested that these forms be deleted and that a new MC form be created in their place. The suggestor states that circuit courts need an order of probation that accounts for all deferral options for felony and misdemeanor cases because of MCR 6.008(D).

Should this form be created? Why or why not?

Public Comments:

- I think we need to be careful with this one. We are running into problems with this new court rule. When the Circuit Court enters the judgment and then requires District Court probation to oversee the probation, the District Court probation officers have no file to work from; have no case management system rights; the forms are not available to them for Circuit files; and most importantly – the money issue has become a nightmare. Circuit Court has no ability to collect for District Court probation oversight fees, among other fees. It simply is not something we can do through our case management system.

So please consider this one carefully!

Kristi Cox
Chief Deputy County Clerk – Legal Division
44th Circuit Court
Livingston County

5. CC 265, Notice of Right to Appellate Review and Request for Appointment of Attorney

- A. It has been suggested that the “Receipt of Notice” section of this form be deleted. The suggestor states that there is no time in their court for the defendant to fill out this section and it is not required by statute or court rule. However, other courts have stated that they are more comfortable having something initialed by the defendant in the court file to indicate that the notice was received.

Should the “Receipt of Notice” section of this form be removed?

- B. Modifications to the “Instructions to defendant/juvenile” section of the form have been suggested by the Michigan Appellate Assigned Counsel System (MAACS). MAACS suggests moving the sentence with their address to the bottom of the form because a significant number of defendants have mistakenly mailed the form to MAACS’ office, rather than back to the trial court. Moving the sentence to the bottom of the form may alleviate some of this problem.

In addition, the MAACS zip code will be corrected to 48913 for the state mail facility.

- C. Modifications are suggested to item 3 to accommodate the proposed court rule changes to MCR 6.425 from [ADM 2017-27](#).

Public Comments:

- I am writing on behalf of the State Appellate Defender Office (SADO) and Michigan Appellate Assigned Counsel System (MAACS) about the proposed changes to CC 265, Notice of Right to Appellate Review and Request for Appointment of Attorney.

SADO and MAACS oppose the deletion of the "Receipt of Notice" section of this form. By creating a record of the defendant’s receipt of the form at sentencing, this section helps ensure the protection of the defendant’s rights to appellate review and counsel, while also protecting the trial court from claims of nonfeasance. Notwithstanding the sentiment behind this proposal, we believe most trial courts would agree that the protection of these interests is worth an extra minute of time at sentencing. Moreover, our office has proposed (and the State Bar of Michigan Board of Commissioners has endorsed) a proposed change to MCR 6.425 that would require trial courts to give defendants the opportunity to tender a completed request for counsel at sentencing – a practice many trial courts already allow. See ADM File No. 2017-27. While the Supreme Court has not yet ruled on this proposal, it would be an odd time to amend CC 265 in a manner that prioritizes speed over the careful protection of appellate rights.

For the reasons already explained, however, SADO and MAACS support moving the MAACS address to the very bottom of the request form, as it will likely help alleviate some of the unforeseen confusion that leads some defendants to mail the form to MAACS rather than the trial court (often because the trial court address has not been provided). While most trial courts will gladly accept the form if forwarded from MAACS, not all courts are equally accommodating, and it would be unfortunate if anyone lost the right to appellate review or counsel due to avoidable confusion.

Thank you for your consideration, and please contact me if you have any questions.

Bradley R. Hall
Administrator, Michigan Appellate Assigned Counsel System
State Appellate Defender Office

6. CC 291, Advice of Rights (Circuit Court Plea)

It has been suggested that this form contain the following language from MCR 1.110 and 6.425: Fines, costs, and other financial obligations imposed by the court must be paid at the time of assessment, except when the court allows otherwise, for good cause shown. If you are not able to pay due to financial hardship, contact the court immediately to request a payment alternative. MCR 6.425(E)(3).

Should this suggestion be adopted?

7. DC 213, Advice of Rights

It has been suggested that this form be modified to contain the statement, “You will be required to state, orally on the record, that you have read and understand all the above, and that you agree to waive all the above rights.” The suggestor states that this statement is on form CC 291, Advice of Rights (Circuit Court Plea) and stems from MCR 6.302(B), which requires the court to obtain a statement from the defendant that he or she read and understood the advice of rights.

Form DC 213 is designed to be used for misdemeanor pleas taken under MCR 6.610(E), which has the same requirements as MCR 6.302(B). Because these rules have the same requirements, the suggestor thinks the statement should be present on both forms.

