

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](#)

Public Access to the Court

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

Courts must provide essential functions, and the public must have access to the court to file legal documents. [Administrative Order No. 2020-19](#) states that “courts must continue to provide a method or methods for filers to submit pleadings other than by personal appearance at courts.”

2. 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. As courts begin to resume court operations, they should follow the guidance as outlined in the [Return to Full Capacity Guide](#), as well as the plan established in the court’s phased Return to Full Capacity LAO.

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

Michigan Judicial Institute has prepared [helpful resources](#) regarding the public’s right to access court proceedings.

4. 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,¹ 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.

¹ See [Model LAO 8](#), regarding “Access, Inspection, Reproduction, and Creation of Records.”

General Court Operations

5. 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.

6. 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.²

7. 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 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.

² See MCL 8.3q regarding written signatures.

- 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.

8. 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.

9. 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](#),³ 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;⁴
- 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;

³ 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.

⁴ On June 22, 2020, the Michigan Supreme Court decided *People v Jemison*, ___ Mich ___ (2020)(Docket No. 157812), which held that utilizing two-way videoconferencing technology to take witness testimony at trial over defendant's objection violated his right to confrontation under both the federal and Michigan constitution.

- 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.

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

The Michigan Supreme Court offers each seated circuit, district, municipal, 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.

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

The State Court Administrative Office 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

12. 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.

13. 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.

14. 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.

15. 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.

16. 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. Please review the [Return to Full Capacity Guide](#) for additional information.

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:

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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

Evictions and Summary Proceedings

23. What actions can the court take in landlord tenant cases?

Please review the "[Evictions and Landlord Tenant](#)" materials on the COVID-19 News and Resources page for recent developments and further guidance.

Child Protective Proceedings

24. 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 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.

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.

25. 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.

26. 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.

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

27. 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

28. 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.

29. 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>
- HIPPA 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>