District Court Magistrate Manual — Revised Edition



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Michigan Supreme Court

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- The Honorable Noah P. Hood, *MJI Liaison Justice*
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Statements in this benchbook represent the professional judgment of the author and are not intended to be authoritative statements by the justices of the Michigan Supreme Court. This benchbook was initially published in 2016, and the text has been revised, reordered, and updated through August 19, 2026.

Note on Precedential Value

The Michigan Judicial Institute endeavors to present accurate, binding precedent when discussing substantive legal issues. "The essence of the common law doctrine of precedent or stare decisis is that the rule of the case creates a binding legal precept." *Hudson v Dep't of Corrections*, ___ Mich App ___, ___ (2025) (quotation marks and citation omitted). "Maintaining consistency in the law is one of the primary benefits of stare decisis, as it provides the public with some level of predictability in how the courts have interpreted the law." *Plachta v Plachta*, ___ Mich App ___, ___ (2026). Generally, trial courts "must follow the published decisions of the Court of Appeals and the Michigan Supreme Court." *People v Metamora Water Serv, Inc*, 276 Mich App 376, 382 (2007).

Negative subsequent history. Several cases in this book have been reversed, vacated or overruled in part and/or to the extent that they contained a specific holding on one issue or another. While a case that has been fully reversed, vacated, or overruled is no longer binding precedent, it is less clear when an opinion is not reversed, vacated or overruled in its entirety. Some cases state that "an overruled proposition in a case is no reason to ignore all other holdings in the case." *People v Carson*, 220 Mich App 662, 672 (1996). See also *Stein v Home-Owners Ins Co*, 303 Mich App 382, 389 (2013) (distinguishing between reversals in their entirety and reversals in part); *Graham v Foster*, 500 Mich 23, 31 n 4 (2017) (because the Supreme Court vacated a portion of the Court of Appeals decision, "that portion of the Court of Appeals' opinion [had] no precedential effect and the trial court [was] not bound by its reasoning"). However, other cases provide that a "decision that has been reversed on other grounds has no precedential value." *Dunn v Detroit Inter-Ins Exch*, 254 Mich App 256, 262 (2002), citing *Taylor v Kurapati*, 236 Mich App 315 (1999). See also *Horace v City of Pontiac*, 456 Mich 744, 754–755 (1998) (holding that where the Supreme Court reverses a Court of Appeals decision on one issue and does not specifically address a second issue in the case, "no rule of law remain[s] from the Court of Appeals decision"). Note that *Stein* specifically distinguished its holding from the *Dunn* holding because the precedent discussed in *Dunn* involved a reversal in its entirety while the precedent discussed in *Stein* involved a reversal in part. *Stein*, 303 Mich App at 389.

Because it may be unclear under certain circumstances how subsequent case history may affect the precedential value of a particular opinion, trial courts should proceed with caution when relying on cases that have negative subsequent history. The analysis presented in a case that is not binding may still be persuasive. See generally, *Dunn*, 254 Mich App at 264-266.

United States Supreme Court. Michigan courts are bound by "our state Supreme Court precedent, unless the United States Supreme Court has addressed a federal

constitutional question." *People v Beasley*, 239 Mich App 548, 559 (2000). "A plurality opinion of the United States Supreme Court, however, is not binding precedent." *Id*., citing *Texas v Brown*, 460 US 730, 737 (1983).

Other federal and state courts. "Cases from foreign jurisdictions, which are not binding, can be persuasive." *Bazzy v Citizens Ins Co of America*, ___ Mich App ___, ___ (2025) (cleaned up). Accordingly, state courts are not bound by the decisions of lower federal courts construing federal law, and Michigan courts "are free to follow or reject their authority." *People v Gillam*, 479 Mich 253, 261 (2007). "Caselaw from other states is not binding but may be considered for its persuasive value." *Kewadin Casinos Gaming Auth v Patterson Earnhart Real Bird & Wilson LLP*, ___ Mich App ___, ___ n 4 (2026) (quotation marks and citation omitted).

Michigan Supreme Court. A Michigan "Supreme Court opinion becomes binding precedent for intermediate appellate and trial courts at the time a signed opinion is date-stamped and filed with the Clerk of the Supreme Court, unless" the opinion "specifically states that the opinion is effective at a different date." *Riley v Northland Geriatric Center*, 425 Mich 668, 678 (1986). "'The clear rule in Michigan is that a majority of the [Michigan Supreme] Court must agree on a ground for decision in order to make that binding precedent for future cases.'" *People v Sexton*, 458 Mich 43, 65 (1998), quoting *People v Anderson*, 389 Mich 155, 170 (1973). See MCR 7.315(A) ("Except for affirmance of action by a lower court or tribunal by even division of the justices, a decision of the Court must be made by concurrence of a majority of the justices voting."). "Plurality decisions in which no majority of the justices participating agree as to the reasoning are not an authoritative interpretation binding . . . under the doctrine of *stare decisis*." *Negri v Slotkin*, 397 Mich 105, 109 (1976). However, "a [plurality] decision rendered by less than four justices who nevertheless constitute a majority of a legally constituted quorum is binding on the Court of Appeals and the trial courts." *Id*. at 106. "'If there is merely a majority for a particular result, then the parties to the case are bound by the judgment but the case is not authority beyond the immediate parties.'" *Sexton*, 458 Mich at 65, quoting *Anderson*, 389 Mich at 170. In other words, "plurality opinions in which no majority of the participating justices agree with respect to the reasoning for the holding are not generally considered authoritative interpretations that are binding under the doctrine of stare decisis." *Auto Club Group Ins Co v Booth*, 289 Mich App 606, 613 (2010).

For information regarding the precedential value of an order or judgment issued by the Michigan Supreme Court, see the Michigan Judicial Institute's *Appeals & Opinions Benchbook*, Section 1.4(B).

Michigan Court of Appeals. "A published opinion of the Court of Appeals has precedential effect under the rule of stare decisis." MCR 7.215(C)(2). Accordingly, "the publication of an opinion of the Court of Appeals creates binding precedent until the Michigan Supreme Court enters a decision altering [the] Court's

decisions or its rationale." *Esordi v Macomb Twp*, ___ Mich App ___, ___ (2025) (citation omitted). "A panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990, that has not been reversed or modified by the Supreme Court, or by a special panel of the Court of Appeals as provided in [MCR 7.215]." MCR 7.215(J)(1). "Under the plain terms of MCR 7.215(C)(2), all published decisions of [the] Court [of Appeals] issued prior to November 1, 1990, are binding, precedential decisions under stare decisis." *Plachta*, ___ Mich App at ___. "They are *not* merely persuasive and are not on par with unpublished decisions." *Id*. at ___. Although the Court of Appeals is "not strictly required to follow uncontradicted opinions . . . decided before November 1, 1990, those opinions are nonetheless considered to be precedent and entitled to significantly greater deference than are unpublished cases." *People v Bensch*, 328 Mich App 1, 7 n 6 (2019) (quotation marks and citation omitted). See also *People v Schurr*, 350 Mich App 47, 76 n 6 (2024) (stating "decisions published before November 1, 1990, [are binding] only on the trial courts and only are precedent if uncontradicted"). In other words, "there is no difference in the precedential effect of a pre- versus post-1990 decision." *Plachta*, ___ Mich App at ___. "Instead, the only difference between a pre- and post-November 1, 1990 decision is that the latter must be followed by a subsequent panel unless it is overruled by a conflict panel or the Supreme Court, while the former must be followed unless a subsequent three-judge panel concludes it is distinguishable or warrants reversal." *Id*. at ___.

For more information regarding the precedential nature of Court of Appeals opinions, see the Michigan Judicial Institute's *Appeals & Opinions Benchbook*, Section 1.4(C).

Acknowledgments

This revised edition of the *District Court Magistrate Manual* was authored by MJI Research Attorney Alessa Boes and was edited by MJI Publications Manager Sarah Roth. The author of this edition was greatly assisted by an editorial advisory committee whose members reviewed draft text and provided valuable feedback. The members of the editorial advisory committee were:

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The *District Court Magistrate Manual* derives from the *Manual for Magistrates*, which was first published in 1978 by the State Court Administrative Office, and renamed the *Manual for District Court Magistrates* in 1985.

The **Michigan Judicial Institute (MJI)** was created in 1977 by the Michigan Supreme Court. MJI is responsible for providing educational programs and written materials for Michigan judges and court personnel. In addition to formal seminar offerings, MJI is engaged in a broad range of publication activities, services, and projects that are designed to enhance the professional skills of all those serving in the Michigan court system. MJI welcomes comments and suggestions. Please send them to **Michigan Judicial Institute, Hall of Justice, P.O. Box 30048, Lansing, MI 48909. (517) 373-7171.**

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1.1 Scope Note

This chapter provides general information about the authority and responsibilities of district court magistrates, as well as information about ethical issues, administrative issues relevant to district court magistrates, sources of legal authority, and other resources for district court magistrates.

1.2 Appointment of District Court Magistrates and Qualifications

All district court magistrates must be registered electors in the county in which they are appointed, and all magistrates serve at the pleasure of the judges of the district court. MCL 600.8507(1). "Before assuming office, persons appointed magistrates shall take the constitutional oath of office and file a bond with the treasurer of a district funding unit of that district in an amount determined by the state court administrator." *Id.*

A. First and Second Class Districts

"In a county that elects by itself fewer than 2 district judges, the county board of commissioners shall provide for 1 district court magistrate. In all other counties in districts of the first and second class, the county board of commissioners shall provide for not less than 1 magistrate if recommended by the judges of the district. Additional magistrates may be provided by the board upon recommendation of the judges. All magistrates provided for shall be appointed by the judges of the district and the appointments shall be subject to approval by the county board of commissioners before a person assumes the duties of the office of magistrate." MCL 600.8501(1).

B. Third Class Districts

"In each district of the third class, the judge or judges of the district may appoint 1 or more district court magistrates. A person shall not be appointed magistrate unless the person is a registered elector in the district for which the person was appointed or in an adjoining district if the appointment is made under a plan of concurrent jurisdiction adopted under [C]hapter 4[of the Revised Judicature Act, MCL 600.401 *et seq.*] Before a person assumes the duties of the office of magistrate in a district of the third class, the appointment of that person as a district court magistrate is subject to approval by the governing body or bodies of the district control unit or units that, individually or in the aggregate, contain more than 50% of the

population of the district. This subsection does not apply to the thirty-sixth district." MCL 600.8501(2).

C. The 36th District Court

"The thirty-sixth district shall have not more than 6 district court magistrates. The chief judge of the thirty-sixth district may appoint 1 or more magistrates as permitted by this subsection. If a vacancy occurs in the office of district court magistrate, the chief judge may appoint a successor. Each magistrate appointed under this subsection shall serve at the pleasure of the chief judge of the thirty-sixth district." MCL 600.8501(3). "A person shall not be appointed district court magistrate [in the 36th District Court] unless the person is a registered elector in the district or in an adjoining district if the appointment is made under a plan of concurrent jurisdiction adopted under [C]hapter 4[of the Revised Judicature Act, MCL 600.401 *et seq.*]" MCL 600.8501(4).

D. Temporary Service in Another County – First Class Districts

"In a district of the first class that consists of more than 1 county, if a magistrate is temporarily absent or incapacitated, the chief or only district judge may direct a magistrate of another county of the same district to serve temporarily in the county where the magistrate is temporarily absent or incapacitated. The district judge shall make his or her order in writing. A magistrate serving temporarily under this subsection is not entitled to additional compensation but shall be reimbursed for actual and necessary expenses incurred during the authorized temporary service upon certification and approval by the state court administrator. Upon allowance, the reimbursement shall be paid by the state treasurer out of the appropriation for the state court administrative office." MCL 600.8507(2).

"In a district of the first class that consists of more than 1 county, the chief or only district judge may authorize a magistrate appointed in 1 county to serve in another county in the district." MCL 600.8507(3).

"Pursuant to a multiple district plan under [MCL 600.8320] involving adjoining districts of the first class, a district court magistrate appointed in a county of 1 district may be authorized to serve in a county of the adjoining district. While serving in the adjoining district, the magistrate shall be subject to the superintending control of the chief or only district judge of that district." MCL 600.8507(4). For further discussion of multiple district plans see Section 1.7.

1.3 General Authority of District Court Magistrates

District court magistrates may only exercise the jurisdiction expressly provided by law and authorized by the chief judge of the district or division. MCR 4.401(B). Chapter 85 of the Revised Judicature Act, MCL 600.8501 *et seq.*, sets out the statutory authority of district court magistrates. Specifically, MCL 600.8511, MCL 600.8512, and MCL 600.8512a address the jurisdiction, duties, and general powers of district court magistrates. Note that when the Code of Criminal Procedure or the Public Health Code refers to magistrates, the reference does not include *district court magistrates.* Additionally, MCR 4.401 addresses district court magistrates. "The judges of the district court shall exercise superintending control over all district court magistrates within their districts. A district judge may not extend the jurisdiction of a district court magistrate beyond the jurisdiction expressly provided by law." MCL 600.8541(1). All district court magistrates serve at the pleasure of the judge(s) of the district court. MCL 600.8507(1).

A district court magistrate's appointment and scope of authority must be documented through a local administrative order (LAO). Administrative Order No. 2009-6, 485 Mich xcv (2009). See Model LAOs for appointing district court attorney magistrates and district court nonattorney magistrates.

A district court magistrate may only exercise his or her authority in his or her court of appointment, which is the district court where the magistrate is a registered elector, where the LAO assignment is made, and where the magistrate is paid. See MCL 600.8501; MCL 600.8507; MCL 600.8521(1). A district court magistrate may also have authority in other courts pursuant to a concurrent jurisdiction plan under MCL 600.401, see Section 1.5(B), or pursuant to a multiple district plan under MCL 600.8320, see Section 1.7.

District court magistrates are broadly authorized to use videoconferencing technology. MCR 4.401(E) ("A district court magistrate may use videoconferencing technology in accordance with MCR 2.407[1] and MCR 6.006."[2]) "A court may, at the request of any participant, or sua sponte, allow the use of videoconferencing technology by any participant in any criminal proceeding." MCR 6.006(A)(2). In district and municipal court, the use of videoconferencing technology is the preferred mode for "conducting arraignments and probable cause conferences for in-custody defendants." MCR 6.006(C)(1). "In all other proceedings, the in-person appearance of the parties, witnesses, and other participants is presumed." MCR 6.006(C)(2).

[1] MCR 2.408 addresses videoconferencing in civil proceedings.

[2] MCR 6.006 addresses video and audio proceedings in criminal proceedings.

Every determination that a district court magistrate makes is appealable to a district court judge as a matter of right. MCR 4.401(D).

Committee Tip:

District court magistrates may want to keep a copy of their authorization letter on the bench for quick reference.

1.4 District Court System

A. Uniform Court System

The Michigan Constitution of 1963 provides for a uniform state court system headed by the Michigan Supreme Court. Const 1963, art 6, § 1. The chief judge of a district court has the authority and responsibility to hire, supervise, and discharge most employees of the court, including district court magistrates. MCR 8.110(C)(3)(d); MCL 600.8271(9).

B. District Court Classes and Where the Court Sits

District courts are divided into three classes, according to the geographical area of their venue – districts of the first class, second class, and third class. See MCL 600.8101; MCL 600.8103.

MCL 600.8251 addresses where each district court sits according to its class. "When a city is located in more than 1 district, the provisions of [MCL 600.8251] as to where the district court is required to sit shall apply only to that part of such city lying within the particular county or district. A city having a population in excess of 20,000 which is located in more than 1 district is a part of the district containing the greater portion of the population of the city." MCL 600.8101(2).

"Magistrates shall sit at any county seat and city or other locations as determined by the presiding judge." MCL 600.8551.

1.5 Jurisdiction of the District Court

The district court has the following jurisdiction:

- Exclusive jurisdiction over civil claims of $25,000 or less. MCL 600.8301(1).

- Civil infractions. MCL 600.8301(2).

- Although the family division of the circuit court generally has jurisdiction over all offenses committed by a person who is under 18 years of age, MCL 712A.2, it "may enter into an agreement with any or all district courts or municipal courts within the court's geographic jurisdiction to waive jurisdiction over any or all civil infractions alleged to have been committed by juveniles within the geographic jurisdiction of the district court or municipal court. The agreement shall specify for which civil infractions the court waives jurisdiction." MCL 712A.2e(1). "For a civil infraction waived under [MCL 712A.2e(1)] committed by a juvenile on or after the effective date of the agreement, the district court or municipal court has jurisdiction over the juvenile in the same manner as if an adult had committed the civil infraction." MCL 712A.2e(2).

- Summary proceedings to recover land. MCL 600.5704 (Chapter 57 of the Revised Judicature Act, also known as the Summary Proceedings Act); MCR 4.201(H)(2)(b); MCR 4.202(I)(4). But damage claims in excess of the jurisdictional limit must be brought in circuit court. *Ames v Maxson*, 157 Mich App 75, 80-81 (1987), rev'd on other grounds by *Mich Nat'l Bank v Cote*, 451 Mich 180 (1996). For a detailed discussion, see the Michigan Judicial Institute's *Residential Landlord-Tenant Law Benchbook*, Chapter 4.

- Criminal. MCL 600.8311. See also MCR 6.008(A) ("The district court has jurisdiction over all misdemeanors and all felonies through the preliminary examination and until the entry of an order to bind the defendant over to the circuit court."

    - Misdemeanors punishable by fine or imprisonment of 1 year or less or both. MCL 600.8311(a).

    - Ordinance and charter violations punishable by fine or imprisonment or both. MCL 600.8311(b).

    - Arraignments, setting bail, and accepting bonds. MCL 600.8311(c).

    - Probable cause conferences in all felony cases and misdemeanor cases not cognizable by the district court and all matters allowed at the probable cause conference under MCL 766.4. MCL 600.8311(d).

- Preliminary examinations for all felony cases and misdemeanor cases not cognizable by the district court and all matters allowed at the preliminary examination under MCL 766.1 *et seq*. (There is no preliminary examination for any misdemeanor case that will be tried in a district court.) MCL 600.8311(e).

- Circuit court arraignments in all felony cases and misdemeanor cases not cognizable by the district court under MCL 766.13. (However, sentencing for felony cases and misdemeanor cases must be conducted by a circuit judge.) MCL 600.8311(f).

- Subject to the above-discussed criminal criteria, in general, state courts in Michigan, not federal courts, "have jurisdiction over a criminal prosecution in which a defendant is a non-Indian, the offense is committed on Indian lands or in Indian country, and the offense is either victimless or the victim is not an Indian." *People v Collins*, 298 Mich App 166, 177 (2012).

- Small claims[3] in which the amount claimed does not exceed the following:

  - Beginning January 1, 2015, $5,500.00.

  - Beginning January 1, 2018, $6,000.00.

  - Beginning January 1, 2021, $6,500.00.

  - Beginning January 1, 2024, $7,000.00. MCL 600.8401.

- No general equitable jurisdiction, MCL 600.8315, except concurrent jurisdiction with the circuit court pursuant to MCL 600.8302:

  - In small claims cases, injunctions and orders rescinding and reforming contracts. MCL 600.8302(2).

  - In summary proceedings, equitable claims regarding interests in land and equitable claims arising out of foreclosure, partition or public nuisances. MCL 600.8302(3). See *Mfrs Hanover Mortgage Corp v Snell*, 142 Mich App 548, 554 (1985).[4]

  - In an action under Chapter 87 of the Revised Judicature Act, (addressing municipal civil infractions), to issue and enforce any judgment, writ, or order necessary to enforce the ordinance. MCL 600.8302(4).

[3]Note that only attorney district court magistrates may hear small claims cases. MCL 600.8427.

- Equitable jurisdiction over forfeiture proceedings brought under Chapter 47 of the Revised Judicature Act. MCL 600.8303.

- Attachment and garnishment under certain conditions. MCL 600.8306.

- Civil actions to recover the possession of goods or chattels which are unlawfully taken or unlawfully detained if within the limitations of the jurisdictional amount and venue otherwise applicable to the district court. MCL 600.8308.

Concurrent jurisdiction. Some district courts are under concurrent jurisdiction plans pursuant to MCL 600.401. "A plan of concurrent jurisdiction under [MCL 600.401] may provide for 1 or more of the following:

* * *

> (e) The district court and 1 or more district judges may exercise the power and jurisdiction of the circuit court.
>
> (f) The district court and 1 or more district judges may exercise the power and jurisdiction of the probate court.
>
> (g) If there are multiple district court districts within the judicial circuit, 1 or more district judges may exercise the power and jurisdiction of judge of another district court district within the judicial circuit." MCL 600.401(2).

However, "[i]n a district court district in which the district court is affected by a plan of concurrent jurisdiction adopted under [C]hapter 4[of the Revised Judicature Act, MCL 600.401 *et seq.*], the district court has concurrent jurisdiction with the circuit court or the probate court, or both, as provided in the plan of concurrent jurisdiction, except as to the following matters:

> (a) The circuit court has exclusive jurisdiction over appeals from the district court and from administrative agencies as authorized by statute.

---

[4]Because MCL 600.8302(3) is a more specific grant of jurisdictional power than the general grant of jurisdictional power found in [MCL 600.8301(1),it takes precedence. *Bruwer v Oaks (On Remand)*, 218 Mich App 392, 396 (1996). See also *Clohset*, 302 Mich App at 561-562, where the Court of Appeals held that the district court had jurisdiction over the case even though the judgment was for an amount outside its jurisdictional limit under MCL 600.8301(1) "[b]ecause subject-matter jurisdiction is determined by reference to the pleadings, and because the complaint filed by the [plaintiffs] in the district court invoked the district court's specific jurisdiction under MCL 600.8302(1) and [MCL 600.8302(3)] and chapter 57 of the [Revised Judicature Act] RJA, [a] specific jurisdictional grant that takes precedence over the more general jurisdictional grant found in MCL 600.8301(1)[.]"

> (b) The circuit court has exclusive jurisdiction and power to issue, hear, and determine prerogative and remedial writs consistent with section 13 of article VI of the state constitution of 1963." MCL 600.8304.

Under a plan of concurrent jurisdiction, any magistrate in any of the district courts involved in the concurrent jurisdiction plan approved by the Michigan Supreme Court is authorized to use any powers granted to them by their judge under the local administrative order (LAO), which must outline the duties that the district court magistrate is authorized to perform pursuant to statute. See MCL 600.401, MCL 600.8304, MCL 600.8501, Administrative Order No. 2009-6, 485 Mich xcv (2009).

If there is a multiple district plan, a district court magistrate has limited authority to conduct certain proceedings outside the district. MCL 600.8251(6). For further discussion of multiple district plans see Section 1.7.

"As part of a concurrent jurisdiction plan, the circuit court and district court may enter into an agreement for district court probation officers to prepare the presentence investigation report and supervise on probation defendants who either plead guilty to, or are found guilty of, a misdemeanor in circuit court. The case remains under the jurisdiction of the circuit court." MCR 6.008(E).

1.6 Venue[5]

A. First-Class Districts

In a district of the first class, venue for criminal actions is the county where the violation took place. MCL 600.8312(1).

B. Second-Class District

In a district of the second class, venue for criminal actions is in the district where the violation took place. MCL 600.8312(2).

C. Third-Class District

In a district of the third class, venue for criminal actions is in the political subdivision where the violation took place, except when the violation occurs in a political subdivision where the court is not

[5]See Section 6.4 for information on venue for civil infractions and Section 7.5 for information on venue for small claims.

required to sit, venue is proper in any political subdivision where the court is required to sit. MCL 600.8312(3).

D. Special Provisions

"With regard to state **criminal** violations cognizable by the district court, the following special provisions shall apply:

> (a) If an offense is committed on the boundary of 2 or more counties, districts, or political subdivisions or within 1 mile thereof, venue is proper in any of the counties, districts, or political subdivisions concerned.
>
> (b) If an offense is committed in or upon any railroad train, automobile, aircraft, vessel, or other conveyance in transit, and it cannot readily be determined in which county, district, or political subdivision the offense was committed, venue is proper in any county, district, or political subdivision through or over which the conveyance passed in the course of its journey." MCL 600.8312(4).

1.7 Multiple District Plans

A multiple district plan allows a district court magistrate to serve, in a limited capacity, in district courts that are not within his or her home district. See MCL 600.8320.

"The chief or only judges of 2 or more districts of the district court within a county or the chief or only judges of 2 adjoining districts of the first class may create a multiple district plan or plans subject to all of the following limitations and requirements:

> (a) A multiple district plan shall be in writing and shall be signed by the chief or only judges of all participating districts in the multiple district area.
>
> (b) A multiple district plan shall specify who has superintending control of a district court magistrate acting under the plan and may include, but shall not be limited to, provisions regarding compensation for the district court magistrate and any support personnel and use of facilities.
>
> (c) A multiple district plan shall not grant to a district court magistrate powers or duties that are not authorized by [C]hapter 85 [of the Revised Judicature Act, MCL 600.8501 *et seq.*] or that exceed the authorization of the chief or only

> judge of the district on behalf of which the magistrate is acting.
>
> (d) A multiple district plan may authorize a district court magistrate appointed pursuant to [MCL 600.8501] to serve at any location, and on behalf of all participating districts, within the multiple district area.
>
> (e) A multiple district plan is subject to approval by the state court administrator." MCL 600.8320(2).

"A district judge shall not serve outside the district for which he or she is elected pursuant to a multiple district plan under [MCL 600.8320] unless he or she is assigned by the supreme court to act as a district judge for the other district or districts designated by the plan." MCL 600.8320(3).

A district court magistrate serving under a multiple district plan in a multiple district area has limited authority and, with the authorization of the chief judge of the district in which the magistrate is acting, may only "conduct arraignments, set bail or recognizances, provide for the appointment of counsel, or make determinations of probable cause and issue warrants, for all of the participating districts within a multiple district area." MCL 600.8320(1)(b).

1.8 Interpreters

A. Statutory and Constitutional Rights to Simultaneous Translation

MCL 775.19a provides:

> "If an accused person is about to be examined or tried and it appears to the judge that the person is incapable of adequately understanding the charge or presenting a defense to the charge because of a lack of ability to understand or speak the English language, the inability to adequately communicate by reason of being mute, or because the person suffers from a speech defect or other physical defect which impairs the person in maintaining his or her rights in the case, the judge shall appoint a qualified person to act as an interpreter. Except as provided in the [Deaf Persons' Interpreters Act, MCL 393.501 *et seq.*], the interpreter shall be compensated for his or her services in the same amount and manner as is provided for interpreters in [MCL 775.19]."

Under MCL 775.19a, a trial court "has an affirmative duty to establish [a] defendant's proficiency in English or appoint an interpreter"

where there is record evidence "that [the] defendant [is] incapable of understanding English at a level necessary to effectively participate in his defense without simultaneous translation of the trial proceedings." *People v Gonzalez-Raymundo*, 308 Mich App 175, 189 (2014) (citations omitted). "[W]hen presented . . . with indications that a defendant may lack sufficient comprehension of the English language, [the trial court should] either satisfy itself of the defendant's proficiency, provide for simultaneous interpretation, or, if the defendant wishes to waive the right to an interpreter, secure the defendant's personal, informed waiver." *Id*. at 193 (citations omitted). A court's "fail[ure] to satisfy this duty[] . . . [may] effectively prevent[] [a] defendant from being truly present at his trial and arguably interfere[] with his ability to assist in his defense, including in the cross-examination of witnesses." *Id*. at 190.

Additionally, "[t]he lack of simultaneous translation [may] implicate[a] defendant's rights to due process of law guaranteed by the United States and Michigan Constitutions." *Gonzalez-Raymundo*, 308 Mich App at 188, citing US Const, Am V; US Const, Am XIV; Const 1963, art 1, § 17. "Specifically, a defendant has a right to be present at a trial against him . . . and a defendant's lack of understanding of the proceedings against him renders him [effectively absent[.]" *Gonzalez-Raymundo*, 308 Mich App at 188 (citations omitted). "In addition, lack of simultaneous translation impairs a defendant's right to confront witnesses against him and participate in his own defense." *Id*. (citations omitted). Because the right to simultaneous translation "is . . . not merely statutory as codified by MCL 775.19a, but [also] constitutional, . . . [it is] subject to every reasonable presumption against its loss." *Gonzalez-Raymundo*, 308 Mich App at 188.

B. Appointment of Interpreter for Deaf or Deaf-Blind Person[6]

1. Right to Appointment of Interpreter for Deaf or Deaf-Blind Person Under MCL 393.501 *et seq*.

A deaf or deaf-blind person has the right to a qualified interpreter and to meaningful participation in judicial or investigative proceedings. *People v Brannon*, 194 Mich App 121, 127 (1992); *Bednarski v Bednarksi*, 141 Mich App 15, 19 (1985); MCL 393.503(3); MCL 393.504(1).

"An appointing authority, when it knows a deaf or deaf-blind person is or will be coming before it, shall inform the deaf or

[6]Information on interpreters for the deaf is available at http://courts.mi.gov/Administration/admin/op/access/Pages/americans-with-disabilities-act.aspx. For a list of sign language interpreters or accommodations available for the deaf, hard of hearing, and deaf-blind persons, see www.michigan.gov/mdcr/0,4613,7-138-58275_28545---,00.html.

deaf-blind person of the right to a qualified interpreter." MCL 393.504(2). See also *Bednarski*, 141 Mich App at 20 ("an appointing authority . . . who knows a deaf person will be coming before it is obliged to inform the deaf person of the right to an interpreter[]").

2. Interpreters in Arrest/Custodial/Interrogation Situations

"If a deaf or deaf-blind person is arrested and taken into custody for any alleged violation of a criminal law of this state, the arresting officer and the officer's supervisor shall procure a qualified interpreter in order to properly interrogate the deaf or deaf-blind person and to interpret the deaf or deaf-blind person's statements." MCL 393.505(1).

"A statement taken from a deaf or deaf-blind person before a qualified interpreter is present is not admissible in court." MCL 393.505(2).

"An evidentiary hearing should be conducted when there is a challenge of the admissibility of a statement from a defendant who asserts he should have been provided with an interpreter under MCL 393.505." *Brannon*, 194 Mich App at 128. Testimony at the hearing "should center on whether the [alleged deaf] individual lacked the necessary communication skills to make a statement without the aid of an interpreter." *Id*.

"[A] reviewing court must engage in a two-step analysis when determining whether a defendant's statement is admissible when he claims he has a hearing deficiency." *Brannon*, 194 Mich App at 129. "First, if the court finds the defendant is 'deaf,' as defined by [MCL 393.502(b)], then the Legislature has provided that the defendant cannot be interrogated unless he [or she] is provided with an interpreter and that any statement made by a deaf defendant unaided by an interpreter must be automatically excluded." *Brannon*, 194 Mich App at 129. "Second, if the court finds the defendant is not 'deaf,' as provided by [MCL 393.502(b)], the court must still determine whether the hearing-impaired defendant was able to comprehend his rights and make a knowing and intelligent waiver of his rights." *Brannon*, 194 Mich App at 129-130.

