

Frequently Asked Questions and General Guidance Regarding Emergency Court Response to COVID-19

The following information and guidance is an effort to provide some general information and answers to frequently asked questions we have received. This document will be updated as information becomes available and additional questions arise. The document is broken down into the following specific sections:

- [Public Access to the Court](#)
- [General Court Operations](#)
- [Detention, Bail, and Pretrial Release](#)
- [Probation and Problem Solving Courts](#)
- [Case Specific Issues](#)
- [Other Resources](#)
- [Appendices A thru B](#)

Public Access to the Court

1. Can I just close our court altogether until the emergency is over?

No. AO No. 2020-2 directs that certain essential functions must continue, and the public must have access to the court to file legal documents. The AO states that “the court must work with the county clerk to ensure that if in-person filing of court pleadings is limited due to the state of emergency, court pleadings will continue to be accepted for filing by other means, such as U.S. mail, e-Filing, e-mail, or facsimile.”

2. What essential services should the court provide?

On March 18, 2020, the Michigan Supreme Court issued [Administrative Order No. 2020-2](#)¹ directing courts to limit court activity only to essential functions, which include:

I. CIRCUIT COURTS

A. Criminal Proceedings

1. To the extent possible and consistent with [MCR 6.006](#) and a defendant’s constitutional and statutory rights, courts should conduct the following hearings remotely using two-way interactive video technology or other remote participation tools:
 - a. For in-custody criminal defendants, pleas, sentencing, arraignments on the information under [MCR 6.113](#) (unless waived), probation violation arraignments under [MCR 6.445\(B\)](#), and emergency motions regarding bond. If the defendant is not in custody, these matters should be adjourned.
 - b. Processing of criminal extradition matters for in-custody defendants pursuant to [MCL 780.9](#). The issue of bail should be addressed for those eligible defendants as provided in [MCL 780.14](#).

¹ On April 27, 2020, the Michigan Supreme Court issued [AO No. 2020-12](#) extending several AOs until further order of the court, including AO No. 2020-2.

2. The court should make a good faith effort to remotely conduct all other criminal matters, including all non-emergency matters where the defendant is not in custody.²
3. With regard to matters involving forensic evaluations of juveniles or adults for competence to stand trial, competence to waive Miranda rights, and criminal responsibility, courts shall permit the use of video technology. The evaluator shall note in the forensic opinion whether the use of video technology impeded an impartial and accurate clinical assessment, and, if so, notify the court that an in-person evaluation must be scheduled.

B. General Civil and Business Court Cases

1. Infectious disease (ID) proceedings under [MCL 333.5201 et seq.](#)
2. Limited proceedings regarding personal protection orders (PPOs):
 - a. Review and determination of requests for personal protection orders (PPO) under [MCL 600.2950](#) and [600.2950a](#);
 - b. Review and determination of emergency request to extend a PPO pursuant to [MCR 3.707\(B\)](#);
 - c. Initial hearing for in-custody respondent arrested for alleged violation of PPO to allow court to address issue of bond under [MCL 764.15b](#).
3. The court should make a good faith effort to remotely conduct all other civil and business court matters, including trials, using two-way interactive video technology or other remote participation tools.

C. Family Court Matters

1. Review and determine requests for ex parte relief in domestic relations proceedings necessary for the safety and well-being of a litigant and/or children under [MCR 3.207](#).
2. Safe delivery of newborn child (NB) proceedings under [MCL 712.1, et seq.](#)
3. Waiver for parental consent (PW) proceedings under the Parental Rights Restoration Act, [MCL 722.901, et seq.](#)
4. Juvenile delinquency proceedings:
 - a. hearings required within 24 hours of a juvenile's apprehension or detention pursuant to [MCR 3.935](#) and [MCR 3.944](#).

² Although AO No. 2020-2 originally directed courts to adjourn some matters, AO No. 2020-6 superseded that directive. In part, AO No. 2020-6 states “[a]lthough adjournments are permitted when necessary, courts are directed to implement measures to ensure all matters may proceed as expeditiously as possible under the circumstances....” Also see AO No. 2020-6, footnote one, stating “[t]o the extent that Administrative Order No. 2020-2 may be interpreted to require the adjournment of some matters, this order replaces that directive.”

- b. arraignments for in-custody designated and adult court waiver proceedings pursuant to [MCR 3.951](#) (designated) and [MCR 3.950](#) (waiver, circuit court arraignment).
- 5. Child protective proceedings:
 - a. hearings required within 24 hours of taking a child into protective custody pursuant to [MCR 3.965](#) and [MCR 3.974](#);
 - b. permanency planning hearings that are required pursuant to [MCL 712A.19a](#).
- 6. Friend of the court arraignments on bench warrants pursuant to [MCR 3.221\(B\)](#). An arrested individual must be promptly arraigned if the underlying contempt hearing cannot be held within 48 hours. In addition, friend of the court offices should set priorities to continue the following services:
 - a. To the extent it is safely possible, courts should continue to make staff available to implement income withholding notices so payments can be deducted and paid automatically. To the extent it is not safely possible to make staff available for this purpose, most income withholding notices should be issued automatically when there is a New Hire Directory match.
 - b. To the extent it is safely possible, courts should continue to make staff available to implement national medical support notices to allow health care coverage to be implemented as quickly as possible.
- 7. The court should make a good faith effort to remotely conduct all other family court matters, including trials, using two-way interactive video technology or other remote participation tools.
- D. Other emergency motions in the discretion of the court.

