

Appendix M
Possible Court Rule
Amendments

Possible Court Rule Amendments:

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Possible Court Rule Amendments:

Rule 3.605 Collection of Penalties, Fines, Forfeitures, and Forfeited Recognizances

(A) Definition. The term "penalty," as used in this rule, includes fines, forfeitures, and forfeited recognizances, unless otherwise provided in this rule.

(B) Parties. The civil action for a pecuniary penalty incurred for the violation of an ordinance of a city or village must be brought in the name of the city or village. Other actions to recover penalties must be brought in the name of the people of the State of Michigan.

(C) Judgment on Penalty. In an action against a party liable for a penalty, judgment may be rendered directly against the party and in favor of the other party on motion and showing that the condition has occurred giving rise to the penalty. This subrule does not apply to forfeited civil recognizances under MCR 3.604 or to forfeited criminal recognizances under MCL 765.28.

(D) Remission of Penalty. An application for the remission of a penalty, including a bond forfeiture, may be made to the judge who imposed the penalty or ordered the forfeiture. The application may not be heard until reasonable notice has been given to the prosecuting attorney (or municipal attorney) and he or she has had an opportunity to examine the matter and prepare to resist the application. The application may not be granted without payment of the costs and expenses incurred in the proceedings for the collection of the penalty, **unless waived by the court.**

(E) Duty of Clerk When Fine Without Order for Commitment; Duty of Prosecutor. When a fine is imposed by a court on a person, without an order for the immediate commitment of the person until the fine is paid, the clerk of the court shall deliver a copy of the order imposing the fine to the prosecuting attorney of the county in which the court is held, or the municipal attorney in the case of a fine that is payable to a municipality. The prosecuting attorney (or municipal attorney) shall obtain execution to collect the fine.

Rule 3.606 Contempts Outside Immediate Presence of Court

(A) Initiation of Proceeding. For a contempt committed outside the immediate view and presence of the court, on a proper showing on ex parte motion supported by affidavits, the court shall either

(1) order the accused person to show cause, at a reasonable time specified in the order, why that person should not be punished for the alleged misconduct; or

(2) issue a bench warrant for the arrest of the person.

(B) Writ of Habeas Corpus. A writ of habeas corpus to bring up a prisoner to testify may be used to bring before the court a person charged with misconduct under this rule. The court may enter an appropriate order for the disposition of the person.

(C) Bond for Appearance.

(1) The court may allow the giving of a bond in lieu of arrest, prescribing in the bench warrant the penalty of the bond and the return day for the defendant.

(2) The defendant is discharged from arrest on executing and delivering to the arresting officer a bond

(a) in the penalty endorsed on the bench warrant to the officer and the officer's successors,

(b) with two sufficient sureties, and

(c) with a condition that the defendant appear on the return day and await the order and judgment of the court.

(3) Return of Bond. On returning a bench warrant, the officer executing it must return the bond of the defendant, if one was taken. The bond must be filed with the bench warrant.

(D) Assignment of Bond; Damages. The court may order assignment of the bond to an aggrieved party who is authorized by the court to prosecute the bond under MCR 3.604(H). The measure of the damages to be assessed in an action on the bond is the extent of the loss or injury sustained by the aggrieved party because of the misconduct for which the order for arrest was issued, and that party's costs and expenses in securing the order. The remainder of the penalty of the bond is paid into the treasury of the county in which the bond was taken, to the credit of the general fund.

(E) Prosecution on Bond by Attorney General or Prosecutor. If the court does not order an assignment as provided in (D), it shall order the breach prosecuted by the Attorney General or by the prosecuting attorney for the county in which the bond was taken, under MCR 3.604. The penalty recovered is to be paid into the treasury of the county in which the bond was taken, to the credit of the general fund.

(F) The court shall not sentence a person to a term of incarceration unless the court has complied with the provisions of MCL 6.425(E)(3). Proceedings to which the Child Support and Parenting Time Enforcement Act, MCL 552.602 et. seq. applies are subject to the requirements of that Act.

Rule 3.928 Contempt of Court

(A) Power. The court has the authority to hold persons in contempt of court as provided by MCL 600.1701 and 712A.26. A parent, guardian, or legal custodian of a juvenile who is within the court's jurisdiction and who fails to attend a hearing as required is subject to the contempt power as provided in MCL 712A.6a.

(B) Procedure. Contempt of court proceedings are governed by MCL 600.1711, 600.1715, and MCR 3.606. MCR 3.982-3.989 govern proceedings against a minor for contempt of a minor personal protection order.

(C) Contempt by Juvenile. A juvenile under court jurisdiction who is convicted of criminal contempt of court, and who was at least 17 years of age when the contempt was committed, may be sentenced to up to 93 days in the county jail as a disposition for the contempt. Juveniles sentenced under this subrule need not be lodged separately and apart from adult prisoners. Younger juveniles found in contempt of court are subject to a juvenile disposition under these rules.

(D) Determination of Ability to Pay. A juvenile and/or parent shall not be detained or incarcerated for the nonpayment of court ordered financial obligations as ordered by the court, unless the court determines that the juvenile and/or parent has the resources to pay and has not made a good-faith effort to do so.

Rule 3.944 Probation Violation

(A) Petition; Temporary Custody.

