

1993 PA 317
COLLECTION OF PENALTIES - 20% LATE PENALTY

Procedural Instructions and Forms

- **Governing Statute**

MCL 600.4801 and 600.4803, Definitions and 20% Late Penalty

Under MCL 600.4803, a 20% late penalty shall be applied to any total amount of costs, fees, penalty, or civil violation which has not been paid 56 days after that amount is due. Costs, fees, penalty, and civil violation are defined under MCL 600.4801 as follows:

Costs means any monetary amount that the court is authorized to assess and collect for the prosecution, adjudication, or processing of criminal offenses, civil infractions, civil violations, and parking violations, including court costs, the cost of prosecution, and the cost of providing court ordered legal assistance to the defendant.

Fee means any monetary amount, other than costs or a penalty, that the court is authorized to impose and collect pursuant to a conviction, finding of responsibility, or other adjudication of a criminal offense, a civil infraction, a civil violation, or a parking violation, including a driver license reinstatement fee.

Penalty includes fines, forfeitures, and forfeited recognizances.

Civil violation means a violation of a law of this state or a local ordinance, other than a criminal offense or a violation that is defined or designated as a civil infraction, that is punishable by a civil fine or forfeiture under the applicable law or ordinance.

- **Forms**

Civil Infraction Traffic Proceedings

CIA 02, Judgment

CIA 07-OSM, Default Judgment

Misdemeanor Criminal and Traffic Proceedings

MC 219, Judgment of Sentence

DC 243, Order of Probation

Felony Proceedings

MC 219, Judgment of Sentence

CC 243a, Order of Probation

Bond Forfeiture Proceedings

MC 238, Judgment After Bond Forfeiture

- **Related Statutes and Court Rules**

The following statutes and court rules represent either the authority for the SCAO Approved forms or the content of the forms as it relates to fines, costs, penalties, assessments, and bond forfeitures.

Civil Infraction Traffic Proceedings

- MCL 257.321a, Noticing process and \$25.00 clearance fee
- MCL 257.729, Additional costs incurred in compelling appearance
- MCL 257.907, Civil infractions; penalties; civil fine and costs; suspension of license
- MCR 4.101, Civil infraction actions

Civil Violations

- [minor in possession and DNR violations]
- disposed of on Judgment of Sentence, MC 219

Misdemeanor Criminal and Traffic Proceedings

- MCL 257.321a, Noticing process and \$25.00 clearance fee
- MCL 257.729, Additional costs incurred in compelling appearance
- MCL 765.6c, Use of bond or bail toward payments
- MCR 6.106(I), Termination of release order and application of bond to judgment

Felony Proceedings

- MCL 765.6c, Use of bond or bail toward payments
- MCR 6.106(I), Termination of release order and application of bond to judgment

Bond Forfeiture Proceedings

- MCL 765.15, Forfeiture or discharge of bond or bail; setting aside forfeiture; disposition of security
- MCL 765.22, Distribution of bond or bail toward payments
- MCL 780.66(7) and (8), Bail deposit; forfeiture and application of balance on judgment
- MCL 780.67(8) and (9), Bail bond security; forfeiture and execution of judgment
- MCR 6.106(I), Termination of release order and application of bond to judgment

- **Standard Penalty Language**

SCAO Approved forms will contain fairly standard language on the 20% late penalty. If courts use their own forms, language should be added substantially in the form approved by the SCAO.

Suggested language is as follows:

Fines, costs, and fees not paid within 56 days of the date owed are subject to a 20% late penalty on the amount owed.

- **Systems Criteria**

Below are the basic criteria which automated systems must observe.

- Ability to enter due date of total payment or schedule of due dates for each installment payment.
- Inability to assess additional costs at generation of 14 day notice and license suspension.
- Ability to calculate late penalty of 20% on the total balance owed on the 57th day after the due date of the first payment which has remained unpaid and calculation of new balance.
- Ability to remove late penalty in the event of waiver by the court.
- Inability to calculate more than one late penalty for each original order or judgment.
- Ability to add costs, calculate new balance, and enter new due date or schedule of due dates for each installment payment based on amended order or judgment.
- Ability to generate forfeiture judgment on 29th day after order forfeiting bail bond if defendant fails to appear as ordered including calculation of judgment.
- Ability to generate list of bond accounts to be disposed of 45 days after entry of forfeiture judgment.
- Ability to calculate late penalty of 20% on total balance of forfeiture judgment on 57th day after entry of forfeiture judgment (due date).

- **Procedural Steps**

Procedural steps to take on collecting judgments are as follows:

Civil Infraction Traffic Proceedings

1. When to notify defendant of late penalty.

The defendant should be notified of the possibility of a late penalty at time of judgment. Penalty language has been added to CIA 02, Traffic/Civil Infraction Judgment and CIA 07-OSM, Default Judgment, Civil Infraction (CIA 07-OSM is used only by automated systems). The due date for payment of fine, costs, etc. is the appearance date on CIA 07-OSM.