II. DISTRICT COURTS

- A. **Criminal Matters** - To the extent possible, and consistent with [MCR 6.006](#) and a defendant's constitutional and statutory rights, courts should conduct the following hearings remotely using two-way interactive video technology or other remote participation tools:
 - 1. For in-custody criminal defendants, pleas, sentencing, arraignments under [MCR 6.104](#), bond motions under [MCR 6.106](#) or [MCR 6.108](#), probable cause conferences under [MCR 6.108](#), and preliminary examinations under [MCR 6.110](#).
 - 2. Processing of criminal extradition matters for in-custody defendants pursuant to [MCL 780.9](#). The issue of bail should be addressed for those eligible defendants as provided in [MCL 780.14](#).
 - 3. With regard to matters involving forensic evaluations of juveniles or adults for competence to stand trial, competence to waive Miranda rights, and criminal responsibility, courts shall permit the use of video

technology. The evaluator shall note in the forensic opinion whether the use of video technology impeded an impartial and accurate clinical assessment, and, if so, notify the court that an in-person evaluation must be scheduled.

4. Review and determination of requests for search warrants should continue pursuant to [MCL 780.651](#).
 5. Review and issuance of arrest warrants pursuant to [MCL 764.1a](#) for crimes that present a danger to public safety.
 6. The court should make a good faith effort to remotely conduct all other criminal matters, including all non-emergency matters where the defendant is not in custody.
- B. **Civil Matters** – The court should make a good faith effort to remotely conduct all matters using two-way interactive video technology or other remote participation tools.
- C. **Traffic Matters** – The court should make a good faith effort to remotely conduct all civil infractions, including trials, using two-way interactive video technology or other remote participation tools. No bench warrants shall be issued for individuals failing to appear during the state of emergency.
- D. Other emergency motions in the discretion of the court.

III. **PROBATE COURTS**

- A. Proceedings regarding involuntary mental health treatment under [Chapter 4 of the Mental Health Code](#), including the following:
1. Pick-up/transportation orders pursuant to [MCL 330.1436](#) and [330.1426](#);
 2. Petitions for initial or continuing involuntary hospitalization pursuant to [MCL 330.1472a](#).
- B. Petitions for immediate funeral/burial arrangements pursuant to [MCL 700.3206](#) and [700.3614](#).
- C. Emergency petitions filed by Adult Protective Services under [MCL 400.11b\(6\)](#).
- D. Emergency petitions for guardianship pursuant to [MCL 700.5312](#).
- E. Emergency conservatorships and other protective orders pursuant to [MCL 700.5407](#) in those cases with immediate pending evictions/foreclosures/shut off notices.
- F. Estates where immediate access to residence is necessary under [MCL 700.5407](#).
- G. Ex parte requests for temporary restraining orders.
- H. With regard to proceedings involving mental health and guardianship matters, courts shall permit the use of video technology unless a health and safety issue requires an in-person appearance.
- I. The court should make a good faith effort to remotely conduct all other probate court matters using two-way interactive video technology or other remote participation tools.

J. Other emergency motions in the discretion of the court.

~~The court must work with the county clerk to ensure that if in-person filing of court pleadings is limited due to the state of emergency, court pleadings will continue to be accepted for filing by other means, such as U.S. mail, e-Filing, e-mail, or facsimile.~~

3. Can the court or security staff ask public visitors if they are sick or have been exposed to COVID-19?

Pursuant to [Administrative Order No. 2020-1](#), trial courts are instructed to take reasonable measures to avoid exposing court proceeding participants, employees, or the general public to the COVID-19. This may include inquiring as to whether individuals entering the courthouse are experiencing COVID-19 or flu-like symptoms. Courts are also encouraged to post signage on doors and within the courthouse directing those experiencing symptoms to avoid public areas and to self-isolate at home in accordance with [CDC guidance](#).

4. Can the court limit access to court buildings and any proceedings to attorneys, parties, and essential individuals only?

As a general rule, under MCL 600.1420, the public is entitled to attend sittings of every court. However, this right is not absolute. *Detroit Free Press, Inc v Macomb Circuit Judge*, 405 Mich 544, 546 (1979). Pursuant to [Administrative Order 2020-2](#), trial courts are ordered to limit access to courtrooms and other spaces to no more than 10 persons, including staff, and to practice social distancing. However, all reasonable measures must be balanced against the constitutional rights of parties, including a criminal defendant's right to a public trial. Const 1963, Art 1, §20.

5. Can my court discourage attendance of court proceedings by providing increased access to recordings or live streaming of court proceedings?

Pursuant to the [Michigan Trial Courts Virtual Courtroom Standards and Guidelines](#), courts are encouraged to establish a live stream of the court proceedings to facilitate access to public court proceedings. Additionally, pursuant to local administrative order,³ each court may determine whether the public may access recordings of court proceedings made pursuant to MCR 8.108. Those courts who have currently elected to limit access to recordings of court proceedings are encouraged to review and revise their local administrative order to grant public access to court recordings of proceedings made during this emergency period.

General Court Operations

6. Are courts still processing pleadings? Are courts required to conduct any proceedings other than those listed in AO No. 2020-2?

Under [EO 2020-59](#), the governor has temporarily required a suspension of all in-person activities that are not necessary to sustain or protect life until at least May 15, 2020. However, as outlined in AO No. 2020-2 and 2020-3, courts should limit in-person activity to those listed as essential functions under AO No. 2020-2. Otherwise, courts should conduct other matters remotely using videoconference technology or other remote participation tools.

