



## Michigan Supreme Court

State Court Administrative Office

### Trial Court Services Division

Michigan Hall of Justice

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Jennifer Warner  
Director

### MEMORANDUM

DATE: March 21, 2013

TO: Family Division Judges  
cc: Family Division Administrators  
Case Management System Providers

FROM: Ashley A. Coneff, Management Analyst

RE: Juvenile Competency

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The purpose of this memo is to inform the courts of recently-passed legislation that will affect court operations.

Effective March 28, 2013, 2012 PA 540 and PA 541 amend the Probate Code and Mental Health Code to specify that a juvenile under the age of 10 is presumed incompetent to stand trial. Conversely, a juvenile 10 years of age or older is presumed competent to proceed, unless the issue of competency is raised by either party. MCL 712A.18n (1). If a petition is filed for a juvenile under the age of 10, the clerk should accept the petition and process the case in the normal fashion. The court will then make a determination as to how it should proceed.

- Competency Evaluations: On its own motion, or at the request of the juvenile, the juvenile's attorney, or the prosecuting attorney, a court may order a competency examination to determine whether the juvenile is incompetent to proceed if the juvenile is the subject of a delinquency petition or is subject to the court's jurisdiction under MCL 712A.2(2)-(4). Such a request may be made at any time during the proceeding, and will temporarily delay the delinquency proceeding until the court makes a determination on the juvenile's competency. MCL 712A.18n(2)-(3). The court must order the prosecuting attorney and juvenile's attorney to provide all information related to competency to the mental health examiner within 10 days after the court issues the order for the competency evaluation. MCL 712A.18p(1) and (4). The constitutional protections against self-incrimination apply to all competency evaluations. MCL 712A.18r(1). The mental health examiner appointed by the court shall be allowed reasonable fees. MCL 712A.18.q(3). The court may allow any party to retain its own qualified forensic mental

health examiner, at its own expense, to conduct additional evaluations. MCL 712A.18o(2).

- **Examiner's Report:** The mental health examiner's written report must be submitted to the court within 30 days after receiving the order to conduct a competency evaluation. MCL 712A.18p(5). The court may, for good cause, grant the mental health examiner a 30-day extension in filing the report. MCL 712A.18p(7). The court must provide copies of the report to the juvenile's attorney, the prosecuting attorney, and any guardian ad litem no later than five working days after receipt by the court. MCL 712A.18p(8).
- **Determining Competency:** A court must hold a hearing to determine competency within 30 days after the report is filed. At the hearing, the parties may introduce other evidence regarding the juvenile's mental condition or may submit the matter by written stipulation based on the filed report. MCL 712A.18q(1).
  - If the juvenile is found *incompetent to proceed but able to be restored* to competency in the foreseeable future, one of the following applies:
    - If the offense is a traffic offense or a misdemeanor other than a serious misdemeanor,<sup>1</sup> the matter shall be dismissed.
    - If the offense is a serious misdemeanor, the court may dismiss the matter or suspend the proceedings against the juvenile.
    - If the offense is a felony, the proceedings against the juvenile shall be further suspended.  
MCL 712A.18s(1).

If the matter is suspended, the court may issue a restoration order. Before doing so, the court shall hold a hearing to determine the least restrictive environment for the juvenile during the restoration period. The order may be valid until one of the following (whichever first occurs):

- 60 days after the date of the initial finding of incompetency;
- The mental health examiner submits a report that the juvenile regained/substantial probability that the juvenile will regain competency during the period of the order;
- The charges are dismissed;
- The juvenile reaches the age of 18.  
MCL 712A.18s(2).

After the restoration order is issued, the restoration provider must submit a report to the court and the juvenile forensic mental health examiner every 30 days, or sooner if and at the time either of the following occurs:

- The qualified restoration provider determines that the juvenile is no longer incompetent to proceed;

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<sup>1</sup> "Serious misdemeanor" means that term as defined in MCL 780.811.

- The qualified restoration provider determines that there is no substantial probability that the juvenile will be competent to proceed within the period of the order.

MCL 712A.18s(2)(c).

Not later than 14 days before the expiration of the 60-day order, the restoration provider may submit a report to the court and the forensic mental health examiner, in which the provider recommends that the restoration order be renewed for another 60 days, if there is a substantial probability that the juvenile will be competent to proceed within the period of that order. The restoration order and any renewed restoration order shall not exceed a total of 120 days. MCL 712A.18s(3).

