



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

Michigan Hall of Justice

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Jennifer Warner
Director

MEMORANDUM

DATE: November 13, 2015

TO: District Judges
District Court Administrators

FROM: Noah A. Bradow, Management Analyst
Bobbi Morrow, Management Analyst

RE: Changes to MCR 6.106 – Pretrial Release

On September 23, 2015, the Michigan Supreme Court adopted two orders that will amend MCR 6.106 effective January 1, 2016. The changes addressed in each order (in Administrative File Nos. [2014-02](#) and [2014-15](#)) will be discussed separately in this memo.

Administrative File No. [2014-02](#) – Arraignment and Pretrial Release

The changes of MCR 6.106(A) clarify that it is at the arraignment on the complaint and/or warrant that a court makes a determination regarding bail (MCL 765.6) and any conditions of pretrial release (MCL 765.6b). Previously, the rule stated that this determination was to occur at the defendant's "first appearance before the court." Some courts interpreted this language to mean a defendant's appearance before a judge or magistrate for the purpose of setting an interim bond. To be clear, there is no authority for a court to impose protective conditions on a defendant released on interim bond, except as provided by MCL 780.582a.¹ Additionally, for those limited cases, the only protective condition that may be imposed is that the person released "shall not have or attempt to have contact of any kind with the victim." MCL 780.582a(2).

Administrative File No. [2014-15](#) – Custody Order Conditions

The amendments of MCR 6.106 clarify that protective conditions may be ordered by the court while a defendant remains in custody. First, MCR 6.106(B)(5) was added to the rule, and states

¹ The protective conditions permitted by MCL 780.582a(1)(b) are limited to those cases in which a defendant is charged under MCL 750.81 and 750.81a, "and the person is a spouse or former spouse of the victim of the violation, has or has had a dating relationship with the victim of the violation, has had a child in common with the victim of the violation, or is a person who resides or has resided in the same household as the victim of the violation."

that a court may place conditions on a defendant in a custody order if the court determines the conditions are necessary to maintain the integrity of the judicial proceedings or for the protection of a named person. Second, MCR 6.106(D)(2)(m) was amended to state that a court may make a protective condition effective immediately upon entry of a pretrial release order, including during the time a defendant remains in custody.

If you have any questions, please contact Noah A. Bradow at 517-373-3756 or BradownN@courts.mi.gov, or Bobbi Morrow at 517-373-2173 or MorrowB@courts.mi.gov