³ See [Model LAO 8](#), regarding "Access, Inspection, Reproduction, and Creation of Records."

In addition, courts must maintain a process that allows filers to submit filings to the court in a way that does not include face-to-face contact: e.g. by mail, e-Filing, e-mail, or fax.

7. How do Executive Order 2020-59, AO No. 2020-2, and AO No. 2020-3 affect court filings?

Courts should review [EO 2020-59](#), [AO No. 2020-2](#), and [2020-3](#) to determine what an essential function is and how to comply with the Governor’s “Stay Home, Stay Safe” directive. Courts must ensure that in each proceeding that requires in-person participation, social distancing and other mitigating strategies are rigidly enforced.

The State Bar of Michigan is advising lawyers that the order does not specifically exempt attorneys from the stay at home order as “critical infrastructure workers” necessary to sustain or protect life, but allows them to leave home to attend legal proceedings for essential or emergency purposes as ordered by a court.

Keep in mind that under [AO No. 2020-2](#), in addition to the list of specific essential functions, each court (circuit, district, and probate) has the authority to hear emergency motions at their discretion. Parties or attorneys always have the option to contact a court (each court should have an emergency contact number to allow people to get answers to specific questions) if such an emergency arises that is not listed as an essential function.

8. I need help addressing issues taken by my funding unit during this emergency, who should I contact?

Please contact your regional administrator to discuss any issues related to your funding unit.

9. The court would like to utilize single-use pencils instead of sharing pens for individuals signing documents. Can documents be signed in pencil?

Yes, where a written signature is required it may be in pencil.⁴

10. Can the court use facsimile (fax) or electronic mail (e-mail) to receive and process filings from the public?

Pursuant to [Administrative Order No. 2020-1](#), “[t]rial courts should maximize the use of technology to facilitate electronic filing and service to reduce the need for in-person filing and service.”

a. Procedures regarding filing by fax under MCR 2.406

Under MCR 2.406, courts currently have the authority to permit filers to submit filings to the court via fax. Here are several points to remember:

i. Documents with filing fees. Filings that require the payment of a filing fee may not be accepted via fax unless that fee is paid in advance. Courts permitting or encouraging the use of fax should consider a process to facilitate payments of filing fees over the phone.

ii. Fees for permitting use of fax filing. Although MCR 2.406(D) allows courts to impose a fee for permitting a filer to submit a filing via fax, the

⁴ See MCL 8.3q regarding written signatures.

court should suspend or waive any such fee pursuant to AO No. 2020-1. However, the court should still charge the required filing fees for the documents.

- iii. **Filing Dates.** Under MCR 2.406(E), documents received during the regular business hours of the court will be deemed filed that business day. Documents received outside business hours will be deemed file the next business day.

b. Procedures for using e-mail to receive filings.

As directed by Administrative Order No. 2020-1, if the court determines it is a reasonable measure based on local conditions, the court may permit filing via e-mail as an emergency measure for a limited time.

- i. **Documents with filing fees.** Filings that require the payment of a filing fee may not be accepted via e-mail unless that fee is paid in advance. Courts permitting or encouraging the use of e-mail should consider a process to facilitate payment of filing fees over the phone.
- ii. **Fees for permitting e-mail filing.** The court should not impose any fee to permit a filer to submit a filing via e-mail.
- iii. **E-mail standards for filers.** Individual courts should establish standards and guidance for filers submitting filings via e-mail. The court should consider standards regarding things such as:
 - 1. subject line formatting;
 - 2. acceptable file types;
 - 3. maximum e-mail message sizes;
 - 4. filing date (*should be consistent with fax filing rule MCR 2.406(E)*).
- iv. **Specified e-mail filing account.** Courts should establish a single unique e-mail address to receive court filings. Courts should configure an automatic reply to notify filers of receipt of their filings.
- v. **IT support and security considerations.** Courts should work with their individual IT support to make any necessary configurations and address any security concerns.

11. If a filer submits documents electronically (e.g. e-Filing, e-mail, or fax) should the clerk require a paper copy?

No. A paper copy of a document submitted electronically to the court is not required. Under MCR 1.109(G)(4), the electronic version of any document electronically filed with the court is the official court record. Additionally, MCR 2.406(G) provides that documents that are filed via fax are considered original documents. Under MCR 2.119(A)(2)(d), a judge's copy of electronically filed documents shall not be required. The principle and intent of these rules should be applied to filings accepted via e-mail during this time of emergency.

12. When may the courts use phone or video conferencing technology for hearings?

Courts may already use phone and video conferencing technology to conduct court proceedings with parties and witnesses in accordance with the [Michigan Trial Court Standards for Courtroom Technology](#). During this limited time of emergency, in accordance

with [AO No. 2020-1](#), the court is encouraged to allow liberal use of phone and videoconferencing technology to ensure continuation of court proceedings when possible. Any current court-required fee to participate remotely in proceedings should be waived.

In accordance with [AO No. 2020-6](#),⁵ a judicial officer may conduct a proceeding (whether physically present in the courtroom or elsewhere) under the following conditions:

- any such procedures must be consistent with a party's Constitutional rights;
- the procedure must enable confidential communication between a party and the party's counsel;
- access to the proceeding must be provided to the public either during the proceeding or immediately after via access to a video recording of the proceeding, unless the proceeding is closed or access would otherwise be limited by statute or rule;
- the procedure must enable the person conducting or administering the procedure to create a recording sufficient to enable a transcript to be produced subsequent to the activity.