"Before utilizing a statement made by a hearing-impaired defendant either with or without the assistance of an interpreter, it must be established that the defendant comprehended his *Miranda*[7] rights and intelligently waived them before making the statement." *Brannon*, 194 Mich App at 130-131. "A waiver is intelligently made when the *Miranda* warnings are explained to

the defendant by an interpreter familiar with and competent in the defendant's primary language." *Id*. at 131. "Where a hearing-impaired defendant is subjected to polygraph examination, even greater care must be taken in explaining the rights and questions involved." *Id*. (noting that "the Deaf Persons' Interpreters Act is generally based on the same Fifth Amendment concepts associated with the waiver of rights and the voluntariness of statements[]" and holding that "the basic principles applicable to *Walker*[8] hearings are applicable to hearings under the Deaf Persons' Interpreters Act[]").

3. Determining Whether to Appoint an Interpreter for Deaf or Deaf-Blind Person

a. Appointment for Witness or Party

"In any action before a court or a grand jury where a deaf or deaf-blind person is a participant in the action, either as a plaintiff, defendant, or witness, the court shall appoint a qualified interpreter to interpret the proceedings to the deaf or deaf-blind person, to interpret the deaf or deaf-blind person's testimony or statements, and to assist in preparation of the action with the deaf or deaf-blind person's counsel." MCL 393.503(1).

"In a proceeding before an appointing authority, other than a court, the appointing authority shall appoint a qualified interpreter to interpret the proceedings to the deaf or deaf-blind person and to interpret the deaf or deaf-blind person's testimony or statements in any proceeding before the appointing authority." MCL 393.503(2).

See also *Bednarski*, 141 Mich App at 20 ("[t]he Deaf Persons' Interpreters Act . . . provides for the mandatory appointment of an interpreter in any action before a court or a grand jury where a deaf person is a participant in the action, either as a plaintiff, defendant, or witness, to perform three specific functions: (1) to interpret the proceedings to the deaf person; (2) to interpret the deaf person's testimony or statements; and (3) to assist in preparation of the action with the deaf person[]"). In *Bednarski*, 141 Mich App at 20-21, the defendant was entitled to a new trial where the procedure followed at

[7] *Miranda v Arizona*, 384 US 436 (1966). See the Michigan Judicial Institute's *Evidence Benchbook*, Chapter 3, for discussion of self-incrimination and *Miranda*.

[8] *People v Walker (On Rehearing)*, 374 Mich 331 (1965).

trial only satisfied the second function set out in MCL 393.503(1). See also *People v Thomas*, 441 Mich 879 (1992), where the defendant moved for a new trial on the basis of the court's failure to appoint an interpreter on his behalf "under either the Deaf Persons' Interpreters Act, MCL 393.501 *et seq.*, MCL 775.19a[,] or constitutional principles[.]" The trial court denied the motion, "allud[ing] to the fact that neither the defendant nor the attorneys ever mentioned any need for the court to appoint an interpreter for the defendant." *Thomas*, 441 Mich at 879. "However, the record include[d] statements by the court that it was aware that the defendant had a hearing problem at the time [he] waived his right to a jury trial . . . and during the trial itself[.]" *Id*. "The record also contain[ed] an assertion by defense counsel during trial that the defendant was 80% deaf and . . . suggest[ed] that the court appointed an interpreter for the defendant to assist in proceedings in another case that took place at about the same time as or soon after the trial of this matter." *Id*. The Michigan Supreme Court remanded for "supplemental findings as to why an interpreter was not appointed on the defendant's behalf." *Id*.

b. Notification of Need for/Right to Interpreter

"Each deaf or deaf-blind person whose appearance in an action or other proceeding entitles the deaf or deaf-blind person to a qualified interpreter shall provide reasonable notice to the appointing authority of the need of a qualified interpreter before the appearance." MCL 393.504(1).

"Each deaf or deaf-blind person who is entitled to a qualified interpreter as an accommodation under state or federal law shall provide reasonable notice to the appointing authority of the need for a qualified interpreter." MCL 393.504(1).

c. Reasonable Proof of Deafness

"An appointing authority may require a person requesting the appointment of a qualified interpreter to furnish reasonable proof of the person's deafness, if the appointing authority has reason to believe that the person is not deaf or deaf-blind." MCL 393.504(3).

d. Making a Determination

"A trial court's decision regarding whether an individual is a deaf person is based upon factual findings[.]" *Brannon*, 194 Mich App at 127-128.

"A qualified interpreter shall not be appointed unless the appointing authority and the deaf or deaf-blind person make a preliminary determination that the qualified interpreter is able to readily communicate with the deaf or deaf-blind person and to interpret the proceedings in which the deaf or deaf-blind person is involved." MCL 393.503(4). "[T]he record should affirmatively disclose that the required preliminary determination was made." *Bednarski*, 141 Mich App at 22.

"If a qualified interpreter states that the interpreter is unable to render a satisfactory interpretation and that an intermediary interpreter or deaf interpreter will improve the quality of the interpretation, the appointing authority shall appoint an intermediary interpreter or deaf interpreter to assist the qualified interpreter." MCL 393.503(5).

e. Fulfilling Requests

"The appointing authority shall channel requests for qualified interpreters, intermediary interpreters, and deaf interpreters through the division." MCL 393.508(1). "The division shall compile and update annually a listing of qualified interpreters, intermediary interpreters, and deaf interpreters and shall make this listing available to an appointing authority that may need the services of a qualified interpreter, intermediary interpreter, or deaf interpreter as required by [the Deaf Persons' Interpreters Act, MCL 393.501 *et seq*.]" MCL 393.508(2).

Committee Tip:

An ADA Coordinator or contact has been designated in each court to assist with questions or requests regarding accommodations for individuals who are deaf, deaf-blind, or hard of hearing.

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4. Waiver of Right to Interpreter

"The right of a deaf or deaf-blind person to a qualified interpreter shall not be waived except by a request for waiver in writing by the deaf or deaf-blind person." MCL 393.503(3).

"A written waiver of a plaintiff or defendant is subject to the approval of the deaf or deaf-blind person's counsel and the approval of the appointing authority." MCL 393.503(3). See also *Bednarski*, 141 Mich App at 20 ("[a]ny waiver of the right to an interpreter must be in writing by the deaf person).

5. Classifications of Interpreters for Deaf Person[9]

"If an interpreter is required as an accommodation for a deaf or deaf-blind person under state or federal law, the interpreter shall be a qualified interpreter." MCL 393.503a.

a. Qualified Interpreter

A *qualified interpreter* is "a person who is certified through the national registry of interpreters for the deaf or certified through the state by the division." MCL 393.502(f).

b. Qualified Oral Interpreter

A *qualified oral interpreter* is "a qualified interpreter who is able to convey information through facial and lip movement." MCL 393.502(g).

c. Qualified Sign Language Interpreter

A *qualified sign language interpreter* is "a qualified interpreter who uses sign language to convey information." MCL 393.502(h).

d. Intermediary Interpreter/Deaf Interpreter

An *intermediary interpreter* or *deaf interpreter* is "any person, including any deaf or deaf-blind person, who is able to assist in providing an accurate interpretation between spoken English and sign language or between

[9]On February 22, 2016, the Michigan Department of Civil Rights (MDCR)—Division of Deaf, Deaf-Blind, and Hard of Hearing released its policies and procedures for certified interpreters who provide American Sign Language (ASL) services enforcing Michigan's Deaf Persons' Interpreters Act and the Qualified Interpreter-General Rules. For more information, see http://courts.mi.gov/Administration/SCAO/OfficesPrograms/TCS/Documents/TCS%20Memoranda/TCS-2016-06.pdf.

variants of sign language by acting as an intermediary between a deaf or deaf-blind person and a qualified interpreter." MCL 393.502(e).

6. Appointing More Than One Interpreter

In a situation where both parties and several additional witnesses were deaf, the Court of Appeals stated its opinion that "the provisions of [the Deaf Persons' Interpreters Act] require the appointment of an interpreter for each plaintiff and defendant, and a third interpreter for the court, if necessary." *Bednarski*, 141 Mich App at 21.

7. Interpreter Oath or Affirmation

"Before a qualified interpreter participates in any action or other proceeding because of an appointment under [the Deaf Persons' Interpreters Act, MCL 393.501 *et seq.*], the qualified interpreter shall make an oath or affirmation that the qualified interpreter will make a true interpretation in an understandable manner to the deaf or deaf-blind person for whom the qualified interpreter is appointed and that the qualified interpreter will interpret the statements of the deaf or deaf-blind person in the English language to the best of the interpreter's skill." MCL 393.506(1).

The Court of Appeals noted that MCL 393.506(1) may have been violated where "[p]rior to trial, counsel stipulated that the interpreter would 'paraphrase' the answers of the witnesses to 'expedite' the proceeding." *Bednarski*, 141 Mich App at 22. The Court recognized that "[d]ue to the conceptual nature of sign language, a verbatim translation of oral testimony (or vice versa) may not be possible[;] [h]owever, the very fact of the unavoidable translation difficulty renders the need for accurate and skillful interpretation even more critical." *Id*.

"The appointing authority shall provide recess periods as necessary for the qualified interpreter when the qualified interpreter so indicates." MCL 393.506(1).

"The information that the qualified interpreter, intermediary interpreter, or deaf interpreter gathers from the deaf or deaf-blind person pertaining to any action or other pending proceeding shall at all times remain confidential and privileged, unless the deaf or deaf-blind person executes a written waiver allowing the information to be communicated to other persons and the deaf or deaf-blind person is present at the time the information is communicated." MCL 393.506(2).

8. Interpreter Costs

"A court appointed interpreter, qualified interpreter, intermediary interpreter, or deaf interpreter shall be paid a fee by the court that it determines to be reasonable." MCL 393.507(1).

"A qualified interpreter, intermediary interpreter, or deaf interpreter appointed by an appointing authority other than a court shall be paid a fee by the appointing authority[] . . . out of funds available to the appropriate appointing authority." MCL 393.507(1)-(2).

"In addition, a qualified interpreter, intermediary interpreter, or deaf interpreter shall be paid for his or her actual expenses for travel, meals, and lodging." MCL 393.507(1).

"A qualified interpreter appointed for the deaf or deaf-blind person shall be available for the duration of the deaf or deaf-blind person's participation in the action or other proceeding." MCL 393.507(3).

C. Appointment of Foreign Language Interpreters[10]

1. Right to Appointment of Foreign Language Interpreter Under the Michigan Court Rules

To support access to justice, MCR 1.111 provides for court-appointed foreign language interpreters for limited English proficient (LEP) persons.[11] MCR 1.111 "focuses on the critical legal requirement [of] *meaningful access*[,]" and requires a court "to provide an interpreter for a party or witness if the court determines one is needed for either the party or the witness to meaningfully participate." ADM File No. 2012-03, 495 Mich clvii, clviii-clix (2013). See MCR 1.111(B)(1).

Limited English proficient person means "a person who does not speak English as his or her primary language, and who has a limited ability to read, write, speak, or understand English, and by reason of his or her limitations, is not able to understand and meaningfully participate in the court process." Administrative Order No. 2013-8.

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[10] For information on Language Access, see https://www.courts.michigan.gov/administration/court-programs/foreign-language-interpreter-certification-program/. For information on requesting a court interpreter, see https://www.courts.michigan.gov/resources-for/the-public/self-represented-litigants/.

[11] For a summary of MCR 1.111, see http://courts.mi.gov/Administration/SCAO/OfficesPrograms/FLI/Documents/MCR_%201_111_RuleSummary.pdf.

2. Determining Whether to Appoint a Foreign Language Interpreter

"Any doubts as to eligibility for interpreter services should be resolved in favor of appointment of an interpreter." MCR 1.111(F)(6). "At the time of determining eligibility, the court shall inform the party or witness of the penalties for making a false statement. The party has the continuing obligation to inform the court of any change in financial status and, upon request of the court, the party must submit financial information." MCR 1.111(F)(7).

Committee Tips:

A Language Access Coordinator has been designated in each court to assist with questions or requests regarding appointment of foreign language interpreters.

Whether to appoint multiple interpreters is in the discretion of the trial court. See MCR 1.111(E)(1) and MCR 1.111(F)(3). The court rules were purposefully crafted to allow the trial courts broad discretion to consider all of the facts of any circumstance and decide for themselves. For example, in a situation in which a defendant and a victim both need an interpreter, the court should seriously consider appointing separate interpreters for each. The court should avoid any appearance that proceedings are not equitable.

"[O]nce a litigant or counsel requests an interpreter and the court agrees to appoint one, the trial court has an ongoing obligation under MCR 1.111(B)(1) to ensure that [the testifying witness or party] receive[s] such interpretation services as [are] necessary to 'meaningfully participate in the case or court proceeding[.]" *In re DRRR Guardianship*, ___ Mich App ___, ___ (2025) (quotation marks and citation omitted) (holding that the court erred "in requiring appellant to repeatedly request an interpreter, in violation of MCR 1.111(B)(1), despite having previously determined that an interpreter was necessary for [appellant's sister] to meaningfully participate in the case").

a. Appointment for Witness or Party

"If a person requests a foreign language interpreter and the court determines such services are necessary for the person to meaningfully participate in the case or court proceeding, or on the court's own determination that foreign language interpreter services are necessary for a person to meaningfully participate in the case or court proceeding, the court shall appoint a foreign language interpreter for that person if the person is a witness testifying in a civil or criminal case or court proceeding or is a party." MCR 1.111(B)(1).

"Under MCR 1.111(B)(1), when a party or witness requests an interpreter and the court determines such services are necessary for meaningful participation, or when the court makes that determination on its own, the court *must* appoint an interpreter." *In re DARL Guardianship*, ___ Mich App ___, ___ (2025). "Once this determination is made, the trial court has a continuing obligation to ensure that interpreter services remain adequate throughout the proceedings, safeguarding the individual's ability to fully understand and participate in the case." *Id*. at ___. Accordingly, after the court grants a request for an interpreter, "there [is] no need for [a testifying witness or a party] to make additional requests for an interpreter." *In re DRRR Guardianship*, ___ Mich App ___, ___ (2025).

In *DRRR*, "while the court had previously provided [appellant] with an interpreter at initial proceedings, it erred by failing to abide by its continuing obligation, under MCR 1.111(B)(1), to provide [appellant] with an interpreter at all subsequent court proceedings." *DRRR*, ___ Mich App at ___. "Neither MCR 1.111 nor the court's language access plan require litigants to request an interpreter prior to each proceeding if the court has already determined that the litigant needs an interpreter."*DRRR*, ___ Mich App at ___. "The court was obligated by MCR 1.111(F)(1) to provide an interpreter until the proceedings were concluded." *DRRR*, ___ Mich App at ___ n 1 (holding that the trial court violated MCR 1.111(B) when it "required appellant to make multiple requests for an interpreter").

"Whenever practicable, the interpreter must be certified by the State Court Administrative Office (SCAO)." *DARL*, ___ Mich App at ___, citing MCR 1.111(F)(1) and MCR 1.111(A)(4). "However, when a SCAO-certified

interpreter is not reasonably available, 'after considering the gravity of the proceedings and whether the matter should be rescheduled,' the court *may* appoint a 'qualified' or 'capable' interpreter." *DARL*, ___ Mich App at ___, citing MCR 1.111(F)(1) and MCR 1.111(F)(2). "MCR 1.111(A)(6) outlines the detailed criteria for an interpreter to be considered 'qualified.'" *DARL*, ___ Mich App at ___ n 3. "The court determines a potential interpreter's capability through voir dire, during which the court assesses whether the interpreter can convey the intent and content of the speaker's words sufficiently to allow the court to conduct the proceeding without prejudice to the speaker." *DARL*, ___ Mich App at ___ n 4, citing MCR 1.111(F)(2).

"[T]he broad standard set forth under MCR 1.111(B)(1) mandates interpretation services during pretrial preparations when necessary for a defendant to meaningfully participate in the case or court proceeding." *People v Hoang*, 328 Mich App 45, 58 (2019) ("[A] party shall receive interpretation services as necessary for the person 'to meaningfully participate' in any hearing, trial, etc."). "Fundamental to meaningful participation in preliminary examinations, plea hearings, and trial is the ability to engage in pretrial preparation with trial counsel." *Id*. In *Hoang*, defendant's "trial counsel did not detect a communication breakdown." *Hoang*, 328 Mich App at 58. "However, after receiving letters from his client, trial counsel ensured that [defendant] had access to an interpreter." *Id*. Defendant's "interpreter participated telephonically during pretrial preparations between [defendant] and his attorney, and [defendant] did not raise any issue regarding interpretation services at the plea hearing." *Id*. Accordingly, "the trial court did not err . . . by failing to ensure the interpreter's physical presence during pretrial meetings with trial counsel." *Id*. (holding that the trial court complied with MCR 1.111, as well as MCL 775.19a, which specifically applies to the appointment of interpreters in criminal proceedings).

"Notwithstanding the failure of the defendant to request an interpreter, it was [reversible] error to fail to appoint an interpreter [at trial] where the record clearly show[ed] that the defendant spoke no English whatsoever." *People v Sepulveda*, 412 Mich 889 (1981).[12]

[12]Note that this case predates MCR 1.111.

b. Appointment for Person Other than Witness or Party

"The court may appoint a foreign language interpreter for a person other than a party or witness who has a substantial interest in the case or court proceeding." MCR 1.111(B)(2).

c. Determining Whether Services are Necessary for Meaningful Participation

"In order to determine whether the services of a foreign language interpreter are necessary for a person to meaningfully participate under [MCR 1.111(B)(1)], the court shall rely upon a request by an LEP individual (or a request made on behalf of an LEP individual) or prior notice in the record." MCR 1.111(B)(3). "If no such requests have been made, the court may conduct an examination of the person on the record to determine whether such services are necessary." *Id*.

"During the examination, the court may use a foreign language interpreter." MCR 1.111(B)(3). "For purposes of this examination, the court is not required to comply with the requirements of [MCR 1.111(F)] and the foreign language interpreter may participate remotely." MCR 1.111(B)(3).

d. Denying Request for Interpreter

"Any time a court denies a request for the appointment of a foreign language interpreter . . . , it shall do so by written order." MCR 1.111(H)(1). "An LEP individual may immediately request review of the denial of appointment of a foreign language interpreter[.]" MCR 1.111(H)(2). "A request for review must be submitted to the court within 56 days after entry of the order." *Id.*

3. Waiver of Right to Interpreter

"A person may waive the right to a foreign language interpreter established under [MCR 1.111(B)(1)] unless the court determines that the interpreter is required for the protection of the person's rights and the integrity of the case or court proceeding." MCR 1.111(C). "The court must find on the record that a person's waiver of an interpreter is knowing and voluntary." *Id*. "When accepting the person's waiver, the court may use a foreign language interpreter." *Id*. "For purposes of this waiver, the court

is not required to comply with the requirements of [MCR 1.111(F)] and the foreign language interpreter may participate remotely." MCR 1.111(C).

A defendant does not make "an informed waiver of his right to receive simultaneous translation during histrial[]" under MCL 775.19a where there is no indication "that [the] defendant [has] made a personal and informed decision to waive his right to an interpreter[]" and where "the trial court [does not] ask[] [the] defendant personally whether he [is] aware of his constitutional and statutory right to an interpreter[.]" *Gonzalez-Raymundo*, 308 Mich App at 187-189 (holding that defense counsel's assertion that the defendant "went along with" counsel's advice to waive his right to an interpreter "[did not] operate[] to affirmatively waive [the] defendant's rights[]").

4. Classifications of Foreign Language Interpreters

a. Certified Foreign Language Interpreters

"When the court appoints a foreign language interpreter under [MCR 1.111(B)(1)], the court shall appoint a certified foreign language interpreter whenever practicable." MCR 1.111(F)(1).

b. Qualified Foreign Language Interpreters

"If a certified foreign language interpreter is not reasonably available, and after considering the gravity of the proceedings and whether the matter should be rescheduled, the court may appoint a qualified foreign language interpreter who meets the qualifications in [MCR 1.111(A)(6)]." MCR 1.111(F)(1). "The court shall make a record of its reasons for using a qualified foreign language interpreter." *Id*. "As MCR 1.111(F)(1) suggests, a 'qualified foreign language interpreter' differs from a 'certified foreign language interpreter,' see MCR 1.111(A)(4)." *In re DRRR Guardianship*, ___ Mich App ___, ___ n 6 (2025).

c. Other Capable Person

"If neither a certified foreign language interpreter nor a qualified foreign language interpreter is reasonably available, and after considering the gravity of the proceeding and whether the matter should be rescheduled, the court may appoint a person whom the court determines through voir dire to be capable of

conveying the intent and content of the speaker's words sufficiently to allow the court to conduct the proceeding without prejudice to the limited English proficient person." MCR 1.111(F)(2).

"[T]he court erred when it failed to comply with MCR 1.111(F)(2) by refusing to voir dire or otherwise permit [appellant's sister] to use the qualified interpreter whom counsel brought to [a] hearing." *In re DRRR Guardianship*, ___ Mich App ___, ___ (2025). "Although a certified foreign language translator was not present at the hearing, appellant's attorney had a person capable of translating present at the hearing, as permitted under MCR 1.111(F)(2), yet the trial court refused to accept her as a translator because she was not certified by the State Court Administrator's Office (SCAO)." *DRRR*, ___ Mich App at ___. "[T]he sum of the trial court's rationale for asserting that it could prevent use of a non-certified interpreter was that requiring a certified foreign language interpreter was 'the procedure' and simply 'how we run things here', but those comments fall short of valid reasons for requiring a certified foreign language interpreter." *DRRR*, ___ Mich App at ___ n 8. "Had the court adhered to MCR 1.111(F)(2), it would have found that the proposed interpreter had been speaking Spanish since she was five years old, that she had a minor degree in Spanish from Michigan State University, and that she had been employed in various positions that required her to translate English and Spanish in the United States and abroad." *DRRR*, ___ Mich App at ___. "The proposed interpreter was precisely the type of person referenced in MCR 1.111(F)(2), i.e., a person 'capable of conveying the intent and content of the speaker's words sufficiently to allow the court to conduct' the hearing without prejudice to [appellant's sister], who was not proficient in English." *DRRR*, ___ Mich App at ___ ("conclud[ing] that the court made several critical errors, resulting in [appellant's sister] being denied meaningful access to justice").

d. Court Employee As Foreign Language Interpreter

"A court employee may interpret legal proceedings as follows:

> (a) The court may employ a person as an interpreter. The employee must meet the minimum requirements for [certified foreign

> language] interpreters established by [MCR 1.111(A)(4)]. The state court administrator may authorize the court to hire a person who does not meet the minimum requirements established by [MCR 1.111(A)(4)] for good cause including the unavailability of a certification test for the foreign language and the absence of certified interpreters for the foreign language in the geographic area in which the court sits. The court seeking authorization from the state court administrator shall provide proof of the employee's competency to act as an interpreter and shall submit a plan for the employee to meet the minimum requirements established by [MCR 1.111(A)(4)] within a reasonable time.
>
> (b) The court may use an employee as an interpreter if the employee meets the minimum requirements for interpreters established by [MCR 1.111] and is not otherwise disqualified." MCR 1.111(E)(2).

5. Appointing More Than One Interpreter

In general, "[t]he court shall appoint a single interpreter for a case or court proceeding." MCR 1.111(F)(3). However, "[t]he court may appoint more than one interpreter after consideration of[:]

- the nature and duration of the proceeding;
- the number of parties in interest and witnesses requiring an interpreter;
- the primary languages of those persons; and
- the quality of the remote technology that may be utilized when deemed necessary by the court to ensure effective communication in any case or court proceeding." MCR 1.111(F)(3) (bullets added).

6. Avoiding Potential Conflicts of Interest

"The court should use all reasonable efforts to avoid potential conflicts of interest when appointing a person as a foreign language interpreter and shall state its reasons on the record for appointing the person if any of the following applies:

> (a) The interpreter is compensated by a business owned or controlled by a party or a witness;
>
> (b) The interpreter is a friend, a family member, or a household member of a party or witness;
>
> (c) The interpreter is a potential witness;
>
> (d) The interpreter is a law enforcement officer;
>
> (e) The interpreter has a pecuniary or other interest in the outcome of the case;
>
> (f) The appointment of the interpreter would not serve to protect a party's rights or ensure the integrity of the proceedings;
>
> (g) The interpreter does have, or may have, a perceived conflict of interest;
>
> (h) The appointment of the interpreter creates an appearance of impropriety." MCR 1.111(E)(1).

7. Recordings

"The court may make a recording of anything said by a foreign language interpreter or a limited English proficient person while testifying or responding to a colloquy during those portions of the proceedings." MCR 1.111(D).

8. Interpreter Oath or Affirmation

"The court shall administer an oath or affirmation to a foreign language interpreter substantially conforming to the following:

> 'Do you solemnly swear or affirm that you will truly, accurately, and impartially interpret in the matter now before the court and not divulge confidential communications, so help you God?'" MCR 1.111(G).

9. Interpreter Costs

"The court may set reasonable compensation for interpreters who are appointed by the court." MCR 1.111(F)(4). "Court-appointed interpreter costs are to be paid out of funds provided by law or by the court." *Id*. See also MCL 775.19a; MCL 775.19.

"Except as otherwise provided in [MCR 1.111(F)], if a party is financially able to pay for interpretation costs, the court may

order the party to reimburse the court for all or a portion of interpretation costs. Reimbursement is prohibited in criminal cases." MCR 1.111(F)(5).

"Any time a court . . . orders reimbursement of interpretation costs, it shall do so by written order." MCR 1.111(H)(1).

"An LEP individual may immediately request review of . . . an assessment for the reimbursement of interpretation costs." MCR 1.111(H)(2). "A request for review must be submitted to the court within 56 days after entry of the order." *Id*. "In a court having two or more judges, the chief judge shall decide the request for review de novo." MCR 1.111(H)(2)(a). "In a single-judge court, or if the denial was issued by a chief judge, the judge shall refer the request for review to the state court administrator for assignment to another judge, who shall decide the request de novo." MCR 1.111(H)(2)(b).

If there is a pending request for review under MCR 1.111(H), the underlying litigation is stayed and the request for review must be decided on an expedited basis. MCR 1.111(H)(2)(c)-(d).

"No motion fee is required for a request for review made under [MCR 1.111(H)]." MCR 1.111(H)(2)(e).

10. Standard of Review

Appellate courts review a trial court's decision whether to appoint an interpreter for an abuse of discretion. *In re DRRR Guardianship*, ___ Mich App ___, ___ (2025). "A court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes." *Id*. at ___ (quotation marks and citation omitted). "[Appellate courts] review de novo the interpretation of statutes and court rules." *Id*. at ___.

1.9 Miscellaneous Authority of District Court Magistrates

The primary authorities of district court magistrates are discussed in detail throughout this manual, including the issuance of arrest and search warrants, pretrial release, arraignment, pleas, sentencing, civil infraction cases, small claims proceedings, and marriage ceremonies. This section addresses some additional areas where district court magistrates have authority.

A. Suspend Payment of Court Fees

"If authorized by the chief judge of the district, a district court magistrate may . . . [s]uspend payment of court fees by an indigent

party in any civil, small claims, or summary proceedings action, until after judgment has been entered." MCL 600.8513(2)(b).

B. Execute and Issue Process

"If authorized by the chief judge of the district, a district court magistrate may . . . [e]xecute and issue process to carry into effect authority expressly granted by law to district court magistrates." MCL 600.8513(2)(d).

C. Administer Oaths and Affirmations

"[D]istrict court magistrates may administer oaths and affirmations[.]"[13] MCL 600.8317.

"Before testifying, a witness must give an oath or affirmation to testify truthfully. It must be in a form designed to impress that duty on the witness's conscience." MRE 603.

Under MRE 603, "no particular form or language is necessary[.]" *Donkers v Kovach*, 277 Mich App 366, 372-373 (2007) (holding that the witness was not required to raise her hand while affirming to tell the truth).

"The usual mode of administering oaths now practiced in [Michigan], by the person who swears holding up the right hand, shall be observed in all cases in which an oath may be administered by law except as otherwise provided by law. The oath shall commence, 'You do solemnly swear or affirm'." MCL 600.1432(1).

"If an oath or affirmation is administered by electronic or electromagnetic means of communication pursuant to [MCL 780.651], or pursuant to [MCL 764.1], the oath or affirmation is considered to be administered before the justice, judge, or district court magistrate." MCL 600.1432(2).

Foreign language interpreters. "The court shall administer an oath or affirmation to a foreign language interpreter substantially conforming to the following: 'Do you solemnly swear or affirm that you will truly, accurately, and impartially interpret in the matter now before the court and not divulge confidential communications, so help you God?'" MCR 1.111(G). See also MRE 604 (stating interpreters must be qualified and must give an oath or affirmation to make a true translation).

[13] Note that MCL 600.8317 also authorizes district court magistrates to take acknowledgments. However, effective March 12, 2019, 2018 PA 363 repealed the Uniform Recognition of Acknowledgments Act.

D. Collecting and Recording Payment of Fines and Costs

"Except [in the 36th District Court], district court magistrates shall pay all fines and costs received by them to the clerk of the district court on or before the last day of the month following receipt of those funds, which shall be allocated as provided in [MCL 600.8379]." MCL 600.8535(1).

"In the [36th District Court], each district court magistrate shall cause all fines and costs received by the magistrate to be paid immediately to the clerk of the district court for the thirty-sixth district." MCL 600.8535(2).

If a magistrate collects and records payments, the magistrate must follow the fiscal management guidelines regarding the receipt and deposit of money in Section 6-05 of the SCAO's *Michigan Trial Court Administration Reference Guide*.

E. Dangerous Animals

"Upon a sworn complaint that an animal is a dangerous animal and has caused serious injury or death to an individual or has caused serious injury or death to a dog, a district court magistrate, district court, or municipal court shall issue a summons to the owner ordering him or her to appear to show cause why the animal should not be destroyed." MCL 287.322(1). See also MCL 287.286a (providing similar authority pertaining only to dogs under the Dog Law of 1919, MCL 287.261 *et seq.*).

The definition of "dangerous animal" excludes an "animal that bites or attacks a person who *provokes* or torments the animal." MCL 287.321(a)(*ii*). See *In re Chance*, ___ Mich App ___, ___ (2026) (holding that provocation is determined under "a wholly objective standard").

1. Temporary Placement of Animal Until Hearing is Held

"Upon the filing of a sworn complaint as provided in [MCL 287.322(1)], the district court magistrate, district court, or municipal court shall order the owner to immediately turn the animal over to an animal control authority, incorporated humane society, veterinarian, or boarding kennel, at the owner's option, to be retained until a hearing is held and a decision is made for the disposition of the animal." MCL 287.322(2).

"The owner shall notify the person that retains the animal under this subsection of the complaint and order." MCL 287.322(2).

"The owner is responsible for the expense of the boarding and retention of the animal." MCL 287.322(2).

"The animal must not be returned to the owner until the animal has a current rabies vaccination and license as required by law." MCL 287.322(2).

2. Possible Outcomes After Hearing

a. Dangerous Animal That Caused Serious Injury or Death

The district court magistrate, district court, or municipal court shall order destruction of the animal, at the owner's expense, "if the animal is found to be a dangerous animal that caused serious injury or death to an individual or a dog[.]" MCL 287.322(3).

b. Dangerous Animal That is Likely to Cause Future Serious Injury or Death

The "district court magistrate, district court, or municipal court may order destruction of the animal, at the owner's expense," "if the animal has been previously adjudicated a dangerous animal or is found to be a dangerous animal that did not cause serious injury or death to an individual but is likely to cause serious injury or death to an individual in the future[.]" MCL 287.322(3).

c. Dangerous Animal That Has Not Caused Serious Injury or Death

If the district court magistrate, district court, or municipal court finds that an animal is a dangerous animal that has not caused serious injury or death to an individual, it shall notify the county animal control authority of:

- the court's finding;
- the name of the dangerous animal's owner, and;
- the address at which the animal was kept at the time of the finding. MCL 287.322(4).