- If the juvenile is found *incompetent to proceed and there is a substantial probability that the juvenile will remain incompetent* for the foreseeable future or within the period of the restoration order, the court must dismiss the charges with prejudice and determine custody of the juvenile. MCL 712A.18q(2). If there is a substantial probability that the juvenile is unable to be restored due to serious emotional disturbance, the court may order that mental health services be provided to the juvenile by the Department of Community Health, subject to the availability of inpatient care, a community mental health services program, the Department of Human Services, a county Department of Human Services, or another appropriate mental health services provider for a period not to exceed 60 days. The court must retain jurisdiction over the juvenile throughout the duration of the order. MCL 712A.18s(5). Not later than 14 days before the expiration of an order for treatment, the entity providing treatment must submit a report to the court and the forensic mental health examiner regarding the juvenile. After reviewing the report, the court shall either renew the order for another period of treatment not to exceed 60 days (with the total period not to exceed 120 days) or determine custody of the juvenile and dismiss the charges. MCL 712A.18s(6).
- Tracking Competency Evaluations Requested: Courts are required to maintain a record of the number of competency evaluations requested but are not required to submit this figure to SCAO. MCL 712A.18n(4). The Legislature required courts to keep track of this number so that the Legislature would have the ability to contact the courts to determine the number of evaluations ordered and the approximate costs associated with the evaluations.
- Reporting to SCAO: The court shall report to the State Court Administrator the number of juveniles found to be incompetent to proceed and the number of proceedings in which the petition has been dismissed. MCL 712A.18n(4) and MCL 712A.18q(4). See MCL 712A.18q(2) and MCL 712A.18s(1), (2)(b), (4), or (6) for details on dismissal. Revised reporting forms and instructions are attached to this memo. For purposes of time guidelines, both DL and DJ cases can be placed on inactive status (MCL 712A.18n[2] or MCL 712A.18s[2], or [3]) when the court enters an order for evaluation to determine competency, when the court enters an order finding a juvenile incompetent to stand trial, when the court enters an initial or a renewed restoration order, or when the court allows a restoration order to continue. A DL or DJ case placed on inactive status is reopened upon

receipt of a report from either a qualified juvenile forensic mental health examiner or a qualified restoration provider regarding the competency of the juvenile to stand trial (MCL 712A.18p[5] and MCL 712A.28s[2][c]). All time from inactive status to reopening will be deducted from the total age of the case. Case management system providers should program these changes as soon as possible. If you have questions about the changes, contact Amy Garoushi at [elgaroushia@courts.mi.gov](mailto:elgaroushia@courts.mi.gov) or 517-373-4834.

New court forms for use in juvenile proceedings, similar to those used in adult competency proceedings, will be developed, published for comment in July, and reviewed by the Michigan Court Forms Committee at its fall meeting before being distributed to the courts.

If you have any questions, please feel free to contact Management Analyst Ashley A. Coneff at [coneffa@courts.mi.gov](mailto:coneffa@courts.mi.gov) or 517-373-2451.

<b>CIRCUIT COURT CASELOAD</b> Complete Parts 1, 2, and 4 annually and transmit no later than 30 days following the end of the reporting period.				Year
Preparer's name	Preparer's telephone no.	Court no. and designation	County or Location	

**PART 1: NEW FILINGS AND REOPENED CASES**

**SECTION A: APPEALS, ADMINISTRATIVE REVIEW, EXTRAORDINARY WRITS**

Line	CASE TYPE	AA	AE	AP	AR	AV	AH	AL	AS	AW
1	Beginning Pending									
2	New Filings									
3	Reopened									

**SECTION B: CRIMINAL**

Line	CASE TYPE	AX	FC	FH	FJ
1	Beginning Pending				
2	New Filings				
3	Reopened				

**SECTION C: CIVIL**

Line	CASE TYPE	CB	CC	CD	CE	CF	CH	CK	CL	CP	CR	CZ	ND	NF
1	Beginning Pending													
2	New Filings													
3	Reopened													

  

Line	CASE TYPE	NH	NI	NM	NO	NP	NS	NZ	PC	PD	PR	PS	PZ
1	Beginning Pending												
2	New Filings												
3	Reopened												