Please review [AO No. 2020-6](#) for additional details regarding the expansion of authority for judicial officers to conduct hearings from a location other than the courtroom.

Will the Michigan Supreme Court Provide Zoom Licensing for Virtual Courtrooms?

The Michigan Supreme Court offers each seated circuit, district, and probate judge a Zoom Enterprise license at no charge to the local court. The license provides each judge with their own Zoom virtual court room. Additional Zoom licenses are being provided for magistrates and other judicial officers based on requests previously made by courts through their regional administrators.

13. What technical resources are available for courts that are implementing virtual courtrooms?

The State Court Administrative Office has launched the [Virtual Court Resource Center](#) to provide courts with standards and best practices, as well as technical advice on how to use Zoom. Please visit the [Virtual Resource Center](#) to review the information and materials available

14. If the court makes a recording of a remote proceeding using Zoom or another remote meeting service provider, can the generated recording be used as the official recording for purposes of generating a transcript?

Yes. Under MCR 8.109(A), courts are authorized to use audio and video recording equipment for making a record of court proceedings. The audio or video recording that is created for the purposes under MCR 8.109(A) is the official recording. For those courts using Zoom to conduct and record a remote proceeding, the generated recording is an MP4 format that complies with the [Michigan Trial Court Standards for Courtroom Technology](#). Please review the [Michigan Trial Courts Virtual Courtroom Standards and Guidelines](#) for additional guidance.

⁵ On April 27, 2020, the Michigan Supreme Court issued [AO No. 2020-12](#), extending several AOs until further order of the court, including AO No. 2020-6.

15. Can I access my JIS case management system (CMS) remotely?

The JIS Service Desk has been receiving a high number of requests from court users requesting assistance or guidance on how to access the Case Management Systems (MiCOURT, CCS, DCS, PCS, and TCS) from “home” or from remote locations. We cannot provide support for configuration or access to the CMS systems outside your individual local court locations; while it may be feasible on a case-by-case basis with the support of your local IT staff, every court environment is different and may have different policies or technical restrictions. Please consult with your local IT staff if you have any questions or needs regarding the topic of remote access to court systems.

JIS is committed to supporting our products and court users throughout the current COVID-19 State of Emergency in Michigan. You should expect to be able to contact us through all of the existing service channels (service portal, e-mail, and phone) during this period; our team has contingency plans in place to continue service desk support.

16. Is there a way to do a “mass reschedule” in my JIS District Court System (DCS) case management system?

On March 16, the JIS helpdesk issued a notice to DCS users regarding the availability and instruction for accomplishing a mass reschedule event. This notice and all others may be accessed on the JIS service portal at <https://servicedesk.courts.michigan.gov/>.

The DCS application does have a “Mass Reschedule” feature. Courts should utilize this feature to avoid the Traffic/Criminal Daily Date Generated Notices (DGN) from generating. The DGN generates the following notices:

- a. Abstracts
- b. FAC/FCJFCPV Suspensions
- c. Default Judgments, Civil Infractions
- d. 14-day Civil Infraction Notice
- e. 14-day Misdemeanor Notice
- f. Notice of Non-Compliance
- g. Warrant Misdemeanor
- h. Warrant Notice

For example: if a court is closed for 14 days, a 14-Day Notice and suspension could generate on the same day when requesting DGN. You can avoid this scenario by using the [Mass Reschedule](#) feature to reset a due date, which will prevent improper notices from generating upon resuming normal operations.

Please review the detailed JIS notice on the service portal for additional information and instructions regarding this matter.

17. How should courts handle a party’s failure to appear during this emergency?

The emergency information and direction regarding mitigating the COVID-19 outbreak is rapidly changing. On March 23, the Governor originally [issued](#) a “Stay at Home” order. On April 24, the Governor issued [EO 2020-59](#) extending the “Stay at Home” order until at least May 15, 2020. Administrative Orders [2020-2](#) and [2020-3](#) were issued in furtherance of Governor’s executive order and federal guidelines to practice social distancing and restrict non-essential activity. As a result, many people may be confused about what actions to take regarding appearing in areas of public gathering like courthouses. During this emergency,

we recommend that you do not default or issue a bench warrant for individuals who fail to appear for their scheduled proceeding unless that individual presents a specific and verified threat of criminal activity.

18. How will the court's emergency measures imposed in response to COVID-19 affect the assessment of the court's compliance with time guidelines and performance measures?

The many emergency measures taken by courts and the community stakeholders will affect the timeliness of court proceedings. As a result, there will likely be many instances where individual cases do not meet time guidelines established by SCAO and the court's performance under established trial court performance measures will be affected. SCAO will still collect the 2020 case age data; however, the State Court Administrator will continue to consult with the Trial Court Performance Measures Committee on how SCAO will publish, use, and footnote the 2020 data in light of emergency measures taken by courts. To prevent misuse of the 2020 case age rates, SCAO will not publish data for an individual judge or court.

19. How does the current national health emergency affect the requirement for all trial courts to submit reports due in March, April, and May?

SCAO understands that the Michigan trial courts are working diligently to protect the public and court staff while also providing the essential public services necessary during this national health emergency. Therefore, reporting deadlines on a variety of reports have been suspended indefinitely. Please see [Appendix B](#) for a memo with the specific reports suspended.