Should this suggestion be adopted?

8. MC 219, Judgment of Sentence

It has been suggested that this form be modified to include checkboxes indicating whether a conviction is a felony or misdemeanor. The suggestor states that the general public would not know if a charge is a misdemeanor or felony, based on the form. However, the register of actions does indicate if a charge is a felony, misdemeanor, or civil infraction.

Should this suggestion be adopted?

9. MC 220, Recall of Warrant/Order to Apprehend and Removal from LEIN

In 2017, the Criminal Forms Workgroup considered a suggestion to remove “Clerk/Register” from the signature line of the order section of the form. At that time, members agreed that neither a clerk nor register has the authority to sign court orders. However, members remarked that removing “Clerk/Register” from the form would significantly affect warrant recall processing. Ultimately, the form was not changed.

SCAO analysts would like to reconsider this issue. A proposed draft form is provided.

10. MC 240, Pretrial Release Order

It has been suggested that this form be modified to allow courts to prohibit marijuana use as a release condition. Courts previously used item 4g to prohibit marijuana use. However, passage of the Michigan Regulation and Taxation of Marijuana Act, MCL 333.27951 *et seq.*, made recreational use of marijuana legal in Michigan. Therefore, it is no longer clear that item 4g applies to marijuana.

Should this form be updated to include an item to prohibit marijuana use as a release condition?

Public Comments:

- Please consider adding marijuana to the prohibited substances in paragraph g.

Thank you,

Honorable Stacia Buchanan
54-A District Court
Ingham County

11. MC 399, Motion to Set Aside Forfeiture and Discharge of Bond and Notice of Hearing

It has been suggested that item 1 of this form be revised to clarify that the judgment in question may or may not have been paid within 56 days of the forfeiture judgment. The suggestor states that there are many times when the court enters a judgment against a surety bondsman, and then the bondsman brings the defendant into court before ever paying the judgment. The language of item 1 does not appear to accommodate this.

Should item 1 be revised to clarify this point?

12. MC 446, Probation Violation Advice of Rights

It has been suggested that this form be revised to make clear that the form is only intended to be a helpful aid to probationers and that the court is still required to advise the probationer on the record, at the time of arraignment, of his or her rights.

Courts are allowed to use a writing for an “advice of rights” when taking a felony or misdemeanor plea. See MCR 6.302 and 6.610(E). The suggestor thinks that courts will supplant advising the defendant on the record for probation arraignments because of the plea rules.

Should the form be clarified?

13. New form request: Complaint of Violation of Conditional Release

It has been suggested that the SCAO create a new form for peace officers for complaints of violations of conditional release. Under MCL 764.15e, a peace officer may arrest and take into custody a defendant who violated a condition of release. If the peace officer arrests a defendant, the peace officer must prepare a complaint of violation of conditional release and file it with the court.

The statute provides language and a format for the complaint. However, the suggestor states that many police departments are not aware of the statute and do not have a complaint form. The suggestor thinks that creation of a SCAO-approved form would benefit courts and make police departments more aware of the statute.

Should a form be created?

14. New form request: Arraignment information under MCR 6.610(D)

It has been suggested that a new form be created for use under MCR 6.610(D). Under this rule, the court must inform the defendant of several things at the time of arraignment. This information may be given to the defendant in a writing that is made part of the file or by the court on the record.

Form DC 213 is often mistakenly used by courts at the time of arraignment. However, DC 213 is designed for misdemeanor pleas under MCR 6.610(E). The information required by these separate rules is similar, but not the same. The suggestor states that creation of a specific arraignment form would alleviate the confusion.

Should this form be created?

15. New form request: Complaint, Probation Violation; Summons, Probation Violation; Warrant, Probation Violation
MC 229, Motion, Affidavit, and Bench Warrant
MC 246, Motion and Summons Regarding Probation Violation

It has been suggested that new complaint, summons, and warrant forms be created in accordance with MCR 6.445(A) for probation violations.

Currently, different forms are used to notify courts of an alleged probation violation, depending on whether or not the probation officer is requesting a summons or bench warrant. If the probation officer is requesting a summons, form MC 246 is used. If the probation officer is requesting a bench warrant, form MC 229 is used. The suggestor states that creating a combined form will foster consistency and streamline the process.

