



# MICHIGAN COURTS NEWS RELEASE

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**Chief Justice Bridget M. McCormack, Michigan Supreme Court  
Sheriff Matt Saxton (ret.), Executive Director, Michigan Sheriffs' Association  
Joint Statement**

Thank you to judges, sheriffs, and law enforcement statewide who have stepped up to reduce jail populations in response to the ongoing public health emergency. With a single-minded focus on keeping our communities safe, jail populations across Michigan have declined to between 25% and 75% below their maximum capacities.

We are grateful for the efforts taken so far, but we must make sure we do all we can to protect the health of Michiganders. We have half a million criminal court cases each year in Michigan and several hundred thousand people entering jails. Governor Whitmer has requested that we all do our part to limit risk, and judges and sheriffs must work together to protect court employees, jail staff, inmates, and the public at large.

We can be proactive to reduce this risk:

- Judges and Sheriffs should use the statutory authority they have to reduce and suspend jail sentences for people who do not pose a public safety risk.
- Law enforcement should only arrest people and take them to jail if they pose an immediate threat to people in the community.
- Judges should release far more people on their own recognizance while they await their day in court. For some, judges may want to release them under supervision or under a condition that they stay away from a particular place or person.
- And judges should use probation and treatment programs as jail alternatives.

In addition, see the detailed advice that the Michigan Supreme Court State Court Administrative Office previously provided to judges and court administrators statewide. Following this advice WILL SAVE LIVES. (attached below)

## **Guidance to Trial Courts (Provided to Trial Courts March 20, 2020)**

### **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:

**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.

**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 incarceration and allows the court more flexibility with scheduling arraignments than with in-custody defendants.

**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.

**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.

**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 rearrests 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.

**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.

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