Use this format to report Court of Claims cases using the case type codes MD, MH, MK, MM, MP, MT, and MZ

## Section E: Juvenile - New Filings (Petitions) and Reopened Cases (Petitions)

**Line 1:** Provide the number of beginning pending petitions as of January 1 for each of the case type codes.

**Line 2:** Under the appropriate case type codes, provide the total number of petitions. Count petitions opened on the date received. Only one juvenile shall be included in a single petition, complaint, or citation. A petition, complaint, or citation may charge multiple offenses against one juvenile. The most serious offense defines the case type code to be assigned, i.e., if delinquency and traffic offenses are filed on the same petition, the case type is DL.

- A juvenile petition is counted as a new petition when an original complaint, petition, or citation is received (not when authorized); when an order granting a request to designate a case is entered; or when a petition is received by your court after transfer from another court because of change of venue or change of jurisdiction including transfers from district court under MCR 6.911 and transfers from the circuit criminal division under MCL 712A.3.
  - If the filing is prosecutor designated, count under DJ rather than DL. If the court designates the DL filing, count under DJ.
  - Do not count **supplemental** petitions **except** in a proceeding for violation of a personal protection order issued by another court.

*Forms that may be used are:*

*JC 01 and JC 02 (Complaint)*

*JC 04 (Petition)*

*JC 29 (Order to Transfer Jurisdiction)*

*JC 68 (Order After Designation Hearing)*

*UC-01a or UC-01b (Uniform Law Citation)*

*MC 200 (Bind Over/Transfer After Preliminary Examination, Felony)*

*MC 316 (Order for Change of Venue)*

*CC 375M (Petition for Personal Protection Order Against a Minor, Domestic Relationship)*

*CC 377M (Petition for Personal Protection Order Against Stalking by a Minor, Nondomestic)*

*Court rules and statutes associated with a juvenile complaint or petition are MCR 3.926, 3.931, 3.932(C), (D), 3.939, 3.951(A), 3.952(D), and 6.911 and MCL 257.728, 712A.2, 712A.2b, 712A.2d, 712A.2h, and 712A.3.*

**Line 3:** Provide the total number of reopened petitions. Count cases reopened only if they have been previously counted as disposed.

- A juvenile petition is counted as a reopened petition:
  - when remanded from another court for a new trial.
  - when a request to withdraw plea is granted or when a judgment notwithstanding the verdict is entered except when entered upon return of the jury verdict.
  - when the juvenile fails to comply with a consent calendar agreement or a diversion program.
  - when the court transfers an adjudicated petition to the consent calendar before disposition under MCR 3.932(C)(8)
  - when the judge overturns a decision of a referee.
  - when the juvenile appears on a petition/citation which was previously reported disposed for failure to appear.
  - **after receiving a report from a qualified juvenile forensic mental health examiner or a qualified restoration provider regarding the competency of the juvenile to stand trial; report this based upon date received.**
  - when the prosecutor files a nolle prosequi after the case has been previously counted disposed under inactive status.
- Count as a reopened petition each petition scheduled for hearing under MCR 3.705(B) after an order is entered denying or dismissing a petition for **ex parte** personal protection.

*Court rules and statute associated with reopening a juvenile petition are MCR 3.932(C)(8), 3.941, 6.310, 7.215(D) and 7.317 and MCL 712A.18p(5) and 712A.28s(2)(c).*

**CIRCUIT COURT CASELOAD - PART 2: METHOD OF DISPOSITION (ADJUDICATION)**

**SECTION E: JUVENILE**

Line	CASE TYPE	DL	TL
1	Jury Verdict		
2	Bench Verdict		
3	Admission/ No Contest		
4	Prosecutor Waiver		
5	Traditional Waiver		
6	Nolle Prosequi		
7	Dismissed by Court		
8	Dismissed Incompetent		
9	Consent Calendar		
10	Transferred		
11	Diversion/ Not Auth.		
12	Designation Granted		
13	Inactive Status		
14	Not Charged		
15	Case Type Change		

Line	CASE TYPE	DJ
16	Jury Verdict	
17	Bench Verdict	
18	Guilty Plea	
19	Nolle Prosequi	
20	Dismissed by Court	
21	Dismissed Incompetent	
22	Inactive Status	
23	Not Authorized	