The district court magistrate, district court, or municipal court must also order the owner of the dangerous animal to do one or more of the following:

- If the dangerous animal is a dog, have a permanent identification number assigned to the animal at the owner's expense.
- Erect escape proof fencing or an enclosure that includes a top or roof, to prevent the animal from escaping or an unauthorized individual from entering the premises.
- Sterilize the animal.
- Obtain and maintain liability insurance coverage sufficient to protect the public from any damage or harm caused by the animal.
- Take any other action appropriate to protect the public. MCL 287.322(5)(a)-(e) (some quotation marks omitted).

3. Caselaw

Although MCL 287.321 does not define "attack," an attack "require[s] targeted conduct by the attacker against the attackee," e.g., for an animal "to set upon or work against forcefully, to begin to affect or to act on injuriously, to set upon with violent force, and to act on in a detrimental way, cause harm to." *In re Tato*, 339 Mich App 654, 661 (2021) (cleaned up). Thus, an animal does not "attack" where there are "individuals or animals who are simply in the area or incidentally hurt as a result of the attack." *Id*. at 661. In *Tato*, a dog who escaped from his home attacked a smaller dog who was out on a walk with her owner. *Id*. at 657. The owner of the smaller dog was able to free her dog, but received minor scrapes during the incident; a group of people nearby also attempted to assist in the release of the smaller dog but they were not injured. *Id.* at 657, 658. The smaller dog suffered an injury to one ear that did not require stitches and was not noticeable after grooming. *Id.* at 658. The trial court improperly concluded that the larger dog was a dangerous animal because none of the people involved in the incident were the target of his attack and there were only incidental injuries. *Id*. at 662. Additionally, the injuries suffered by the smaller dog "[did] not amount to disfigurement or impairment that could be deemed to rise to the level of a 'serious injury' under [MCL 287.321(e)]." *Tato*, 339 Mich App at 662. Accordingly, the dog was not a dangerous animal under

the statute because he did not attack a person and did not cause serious injury to an animal. *Id*. at 662, 663.

"'Provoke' means to perform a willful act or omission that an *ordinary and reasonable person* would conclude is likely to precipitate the bite or attack *by an ordinary dog or animal*." MCL 287.321(d) (emphasis added). "The term 'ordinary and reasonable person' is a legal term of art that denotes an objective standard." *In re Chance*, ___ Mich App ___, ___ (2026). "The reference to an 'ordinary dog' in MCL 287.321(d) also indicates that an objective standard applies." *Chance*, ___ Mich App at ___. In *Chance*, the district court erred when it "relied in part on the guest's subjective thoughts or feelings in concluding that her actions did not constitute provocation." *Id*. at ___. Instead, "the district court should have applied a wholly objective standard in determining whether the guest's actions constituted provocation." *Id*. at ___. "That is, the district court should have considered whether getting down on the ground and putting one's face less than six inches from the face of a large dog that had a chewable object, such as a shoe, that had been next to the dog, while simultaneously scolding the dog in a loud voice while possibly waving a shoe above the dog's head, constituted 'a willful act or omission that an *ordinary and reasonable person* would conclude is likely to precipitate the bite or attack by an *ordinary* dog or animal.'" *Id*. at ___, quoting MCL 287.321(d). Furthermore, "the district court erred in failing to make credibility determinations and state findings regarding whether the guest was waving the shoe." *Chance*, ___ Mich App at ___ n 5 (concluding that the district court "misconstrued or misapplied the statutory definition of 'provoke' in MCL 287.321(d)" by "failing to apply a purely objective standard").

4. Additional Requirements for Dogs Under Dog Law of 1919

A district court magistrate must issue a summons to show cause why a dog should not be killed upon a sworn complaint that any of the following exist:

> "(a) After January 10 and before June 15 in each year a dog over 6 months old is running at large unaccompanied by its owner or is engaged in lawful hunting and is not under the reasonable control of its owner without a license attached to the collar of the dog.

> (b) A dog, licensed or unlicensed, has destroyed property or habitually causes damage by trespassing on the property of a person who is not the owner.
>
> (c) A dog, licensed or unlicensed, has attacked or bitten a person.
>
> (d) A dog has shown vicious habits or has molested a person when lawfully on the public highway.
>
> (e) A dog duly licensed and wearing a license tag has run at large contrary to [the Dog Law of 1919]." MCL 287.286a(1)(a)-(e).

After a hearing on the complaint, the district court magistrate may either order the dog killed or order the dog confined to the owner's premises.

If the owner disobeys the order, the owner may be punished under MCL 287.286.[14] MCL 287.286a(2). "Costs as in a civil case shall be taxed against the owner of the dog, and collected by the county. The county board of commissioners shall audit and pay claims for services of officers rendered pursuant to this section, unless the claims are paid by the owner of the dog." *Id.*

F. Abandoned Vehicles[15]

The Michigan Vehicle Code, MCL 257.1 *et seq.*, "'provides a statutory scheme for the removal and disposition of abandoned vehicles' and 'the processes by which a person may recover a vehicle or challenge the removal or seizure of a vehicle.'" *Auto-Owners Ins Co v J & T Towing*, ___ Mich App ___, ___ (2026), quoting *Noll v Ritzer*, 317 Mich App 506, 510 (2016). See MCL 257.252a, MCL 257.252b, and MCL 257.252d to MCL 257.252m.

A hearing on a petition under MCL 257.252a, MCL 257.252b, or MCL 257.252d must "be conducted by a district court magistrate, if a district court magistrate has been appointed by the court. The appeal of a district court magistrate's decision under [MCL 257.252f] shall be heard by a judge of the district court." MCL 257.252f(4).

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[14] MCL 287.286 provides in relevant part: "Any person or police officer, violating or failing or refusing to comply with any of the provisions of [the Dog Law of 1919] shall be guilty of a misdemeanor and upon conviction shall pay a fine not less than $10.00 nor more than $100.00, or shall be imprisoned in the county jail for not exceeding 3 months, or both such fine and imprisonment."

[15] See the Michigan Judicial Institute's *Abandoned Vehicle Hearing Checklist*.

"MCL 257.252a(6) mandates that a request for a hearing be made within 20 days after the date of the notice of abandonment." *Auto-Owners*, ___ Mich App at ___. MCL 257.252a(6) also requires that "a petitioner must post a bond when requesting a hearing under MCL 257.252a . . . ." *Auto-Owners*, ___ Mich App at ___, citing *Noll*, 317 Mich App at 515-516. Where either threshold is unmet, "[t]he district court [is] required to dismiss the petition and [errs] by failing to do so." *Auto-Owners*, ___ Mich App at ___ (observing that no attorney-fee award is authorized under MCL 257.252a(8) or MCL 257.252a(16) absent a finding that an owner's challenge was frivolous after a valid hearing on the reasonableness of the towing and storage fees); see also *Noll*, 317 Mich App at 516.

"[N]othing in the Michigan Vehicle Code indicates that an irregularity in complying with the procedures outlined in MCL 257.252d excuses a vehicle's owner from complying with the 20-day deadline for filing a petition under MCL [257].252a." *Auto-Owners*, ___ Mich App at ___. Nor is there "statutory language indicating that the petition-filing deadline may be delayed because of a transfer of vehicle ownership" or because of alleged missing elements in the notice of abandonment. *Id*. at ___.

1.10 Areas Where District Court Magistrates Lack Authority[16]

"Proceedings involving district court magistrates must be in accordance with relevant statutes and rules," and "district court magistrates exercise only those duties expressly authorized by" their chief judge. MCR 4.401(A)-(B). In addition, "[a] district judge may not extend the jurisdiction of a district court magistrate beyond the jurisdiction expressly provided by law." MCL 600.8541(1). District court magistrates do not have authority to:

- issue bench warrants, *In re James*, 492 Mich 553, 566, 566 n 22 (2012) (finding that the judge committed misconduct by requiring a district court magistrate to sign bench warrants "in violation of MCL 600.8511," which "permits magistrates to sign arrest warrants, not bench warrants");
- conduct probation violation hearings or probation violation sentencings, MCL 600.8511(d).

[16] District court magistrates "shall not preside at a preliminary examination or accept a plea of guilty or nolo contendere to an offense or impose a sentence *except as otherwise authorized by* [MCL 600.8511(a)-(c).]" MCL 766.1 (emphasis added). MCL 600.8511(a)-(c) sets forth specific situations where the district court magistrate may act and are discussed throughout this manual.

In addition, a district court magistrate may not "conduct an informal hearing in a civil infraction action involving a traffic or parking violation governed by the Michigan vehicle code [MCL 257.1–MCL 257.932], until he or she has successfully completed a special training course in traffic law adjudication and sanctions." MCL 600.8512(3).

1.11 Filings by Incarcerated Individuals

A pleading or other document filed by an unrepresented individual who is incarcerated in prison or jail "must be deemed timely filed if it was deposited in the institution's outgoing mail on or before the filing deadline. Proof of timely filing may include a receipt of mailing, a sworn statement setting forth the date of deposit and that postage has been prepaid, or other evidence (such as a postmark or date stamp) showing that the document was timely deposited and that postage was prepaid." MCR 1.112.

1.12 Ethical Obligations and Considerations

District court magistrates should be familiar with the Model Code of Conduct for Trial Court Employees and the Michigan Code of Judicial Conduct.

As a judicial officer, magistrates are subject to the Michigan Rules of Professional Conduct and the Michigan Code of Judicial Conduct, including filing financial reports pursuant to MCJC 6C and MCJC 5C(4)(c). MCR 9.201(B)(2); MCR 9.202. See SCAO Form SCAO 17, *Financial Report*.

The State Bar of Michigan has a Standing Committee on Professional Ethics and a Standing Committee on Judicial Ethics that renders opinions on questions of professional responsibility submitted by judges and attorneys.[17] These opinions address the propriety of various actions by judges and quasi-judicial personnel in light of the Michigan Code of Judicial Conduct. Some of these opinions apply directly to magistrates; others apply indirectly. While the committee's opinions are not binding on state courts, they may be considered instructive. *Reed v Breton*, 279 Mich App 239, 244 (2008). Published ethics opinions interpreting the Michigan Code of Judicial Conduct are available on the State Bar's website.

[17] To request an ethics opinion, visit http://www.michbar.org/generalinfo/ethics/request.

A. Facilitating Ability of Litigants to be Fairly Heard

"A judge may make reasonable efforts, consistent with the law, court rules, and rules of evidence, to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard." MCJC 3(A)(4). "In the interest of ensuring fairness and access to justice, judges may make reasonable efforts that help self-represented litigants to understand the proceedings and applicable procedural requirements, secure legal assistance, and be heard according to law." MCJC 3(A)(4)(a). "The judge should be careful that the reasonable efforts do not give self-represented litigants an unfair advantage or create an appearance of judicial partiality." *Id*. "In some circumstances, particular efforts for self-represented litigants are required by decisional or other law." *Id*. "In other circumstances, potential efforts are within the judge's discretion." *Id*. "Reasonable efforts that a judge may take in the exercise of such discretion include, but are not limited to:

> (i) Construe pleadings to facilitate consideration of the issues raised.
>
> (ii) Provide brief information or explanation about the proceedings.
>
> (iii) Ask neutral questions to elicit or clarify information.
>
> (iv) Modify the traditional manner or order of taking evidence.
>
> (v) Refer litigants to any resources available to assist in the preparation of the case or enforcement and compliance with any order.
>
> (vi) Inform litigants what will be happening next in the case and what is expected of them." [MCJC 3(A)(4)(b)].

B. Limitations on the Practice of Law

"An attorney at law who is a magistrate shall be prohibited from the practice of law in the district court for the district in which the attorney serves." MCL 600.8525.

"A person who is appointed as a magistrate in the thirty-sixth district shall not engage in the practice of law while he or she is a magistrate." MCL 600.8525.

The Michigan State Bar ethics committee has opined that it is not ethical for a full-time district court magistrate to engage in the

private practice of law anywhere. State Bar Ethic Opinion, JI-77, December 13, 1993.

C. Conflicts of Interest

There is a conflict of interest invalidating the district court magistrate's actions where the district court magistrate also serves as the deputy sheriff at the time of issuing a search warrant. *People v Payne*, 424 Mich 475, 482 (1985) (holding that the magistrate issuing a search warrant who is also a deputy sheriff is incapable of being "neutral and detached" as required by the Fourth Amendment). "A search warrant is invalid if the issuing magistrate also was an active participant in the investigation or prosecution of the underlying crime." *Id.* at 480. Further, "[t]he probable cause determination must be made by a person whose loyalty is to the judiciary alone, unfettered by professional commitment, and therefore loyalty, to the law enforcement arm of the executive branch." *Id.* at 483.

There is a conflict of interest invalidating the district court magistrate's actions where the district court magistrate is also the county district ambulance supervisor. 1 OAG, 1980, No. 5,757 (August 20, 1980) (simultaneously holding judicial power and the position of county district ambulance supervisor is a violation of the separation of powers in Const 1963, art 3, § 2).

D. Judicial Tenure Commission

Allegations of misconduct against a district court magistrate are investigated by the Judicial Tenure Commission, which determines whether to issue a formal complaint based on the allegations. MCR 9.220(B). If a complaint is issued, the commission must petition the Michigan Supreme Court for the appointment of a neutral. MCR 9.224(C). A hearing is held before the appointed neutral. See MCR 9.231(A). After the hearing, the neutral prepares a report containing findings of fact and conclusions of law, then transmits it to the commission. MCR 9.236. After hearing any objections to the report, the commission makes its own report and must file it with the Supreme Court. See MCR 9.240; MCR 9.241; MCR 9.244; MCR 9.250. Subchapter 9.200 of the Michigan Court Rules governs the Judicial Tenure Commission.

1.13 Media Relations

The chief judge represents the court in its relations with the general public and the news media. MCR 8.110(C)(2)(e).

1.14 Immunity

"A district court magistrate, for acts expressly authorized by the chief judge and by law, has judicial immunity to the extent accorded a district court judge." MCL 600.8513(3).

1.15 Administrative Issues Pertinent to District Court Magistrates

A district court magistrate should be familiar with local administrative policies and procedures of the court, as well as overall court administration. Administrative subject matters most pertinent to the magistrate are human resources, fiscal management, caseflow, records management, facilities, and court security. Although many of these subjects do not relate specifically to the management of the cases for which the magistrate is responsible, they are relevant to the everyday operations of the court. For a detailed discussion of public access to court records, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, 1.1(F)(2), and SCAO's *Michigan Trial Court Administration Reference Guide*, Chapter 4. The guide is available to every district court magistrate. The guide provides an overview of the authority, function, and pertinent details of court administration. Administrative issues can vary by court, and magistrates should always examine local policies.

Privileged information is not open to public inspection. For information about privileged information, see the Michigan Judicial Institute's *Evidence Benchbook*, Chapter 1.

Some common information, subject to disclosure rules, that a district court magistrate may work with is discussed in the following sub-subsections.

A. Caseflow Management

The docket schedule should be staggered so that the parties "may be heard within a time reasonably close to the scheduled time, and, except for good cause, the docket shall be called in order." MCR 8.116(C). For detailed discussion of caseflow management, see the SCAO's *Caseflow Management Guide*.

B. Records and Information Management

Every court should have a program for managing the creation, maintenance, and disposition of all court records, both case and internal operations, including personnel. Any records management program should be followed by the district court magistrate.

General information on records management, such as the method for keeping certain records, public access to court records, record retention and disposal, and report requirements, can be found in the SCAO's *Michigan Trial Court Administration Reference Guide*. See also the SCAO's *Michigan Trial Court Records Management Standards*.

For additional information on records management, and for links to records retention and disposal schedules, see the State Court Administrative Office's Records Management website. The retention and disposal schedule must be used in conjunction with the *Michigan Trial Court Records Management Standards*.

C. Set Aside Convictions

Courts must restrict access to case records involving set aside convictions in the same manner that MCL 780.623 restricts access to records maintained by the Michigan State Police. MCR 8.119(H)(9). Specifically, MCR 8.119(H)(9) provides that "[a]ccess to information on set aside convictions is limited to a court of competent jurisdiction, an agency of the judicial branch of state government, the department of corrections, a law enforcement agency, a prosecuting attorney, the attorney general, and the governor upon request and only for the purposes identified in MCL 780.623. Access may also be provided to the individual whose conviction was set aside, that individual's attorney, and the victim(s) as defined in MCL 780.623." MCR 8.118(H)(9). However, MCR 8.119(H)(9) requires the court to redact "all information related to the set aside conviction or convictions before making the case record or a court record available to the public in any format." *Id*.[18]

D. Confidentiality and Management of Records[19]

MCR 8.119 governs court records and reports, including which records are public records. Trial courts must comply with the records standards in MCR 8.119, MCR 1.109, and as prescribed by the Michigan Supreme Court. MCR 8.119(B).

1. Bindovers to Circuit Court

District and municipal court case and court records following circuit-court bindover. All case and court records maintained

[18]MCR 6.451 addresses reinstatement of convictions set aside without application. See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 3*, Chapter 3, for additional information on MCR 6.451.

[19]A chart created by SCAO detailing various court record types to which access is limited is available here (commonly known as the "nonpublic chart"): http://courts.mi.gov/administration/scao/resources/documents/standards/cf_chart.pdf

by a district or municipal court become nonpublic immediately after entry of an order binding a criminal defendant over to the circuit court on or after July 2, 2024. MCR 8.119(H)(10). Circuit court case and court records, including those transmitted under MCR 6.110(G), remain accessible under MCR 8.119. MCR 8.119(H)(10).

2. Remands to District or Municipal Court

Remand to district or municipal court following circuit-court bindover. Immediately after remand, the district or municipal court must certify and transmit to court in which the defendant will appear "the case file, any recognizances received, and a copy of the register of actions." MCR 6.110(G). The district or municipal court "need not transmit recordings of any proceedings to the circuit court." *Id*. Upon remand to the district or municipal court, all case and court records maintained by the circuit court become nonpublic immediately upon entry of an order to remand on or after July 2, 2024. MCR 8.119(H)(10). District or municipal court and case records, including the records transmitted under MCR 6.110(J), become accessible after an order to remand under MCR 8.119. MCR 8.119(H)(10).

If the circuit court remands a case to the district or municipal court for further proceedings, "the circuit court must transmit to the court where the case has been remanded the case file, any recognizances received, and a copy of the register of actions." MCR 6.110(J). "The circuit court need not transmit recordings of any proceedings to the district or municipal court." *Id*.

3. Transcripts Following Bindovers

"If an interested party requests a transcript of a district or municipal court proceeding after the case is bound over, the circuit court shall forward that request to the district or municipal court for transcription as provided in MCR 8.108." MCR 6.110(G)(ii). "The circuit court shall forward this request only if the circuit court case record is publicly-accessible." *Id*.

4. Transcripts Following Remands

Similarly, if an interested party requests a transcript of a circuit court proceeding after the case is remanded, the district or municipal court must forward that request to the circuit court for transcription under MCR 8.108 if the record is publicly-accessible. MCR 6.110(J)(ii).

5. Presentence Investigation Reports

A presentence investigation report (PSIR) must be prepared before the court sentences a person charged with a felony and may be prepared if directed by the court in any case where a person is charged with a misdemeanor. MCL 771.14(1). See also MCR 6.425(A). In the course of preparing the PSIR, "the probation officer must investigate the defendant's background and character[and] verify material information[.]" MCR 6.425(A)(1). "On request, the probation officer must give the defendant's attorney notice and a reasonable opportunity to attend the presentence interview." MCR 6.425(A)(2). The prosecutor, the defendant's attorney, and the defendant are all entitled to review the PSIR. MCL 771.14(5).

If a victim impact statement is included in the presentence report, the victim must be notified that his or her statement will be made available to the defendant and defense counsel unless the court exempts it from disclosure. MCL 780.763(1)(e); MCL 780.791(2)(c); MCL 780.823(1)(e).

The court *must* exclude from the PSIR "any address or telephone number for the home, workplace, school, or place of worship of any victim or witness, or a family member of any victim or witness, unless an address is used to identify the place of the crime or to impose conditions of release from custody that are necessary for the protection of a named individual." MCL 771.14(2); MCR 6.425(A)(3); MCR 6.610(G)(1)(b). Upon request, the court must also exempt an address or telephone number that would reveal the location of a victim, witness, or a victim's or witness's family member unless the address is used to identify the location of the crime or to impose conditions of release from custody that are necessary to protect a named individual. MCL 771.14(2); MCR 6.425(A)(3); MCR 6.610(G)(1)(b).

The court *may* exempt from disclosure "information or a diagnostic opinion that might seriously disrupt a program of rehabilitation or sources of information obtained on a promise of confidentiality."[20] MCL 771.14(3); MCL 771.14a(2); MCR 6.425(B). If the court exempts information from disclosure, the court must state on the record its reasons for this action and inform the parties of the nondisclosure. MCL 771.14(3); MCL 771.14a(2); MCR 6.425(B). Information or a diagnostic opinion exempted from disclosure must also be specifically noted in

[20] The court's decision to exempt information from disclosure is subject to appellate review. MCL 771.14(3); MCL 771.14a(2); MCR 6.425(B).

the PSIR. MCL 771.14(3); MCL 771.14a(2); MCR 6.425(B). "To the extent it can do so without defeating the purpose of nondisclosure, the court also must provide the parties with a written or oral summary of the nondisclosed information and give them an opportunity to comment on it." MCR 6.425(B).

After sentencing and on written request, "the court must provide the prosecutor, the defendant's lawyer, or the defendant if not represented by a lawyer, with copies of any documents that were presented for consideration at sentencing, including the court's initial copy of the presentence report if corrections were made after sentencing. If the court exempts or orders the exemption of any information from disclosure, it must follow the exemption requirements of [MCR 6.425(B)]." MCR 6.425(E).

6. Probation Records

"[A]ll records and reports of investigations made by a probation officer, and all case histories of probationers shall be privileged or confidential communications not open to public inspection." MCL 791.229. However, "[j]udges and probation officers shall have access to the records, reports, and case histories." *Id.* See also *Howe v Detroit Free Press, Inc*, 440 Mich 203 (1992) (discussing the scope of the privilege).

1.16 Sources of Michigan Law

District court magistrates must make legal determinations based on Michigan law and local ordinances. The following is a brief description of sources of legal authority upon which a district court magistrate may rely. For information on citation to these authorities, see the Michigan Supreme Court - Office of the Reporter of Decisions's *Michigan Appellate Opinion Manual*.

- Michigan Compiled Laws

When the Michigan Legislature first enacts a statute, it is referred to as a "Public Act" and given a number. Public Acts are numbered chronologically during the legislative session for a single year. After enactment, Public Acts are incorporated into a statutory compilation known as the Michigan Compiled Laws. The Michigan Compiled Laws is a topical collection of all the statutes enacted by the Michigan Legislature. This compilation is divided into chapters, with each addressing a particular broad subject matter.

The Legislature's website includes all Michigan Compiled Laws.

- Caselaw

The Michigan Supreme Court and Court of Appeals resolve questions relating to the interpretation of statutes, court rules, and other laws. Michigan Supreme Court decisions are collected in reporters called the *Michigan Reports*. Court of Appeals decisions appear in reporters called the *Michigan Appeals Reports*. All Michigan trial courts are required to follow published case decisions by the state's appellate courts.

The Michigan Supreme Court publishes all of its decisions. See MCR 7.301(E)(1); MCR 7.315(B). The Court of Appeals only publishes selected decisions. See MCR 7.215. Michigan trial courts are only required to follow published decisions by the Court of Appeals. MCR 7.215(C). Unpublished Court of Appeals opinions may be considered, but are not binding. MCR 7.215(C)(1). When published Court of Appeals opinions conflict with one another, the rule of law established by the prior opinion issued on or after November 1, 1990, will control so long as that opinion has not been reversed or modified by the Michigan Supreme Court or by a special panel of the Court of Appeals. MCR 7.215(J).

Opinions of the Michigan Supreme Court and the Michigan Court of Appeals can be accessed on the Michigan One Court of Justice website.

- Michigan Court Rules

The Michigan Court Rules are adopted by the Michigan Supreme Court and set forth procedural requirements for Michigan courts. The Michigan Court Rules, as well as the Michigan Rules of Evidence, Administrative Orders, local court rules for district courts, and other rules that may be of interest, can be accessed on the Michigan One Court of Justice website.

- Local Ordinances

Local ordinances are a type of law enacted by a local unit of government, such as a city or township. Local ordinances often address traffic laws. Local ordinances addressing traffic laws must be consistent with the Michigan Vehicle Code (MVC), MCL 257.1 *et seq.* Local ordinances that conflict with the MVC are void to the extent of the conflict. See *Builders Ass'n v Detroit*, 295 Mich 272, 277 (1940). Some localities have adopted a model set of traffic ordinances called the Uniform Traffic Code, which was prepared by the Michigan Department of State Police and can be accessed on their website.

Magistrates should familiarize themselves with the applicable local ordinances in their jurisdiction because no two sets of local ordinances are exactly the same in format, organization, or numbering system. Ordinance compilations may be obtained from local sources such as

courts, public libraries, and city, county, village and township clerks' offices.

- Attorney General Opinions

The Michigan Attorney General (AG) occasionally provides opinions on legal issues that magistrates might encounter. The courts are not required to follow these opinions, but they may offer guidance or be persuasive. *People v Woolfolk*, 304 Mich App 450, 492 (2014). Michigan Attorney General opinions are found in a multi-volume set called the *Report of the Attorney General*. The volumes are organized by year. AG Opinions can also be accessed from the AG's website.

1.17 Additional Resources for District Court Magistrates

- The Michigan Association of District Court Magistrates (MADCM) can be a useful resource. The association publishes a quarterly newsletter called *The Docket*. The association's website is: http://www.madcm.org/. Further, membership in MADCM allows district court magistrates to join an email group, through which magistrates can ask their peers questions and receive other magistrates' opinions on issues.

- If a district court magistrate is asked to address an accommodation issue, the SCAO's *A Handbook for Michigan Courts on Accessibility and Accommodation for Individuals with Disabilities* may be useful. The SCAO also has several additional resources on the Michigan One Court of Justice website. Finally, each court should have an Americans With Disabilities Act (ADA) Coordinator that can help answer any court-specific questions. To find your court's ADA Coordinator, visit the trial court directory on the Michigan One Court of Justice website.

Chapter 2: Arrest Warrants, Search Warrants, and Summonses

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Part A: Electronic Filing

2.1 Electronic Filing

See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 3, for information about electronic filing.

Part B: Complaints, Arrest Warrants, and Summonses

2.2 Arrest

A. Purpose and Function of an Arrest Warrant

The purpose of an arrest warrant is to bring the defendant to appear before the court on an accusation charged in a complaint. See MCL 764.1b. A complaint is the charging instrument which, once accepted by the court, formally sets forth the charge against the defendant and constitutes the basis for all further action to be taken by the court in the case. See MCL 761.1(c). The complaint recites the substance of the accusation against the accused and may contain factual allegations establishing reasonable cause. *Id.*; MCL 764.1d.

An arrest warrant is the order by the court to arrest a defendant and bring him or her before the court to answer the charge alleged in the complaint. MCL 764.1b. Under certain circumstances, a person may be arrested without an arrest warrant. See MCL 764.15; MCL 764.15a; MCL 764.15b; MCL 764.15e; MCL 764.15f; MCL 764.16. See Section 2.15 and the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 3, for a discussion of warrantless arrests.

For a summary of the arrest warrant process, see the Michigan Judicial Institute's checklist describing the process for issuing an arrest warrant and the checklist describing the process for electronically issuing an arrest warrant.

B. Probable Cause for Warrantless Arrest

"'A police officer may arrest an individual without a warrant if a felony has been committed and the officer has probable cause to believe that individual committed the felony.'" *People v Tierney*, 266 Mich App 687, 705 (2005), quoting *People v Kelly*, 231 Mich App 627, 631 (1998). "The existence of probable cause is determined by the

totality of the circumstances." *People v Nguyen*, 305 Mich App 740, 752 (2014) (citations omitted). "The constitutional validity of an arrest depends upon whether, at the moment the arrest was made, the officers had probable cause to make it–whether at that moment the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the defendant had committed or was committing an offense." *People v Trapp*, 335 Mich App 141, 166-167 (2020) (cleaned up). "'The prosecution has the burden of establishing that an arrest without a warrant is supported by probable cause.'" *Tierney*, 266 Mich App at 705, quoting *People v Davenport*, 99 Mich App 687, 691 (1980).

"Because distinctly different probable-cause standards distinguish . . . arrest and bind-over decisions," a district court's conclusion that it lacked probable cause to bind a defendant over for trial on the charge for which he was arrested did not necessarily render the arrest itself invalid. *People v Cohen*, 294 Mich App 70, 72, 76-77 (2011) (circuit court erroneously concluded that in the absence of probable cause to bind the defendant over for trial on charge of possession of cocaine, police lacked probable cause to arrest for that offense, and that evidence of additional crime obtained following arrest therefore must be suppressed; police had probable cause to arrest based on the defendant's joint constructive possession of cocaine paraphernalia, which was observed in plain view and within the defendant's reach in car occupied by only driver and the defendant, and evidence discovered after the constitutionally valid arrest was admissible in prosecution for additional offense).

See Section 2.15 for statutory provisions that provide for warrantless arrests.

C. Delay Between Crime and Arrest

The Speedy Trial Clause of the Sixth Amendment does not protect the defendant against lengthy prearrest delay, only from pretrial delay following an arrest. *United States v Lovasco*, 431 US 783, 788 (1977).[1] Generally, a defendant is protected against unreasonable prearrest delay by the applicable statute of limitations. *People v Bisard*, 114 Mich App 784, 788-789 (1982). A delay between an offense and the arrest of the defendant may violate the defendant's federal and state due process rights. *People v Cain*, 238 Mich App 95, 109 (1999). The due process inquiry must consider the reasons for

[1] Additionally, the Sixth Amendment's Speedy Trial Clause "does not apply once a defendant has been found guilty at trial or has pleaded guilty to criminal charges[,]" and therefore does not "apply to the sentencing phase of a criminal prosecution." *Betterman v Montana*, 578 US 437, 439-441 (2016) (holding "that the Clause does not apply to delayed sentencing").

the delay as well as the prejudice to the defendant. *Lovasco*, 431 US at 790. A delay in bringing charges against a defendant may deny the due process right to a fair trial if the prosecutor delays to gain a tactical advantage or to deprive the defendant of an opportunity to defend against the charges. *Id*. at 797 n 19.

"A prearrest delay that causes substantial prejudice to a defendant's right to a fair trial and that was used to gain tactical advantages violates the constitutional right to due process" *People v Woolfolk*, 304 Mich App 450, 454 (2014), aff'd on other grounds 497 Mich 23 (2014). "Michigan applies a balancing test to determine if a prearrest delay requires reversing a defendant's conviction because the state may have an interest in delaying a prosecution that conflicts with a defendant's interest in prompt adjudication of the case." *Cain*, 238 Mich App at 108. Under this balancing test, the defendant bears the burden of "initially demonstrat[ing] 'actual and substantial' prejudice to his right to a fair trial." *People v Adams*, 232 Mich App 128, 134 (1998).