2. How to track due dates.

Automated systems should follow the criteria specified above. Manual systems should set up a daily tickler file for following up on late payments.

3. When to apply a late penalty.

When a defendant does not pay on a civil infraction judgment within 56 days of the date owed as specified in the judgment and the late penalty has not been waived by the court, a late penalty of 20% of the amount due is to be added to the balance owing on the 57th day after the date owed.

NOTE: The late penalty is a one-time assessment even if an installment payment plan is in effect.

4. Installment payments.

The State Court Administrative Office discourages the practice of installment payments for civil infraction judgments because it is a paper and labor-intensive practice. If, however, the court establishes installment payment plans, counting of the 56 days begins after each due date.

In an automated system, the schedule of due dates must be entered. In a manual system, the tickler file should be updated for each due date. Regardless of the number of due dates which has passed, once the first 56 days has been reached without a payment, the 20% late penalty must be calculated and added to the balance. The late penalty should be calculated on the entire judgment balance owing, not the amount due for the installment payment(s). Once the 20% late penalty has been added, the assessment of a late penalty should be disabled on the automatic system. On a manual system, the record should reflect that the 20% late penalty has been added so that no further penalties are added.

5. Additional notice.

Once the defendant has been notified of the possibility of a late penalty at judgment, there is no need for further notice when a late penalty is assessed except as required when a civil action for collection is sought or the debt is transferred to the Michigan Department of Treasury for collection.

Language about the 20% late penalty is not needed on either CIA 03, 14 Day Notice, Traffic/Civil Infraction or CIA 06, Order to Show Cause, Traffic/Civil Infraction.

6. Additional penalty or costs.

Except for the \$25.00 license reinstatement fee provided by MCL 257.321a due to suspension for failure to comply with a judgment, costs incurred in compelling appearance, and the 20% late penalty 57 days after failure to pay, **no additional penalties or costs can be imposed after entry of judgment or default judgment.** Costs for compelling appearance should be added under an amended judgment.

Exception: A defendant is subject to a second late penalty if a judgment is amended.

7. Collection of unpaid debt.

A default in the payment of a civil fine or costs ordered for a civil infraction may be collected by either garnishment under MCL 600.4001 et seq. or execution under MCL 600.6001 et seq. as authorized under MCL 257.907 or by civil contempt under MCL 257.908. The unpaid debt may also be transferred to the Department of Treasury for collection under the authority of 1993 PA 316.

Misdemeanor Criminal and Traffic Proceedings

1. When to notify defendant of late penalty.

The defendant should be notified of the possibility of a late penalty at time of judgment. Penalty language has been added to MC 219, Judgment of Sentence and DC 243, Order of Probation. A due date for payment of fine, costs, etc. must be specified in the judgment. If the case has not been adjudicated and bond has been posted, the defendant should be notified at the time a bond forfeiture judgment is entered (see page 7).

2. How to track due dates.

Automated systems should follow the criteria specified under **Systems Criteria** on page 3 of these instructions. Manual systems should set up a daily tickler file for following up on late payments. If a probation order is in effect, the probation officer should follow up on non-payment. If an installment payment plan has been set up, counting of the 56 days begins after each due date except as noted in item 4. below.

3. When to apply a late penalty.

If a defendant does not pay on a misdemeanor criminal or traffic judgment within 56 days of the date specified in the judgment or order of probation, a late penalty of 20% of the amount due is to be added to the balance owing on the 57th day after the due date.

4. Installment payments.

In an automated system, the schedule of due dates must be entered. In a manual system, the tickler file should be updated for each due date. Regardless of the number of due dates which has passed, once the first 56 days has been reached without a payment, the 20% late penalty must be calculated and added to the balance. The late penalty should be calculated on the entire judgment balance owing, not the amount due for the installment payment(s). Once the 20% late penalty has been added, the assessment of a late penalty should be disabled on the automatic system. On a manual system, the record should reflect that the 20% late penalty has been added so that no further penalties are added.

5. Additional notice.

Once the defendant has been notified of the possibility of a late penalty at judgment, there is no need for further notice when a late penalty is assessed except as required when a civil action for collection is sought or the debt is transferred to the Michigan Department of Treasury for collection.

Language about the 20% late penalty is not needed on DC 216, 14 Day Notice, Traffic Misdemeanor; DC 216a, Notice of Noncompliance, Drinking/Driving Offense; MC 229, Petition and Bench Warrant; MC 230, Order to Show Cause; or DCY 246, Petition and Order, Probation Violation.

6. Additional penalty or costs.

Except for the cost of suspension 28 days after failure to comply with a judgment and the 20% late penalty 57 days after failure to pay, **no additional penalties or costs can be imposed after judgment.**

Exception: A defendant is subject to additional costs and a second late penalty if a judgment or order of probation is amended.