(1) Upon receipt of a sworn supplemental petition alleging that the juvenile has violated any condition of probation, the court may:

(a) direct that the juvenile be notified pursuant to MCR 3.920 to appear for a hearing on the alleged violation, which notice must include a copy of the probation violation petition and a notice of the juvenile's rights as provided in subrule (C)(1); or

(b) order that the juvenile be apprehended and brought to the court for a detention hearing, which must be commenced within 24 hours after the juvenile has been taken into court custody, excluding Sundays and holidays as defined in MCR 8.110 (D)(2).

(2) When a juvenile is apprehended pursuant to court order as provided in subrule (A)(1)(b), the officer must:

(a) forthwith take the juvenile

(i) to the court for a detention hearing, or

(ii) to the place designated by the court pending the scheduling of a detention hearing; and

(b) notify the custodial parent, guardian, or legal custodian that the juvenile has been taken into custody, of the time and place of the detention hearing, if known, and of the need for the presence of the parent, guardian, or legal custodian at the detention hearing.

(B) Detention Hearing; Procedure. At the detention hearing:

(1) The court must determine whether a parent, guardian, or legal custodian has been notified and is present. If a parent, guardian, or legal custodian has been notified, but fails to appear, the detention hearing may be conducted without a parent, guardian, or legal custodian if a guardian ad litem or attorney appears with the juvenile.

(2) The court must provide the juvenile with a copy of the petition alleging probation violation.

(3) The court must read the petition to the juvenile, unless the attorney or juvenile waives the reading.

(4) The court must advise the juvenile of the juvenile's rights as provided in subrule (C)(1) and of the possible dispositions.

(5) The juvenile must be allowed an opportunity to deny or otherwise plead to the probation violation. If the juvenile wishes to admit the probation violation or plead no contest, the court must comply with subrule (D) before accepting the plea.

(a) If the juvenile admits the probation violation or pleads no contest, and the court accepts the plea, the court may modify the existing order of probation or may order any disposition available under MCL 712A.18 or MCL 712A.18a.

(b) If the juvenile denies the probation violation or remains silent, the court must schedule a probation violation hearing, which must commence within 42 days. The court may order the juvenile detained without bond pending the probation violation hearing if there is probable cause to believe the juvenile violated probation. If the hearing is not commenced within 42 days, and the delay in commencing the hearing is not attributable to the juvenile, the juvenile must be released pending hearing without requiring that bail be posted.

(C) Probation Violation Hearing.

(1) At the probation violation hearing, the juvenile has the following rights:

(a) the right to be present at the hearing,

(b) the right to an attorney pursuant to MCR 3.915(A)(1),

(c) the right to have the petitioner prove the probation violation by a preponderance of the evidence,

(d) the right to have the court order any witnesses to appear at the hearing,

(e) the right to question witnesses against the juvenile,

(f) the right to remain silent and not have that silence used against the juvenile, and

(g) the right to testify at the hearing, if the juvenile wants to testify.

(2) At the probation violation hearing, the Michigan Rules of Evidence do not apply, other than those with respect to privileges. There is no right to a jury.

(3) If it is alleged that the juvenile violated probation by having been found, pursuant to MCR 3.941 or MCR 3.942, to have committed an offense, the juvenile may then be found to have violated probation pursuant to this rule.

(D) Pleas of Admission or No Contest. If the juvenile wishes to admit the probation violation or plead no contest, before accepting the plea, the court must:

(1) tell the juvenile the nature of the alleged probation violation;

(2) tell the juvenile the possible dispositions;

(3) tell the juvenile that if the plea is accepted, the juvenile will not have a contested hearing of any kind, so the juvenile would give up the rights that the juvenile would have at a contested hearing, including the rights as provided in subrule (C)(1);

(4) confirm any plea agreement on the record;

(5) ask the juvenile if any promises have been made beyond those in the plea agreement and whether anyone has threatened the juvenile;

(6) establish support for a finding that the juvenile violated probation,

(a) by questioning the juvenile or by other means when the plea is a plea of admission, or

(b) by means other than questioning the juvenile when the juvenile pleads no contest. The court must also state why a plea of no contest is appropriate;

(7) inquire of the parent, guardian, legal custodian, or guardian ad litem whether there is any reason why the court should not accept the juvenile's plea. Agreement or objection by the parent, guardian, legal custodian, or guardian ad litem to a plea of admission or of no contest by a juvenile shall be placed on the record if the parent, guardian, legal custodian, or guardian ad litem is present; and

(8) determine that the plea is accurately, voluntarily and understandingly made.

(E) Disposition of Probation Violation; Reporting.

(1) If, after hearing, the court finds that a violation of probation has occurred, the court may modify the existing order of probation or order any disposition available under MCL 712A.18 or MCL 712A.18a.

(2) If, after hearing, the court finds that a violation of probation occurred on the basis of the juvenile having committed an offense, that finding must be recorded as a violation of probation only and not a finding that the juvenile committed the underlying offense. That finding must not be reported to the State Police or the Secretary of State as an adjudication or a disposition.

(F) Determination of Ability to Pay. A juvenile and/or parent shall not be detained or incarcerated for the nonpayment of court ordered financial obligations as ordered by the court, unless the court determines that the juvenile and/or parent has the resources to pay and has not made a good-faith effort to do so.

Rule 3.956 Review Hearings; Probation Violation

(A) Review Hearings in Delayed Imposition of Sentence Cases.

(1) When Required. If the court entered an order of disposition delaying imposition of sentence, the court shall conduct a review hearing to determine whether the juvenile has been rehabilitated and whether the juvenile presents a serious risk to public safety.

(a) Time of Hearing.