Line	CASE TYPE	PJ
26	Orders Issued Ex Parte	
27	Orders Issued After Hearing	
28	Transferred	
29	Dismissed/Denied Ex Parte	
30	Dismissed/Denied After Hearing	
31	Dismissed by Petitioner	
32	Orders Rescinded	
33	Orders Issued After Denial	

Line	Juveniles in the System	DL/TL/DJ
24	Court Supervision	
25	DHS Supervision	
26	DCJ Supervision (in Wayne County only)	
27	Pending Adjudication	

**SECTION F: CHILD PROTECTIVE**

Line	CASE TYPE	NA
1	Jury Verdict	
2	Bench Verdict	
3	Admission/ No Contest	
4	Dismissed/ Withdrawn	
5	Transferred	
6	Not Authorized	

Line	Children in the System	NA
7	Temporary Court Ward	
8	Temporary State Ward (MCIO)	
9	Permanent Ward (MCI and court)	
10	Pending Adjudication	

## Section E: Juvenile - Method of Disposition (Adjudication)

**Report DL petitions and TL citations in this section when** all counts against the juvenile have been dismissed or adjudicated. Enter in the appropriate lines the number of petitions adjudicated for each of the case type codes. Do not count cases adjudicated when assigned by the State Court Administrative Office to a judge of another court. **The method of disposition** should be entered in the line representing the highest form of adjudication on the petition/citation using the following hierarchy. For example, petition has 3 counts, juvenile pleads guilty to 2 counts and a jury trial was held on 1 count; count the petition adjudicated by jury verdict.

**Line 1:** Jury Verdict [MCR 3.942, MCL 712A.18, 712A.18i]

Count when verdict is returned by jury except judgment notwithstanding the verdict. Count pleas accepted by court during course of trial under line 3.

**Line 2:** Bench Verdict [MCR 3.942, MCL 712A.18, 712A.18i]

Count when verdict is returned by judge. Count directed verdicts in favor of juvenile after conclusion of petitioner's case even if during jury trial. Count entry of adjudication by judge notwithstanding jury verdict. Count pleas accepted by court during course of trial under line 3.

**Line 3:** Admission/No Contest [MCR 3.941, MCL 712A.18, 712A.18i]

Count when a plea is offered and accepted. Count as plea if juvenile pleads during or after proofs are heard. A plea taken under advisement under MCR 3.941 is not an adjudication; do not count here.

**Line 4:** Prosecutor's Discretionary Waiver [MCR 3.935(A), MCL 712A.4]

Count when prosecutor exercises discretionary waiver to district court following 5 day adjournment period requested in petition.

**Line 5:** Traditional Waiver (form JC 29) [MCR 3.950(E), MCL 712A.4]

Count when judge grants motion to waive jurisdiction to criminal division.

**Line 6:** Nolle Prosequi (form MC 263) [MCR 3.935(B), MCL 712A.18]

Count when nolle prosequi is filed by the prosecutor or city attorney and an order is entered.

**Line 7:** Dismissed by Court (forms JC 14, JC 59, MC 262) [MCR 3.935(B), MCL 712A.18]

Count when dismissed by court.

**Line 8:** Dismissed for Incompetency [MCL 712A.18q(2), 712A.18s(1), (2)(b), (4), or (6)]

Count when dismissed by the court after a finding of incompetence under MCL 712A.18q(2) or 712A.18s(1), (2)(b), (4), or (6).

**Line 9:** Consent Calendar [MCR 3.932(C), MCL 712A.18]

Count whether petition is authorized or not and juvenile consents to proceed on consent calendar. Count when citation is placed on consent calendar.

**Line 10:** Transferred (form MC 316) [MCR 3.926]

Count transfers to another court (including tribal court) before adjudication.

**Line 11:** Diversion/Not Authorized (forms JC 10) [MCR 3.932(A)]

Count when petition is not authorized and/or the matter is referred for alternative services.

**Line 12:** Designation Granted (form JC 68) [MCR 3.952(D), 3.953(F), MCL 712A.2d]

Count when request for designation is granted by judge.

