



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

Michigan Hall of Justice

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MICHIGAN COURT FORMS COMMITTEE

Criminal Workgroup

Minutes of March 7, 2019

Present: Mr. David Gilbert, Calhoun County Prosecutor
Ms. Kathryn Griffin, 45th Circuit Court
Honorable Scott Hill-Kennedy, 49th Circuit Court
Ms. Jacqueline McCann, State Appellate Defender Office
Mr. Takura Nyamfukudza, Chartier & Nyamfukudza, P.L.C.
Ms. Miriam Perry, Washtenaw County Asst. Public Defender
Honorable Gerald Prill, 52nd Circuit Court
Honorable Travis Reeds, 52-1 District Court
Ms. Alisa Shannon, 3rd Circuit Court
Ms. Renee Shelide, 46th District Court
Mr. Tracy Smith, 30th Circuit Court
Ms. Jessica Testolin, 73B District Court
Mr. Jay Francisco, Judicial Information Services (Staff)
Ms. Carol Rochester, Judicial Information Services (Staff)
Ms. Sheryl Doud, Trial Court Services (Staff)
Ms. Bobbi Morrow, Trial Court Services (Staff)
Ms. Michele Muscat, Trial Court Services (Staff)
Mr. Matthew Walker, Trial Court Services (Staff)
Ms. Stacy Westra, Trial Court Services (Staff)

Absent: Honorable William McConico, 36th District Court
Ms. Elaine Richardson, 28th Circuit Court
Mr. Tim Schalk, Judicial Information Services (Staff)
Ms. Stephanie Beyersdorf, Trial Court Services (Staff)
Ms. Rebecca Schnelz, Trial Court Services (Staff)

1. **Minor Changes**

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

The address information for the Michigan Appellate Assigned Counsel System was updated.

MC 205, Finding and Order on Competency

Citation to MCL 330.2050 was corrected to MCL 330.2030.

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

A spelling error was corrected on page 2.

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

The committee considered adding a note to MC 70 and MC 70a to clarify that these forms are used to request a sign language interpreter. The committee agreed that the note would be beneficial because individuals often mistakenly believe sign language interpreters equate with foreign language interpreters. The committee added the following to both forms in the area above the applicant information grid: “Note: For foreign language interpreters (except sign language) use form MC 81.”

The committee also considered removing the parenthetical from item 3 on both forms that specifies examples of sign language that can be requested. SCAO staff noted that sign language technology changes frequently, so the parenthetical may not always reflect appropriate options. Under the ADA, the requester must know and request the specific accommodation he or she needs. Therefore, the committee agreed that it is not necessary to include a list of examples for sign language. The committee removed the language in question from both forms.

The committee considered draft language on MC 70a to modify the title of the order section by adding the words “To Review” at the end. The committee agreed that the modification helped to clarify that the decision reflected in the order portion was following a review and accepted the change.

The forms were approved as revised.

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

The committee considered a suggestion to insert the words “Foreign Language” before “Interpreter” in the title and section headers of each form to clarify that the forms are only for requesting foreign language interpreters and not sign language interpreters. The committee approved the suggestion as well as adding a use note to both forms to clarify that individuals needing a sign language interpreter should utilize form MC 70.

The committee also considered modifying item one on both forms to clarify the time period for which the interpreter is appointed under MCR 1.111(B)(1). Under the court rule, an interpreter may be appointed for various individuals for various hearings and the form does not specify the period of the appointment. SCAO staff noted that there have been issues with courts requiring parties to file a request prior to every hearing, which creates additional obstacles for those individuals. The committee agreed that clarifying the length of appointment would be helpful. The committee approved the draft language.

The forms were approved as revised

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

The committee considered a suggestion to delete forms CC 243a and DC 243 and then create a new order of probation to be used in both circuit and district courts. 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 almost exclusively used in the specific court it was designed for. With the addition of MCR 6.008(D), circuit courts need the deferral options and other clauses in form DC 243 when sentencing a misdemeanor case.