(i) Annual Review. The court shall conduct an annual review of the probation, including, but not limited to, the services being provided to the juvenile, the juvenile's placement, and the juvenile's progress in placement. In conducting the review, the court must examine any report prepared under MCL 803.223, and any report prepared by the officer or agency supervising probation. The court may order changes in the juvenile's probation on the basis of the review including, but not limited to, imposition of sentence.

(ii) Review on Request of Institution or Agency. If an institution or agency to which the juvenile was committed believes that the juvenile has been rehabilitated and does not present a serious risk to public safety, the institution or agency may petition the court to conduct a review hearing at any time before the juvenile becomes 19 years of age or, if the court has extended jurisdiction, any time before the juvenile becomes 21 years of age.

(iii) Mandatory Review. The court shall schedule a review hearing to be held within 42 days before the juvenile attains the age of 19, unless adjourned for good cause.

(iv) Final Review. The court shall conduct a final review of the juvenile's probation not less than 91 days before the end of the probation period.

(b) Notice of Hearing. Notice of the hearing must be given at least 14 days before the hearing to

(i) the prosecuting attorney;

(ii) the agency or the superintendent of the institution or facility to which the juvenile has been committed;

(iii) the juvenile; and

(iv) if the address or whereabouts are known, the parent, guardian, or legal custodian of the juvenile.

The notice must clearly indicate that the court may extend jurisdiction over the juvenile or impose sentence and must advise the juvenile and the parent, guardian, or legal custodian of the juvenile that the juvenile has a right to an attorney.

(2) Appointment of Attorney. The court must appoint an attorney to represent the juvenile unless an attorney has been retained. The court may assess the cost of providing an attorney as costs against the juvenile or those responsible for the juvenile's support, or both, if the persons to be assessed are financially able to comply.

(3) Evidence; Commitment Report. The court may consider the commitment report prepared as provided in MCL 803.225 and any report prepared upon the court's order by the officer or agency supervising probation.

(4) Burden of Proof; Findings.

(a) Before the court may continue jurisdiction over the juvenile or impose sentence, the prosecuting attorney must demonstrate by a preponderance of the evidence that the juvenile has not been rehabilitated or that the juvenile presents a serious risk to public safety. The Michigan Rules of Evidence, other than those with respect to privileges, do not apply. In making the determination, the court must consider the following factors:

(i) the extent and nature of the juvenile's participation in education, counseling, or work programs;

(ii) the juvenile's willingness to accept responsibility for prior behavior;

(iii) the juvenile's behavior in the current placement;

(iv) the juvenile's prior record, character, and physical and mental maturity;

(v) the juvenile's potential for violent conduct as demonstrated by prior behavior;

(vi) the recommendation of the institution, agency, or facility charged with the juvenile's care for the juvenile's release or continued custody;

(vii) any other information the prosecuting attorney or the juvenile submit.

(b) Before the court may impose a sentence at the final review hearing, the court must determine that the best interests of the public would be served by the imposition of a sentence provided by law for an adult offender. In making the determination, the court must consider the following factors, in addition to the criteria specified in subrule (4)(a):

(i) the effect of treatment on the juvenile's rehabilitation;

(ii) whether the juvenile is likely to be dangerous to the public if released;

(iii) the best interests of the public welfare and the protection of public security.

(5) Sentencing credit. If a sentence of imprisonment is imposed, the juvenile shall receive credit for the time served on probation.

(B) Violation of Probation in Delayed Imposition of Sentence Cases.

(1) Subsequent Conviction. If a juvenile placed on probation under an order of disposition delaying imposition of sentence is found by the court to have violated probation by being convicted of a felony or a misdemeanor punishable by imprisonment for more than 1 year, or adjudicated as responsible for an offense that if committed by an adult would be a felony or a misdemeanor punishable by imprisonment for more than 1 year, the court shall revoke probation and sentence the juvenile to imprisonment for a term that does not exceed the penalty that could have been imposed for the offense for which the juvenile was originally convicted and placed on probation.

(2) Other Violations of Probation. If a juvenile placed on probation under an order of disposition delaying imposition of sentence is found by the court to have violated probation other than as provided in subrule (B)(1), the court may impose sentence or may order any of the following for the juvenile:

(a) A change in placement.

(b) Community service.

(c) Substance abuse counseling.

(d) Mental health counseling.

(e) Participation in a vocational-technical program.

(f) Incarceration in the county jail for not more than 30 days if the present county jail facility would meet all requirements under federal law and regulations for housing juveniles, and if the court has consulted with the sheriff to determine when the sentence will begin to ensure that space will be available for the juvenile. If the juvenile is under 17 years of age, the juvenile must be placed in a room or ward out of sight and sound from adult prisoners.

(g) Other participation or performance as the court considers necessary.

(3) Hearing. The probation violation hearing must be conducted pursuant to MCR 3.944(C).

(4) Sentencing Credit. If a sentence of imprisonment is imposed, the juvenile must receive credit for the time served on probation.

(C) Determination of Ability to Pay. A juvenile and/or parent shall not be detained or incarcerated for the nonpayment of court ordered financial obligations as ordered by the court, unless the court determines that the juvenile and/or parent has the resources to pay and has not made a good-faith effort to do so.

Rule 6.001 Scope; Applicability of Civil Rules; Superseded Rules and Statutes

(A) Felony Cases. The rules in subchapters 6.000-6.500 govern matters of procedure in criminal cases cognizable in the circuit courts and in courts of equivalent criminal jurisdiction.