There are two important exceptions to the suspension of reporting deadlines. The following two reports are necessary for SCAO to disburse funds to the courts:

- a. **The deadline for the Drug and Drunk Driving Reimbursement report remains April 30.**
- b. **The deadline for the Jury Fees report remains May 31.**

If your court has any difficulty submitting these two reports, please contact your regional administrator.

20. There may be orders in place restricting movement or affecting limited groups for a long time. Can our court still proceed through the phases if those orders are significantly modified or scaled back in our region?

Yes. Scaled-back local or state restrictions are the catalyst for courts to move from one phase to the next. Indeed, we should expect rescission of such orders and replacement with less restrictive orders to continue until the crisis has passed. Local and state restrictive movement and/or shelter-in-place orders must be sufficiently rescinded to allow for the activity permitted by the next phase your court proposes. Consult your regional administrator to discuss whether changes in state or local restrictions, combined with achievement of gating criteria required by AO No. 2020-14, allow for court operations consistent with the next phase. As detailed in the [Return to Full Capacity Guide](#), in order to transition to the next phase the regional administrator must approve the appropriate version of Model LAO 50 and the court must have met all of the following benchmarks:

- No confirmed or suspected COVID-19 cases in the court facility within a 14-day period OR confirmed or suspected cases have occurred in the court facility, but deep

cleaning of exposed areas and applicable employee self-quarantine actions have been taken.

- Downward trajectory of documented cases within a 14-day period OR downward trajectory of positive tests as a percent of total tests within a 14-day period (flat or increasing volume of tests).
- Rescission of local and state restrictive movement and/or shelter-in-place orders and local and regional health care facilities are able to treat all patients without crisis care.

Detention, Bail, and Pretrial Release

In an effort to slow the spread of COVID-19, especially in the confined environments of county jails, courts should collaborate with county stakeholders and consider the following recommendations:

21. Coordinate with law enforcement in your county about expanding the use of appearance citations (when appropriate and legally permissible) rather than custodial arrests.

Pursuant to MCL 764.9c, police officers may issue appearance tickets, subject to certain exceptions, for misdemeanor or ordinance violations for which the maximum permissible penalty does not exceed 93 days in jail. Appearance tickets save police officers' time for more pressing matters and eliminate jail confinement. Even if an offense does not qualify for an appearance ticket (e.g. felonies or misdemeanors with punishments exceeding 93 days in jail), law enforcement still has the option for many offenses to release defendants, without charges, and submit their report to the prosecutor's office for review.

22. Coordinate with your prosecutors and law enforcement agencies in your county regarding the possible use of summons (when appropriate) rather than arrest warrants.

Pursuant to MCR 6.103, a court may issue a summons instead of an arrest warrant upon the request of the prosecutor. This presents another opportunity to avoid unnecessary incarceration and may allow the court more flexibility with handling walk-in or scheduled arraignments than with in-custody defendants.

23. If defendants are arrested for warrantless misdemeanor offenses, courts should coordinate with law enforcement to use their discretionary authority to set lower interim bonds for an expedited release of low-risk defendants before arraignment.

Pursuant to MCL 780.581, a police officer may, subject to certain exceptions, set interim bail if defendants are arrested without a warrant for misdemeanor offenses and a magistrate is not available. The amount of interim bail must be "a sum of money" determined by the police officer, not the court, but must not exceed the maximum possible fine for the offense nor be less than 20 percent of the minimum possible fine. Law enforcement agencies sometimes accomplish this by using a "bond schedule." Several courts utilize an Interim Bond Order for this purpose.

24. Courts must closely adhere to MCR 6.106(C) regarding personal or unsecured bonds to effectuate as many pretrial releases from custody as safely possible.

MCR 6.106(C) requires courts to release defendants on personal or unsecured bonds unless they will not reasonably ensure the appearance of the defendant as required or will present a danger to the public. Money bail of even modest amounts can delay, or outright deny, the

release of certain presumptively innocent defendants. Courts should also be mindful that many commercial bail services are currently closed.

25. When setting bail, courts should carefully weigh the public necessity of certain pretrial conditions (including drug/alcohol testing, counseling, office visits, etc.) with the risk of spreading COVID-19.

Courts should be mindful that conditions of release, while not confining defendants in jail, can still place defendants in close proximity with other individuals. MCR 6.106(D) allows courts to impose conditions of pretrial release if a personal recognizance bond will not reasonably ensure the appearance of the defendant or the safety of the public. Moreover, research suggests many conditions of pretrial release, with the exception of court date reminders, are ineffective at reducing failure to appear and rearrest rates. When balancing which bond conditions to order with minimizing the spread of the COVID-19, the court should still be mindful that behavior that is dangerous to the defendant or others should not be tolerated.

26. Consider using non-warrant alternatives (when appropriate) when defendants fail to appear in court or otherwise commit conditional release violations.

Pursuant to MCR 3.606(A)(1) and MCR 6.106(H)(2), a court may order a defendant to appear for a show cause hearing for an alleged bond violation or issue a summons for a modification of bond. Show Cause Orders ([MC 230](#)) and Summons Regarding Bond Violations ([MC 308](#)) are two options that will avoid custodial arrests and allow courts more control over their dockets. The court should continue to issue bench warrants in those circumstances where the defendant's conduct resulting in the alleged bond or probation violations present a danger to the defendant or others.

Case-Specific Issues

27. Can a litigant serve a summons that has been issued by the court?

All stakeholders in the judicial system should review [EO 2020-59](#) to determine what actions are allowable at this time.