Members reflected on these forms and the procedure surrounding them. After discussion, the committee agreed that the best course of action would be to retain both forms, but modify DC 243 for use in circuit court instead of creating a new form. Members stated that the separate forms contain different clauses for payment as well as deferral options. Therefore, it is more practical to modify DC 243 for circuit court use. Members also commented that, depending on the court, MDOC may or may not supervise misdemeanors sentenced in circuit court.

The committee added circuit court to the header and changed the form index from DC to MC. In addition, the committee removed the writing space for supervision from item 6 and created a new item 7 that mimics item 7 on CC 243a. The new item 7 will allow courts to direct payment of the supervision fee to the Department of Corrections or District Court probation staff.

The form was approved as revised.

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

- A. The committee considered a suggestion to delete the receipt of notice section from the form. The receipt of notice is not legally required and some courts do not offer time for defendants to complete the section while in court. The committee considered the comments of Mr. Brad Hall, Administrator of the Michigan Appellate Assigned Counsel System.

Members agreed with Mr. Hall that the receipt of notice section helps protect defendant's rights. Even though it is not required, the receipt of notice section provides an easy way to confirm that a defendant received notice of the right to appellate review. For that reason, the committee retained the section.

Members also considered adding language to indicate that the section is optional. Members declined to add this language, thinking that it would discourage courts from using the section.

- B. The committee considered modifications to the instructions to defendant/juvenile section of the form. Specifically, the committee considered moving the address for MAACS to the bottom of the form. MAACS suggested moving their address 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.

Members agreed with moving the address and thought additional measures could be taken to help alleviate the issues. The committee added "at the address above" after "trial court" in the instructions. The committee also bolded "the trial court" in item 3 of the receipt of notice section.

- C. The committee considered modifications to item 3 in the receipt of notice to accommodate the proposed court rule changes to MCR 6.425 from ADM 2017-27. The committee agreed with replacing "returning this form to" with "filing it with the" if the proposed court rule change passes.

The form was approved as revised.

STAFF NOTE: Revisions to this form have been held due to changes in the court rule. See ADM file 2017-27.

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

The committee considered modifying this form to contain language from MCR 1.110 and MCR 6.425. SCAO staff explained that the proposed language was added to several forms last year to accommodate court collections standards and payment alternatives options.

Members agreed with the suggestion to add the language to this form, stating that this form is a good opportunity to inform defendants of the information. In addition, the language is included on the misdemeanor advice of rights form, DC 213.

The committee added the following language as a new item 3: 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).

The form was approved as revised.

7. DC 213, Advice of Rights

The committee considered modifying this form to include 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 stated 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 thought the statement should be present on both forms.

Members disagreed with the suggestion, and stated that including the statement on the form is unnecessary. Many judges and magistrates include this kind of statement in their statements to the defendant on the record. Members also commented that MCR 6.610(E) does not require this statement to be part of the writing, if a writing is used to advise the defendant of his or her rights.

The form was not revised.

8. MC 219, Judgment of Sentence

The committee considered modifying this form to include checkboxes to indicate whether a conviction is a felony or misdemeanor. The suggestor stated 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.

Members disagreed with the suggestion and commented that it would be logistically difficult. Not every crime falls neatly into the felony or misdemeanor category (for example, high-court misdemeanors) and it is unclear who would code the document.

The form was not revised.

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

The committee considered a complete revision to this form to remove “Clerk/Register” from the signature line. In 2017, the Criminal Forms Workgroup considered this same 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 at that time.

Members discussed a number of possible solutions to this issue. One possible solution for limited situations would be to include the conditions for removal on the initial warrant. Then, once the warrant is no longer needed, the clerk can remove it from LEIN without further order. Ultimately, the committee could not arrive at a resolution through the form. The committee suggested that a court rule amendment may be necessary.