**Line 13:** Inactive Status (form JC 05) [MCL 712A.18n(2), 712A.18s(2),(3)]

Count as inactive when a warrant is issued for nonappearance before adjudication and when a juvenile is ordered for evaluation to determine whether competent to stand trial, when the court enters an order finding a juvenile incompetent to stand trial, when the court enters an initial or renewed restoration order, and when the court allows a restoration order to continue.

**Line 14:** Not Charged

Count complaints received for which no petition is offered after review by prosecutor (for counties which open a case file and provide services before prosecutor review).

**Line 15:** Case Type Change

Count when a case type code is changed after a case has already been reported to the State Court Administrative Office as a new filing under another case type code.

## Section E: Juvenile - Method of Disposition

**Report juvenile petitions with a "DJ" case type in this section when** all counts against the juvenile have been disposed. Enter in the appropriate lines the number of designated cases disposed whether the cases were originally filed as designated cases (prosecutor-designated) or were subsequently ordered designated (court-designated). Do not count cases disposed when assigned by the State Court Administrative Office to a judge of another court. **The method of disposition** should be entered in the line representing the highest form of disposition within the case using the following hierarchy. For example, petition has 3 counts, juvenile plead guilty to 2 counts and a jury trial was held on 1 count; count the petition disposed by jury verdict.

**Line 16:** Jury Verdict [MCR 3.954, 6.420, MCL 712A.18]

Count when verdict is returned by jury except judgment notwithstanding the verdict. Count pleas accepted by court during course of trial under line 3.

**Line 17:** Bench Verdict [MCR 3.954, 6.403, MCL 712A.18]

Count when verdict is returned by judge. Count directed verdicts in favor of juvenile after conclusion of petitioner's case even if during jury trial. Count entry of judgment notwithstanding jury verdict. Count pleas accepted by court during course of trial under line 3.

**Line 18:** Guilty Plea [MCR 6.302, 6.303, 6.304, MCL 712A.18]

Count when a guilty plea is offered and accepted. Count as a plea if: 1) new trial is granted after verdict and juvenile later pleads guilty; 2) juvenile pleads guilty during or after proofs are heard.

**Line 19:** Nolle Prosequi (form MC 263) [MCR 6.110(F), (H), 6.427]

Count when nolle prosequi is filed by the prosecutor and an order is entered.

**Line 20:** Dismissed by Court (form MC 262) [MCR 6.110(F), (H), 6.427]

Count when dismissed by judge after preliminary examination, during trial, or after trial.

**Line 21:** Dismissed for Incompetency [MCL 712A.18q(2), 712A.18s(1), (2)(b), (4), or (6)]

Count when dismissed by the court after a finding of incompetence under MCL 712A.18q(2) or 712A.18s(1), (2)(b), (4), or (6).

**Line 22:** Inactive Status (forms JC 05, JC 69, MC 229) [MCR 6.125, MCL 712A.18n(2), 712A.18s(2),(3)]

Count as inactive when a warrant is issued for nonappearance before adjudication and when a juvenile is ordered for evaluation to determine whether competent to stand trial, when the court enters an order finding a juvenile incompetent to stand trial, when the court enters an initial or renewed restoration order, and when the court allows a restoration order to continue.

**Line 23:** Not Authorized [MCR 3.951(A)(2)(c)]

Count when the filing of the petition is not authorized after arraignment.

**Line 24:** Juveniles in the System - Court Supervision

Provide the total number of juveniles under court supervision on the last day of the year. Include juveniles on consent calendar. Include designated cases except when the juvenile is committed to jail or the Department of Corrections (forms JC 71 and JC 72).

**Line 25:** Juveniles in the System - DHS Supervision

Provide the total number of juveniles under DHS supervision on the last day of the year. Include designated cases except when the juvenile is committed to jail or the Department of Corrections (forms JC 71 and JC 72). Include waiver cases from the criminal division where the juvenile is committed to DHS (case type code FJ).

**Line 26:** Juveniles in the System - DCJ Supervision

Provide the total number of juveniles under DCJ supervision on the last day of the year. Include designated cases except when the juvenile is committed to jail or the Department of Corrections (forms JC 71 and JC 72). Include waiver cases from the criminal division where the juvenile is committed to DCJ (case type code FJ).

**Line 27:** Juveniles Pending Adjudication

Provide the total number of juveniles for whom a petition is pending adjudication who are not already under court, DHS, or DCJ supervision.