An "oppressive" delay between the alleged crime and the defendant's arrest may implicate a defendant's due process rights and lead to a motion to dismiss. *People v Tanner*, 255 Mich App 369, 414 (2003), rev'd on other grounds 469 Mich 437 (2003),[2] overruled on other grounds *People v Kennedy*, 502 Mich 206 (2018). In deciding the motion, the court must balance the actual prejudice to the defendant with the prosecutor's reasons for the delay. *Cain*, 238 Mich App at 108-109; *Bisard*, 114 Mich App at 790-791.

The defendant must produce evidence that he or she sustained "actual and substantial" prejudice because of the delay. *Cain*, 238 Mich App at 108; *Bisard*, 114 Mich App at 791. "Actual and substantial" prejudice means that the defendant's ability to defend against the charges was "meaningfully impaired" by the delay. *Cain*, 238 Mich App at 110; *Bisard*, 114 Mich App at 788. "[P]roof of 'actual and substantial' prejudice requires more than generalized allegations[.]" *Adams*, 232 Mich App at 135. "Defendant must present evidence of actual and substantial prejudice, not mere speculation." *Woolfolk*, 304 Mich App at 454. "A defendant cannot merely speculate generally that delay resulted in lost memories, witnesses, and evidence[.]" *Id*.

The following cases discuss actual and substantial prejudice:

- *People v Adams*, 232 Mich App 128 (1998)

[2]For more information on the precedential value of an opinion with negative subsequent history, see our note.

The death of a witness or the loss of physical evidence alone are insufficient to establish actual prejudice. *Id.* at 136-138. "[A] defendant does not show actual prejudice based on the death of a potential witness if he has not given an indication of what the witness's testimony would have been and whether the substance of the testimony was otherwise available." *Id*. at 136 (quotation marks and citation omitted).

Additionally, a 12-year delay did not violate the defendants' due process rights where physical evidence was lost, but its potentially exculpatory value was unsubstantiated. *Id*. at 132-139.

- *People v Cain*, 238 Mich App 95 (1999)

  Defendant was unable to establish unfair prejudice during 16-month delay where witnesses had slight memory failure and evidence that was unrelated to the case was thrown away. *Id*. at 107-111.

- *People v Patton*, 285 Mich App 229 (2009)

  Defendant was unable to establish actual and substantial prejudice because he did not identify any specific prejudice; rather, he made general allegations that the prearrest delay prevented him from contacting witnesses but gave no details on the substance of a defense to the charge, or details regarding how the witnesses would have supported a defense. *Id*. at 236-237.

- *People v Scott*, 324 Mich App 459 (2018)

  "[S]peculations regarding a possible alibi and the potential for adverse sentencing consequences do not constitute actual and substantial prejudice to defendant's right to a fair trial[.]" *Id*. at 463. An assertion by a defendant that delay in bringing charges resulted in prejudice regarding sentencing due to an earlier plea agreement regarding separate charges was insufficient to establish prejudice. *Id*. at 463, 464. "When considering whether a defendant was prejudiced by a delay in pursuing charges, '[w]hat must be kept in mind is that the prejudice to the defendant must impair his right to a fair trial, not merely that it has an adverse impact upon the sentence imposed upon the defendant.'" *Id*. at 465, citing *People v Ervin*, 163 Mich App 518, 520 (1987) (alteration in original).

Once the defendant has made a showing of prejudice, the prosecution has the burden of persuading the court that the reasons for the delay justified any prejudice that resulted. *Cain*, 238 Mich App at 109; *Bisard*, 114 Mich App at 791. In evaluating the reason for the delay, the court may consider the explanation for the delay, whether the delay was deliberate, and whether undue prejudice attached to the defendant. *Bisard*, 114 Mich App at 786-787, 791.

"When a delay is deliberately undertaken to prejudice a defendant, little actual prejudice need be shown to establish a due process claim. Where, however, there is a justifiable reason for the delay, the defendant must show more—that the prejudice resulting from the delay outweighs any reason provided by the state." *Bisard*, 114 Mich App at 790.

"It is appropriate for a prosecuting attorney to wait for the collection of sufficient evidence before charging a suspect, even when that wait is extended by the disappearance of a key witness." *Woolfolk*, 304 Mich App at 452-456 (a nearly five-year delay in arresting the defendant for a murder "was reasonable and justified under the circumstances" where the principal witness originally told the police that he did not know who shot the victim, then disappeared for several years and was convicted of an unrelated crime out-of-state before making a statement implicating the defendant; the officer in charge of the murder case, who "had [no] reason to believe that [the witness] was not being truthful" in his original interview, "was not aware that [the witness] was about to disappear," and "the prosecution lacked access to and jurisdiction over" the witness during the time he was being prosecuted out-of-state).

D. Delay Between Warrantless Arrest and Arraignment

Persons arrested without a warrant must be promptly brought before a neutral magistrate for a probable cause determination. *People v Cipriano*, 431 Mich 315, 319 (1988); MCL 764.13; MCL 764.26; MCR 6.104(A).

A probable-cause determination and an arraignment "are not synonymous proceedings." *People v Sanders*, ___ Mich ___, ___ n 4 (2026). "The purpose of a probable-cause determination is to provide a neutral judgment that legal justification exists for an arrest, while the purpose of an arraignment is to provide defendants with notice of the charges brought against them and to allow them to enter a plea." *Id*. (citations omitted).

"[A] jurisdiction that provides judicial determinations of probable cause within 48 hours of [a warrantless] arrest will, as a general matter, [be found to] comply with the promptness requirement" of

the federal constitution's Fourth Amendment. *Riverside Co v McLaughlin*, 500 US 44, 56 (1991). However, a probable cause determination is not automatically proper simply because it is made within 48 hours. *Id.* at 56. A delay of less than 48 hours may still be unconstitutional if it is an unreasonable delay. *Id*.

Police authorities may only hold an arrestee for more than 48 hours before arraignment if they can "'demonstrate the existence of a bona fide emergency or other extraordinary circumstance'" that would justify the delay. *People v Whitehead*, 238 Mich App 1, 2 (1999), quoting *Riverside Co v McLaughlin*, 500 US 44, 57 (1991).

See also *People v Cain (Cain I)*, 299 Mich App 27, 49-50 (2012), vacated in part on other grounds by *People v Cain (Cain II)*, 495 Mich 874 (2013)[3] (the defendant was not deprived of due process despite not being arraigned until three days after his arrest where "no evidence was obtained as a direct result of the 'undue delay,' which would have begun . . . 48 hours after [the] defendant's arrest;" because the evidence against the defendant, including his statement to police and his identification from a photo lineup, was obtained within 48 hours after his arrest, "there was no evidence to suppress").

E. Standard of Review

A trial court's decision on a motion to dismiss on the basis of prearrest delay is reviewed for an abuse of discretion. *People v Herndon*, 246 Mich App 371, 389 (2001). To the extent that a claim of prearrest delay implicates constitutional due process rights, it is reviewed de novo. *People v Cain*, 238 Mich App 95, 108 (1999). The trial court's related factual findings are reviewed for clear error. *People v Tanner*, 255 Mich App at 412, rev'd on other grounds 469 Mich 437 (2003),[4] overruled on other grounds *People v Kennedy*, 502 Mich 206 (2018).

2.3 Summons Required Instead of Arrest Warrant

MCR 6.102(C) requires a court to issue a summons rather than a warrant unless:

> "(1) the complaint is for an assaultive crime or an offense involving domestic violence, as defined in MCL 764.1a.

[3]For more information on the precedential value of an opinion with negative subsequent history, see our note.

[4]For more information on the precedential value of an opinion with negative subsequent history, see our note.

(2) there is reason to believe from the complaint that the person against whom the complaint is made will not appear upon a summons.

(3) the issuance of a summons poses a risk to public safety.

(4) the prosecutor has requested an arrest warrant." MCR 6.102(D). See also MCL 764.1a(2). See the Michigan Judicial Institute's *Issuing Summons Flowchart*.

2.4 District Court Magistrate's Authority to Issue Arrest Warrants and Summonses

The Revised Judicature Act of 1961 (RJA), MCL 600.101 *et seq.*, and the Code of Criminal Procedure, MCL 760.1 *et seq.*, both address a district court magistrate's power to issue an arrest warrant or summons. See MCL 600.8511(e); MCL 764.1. Arrest warrants and summonses are also addressed by the Michigan Court Rules. See MCR 6.102. "Notwithstanding statutory provisions to the contrary, district court magistrates exercise only those duties expressly authorized by the chief judge of the district or division." MCR 4.401(B).

A. Statutory Authority

Chapter 85 of the RJA specifically addresses magistrates, and provides that a district court magistrate has the jurisdiction and duty to "issue warrants for the arrest of a person upon the written authorization of the prosecuting or municipal attorney, except written authorization is not required for a vehicle law or ordinance violation within the jurisdiction of the magistrate if a police officer issued a traffic citation under . . . MCL 257.728, and the defendant failed to appear." MCL 600.8511(e).

The Code of Criminal Procedure also provides guidance to magistrates regarding the requirements for issuance of an arrest warrant or summons.

> "(1) For the apprehension or summons of persons charged with a felony, misdemeanor, or ordinance violation, a judge or district court magistrate may issue processes to implement [Chapter 4 of the Code of Criminal Procedure], except that a judge or district court magistrate shall not issue a warrant or summons for other than a minor offense unless an authorization in writing allowing the issuance of the warrant or summons is filed with the judge or district court magistrate and, except as otherwise provided in [the Code of Criminal Procedure], the authorization is

signed by the prosecuting attorney, or unless security for costs is filed with the judge or district court magistrate.

(2) A judge or district court magistrate shall not issue a warrant for a minor offense unless an authorization in writing allowing the issuance of the warrant is filed with the judge or district court magistrate and signed by the prosecuting attorney, or unless security for costs is filed with the judge or district court magistrate, except if the warrant is requested by any of the following officials for the following offenses:

> (a) Agents of the state transportation department, a county road commission, or the public service commission for violations of the motor carrier act, . . . MCL 475.1 to [MCL] 479.42, or the motor carrier safety act of 1963, . . . MCL 480.11 to [MCL] 480.25, the enforcement of which has been delegated to them.
>
> (b) The director of the department of natural resources, or a special assistant or conservation officer appointed by the director of the department of natural resources and declared by statute to be a peace officer, for a violation of a law that provides for the protection of wild game or fish.

(3) A complaint for an arrest warrant or summons may be made and an arrest warrant or summons may be issued by any electronic or electromagnetic means of communication from any location in this state, if all of the following occur:

> (a) The prosecuting attorney authorizes the issuance of the warrant or summons. Authorization may consist of an electronically or electromagnetically transmitted facsimile of the signed authorization.
>
> (b) The judge or district court magistrate orally administers the oath or affirmation, in person or by any electronic or electromagnetic means of communication, to an applicant for an arrest warrant or summons who submits a complaint under this subsection.
>
> (c) The applicant signs the complaint. Proof that the applicant has signed the complaint may consist

> of an electronically or electromagnetically transmitted facsimile of the signed complaint.
>
> (4) The person or department receiving an electronically or electromagnetically issued arrest warrant or summons must receive proof that the issuing judge or district court magistrate has signed the warrant or summons before the warrant or summons is executed. Proof that the issuing judge or district court magistrate has signed the warrant or summons may consist of an electronically or electromagnetically transmitted facsimile of the signed warrant or summons.
>
> (5) A judge or district court magistrate may sign an electronically or electromagnetically issued arrest warrant or summons when he or she is at any location in this state." MCL 764.1.

"A magistrate shall issue a warrant or summons upon presentation of a proper complaint alleging the commission of an offense and a finding of reasonable cause to believe that the individual accused in the complaint committed that offense." MCL 764.1a(1).

SCAO Form DC 225s, *Misdemeanor Complaint*, contains a box in the lower left portion of the complaint for the prosecuting official's signature. If the prosecutor's signature does not appear in this box, the court, except in very limited circumstances, has no authority to issue the warrant or summons and should refer the complaining witness back to the prosecuting official to procure the required signature. See MCL 764.1(1)-(2).

B. Michigan Court Rules

"A court must issue an arrest warrant or a summons . . . if presented with a proper complaint and if the court finds probable cause to believe that the accused committed the alleged offense." MCR 6.102(A). See MCR 6.102, which is the court rule addressing summonses in criminal cases.

C. Caselaw

The requirement that the prosecuting attorney sign an order authorizing issuance of a warrant or that security for costs be filed should be strictly followed. *People v Holbrook*, 373 Mich 94, 98-99 (1964). See also *People v White*, 167 Mich App 461, 465 (1988), abrogated in part on other grounds by *People v Russo*, 439 Mich 584, 602-603 (1992)[5] (holding that a "magistrate's power to issue an arrest

warrant . . . [is] expressly dependent on the written authorization of the prosecuting attorney or the municipal attorney[]").

D. Circumstances Under Which a Warrant May be Issued Without Written Authorization

- A district court magistrate does not need written authorization to issue an arrest warrant for "a vehicle law or ordinance violation within the jurisdiction of the magistrate if a police officer issued a traffic citation under . . . MCL 257.728[6], and the defendant failed to appear." MCL 600.8511(e).

- A district court magistrate may issue a warrant for a minor offense without written authorization if security for costs is filed with the magistrate. MCL 764.1(2).

- A district court magistrate may issue a warrant for a minor offense without written authorization if the warrant is requested by certain officials for specified offenses. MCL 764.1(2). Specifically:

  - "Agents of the state transportation department, a county road commission, or the public service commission for violations of the motor carrier act, . . . MCL 475.1 to [MCL] 479.42, or the motor carrier safety act of 1963, . . . MCL 480.11 to [MCL] 480.25, the enforcement of which has been delegated to them." MCL 764.1(2)(a).

  - "The director of the department of natural resources, or a special assistant or conservation officer appointed by the director of the department of natural resources and declared by statute to be a peace officer, for a violation of a law that provides for the protection of wild game or fish." MCL 764.1(2)(b).

E. Juveniles

An arrest warrant may be issued for a juvenile through district court if the juvenile is 14 years of age or older but less than 18 years of age and the prosecuting attorney has reason to believe that the juvenile committed a specified juvenile violation. MCL 764.1f(1).

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[5] For more information on the precedential value of an opinion with negative subsequent history, see our note.

[6] MCL 257.728 refers to traffic misdemeanors.

F. Arrest Warrants Distinguished From Bench Warrants

A district court magistrate is **not authorized** to issue a bench warrant. See MCL 600.8511 (discussing the jurisdiction and duties of a district court magistrate without including an authorization for issuing a bench warrant); *In re James*, 492 Mich 553, 566-567 (2012) (finding that the judge committed misconduct by requiring a district court magistrate to sign bench warrants "in violation of MCL 600.8511," and noting that the judge was the only person "who had legal authority to sign bench warrants").

The purpose of the bench warrant is to bring the defendant before the court to answer to a charge of contempt of court. See MCR 3.606(A).

2.5 The Complaint and Warrant or Summons

A defendant has a constitutional right to be informed of the nature of the charges pending against him or her. Const 1963, art 1, § 20; *People v Higuera*, 244 Mich App 429, 442-443 (2001). "A complaint is a written accusation that a named or described person has committed a specified criminal offense," and it "must include the substance of the accusation against the accused and the name and statutory citation of the offense." MCR 6.101(A); see also MCL 764.1d. A criminal complaint must "adequately inform of the substance of the accusations," and its "factual allegations [must] provide the basis from which commission of the legal elements of the charge can be inferred." *Higuera*, 244 Mich App at 447. At the time of filing, specified case information must be provided in the form and manner established by SCAO and other applicable rules. MCR 1.109(D)(2); MCR 6.101(A). "At a minimum, specified case information shall include the name, an address for service, an e-mail address, and a telephone number of every party[.]" MCR 1.109(D)(2). A complaint may also contain "factual allegations establishing reasonable cause." MCL 764.1d. "A summons must contain the same information as an arrest warrant, except that it should summon the accused to appear before a designated court at a stated time and place." MCR 6.102(C)(1).

A complaint serves a dual purpose: "[i]t both initiates the judicial phase of the prosecution and provides a basis for the issuance of an arrest warrant." *People v Burrill*, 391 Mich 124, 128 (1974). "'The primary function of a complaint is to move the magistrate to determine whether a warrant shall issue.'" *Higuera*, 244 Mich App at 443, quoting *Wayne Co Prosecutor v Recorder's Court Judge*, 119 Mich App 159, 162 (1982).

"The complaint must be signed and verified under MCR 1.109(D)(3). Any requirement of law that a complaint filed with the court must be sworn is met by this verification." MCR 6.101(B). "A complaint may not be filed without a prosecutor's written approval endorsed on the complaint or

attached to it, or unless security for costs is filed with the court." MCR 6.101(C).

"A court must issue an arrest warrant or a summons[7] . . . if presented with a proper complaint and if the court finds probable cause to believe that the accused committed the alleged offense." MCR 6.102(A).The probable cause determination "may be based on hearsay evidence and rely on factual allegations in the complaint, affidavits from the complainant or others, the testimony of a sworn witness adequately preserved to permit review, or any combination of these sources." MCR 6.102(B).

The complaint is filed with the court and a file is established. The process of establishing a file varies among courts. At a minimum, the file must be assigned a case number and contain the complaint and warrant. For a summary of the arrest warrant process, see the Michigan Judicial Institute's checklist describing the process for issuing an arrest warrant and the checklist describing the process for electronically issuing an arrest warrant. The procedures for arraignment on the warrant or complaint are governed by MCR 6.104.[8] A person in custody "must be taken without unnecessary delay before a court . . . or must be arraigned without unnecessary delay by use of two-way interactive video technology[.]" MCR 6.104(A). The accused is entitled to the assistance of an attorney at arraignment unless they waive counsel or the court issues a personal bond and will not accept a plea of guilty or no contest at arraignment. *Id.* At a defendant's arraignment, the court must address issues of pretrial release, possible appointment of counsel by the local indigent criminal defense system, and scheduling the defendant's preliminary examination. MCR 6.104(E).

Committee Tip:

Neither statute nor court rule authorize the use of "pre-complaints," "interim complaints," "temporary complaints," or any document entitled with similar language that suggests the future filing of another complaint for the same defendant and same offense(s) arising out of the same incident. If a subsequent complaint for the same defendant and same offense(s) arising out of the same incident is later filed in a more "formal" manner as a courtesy copy, such as a SCAO-approved form, the magistrate may not

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[7] The court may issue a summons instead of an arrest warrant if requested by the prosecutor. MCR 6.102(D)(4).

[8] For more information on arraignments, see Chapter 5.

sign that copy, but may place it in the court file for reference.

2.6 Persons Who May File a Complaint

A. Prosecuting Attorney

"A complaint may not be filed without a prosecutor's written approval endorsed on the complaint or attached to it, or unless security for costs is filed with the court." MCR 6.101(C). See also MCL 764.1(1).

B. Other Authorized Official

An agent of the state transportation department, a county road commission, or the public service commission may make a complaint for a minor offense that constitutes a violation of the motor carrier act or the motor carrier safety act if that person has been delegated to enforce the act. See MCL 764.1(2)(a).

Similarly, a complaint alleging a minor offense that constitutes a violation of a law that provides for the protection of wild game or fish may be made by "[t]he director of the department of natural resources, or a special assistant or conservation officer appointed by the director . . . and declared by statute to be a peace officer[.]" See MCL 764.1(2)(b).

C. Private Citizen

Both statute, MCL 764.1(1)-(2), and court rule, MCR 6.101(C), allow a private citizen to file a complaint when security for costs is filed with the court. See also *People v Herrick*, 216 Mich App 594, 597 n 1 (1996). However, the statute and the court rule are silent regarding the procedure a court should use when a citizen seeks to file security for costs.

2.7 Drafting and Typing a Complaint

Preferably, a complaint should be typed on the following State Court Administrative Office forms:

MC 200 — Complaint, Felony

DC 225 — Complaint, Misdemeanor

However, MCL 764.1(3) provides:

> "A complaint for an arrest warrant or summons may be made and an arrest warrant or summons may be issued by any electronic or electromagnetic means of communication from any location in this state, if all of the following occur:
>
> (a) The prosecuting attorney authorizes the issuance of the warrant or summons. Authorization may consist of an electronically or electromagnetically transmitted facsimile of the signed authorization.
>
> (b) The judge or district court magistrate orally administers the oath or affirmation, in person or by any electronic or electromagnetic means of communication, to an applicant for an arrest warrant or summons who submits a complaint under this subsection.
>
> (c) The applicant signs the complaint. Proof that the applicant has signed the complaint may consist of an electronically or electromagnetically transmitted facsimile of the signed complaint."

A. Required Signatures on a Complaint

At least one attorney of record must sign every document on behalf of their client. MCR 1.109(E)(2). The party must sign if he or she is not represented by an attorney. *Id*. "If a document is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party." MCR 1.109(E)(3). Electronic signatures are acceptable if they are made in accordance with MCR 1.109(E). See MCR 1.109(E)(4).

1. Signature and Written Authorization of Prosecuting Attorney

When written authorization by the prosecutor is required for issuance of a warrant or summons, it must be signed by the prosecuting attorney. MCL 764.1(1). See also MCR 6.101(C), which requires a complaint, in felony cases, to contain a prosecutor's signature unless security for costs is filed with the court.

2. Signature and Oath of Complaining Witness

MCL 764.1a(1) requires a complaint to be "sworn to before a magistrate or clerk." See also MCR 1.109(E)(2) (requiring all filed documents to be signed by at least one attorney of record or the

party if not represented by an attorney); MCR 6.101(B) (requiring complaint to be "signed and verified under MCR 1.109(D)(3)"; "[a]ny requirement of law that a complaint filed with the court must be sworn is met by this verification"). When a warrant or summons is sought by electronic means, a facsimile of the applicant's signature may be transmitted electronically to the court. MCL 764.1(3)(c).

The complaining witness swearing to the complaint need not necessarily be the victim. See, e.g., *People v Graham*, 173 Mich App 473, 475 (1988) (complainant was the victim's mother). See also MCL 764.1a(5), which provides:

> "The magistrate may require sworn testimony of the complainant or other individuals. Supplemental affidavits may be sworn to before an individual authorized by law to administer oaths. The factual allegations contained in the complaint, testimony, or affidavits may be based upon personal knowledge, information and belief, or both."

Under MCL 764.1a(6), a magistrate must accept a complaint if the complaint is signed upon information and belief by an individual other than the victim if:

- the complainant alleges a violation of MCL 750.81 (assault and battery, including domestic assault and battery) or MCL 750.81a (aggravated assault and battery, including domestic aggravated assault and battery);[9] and
- the person against whom the complaint is filed is a spouse or former spouse of the victim, has a child in common with the victim, has or has had a dating relationship with the victim, or resides or has resided in the same house as the victim.

Under MCL 764.1a(7), a magistrate must "accept a complaint alleging that a crime was committed in which the victim is a vulnerable adult [if] the complaint is signed upon information and belief by an individual other than the victim."

[9] This requirement also applies to local ordinances substantially complying with MCL 750.81. MCL 764.1a(6).

B. Substantive Requirements of a Complaint

"A party filing a case initiating document . . . shall provide specified case information in the form and manner established by the State Court Administrative Office and as specified in other applicable rules." MCR 1.109(D)(2). See also MCR 6.101(A). "At a minimum, specified case information shall include the name, an address for service, an e-mail address, and a telephone number of every party[.]" MCR 1.109(D)(2).

For a summary of the arrest warrant/summons process, including the substantive requirements of the complaint, see the Michigan Judicial Institute's checklist describing the process for issuing an arrest warrant or summons and the checklist describing the process for electronically issuing an arrest warrant or summons.

1. Nature of the Offense

A complaint must recite the substance of the accusation against the accused and may contain factual allegations establishing reasonable cause to arrest. MCL 764.1d. See also MCR 6.101(A) (requiring a complaint to "include the substance of the accusation against the accused and the name and statutory citation of the offense").

"In charging the offense, a detailed recital of the evidence by which it will be established is not required. Such facts must be averred that, if admitted, would constitute the offense and establish the guilt of the accused. The elements of the offense must be so stated that [the accused] can know what he [or she] is to meet and can prepare for his [or her] defense." *People v Quider*, 172 Mich 280, 285-286 (1912). See also *People v Higuera*, 244 Mich App 429, 447-448 (2001) (where "the factual allegations provide the basis from which commission of the legal elements of the charge can be inferred[, a]ny deficiencies in the allegations of the actual charge . . . can be cured by amendment").

Committee Tip:

A defendant must be charged on separate complaints and warrants when he or she commits two offenses that are ***not*** *part of the same event or transaction.*

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a. Statutory Violations

A complaint based on a violation of a statutory provision must include "the name and statutory citation of the offense." MCR 6.101(A). If the facts in a complaint sufficiently set out an offense under a particular section of a statute, it is immaterial that the complaint erroneously states the wrong section. *People v Wolfe*, 338 Mich 525, 536-537 (1953). Further, the facts contained in the complaint, not the conclusion of the person drafting it, control the particular section of law on which the charge should be predicated. *Id*. at 537.

b. Local Ordinance Violations

A complaint based on a violation of a local ordinance must substantially conform to the complaint requirements "as provided by law in misdemeanor cases in the district court." MCL 90.5(1); MCL 66.7. The complaint does not need to set out the ordinance or its provisions; rather, "[i]t is a sufficient statement of the cause of action in the [complaint] to set forth substantially, and with reasonable certainty as to time and place, the act or offense complained of and to allege it to be in violation of an ordinance of the city, referring to the ordinance by its title and the date of its passage or approval." MCL 90.10(1).[10] See also MCL 66.9(2), which contains substantially similar language.

2. Date and Place of Offense

Generally, a complaint is not invalidated merely because the complainant is unable to ascertain the exact date of the alleged violation. *Hamilton v People*, 46 Mich 186, 188-189 (1881). However, the complaint should establish that the offense was committed within the period of limitations. *People v Gregory*, 30 Mich 371, 372-373 (1874). Also, when time is an element of the offense charged, it should be set out in the complaint as part of the substance of the offense. See *People c Quider*, 172 Mich 280, 285-286 (1912).

The complaint should state the place where the offense is alleged to have been committed. A court may take judicial notice of a municipality within its jurisdiction; thus, it is sufficient if the complaint names the municipality where the crime occurred without naming the county. *People v Telford*, 56 Mich 541, 543

[10] MCL 90.10(1) "does not apply to an ordinance violation that constitutes a civil infraction." MCL 90.10(1).

(1885). However, in *Gregory*, 30 Mich at 372-373, the complaint was fatally defective where it "named no county . . . except the county of 'Michigan.'" The Supreme Court reversed the defendant's conviction because the erroneous statement naming the county of Michigan "was no better than a blank," and thus the court lacked jurisdictional authority to proceed with the prosecution. *Id*.

For a violation of a local ordinance, the time and place should be stated on the complaint or warrant with "reasonable certainty." MCL 66.9(2); MCL 90.10(1).

3. Requirements Under the Crime Victim's Rights Act

Under the juvenile and serious misdemeanor articles of the Crime Victim's Rights Act (CVRA), if a complaint, petition, appearance ticket, traffic citation, or other charging instrument cites any one of several enumerated offenses, or a violation of a local ordinance substantially corresponding to any one of the enumerated offenses, the prosecuting attorney or law enforcement officer must include a statement on the charging instrument "that the offense resulted in damage to another individual's property or physical injury or death to another individual." MCL 780.783a (juvenile article); MCL 780.811a (serious misdemeanor article).

Along with the charging instrument, the investigating law enforcement agency must file a separate list of the name, address, and telephone number of each victim for any offense or serious misdemeanor falling under the juvenile or serious misdemeanor articles of the CVRA. MCL 780.784 (juvenile article) and MCL 780.812 (serious misdemeanor article).[11]

a. Juvenile Article Enumerated Offenses

MCL 780.783a states that an enumerated offense under the juvenile article of the CVRA is one of the "juvenile offense[s] described in [MCL 780.781(1)(g)(*iii*)-(*v*)[12]], or a local ordinance substantially corresponding to [one of those] juvenile offense[s]." MCL 780.781(1)(g)(*iii*)-(*v*) include the following offenses:

[11]For a discussion of charging instrument requirements under the CVRA, or a discussion of the CVRA generally, see the Michigan Judicial Institute's *Crime Victim Rights Benchbook*.

[12] MCL 780.783a states that the enumerated offenses appear in MCL 780.781(1)(d)(*iii*)-(*v*). However, MCL 780.781 has been revised numerous times, and the offenses now appear in MCL 780.781(1)(g)(*iii*)-(*v*). MCL 780.783a has not been amended to reflect this change.

- "[a] violation of [MCL 257.601b(2)[13]] (injuring a worker in a work zone)[;]"
- leaving the scene of a personal-injury accident, MCL 257.617a;
- "[a] violation of . . . [MCL 257.625[14]] (operating a vehicle while under the influence of or impaired by intoxicating liquor or a controlled substance, or with unlawful blood alcohol content) . . . if the violation involves an accident resulting in damage to another individual's property or physical injury or death to another individual[;]"
- selling or furnishing alcoholic liquor to an individual less than 21 years of age, MCL 436.1701, if the violation results in physical injury or death to any individual; and
- "[a] violation of . . . [MCL 324.80176(1) or MCL 324.80176(3)[15]] (operating a motorboat while under the influence of or impaired by intoxicating liquor or a controlled substance, or with an unlawful blood alcohol content) . . . if the violation involves an accident resulting in damage to another individual's property or physical injury or death to any individual."

b. Serious Misdemeanor Enumerated Offenses

MCL 780.811a states that an enumerated offense under the serious misdemeanor article of the CVRA is one of the "serious misdemeanor[s] described in [MCL 780.811(1)(a)(*xix*)-(*xxi*)], or a local ordinance substantially corresponding to [one of those] serious misdemeanor[s]." MCL 780.811(1)(a)(*xix*)-(*xxi*) include the following offenses:

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[13] Note that MCL 257.601b has been subsequently amended to make it a misdemeanor to commit a moving violation that causes injury to another person in a work zone *or* school bus zone. See 2008 PA 296; 2011 PA 60. In deciding how MCL 780.781(1)(g)(*iii*) applies, the court should apply the rules of statutory interpretation.

[14] Note that MCL 257.625 has been amended numerous times and now contemplates additional offenses such as offenses involving other intoxicating substances. In deciding how MCL 780.781(1)(g)(*iii*) applies, the court should apply the rules of statutory interpretation.

[15] Effective March 31, 2015, 2014 PA 402 amended MCL 324.80176(1) and MCL 324.80176(3) to, among other things, replace the term *vessel* with *motorboat*; replace the term intoxicating liquor with alcoholic liquor; and add MCL 324.80176(1)(c) to prohibit a person from operating a motorboat with the presence of any amount of certain controlled substances in the body. In deciding how MCL 780.781(1)(g)(*v*) applies, the court should apply the rules of statutory interpretation.