(B) Misdemeanor Cases. MCR 6.001-6.004, 6.005(B) and (C), 6.006, 6.102(D) and (F), 6.106, 6.125, 6.202, **6.425(E)(3)**, 6.427, 6.445(A)-(G), and the rules in subchapters 6.600-6.800 govern matters of procedure in criminal cases cognizable in the district courts.

(C) Juvenile Cases. The rules in subchapter 6.900 govern matters of procedure in the district courts and in circuit courts and courts of equivalent criminal jurisdiction in cases involving juveniles against whom the prosecutor has authorized the filing of a criminal complaint as provided in MCL 764.1f.

(D) Civil Rules Applicable. The provisions of the rules of civil procedure apply to cases governed by this chapter, except

(1) as otherwise provided by rule or statute,

(2) when it clearly appears that they apply to civil actions only, or

(3) when a statute or court rule provides a like or different procedure.

Depositions and other discovery proceedings under subchapter 2.300 may not be taken for the purposes of discovery in cases governed by this chapter. The provisions of MCR 2.501(C) regarding the length of notice of trial assignment do not apply in cases governed by this chapter.

(E) Rules and Statutes Superseded. The rules in this chapter supersede all prior court rules in this chapter and any statutory procedure pertaining to and inconsistent with a procedure provided by a rule in this chapter.

Rule 6.425 Sentencing; Appointment of Appellate Counsel

(A) Presentence Report; Contents.

(1) Prior to sentencing, the probation officer must investigate the defendant's background and character, verify material information, and report in writing the results of the investigation to the court. The report must be succinct and, depending on the circumstances, include:

(a) a description of the defendant's prior criminal convictions and juvenile adjudications,

- (b) a complete description of the offense and the circumstances surrounding it,
- (c) a brief description of the defendant's vocational background and work history, including military record and present employment status,
- (d) a brief social history of the defendant, including marital status, financial status, length of residence in the community, educational background, and other pertinent data,
- (e) the defendant's medical history, substance abuse history, if any, and, if indicated, a current psychological or psychiatric report,
- (f) information concerning the financial, social, psychological, or physical harm suffered by any victim of the offense, including the restitution needs of the victim,
- (g) if provided and requested by the victim, a written victim's impact statement as provided by law,
- (h) any statement the defendant wishes to make,
- (i) a statement prepared by the prosecutor on the applicability of any consecutive sentencing provision,
- (j) an evaluation of and prognosis for the defendant's adjustment in the community based on factual information in the report,
- (k) a specific recommendation for disposition, and
- (l) any other information that may aid the court in sentencing.

(2) A presentence investigation report shall not include any address or telephone number for the home, workplace, school, or place of worship of any victim or witness, or a family member of any victim or witness, unless an address is used to identify the place of the crime or to impose conditions of release from custody that are necessary for the protection of a named individual. Upon request, any other address or telephone number that would reveal the location of a victim or witness or a family member of a victim or witness shall be exempted from disclosure unless an address is used to identify the place of the crime or to impose conditions of release from custody that are necessary for the protection of a named individual.

(3) Regardless of the sentence imposed, the court must have a copy of the presentence report and of any psychiatric report sent to the Department of Corrections. If the defendant is sentenced to prison, the copies must be sent with the commitment papers.

(B) Presentence Report; Disclosure Before Sentencing. The court must provide copies of the presentence report to the prosecutor, and the defendant's lawyer, or the defendant if not represented by a lawyer, at a reasonable time, but not less than two business days, before the day of sentencing. The prosecutor and the defendant's lawyer, or the defendant if not represented by

a lawyer, may retain a copy of the report or an amended report. If the presentence report is not made available to the prosecutor and the defendant's lawyer, or the defendant if not represented by a lawyer, at least two business days before the day of sentencing, the prosecutor and the defendant's lawyer, or the defendant if not represented by a lawyer, shall be entitled, on oral motion, to an adjournment of the day of sentencing to enable the moving party to review the presentence report and to prepare any necessary corrections, additions, or deletions to present to the court. The court may exempt from disclosure information or diagnostic opinion that might seriously disrupt a program of rehabilitation and sources of information that have been obtained on a promise of confidentiality. When part of the report is not disclosed, the court must inform the parties that information has not been disclosed and state on the record the reasons for nondisclosure. To the extent it can do so without defeating the purpose of nondisclosure, the court also must provide the parties with a written or oral summary of the nondisclosed information and give them an opportunity to comment on it. The court must have the information exempted from disclosure specifically noted in the report. The court's decision to exempt part of the report from disclosure is subject to appellate review.

(C) Presentence Report; Disclosure After Sentencing. After sentencing, the court, on written request, must provide the prosecutor, the defendant's lawyer, or the defendant not represented by a lawyer, with a copy of the presentence report and any attachments to it. The court must exempt from disclosure any information the sentencing court exempted from disclosure pursuant to subrule (B).

(D) Sentencing Guidelines. The court must use the sentencing guidelines, as provided by law. Proposed scoring of the guidelines shall accompany the presentence report.

(E) Sentencing Procedure.

