



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

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PROPOSALS FOR COMMENT

Below is the proposed agenda for the March 5, 2020 meeting of the Michigan Court Forms Committee, Criminal Workgroup. Please provide any comments or feedback by clicking on the comment button next to each item and including the agenda item in the body of the e-mail.

Agenda items are published for a 45-day comment period. Comments received on proposed agenda items will be posted daily. Proposed agenda items and comments will remain posted until the committee meeting is held.

1. Minor Change

[CC 261, Waiver of Arraignment and Election to Stand Mute or Enter Not Guilty Plea](#)

The form will be modified to add a line beneath the attorney signature for the attorney's name to be typed or printed.

[Draft provided.](#)

[DC 225, Complaint, Misdemeanor](#) **[MC 200, Felony Set](#)**

Race and sex will be added to the information collected on the form as required by LEIN.

[CC 291, Advice of Rights \(Circuit Court Plea\)](#)

This form will be modified to be an MC form to accommodate use in both circuit and district courts.

MC 222, Request for Court-appointed Attorney and Order

A suggestion was received to add a line after the word “charge” in box #1 to more clearly indicate that the actual charge should be written in. A fill-in line will be added to box #1.

Draft provided.

MC 229, Motion, Affidavit, and Bench Warrant

Modifications will be made to the form to correct errors that occurred during previous revisions to the form. Specifically, the title of the motion section will be revised to “Motion and Affidavit.” Under the “Bench Warrant” header, the following language will be reinserted, “Respondent failed to comply with an order of this court. TO ANY PEACE OFFICER OR COURT OFFICER AUTHORIZED TO MAKE ARREST, I order you to arrest:”. Under the “Return” section, the caption under the signature line will be revised to, “Peace Officer.”

Draft provided.

MC 235, Motion for Destruction of Biometric Data and Arrest Record

The citation to MCL 28.243 in the use note will be corrected to reflect the proper subsection of the statute, which was modified by 2018 PA 67. The citation will be corrected to read MCL 28.243(14)(h).

Draft provided.

2. DC 226, Warrant, Misdemeanor

A judge has suggested that this form should be modified to include space for the individual requesting the warrant to swear to specific factual allegations. The judge suggests that the current design of the form includes a statement that the judge/magistrate finds probable cause, but relies only on the attached citation, which frequently only states the charge and provides no facts upon which probable cause may be found. The judge questions whether this meets the court rule requirement of MCR 6.102(B):

Probable Cause Determination. A finding of probable cause may be based on hearsay evidence and rely on factual allegations in the complaint, affidavits from

the complainant or others, the testimony of a sworn witness adequately preserved to permit review, or any combination of these sources.

Should a space for factual allegations be added to the form, or is it sufficient for a judge to use judicial discretion and deny the request for warrant when there is insufficient information included in the attached citation?

3. [MC 203, Writ of Habeas Corpus](#)

A suggestion was received to modify item 3 to add a reference to a referee. The item currently directs that the person be brought “before the Honorable _____.” The suggestion is to modify the language to read “before Judge/Referee _____” to reflect the fact that individuals are also brought before referees.

Should item 3 be modified to include a referee?

4. [MC 240, Pretrial Release Order](#)

A. A suggestion was made to add options under the section regarding third party bond posters that would allow the poster to direct that the bond be returned to the poster or applied to the defendant’s fines/costs/assessment instead.

Should the options be added to the form?

B. A suggestion was made to add a checkbox to item 4t of the form to indicate whether the address listed is the victim’s address.

MCL 780.758(2) provides:

The work address and address of the victim shall not be in the court file or ordinary court documents unless contained in a transcript of the trial or it is used to identify the place of the crime. The work telephone number and telephone number of the victim shall not be in the court file or ordinary court documents except as contained in a transcript of the trial.

Item 4t of the form provides for ordering the defendant not to enter specified premises or areas. It is suggested that a conflict arises when the specified address is the victim's, which is not to be included in the court file per statute, but the defendant is entitled to receive specific notice of any restrictions so he or she can avoid a violation. The purpose of the checkbox would be to give notice to the court clerk entering the document to remove the victim's address from the publicly accessible file.

An alternative suggestion was made that no address should appear in item 4t and the defendant should be given a specific geographical area that is forbidden. This would keep the victim's specific address off any documents, but would not provide specificity to the defendant.