- operating a vehicle while under the influence of or impaired by intoxicating liquor or a controlled substance, or with an unlawful blood alcohol content, MCL 257.625, if the violation involves an accident resulting in damage to another individual's property or physical injury or death to any individual;

- selling or furnishing alcoholic liquor to an individual less than 21 years of age, MCL 436.1701, if the violation results in physical injury or death to any individual;

- "[a] violation of . . . [MCL 324.80176(1) or MCL 324.80176(3)[16]] (operating a motorboat while under the influence of or impaired by intoxicating liquor or a controlled substance, or with an unlawful blood alcohol content) . . . if the violation involves an accident resulting in damage to another individual's property or physical injury or death to any individual."

2.8 Persons Who May Issue Arrest Warrants or Summonses

A judge or district court magistrate may issue arrest warrants or summonses for the apprehension of persons charged with felony, misdemeanor, or ordinance violations. MCL 764.1. See also MCL 600.8511(e), which grants a district court magistrate jurisdiction "[t]o issue warrants for the arrest of a person upon the written authorization of the prosecuting or municipal attorney[.]"[17] No provision of MCL 761.1 allows a probate judge to issue an arrest warrant.

Although district court "magistrates perform limited judicial functions," they are not judges for purposes of Const 1963, art 6, § 19 (requiring "judges of courts" to be licensed attorneys); however, a nonattorney magistrate may issue an arrest warrant. *People v Ferrigan*, 103 Mich App 214, 219 (1981). Additionally, it does not violate the Fourth Amendment for a nonattorney magistrate to issue a warrant. US Const, Am IV.; *Shadwick v City of Tampa*, 407 US 345, 350-353 (1972). In *Shadwick*, the

[16] Effective March 31, 2015, 2014 PA 402 amended MCL 324.80176(1) and MCL 324.80176(3) to, among other things, replace the term *vessel* with *motorboat*; replace the term *intoxicating liquor* with alcoholic liquor; and add MCL 324.80176(1)(c) to prohibit a person from operating a motorboat with the presence of any amount of certain controlled substances in the body. In deciding how MCL 780.781(1)(g)(*v*) applies, the court should apply the rules of statutory interpretation.

[17] MCL 600.8511(e) provides an exception to the requirement of written authorization when the defendant committed a traffic violation in the magistrate's jurisdiction, was issued a citation under MCL 257.728, and subsequently failed to appear.

United States Supreme Court established two necessary prerequisites that a magistrate must possess: (1) he or she must be neutral and detached,[18] and (2) he or she must be capable of determining whether probable cause exists for the requested arrest. The Court concluded that there is no reason that a nonattorney could not meet these prerequisites. *Id*. at 352-353.

A district court magistrate, like a judge, is also authorized to issue an arrest warrant or summons "by any electronic or electromagnetic means of communication from any location in this state," if certain conditions are met. MCL 764.1(3); see also MCL 764.1(4)-(5).

2.9 Finding Probable Cause to Issue Arrest Warrant or Summons

In addition to the presentation of a proper complaint, issuance of an arrest warrant or summons requires the court to make a finding of probable cause[19] to believe that the individual accused in the complaint committed that offense. MCL 764.1a(1); MCR 6.102(A). The court must make an independent determination of the existence of probable cause and may "not serve merely as a rubber stamp for the police." *United States v Leon*, 468 US 897, 914 (1984) (internal citation and quotation marks omitted). See also *People v Crawl*, 401 Mich 1, 26 n 15 (1977).[20] If a complaint is later found to have been issued without a finding of probable cause, an arrest warrant based on it is invalid. *People v Burrill*, 391 Mich 124, 132 (1974). However, such a complaint may serve as a basis for starting judicial proceedings, and thus the court is not divested of jurisdiction when the complaint has insufficient factual support. *Id*. See also *Frisbie v Collins*, 342 US 519, 522 (1952) ("due process of law is satisfied when one present in court is convicted of [a] crime after having been fairly appri[s]ed of the charges against him"); *People v Muhammad*, 326 Mich App 40, 72 (2018) ("irrespective of whether there were errors associated with the warrant, defendant is not entitled to relief"). Without a valid warrant, an arrest may be legal if circumstances allowing arrest without a warrant exist. For a summary of the arrest warrant and

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[18] A *neutral and detached magistrate* is one that is "independent of the police and prosecution." *People v Payne*, 424 Mich 475, 481 (1985) (magistrate who was also a deputy sheriff was not neutral and detached, and therefore the search warrant he issued was invalid).

[19] MCL 764.1a states that the warrant or summons may be issued upon a finding of *reasonable cause*, which is a term interchangeable with *probable cause*. See 1989 Staff Comment to MCR 6.102: "[MCR 6.102](A) states the requirements for issuance of a warrant set forth in MCL 764.1a except that it substitutes 'probable cause' for 'reasonable cause.' These terms are viewed as equivalent, with 'probable cause' being preferable because it is a familiar and recognized standard." This section will use the term "probable cause" as opposed to "reasonable cause."

[20] Both *Crawl* and *Leon* involve search warrants; however, the "independent determination" requirement for issuing a search warrant also governs the issuance of arrest warrants. See *People v Burrill*, 391 Mich 124, 132 (1974); *Giordenello v United States*, 357 US 480, 485-486 (1958).

summons process, including the probable cause requirement, see the Michigan Judicial Institute's checklist describing the process for issuing an arrest warrant, the checklist describing the process for electronically issuing an arrest warrant, and the flowchart describing when the issuance of a summons rather than a warrant is required.

A. Probable Cause Defined

"'[A]rticulating precisely what . . . 'probable cause' means is not possible. [It is a] commonsense, nontechnical conception[] that deals with "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act" [and] as such the standards are "not readily, or even usefully, reduced to a neat set of legal rules." . . . We have cautioned that [this] legal principle[] [is] not [a] "finely-tuned standard []" comparable to the standards of proof beyond a reasonable doubt or of proof by a preponderance of the evidence. [It is] instead [a] fluid concept[] that takes [its] substantive content from the particular contexts in which the standards are being assessed.'" *Matthews v BCBSM*, 456 Mich 365, 387 n 33 (1998), quoting and editing *Ornelas v United States*, 517 US 690 (1996).

A finding of probable cause on a complaint is proper where the complaint and testimony are sufficient to enable the judge or district court magistrate "to make the judgment that the charges are not capricious and are sufficiently supported to justify bringing into play the further steps of the criminal process." *Jaben v United States*, 381 US 214, 224-225 (1965).[21]

B. Evidentiary Support for a Finding of Probable Cause

"The finding of [probable] cause by the magistrate may be based upon 1 or more of the following:

(a) Factual allegations of the complainant contained in the complaint.

(b) The complainant's sworn testimony.

(c) The complainant's affidavit.

[21]The probable cause standard for arrests is different and distinct from the probable cause standard required to bind over a defendant after a preliminary examination. *People v Cohen*, 294 Mich App 70, 74 (2011). "'[T]he arrest standard looks only to the probability that the person committed the crime as established at the time of the arrest, while the preliminary [examination] looks both to that probability at the time of the preliminary [examination] *and* to the probability that the government will be able to establish guilt at trial.'" *Id.* at 76, quoting LaFave & Israel, Criminal Procedure (2d ed, 1992), § 14.3, pp 668-669.

> (d) Any supplemental sworn testimony or affidavits of other individuals presented by the complainant or required by the magistrate." MCL 764.1a(4).

See also MCR 6.102(B) (applicable only to offenses not cognizable by the district court, MCR 6.001(A)-(B)), which states:

> "A finding of probable cause may be based on hearsay evidence and rely on factual allegations in the complaint, affidavits from the complainant or others, the testimony of a sworn witness adequately preserved to permit review, or any combination of these sources."

"The factual allegations contained in the complaint, testimony, or affidavits may be based upon personal knowledge, information and belief, or both." MCL 764.1a(5). Thus, the factual basis is supplied by the operative facts relied on by the complaining witness and not merely by his or her conclusions. *People v Burrill*, 391 Mich 124, 132 (1974). It must appear that an affiant spoke with personal knowledge, or else the sources for the witness's belief must be disclosed. *People v Hill*, 44 Mich App 308, 311 (1973).[22] When the belief is based on information from other persons, other than an eyewitness, some basis of informant credibility must be shown. *Id*. at 311-312. This does not necessarily require the affiant to reveal the identity of the informant. *McCray v Illinois*, 386 US 300, 307-308 (1967). The information required to support informant credibility depends on its context, including the nature of the alleged crime and the source of the information. *Jaben v United States*, 381 US 214, 224 (1965). See also *Adams v Williams*, 407 US 143, 147 (1972) ("Informants' tips, like all other clues and evidence . . . may vary greatly in their value and reliability.").

Committee Tip:

If it is clear that an affiant is not prepared to testify to provide a basis for probable cause, it is appropriate to take a recess and allow the affiant an opportunity to gather more information before simply refusing to sign the warrant. For example, a police officer who was not involved in the case but was sent to court

[22] Because the due process protections for both search warrants and arrest warrants derive from the same source, the Fourth Amendment, "probable cause" in either context requires the same precautions. *Giordenello v United States*, 357 US 480, 485-486 (1958). Unlike MCL 764.1a(5), however, the statute controlling the probable cause supporting a search warrant, MCL 780.653, expressly specifies that an affidavit must contain allegations that a named informant spoke with personal knowledge or that an unnamed informant spoke with personal knowledge and either that the unnamed person is credible or that the information is reliable.

with a report in order to testify to probable cause.

C. Record of Testimony and Affidavits

"The magistrate may require sworn testimony of the complainant or other individuals. Supplemental affidavits may be sworn to before an individual authorized by law to administer oaths." MCL 764.1a(5).

Any sworn testimony relied on in making the probable cause determination in a felony case must be "adequately preserved to permit review[.]" MCR 6.102(B).[23]

Although affidavits are not required to support a probable cause determination under MCL 764.1a(4) and MCR 6.102(B), if affidavits are used, they "must be verified by oath or affirmation." MCR 1.109(D)(1)(f). An affidavit must be verified by "oath or affirmation of the party or of someone having knowledge of the facts stated[.]"[24] MCR 1.109(D)(3)(a).

Committee Tip:

The arraignment, plea, or sentence may be conducted days, weeks, months, or years after the warrant was issued or may be conducted by someone other than the individual who signed the warrant. If an affidavit is used to establish probable cause and is in the court file, the court can easily refer to the affidavit when setting bond or taking a plea or sentencing to remind the court of the allegations.

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[23] The 1989 Staff Comment to MCR 6.102 states that "[a]n objective of [MCR 6.102(B)] is to ensure that there is a reviewable record in the event that the probable cause determination is subsequently challenged. Accordingly, if any oral testimony is relied on, it must be preserved adequately in some fashion to permit a review of its sufficiency to support the probable cause determination. An electronically recorded or verbatim written record obviously satisfies this requirement. A written or recorded oral summary of the testimony sufficiently contemporaneous to be reliable, and certified as accurate by the judicial officer, may also satisfy this requirement."

[24] Even though MCR 1.109 is a rule governing civil procedure, the rule may also be applied to matters of criminal procedure. See MCR 6.001(D)(1)-(4), which state, in pertinent part: "The provisions of the rules of civil procedure apply to cases governed by this chapter [(Criminal Procedure)], except

(1) as otherwise provided by rule or statute,

(2) when it clearly appears that they apply to civil actions only,

(3) when a statute or court rule provides a like or different procedure, or

(4) with regard to limited appearances and notices of limited appearance."

2.10 Issuing an Arrest Warrant

An arrest warrant is an order by a court to arrest a person and bring him or her before the court to answer to the charge alleged in the complaint and to be further dealt with according to law. MCL 764.1b. For a summary of the arrest warrant process, see the Michigan Judicial Institute's checklist describing the process for issuing an arrest warrant and the checklist describing the process for electronically issuing an arrest warrant.

"If an accused is arrested without a warrant, a complaint complying with MCR 6.101 must be filed at or before the time of arraignment." MCR 6.104(D). "On receiving the complaint and on finding probable cause, the court must either issue a warrant or endorse the complaint as provided in MCL 764.1c." MCR 6.104(D). "Arraignment of the accused may then proceed in accordance with [MCR 6.104(E)]." MCR 6.104(D). Stated another way, the court must either sign/issue the warrant *or* endorse the complaint before proceeding to arraignment. MCR 6.104(D).

A complaint may also serve as a warrant if the officer makes a warrantless arrest of a person, he or she is in custody, and the court endorses the complaint with a finding of probable cause. MCL 764.1c(2); MCR 6.104(D).

A. Requirement to Determine Parolee Status

Before an arrest warrant is issued, the law enforcement agency seeking the warrant must use the Michigan Law Enforcement Information Network (LEIN) to determine whether the individual for whom the warrant is sought is a parolee under the jurisdiction of the Michigan Department of Corrections (MDOC). MCL 764.1g(1). If the person is determined to be a parolee under the MDOC's jurisdiction, and an arrest warrant is issued, MCL 764.1g(1) requires that the MDOC be promptly notified and provided with the following information, by telephone or other electronic means:[25]

> "(a) The identity of the person named in the warrant.
>
> (b) The fact that information in databases managed by the [MDOC] and accessible by the [LEIN] provides

[25] MCL 764.1g(1) requires the information to be provided by either the investigating law enforcement agency, or the court if the court is entering arrest warrants and learns of the person's parolee status from the law enforcement agency.

> reason to believe the person named in the warrant is a parolee under the jurisdiction of the [MDOC].
>
> (c) The charge or charges stated in the warrant."

The MDOC must also be notified if there is a delay in the process:

> "If the court has assumed the responsibility for entering arrest warrants into the [LEIN] and delays issuance or entry of a warrant pending a court appearance by the person named in the warrant, the law enforcement agency submitting the sworn complaint to the court shall promptly give to the [MDOC], by telephonic or electronic means, notice of the following:
>
> (a) The identity of the person named in the sworn complaint.
>
> (b) The fact that a prosecuting attorney has authorized issuance of a warrant.
>
> (c) The fact that information in databases managed by the [MDOC] and accessible by the [LEIN] provides reason to believe the person named in the sworn complaint is a parolee under the jurisdiction of the [MDOC].
>
> (d) The charge or charges stated in the sworn complaint.
>
> (e) Whether, pending a court appearance by the person named in the sworn complaint, the court has either issued the arrest warrant but delayed entry of the warrant into the [LEIN] or has delayed issuance of the warrant." MCL 764.1g(2).

Transmitting notice to any of the following satisfies the notice requirements of MCL 764.1g:

> "(a) To the [MDOC] by a central toll-free telephone number that is designated by the [MDOC] for that purpose and that is in operation 24 hours a day and is posted in the [MDOC's] database of information concerning the status of parolees.
>
> (b) To a parole agent serving the county where the warrant is issued or is being sought.
>
> (c) To the supervisor of the parole office serving the county where the warrant is issued or is being sought." MCL 764.1g(3).

B. Substantive Requirements of an Arrest Warrant

An arrest warrant must:

- "recite the substance of the accusation contained in the complaint[,]" MCL 764.1b;
- be directed at a peace officer, MCL 764.1b;
- "command the peace officer immediately to arrest the person accused and to take that person, without unnecessary delay, before a magistrate of the judicial district in which the offense is charged to have been committed, to be dealt with according to law[,]" MCL 764.1b;
- "direct that the warrant, with a proper return noted on the warrant, be delivered to the magistrate before whom the arrested person is to be taken." MCL 764.1b.

See also MCR 6.102(E), which requires an arrest warrant to:

> "(1) contain the accused's name, if known, or an identifying name or description;
>
> (2) describe the offense charged in the complaint;
>
> (3) command a peace officer or other person authorized by law to arrest and bring the accused before a judicial officer of the judicial district in which the offense allegedly was committed or some other designated court; and
>
> (4) be signed by the court."

For a summary of the arrest warrant process, see the Michigan Judicial Institute's checklist describing the process for issuing an arrest warrant and the checklist describing the process for electronically issuing an arrest warrant.

In addition, MCR 6.102(F) allows the court, when permitted by law, to specify on the warrant an amount of interim bail the accused may post to obtain release before arraignment on the warrant. For further discussion of interim bail, see Section 2.19.

C. Sanctions for Arrest Based on Invalid Arrest Warrant

The proper sanction to be imposed for arresting an individual based on an invalid arrest warrant is the suppression of evidence obtained from the person following his or her illegal arrest, not divestiture of

the court's jurisdiction. *People v Burrill*, 391 Mich 124, 133 (1974). Thus, even if the complaint or warrant is later determined to be invalid, the court retains jurisdiction. *Id*. See also *Whiteley v Warden, Wyoming State Penitentiary*, 401 US 560, 565 (1971) (where no probable cause supported either the warrant or a warrantless arrest, evidence secured as a result of the illegal arrest should have been suppressed); *People v Muhammad*, 326 Mich App 40, 72 (2018) ("irrespective of whether there were errors associated with the warrant, defendant is not entitled to relief").

2.11 Arrest Warrants and Complaints for Juveniles Charged with Specified Juvenile Violations

If a prosecuting attorney has reason to believe that a juvenile at least 14 years old and less than 18 years old has committed a specified juvenile violation, the prosecutor may authorize the filing of a complaint and warrant on the charge in the district court instead of filing a petition in the family division of circuit court. MCL 764.1f. This is called an automatic waiver, and further discussion is beyond the scope of this benchbook. See the Michigan Judicial Institute's *Juvenile Justice Benchbook* for more information.

2.12 Execution of Arrest Warrants

For a summary of the arrest warrant process, including execution, see the Michigan Judicial Institute's checklist describing the process for issuing an arrest warrant and the checklist describing the process for electronically issuing an arrest warrant.

A. Executing an Arrest Warrant

Unless the accused is already in custody after a warrantless arrest, MCL 764.1b directs that an arrest warrant "command the peace officer immediately to arrest the person accused and to take that person, without unnecessary delay[26], before a magistrate of the judicial district in which the offense is charged to have been committed . . . ." MCR 6.102(G) clarifies that "[o]nly a peace officer or other person authorized by law may execute an arrest warrant." It is not necessary for the arresting officer to personally possess the arrest warrant. MCL 764.18. Rather, it is sufficient for the officer to inform the arrestee of an outstanding warrant for his or her arrest. *Id*.

[26] A delay of more than 48 hours after arrest is presumptively unreasonable unless there are extraordinary circumstances. *Riverside Co v McLaughlin*, 500 US 44, 56-57 (1991).

However, the officer must show the arrest warrant to the arrestee as soon as practicable after the arrest. *Id*.

B. Return on an Arrest Warrant

The return on an arrest warrant is a certification by the executing officer that states the manner in which the warrant was executed. The warrant itself should direct the executing officer to note "a proper return" and to deliver the warrant "to the magistrate before whom the arrested person is to be taken." MCL 764.1b. MCR 6.102(G) (applicable only to offenses not cognizable by the district court, MCR 6.001(A)-(B)) similarly provides that "[o]n execution or attempted execution of the warrant, the officer must make a return on the warrant and deliver it to the court before which the arrested person is to be taken."

The warrant, along with the proper return noted on it, should be delivered to the magistrate before whom the arrested person is taken. MCL 764.1b.

When an officer makes a warrantless arrest, "[t]he return of the officer making the arrest, endorsed upon the warrant upon which the accused shall be subsequently held, affirming compliance with the provisions herein, shall be prima facie evidence of the fact in the trial of any criminal cause." MCL 764.19.

C. Execution of Warrant by Electronic Device

"The person or department receiving an electronically or electromagnetically issued arrest warrant . . . must receive proof that the issuing judge or district court magistrate has signed the warrant . . . before the warrant . . . is executed. Proof that the issuing judge or district court magistrate has signed the warrant . . . may consist of an electronically or electromagnetically transmitted facsimile of the signed warrant[.]" MCL 764.1(4).

2.13 Collection of Biometric Data

See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 3, for information regarding the collection of biometric data.

2.14 Information or Indictment

See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 3, for information regarding informations and indictments.

2.15 Circumstances Allowing Warrantless Arrests

A peace officer may make a warrantless arrest if a felony, misdemeanor, or ordinance violation is committed in the officer's presence. MCL 764.15(1)(a). Under MCL 764.15, a peace officer may also make a warrantless arrest for certain offenses *not* committed in his or her presence when:

- A person has committed a felony outside the presence of the officer, MCL 764.15(1)(b).
- A felony in fact has been committed and the officer has reasonable cause[27] to believe the person committed it, MCL 764.15(1)(c).
- The officer has reasonable cause to believe that a misdemeanor punishable by more than 92 days' imprisonment or a felony has been committed, and reasonable cause to believe the person committed it, MCL 764.15(1)(d).
- The officer receives positive information from a written, telegraphic, teletypic, telephonic, radio, electronic, or other authoritative source that another officer or a court holds a warrant for the person's arrest, MCL 764.15(1)(e).
- The officer receives positive information broadcast from a recognized police or other governmental radio station or teletype, that affords the officer reasonable cause to believe that a misdemeanor punishable by more than 92 days' imprisonment or a felony has been committed and that the person committed it, MCL 764.15(1)(f).
- The officer has reasonable cause to believe that the person is an escaped convict, has violated a condition of parole from a prison, has violated a condition of a pardon, or has violated one or more conditions of a conditional release order or probation order by any court of any state, Indian tribe, or United States territory, MCL 764.15(1)(g).
- The officer has reasonable cause to believe the person was involved in an accident in Michigan while operating a vehicle and (1) while under the influence of alcoholic liquor, a controlled substance, or other intoxicating substance, or any combination thereof, (2) with an unlawful

[27] The 1989 Staff Comment to MCR 6.102 states that *reasonable cause* and *probable cause* are equivalent. However, according to the Staff Comment, the preferred term is *probable cause*.

bodily alcohol content, (3) while visibly impaired, (4) with any bodily alcohol content if the person is under 21, or (5) while violating certain provisions in MCL 257.625 and having occupants under age 16 in the vehicle. MCL 764.15(1)(h). Warrantless arrest authority also extends to violations of substantially corresponding local ordinances. *Id*.

- The officer has reasonable cause to believe the person was involved in an accident in Michigan while operating a commercial vehicle and with an unlawful bodily alcohol content under MCL 257.625m, or violating a substantially corresponding local ordinance. MCL 764.15(1)(h).

- The person is found in the driver's seat of a stopped or parked vehicle on a highway or street that in any way intrudes into a roadway, and the officer reasonably believes the person was operating the vehicle (1) while under the influence of alcoholic liquor, a controlled substance, or other intoxicating substance, or any combination thereof, (2) with an unlawful bodily alcohol content, (3) while visibly impaired, (4) with any bodily alcohol content if the person is under 21, or (5) while violating certain provisions in MCL 257.625 and having occupants under age 16 in the vehicle. MCL 764.15(1)(*i*). Warrantless arrest authority also extends to violations of substantially corresponding local ordinances. *Id*.

- The person is found in the driver's seat of a stopped or parked commercial vehicle on a highway or street that in any way intrudes into a roadway, and the officer reasonably believes the person was operating the vehicle and with an unlawful bodily alcohol content under MCL 257.625m, or violating a substantially corresponding local ordinance. MCL 764.15(1)(i).

- The officer has reasonable cause to believe the person was involved in an accident in Michigan while operating a snowmobile, off-road vehicle (ORV), or vessel (1) while under the influence of intoxicating liquor or a controlled substance, or both (2) with an unlawful bodily alcohol content, or (3) while visibly impaired. MCL 764.15(1)(j)-(l). Warrantless arrest authority also extends to violations of substantially corresponding local ordinances. *Id*.

- The officer has reasonable cause to believe retail fraud has occurred, and the person committed the retail fraud, whether or not committed in the officer's presence, MCL 764.15(1)(m).

- The officer has reasonable cause to believe that a misdemeanor has occurred or is occurring on school property, and the person committed or is committing the misdemeanor, whether or not committed in the officer's presence, MCL 764.15(1)(n).

"MCL 764.15(1)(d) and [MCL 764.15(1)(f)] authorize a warrantless arrest for a misdemeanor committed outside an officer's presence only if the misdemeanor is punishable by imprisonment for more than 92 days." *People v Nordstrom*, ___ Mich App ___, ___ (2026) (holding that a warrantless arrest was not authorized for disturbing the peace, MCL 750.170 and MCL 750.504, or being a disorderly person, MCL 750.168, because the conduct occurred outside the officers' presence and neither offense is punishable by more than 90 days' imprisonment).

Other statutes also allow a peace officer to make a warrantless arrest when a criminal offense or violation of a court order allegedly occurred:

- MCL 764.15a authorizes a peace officer to make a warrantless arrest in a case involving domestic assault and aggravated domestic assault.[28] The officer may arrest a person regardless of whether the violation takes place in his or her presence, as long as the arresting officer has or receives positive information that another officer has reasonable cause to believe both of the following:

  (1) the violation occurred or is occurring; and

  (2) the individual arrested has had a child in common with the victim, resides or has resided in the same household as the victim, is or has had a dating relationship with the victim, or is a spouse or former spouse of the victim.

- MCL 764.15b authorizes a peace officer to make a warrantless arrest for the violation of a personal protection order (PPO) or a valid foreign protection order (FPO) if the officer has or receives positive information that another officer has reasonable cause to believe all of the following:

  - a PPO has been issued under either the domestic or nondomestic PPO statute, or is a valid FPO;

  - the individual named in the PPO is violating or has violated the order (the act must be specifically prohibited in the order); and

[28] For a complete discussion of this topic, see the Michigan Judicial Institute's *Domestic Violence Benchbook*.

- the PPO states on its face that a violation of its terms subjects the individual to immediate arrest and either of the following:
  - if the individual is 18 years of age or older, to criminal contempt sanctions of imprisonment for not more than 93 days and to a fine of not more than $500; or
  - if the individual is less than 18 years of age, to the dispositional alternatives in MCL 712A.18 of the Juvenile Code.

- MCL 764.15e allows a peace officer to make a warrantless arrest of a person if the officer has or receives positive information that another officer has reasonable cause to believe that the person is violating or has violated a condition of release imposed under MCL 765.6b or MCL 780.582a (governing pretrial conditional release). See also MCL 764.15(1)(g) (allowing warrantless arrest of person violating postconviction conditional release).

- MCL 764.15f allows a peace officer to make a warrantless arrest of a person if the officer has reasonable cause to believe all of the following:
  - the Family Division issued an order under MCL 712A.13a(4) (requiring certain adults to leave the home pending the outcome of child protective proceedings), and the order specifically stated the time period for which the order was valid;
  - a true copy of the order and proof of service have been filed with the law enforcement agency having jurisdiction of the area where the person who has custody of the child resides;
  - the person named in the order received notice of the order;
  - the person named in the order violated the order;
  - the order specifically states that a violation will subject the person to criminal contempt sanctions, including up to 90 days' imprisonment and a $500 fine.

A private person may make a warrantless arrest of another individual under the following circumstances:

- For a felony regardless of whether the felony is committed in his or her presence. MCL 764.16(a)-(b).

- If summoned by a peace officer to assist the officer in making an arrest. MCL 764.16(c).

- If the private person is a merchant, agent of a merchant, employee of a merchant, or an independent contractor providing security for a merchant of a store and has reasonable cause to believe the other individual has committed retail fraud, regardless of whether the retail fraud occurred in his or her presence. MCL 764.16(d).

2.16 Complaint Serving as the Warrant

If a defendant is in custody following a warrantless arrest, the complaint can serve as both the complaint and warrant when reasonable cause is found. MCL 764.1c(2). The magistrate must direct the officer to bring the accused before the magistrate or judge for arraignment in the district where the offense allegedly was committed. MCL 764.1c(1)(b). See also MCR 6.104(D).

If the complaint will be used in lieu of a warrant, the finding of reasonable cause must be endorsed on the complaint. MCL 764.1c(1)(b).

2.17 Alternatives to a Formal Complaint and Arrest Warrant

A. Appearance Tickets for Misdemeanor Non-Traffic Violations

1. Statutory Authority

In lieu of filing a complaint as required by MCL 764.13, a police officer may issue an appearance ticket to a person who is arrested without a warrant "for a misdemeanor or ordinance violation[.]" MCL 764.9c(1). "The appearance ticket . . . , or other documentation as requested, must be forwarded to the court, appropriate prosecuting authority, or both, for review without delay." *Id*.

"Except as provided in [MCL 764.9c(5)], a police officer shall issue to and serve upon a person an appearance ticket . . . and release the person from custody if the person has been arrested for a misdemeanor or ordinance violation that has a maximum permissible penalty that does not exceed 1 year in jail or a fine, or both, and is not a serious misdemeanor, assaultive crime, domestic violence violation of . . . MCL 750.81 [or MCL] 750.81a, a local ordinance substantially corresponding to a domestic

violence violation of . . . MCL 750.81 [or MCL] 750.81a, an offense involving domestic violence . . . , or an operating while intoxicated offense." MCL 764.9c(4). See Section 2.17(C) for more information on MCL 764.9(c)(5), arrest in lieu of appearance ticket.

MCL 764.9c "does not create a right to the issuance of an appearance ticket in lieu of an arrest. An arrested person may appeal the legality of his or her arrest as provided by law. However, an arrested person does not have a claim for damages against a police officer or law enforcement agency because he or she was arrested rather than issued an appearance ticket." MCL 764.9c(8).

2. Appearance Ticket Requirements

Appearance tickets "must be numbered consecutively, provide a space for the defendant's cellular telephone number and electronic mail address, if applicable, [and] be in a form required by the attorney general, the state court administrator, and the director of the department of state police[.]" MCL 764.9f(1).The original appearance ticket serves as the complaint or notice to appear and must be filed with the court. MCL 764.9f(1)(a). The first copy is the abstract of court record; the second copy must be retained by the local enforcement agency; the third copy must be delivered to the alleged violator. MCL 764.9f(1)(b)-(d).

3. Restrictions on the Issuance of Appearance Tickets

MCL 764.9c(3) prohibits the issuance of appearance tickets to:

- A person arrested for a domestic violence violation of assault and battery, MCL 750.81; aggravated assault and battery, MCL 750.81a; a substantially corresponding local ordinance; or an offense involving domestic violence. MCL 764.9c(3)(a).
- "A person subject to detainment for violating a personal protection order." MCL 764.9c(3)(b).
- "A person subject to a mandatory period of confinement, condition of bond, or other condition of release until he or she has served that period of confinement or meets that requirement of bond or other condition of release." MCL 764.9c(3)(c).
- "A person arrested for a serious misdemeanor." MCL 764.9c(3)(d).

- "A person arrested for any other assaultive crime." MCL 764.9c(3)(e).

4. Failure to Appear

"If after the service of an appearance ticket and the filing of a complaint for the offense designated on the appearance ticket the defendant does not appear in the designated local criminal court within the time the appearance ticket is returnable, the court may issue a summons or a warrant as provided in this [MCL 764.9e]." MCL 764.9e(1). "Notwithstanding any provision of law to the contrary, in the event that a defendant fails to appear for a court hearing within the time the appearance ticket is returnable there is a rebuttable presumption that the court must issue an order to show cause why the defendant failed to appear instead of issuing a warrant." MCL 764.9e(2). "The court may overcome the presumption and issue a warrant if it has a specific articulable reason to suspect that any of the following apply:

> (a) The defendant committed a new crime.
>
> (b) The defendant's failure to appear is the result of a willful intent to avoid or delay the adjudication of the case.
>
> (c) Another person or property will be endangered if a warrant is not issued." MCL 764.9e(3).

"If the court overcomes the presumption under [MCL 764.9e(2)] and issues a warrant, the court must state on the record its reasons for doing so." MCL 764.9e(4).