This issue was tabled for further discussion.

10. MC 240, Pretrial Release Order

The committee considered modifying this form 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.

Members agreed that courts should be able to specifically restrict marijuana. SCAO staff suggested that the form should allow the court to individually restrict alcohol, marijuana, and

illegal substances, or all three, depending on what is appropriate in the case. Members agreed.

The committee modified item 4g to include individual checkboxes for alcohol, marijuana, and illegal substances.

The form was approved as revised.

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

The committee considered modifying item 1 of this form to clarify that the judgment in question may or may not have been paid within 56 days of the forfeiture judgment. The suggestor stated that there are many times when the court enters a judgment against a surety bondsman, and then the surety brings the defendant into court before ever paying the judgment. The language of item 1 only accommodates situations where the surety has paid.

Members agreed that the form should accommodate the suggestion because it is inefficient to have a surety pay the judgment and then have the same amount of money returned. The committee split item 1 into two checkboxes. Item 1 now reads, “The above bond was forfeited and a judgment of \$_____ was paid to the court on ___(Date)___, within 56 days of the entry of the forfeiture judgment. has not been paid and 56 days has not passed since entry of the forfeiture judgment.”

The form was approved as revised.

12. MC 446, Probation Violation Advice of Rights

The committee discussed modifying this form to clarify 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 thought that courts will supplant advising the defendant on the record for probation arraignments because of the misdemeanor and felony plea rules.

SCAO staff explained that the form was created in 2018 and designed explicitly for the rights in MCR 6.445(B), (C), (D), (E) — the form was not designed for MCR 6.445(F) because that court rule requires the court to speak to the defendant on the record.

The committee disagreed with the suggestor’s assertion that the court must advise the defendant on the record during a probation violation arraignment. MCR 6.445 is silent on this issue. Members stated that the advice of rights is part of many judge’s internal script for

hearings, but saw no issue with a court only using this form to advise the defendant. Members stated that this form is beneficial because it allows defendants to more carefully review their rights and the form will not create a chilling effect on courts reading rights on the record.

Members agreed that the form should be modified to clarify that the form is only for use during arraignment. The committee revised the title to “Probation Violation Arraignment Advice of Rights.”

The form was approved as revised.

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

The committee considered creating 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 stated that many police departments are not aware of the statute and do not have a complaint form. The suggestor thought that creation of a SCAO-approved form would benefit courts and make police departments more aware of the statute.

Members disagreed that a form should be created. Members stated that the legislature provided the format for the form and that police departments can easily follow the format if they desire to create a form.

The form was not created.

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

The committee considered creating a new form 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 stated that creation of a specific arraignment form would alleviate the confusion.

Members disagreed that a form should be created. MCR 6.610(D) allows the court to state the arraignment information on the record, which most judges and magistrates do. If a form

were created, court personnel would need to write in the charge and other required information. Members stated this would create unnecessary work.

The form was not 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

The committee considered creating new complaint, summons, and warrant forms 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.

SCAO staff explained that the original suggestion regarding this came from the Michigan Department of Corrections (MDOC). MDOC stated that completing the affidavit portion of MC 229 and notarizing the form is burdensome. SCAO staff provided a copy of *People v Glenn-Powers*, 296 Mich App 294; 823 NW2d 127 (2012). The court in *Glenn-Powers* indicated that the affidavit requirement generally applicable to warrants under the Fourth Amendment does not apply to a warrant for the arrest of a probationer. For that reason, MC 229 could be revised to indicate that the form need not be notarized for a probation violation.

Members discussed revising MC 229 or creating the new proposed form. Members agreed that streamlining the process for probation violations would be beneficial, but did not think the proposed draft form would be the most effective method. Members also disagreed with revising MC 229. MC 229 is already a confusing and compact form—adding additional language would only make that problem worse.