(1) The court must sentence the defendant within a reasonably prompt time after the plea or verdict unless the court delays sentencing as provided by law. At sentencing, the court must, on the record:

(a) determine that the defendant, the defendant's lawyer, and the prosecutor have had an opportunity to read and discuss the presentence report,

(b) give each party an opportunity to explain, or challenge the accuracy or relevancy of, any information in the presentence report, and resolve any challenges in accordance with the procedure set forth in subrule (E)(2),

(c) give the defendant, the defendant's lawyer, the prosecutor, and the victim an opportunity to advise the court of any circumstances they believe the court should consider in imposing sentence,

(d) state the sentence being imposed, including the minimum and maximum sentence if applicable, together with any credit for time served to which the defendant is entitled,

(e) if the sentence imposed is not within the guidelines range, articulate the substantial and compelling reasons justifying that specific departure, and

(f) order that the defendant make full restitution as required by law to any victim of the defendant's course of conduct that gives rise to the conviction, or to that victim's estate.

(2) Resolution of Challenges. If any information in the presentence report is challenged, the court must allow the parties to be heard regarding the challenge, and make a finding with respect to the challenge or determine that a finding is unnecessary because it will not take the challenged information into account in sentencing. If the court finds merit in the challenge or determines that it will not take the challenged information into account in sentencing, it must direct the probation officer to

(a) correct or delete the challenged information in the report, whichever is appropriate, and

(b) provide defendant's lawyer with an opportunity to review the corrected report before it is sent to the Department of Corrections.

(3) Incarceration for Nonpayment.

(a) The court shall not sentence a defendant to a term of incarceration, nor revoke probation, for failure to comply with an order to pay money unless the court finds, on the record, that the defendant is able to comply with the order without manifest hardship and that the defendant has not made a good faith effort to comply with the order.

(b) Payment alternatives. If the court finds that the defendant is unable to comply with an order to pay money without manifest hardship, the court may impose a payment alternative, such as a payment plan, modification of any existing payment plan, or waiver of part or all of the amount of money owed to the extent permitted by law.

(c) Determining manifest hardship. The court shall consider the following criteria in determining manifest hardship:

(i) Defendant's employment status and history.

(ii) Defendant's employability and earning ability.

(iii) The willfulness of the defendant's failure to pay.

(iv) Defendant's financial resources.

(v) Defendant's basic living expenses, including but not limited to food, shelter, clothing, necessary medical expenses, or child support.

(vi) Any other special circumstances that may have bearing on the defendant's ability to pay.

(F) Advice Concerning the Right to Appeal; Appointment of Counsel.

(1) In a case involving a conviction following a trial, immediately after imposing sentence, the court must advise the defendant, on the record, that

(a) the defendant is entitled to appellate review of the conviction and sentence,

(b) if the defendant is financially unable to retain a lawyer, the court will appoint a lawyer to represent the defendant on appeal, and

(c) the request for a lawyer must be made within 42 days after sentencing.

(2) In a case involving a conviction following a plea of guilty or nolo contendere, immediately after imposing sentence, the court must advise the defendant, on the record, that

(a) the defendant is entitled to file an application for leave to appeal,

(b) if the defendant is financially unable to retain a lawyer, the court will appoint a lawyer to represent the defendant on appeal, and

(c) the request for a lawyer must be made within 42 days after sentencing.

(3) The court also must give the defendant a request for counsel form containing an instruction informing the defendant that the form must be completed and returned to the court within 42 days after sentencing if the defendant wants the court to appoint a lawyer.

(4) When imposing sentence in a case in which sentencing guidelines enacted in 1998 PA 317, MCL 777.1 *et seq.*, are applicable, if the court imposes a minimum sentence that is longer or more severe than the range provided by the sentencing guidelines, the court must advise the defendant on the record and in writing that the defendant may seek appellate review of the sentence, by right if the conviction followed trial or by application if the conviction entered by plea, on the ground that it is longer or more severe than the range provided by the sentencing guidelines.

(G) Appointment of Lawyer; Trial Court Responsibilities in Connection with Appeal.

(1) Appointment of Lawyer.

(a) Unless there is a postjudgment motion pending, the court must rule on a defendant's request for a lawyer within 14 days after receiving it. If there is a postjudgment motion pending, the court must rule on the request after the court's disposition of the pending motion and within 14 days after that disposition.

(b) In a case involving a conviction following a trial, if the defendant is indigent, the court must enter an order appointing a lawyer if the request is filed within 42 days after sentencing or within

the time for filing an appeal of right. The court should liberally grant an untimely request as long as the defendant may file an application for leave to appeal.

(c) In a case involving a conviction following a plea of guilty or nolo contendere, if the defendant is indigent, the court must enter an order appointing a lawyer if the request is filed within 42 days after sentencing.

(d) Scope of Appellate Lawyer's Responsibilities. The responsibilities of the appellate lawyer appointed to represent the defendant include representing the defendant

(i) in available postconviction proceedings in the trial court the lawyer deems appropriate,

(ii) in postconviction proceedings in the Court of Appeals,

(iii) in available proceedings in the trial court the lawyer deems appropriate under MCR 7.208(B) or 7.211(C)(1), and

(iv) as appellee in relation to any postconviction appeal taken by the prosecutor.

(2) Order to Prepare Transcript. The appointment order also must

(a) direct the court reporter to prepare and file, within the time limits specified in MCR 7.210,

(i) the trial or plea proceeding transcript,

(ii) the sentencing transcript, and

(iii) such transcripts of other proceedings, not previously transcribed, that the court directs or the parties request, and

(b) provide for the payment of the reporter's fees.

The court must promptly serve a copy of the order on the prosecutor, the defendant, the appointed lawyer, the court reporter, and the Michigan Appellate Assigned Counsel System. If the appointed lawyer timely requests additional transcripts, the trial court shall order such transcripts within 14 days after receiving the request.