5. Arrest in Lieu of Appearance Ticket

A police officer may take an "arrested person before a magistrate and promptly file a complaint as provided in [MCL 764.13] instead of issuing an appearance ticket as required under [MCL 764.9c(4)] if 1 of the following circumstances is present:

> (a) The arrested person refuses to follow the police officer's reasonable instructions.
>
> (b) The arrested person will not offer satisfactory evidence of identification.
>
> (c) There is a reasonable likelihood that the offense would continue or resume, or that another person or property would be endangered if the arrested person is released from custody.

(d) The arrested person presents an immediate danger to himself or herself or requires immediate medical examination or medical care.

(e) The arrested person requests to be taken immediately before a magistrate.

(f) Any other reason that the police officer may deem reasonable to arrest the person which must be articulated in the arrest report." MCL 764.9c(5).

If acting under MCL 764.9c(5), a police officer "takes an arrested person before a magistrate and promptly files a complaint as provided in [MCL 764.13] instead of issuing an appearance ticket, the police officer must specify the reason for not issuing a citation in the arrest report or other documentation, as applicable, and must forward the arrest report or other documentation, as requested, to the appropriate prosecuting authority for review without delay." MCL 764.9c(6). A person arrested under MCL 764.9c(6) "must be charged by the appropriate prosecuting authority or released from custody not later than 3 p.m. the immediately following day during which arraignments may be performed." MCL 764.9c(7).

B. Citations to Appear[29] for Traffic Misdemeanors or Traffic Civil Infractions

1. Statutory Authority

Under the Michigan Vehicle Code (MVC), a police officer *must* issue a citation to a person who is arrested without a warrant for "a violation of [the MVC] punishable as a misdemeanor, or an ordinance substantially corresponding to a provision of [the MVC] and punishable as a misdemeanor, under conditions not referred to in [MCL 257.617, MCL 257.619, or MCL 257.727.]" MCL 257.728(1). However, where no arrest occurs, "[a] police officer *may* issue a citation to a person who is an operator of a motor vehicle involved in an accident if, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a misdemeanor under [the MVC] in connection with the accident." MCL 257.728(8) (emphasis added). See also MCL 257.742(3) (containing substantially similar language with respect to civil infractions). Additionally,

[29]The terms *complaint*, *appearance ticket*, and *citation to appear* are used interchangeably to discuss the Uniform Law Citation (UC-01a and UC-01b) and refer to "a written notice to appear given to a misdemeanor defendant (by an officer or other official) in lieu of a more immediate presentation of the defendant to a magistrate." *McIntosh*, 291 Mich App at 154 n 1.

an officer may issue a citation to an individual that the police officer witnesses committing a civil infraction or who the police officer has reason to believe is committing a civil infraction by violating certain load, weight, height, length, or width requirements. MCL 257.742(1)-(2).

Subject to the exceptions in MCL 764.9c, the citation must be filed in the district court in which the appearance is to be made. MCL 257.727c(1)(a); MCR 4.101(A) (civil infractions); MCR 6.615(A)(1)(a) (misdemeanors). There is no prohibition against filing a single citation that lists both a misdemeanor and a civil infraction. See MCL 257.727c(3).

A person arrested under the MVC without a warrant for a misdemeanor or civil infraction may, in lieu of being issued a citation to appear, demand to be brought to a judge or district court magistrate or to the family division of the circuit court for arraignment. MCL 257.728(1). If a nonresident demands an immediate arraignment, and a judge or district court magistrate is not available to conduct the arraignment or if an immediate trial cannot be held, the nonresident may deposit with the officer a guaranteed appearance certificate or a sum of money not to exceed $100 and be issued a written citation. MCL 257.728(5). However, a nonresident may not be issued a written citation if he or she was arrested for a violation of any offense listed in MCL 257.727(a)-(d). MCL 257.728(5). Requirements for nonresidents who are issued civil infraction citations are discussed in detail in Section 6.13.

2. Citation Requirements

The citation may serve as a sworn complaint and summons to command the initial appearance of the accused and to command the accused's response regarding his or her guilt of or responsibility for the violation alleged in misdemeanor cases. MCR 4.101(A)(3)(a)-(b) (civil infractions); MCR 6.615(A)(2)(a)-(b) (misdemeanors). The citation must contain "the name and address of the person, the violation charged, and the time and place when and where the person shall appear in court." MCL 257.728(1) (warrantless arrest for alleged misdemeanor violation). See also MCL 257.743 (requiring substantially similar information and additional information for alleged civil infraction); MCL 257.728(8) (requiring substantially similar information for traffic accidents allegedly involving a misdemeanor where no arrest is made). The officer must complete an original and three copies of the citation. MCL 257.728(1); MCL 257.728(8). The original must be filed with the court in which the appearance is to be made, the first copy is

retained by the local traffic enforcement agency, the second copy is delivered to the violator if the violation is a misdemeanor, and the third copy is delivered to the violator if the violation is a civil infraction. MCL 257.727c(1).[30] See also MCL 257.743, which requires additional information pertaining to an accused's right to admit or deny responsibility for a civil infraction citation.

"If the citation is issued to a person who is operating a commercial motor vehicle, the citation shall contain the vehicle group designation and indorsement description of the vehicle operated by the person at the time of the alleged violation." MCL 257.728(9) (misdemeanors). See also MCL 257.743(5) (requiring substantially similar information be provided for alleged traffic civil infraction involving commercial motor vehicle).

3. Restrictions on the Issuance of Citations

MCL 257.728(1) prohibits the issuance of citations for the following offenses[31]:

- Leaving the scene of an accident resulting in serious impairment of a body function or death. MCL 257.617.
- Failing to give the proper information and aid after an accident. MCL 257.619.
- Committing a moving violation causing death or serious impairment of a body function to another person under MCL 257.601d. MCL 257.727(a).
- Operating a vehicle while intoxicated, visibly impaired, with any bodily alcohol content if under age 21, or while having a controlled substance in his or her body under MCL 257.625(1), MCL 257.625(3), MCL 257.625(6), or MCL 257.625(8), or a substantially corresponding ordinance. MCL 257.727(b).
- Causing death or serious impairment of a body function by operating a vehicle while intoxicated or visibly impaired, or while having a controlled substance in his or her body, MCL 257.625(4)-(5). MCL 257.727(b).

[30] With the approval of certain specified officials, the content or number of copies required by MCL 257.727c(1) may be modified "to accommodate law enforcement and local court and procedures and practices." MCL 257.727c(2).

[31] Some of the listed offenses are felonies, not punishable as misdemeanors, or may be punishable as felonies if the person has prior convictions.

- Operating a vehicle while intoxicated or visibly impaired, with any bodily alcohol content if under age 21, or while having a controlled substance in his or her body, and having occupants under age 16 in the vehicle, MCL 257.625(7). MCL 257.727(b).

- Reckless driving, MCL 257.626, or a substantially corresponding ordinance, unless the officer deems that issuing a citation and releasing the person will not constitute a public menace. MCL 257.727(c).

- Not having in his or her immediate possession at the time of arrest a valid operator's or chauffeur's license, MCL 257.311, or a receipt for an already surrendered license, MCL 257.311a. However, if the officer can satisfactorily determine the identity of the person and whether the person can be apprehended if he or she fails to appear before the designated magistrate, the officer may issue a citation. MCL 257.727(d).

C. Summons to Appear

A court must issue a summons[32] "if presented with a proper complaint and if the court finds probable cause to believe that the accused committed the alleged offense." MCR 6.102(A). See also MCL 764.1a(1). However, a court may issue an arrest warrant, rather than a summons, if:

> "(1) the complaint is for an assaultive crime or an offense involving domestic violence, as defined in MCL 764.1a.
>
> (2) there is reason to believe from the complaint that the person against whom the complaint is made will not appear upon a summons.
>
> (3) the issuance of a summons poses a risk to public safety.
>
> (4) the prosecutor has requested an arrest warrant." MCR 6.102(D). See also MCL 764.1a(2) and MCL 764.9a(1).

"A summons must contain the same information as an arrest warrant, except that it should summon the accused to appear before a designated court at a stated time and place." MCR 6.102(C)(1). See also MCL 764.1a(3).

[32] See SCAO Form DC 225s, *Misdemeanor Summons* or SCAO Form MC 200s, *Felony Summons*

"A summons may be served by the court or prosecuting attorney by

(a) delivering a copy to the named individual; or

(b) leaving a copy with a person of suitable age and discretion at the individual's home or usual place of abode; or

(c) mailing a copy to the individual's last known address.

Service should be made promptly to give the accused adequate notice of the appearance date. Unless service is made by the court, the person serving the summons must make a return to the court before the person is summoned to appear." MCR 6.102(C)(2). See also MCL 764.1a(3) and MCL 764.9a(3). If the accused fails to appear in response to a summons, the court may issue a bench warrant pursuant to MCR 6.103." MCR 6.102(C)(3).[33] See also MCL 764.1a(3).

Generally, "if a defendant fails to appear in court, the court must wait 48 hours, excluding weekends and holidays if the court is closed to the public, before issuing a bench warrant to allow the defendant an opportunity to voluntarily appear before the court." MCR 6.103(A). "If the defendant does not appear within 48 hours, the court must issue a bench warrant unless the court believes there is good reason to instead schedule the case for further hearing." MCR 6.103(A)(3). "The court must not revoke a defendant's release order or forfeit bond during the 48-hour period of delay before a warrant is issued." MCR 6.103(C). However, MCR 6.103(A) "does not apply if the case is for an assaultive crime or domestic violence offense, as defined in MCL 764.3, or if the defendant previously failed to appear in the case." MCR 6.103(A)(1).

MCR 6.103(A)(2) permits a court to "immediately issue a bench warrant only if the court has a specific articulable reason, stated on the record, to suspect any of the following apply:

(a) the defendant has committed a new crime.

(b) a person or property will be endangered if a bench warrant is not issued.

(c) prosecution witnesses have been summoned and are present for the proceeding.

[33] Although corporations are not subject to arrest, they can be charged and held liable for criminal acts of their agents. *People v Lanzo Constr Co*, 272 Mich App 470, 472 (2006). Thus, the procedure set out in MCR 6.102 can be applied to a corporate defendant as well as an individual defendant.

(d) the proceeding is to impose a sentence for the crime.

MCR 6.103 "does not abridge a court's authority to issue an order to show cause, instead of a bench warrant, if a defendant fails to appear in court." MCR 6.103(B).

2.18 Plan for Judicial Availability

"In each county, the court with trial jurisdiction over felony cases must adopt and file with the state court administrator a plan for judicial availability." MCR 6.104(G). The plan must "make a judicial officer available for arraignments each day of the year, or . . . make a judicial officer available for setting bail for every person arrested for commission of a felony each day of the year[.]" MCR 6.104(G)(1)-(2). The setting of bail is conditioned upon the judicial officer being presented with a proper complaint and finding probable cause and the officer having available information to set bail. MCR 6.104(G)(2)(a)-(b).

The plan must also require that the judicial officer "order the arresting officials to arrange prompt transportation of any accused unable to post bond to the judicial district of the offense for arraignment not later than the next regular business day." MCR 6.104(G). See also MCR 6.104(A).

2.19 Interim Bail

In general, a person accused of a criminal offense is entitled to post interim bail to obtain release before arraignment. MCL 765.4; MCL 765.6. Const 1963, art 1, § 15 identifies offenses for which bail may be precluded "when the proof is evident or the presumption great[.]" See also MCR 6.106. However, "denial of bail on this condition is discretionary with the trial court upon a finding by the trial court that the proof of the defendant's guilt is evident or the presumption of the defendant's guilt is great." *People v Davis*, 337 Mich App 67, 77, 83 (2021) (concluding that language in MCL 765.5 expressly prohibiting bail to a person charged with treason or murder conflicts with Const 1963, art 1, § 15 and MCR 6.106(B)(1), because it curtails "the discretion granted the trial court in the constitutional provision and the court rule, and also curtail[s] the defendant's right to pretrial release under Const 1963, art 1, § 15"). The applicable procedures for bail depend on the nature of the offense and whether a magistrate is available to set the amount of bail. For a detailed discussion of interim bail, see Chapter 3.

Part B: Search Warrants

2.20 Purpose and Function of a Search Warrant

A search warrant gives the police authority to search a specified place, person, or thing as well as the authority to seize specified property. See, e.g., *People v Davis*, 442 Mich 1, 9-10 (1993). "Searches conducted without a warrant are *per se* unreasonable under the Fourth Amendment, 'subject only to a few specifically established and well-delineated exceptions.'" *Id.*, quoting *Horton v California*, 496 US 128, 133, n 4 (1990) (additional quotation marks omitted).[34]

For a summary of the search warrant process, see the Michigan Judicial Institute's checklist describing the process for issuing a search warrant and the checklist describing the process for electronically issuing a search warrant.

2.21 District Court Magistrate's Authority to Issue Search Warrants

"Notwithstanding statutory provisions to the contrary, district court magistrates exercise only those duties expressly authorized by the chief judge of the district or division." MCR 4.401(B). Accordingly, a district court magistrate has the jurisdiction and duty "[t]o issue search warrants, if [so] authorized[.]" MCL 600.8511(g). See also MCL 780.651(1); MCL 780.651(3). The term *search warrant* includes administrative search warrants issued outside the criminal context. *Richter v Dep't of Natural Resources*, 172 Mich App 658, 664-665 (1988).

The chief judge of the district court may grant "blanket authorization" to magistrates to issue search warrants; the authorization need not be on a case-by-case basis. *People v Paul*, 444 Mich 949 (1994).

Although MCL 600.8511 does not require that the authorization to issue search warrants be in writing, effective January 1, 2010, AO 2009-6 requires the district court to submit a local administrative order (LAO) specifying each magistrate's authorized duties. See LAO 3a and 3b.[35]

MCL 780.651(3) authorizes "[a] . . . district court magistrate [to] issue a written search warrant in person or by any electronic or electromagnetic

[34]For a detailed discussion of the exceptions to the warrant requirement, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 11.

[35]LAO 3a and 3b, which are model administrative orders, can be downloaded from the Michigan One Court of Justice website.

means of communication, including by facsimile or over a computer network." Furthermore, "[a] . . . district court magistrate may sign an electronically issued search warrant when he or she is at any location in this state." MCL 780.651(4).

District court magistrates may also issue search warrants in an adjoining district or in other districts within a county if there is a multiple district plan in place. MCL 600.8320.

A search warrant may be executed outside the district, but within the State of Michigan, in which the magistrate is appointed to serve. *People v Fiorillo*, 195 Mich App 701, 704 (1992) ("No constitutional or statutory limits exist which prevent the district court from issuing search warrants to be executed outside the county of issuance. Since there is only one district court within the state, there is no need for explicit statutory authorization allowing the district court to issue statewide search warrants.")[36]

2.22 Initiating the Search Warrant Process[37]

The first step to the issuance of a search warrant is the preparation and filing of an affidavit. The affidavit is the document that sets forth the grounds for issuing the search warrant, as well as the factual averments from which a finding of probable cause may be made by the court. See MCL 780.651(1). For detailed discussion of the affidavit, see Section 2.27. Following the filing of an affidavit, a neutral and detached magistrate must examine the affidavit and determine whether there is probable cause to support the issuance of the search warrant. See *id.*; *People v Payne*, 424 Mich 475, 482-483 (1985).

The principal statutes concerning search warrants are MCL 780.651–MCL 780.658, and are discussed in more detail throughout this section. For a summary of the search warrant process, see the Michigan Judicial Institute's checklist describing the process for issuing a search warrant and the checklist describing the process for electronically issuing a search warrant.

[36]This case does not address whether a magistrate or judge has the authority to issue a search warrant for an underlying case which will be heard in another district court.

[37] See the Michigan Judicial Institute's Arrest & Search Warrants Quick Reference Materials web page for resources concerning the issuance of search warrants. For information regarding a motion to suppress evidence based on an illegal search or seizure, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 11.

A. Drafting and Typing the Documents

The affidavit and search warrant are generally drafted by either: (1) the prosecuting official, which may include assistant attorneys general, assistant prosecuting attorneys, or attorneys for the city, village, or township; or (2) the applicable law enforcement agency. Preferably, the affidavit and warrant should be typed on SCAO Form MC 231, *Affidavit and Search Warrant*, which contains "[i]nstructions for [p]reparing [the] [a]ffidavit and [s]earch [w]arrant" on its reverse side.

B. Signature of Prosecuting Official

The signature of a prosecuting official is not legally necessary to issue a search warrant based on an affidavit. MCL 600.8511(g); *People v Brooks*, 75 Mich App 448, 450 (1977).[38]

Committee Tip:

The signature of the prosecutor is not required, but if there are issues regarding the warrant or affidavit, the judge or district court magistrate should tell the police officer that it should be reviewed by the prosecutor.

Although a prosecuting official's signature is not legally necessary to issue a search warrant, SCAO Form MC 231, *Affidavit and Search Warrant*, contains a rectangular box in the lower left corner for the signature of a reviewing prosecuting official to accommodate local practice.

C. Probable Cause

"Probable cause means that there is a substantial basis for inferring a fair probability that contraband or evidence of a crime will be found in a particular place." *People v Armstrong*, ___ Mich ___, ___ (2025) (quotation marks and citation omitted). See also *United States v Grubbs*, 547 US 90 (2006). Probable cause is discussed in detail in Section 2.25.

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[38]This is in contrast to the issuance of an arrest warrant, which generally requires the signature of a prosecuting official. See MCL 764.1(2) ("A judge or district court magistrate shall not issue a warrant for a minor offense unless an authorization in writing allowing the issuance of the warrant is filed with the judge or district court magistrate and signed by the prosecuting attorney . . . .") and MCL 600.8511(e) (a magistrate has the authority "[t]o issue warrants for the arrest of a person upon the written authorization of the prosecuting or municipal attorney . . . .").

D. Neutral and Detached Magistrate

A magistrate who issues a search warrant must be "neutral and detached," a requirement rooted in both the United States and Michigan Constitutions. *Shadwick v City of Tampa*, 407 US 345, 350 (1972); *People v Payne*, 424 Mich 475, 482-483 (1985); Const 1963, art 3, § 2.

Committee Tip:

It is important to maintain neutrality. For example, if either the affidavit or search warrant is defective, the magistrate/judge can notify the police officer of a problem (e.g., insufficient factual basis to establish probable cause). Some judicial officers are of the opinion that they should not tell the police officer how to fix the defect, while other judicial officers are of the opinion that they may indicate what would be required in order for them to sign it. One approach is to refer the police officer to the prosecutor for review of the affidavit/search warrant. District court magistrates should always defer to any procedure or approach set in place by the chief judge of the district.

"The probable cause determination must be made by a person whose loyalty is to the judiciary alone, unfettered by professional commitment, and therefore loyalty, to the law enforcement arm of the executive branch." *Payne*, 424 Mich at 483 (magistrate who was also a court officer and a sworn member of the sheriff's department could not issue search warrants). See also *People v Lowenstein*, 118 Mich App 475, 486 (1982) (magistrate who previously had prosecuted and had been sued by the defendant was not neutral and detached). But see *People v Tejeda (On Remand)*, 192 Mich App 635, 638 (1992) (police officers waiting in magistrate's chambers for a phone call to provide them with additional information to complete the affidavit does not necessarily mean magistrate has injected themself into the investigatory process).

A magistrate must disqualify themself from authorizing warrants in the following situations:

> "'[A magistrate] associated in any way with the prosecution of alleged offenders, because of his allegiance to law enforcement, cannot be allowed to be placed in a position requiring the impartial judgment

> necessary to shield the citizen from unwarranted intrusions into his privacy.' . . . In other words, an otherwise duly appointed magistrate who just happens to be connected with law enforcement may not constitutionally issue warrants. . . . Next, the magistrate (or judge) must disqualify himself if he had a pecuniary interest in the outcome. . . . A judge must also disqualify himself when one of the parties happens to be his client. . . . He must also disqualify himself where a party happens to be a relative. . . . " *Lowenstein*, 118 Mich App at 483-484 (citations omitted).

E. Review of Decision to Issue Search Warrant

In reviewing the issuance of a search warrant, the reviewing court must determine whether a reasonably cautious person could have concluded that there was a substantial basis for finding probable cause. *People v Russo*, 439 Mich 584, 603 (1992). The reviewing court must afford deference to the magistrate's decision and "insure that there is a substantial basis for the magistrate's conclusion that there is a 'fair probability that contraband or evidence of a crime will be found in a particular place.'" *Id*. at 604, quoting *Illinois v Gates*, 462 US 213, 238 (1983). See also *People v Armstrong*, ___ Mich ___, ___ (2025) ("[p]robable cause means that there is a substantial basis for inferring a fair probability that contraband or evidence of a crime will be found in a particular place") (quotation marks and citation omitted), and *United States v Ventresca*, 380 US 102, 108 (1965), where the United States Supreme Court stated:

> "[A]ffidavits for search warrants . . . must be tested and interpreted by magistrates and courts in a commonsense and realistic fashion. They are normally drafted by nonlawyers in the midst and haste of a criminal investigation. Technical requirements of elaborate specificity once exacted under common law pleadings have no proper place in this area. A grudging or negative attitude by reviewing courts toward warrants will tend to discourage police officers from submitting their evidence to a judicial officer before acting."

F. SCAO-Approved Forms

The following SCAO-approved forms address the issuance of a search warrant:

- SCAO Form MC 231, *Affidavit and Search Warrant*

- SCAO Form MC 231a, *Affidavit for Search Warrant (continuation)*

2.23 Contents of the Search Warrant

The particularity requirement of the Fourth Amendment "only allows the issuance of search warrants 'particularly describing the place to be searched, and the persons or things to be seized.'" *People v Bogucki*, ___ Mich App ___, ___ (2025), quoting US Const, Am IV. "The Michigan Constitution has a substantively similar provision at Const 1963, art 1[,] § 11." *Bogucki*, ___ Mich App at ___. "A general warrant, which fails to comply with the particularity requirement, is prohibited." *Bogucki*, ___ Mich App at ___. For more information regarding the particularity requirement, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook*, Vol. 1, Section 11.5. For a summary of the search warrant process, see the Michigan Judicial Institute's checklist describing the process for issuing a search warrant and the checklist describing the process for electronically issuing a search warrant.

A. Description of the Place to be Searched

The United States and Michigan Constitutions require that a search warrant particularly describe the place to be searched. See US Const, Am IV ("[N]o warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched . . . .") and Const 1963, art I, § 11 ("No warrant to search any place . . . shall issue without describing [it] . . . ."). See also MCL 780.654(1) ("Each warrant shall designate and describe the house or building or other location or place to be searched . . . .").

The place to be searched must be described with sufficient precision so as to exclude any and all other places. "[W]here a multi-unit dwelling is involved . . . the warrant must specify the particular sub-unit to be searched, unless the multi-unit character of the dwelling is not apparent and the police officers did not know and did not have reason to know of its multi-unit character." *People v Toodle*, 155 Mich App 539, 545 (1986).

Although specific addresses should be used when available, an incorrect address will not always invalidate a search warrant. See *People v Westra*, 445 Mich 284, 285-286 (1994) (warrant not invalid even though the apartment street address and unit number were incorrect, because the police made a reasonable inquiry into the address before executing the search).

A warrant may be issued for a specific building or place to be searched for violations of the Michigan Penal Code pertaining to

animals. MCL 750.54. Articles or instruments found to be designed for torturing or harming animals or causing animals to fight are required to be seized by the executing officer, if found. *Id*.

B. Description of the Person to be Searched, Searched For, and/or Seized

"A warrant may be issued to search for and seize a person who is the subject of either of the following:

> (a) An arrest warrant for the apprehension of a person charged with a crime.
>
> (b) A bench warrant issued in a criminal case." MCL 780.652(2).

In order to issue a search warrant for a person, the affidavit must establish particularized probable cause to search the location "where the person . . . to be searched for and seized is situated." MCL 780.651(1). Once issued, "[a] search warrant shall be directed to the sheriff or any peace officer, commanding the sheriff or peace officer to search the house, building, or other location or place, where the person . . . for which the sheriff or peace officer is required to search is believed to be concealed. Each warrant shall designate and describe the house or building or other location or place to be searched and the property or thing to be seized." MCL 780.654(1).

Although search warrants give authority to search the described premises and any specifically identified persons on the premises, it is sometimes unclear whether the warrant authorizes a search of persons who are present on the premises but who were not specifically identified in the search warrant.

MCL 780.654 requires particularized probable cause for the *place* and *property* to be searched, but it does not expressly provide legal requirements for a *person* to be searched. However, the United States Supreme Court has held that when a search warrant describes persons to be searched, it "must be supported by probable cause particularized with respect to that person." *Ybarra v Illinois*, 444 US 85, 91 (1979) (warrant to search public bar and bartender did not extend to a *Terry*[39] pat-down search of bar patrons present on the premises because the patrons were not described or named in the warrant as persons known to purchase drugs at that location, and because there was no reasonable belief that patrons were armed or dangerous). But see *People v Jackson*, 188 Mich App 117, 121 (1990), where the Court of Appeals distinguished *Ybarra* and upheld a *Terry* pat-down search of

[39] *Terry v Ohio*, 392 US 1 (1968).

a defendant who arrived at an alleged drug-house during the execution of a search warrant ("[*Ybarra*] involved an unjustified cursory search of patrons in a public bar, whereas this case deals with the search of an individual at a residence targeted for drug sales, which was conducted in light of various threats made against the searching officers").

"The places and persons authorized to be searched by a warrant must be described sufficiently to identify them with reasonable certainty so that the object of the search is not left in the officer's discretion." *People v Kaslowski*, 239 Mich App 320, 323 (2000).

"[U]nless a search of a particularly described person is expressly authorized by a warrant, a full search of a person present on the premises subject to a warrant may not be based upon the warrant." *People v Stewart*, 166 Mich App 263, 268 (1988). However, when a search of private premises pursuant to a warrant reveals controlled substances, police have probable cause to arrest and search incident to arrest occupants of the premises who were not named in the warrant. *People v Arterberry*, 431 Mich 381, 383-385 (1988). See also *Michigan v Summers*, 452 US 692, 705 (1981)[40] (a warrant to search a residence for contraband implicitly carries with it the limited authority to detain, but not search, occupants of the premises while a proper search of the home is conducted; once evidence to establish probable cause to arrest an occupant is found, that person's arrest and search incident thereto is constitutionally permissible).

A person on the premises at the time of the execution of the warrant may be searched without a warrant if probable cause exists independently of the search warrant to search that particular person. *People v Cook*, 153 Mich App 89, 91-92 (1986). A search may also be made of a person, even though the search warrant does not specifically authorize the search of a person, if the affidavit in support of the search warrant establishes probable cause to support the search. *People v Jones*, 162 Mich App 675, 677-678 (1987).

C. Description of Property to be Seized

General searches are prohibited under the Fourth Amendment of the United States Constitution, which requires warrants to "particularly describ[e] the . . . things to be seized[,]" and Const 1963, art 1, § 11, which provides that "[n]o warrant to . . . seize any . . . things shall issue without describing them[.]"[41] See also MCL 780.654 ("[e]ach warrant shall designate and describe the . . . property or thing to be

[40]The rule in *Summers* is limited to a detention in the immediate vicinity of the premises to be searched; it does not apply to a detention at any appreciable distance away from the premises to be searched. *Bailey v United States*, 568 US 168, 201 (2013).

seized"), and *People v Collins*, 438 Mich 8, 37-38 (1991) ("the warrant must set forth, with particularity, the items to be seized").

"The particularity requirement in describing the items to be seized is intended to provide reasonable guidance to officers executing the warrant and thereby prevent an undirected exercise of discretion in determining what is to be seized." *Bogucki*, ___ Mich App at ___. "The degree of specificity required depends upon the circumstances and types of items involved." *People v Zuccarini*, 172 Mich App 11, 15 (1988).

1. Descriptions Sufficient

- Descriptions in a warrant of "all money and property acquired through the trafficking of narcotics," and "ledgers, records or paperwork showing trafficking in narcotics," were sufficiently particular because the executing officers' discretion in determining what was subject to seizure was limited to items relating to drug trafficking. *People v Zuccarini*, 172 Mich App 11, 15-16 (1988).

- Descriptions in warrants of "equipment or written documentation used in the reproduction or storage of the activities and day-to-day operations of the [search location]" "further qualified by [a] reference to the drug trafficking and prostitution activities that were thought to take place there" were sufficiently particular because they provided reasonable guidance to the officers performing the search. *People v Martin*, 271 Mich App 280, 304-305 (2006).

- A search warrant authorizing the seizure of "any evidence of homicide" was sufficiently particular because the executing officers were limited to searching only for "items that might reasonably be considered 'evidence of homicide[,]'" and because "[a] general description, such as 'evidence of homicide,' is not overly broad if probable cause exists to allow such breadth." *People v Unger*, 278 Mich App 210, 245-246 (2008).

2. Descriptions Insufficient

- A search warrant "allow[ing] officers to comb through every conceivable type of information on the

[41] "Article 1 § 11 was amended, effective December 19, 2020, to explicitly state that a warrant is required to search or access electronic data or electronic communications." *People v Bogucki*, ___ Mich App ___, ___ (2025).

cell phone limited only, at best, to evidence 'pertaining to the investigation of Larceny in a Building and Safe Breaking'" was insufficiently particular. *People v Carson*, ___ Mich ___, ___ (2025) (plurality opinion by CAVANAGH, C.J.)[42] ("The authorization to search every nook and cranny of the cell-phone data for 'any and all records or documents' and 'any and all data' related to safebreaking and larceny provides no meaningful constraint in this case."). "Although such a wide-ranging search might uncover incriminating evidence, such exploratory rummaging is not reasonably directed at obtaining evidence of safebreaking or larceny." *Id*. at ___ (quotation marks and citation omitted). "The lack of instruction on the scope, breadth, or focus of the search shifts the particularity requirement from the warrant, where it belongs, to the executing officer's discretion." *Id*. at ___. "In our modern age, when cell phones carry a virtually unlimited amount of private information, such wide-ranging exploratory rummaging is constitutionally intolerable and clearly violates the Fourth Amendment." *Id*. at ___ (explaining that its decision was based on "the warrant's lack of particularity regarding the authorization to *search* defendant's cell-phone data for incriminating evidence" and not on "the *seizure* of a broader swath of data, given the nature of the property at issue and the technology used to identify the data that may be permissibly searched").

- A warrant referring to stolen property of a certain type is insufficient if that property is common, particularly if additional details are available. *Wheeler v City of Lansing*, 660 F3d 931, 941-943 (CA 6, 2011).[43] In *Wheeler*, police officers were issued a warrant to search the plaintiff's apartment for personal property pursuant to an investigation of a series of home invasions. *Id*. at 934-935. The property to be seized was identified in the warrant as including "shotguns, long guns, computer and stereo equipment, cameras, DVD players, video game systems, big screen televisions, necklaces, rings, other jewelry, coin collections, music equipment, and car stereo equipment." *Id*. at 935. The United States Court of Appeals for the Sixth Circuit found that this description "provid[ed] no basis to distinguish the

[42] For more information on the precedential value of a plurality opinion, see our note.

[43] Decisions of lower federal courts, although they may be persuasive, are not binding on Michigan courts. *People v Gillam*, 479 Mich 253, 261 (2007).