Should the form be modified to add a checkbox to item 4t to indicate when it is a victim's address?

5. [MC 245, Motion and Order for Discharge from Probation](#)

A suggestion was received to add MSP CJIC as a distribution recipient to the form.

The distribution list for MC 294, Order Delaying Sentence, includes the Michigan State Police CJIC as a recipient. They are included because orders that include protective conditions must be placed on LEIN. MCL 771.3(4). Where there is local capability, these orders are entered on LEIN locally.

The suggestor states that when an order for discharge from probation that includes protective conditions is entered, the order is frequently not being sent to LEIN for removal because there is no reminder in the distribution list to distribute a copy for that purpose.

Should the form distribution be modified to include MSP CJIC?

6. [MC 263, Motion/Order for Nolle Prosequi](#)

A suggestion was received to modify the instruction to the clerk at the bottom of the form to include that a copy should be provided to the MSP if item 7 is checked. Item 7 directs that

the MSP and the arresting agency shall destroy specific records and that MSP shall remove any LEIN entries.

Should the form be modified?

[Draft provided.](#)

7. MC 294, Order Delaying Sentence

A suggestion was made to include four additional condition options to the order. The suggestor states that these are “standard” conditions that get ordered under the “other” item and it would be more efficient to have the options on the form for the court to select. The conditions are:

1. Not violate any criminal law of any unit of government.
2. Not leave the state without the consent of this court.
3. Make a truthful report to the probation officer monthly, or as often as the probation officer may require, either in person or in writing, as required by the probation officer.
4. Notify the probation officer immediately of any change of address or employment status.

Should these four items be added to the form as options?

8. MC 308, Summons Regarding Bond Violation

A suggestion was received to modify this form to include an option for a court to summon a defendant for a bond modification without needing a bond violation. MCR 6.106(H)(2) provides for a court to modify a prior release decision on its own initiative, which doesn't require that a bond violation has occurred.

Should this option be added to the form?

9. MC 399 – Motion to Set Aside Forfeiture and Discharge of Bond and Notice of Hearing

At its 2019 meeting, the committee modified 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. This was in response to a suggestion 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.

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.”

During typesetting, additional concerns regarding the form were raised and the form was held for further discussion by the committee. Specifically, it was determined that the form was also missing certain legal findings/requirements before a set aside can occur (i.e. apprehension within 1 year and, if a surety bond, that the bond was paid within 56 days if defendant was apprehended more than 56 days but less than 1 year after the forfeiture).

The following additional modifications to the form are recommended:

- 1) Modify item 2 to indicate that the defendant was apprehended within one year.
- 2) Add an additional item or sub-item that applies to sureties and details whether the defendant was apprehended with 56 days of the forfeiture judgment or whether the defendant was apprehended more than 56 days, but less than one year, after the entry of the forfeiture judgment and the judgment was paid to the court in full within 56 days of entry.
- 3) Add an additional item that indicates whether the county has been repaid its cost for apprehending the person. If it has not, provide the option for a request that the court take a portion of the forfeited judgment to pay the county the balance.

Should the additional options be added to the form?

10. MC 399a, Order on Motion to Set Aside Forfeiture and Discharge of Bond

A comment was received that MC 399a should be modified to include statutory references to MCL 765.28 (surety bond) and MCL 765.15 (non-surety bond) in both items 2 and 5 of the form. Item 2 is a finding whether the requirements of MCL 765.28 have or have not been met. Item 5 includes an order to assess costs and deduct them from the judgment pursuant to MCL 765.15. The commenter noted that the court may order either type of bond, so item 2 should reference both. In addition, under item 5, assessment of costs is allowed by statute for both types of bonds, so both relevant statutes should be listed.

Should items 2 and 5 of the form be modified to include references to both MCL 765.28 and MCL 765.15?

11. New Form, Commitment Form

A request was received for development of a new form to act as a standardized commitment form for processing individuals into a facility following a court appearance. The requestor noted that they have received over 30 different form variations from courts for this purpose which frequently do not provide clear direction to the sheriff/facility as to how to process the defendant. According to the requestor, this leads to confusion and errors. The requestor seeks a simple one page form for communication between the court and the facility.

Alternatively, the current practice of some courts is to reissue an MC 240, Pretrial Release Order, after each hearing. However, unless conditions are modified at the hearing, reissuing this order is not appropriate and can be burdensome on the courts and sheriff/facility.