(3) Order as Claim of Appeal; Trial Cases. In a case involving a conviction following a trial, if the defendant's request for a lawyer, timely or not, was made within the time for filing a claim of appeal, the order described in subrules (G)(1) and (2) must be entered on a form approved by the State Court Administrative Office, entitled "Claim of Appeal and Appointment of Counsel," and the court must immediately send to the Court of Appeals a copy of the order and a copy of the judgment being appealed. The court also must file in the Court of Appeals proof of having made service of the order as required in subrule (G)(2). Entry of the order by the trial court pursuant to this subrule constitutes a timely filed claim of appeal for the purposes of MCR 7.204.

Rule 6.445 Probation Revocation

(A) Issuance of Summons; Warrant. On finding probable cause to believe that a probationer has violated a condition of probation, the court may

(1) issue a summons in accordance with MCR 6.103(B) and (C) for the probationer to appear for arraignment on the alleged violation, or

(2) issue a warrant for the arrest of the probationer.

An arrested probationer must promptly be brought before the court for arraignment on the alleged violation.

(B) Arraignment on the Charge. At the arraignment on the alleged probation violation, the court must

(1) ensure that the probationer receives written notice of the alleged violation,

(2) advise the probationer that

(a) the probationer has a right to contest the charge at a hearing, and

(b) the probationer is entitled to a lawyer's assistance at the hearing and at all subsequent court proceedings, and that the court will appoint a lawyer at public expense if the probationer wants one and is financially unable to retain one,

(3) if requested and appropriate, appoint a lawyer,

(4) determine what form of release, if any, is appropriate, and

(5) subject to subrule (C), set a reasonably prompt hearing date or postpone the hearing.

(C) Scheduling or Postponement of Hearing. The hearing of a probationer being held in custody for an alleged probation violation must be held within 14 days after the arraignment or the court must order the probationer released from that custody pending the hearing. If the alleged violation is based on a criminal offense that is a basis for a separate criminal prosecution, the court may postpone the hearing for the outcome of that prosecution.

(D) Continuing Duty to Advise of Right to Assistance of Lawyer. Even though a probationer charged with probation violation has waived the assistance of a lawyer, at each subsequent proceeding the court must comply with the advice and waiver procedure in MCR 6.005(E).

(E) The Violation Hearing.

(1) Conduct of the Hearing. The evidence against the probationer must be disclosed to the probationer. The probationer has the right to be present at the hearing, to present evidence, and to examine and cross-examine witnesses. The court may consider only evidence that is relevant to

the violation alleged, but it need not apply the rules of evidence except those pertaining to privileges. The state has the burden of proving a violation by a preponderance of the evidence.

(2) Judicial Findings. At the conclusion of the hearing, the court must make findings in accordance with MCR 6.403.

(F) Pleas of Guilty. The probationer may, at the arraignment or afterward, plead guilty to the violation. Before accepting a guilty plea, the court, speaking directly to the probationer and receiving the probationer's response, must

(1) advise the probationer that by pleading guilty the probationer is giving up the right to a contested hearing and, if the probationer is proceeding without legal representation, the right to a lawyer's assistance as set forth in subrule (B)(2)(b),

(2) advise the probationer of the maximum possible jail or prison sentence for the offense,

(3) ascertain that the plea is understandingly, voluntarily, and accurately made, and

(4) establish factual support for a finding that the probationer is guilty of the alleged violation.

(G) Sentencing. If the court finds that the probationer has violated a condition of probation, or if the probationer pleads guilty to a violation, the court may continue probation, modify the conditions of probation, extend the probation period, or revoke probation and impose a sentence of incarceration. The court may not sentence the probationer to prison without having considered a current presentence report. **The court may not sentence the probationer to prison or jail for failing to pay fines, costs, restitution, and other financial obligations imposed by the court without and** having complied with the provisions set forth in MCR 6.425(B) and (E).

(H) Review.

(1) In a case involving a sentence of incarceration under subrule (G), the court must advise the probationer on the record, immediately after imposing sentence, that

(a) the probationer has a right to appeal, if the underlying conviction occurred as a result of a trial, or

(b) the probationer is entitled to file an application for leave to appeal, if the underlying conviction was the result of a plea of guilty or nolo contendere.

(2) In a case that involves a sentence other than incarceration under subrule (G), the court must advise the probationer on the record, immediately after imposing sentence, that the probationer is entitled to file an application for leave to appeal.

Rule 6.610 Criminal Procedure Generally

(A) Precedence. Criminal cases have precedence over civil actions.

(B) Pretrial. The court, on its own initiative or on motion of either party, may direct the prosecutor and the defendant, and, if represented, the defendant's attorney to appear for a pretrial conference. The court may require collateral matters and pretrial motions to be filed and argued no later than this conference.

(C) Record. Unless a writing is permitted, a verbatim record of the proceedings before a court under subrules (D)-(F) must be made.

(D) Arraignment; District Court Offenses.

(1) Whenever a defendant is arraigned on an offense over which the district court has jurisdiction, the defendant must be informed of

(a) the name of the offense;

(b) the maximum sentence permitted by law; and

(c) the defendant's right

(i) to the assistance of an attorney and to a trial;

(ii) (if subrule [D][2] applies) to an appointed attorney; and

(iii) to a trial by jury, when required by law.

The information may be given in a writing that is made a part of the file or by the court on the record.