> stolen items from [the plaintiff's] own personal property." *Id*. at 941. Although the police reports of the break-ins identified "the brand and dimensions of the televisions, the brand of the camera and Playstation and the exact amount of cash reported as stolen," two of the three cameras seized were not of the same brand as those identified as stolen. *Id*. The Court emphasized that the Fourth Amendment does not require "every single fact known" to be stated, but the affidavit supporting the warrant should provide "additional details, if they are available, to help distinguish between contraband and legally possessed property." *Id*. at 942.

2.24 Property Subject to Seizure

In addition to the constitutional "particularity" requirement, Michigan statutory law limits the types of items for which a search warrant may be issued. Under MCL 780.652, a warrant may be issued to search for and seize any property or thing that is one or more of the following:

> "(a) Stolen or embezzled in violation of a law of this state.
>
> (b) Designed and intended for use, or that is or has been used, as the means of committing a crime.
>
> (c) Possessed, controlled, or used wholly or partially in violation of a law of this state.
>
> (d) Evidence of crime or criminal conduct.
>
> (e) Contraband.
>
> (f) The body or person of a human being or of an animal that may be the victim of a crime.
>
> (g) The object of a search warrant under another law of this state providing for the search warrant. If there is a conflict between this act and another search warrant law, this act controls." MCL 780.652(1).

Additionally, other Michigan statutes authorize the issuance of search warrants for any of the following property or things:

- Alcoholic liquor and containers, MCL 436.1235.
- Body cavity searches, MCL 764.25b.
- Chop shop materials, MCL 750.535a.

- Controlled substances, MCL 333.7502.
- Gaming implements, MCL 750.308.
- Hair, tissue, blood, or other bodily fluids obtained in criminal sexual conduct crimes (related by blood or affinity), MCL 780.652a.
- Large carnivores, MCL 287.1117.
- Pistols, weapons, and devices unlawfully possessed or carried, MCL 750.238 (penal code); MCL 28.433 (firearms code).
- Sources of ionizing radiation, MCL 333.13517.
- Tortured animals and instruments of torture, MCL 750.54.
- Wild birds, wild animals, and fish, MCL 324.1602.
- Wolf-dogs, MCL 287.1017.

2.25 Probable Cause

A magistrate may only issue a search warrant when there is probable cause to support it. *People v Keller*, 479 Mich 467, 475 (2007); *People v Ulman*, 244 Mich App 500, 509 (2001).

For a summary of the search warrant process, including the probable cause requirement, see the Michigan Judicial Institute's checklist describing the process for issuing a search warrant and the checklist describing the process for electronically issuing a search warrant.

A. Probable Cause Defined

"Probable cause sufficient to support issuing a search warrant exists when all the facts and circumstances would lead a reasonable person to believe that the evidence of a crime or the contraband sought is in the place requested to be searched." *People v Brannon*, 194 Mich App 121, 132 (1992).

Regarding the degree of probability required for "probable cause," the Michigan Supreme Court has held that to issue a search warrant, the items need not be "more likely than not" in the place to be searched; rather, a magistrate need only reasonably conclude that there is a "fair probability" that the evidence is in the place indicated in the search warrant. *People v Russo*, 439 Mich 584, 614-615 (1992).

B. Staleness

"A search warrant must be supported on probable cause existing at the time the warrant is issued." *People v Osborn*, 122 Mich App 63, 66 (1982). "Nevertheless, a lapse of time between the occurrence of the underlying facts and the issuance of the warrant does not automatically render the warrant stale." *Id*. "[T]he measure of a search warrant's staleness rests not on whether there is recent information to confirm that a crime is being committed, but whether probable cause is sufficiently fresh to presume that the sought items remain on the premises." *People v Gillam*, 93 Mich App 548, 553 (1980). "Such probable cause is more likely to be 'sufficiently fresh' when a history of criminal activity is involved." *Osborn*, 122 Mich App at 66, quoting *Gillam*, 93 Mich App at 553.

Staleness "is not a separate doctrine in probable cause to search analysis"; instead "[i]t is merely an aspect of the Fourth Amendment inquiry." *Russo*, 439 Mich at 605. "Time as a factor in the determination of probable cause to search is to be weighed and balanced in light of other variables in the equation, such as whether the crime is a single instance or an ongoing pattern of protracted violations, whether the inherent nature of a scheme suggests that it is probably continuing, and the nature of the property sought, that is, whether it is likely to be promptly disposed of or retained by the person committing the offense." *Id*. at 605-606.

Stale information cannot be used in making a probable cause determination. *United States v Frechette*, 583 F3d 374, 377 (CA 6, 2009).[44] In determining whether information is stale, the court should consider the following factors: (1) the character of the crime (is it a chance encounter or recurring conduct?); (2) the criminal (is he or she "nomadic or entrenched?"); (3) the thing to be seized (is it "perishable and easily transferrable or of enduring utility to its holder?"); and (4) the place to be searched (is it a "mere criminal forum of convenience or [a] secure operational base?"). *Id*. at 378. In *Frechette*, the court applied the above-listed factors to conclude that 16-month-old evidence that the defendant subscribed to a child pornography website was not stale, because the crime of child pornography is not fleeting; the defendant lived in the same house for the time period at issue; child pornography images can have an infinite life span; and the place to be searched was the defendant's home. *Id*. at 378-379.

There is no bright-line rule regarding how much time may intervene between obtaining the facts and presenting the affidavit; however, the time should not be too remote. *People v Mushlock*, 226 Mich 600, 602

[44] Though persuasive, Michigan state courts "are not . . . bound by the decisions of the lower federal courts[.]" *People v Gillam*, 479 Mich 253, 261 (2007).

(1924). "[T]he test of remoteness is a flexible and reasonable one depending on the facts and circumstances of the particular case in question." *People v Smyers*, 47 Mich App 61, 73 (1973).

1. Evidence Stale

- Affidavit alleging that defendant illegally sold liquor four days earlier, absent evidence of continuing illegal activity. *People v Siemieniec*, 368 Mich 405, 407 (1962).

- Affidavit alleging a single controlled drug buy made three days before warrant issued, because there was no evidence to suggest that defendant would still possess the marijuana at the time the warrant was executed. *People v David*, 119 Mich App 289, 296 (1982).

- Affidavit alleging liquor sales and gambling conducted on premises six days earlier, absent evidence of continuing illegal activity. *People v Wright*, 367 Mich 611, 614 (1962).

- Affidavit alleging drug sales to undercover police officer made more than one month before warrant issued. *People v Broilo*, 58 Mich App 547, 550-552 (1975).

2. Evidence Not Stale

- Six day delay between issuance of warrant and affiant's visit to defendant's home and observation of stolen dress. *People v Smyers*, 47 Mich App 61, 72-73 (1973).

- Affidavit alleging that a typewriter used to prepare forged checks had been seen in defendant's apartment several months earlier, because information indicated a continuing criminal enterprise. *People v Berry*, 84 Mich App 604, 608-609 (1978).

Committee Tip:

In operating while intoxicated cases, although M Crim JI 15.5(6) states that the jury "may infer that the defendant's bodily alcohol content at the time of the test was the same as [his / her] bodily alcohol content at the time [he / she]

operated the motor vehicle[,]" the affidavit should indicate the time of the stop. It is common for the police officer to fail to indicate the time of the stop in the affidavit.

2.26 Anticipatory Search Warrant

"'An anticipatory search warrant is a warrant based upon an affidavit showing probable cause that at some future time (but not presently) certain evidence of crime will be located at a specified place.'" *People v Kaslowski*, 239 Mich App 320, 324 (2000), quoting *People v Brake*, 208 Mich App 233, 244 (1994) (Wahls, J., concurring in part and dissenting in part).

In *Kaslowski*, 239 Mich App at 325-329, an anticipatory search warrant permitting police officers to deliver a parcel containing drugs and an electronic monitoring device that would activate when the parcel was opened was deemed valid because the warrant and affidavit established narrow circumstances under which the police were authorized to execute the warrant, the search was subject to the successful delivery of drugs by an undercover police officer, and the affidavit clearly indicated that the execution of the warrant was contingent on the successful delivery of the drugs.

Anticipatory search warrants do not violate the Fourth Amendment's warrant clause. *United States v Grubbs*, 547 US 90, 94-95 (2006). Further, the condition or event that "triggers" execution of an anticipatory search warrant need not be included in the search warrant itself. *Id*. at 99.

2.27 Affidavit

The affidavit is the beginning of the search warrant process and must set forth grounds and establish probable cause to support the issuance of the warrant. See *People v Waclawski*, 286 Mich App 634, 698 (2009). In addition, the Michigan search warrant statute provides that "[t]he magistrate's finding of reasonable or probable cause shall be based upon all the facts related within the affidavit" before him or her. MCL 780.653.

For a summary of the search warrant process, see the Michigan Judicial Institute's checklist describing the process for issuing a search warrant and the checklist describing the process for electronically issuing a search warrant.

A. Requirements

"'The affidavit must contain facts within the knowledge of the affiant, as distinguished from mere conclusions or belief. An affidavit made on information and belief is not sufficient. The affidavit should clearly set forth the facts and circumstances within the knowledge of the person making it, which constitute the grounds of the application. The facts should be stated by distinct averments, and must be such as in law would make out a cause of complaint. It is not for the affiant to draw his own inferences. He must state matters which justify the drawing of them.'" *People v Rosborough*, 387 Mich 183, 199 (1972), quoting 2 Gillespie, Michigan Crim Law & Proc (2d ed), Search and Seizure, § 868, p 1129.

Committee Tip:

Facts to establish probable cause must be contained within the document, and no other information can contribute to the probable cause finding. For example, information that comes from a conversation with a police officer cannot form the basis for probable cause if it is not also contained in the affidavit.

B. Validity

"In Michigan, there is a presumption that an affidavit supporting a search warrant is valid." *People v Mullen*, 282 Mich App 14, 23 (2008). See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 3, for information on hearings challenging the validity of a search warrant.

C. Affidavits Based Upon Hearsay Information

An affidavit may be based on hearsay information supplied to the affiant by a named or unnamed person, subject to the following requirements:

> "(a) If the person is named, affirmative allegations from which the judge or district court magistrate may conclude that the person spoke with personal knowledge of the information.
>
> (b) If the person is unnamed, affirmative allegations from which the judge or district court magistrate may

conclude that the person spoke with personal knowledge of the information and either that the unnamed person is credible or that the information is reliable." MCL 780.653.

1. Informant Must Speak with Personal Knowledge

"In general, the requirement that the informant have personal knowledge seeks to eliminate the use of rumors or reputations to form the basis for the circumstances requiring a search." *People v Stumpf*, 196 Mich App 218, 223 (1992). "The personal knowledge element should be derived from the information provided or material facts, not merely a recitation of the informant's having personal knowledge." *Id*. "If personal knowledge can be inferred from the stated facts, that is sufficient to find that the informant spoke with personal knowledge." *Id*. See also *People v Martin*, 271 Mich App 280, 302 (2006) ("[p]ersonal knowledge can be inferred from the stated facts").

2. Informant Must Be Credible or Information Must Be Reliable

"MCL 780.653(b) derives from the defunct 'two-pronged test' enunciated by the United States Supreme Court in *Aguilar v Texas*, 378 US 108[](1964), and *Spinelli v United States*, 393 US 410[](1969), for determining whether an anonymous informant's tip established probable cause for issuance of a search warrant." *People v Hawkins*, 468 Mich 488, 501 (2003). "Under the *Aguilar-Spinelli* formulation as it was generally understood, a search warrant affidavit based on information supplied by an anonymous informant was required to contain both (1) some of the underlying circumstances evidencing the informant's basis of knowledge and (2) facts establishing either the veracity or the reliability of the information." *Hawkins*, 468 Mich at 501-502.

In *Illinois v Gates*, 462 US 213 (1983), "the United States Supreme Court abandoned the *Aguilar-Spinelli* two-pronged test in favor of a 'totality of the circumstances' approach." *Hawkins*, 468 Mich at 502 n 11. "Accordingly, in determining whether a search warrant affidavit that is based on hearsay information passes Fourth Amendment muster, '[t]he task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place.'" *Id*., quoting *Gates*, 462 US at 238.

A statement in the affidavit that the informant is a "credible person" does not satisfy the statutory requirement set out in MCL 780.653(b). *People v Sherbine*, 421 Mich 502, 511 n 16 (1984), overruled on other grounds by *People v Hawkins*, 468 Mich 488 (2003).

Examples of factual information that is probative of "informant credibility" include:

- A course of past performance in which the informant has supplied reliable information;
- Admissions against the informant's penal interest; and
- Corroboration of non-innocuous details of the informant's story by reliable, independent sources or police investigation. *Sherbine*, 421 Mich at 510 n 13.

The statutory alternative of "informational reliability" must also be established by factual averments in the affidavit. In most cases, once "informant credibility" is established, it logically follows that the information is reliable, and vice versa. However, a subtle distinction may be drawn in situations where the method of procuring the information is unknown. In *Spinelli*, 393 US at 416, the United States Supreme Court explained:

> "In the absence of a statement detailing the manner in which the information was gathered, it is especially important that the tip describe the accused's criminal activity in sufficient detail that the magistrate may know that he [or she] is relying on something more substantial than a casual rumor circulating in the underworld or an accusation based merely on an individual's general reputation."

Thus, by describing the criminal activity in detail, the reliability of the information can be proven independent of informant credibility.

If an affidavit in support of a search warrant is based on other information sufficient in itself to justify the judge or district court magistrate's finding of probable cause, it is not necessary for purposes of MCL 780.653 to determine whether the informant was credible or whether the information provided was reliable. *People v Keller*, 479 Mich 467, 477 (2007). In *Keller*, marijuana discovered in the defendants' trash was itself sufficient to support the conclusion that there was a fair probability that evidence of illegal activity would be found in

the defendants' home. *Id*. at 477. Even though an anonymous tip prompted the initial investigation into the defendants' possible illegal activity, the marijuana alone supported the probable cause necessary to issue a search warrant and "the statutory requirement that an anonymous tip bear indicia of reliability d[id] not come into play." *Id*. at 483.

2.28 Invalidity of Search Warrant and Suppression of Evidence

See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 3, for information on the invalidity of the search warrant and suppression of evidence.

2.29 Verifying and Executing the Affidavit

For a summary of the search warrant process, see the Michigan Judicial Institute's checklist describing the process for issuing a search warrant and the checklist describing the process for electronically issuing a search warrant.

"An affidavit must be verified by oath or affirmation." MCR 1.109(D)(1)(f). The affiant should have knowledge of the facts stated. See MCR 1.109(D)(3)(a). "When an affidavit is made on oath to a judge or district court magistrate authorized to issue warrants in criminal cases, and the affidavit establishes grounds for issuing a warrant under this act, the judge or district court magistrate, if he or she is satisfied that there is probable cause for the search, shall issue a warrant to search the house, building, or other location or place where the property or thing to be searched for and seized is situated." MCL 780.651(1).

Once the judge or district court magistrate is satisfied that the warrant is in proper form and that the affidavit establishes probable cause to believe the items to be seized may be found in the place to be searched, it must swear the affiant and ask him or her to state that the averments in the affidavit are true to the best of his or her information and belief. See MCL 780.651(2).

After the affiant has signed the affidavit, the judge or district court magistrate should sign and date it. This indicates the affidavit was signed and subscribed in the presence of the court on that date. Following this, the court should sign and date the search warrant, thereby "issuing" the warrant. See MCL 780.651(4)-(5).

Committee Tip:

The judge or district court magistrate may want to indicate the time of signature, especially if staleness may be an issue.

The court must retain the original affidavit and warrant for its own records. See SCAO Form MC 231, *Affidavit and Search Warrant*. For additional information on records management, and for links to records retention and disposal schedules, see the State Court Administrative Office's Records Management website.

A. Affiant's Signature Requirement

"The affidavit should be signed by the affiant. A warrant based upon an unsigned affidavit is presumed to be invalid, but the prosecutor may rebut the presumption by showing that the affidavit was made on oath to a magistrate." *People v Waclawski*, 286 Mich App 634, 698 (2009). See also MCL 780.651(2)(a).

B. Judge's or District Court Magistrate's Signature Requirement

"[T]he fact that a search warrant has not been signed by a magistrate or judge presents a presumption that the warrant is invalid. However, this presumption may be rebutted with evidence that, in fact, the magistrate or judge did make a determination that the search was warranted and did intend to issue the warrant before the search." *People v Barkley*, 225 Mich App 539, 545 (1997).

C. Information in Affidavit and Supplementation with Oral Statements

There are "dangers inherent in allowing a magistrate to base his [or her] determinations of probable cause on oral statements not embodied in the affidavit." *People v Sloan*, 450 Mich 160, 176 (1995), rev'd on other grounds by *People v Hawkins*, 468 Mich 488 (2003). "[A]ny additional facts relied on to find probable cause must be incorporated into an affidavit." *Id*. at 177. "What is critical is that the additional information be presented under oath and simultaneously made a permanent part of the record[45]." *Id*. at 178.

[45] "The recording may take various forms, including handwritten notes, video or audio tapes, or formal or informal transcripts of testimony." *Sloan*, 450 Mich at 177.

Committee Tip:

It is important to refrain from discussing the facts of the case with the police officer, so that all the facts relied on are contained in the affidavit. This avoids the issue of facts not contained in the affidavit, which occurs when the police officer verbally augments the facts set out in the affidavit.

If the affiant wants to modify or supplement the affidavit, the affiant may insert additional or corrected information in the affidavit and initial it. The judge or district court magistrate should also initial the changes.

2.30 Submission of Affidavit and Issuance of Search Warrant by Electronic Device

"Under MCL 780.651(2), an affidavit may be made to a judge or district court magistrate via electronic or electromagnetic means of communication if the judge or district court magistrate orally administers the oath or affirmation and the affiant signs the affidavit." *People v Paul*, 203 Mich App 55, 61 (1993), rev'd on other grounds 444 Mich 949 (1994).[46] See also MCR 1.109(E)(4) (authorizing the use of electronic signatures that are in accordance with MCR 1.109(E)).

Specifically, MCL 780.651(2) provides:

> "An affidavit for a search warrant may be made by any electronic or electromagnetic means of communication, including by facsimile or over a computer network, if both of the following occur:
>
> (a) The judge or district court magistrate orally administers the oath or affirmation to an applicant for a search warrant who submits an affidavit under this subsection.
>
> (b) The affiant signs the affidavit. Proof that the affiant has signed the affidavit may consist of an electronically or electromagnetically transmitted facsimile of the

[46]For more information on the precedential value of an opinion with negative subsequent history, see our note.

> signed affidavit or an electronic signature on an affidavit transmitted over a computer network."

"A judge or district court magistrate may issue a written search warrant in person or by any electronic or electromagnetic means of communication, including by facsimile or over a computer network." MCL 780.651(3). Furthermore, "[a] judge or district court magistrate may sign an electronically issued search warrant when he or she is at any location in this state." MCL 780.651(4).

"The peace officer or department receiving an electronically or electromagnetically issued search warrant shall receive proof that the issuing judge or district court magistrate has signed the warrant before the warrant is executed." MCL 780.651(5). "Proof that the issuing judge or district court magistrate has signed the warrant may consist of an electronically or electromagnetically transmitted facsimile of the signed warrant or an electronic signature on a warrant transmitted over a computer network." *Id*.

"If an oath or affirmation is orally administered by electronic or electromagnetic means of communication under [MCL 780.651], the oath or affirmation is considered to be administered before the judge or district court magistrate." MCL 780.651(6).

"If an affidavit for a search warrant is submitted by electronic or electromagnetic means of communication, or a search warrant is issued by electronic or electromagnetic means of communication, the transmitted copies of the affidavit or search warrant are duplicate originals of the affidavit or search warrant and are not required to contain an impression made by an impression seal." MCL 780.651(7).

See also the Michigan Judicial Institute's checklist describing the process for electronically issuing a search warrant.

2.31 Administrative Inspection Warrants

The Public Health Code (PHC), MCL 333.1101 *et seq*., specifically authorizes the issuance of administrative inspection warrants, MCL 333.7504, which can be presented to inspect controlled premises, MCL 333.7507.

Specifically, MCL 333.7504 provides:

> "(1) Administrative inspection warrants shall be issued and executed as prescribed in [Part 75 of the PHC].
>
> (2) A magistrate within the magistrate's jurisdiction, upon proper oath or affirmation showing probable cause, may

> issue a warrant for the purpose of conducting an administrative inspection authorized by [Article 7 of the PHC] or the rules promulgated under [Article 7 of the PHC] and seizures of property appropriate to the inspection. Probable cause exists upon showing a valid public interest in the effective enforcement of [Article 7 of the PHC] or the rules promulgated under [Article 7 of the PHC] sufficient to justify administrative inspection of the area, premises, building, or conveyance in the circumstances specified in the application for the warrant.
>
> (3) A warrant shall issue only upon an affidavit of a designated officer or employee having knowledge of the facts alleged, sworn to before the magistrate and establishing the grounds for issuing the warrant. The magistrate, if satisfied that the grounds for the application exist or that there is probable cause to believe they exist, shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected."

MCL 333.7507 specifically addresses administrative inspections of controlled premises. "When authorized by an administrative inspection warrant, an officer or employee designated by the department of commerce, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection." MCL 333.7507(2). For detailed discussion of an inspection under an administrative inspection warrant, see MCL 333.7507.

Further, administrative inspection warrants may be sought by agencies even where a particular act does not expressly provide for an administrative inspection warrant. *Richter v Dep't of Natural Resources*, 172 Mich App 658, 662-663 (1988) (holding that the district court magistrate's issuance of an administrative inspection warrant to the DNR was proper where the DNR compiled information and evidence that led them to believe that water pollution existed at or near the petitioner's oil well sites despite the fact that the relevant acts provided for a hearing and not an administrative inspection warrant).

2.32 Issuance of Search Warrant in Operating While Intoxicated/Operating While Visibly Impaired Cases

"[P]ersons who operate vehicles on public highways are 'considered to have given consent to chemical tests of his or her blood,' rather than requiring the state to first obtain actual consent or a search warrant." *People v Campbell*, 236 Mich App 490, 498 (1999), quoting MCL

257.625c(1). Specifically, Michigan's implied consent statute, MCL 257.625c, provides:

> "A person who operates a vehicle upon a public highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state is considered to have given consent to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance or other intoxicating substance, or any combination of them, in his or her blood or urine or the amount of alcohol in his or her breath [if the person is arrested for certain specified offenses]." MCL 257.625c(1).

The offenses specified in MCL 257.625c(1) are:

- Operating while intoxicated, MCL 257.625(1), or a substantially corresponding local ordinance;
- Operating while visibly impaired, MCL 257.625(3), or a substantially corresponding local ordinance;
- Operating while intoxicated/while visibly impaired/with any amount of controlled substance in body causing death, MCL 257.625(4);
- Operating while intoxicated/while visibly impaired/with any amount of controlled substance in body causing serious impairment of a body function, MCL 257.625(5);
- Operating with any bodily alcohol content, if the driver is less than 21 years of age, MCL 257.625(6), or a substantially corresponding local ordinance;
- Operating in violation of MCL 257.625(1), MCL 257.625(3)-(5), or MCL 257.625(8), if committed with a passenger under 16 years of age, MCL 257.625(7);
- Operating with any amount of a controlled substance, MCL 257.625(8), or a substantially corresponding local ordinance;
- Operating a commercial motor vehicle and refusing to submit to a preliminary chemical breath analysis, MCL 257.625a(5), or a substantially corresponding local ordinance;

- Operating a commercial motor vehicle with a prohibited alcohol content, MCL 257.625m, or a substantially corresponding local ordinance;
- Committing a moving violation causing death, MCL 257.601d;
- Reckless driving causing serious impairment of a body function, MCL 257.626(3);
- Reckless driving causing death, MCL 257.626(4);
- Manslaughter resulting from the operation of a motor vehicle, MCL 257.625c(1)(b); or
- Murder resulting from the operation of a motor vehicle, MCL 257.625c(1)(b).

MCL 257.625a(6)(b)(*iv*) provides that a person arrested for any of the offenses specified in MCL 257.625c(1) must be advised, among other things, that "[i]f he or she refuses the request of a peace officer to take a [chemical test of his or her blood, urine, or breath], a test must not be given without a court order, but the peace officer may seek to obtain a court order." "[A] blood test conducted under the direction of police falls within the ambit of the Fourth Amendment." *People v Perlos*, 436 Mich 305, 313 (1990). "[W]hen a blood sample is taken pursuant to a search warrant, the issue of consent is removed, and the implied consent statute is not applicable." *Manko v Root*, 190 Mich App 702, 704 (1991).

"[T]he natural metabolization of alcohol in the bloodstream [does not] present[] a *per se* exigency that justifies an exception to the Fourth Amendment's warrant requirement for nonconsensual blood testing in all drunk-driving cases." *Missouri v McNeely*, 569 US 141, 145 (2013). "[C]onsistent with general Fourth Amendment principles . . . exigency in this context must be determined case by case based on the totality of the circumstances." *Id*.

2.33 Issuance of Search Warrants for Monitoring Electronic Communications

No Michigan statute explicitly governs the issuance of search warrants to monitor private conversations. The federal Electronic Communications Privacy Act, 18 USC 2510 *et seq*., consists of three parts. 18 USC 2510–18 USC 2522 is entitled "Wire and Electronic Communications Interception and Interception of Oral Communications," and prohibits the unauthorized interception of wire, oral, or electronic communications. 18 USC 2701–18 USC 2712 is entitled "Stored Wire and Electronic Communications and Transactional Records Access," and is known as

the "Stored Communications Act (SCA)," and concerns stored electronic communications. Finally, 18 USC 3121–18 USC 3127 is entitled "Pen Registers and Trap and Trace Devices," and sets out the procedure for government installation and use of pen registers and trap and trace devices.

The United States Supreme Court has held that third-party monitoring (wiretaps) of private conversations, without the consent of either party, are subject to the warrant requirements of the Fourth Amendment. *Katz v United States*, 389 US 347 (1967). Further, "the very fact that information is being passed through a communications network is a paramount Fourth Amendment consideration." *United States v Warshak*, 631 F3d 266, 285 (CA 6, 2010).[47] Accordingly, "email requires strong protection under the Fourth Amendment." *Id*. at 286. "[A]gents of the government cannot compel a commercial ISP [(Internet Service Provider)] to turn over the contents of an email without triggering the Fourth Amendment." *Id*.

2.34 Executing the Search Warrant

A. Knock-and-Announce

Michigan's "knock-and-announce" statute is set out in MCL 780.656:

> "The officer to whom a warrant is directed, or any person assisting him, may break any outer or inner door or window of a house or building, or anything therein, in order to execute the warrant, if, after notice of his [or her] authority and purpose, he is refused admittance, or when necessary to liberate himself or any person assisting him in execution of the warrant."

"The knock-and-announce statute requires that police executing a search warrant give notice of their authority and purpose and be refused entry before forcing their way in." *People v Fetterley*, 229 Mich App 511, 521 (1998). Although it is known as the "knock-and-announce" rule, "[n]either case law nor statute requires that the police physically knock on the door; rather, they need only give proper notice to the occupants of their authority and purpose." *Id*. at 524. "Police must allow a reasonable time for the occupants to answer the door following the announcement." *Id*. at 521.

The exclusionary rule does not apply to violations of the knock-and-announce statute because violation of MCL 780.656 is unrelated to the

[47] Though persuasive, Michigan state courts "are not . . . bound by the decisions of the lower federal courts[.]" *People v Gillam*, 479 Mich 253, 261 (2007).

seizure of a person's property pursuant to a valid search warrant. *Hudson v Michigan*, 547 US 586, 594, 599-600 (2006).

B. Required Actions Upon Seizure of Property

MCL 780.655(1) sets out the procedures to be followed after property is seized during the execution of a search warrant:

> "When an officer in the execution of a search warrant finds any property or seizes any of the other things for which a search warrant is allowed by this act, the officer, in the presence of the person from whose possession or premises the property or thing was taken, if present, or in the presence of at least 1 other person, shall make a complete and accurate tabulation of the property and things that were seized. The officer taking property or other things under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and shall give to the person a copy of the tabulation upon completion, or shall leave a copy of the warrant and tabulation at the place from which the property or thing was taken. The officer is not required to give a copy of the affidavit to that person or to leave a copy of the affidavit at the place from which the property or thing was taken."

"[A] copy of the affidavit becomes part of the 'copy of the warrant' that must be provided or left pursuant to MCL 780.655[.]" *People v Garvin*, 235 Mich App 90, 99 (1999). "However, a failure by law enforcement officers to comply with the statutory requirement to attach a copy of the affidavit to the copy of the warrant provided or left does not require suppression of evidence seized pursuant to the warrant." *Id*. See also MCL 780.654(3), which permits a magistrate to order the suppression of an affidavit in circumstances necessitating the protection of an investigation or the privacy or safety of a victim or witness:

> "Upon a showing that it is necessary to protect an ongoing investigation or the privacy or safety of a victim or witness, the magistrate may order that the affidavit be suppressed and not be given to the person whose property was seized or whose premises were searched until that person is charged with a crime or named as a claimant in a civil forfeiture proceeding involving evidence seized as a result of the search."

Additionally, the officer must promptly file the tabulation with the judge or district court magistrate. MCL 780.655(2) provides:

> "The officer shall file the tabulation promptly with the judge or district court magistrate. The tabulation may be suppressed by order of the judge or district court magistrate until the final disposition of the case unless otherwise ordered. The property and things that were seized shall be safely kept by the officer so long as necessary for the purpose of being produced or used as evidence in any trial."

After the execution of the warrant, seized property must be returned and disposed of in accordance with MCL 780.655(3):

> "As soon as practicable, stolen or embezzled property shall be restored to the owner of the property. Other things seized under the warrant shall be disposed of under direction of the judge or district court magistrate, except that money and other useful property shall be turned over to the state, county or municipality, the officers of which seized the property under the warrant. Money turned over to the state, county, or municipality shall be credited to the general fund of the state, county, or municipality."

A failure to strictly comply with the requirements of MCL 780.655 does not by itself require suppression of seized evidence. In *People v Sobczak-Obetts*, 463 Mich 687, 712-713 (2001), the Supreme Court held that the trial court and Court of Appeals erred by applying the exclusionary rule to conduct that amounted to a technical violation of MCL 780.655, i.e., an officer's failure to provide a copy of the affidavit in support of the warrant to the defendant at the time of the search, because there was no discernible legislative intent that a violation of MCL 780.655 requires suppression, and because there was no police misconduct to necessitate application of the exclusionary rule, which is predicated on deterring such conduct.

2.35 Public Access to Search Warrant Affidavits

MCL 780.651(8) provides that, "[e]xcept as provided in [MCL 780.651(9)], an affidavit for a search warrant contained in any court file or court record retention system is nonpublic information." MCL 780.651(9) provides:

> "On the fifty-sixth day following the issuance of a search warrant, the search warrant affidavit contained in any court file or court record retention system is public information unless, before the fifty-sixth day after the search warrant is issued, a peace officer or prosecuting attorney obtains a suppression order from a judge or district court magistrate

upon a showing under oath that suppression of the affidavit is necessary to protect an ongoing investigation or the privacy or safety of a victim or witness. The suppression order may be obtained ex parte in the same manner that the search warrant was issued. An initial suppression order issued under [MCL 780.651(9)] expires on the fifty-sixth day after the order is issued. A second or subsequent suppression order may be obtained in the same manner as the initial suppression order and shall expire on a date specified in the order. [MCL 780.651(9)] and [MCL 780.651(8)] do not affect a person's right to obtain a copy of a search warrant affidavit from the prosecuting attorney or law enforcement agency under the [Freedom of Information Act, MCL 15.231–MCL 15.246]."