The proposed new forms have been designed to accommodate MCR 6.445(A), 6.102, and 6.103. Under 6.445, if the court finds probable cause to believe a probationer violated a condition of probation, the court may issue a summons in accordance with MCR 6.103(B) and (C) or issue a warrant for the arrest of the probationer. MCR 6.103(B) requires that a summons contain the same information as an arrest warrant, except that it should summon the defendant to appear. An arrest warrant must contain the defendant's name and describe the offense charged. See MCR 6.102(C). Further, a court can only issue an arrest warrant or summons if presented with a proper complaint and the court finds probable cause. MCR 6.102(A).

Several questions are presented regarding the proposed forms.

- A. MCR 6.445(A)(2) allows the court to issue a warrant for the arrest of a probationer upon a probable cause finding. MCR 6.102(A) requires a proper complaint to issue an arrest warrant, which is why the proposed form is a complaint¹. A complaint may not be filed without a prosecutor's written endorsement on the complaint. See MCR 6.101(C).

Should prosecuting attorneys endorse the complaint for probation violation? If the probation violation were labeled as a petition, would the prosecutor's endorsement be necessary?

- B. District court magistrates are included in signature line for the proposed warrant and summons forms. MCR 6.445(A)(2) states "issue a warrant for the arrest" and does not refer to this warrant as a "bench warrant." District court magistrates are allowed to issue

¹ Michigan Court Rules Practice states that MCR 6.445 does not describe in what manner the allegation is brought to the attention of the court in the first instance. Michigan Court Rules Practice goes on to state that, in practice, probation violation proceedings are often instituted by a written petition filed by a probation officer.

warrants for the arrest of a person (and by extension, a summons) upon the written authorization of the prosecuting or municipal attorney. See *In re James*, 492 Mich 553, 566-567 (2012); see also MCL 600.8511(e).

Should district court magistrates be included in the signature line?

C. Should the proposed forms be adopted? Modifications to MC 229 and MC 246 are also suggested to accommodate the proposed forms. Drafts provided.

16. 2018 PA 67 Discussion

CC 387, Order Vacating Conviction and Entering New Disposition

MC 207, Commitment Order, Not Guilty by Reason of Insanity

MC 235, Motion for Destruction of Fingerprints and Arrest Card

MC 262, Order of Acquittal/Dismissal or Remand

MC 263, Motion/Order of Nolle Prosequi

MC 392, Order Regarding Destruction of Fingerprints and Arrest Card

New form request: Remand to District Court

In 2018, the Legislature passed 2018 PA 67, which changed the statutes regarding expunction and destruction of biometric data. The amended statute states that the arrest record and biometric data shall be expunged/destroyed and the arrest record shall be removed from ICHAT if the charge or charges are dismissed before trial. MCL 28.243(8). A court order is required to effectuate this section. MCL 28.243(9). The Michigan State Police have interpreted subsection (9) to require a specific order directing the destruction of the arrest record and biometric data. In addition, MCL 28.176(4)(a) requires the Michigan State Police to destroy or expunge an individual's DNA sample or DNA identification profile if charge for which the sample was obtained has been dismissed or resulted in acquittal, or no charge was filed, unless an exception applies. See MCL 28.176.

It has been suggested that several forms be modified to include an item directing the Michigan State Police to destroy and expunge the arrest record, biometric data, and DNA profile and remove any LEIN entry concerning any dismissed charge(s).

Drafts provided. An explanation of the changes is below:

CC 387: A new item 7 is suggested stating, "The Michigan State Police shall destroy and expunge the arrest record, biometric data, and DNA profile, and remove any LEIN entry concerning any dismissed charge(s)." This was added because of 2018 PA 67 and the new requirements in subsections (8) and (9), as well as the requirements in MCL 28.176.

The note at the bottom of the form was revised to state "The clerk of the court shall provide a

copy of this order to the Michigan Criminal Justice Information Center and Michigan Department of Corrections upon entry.” The language was revised to be consistent with the changes to MC 262 and 263.

MC 207: It is suggested that item 8, which orders arresting agencies to destroy fingerprints and arrest records, should be removed. In versions of the statute prior to 2012, this data was deleted by MSP on NGRI cases. However, MSP no longer deletes this data because the statutory provision was removed by 2012 PA 374. This form was never updated to reflect that change.

The note to the defendant at the bottom of the form will be removed because MSP no longer automatically deletes fingerprints and arrest records. Item 9 will be revised to include a reference to MCL 769.16b.