(2) An indigent defendant has a right to an appointed attorney whenever the offense charged requires on conviction a minimum term in jail or the court determines it might sentence to a term of incarceration, even if suspended.

If an indigent defendant is without an attorney and has not waived the right to an appointed attorney, the court may not sentence the defendant to jail or to a suspended jail sentence.

(3) The right to the assistance of an attorney, to an appointed attorney, or to a trial by jury is not waived unless the defendant

(a) has been informed of the right; and

(b) has waived it in a writing that is made a part of the file or orally on the record.

(4) The court may allow a defendant to enter a plea of not guilty or to stand mute without formal arraignment by filing a written statement signed by the defendant and any defense attorney of record, reciting the general nature of the charge, the maximum possible sentence, the rights of the defendant at arraignment, and the plea to be entered. The court may require that an appropriate bond be executed and filed and appropriate and reasonable sureties posted or

continued as a condition precedent to allowing the defendant to be arraigned without personally appearing before the court.

(E) Pleas of Guilty and Nolo Contendere. Before accepting a plea of guilty or nolo contendere, the court shall in all cases comply with this rule.

(1) The court shall determine that the plea is understanding, voluntary, and accurate. In determining the accuracy of the plea,

(a) if the defendant pleads guilty, the court, by questioning the defendant, shall establish support for a finding that defendant is guilty of the offense charged or the offense to which the defendant is pleading, or

(b) if the defendant pleads nolo contendere, the court shall not question the defendant about the defendant's participation in the crime, but shall make the determination on the basis of other available information.

(2) The court shall inform the defendant of the right to the assistance of an attorney. If the offense charged requires on conviction a minimum term in jail, the court shall inform the defendant that if the defendant is indigent the defendant has the right to an appointed attorney. The court shall also give such advice if it determines that it might sentence to a term of incarceration, even if suspended.

(3) The court shall advise the defendant of the following:

(a) the mandatory minimum jail sentence, if any, and the maximum possible penalty for the offense,

(b) that if the plea is accepted the defendant will not have a trial of any kind and that the defendant gives up the following rights that the defendant would have at trial:

(i) the right to have witnesses called for the defendant's defense at trial,

(ii) the right to cross-examine all witnesses called against the defendant,

(iii) the right to testify or to remain silent without an inference being drawn from said silence,

(iv) the presumption of innocence and the requirement that the defendant's guilt be proven beyond a reasonable doubt.

(4) A defendant or defendants may be informed of the trial rights listed in subrule (3)(b) as follows:

(a) on the record,

(b) in a writing made part of the file, or

(c) in a writing referred to on the record.

If the court uses a writing pursuant to subrule (E)(4)(b) or (c), the court shall address the defendant and obtain from the defendant orally on the record a statement that the rights were read and understood and a waiver of those rights. The waiver may be obtained without repeating the individual rights.

(5) The court shall make the plea agreement a part of the record and determine that the parties agree on all the terms of that agreement. The court shall accept, reject or indicate on what basis it accepts the plea.

(6) The court must ask the defendant:

(a) (if there is no plea agreement) whether anyone has promised the defendant anything, or (if there is a plea agreement) whether anyone has promised anything beyond what is in the plea agreement;

(b) whether anyone has threatened the defendant; and

(c) whether it is the defendant's own choice to plead guilty.

(7) A plea of guilty or nolo contendere in writing is permissible without a personal appearance of the defendant and without support for a finding that defendant is guilty of the offense charged or the offense to which the defendant is pleading if

(a) the court decides that the combination of the circumstances and the range of possible sentences makes the situation proper for a plea of guilty or nolo contendere;

(b) the defendant acknowledges guilt or nolo contendere, in a writing to be placed in the district court file, and waives in writing the rights enumerated in subrule (3)(b); and

(c) the court is satisfied that the waiver is voluntary.

(8) The following provisions apply where a defendant seeks to challenge the plea.

(a) A defendant may not challenge a plea on appeal unless the defendant moved in the trial court to withdraw the plea for noncompliance with these rules. Such a motion may be made either before or after sentence has been imposed. After imposition of sentence, the defendant may file a motion to withdraw the plea within the time for filing an application for leave to appeal under MCR 7.105(F)(2).

(b) If the trial court determines that a deviation affecting substantial rights occurred, it shall correct the deviation and give the defendant the option of permitting the plea to stand or of withdrawing the plea. If the trial court determines either a deviation did not occur, or that the deviation did not affect substantial rights, it may permit the defendant to withdraw the plea only if it does not cause substantial prejudice to the people because of reliance on the plea.

(c) If a deviation is corrected, any appeal will be on the whole record including the subsequent advice and inquiries.

(9) The State Court Administrator shall develop and approve forms to be used under subrules (E)(4)(b) and (c) and (E)(7)(b).

(F) Sentencing.