28. Do attorneys need to comply with any rule or statutory requirement regarding meeting with or visiting their clients?

Courts should advise attorneys to comply with requirements to meet and engage with their clients; however, during this time of emergency, technology should be used to accomplish this to the greatest extent possible. Attorneys should not conduct any in-person meeting if they themselves or a client is experiencing symptoms or has been exposed to COVID-19. Attorneys unable to satisfy their duties imposed by rule or statute as a result of the emergency measures imposed to address the public health emergency should notify the court of this fact. In order to reduce the burden on courts, we recommend that notification to the courts be communicated in writing.

29. How does the Governor's Executive Order 2020-14 extending the deadline by which property forfeited to a county treasurer must be redeemed affect the court?

Governor Gretchen Whitmer issued [Executive Order 2020-14](#) pursuant to MCL 30.403(1) – (2). This Executive Order (EO) temporarily suspends strict compliance with [MCL 211.78g\(3\)](#). As a result, the deadline by which property forfeited to a county treasurer must be redeemed has been extended from March 31, 2020 until the later of May 29, 2020 or 30

days after the state of emergency declared in [EO 2020-33](#) is terminated. Circuit courts and affected parties need only refer to and rely upon the Executive Order to delay any premature enforcement actions.

Evictions and Summary Proceedings

30. How does the Governor’s Executive Order 2020-54 affect the court’s ability to issue an order of eviction?

Governor Whitmer issued [Executive Order 2020-19](#), temporarily suspending evictions. The Governor issued [EO 2020-54](#), extending the temporary suspension of evictions to May 15, 2020. The order prohibits any person from entering residential property to remove or exclude the tenant from the premises, except when the tenant poses a substantial risk to another person or an imminent and severe risk to property. Courts may want to review MCL 600.5174(b), (d), and (e) to determine whether the tenant poses a substantial risk to another person or imminent and severe risk to property. Although a tenant still has an obligation to pay rent under the lease, a landlord may not serve a demand for payment of rent during this time.

The temporary suspension regarding evictions will continue until May 15, 2020, at 11:59 p.m. Any statutory restriction on the court’s ability to adjourn proceedings, toll redemption or limitation periods, or extend any deadline is also suspended until 30 days after the temporary suspension of evictions expires.⁶

31. How does the federal CARES Act affect eviction proceedings?

On March 27, the President signed into law the [Coronavirus Aid, Relief, and Economic Security Act](#) (“CARES Act”). The CARES Act stops covered landlords from filing new eviction cases for nonpayment of rent beginning on March 27, 2020. The CARES Act applies to “covered properties.” Covered properties include:

- properties that have federally backed mortgage loans;
- properties that have federally backed multifamily mortgage loan;
- “Covered housing programs” as defined by the Violence Against Women Act (VAWA) and properties that participate in the “rural housing voucher program under section 542 of the Housing Act of 1949.” Some examples of these types of housing programs are:
 - Section 8 Vouchers
 - HUD-funded public housing
 - HUD housing for seniors and people with disabilities.
 - Low-Income Housing Tax Credit (LIHTC) housing

On April 16, 2020, the Michigan Supreme Court issued [AO No. 2020-8](#). The AO requires individuals filing an eviction action to file a form verifying compliance with the CARES Act. The verification must be filed on an SCAO approved form.

Child Protective Proceedings

32. What impact does the COVID-19 State of Emergency have on Title IV-E funding for foster care cases?

Federal Title IV-E funding rules remain in effect during the COVID-19 State of Emergency. Therefore, courts should continue to make all necessary judicial determinations

⁶ This guidance was also provided in an SCAO, Court Services Division [memo](#) issued March 23, 2020.

to ensure a child is IV-E eligible. The required judicial determinations include: (1) it is *contrary to the welfare of the child to remain in the home*, (2) the agency made *reasonable efforts to prevent removal*, and (3) the agency made *reasonable efforts to finalize the permanency plan*.

Judicial determinations (1) and (2) must be made in the first court order authorizing a child's removal from the home (exception is the 60-day federal safety net for *reasonable efforts to prevent removal from the home*). Judicial determination (3) must be made within 12 months of the child entering foster care, and once every 12 months thereafter for as long as the child remains out of the home. Each finding should be supported by written, case-specific findings of fact. Pursuant to Michigan Supreme Court Administrative Order 2020-2, Permanency Planning Hearings and 24 hour Preliminary and Emergency Removal Hearings following a child being taken into protective custody have been deemed essential functions of the court.

While these three judicial determinations remain necessary for IV-E funding eligibility, there is no federal requirement that they be made at a specific hearing type or on the record. Courts, therefore, may issue ex-parte orders to ensure IV-E funding compliance. However, if there are any ex-parte court order errors, there will be no hearing transcript to resolve a judicial error.

For additional information, please see the Federal Children's Bureau Information Memorandum (ACYF-CB-IM-0506), which was issued in 2005 due to Hurricane Katrina and recently recirculated by the Federal Government in light of the COVID-19 pandemic:

<https://www.acf.hhs.gov/sites/default/files/cb/im0506.pdf>

Specifically, page 3 of the IM states:

Judicial determinations States also may establish alternative procedures for obtaining judicial determinations regarding contrary to the welfare and reasonable efforts, including reasonable efforts to achieve permanency, as there is no Federal requirement that these determinations be made at a court hearing. These judicial determinations are required to establish a child's eligibility for title IV-E.