The distribution will be revised. Prosecutor and Defendant will be moved to items 2 and 3 of the distribution, respectively. Arresting agency will be replaced with MSP LEIN because the clerk must provide a copy of the form to MSP LEIN for entry in accordance with MCL 769.16b. Sheriff will be revised to 5th copy and include "(if applicable)" because the sheriff only needs a copy of the order if the sheriff is transporting to the Forensic Center.

MC 235: Suggestions are made to update the language to biometric data.

2018 PA 58 was passed earlier this year requiring juvenile courts to ensure the collection of biometric data before disposition. This form is used in both adult and juvenile cases. Fingerprints was replaced with biometric data throughout the form. The term “arrest card” was replaced with “arrest record.”

A new item was added to accommodate charges dismissed by nolle prosequi.

MC 262: Revisions are suggested to item 10 to require MSP and the arresting agency to destroy and expunge the arrest record, biometric data, and DNA profile, and remove any LEIN entry concerning any dismissed charges. The arresting agency was left on the form to make sure that those agencies are deleting their records.

It is also suggested that the remand option, item 9, be removed from the form. Because circuit courts can only remand cases to district court for specific reasons under MCR 6.008 (see staff comment), it is suggested to create a standalone remand form.

The statement below the signature line beginning with “If item 1, 2, or 4...” was revised to state that the Clerk of the Court shall provide a copy of this order to the Michigan State Criminal Justice Information Center upon entry.

The note to the defendant was stricken because the statute no longer requires MSP to destroy fingerprints and arrest records within 60 days of the date of the order of acquittal or dismissal. The 60-day timeline was removed by 2002 PA 694 in favor of more immediate destruction.

The distribution was updated to include a copy to MSP CJIC for each order because the clerk must send a copy to make sure the records are destroyed.

MC 263: A new item 7 is suggested stating “The Michigan State Police shall destroy and expunge the arrest record, biometric data, and DNA profile, and remove any LEIN entry concerning any dismissed charge(s).”

The note at the bottom regarding item 1 was revised to state, “The clerk of the court shall provide a copy of this order to the Michigan State Police Criminal Justice Information Center if any charges were dismissed.” This requires the clerk to send a copy if any charge that is dismissed under item 1 or item 2.

The note to the defendant was stricken because the statute no longer requires MSP to destroy fingerprints and arrest records within 60 days of the date of the order of acquittal or dismissal. The 60-day timeline was removed by 2002 PA 694 in favor of more immediate destruction.

The distribution was updated to include a copy to MSP CJIC for each order because the clerk must send a copy to make sure the records are destroyed.

MC 392: References to fingerprints were replaced with biometric data.

Public Comments:

- CC387
 - The DNA portion should be sent to MSP BID (Biometric and Identification Division), not MSP CJIC. BID handles all DNA.
 - In line #8 in red – please add “Michigan State Police CJIC shall destroy and expunge the arrest record and biometric data.” Also add “Michigan State Police BID shall destroy DNA profile.”

- MC 207
 - Line #4 at the top right should say MSP CJIC, not MSP LEIN.

- Line #9 should read “The clerk of the court shall send to the Michigan State Police a copy of this order. The Michigan State Police shall enter this order in accordance with MCL 769.16b.”

- MC 235
 - Under USE NOTE change 28.243(12)(h) to 28.243(14)(h).
 - USE NOTE should say “has not destroyed” instead of “has failed to destroy.” Also change “as required by law,” to “as permitted by law.”
 - Line #2 change 28.243(12) to 28.243(14).
 - On the red line below I was found not to be...change “arrest record as required by law,” to “as permitted by law.”
 - Inside the red box, the question posed is “Does this apply to nolle pros?” Yes, this applies to both dismissals and nolle pros.

- MC 262
 - Upper left of the form: add MSP BID. MSP CJIC and MSP are separate Divisions. CJIC handles criminal history records, BID handles DNA.
 - Please add “Michigan State Police CJIC shall destroy and expunge the arrest record and biometric data.” Also add “Michigan State Police BID shall destroy DNA profile.”

- MC 263
 - Upper left of the form: add MSP BID. MSP CJIC and MSP are separate Divisions. CJIC handles criminal history records, BID handles DNA.
 - Line #17 – Please add “Michigan State Police CJIC shall destroy and expunge the arrest record and biometric data.” Also add “Michigan State Police BID shall destroy DNA profile.”

Please feel free to contact me with any questions. Thank you.

Todd D. Self
Michigan State Police
Lansing, MI