7. Collection of unpaid debt.

A default in the payment of fine or costs ordered for a misdemeanor criminal or traffic case may be collected by either garnishment under MCL 600.4001 et seq. or execution under MCL 600.6001 et seq. The unpaid debt may also be transferred to the Department of Treasury for collection under the authority of 1993 PA 316.

Felony Proceedings

1. When to notify defendant of late penalty.

The defendant should be notified of the possibility of a late penalty at time of judgment. Penalty language has been added to MC 219, Judgment of Sentence and CC 243a, Order of Probation. A due date for payment of fine, costs, etc. must be specified in the judgment. If the case has not been adjudicated and bond has been posted, the defendant should be notified at the time a bond forfeiture judgment is entered (see page 7).

2. How to track due dates.

Automated systems should follow the criteria specified under **Systems Criteria** on page 3 of these instructions. Manual systems should set up a daily tickler file for following up on late payments. If a probation order is in effect, the probation officer should follow up on non-payment. If an installment payment plan has been set up, counting of the 56 days begins after each due date except as noted in item 4. below.

3. When to apply a late penalty.

If a defendant does not pay on a felony judgment within 56 days of the date specified in the judgment or order of probation, a late penalty of 20% of the amount due is to be added to the balance owing on the 57th day after the due date.

4. Installment payments.

In an automated system, the schedule of due dates must be entered. In a manual system, the tickler file should be updated for each due date. Regardless of the number of due dates which has passed, once the first 56 days has been reached without a payment, the 20% late penalty must be calculated and added to the balance. The late penalty should be calculated on the entire judgment balance owing, not the amount due for the installment payment(s).

Once the 20% late penalty has been added, the assessment of a late penalty should be disabled on the automatic system. On a manual system, the record should reflect that the 20% late penalty has been added so that no further penalties are added.

5. Additional notice.

Once the defendant has been notified of the possibility of a late penalty at judgment, there is no need for further notice when a late penalty is assessed except as required when a civil action for collection is sought or the debt is transferred to the Michigan Department of Treasury for collection.

Language about the 20% late penalty is not needed on MC 229, Petition and Bench Warrant; MC 230, Order to Show Cause; or DCY 246, Petition and Order, Probation Violation.

6. Additional penalty or costs.

Except for the 20% late penalty 57 days after failure to pay, **no additional penalties or costs can be imposed after judgment.**

Exception: A defendant is subject to additional costs and a second late penalty if a judgment or order of probation is amended.

7. Collection of unpaid debt.

A default in the payment of fine or costs ordered for a felony case may be collected by either garnishment under MCL 600.4001 et seq. or execution under MCL 600.6001 et seq. The unpaid debt may also be transferred to the Department of Treasury for collection under the authority of 1993 PA 316.

Bond Forfeiture

1. When to notify the defendant of late penalty.

The defendant, surety, or third party should be notified of the possibility of a late penalty at time of judgment. In bond forfeiture, a judgment (MC 238) must be entered against the defendant and the depositor (if different than the defendant) in the full face amount or value of the bond if the defendant fails to respond to the Order Revoking Release and Forfeiting Bond, Notice of Intent to Enter Judgment (MC 218) within 28 days. Any deposit is applied toward the judgment according to law, and the remaining amount is subject to the late penalty.

2. How to track due dates.

Automated systems should follow the criteria specified on page 3. Manual systems should set up a daily tickler file for following on late payments.

3. When to apply a late penalty.

When a defendant, surety, or third party does not pay the balance of the forfeited bond within 56 days of the due date specified in the judgment, a late penalty of 20% of the amount due is to be added to the balance owing on the 57th day after the due date.

4. Additional notice.

Once the defendant has been notified of the possibility of a late penalty at judgment, there is no need for further notice when a late penalty is assessed except as required when a civil action for collection is sought or the debt is transferred to the Michigan Department of Treasury for collection.

5. Additional penalty or costs.

Except for the 20% late penalty 57 days after failure to pay, **no additional penalties or costs can be imposed after judgment.**

6. A default in the payment of a judgment after bond forfeiture may be collected by either garnishment under MCL 600.4001 et seq. or execution under MCL 600.6001 et seq. The unpaid debt may also be transferred to the Department of Treasury for collection under the authority of 1993 PA 316.

7. If the defendant is picked up on a bench warrant and arraigned within 28 days of the order forfeiting bond, the court shall set aside the forfeiture and may either reinstate the previous bond or order a new bond. The deposit can be applied toward the cost of apprehending the defendant, a new bond, or other costs associated with the case. The steps on page 5 or 6 would be followed once the judgment of sentence is entered.

If the defendant is not picked up on a bench warrant and arraigned until after the Judgment After Bond Forfeiture (MC 238) is entered but before one year from the date of the judgment, the court shall set aside the judgment and discharge the deposit according to MCL 765.15. The deposit should first be applied toward the cost of apprehending the defendant. Any remaining balance can be applied toward toward a new bond or other costs associated with the case. The steps on page 5 or 6 would be followed once the judgment of sentence is entered. If more than one year from the date of judgment has passed, the judgment shall not be set aside.