Federal oversight Further, in conducting Child and Family Services Reviews, title IV-E eligibility reviews and other oversight activities in the future, ACF will be cognizant of the extraordinary demands that this natural disaster has placed on many States.

33. Does the statutory requirement that an L-GAL meet with or observe their client pursuant to MCL 712A.17d require a face-to-face visit during the time of emergency?

As a general rule, L-GALs are encouraged to conduct in-person meetings with their clients to properly assess the welfare and needs of the child. However, [MCL 712A.17d\(e\)](#) permits the court to allow the L-GAL alternative means of contact with the child for good cause. Therefore, where possible, courts should encourage alternate forms of contact such as phone, videoconferencing, or other appropriate methods.

34. Can the court suspend or reduce parenting time in a child protective proceeding as an emergency measure?

Under [MCL 712A.13a\(13\)](#), where a child has been removed from a parent's care, a parent shall be provided parenting time not less than one time every seven days. However, under

[MCL 712A.13a\(13\)](#), the court may determine less frequent parenting time is necessary due to exigent circumstances. If face-to-face parenting time does not occur due to the emergency measures put in place due to COVID-19, the court and parties should implement an alternative method of parenting time rather than cancelling it.

Please Note: On April 25, DHHS released a revised [Communication Issuance 20-032](#) providing the following direction to child welfare field staff regarding visitation with children who are in foster care. Please review that communication for additional details.

35. MDHHS has indicated that Averhealth, its vendor for substance abuse screening in child protective proceedings, has halted all screening activities. What should the court do if respondents were ordered to perform substance abuse testing?

If the court determines that substance abuse screening is necessary to ensure a child is safe and well-cared for, the court may order testing via an alternate provider, if available. If an alternative testing provider is not available, the court should order any additional conditions it deems necessary to safeguard the well-being of the child as a result of the lack of substance abuse screening services.

36. Has MDHHS issued guidance to child welfare field staff regarding changes to policy or activities in light of COVID-19?

Yes. MDHHS has informed SCAO that they have issued several communications regarding several issues. Please see [Appendix A](#) of this document for a list of relevant MDHHS communications.

Domestic Relations (divorce, custody, support, etc.)

37. What should the court or friend of the court advise parents who inquire about the need for compliance with existing parenting time orders in light of the state of emergency?

On March 16, 2020, the Supreme Court [issued a statement](#) reminding parents that all court orders for a child's custody, parenting time, and support are still in force. Parents should continue to follow any court orders unless and until a new order is entered. Please review this [FAQ regarding child support](#) for additional information.

Probation and Problem-Solving Courts

38. Monitoring individuals on in-person reporting probation.

To the extent possible, in-person monitoring appointments should be conducted remotely by telephone, Skype, ZOOM, or other technologies allowing for social distancing. If in-person monitoring appointments are conducted, meeting spaces should be regularly cleaned and disinfected according to the [Michigan Department of Health and Human Services' Mitigation Strategy](#) and social distancing restrictions should be followed. Participants who are sick or showing symptoms should not be required to report in person. Courts should temporarily suspend field visits for probation staff.

39. What if a probationer is unable to meet conditions of probation due to unavailability of services as a result of the public health emergency?

As a result of emergency measures imposed by community agencies and businesses, probationers may report an inability to satisfy certain conditions of probation such as community service, treatment, or employment-related requirements. As directed in [Administrative Order No. 2020-1](#), it is important for courts to ensure that probation staff have

the necessary discretion to handle issues as they rapidly arise and avoid creating administrative and procedural burdens. While each case should be evaluated individually, we recommend that probation departments remain flexible with probationers and avoid issuing violations of probation that are due to community actions taken following the declaration of a state of emergency. Additionally, although a court generally speaks through its written orders, we recommend that the court not issue amended orders of probation for each case to extend time-bound conditions. This will avoid unnecessarily burdening staff or the court with administrative paperwork. Instead, probation staff should continue to communicate with probationers, monitor the circumstances of the case, and follow up with probationers as access to community resources is normalized. We recommend that judicial and probation staff discuss and formulate a plan that is right for each court.

Problem-Solving Court Program Guidance

Guidance specific for Problem Solving Courts has been compiled into a separate document, which may be accessed [here](#).

Other Resources

- Judicial Branch Response to COVID-19
<https://courts.michigan.gov/News-Events/Pages/COVID-19.aspx>
- Judicial Information Services (JIS) Helpdesk Portal
<https://servicedesk.courts.michigan.gov/>
- MI Governor Executive Orders
https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705---,00.html
- MI Executive Branch Coronavirus website
<https://www.michigan.gov/coronavirus/>
- National Center for State Courts – Public Health Emergency Page
<https://www.ncsc.org/Newsroom/Public-health-emergency.aspx>
- HIPAA and COVID-19 Bulletin, *U.S Dept. Health and Human Services*
<https://www.hhs.gov/sites/default/files/hipaa-and-covid-19-limited-hipaa-waiver-bulletin-508.pdf>
- CDC – What you need to know about COVID-19
<https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf>
- CSC – What to do you if you are sick with COVID-19
<https://www.cdc.gov/coronavirus/2019-ncov/downloads/sick-with-2019-nCoV-fact-sheet.pdf>