Instead, members proposed creating a new request and warrant form for probation violations, similar to MC 246. The proposed form (MC 246a) would allow the probation officer to write the alleged violation at the top and the court to complete the warrant at the bottom. SCAO staff asked how the form should be titled. Members stated that the form should be a request or petition, instead of a motion. This would avoid any issues surrounding whether or not probation officers have standing to file motions.

The committee also included a verified statement on the form. SCAO staff pointed out that there is no law requiring a verified statement on this form and the SCAO has removed many verified statements on forms where they are not required by law. Members stated that the court must make a probable cause determination, which requires reliance on the allegations.

Unlike criminal complaints, the request for a warrant does not require sworn testimony. Adding a verified statement allows the court to rely on the allegations for the probable cause determination.

The committee also revised MC 246 for consistency with MC 246a. The title was changed to Request and Summons for Probation Violation, the writing space for the name of the probation officer was removed, and a verified statement was added.

The forms were approved as revised.

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

The committee considered modifications to several forms because of 2018 PA 67, which changed MCL 28.243 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).

SCAO staff informed the committee that the Michigan State Police (MSP) have interpreted subsection (9) to require a specific order directing the destruction of the arrest record and biometric data. Members agreed that forms should be modified to comply with the statute in this regard.

The committee also discussed MCL 28.176 and the requirement that the Michigan State Police 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(4)(a). However, members pointed out that MCL 28.176(1) requires the Michigan State Police to retain the DNA profile for felonies and other crimes. Members agreed that some language should be added as proposed in the drafts, but may only apply in some circumstances.

The committee also discussed the public comments of Mr. Todd Self, MSP representative. Mr. Self indicated that orders should be provided to both the criminal records division and DNA division of MSP. SCAO staff asked how best to handle that in the distribution

sections. Members stated that the forms should direct the clerk to send copies to MSP, but nothing further. Members stated that court clerks will know which MSP divisions to provide copies to.

The committee modified the forms as provided below:

CC 387: The committee agreed not to modify this form. MCL 28.243(8) allows for the destruction of records if charges are dismissed before trial. This form is used after trial (to vacate a conviction). Therefore, the statute does not apply.

MC 207: The committee removed item 8, which orders arresting agencies to destroy fingerprints and arrest records. 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.

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

The distribution was revised. Prosecutor and Defendant was moved to items 2 and 3 of the distribution, respectively. Arresting agency was 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 was revised to 5th copy and includes "(if applicable)" because the sheriff only needs a copy of the order if the sheriff is transporting to the Forensic Center.

MC 235: The committee replaced the word "fingerprints" with "biometric data" and the word "arrest card" with "arrest record" to accommodate 2018 PA 67 and PA 58.

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

MC 262: The committee revised item 10 to state "[] The Michigan State Police and arresting agency shall destroy and expunge the arrest record, biometric data, and, as applicable, DNA profile for the dismissed charge(s). The Michigan State Police shall also remove any LEIN entry concerning any dismissed charge(s)." The arresting agency was left on the form to make sure that those agencies are deleting their records.

The statement below the signature line beginning with "If item 1, 2, or 4..." was replaced with "If item 10 is checked, the clerk of the court shall provide a copy of this order to the Michigan State Police 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. Citations to MCL 764.26a and MCL 28.243 were added to the footer.

MC 263: The committee added a new item 7 stating, “[] The Michigan State Police and arresting agency shall destroy and expunge the arrest record, biometric data, and, as applicable, DNA profile for the dismissed charge(s). The Michigan State Police shall also remove any LEIN entry concerning any dismissed charge(s).”

The note at the bottom regarding item 1 was revised to state, “If item 1 or 2 is checked, the clerk of the court shall provide a copy of this order to the Michigan State Police upon entry.” This requires the clerk to send a copy if any charge 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. Citation was added to MCL 764.26a.

MC 392: The committee replaced the word “fingerprints” with “biometric data” and the word “arrest card” with “arrest record.”