(1) For sentencing, the court shall:

(a) require the presence of the defendant's attorney, unless the defendant does not have one or has waived the attorney's presence;

(b) provide copies of the presentence report (if a presentence report was prepared) to the prosecutor and the defendant's lawyer, or the defendant if not represented by a lawyer, at a reasonable time, but not less than two business days before the day of sentencing. The prosecutor and the defendant's lawyer, or the defendant if not represented by a lawyer, may retain a copy of the report or an amended report. If the presentence report is not made available to the prosecutor and the defendant's lawyer, or the defendant if not represented by a lawyer, at least two business days before the day of sentencing, the prosecutor and the defendant's lawyer, or the defendant if not represented by a lawyer, shall be entitled, on oral motion, to an adjournment to enable the moving party to review the presentence report and to prepare any necessary corrections, additions or deletions to present to the court, or otherwise advise the court of circumstances the prosecutor or defendant believes should be considered in imposing sentence. A presentence investigation report shall not include any address or telephone number for the home, workplace, school, or place of worship of any victim or witness, or a family member of any victim or witness, unless an address is used to identify the place of the crime or to impose conditions of release from custody that are necessary for the protection of a named individual. Upon request, any other address or telephone number that would reveal the location of a victim or witness or a family member of a victim or witness shall be exempted from disclosure unless an address is used to identify the place of the crime or to impose conditions of release from custody that are necessary for the protection of a named individual.

(c) inform the defendant of credit to be given for time served, if any.

(2) The court shall not sentence a defendant to a term of incarceration for nonpayment unless the court has complied with the provisions of MCL 6.425(E)(3).

(23) Unless a defendant who is entitled to appointed counsel is represented by an attorney or has waived the right to an attorney, a subsequent charge or sentence may not be enhanced because of this conviction and the defendant may not be incarcerated for violating probation or any other condition imposed in connection with this conviction.

(34) Immediately after imposing a sentence of incarceration, even if suspended, the court must advise the defendant, on the record or in writing, that:

(a) if the defendant wishes to file an appeal and is financially unable to retain a lawyer, the court will appoint a lawyer to represent the defendant on appeal, and

(b) the request for a lawyer must be made within 14 days after sentencing.

(G) Motion for New Trial. A motion for a new trial must be filed within 21 days after the entry of judgment. However, if an appeal has not been taken, a delayed motion may be filed within the time for filing an application for leave to appeal.

(H) Arraignment; Offenses Not Cognizable by the District Court. In a prosecution in which a defendant is charged with a felony or a misdemeanor not cognizable by the district court, the court shall

(1) inform the defendant of the nature of the charge;

(2) inform the defendant of

(a) the right to a preliminary examination;

(b) the right to an attorney, if the defendant is not represented by an attorney at the arraignment;

(c) the right to have an attorney appointed at public expense if the defendant is indigent; and

(d) the right to consideration of pretrial release.

If a defendant not represented by an attorney waives the preliminary examination, the court shall ascertain that the waiver is freely, understandingly, and voluntarily given before accepting it.

Rule 6.933 Juvenile Probation Revocation

(A) General Procedure. When a juvenile, who was placed on juvenile probation and committed to an institution as a state ward, is alleged to have violated juvenile probation, the court shall proceed as provided in MCR 6.445(A)-(F).

(B) Disposition in General.

(1) Certain Criminal Offense Violations.

(a) If the court finds that the juvenile has violated juvenile probation by being convicted of a felony or a misdemeanor punishable by more than one year's imprisonment, the court must revoke the probation of the juvenile and order the juvenile committed to the Department of Corrections for a term of years not to exceed the penalty that could have been imposed for the offense that led to the probation. The court in imposing sentence shall grant credit against the sentence as required by law.

(b) The court may not revoke probation and impose sentence under subrule (B)(1) unless at the original sentencing the court gave the advice, as required by MCR 6.931(F)(2), that subsequent conviction of a felony or a misdemeanor punishable by more than one year's imprisonment would result in the revocation of juvenile probation and in the imposition of a sentence of imprisonment.

(2) Other Violations. If the court finds that the juvenile has violated juvenile probation, other than as provided in subrule (B)(1), the court may order the juvenile committed to the Department of Corrections as provided in subrule (B)(1), or may order the juvenile continued on juvenile probation and under state wardship, and may order any of the following:

(a) a change of placement,

(b) restitution,

(c) community service,

(d) substance abuse counseling,

(e) mental health counseling,

(f) participation in a vocational-technical education program,

(g) incarceration in a county jail for not more than 30 days, and

(h) any other participation or performance as the court considers necessary.

If the court determines to place the juvenile in jail for up to 30 days, and the juvenile is under 17 years of age, the juvenile must be placed separately from adult prisoners as required by law.

(3) If the court revokes juvenile probation pursuant to subrule (B)(1), the court must receive an updated presentence report and comply with MCR 6.445(G) before it imposes a prison sentence on the juvenile.

(C) Disposition Regarding Specific Underlying Offenses.

(1) Controlled Substance Violation Punishable by Mandatory Nonparolable Life Sentence For Adults. A juvenile who was placed on probation and committed to state wardship for manufacture, delivery, or possession with the intent to deliver 650 grams(1,000 grams beginning March 1, 2003) or more of a controlled substance, MCL 333.7401(2)(a)(i), may be resentenced only to a term of years following mandatory revocation of probation for commission of a subsequent felony or a misdemeanor punishable by more than one year of imprisonment.

(2) First-Degree Murder. A juvenile convicted of first-degree murder who violates juvenile probation by being convicted of a felony or a misdemeanor punishable by more than one year's imprisonment may only be sentenced to a term of years, not to nonparolable life.

(D) Review. The juvenile may appeal as of right from the imposition of a sentence of incarceration after a finding of juvenile probation violation.

(D) Determination of Ability to Pay. A juvenile and/or parent shall not be detained or incarcerated for the nonpayment of court ordered financial obligations as ordered by the court, unless the court determines that the juvenile and/or parent has the resources to pay and has not made a good-faith effort to do so.