Should a form be developed to convey commitment information between a court and the sheriff/facility following a hearing? If so, what information should be included on the form?

12. New Form: Felony Advice of Rights, District Court Arraignment

A request was received for development of a felony advice of rights form for use at district court arraignments. The requestor noted that, in district court felony arraignments, a notice is needed to read to the defendant, or for the defendant to read and sign, because there are additional rights beyond those in a misdemeanor, i.e., the probable cause conference and

preliminary examination. MCL 766.4. The suggestor noted that many magistrates are creating their own scripts to address the issue.

There is a question as to whether a writing may be used for the requested purpose. The court rule defining procedure for felony arraignments is MCR 6.104(E). MCR 6.104(E) does not explicitly state that a writing can be used. Compare this to the corollary misdemeanor rule, MCR 6.610(D), which specifically allows a writing to be used.

Historically, the court rule has been interpreted to mean that a writing cannot be used for MCR 6.104(E), because a writing is not specifically authorized. However, in 2018, the committee created MC 446, Probation Violation Arraignment Advice of Rights, despite the applicable court rule being silent on the use of a writing.

At the time MC 446 was created, there was concern raised about the risk that courts will replace the oral advice of rights with the writing and stop advising defendants on the record. Members of the committee did not think courts would skip the oral advice on the record.

Should a felony advice of rights for arraignments in district court be created? If so, what information should be included on the form?

13. New Form: Misdemeanor Advice of Rights and Request for Appellate Counsel

A request was received from two district court judges to develop a misdemeanor advice of rights and request for counsel form. The judges noted that while there is a form available for circuit court, the same was not true in district court.

In addition, given the infrequency of appeals from district court and varying court practices, there had not been a common tool developed for use. The judges also noted the need to have a clear, standard method for defendants to request appellate counsel rather than continue with the variety of unclear communications that the courts currently receive from defendants. The suggestion is that having a form would standardize the court's obligations on when and what the judge should advise the defendant, and provide a mechanism for the defendant to clearly state a request for appellate counsel.

A sample form was submitted with the suggestion for development of a new SCAO form. In reviewing the sample, the question arose as to whether the form should contain the necessary financial information from the defendant, similar to CC 265 and CC 403, rather than require the submission of a separate form.

Should a new form be created?

[The sample form is provided for review.](#)

14. NEW FORM: MC 243, Order of Probation
DC 243, Order of Probation (Misdemeanor)
CC 243a, Order of Probation

- A. At its 2019 meeting, 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. The issue being addressed was that, under MCR 6.008(D), circuit courts are required to sentence all defendants bound over to circuit court on a felony but who eventually 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 and forms CC 243a and DC 243, Orders of Probation were almost exclusively used in the specific court they were 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.

After discussion, the committee agreed to retain both forms, but modify DC 243 for use in circuit court. Members stated that the separate forms contain different clauses for payment as well as deferral options. 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 created a new item 7 that will allow courts to direct payment of the supervision fee to the Department of Corrections or District Court probation staff.

During typesetting, a second page had to be added to the form to incorporate the changes. Concern was raised that the multi-page format might create some issues to be resolved and the form was not published. Since that time, the form has undergone further development as part of the format revisions to all SCAO-approved forms, as has CC 243a. As a result, the two forms were merged together to create a new MC 243 that encompasses both district and circuit needs.

A [draft](#) of the revised form in the new standard formatting is provided.

Should the form be approved as presented?

- B. A suggestion was received to add an additional item to the order portion of the form that would read, “No use or possession of alcohol or controlled substances, submit to PBT/Urine test upon request.” The suggestor states that adding this to the form as an option would save time because it is almost always ordered at sentencing.

Should this option be added to the order?

15. New Form: Defendant’s Statement of Understanding, Rejection of Offer of Negotiated Guilty Plea

A suggestion was received to create a form for use in situations where the defendant is rejecting the offer of a negotiated guilty plea. It was suggested that the availability of a form would help to avoid issues pursuant to *Lafler v Cooper*, 132 S Ct 1376 (2012), and *Missouri v Frye*, 132 S Ct 1399 (2012). The suggestor provided a copy of form currently used by a federal judge as an example.

Should a form be developed?

[Sample provided.](#)