Appendix A

MDHHS Communications to Child Welfare Staff

- [20-029 COVID-19 Response-Mentor Contractors.pdf](#)
The Children's Services Agency (CSA), Education and Youth Services Unit is making updates to the requirements in the Mentor Contract.
- [20-030 COVID-19 Response-Early On Referral Process.pdf](#)
MDHHS child welfare field staff must continue to follow MDHHS policy and protocol on making Early On referrals. Early On service may be limited, delayed, or not available during the state of emergency caused by Covid-19.
- [20-031 COVID-19 Response-Youth in Young Adult Voluntary Foster Care and Independent Living.pdf](#)
MDHHS is committed to ensuring youth who are 18 and older have the resources available to meet their immediate needs. Effective immediately, changes to Young Adult Voluntary Foster Care (YAVFC) and Youth In Transition (YIT) funded housing supports are available to eligible youth.
- [20-032 COVID-19 Response-Updated Interim Caseworker Guidance for Face-to-Face Contacts and Parenting Time-Sibling Visits \(REVISED\)](#)
This communication is in response to Executive Order 2020-21 and replaces the communication issuance 20-032 that was issued on 3/25/20. This provides updated guidance for Michigan Department of Health and Human Services (MDHHS) and contracted child placing agency Children's Protective Services (CPS), foster care, and juvenile justice caseworkers regarding conducting face-to-face contacts, parenting time, and sibling visits for children and families in response to current COVID-19 health concerns.
- [20-033 COVID-19 Response-Drug Screen Collection Suspension.pdf](#)
MDHHS has suspended all oral fluid collections by MDHHS and private agency staff. Limited testing ability will still be available through third-party administrators (TPAs).
- [20-034 COVID-19 Response-Child Caring Institutions Staffing Ratio.pdf](#)
MDHHS recognizes that Child Caring Institutions (CCI) may experience temporary difficulty adhering to the contracted staffing ratios in some CCIs due to COVID-19. Please see the attached communication related to CCI ratios.
- [20-035 COVID-19 Response-Guidance to Child Welfare Foster Home Licensing Staff.pdf](#)
This guidance is being provided to assure procedures are in place to maintain the renewal of licenses for foster family homes and foster family group homes, and to address the continuity of necessary contact by child welfare licensing staff.
- [20-038 COVID-19 Response-Guidance for Congregate Settings](#)
This guidance is being provided to assist congregate setting facilities in Michigan with devising strategies to prevent the introduction of COVID-19 and other respiratory diseases into the facility, manage known or potential exposures, and prevent widespread transmission of COVID-19 in the facility.
- [20-058 COVID-19 Response-Consideration of Early Release for Juvenile Justice Youth](#)
Juvenile justice specialists and residential and detention staff should work with the youth's court of jurisdiction to review files and determine whether it is appropriate to recommend early release.

Last Updated 05/20/20

Appendix B

March 19, 2020 Memo from Milton Mack, Jr.

“Reporting Deadline Extensions”



Michigan Supreme Court

State Court Administrative Office
Michigan Hall of Justice
P.O. Box 30048
Lansing, Michigan 48909
517-373-0128

Thomas P. Boyd
State Court Administrator

MEMORANDUM

DATE: April 8, 2020

TO: Judges
Court Administrators
Probate Registers

CC: Authorized Users of MCAP Applications

FROM: Thomas P. Boyd

RE: Reporting Deadlines - Suspended Until Further Notice

In March, SCAO announced extensions for numerous reporting requirements. At this time, to allow courts to focus on essential services and adapt to holding hearings remotely, we are suspending most of those deadlines until further notice. The deadlines are provided on page 2.

When your court does submit these reports, the time period covered by the report remains unchanged. For example, the Delay in Criminal Proceedings Report that is normally due in April will still cover activity in January-March. Further, if you are able to submit any reports during this suspension, the MCAP applications and SCAO staff are available to receive those.

There are two important exceptions to the suspension of reporting deadlines. The following reports are necessary for SCAO to disburse funds to the courts:

1. **The deadline for the Drug and Drunk Driving Reimbursement report remains April 30.**
2. **The deadline for the Jury Fees report remains May 31.**

If you have any difficulty submitting these two reports, please contact your regional administrator.

Thank you for your dedicated service during these very stressful times.

April 8, 2020

Page Two

Original Deadline	2020 Deadline	Report Name	Applicability	Authority
March 31	Suspended	Court Costs Imposed and Collected (CCIC)*	Circuit & District Cts	MCL 769.1k(8)
March 31	Suspended	Court Security Reporting	All Trial Courts	AO 2019-1
March 31	April 30	Drug & Drunk Driving Reimb. (DADDRS)*	Circuit & District Cts	MCL 257.323d MCL 257.625h
March 31	Suspended	Jury Statistics Report (JSR)*	All Trial Courts	
March 31	Suspended	Permanency Indicators Reports (PIR)*	Circuit Courts**	MCL 712A.22
April 10	Suspended	Delay in Matters Submitted to Judge (DMS)*	All Judges	MCR 8.107(B)
April 7	Suspended	Delay in Criminal Proceedings (DCP)*	Circuit & District Cts	MCR 8.110(C)(6)
April 15	Suspended	Financial Report	All Judges	Canon 6c
April 30	May 31	Report of Jury Fees*	All Trial Courts	MCL 600.151d
April 30	Suspended	PIR Verification*	Circuit Courts	MCL 712A.22

*Submitted through MCAP to SCAO.

**Courts that manage child protective cases using a JIS system are not required to submit a PIR report. See the March 22, 2019 [memo](#) for additional details.