Chapter 3: Pretrial Release

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3.1 Authority of District Court Magistrate

A district court magistrate has the jurisdiction and duty to "fix bail and accept bond in all cases." MCL 600.8511(f). "Notwithstanding statutory provisions to the contrary, district court magistrates exercise only those duties expressly authorized by the chief judge of the district or division." MCR 4.401(B).

3.2 Purpose and Overview of Bail and Bond

The primary purposes of requiring bail or bond are to ensure that the defendant appears in court and to ensure the safety of the public. See MCR 6.106.[1]

At the defendant's first appearance before the court, the magistrate or judge must order that the defendant be held in custody or released pursuant to MCR 6.106. MCR 6.106(A). There are three types of bail for which a bond is required: cash bail (which includes the posting of 10 percent), secured bail, or unsecured bail (personal recognizance). Denial of pretrial release is permitted only under certain circumstances, discussed in detail in Section 3.5. MCR 6.106(B). If the defendant will be released, the court must determine whether or not he or she will be released on his or her own recognizance or whether bail is required and, if required, establish an amount of bail. MCR 6.106(A). Generally, the court *must* order release on personal recognizance or on an unsecured appearance bond. MCR 6.106(C). Release on personal recognizance is discussed in Section 3.4(A). The court must make specific findings in order to impose conditions on release and in order to release a defendant on money bail. MCR 6.106(D)-(E). "If the court determines for reasons it states on the record that the defendant's appearance or the protection of the public cannot be otherwise assured, money bail, with or without conditions described in [MCR 6.106(D)], may be required." MCR 6.106(E). Conditional release, discussed in Section 3.4(B), and release on cash or secured bail (money bail) is discussed in Section 3.4(C).

The decision whether to grant pretrial release is made after considering various factors, some of which are outlined in MCR 6.106(F)(1), discussed in more detail in Section 3.6.

Committee Tip:

In each court, the chief judge will likely establish a court policy regarding bail. For instance, some

[1] MCR 6.106 applies to both misdemeanor and felony cases. MCR 6.001(A)-(B).

courts may not allow bail on a felony arrest warrant before arraignment. District court magistrates should follow any local court policy that is in place.

3.3 Right to Pretrial Release

"Except as otherwise provided by law,[2] a person accused of a criminal offense is entitled to bail." MCL 765.6. See also Const 1963, art 1, § 15. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v Salerno*, 481 US 739, 755 (1987). "The right to release before trial is conditioned upon the accused's giving adequate assurance that he will stand trial and submit to sentence if found guilty." *Stack v Boyle*, 342 US 1, 4 (1951). "[T]he modern practice of requiring a bail bond or the deposit of a sum of money subject to forfeiture serves as additional assurance of the presence of an accused." *Id*. at 5.

"At the defendant's arraignment on the complaint and/or warrant, unless an order in accordance with this rule was issued beforehand, the court must order that, pending trial, the defendant be

> (1) held in custody as provided in [MCR 6.106(B)];
>
> (2) released on personal recognizance or an unsecured appearance bond; or
>
> (3) released conditionally, with or without money bail (ten percent, cash or surety)." MCR 6.106(A).

Detainees. "Nothing in [MCR 6.106] limits the ability of a jail to impose restrictions on detainee contact as an appropriate means of furthering penological goals." MCR 6.106(B)(6).

Juveniles. Except under specified circumstances where bail may be denied, "the magistrate or court must advise the juvenile of a right to bail as provided for an adult accused. The magistrate or the court may order a juvenile released to a parent or guardian on the basis of any lawful conditions, including that bail be posted." MCR 6.909(A)(1).[3]

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[2] Everyone is entitled to pretrial release, except in certain instances discussed in Section 3.5.

[3] MCR 6.909 applies to juvenile criminal proceedings in district and circuit courts. MCR 6.001(C).

3.4 Types of Pretrial Release

A. Personal Recognizance

This type of release requires only the defendant's promise, usually in writing, and does not require the defendant to pay any bail money. *Blacks Law Dictionary* (10th ed).

1. Generally

"If the defendant is not ordered held in custody pursuant to [MCR 6.106(B)], the court must order the pretrial release of the defendant on personal recognizance, or on an unsecured appearance bond, subject to the conditions that the defendant will appear as required, will not leave the state without permission of the court, and will not commit any crime while released, unless the court determines that such release will not reasonably ensure the appearance of the defendant as required, or that such release will present a danger to the public." MCR 6.106(C).

"Nothing in [MCR 6.106(C)] may be construed to sanction pretrial detention nor to sanction the determination of pretrial release on the basis of race, religion, gender, economic status, or other impermissible criteria." MCR 6.106(F)(3).

2. Release on Personal Recognizance Required

A defendant must be released on personal recognizance if he or she has been incarcerated for a period of 28 days or more (misdemeanor cases) or 180 days or more (felony cases) "to answer for the same crime or a crime based on the same conduct or arising from the same criminal episode, . . . unless the court finds by clear and convincing evidence that the defendant is likely either to fail to appear for future proceedings or to present a danger to any other person or the community." MCR 6.004(C).[4] The 28-day and 180-day periods do not include:

> "(1) periods of delay resulting from other proceedings concerning the defendant, including but not limited to competency and criminal responsibility proceedings, pretrial motions, interlocutory appeals, and the trial of other charges,

[4] MCR 6.004 applies to both misdemeanor and felony cases. MCR 6.001(A)-(B).

> (2) the period of delay during which the defendant is not competent to stand trial,
>
> (3) the period of delay resulting from an adjournment requested or consented to by the defendant's lawyer,
>
> (4) the period of delay resulting from an adjournment requested by the prosecutor, but only if the prosecutor demonstrates on the record either
>
> > (a) the unavailability, despite the exercise of due diligence, of material evidence that the prosecutor has reasonable cause to believe will be available at a later date; or
> >
> > (b) exceptional circumstances justifying the need for more time to prepare the state's case,
>
> (5) a reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run, but only if good cause exists for not granting the defendant a severance so as to enable trial within the time limits applicable, and
>
> (6) any other periods of delay that in the court's judgment are justified by good cause, but not including delay caused by docket congestion." MCR 6.004(C).

B. Conditional Release

"If the court determines that [a release on personal recognizance] will not reasonably ensure the appearance of the defendant as required, or will not reasonably ensure the safety of the public, the court may order the pretrial release of the defendant on the condition or combination of conditions that the court determines are appropriate including

> (1) that the defendant will appear as required, will not leave the state without permission of the court, and will not commit any crime while released, and
>
> (2) subject to any condition or conditions the court determines are reasonably necessary to ensure the appearance of the defendant as required and the safety of the public, which may include requiring the defendant to

(a) make reports to a court agency as are specified by the court or the agency;

(b) not use alcohol or illicitly use any controlled substance;

(c) participate in a substance abuse testing or monitoring program;

(d) participate in a specified treatment program for any physical or mental condition, including substance abuse;

(e) comply with restrictions on personal associations, place of residence, place of employment, or travel;

(f) surrender driver's license or passport;[5]

(g) comply with a specified curfew;

(h) continue to seek employment;

(i) continue or begin an educational program;

(j) remain in the custody of a responsible member of the community who agrees to monitor the defendant and report any violation of any release condition to the court;

(k) not possess a firearm or other dangerous weapon;

(*l*) not enter specified premises or areas and not assault, beat, molest or wound a named person or persons;

(m) comply with any condition limiting or prohibiting contact with any other named person or persons. If an order under this paragraph limiting or prohibiting contact with any other named person or persons is in conflict with another court order,[6] the most restrictive provision of the orders shall take precedence until the conflict is resolved. The court may make this

[5] See also MCL 765.6(3) (specifically permitting the court to require surrender of the defendant's license as security for the defendant's appearance on a misdemeanor or ordinance violation charge).

[6] For example, personal protection orders (PPOs), MCR 3.706(A)(1) ("[a]n order granting a personal protection order must include . . . [a] statement that the [PPO] has been entered, listing the type or types of conduct enjoined[]"). See also MCR 3.207(A).

> condition effective immediately on entry of a pretrial release order and while defendant remains in custody if the court determines it is reasonably necessary to maintain the integrity of the judicial proceedings or it is reasonably necessary for the protection of one or more named persons[;]
>
> (n) satisfy any injunctive order made a condition of release; or
>
> (o) comply with any other condition, including the requirement of money bail as described in [MCR 6.106(E)], reasonably necessary to ensure the defendant's appearance as required and the safety of the public." MCR 6.106(D).

"Nothing in [MCR 6.106(D)] may be construed to sanction pretrial detention nor to sanction the determination of pretrial release on the basis of race, religion, gender, economic status, or other impermissible criteria." MCR 6.106(F)(3).

1. Statutory Authority for Conditional Release To Protect Named Persons

"A judge or district court magistrate may release a defendant under this subsection subject to conditions reasonably necessary for the protection of 1 or more named persons. If a judge or district court magistrate releases a defendant under this subsection subject to protective conditions, the judge or district court magistrate shall make a finding of the need for protective conditions and inform the defendant on the record, either orally or by a writing that is personally delivered to the defendant, of the specific conditions imposed and that if the defendant violates a condition of release, he or she will be subject to arrest without a warrant and may have his or her bail forfeited or revoked and new conditions of release imposed, in addition to the penalty provided under [MCL 771.3f] and any other penalties that may be imposed if the defendant is found in contempt of court." MCL 765.6b(1).

An order releasing a defendant subject to conditions reasonably necessary for the protection of one or more named persons must contain:

- the defendant's full name;
- the defendant's height, weight, race, sex, date of birth, hair color, eye color, and any other identifying

information the judge or district court magistrate considers appropriate;

- the date the conditions become effective;
- the date on which the order will expire; and
- a statement of the conditions imposed. MCL 765.6b(2)(a)-(e).

The court must immediately direct, in writing, that an order under MCL 765.6b(1) or MCL 765.6b(3) be entered into LEIN. The court order can be made using SCAO Form MC 240, *Pretrial Release Order*. MCL 765.6b(4). If the order is rescinded, it must be removed from LEIN. *Id.* See also MCL 765.6b(5); SCAO Form MC 239, *Removal of Entry From LEIN*.

"If a defendant who is charged with a crime involving domestic violence, or any other assaultive crime, is released under [MCL 765.6b(6) and MCL 765.6b(1)], the judge or district court magistrate may order the defendant to wear an electronic monitoring device as a condition of release." MCL 765.6b(6). "In determining whether to order a defendant to wear an electronic monitoring device, the court shall consider the likelihood that the defendant's participation in electronic monitoring will deter the defendant from seeking to kill, physically injure, stalk, or otherwise threaten the victim prior to trial." *Id.* "A defendant described in [MCL 765.6b(6)] shall only be released if he or she agrees to pay the cost of the device and any monitoring as a condition of release or to perform community service work in lieu of paying that cost." *Id.* "[I]f the court orders the defendant to carry or wear an electronic monitoring device as a condition of release as described in [MCL 765.6b(6)], the court shall also impose a condition that the defendant not purchase or possess a firearm." MCL 765.6b(3).

2. Conditional Release Where Defendant Submitted to Preliminary Roadside Analysis

"A judge or district court magistrate may release under this subsection a defendant subject to conditions reasonably necessary for the protection of the public if the defendant has submitted to a preliminary roadside analysis that detects the presence of alcoholic liquor, a controlled substance, or other intoxicating substance, or any combination of them, and that a subsequent chemical test is pending. The judge or district court magistrate shall inform the defendant on the record, either orally or by a writing that is personally delivered to the defendant, of all of the following:

> (a) That if the defendant is released under this subsection, he or she shall not operate a motor vehicle under the influence of alcoholic liquor, a controlled substance, or another intoxicating substance, or any combination of them, as a condition of release.
>
> (b) That if the defendant violates the condition of release under subdivision (a), he or she will be subject to arrest without a warrant, shall have his or her bail forfeited or revoked, and shall not be released from custody prior to arraignment." MCL 765.6b(7).

The court must immediately direct, in writing, that an order under MCL 765.6b(7) be entered into LEIN. MCL 765.6b(8). The court order can be made using SCAO Form MC 240, *Pretrial Release Order*. If the order is rescinded, it must be removed from LEIN. *Id.* See also MCL 765.6b(9); SCAO Form MC 239, *Removal of Entry From LEIN*.

3. Violation of a Bond Condition

Violation of a bond condition is punishable by criminal contempt because "a court's decision in setting bond is a court order." *People v Mysliwiec*, 315 Mich App 414, 417 (2016) (noting that "[s]pecifically, a bail decision is an interlocutory order," and rejecting the defendant's contention "that a defendant may not be held in contempt of court for the violation of bond conditions because they are not court orders") (citation omitted). A "bond condition prohibiting the defendant's use of alcohol was a court order punishable by contempt" under MCL 600.1701(g) where the trial court orally ordered that a condition of the defendant's bond was to abstain from possession or consumption of any alcohol and "then issued written mittimuses, which required [the] defendant have no alcohol." *Mysliwiec*, 315 Mich App at 418.[7] See the Michigan Judicial Institute's *Contempt of Court Benchbook* for additional information on criminal contempt.

C. Money Bail

"If the court determines for reasons it states on the record that the defendant's appearance or the protection of the public cannot be otherwise assured, money bail, with or without conditions described in [MCR 6.106(D)], may be required." MCR 6.106(E). See also MCL 765.6(1) (setting forth factors for consideration when fixing bail).

[7] For discussion of contempt of court, see the Michigan Judicial Institute's *Contempt of Court Benchbook*.

1. Required Considerations for Fixing the Amount of Bail

When setting money bail, the court should recognize the constitutional mandate that "excessive bail shall not be required . . . ." Const 1963, art 1, § 16. See also MCL 765.6(1). "Money bail is excessive if it is in an amount greater than reasonably necessary to adequately assure that the accused will appear when his [or her] presence is required." *People v Edmond*, 81 Mich App 743, 747-748 (1978).

"The court in fixing the amount of the bail shall consider and make findings on the record as to each of the following:

> (a) The seriousness of the offense charged.
>
> (b) The protection of the public.
>
> (c) The previous criminal record and the dangerousness of the person accused.
>
> (d) The probability or improbability of the person accused appearing at the trial of the cause." MCL 765.6(1).

"If the court fixes a bail amount under [MCL 765.6(1)] and allows for the posting of a 10% deposit bond, the person accused may post bail by a surety bond in an amount equal to 1/4 of the full bail amount fixed under [MCL 765.6(1)] and executed by a surety approved by the court." MCL 765.6(2). See also MCR 6.106(E)(1). See Section 3.5(C)(2) for more information on the defendant's bail options.

For example, "if the full bail amount were set at $10,000 with a 10% deposit or a $2,500 surety bond, a defendant could post bail either by paying $1,000 to the court . . . or by paying only $250 to a bond provider, who then would post a $2,500 bond with the court." SB 151 (S-1) Bill Analysis, 5/21/04.

Committee Tip:

Note that MCR 6.106 and MCL 765.6 differ in regard to what must be placed on the record when setting bail. MCL 765.6(1) requires the court to make findings on the record with respect to each statutory factor. MCR 6.106(F)(1) only requires the court to "consider" the enumerated factors. If the court determines the defendant shall be held in custody under

MCR 6.106(B) or released on conditions as provided in MCR 6.106(D) that includes money bail, the court "must state the reasons for its decision on the record." MCR 6.106(F)(2). However, even in those circumstances, the court rule makes clear that, "[t]he court need not make a finding on each of the enumerated factors." MCR 6.106(F)(2). To avoid potential appellate issues, it is recommended that the magistrate consider the requirements from both the court rule and the statute.

---

2. Defendant's Options for Posting Money Bail

Subject to limitations specified in certain statutes,[8] MCR 6.106(E)(1) provides that the court may require the defendant to:

> "(a) post, at the defendant's option,
>
> (*i*) a surety bond[9] that is executed by a surety approved by the court in an amount equal to 1/4 of the full bail amount, or
>
> (*ii*) bail that is executed by the defendant, or by another who is not a surety approved by the court, and secured by
>
> [A] a cash deposit, or its equivalent, for the full bail amount, or
>
> [B] a cash deposit of 10 percent of the full bail amount, or, with the court's consent,
>
> [C] designated real property; or
>
> (b) post, at the defendant's option:
>
> (*i*) a surety bond[10] that is executed by a surety approved by the court in an amount equal to the full bail amount, or

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[8] See Section 3.5(C)(3) for more information on these limitations.

[9] For information about the surety bond process, see SCAO Administrative Memorandum 2017-01, *Surety Bond Process*.

[10] For information about the surety bond process, see SCAO Administrative Memorandum 2017-01, *Surety Bond Process*.

> (*ii*) bail that is executed by the defendant, or by another who is not a surety approved by the court, and secured by
>
> > [A] a cash deposit, or its equivalent, for the full bail amount, or, with the court's consent,
> >
> > [B] designated real property." See also MCL 765.6(2).

Committee Tip:

Note that the court decides whether a 10% bond is appropriate, but it is ***the defendant's decision*** *whether the bond will be posted by the defendant, posted by a third party, secured by a surety approved by the court, or, with the court's consent, secured by designated real property. The court* ***cannot require*** *a cash only bond in the full amount without allowing for a surety bond. MCR 6.106(E).*

If the court allows the defendant to post a bond secured by real property, it "may require satisfactory proof of value and interest in [the] property[.]" MCR 6.106(E)(2).

"Nothing in [MCR 6.106(E)] may be construed to sanction pretrial detention nor to sanction the determination of pretrial release on the basis of race, religion, gender, economic status, or other impermissible criteria." MCR 6.106(F)(3).

3. Limitations on Defendant's Bail Options

In certain instances, a defendant may not exercise the options set out in MCR 6.106(E)(1)(a)-(b). For example, a person arrested pursuant to a bench warrant issued under MCL 552.631 for failure to pay child support, or pursuant to a felony warrant for failure to pay spousal or child support under MCL 750.165, must deposit a cash bond of not less than $500 or 25 percent of the arrearage, whichever is greater; in its discretion, the trial court may set the cash bond in an amount up to 100 percent of the arrearage, plus costs. MCL 552.631(3); MCL 750.165(3); see also MCL 552.632.

Additionally, MCL 765.6a requires the posting of "a cash bond or a surety other than the [bail] applicant if the applicant (1) [i]s

charged with a crime alleged to have occurred while on bail pursuant to a bond personally executed by him [or her]; or (2) [h]as been twice convicted of a felony within the preceding [five] years."

D. Interim Bond

Interim bond occurs *before* arraignment. "Where permitted by law, the court may specify on the warrant the bail that an accused may post to obtain release before arraignment on the warrant[.]" MCR 6.102(F). Interim bond may be set for a person arrested for a misdemeanor or ordinance violation, with or without a warrant. See MCL 780.581; MCL 780.582; MCR 6.102(F). There is no statutory provision that provides for interim bond on felony violations as there is for misdemeanor and ordinance violations. However, MCR 6.102(F) is applicable to felony cases. See MCR 6.001(A)-(B). In addition, that provision "sets forth a . . . procedure . . . [that] authorizes in felony cases the specification on the warrant of interim bail similar to the procedure . . . authorized by statute in misdemeanor cases. See MCL 780.582 and MCL 780.585." 1989 Staff Comment to MCR 6.102 (note, however, that staff comments are not authoritative constructions by the Michigan Supreme Court).

In some instances, interim bond may be set by law enforcement, see MCL 780.581, while in other instances, the court must set interim bond, see MCL 780.582a. These procedures and requirements are discussed in detail in the following sub-subsections. With the exception of domestic violence cases, protective conditions may not be imposed on an interim bond. MCL 780.582a. Protective conditions may only be imposed by a judge or magistrate. *Id*. The imposition of protective conditions in domestic violence cases is discussed in Section 3.4(D)(4). If the court wants to impose conditions on a defendant in a non-domestic violence case, the court must arraign the defendant first and then it may consider the factors outlined in MCR 6.106.[11]

[11] On May 22, 2017, the Department of Licensing and Regulatory Affairs approved proposed standards submitted pursuant to the Michigan Indigent Defense Commission Act (MIDCA) by the Michigan Indigent Defense Commission, including that "[w]here there are case-specific interim bonds set, counsel at arraignment shall be prepared to make a de novo argument regarding an appropriate bond regardless of and, indeed, in the face of, an interim bond set prior to arraignment which has no precedential effect on bond-setting at arraignment." MIDC Standard 4(A). See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 4, for discussion of the MIDCA.

1. Weekend Arraignment and Interim Bond

For a discussion of weekend arraignment and interim bond, see the State Court Administrative Office Memorandum, *Weekend Arraignment and Interim Bond*, May 7, 2015.

2. Warrantless Arrest

Generally, a person arrested without a warrant for committing a misdemeanor or city, village, or township ordinance violation that is punishable by no more than one year imprisonment, or by a fine, or both must be taken "without unnecessary delay" before the most convenient magistrate in the county where the offense was committed to answer the complaint made against him or her. MCL 780.581(1). "[A] jurisdiction that provides judicial determinations of probable cause within 48 hours of [a warrantless] arrest will, as a general matter, [be found to] comply with the promptness requirement" of the federal constitution's Fourth Amendment. *Riverside Co v McLaughlin*, 500 US 44, 56 (1991). However, a probable cause determination is not automatically proper simply because it is made within 48 hours. *Id.* at 56. A delay of less than 48 hours may still be unconstitutional if it is an unreasonable delay. *Id.*

Police authorities may only hold an arrestee for more than 48 hours before arraignment if they can "'demonstrate the existence of a bona fide emergency or other extraordinary circumstance'" that would justify the delay. *People v Whitehead*, 238 Mich App 1, 2 (1999), quoting *Riverside*, 500 US at 57. See also *People v Cain (Cain I)*, 299 Mich App 27, 49-50 (2012), vacated in part on other grounds 495 Mich 874 (2013)[12] (the defendant was not deprived of due process despite not being arraigned until three days after his arrest where "no evidence was obtained as a direct result of the 'undue delay,' which would have begun . . . 48 hours after [the] defendant's arrest[;]" because the evidence against the defendant, including his statement to police and his identification from a photo lineup, was obtained within 48 hours after his arrest, "there was no evidence to suppress").

If a magistrate is not available or an immediate trial may not be had, the arrestee may deposit an interim bond with the arresting officer, his or her direct supervisor, the sheriff, or a deputy in charge of the county jail (if the arrestee is lodged in the county jail) to guarantee the arrestee's appearance at arraignment. MCL 780.581(2). "The bond shall be a sum of money, as determined by

[12] For more information on the precedential value of an opinion with negative subsequent history, see our note.

the officer who accepts the bond, not to exceed the amount of the maximum possible fine but not less than 20% of the amount of the minimum possible fine that may be imposed for the offense for which the person was arrested." *Id*. See also *People v Hardiman*, 151 Mich App 115, 118 (1986).

However, MCL 780.582a sets out two circumstances in which an arrestee must not be released on interim bond. Relevant to this particular discussion,[13] MCL 780.582a(1) prohibits law enforcement from accepting an interim bond where the defendant was arrested without a warrant under MCL 764.15a (arrest for assault of an individual having a child in common, household resident, dating relationship, or spouse/former spouse) or a substantially corresponding local ordinance. MCL 780.582a(1)(a). When a person is arrested without a warrant under MCL 764.15a, the person must be held until he or she can be arraigned or have interim bond set by a judge or district court magistrate. MCL 780.582a(1). See Section 3.4(D)(4) for a detailed discussion of the requirements under MCL 780.582a.

3. Arrest With Warrant

a. Generally

"Where permitted by law, the court may specify on the warrant the bail that an accused may post to obtain release before arraignment on the warrant and, if the court deems it appropriate, include as a bail condition that the arrest of the accused occur on or before a specified date or within a specified period of time after issuance of the warrant." MCR 6.102(F) (applicable to felony cases, MCR 6.001(A)-(B)). See also MCL 765.1; MCL 765.3.

MCR 6.102(F) "authorizes in felony cases the specification on the warrant of interim bail similar to the procedure currently authorized by statute in misdemeanor cases. See MCL 780.582 and MCL 780.585." 1989 Staff Comment to MCR 6.102. MCR 6.102(F) "further authorizes the court, in its discretion, to include an expiration date for the interim bail provision. This option permits the court to set a cut-off date, beyond which release may not be obtained, to prevent the release of a person who may be avoiding arrest. However, setting of an expiration date may also defeat the purpose of the interim bail provision if it is too

[13]The other circumstance under which an arrestee cannot be released on interim bond as provided under MCL 780.581 or MCL 780.583a concerns persons arrested with a warrant, discussed in Section 3.4(D)(3).

short or is used in a case where the arrest of the defendant is sought solely in a passive fashion such as awaiting the defendant's stop for a traffic offense." 1989 Staff Comment to MCR 6.102.

"The amount of bail shall not be excessive." MCL 765.6(1). When fixing the amount of bail, the court "shall consider and make findings on the record as to each of the following:

> (a) The seriousness of the offense charged.
>
> (b) The protection of the public.
>
> (c) The previous criminal record and the dangerousness of the person accused.
>
> (d) The probability or improbability of the person accused appearing at the trial of the cause." MCL 765.6.

b. Misdemeanors and Local Ordinance Violations

"Except as otherwise provided in [MCL 780.582a], if a person is arrested with a warrant for a misdemeanor or a violation of a city, village, or township ordinance, and the misdemeanor or violation is punishable by imprisonment for not more than 1 year or by a fine, or both, the provisions of [MCL 780.581][14] shall apply, except that the interim bond shall be directed to the magistrate who has signed the warrant, or to any judge authorized to act in his or her stead." MCL 780.582. Under MCL 780.582a and relevant to this particular discussion, law enforcement is prohibited from accepting an interim bond where the defendant was arrested with a warrant for violating MCL 750.81 or MCL 750.81a (arrest for assault/battery or assault causing serious/aggravated injury) or a substantially corresponding local ordinance. MCL 780.582a(1)(b).

"In cases arising under [MCL 780.582], the magistrate issuing the warrant may endorse on the back thereof a greater or lesser amount for an interim bond." MCL 780.585.

[14] MCL 780.581 concerns taking a person arrested without a warrant for a misdemeanor or violation of an ordinance before a magistrate, interim bond, and holding certain arrested persons in a holding cell, holding center, lockup, or county jail.

For misdemeanors and local ordinance violations, "[t]he amount of bail shall be:

> (a) Sufficient to assure compliance with the conditions set forth in the bail bond.
>
> (b) Not oppressive.
>
> (c) Commensurate with the nature of the offense charged.
>
> (d) Considerate of the past criminal acts and conduct of the defendant.
>
> (e) Considerate of the financial ability of the accused.
>
> (f) Uniform whether the bail bond be executed by the person for whom bail has been set or by a surety." MCL 780.64(1).

"If a person is charged with an offense punishable by a fine only, the amount of the bail shall not exceed double the amount of the maximum penalty." MCL 780.64(2).

"If a person has been convicted of an offense and only a fine has been imposed, the amount of the bail shall not exceed double the amount of the fine." MCL 780.64(3).

"If a person is arrested for an ordinance violation or a misdemeanor punishable by imprisonment for not more than 1 year or a fine, or both, and if the defendant's operator's or chauffeur's license is not expired, suspended, revoked, or canceled, then the court may require the defendant, in place of other security for the defendant's appearance in court for trial or sentencing or, in addition, to release of the defendant on personal recognizance, to surrender to the court his or her operator's or chauffeur's license." MCL 780.64(4).

c. Release on Interim Cash Bail Provision Included in Warrant

"If an accused has been arrested pursuant to a warrant that includes an interim bail provision, the accused must either be arraigned promptly or released pursuant to the interim bail provision." MCR 6.102(H) (applicable to felony cases, MCR 6.001(A)-(B)).

"The accused may obtain release by posting the bail on the warrant and by submitting a recognizance to appear

before a specified court at a specified date and time, provided that

> (1) the accused is arrested prior to the expiration date, if any, of the bail provision;
>
> (2) the accused is arrested in the county in which the warrant was issued, or in which the accused resides or is employed, and the accused is not wanted on another charge;[15]
>
> (3) the accused is not under the influence of liquor or controlled substance;[16] and
>
> (4) the condition of the accused or the circumstances at the time of arrest do not otherwise suggest a need for judicial review of the original specification of bail.[17] MCR 6.102(H).

"Implicit in [MCR 6.102(H)] is the condition that the accused be satisfactorily identified as the person named in the warrant. Additionally, the rule does not preclude the police agency from requiring the accused to submit to photographing and fingerprinting[18] before being released." 1989 Staff Comment to MCR 6.102.

However, MCL 780.582a sets out two circumstances in which an arrestee must not immediately be released on interim bond. Relevant to this particular discussion,[19] MCL 780.582a(1) prohibits law enforcement from accepting an interim bond where the defendant was arrested with a warrant for a violation of MCL 750.81 (assault and battery) or MCL 750.81a (assault without a weapon inflicting serious or aggravated injury) or a substantially corresponding local ordinance "and the person is a spouse or former spouse of the victim of the violation, has or has had a dating relationship with the

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[15] "The purpose of this limitation is to preclude the availability of interim bail to a person who may be avoiding arrest." 1989 Staff Comment to MCR 6.102.

[16] MCR 6.102(H)(3) "does not preclude interim bail release of an accused who was under the influence of liquor at the time of arrest but who is no longer in that condition." 1989 Staff Comment to MCR 6.102.

[17] MCR 6.102(H)(4) "is a catch-all provision and should be applied in good faith." 1989 Staff Comment to MCR 6.102.

[18] See MCL 28.243 for information on the collection of biometric data, which includes fingerprints.

[19] The other circumstance under which an arrestee cannot be released on interim bond as provided under MCL 780.581 or MCL 780.583a concerns persons arrested without a warrant, discussed in Section 3.4(D)(2).

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." MCL 780.582a(1)(b). When a person is arrested with a warrant under the conditions set out in MCL 780.582a(1)(b), the person must be held until he or she can be arraigned or have interim bond set by a judge or district court magistrate. MCL 780.582a(1). See Section 3.5(D)(4) for a detailed discussion of the requirements under MCL 780.582a.

4. Imposing Protective Conditions Before Release on Interim Bond in Domestic Violence Cases

Certain individuals are not eligible to be released on interim bond by law enforcement. MCL 780.582a(1). These individuals must "be held until [they] can be arraigned or have interim bond set by a judge or district court magistrate if either of the following applies: "(a) [t]he person is arrested without a warrant under . . . MCL 764.15a, or a local ordinance substantially corresponding to that section[,]" or "(b) [t]he person is arrested with a warrant for a violation of . . . MCL 750.81 [or MCL] 750.81a, or a local ordinance substantially corresponding to [MCL 750.81] 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, or is a person who resides or has resided in the same household as the victim of the violation." MCL 780.582a(1). See also MCL 780.581(1); MCL 780.582.

Note that the protective conditions permitted by MCL 780.582a are limited to cases involving domestic violence, and 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 780.582(2). See also State Court Administrative Office Memorandum, *Changes to MCR 6.106 - Pretrial Release*, November 13, 2015.

"If a judge or district court magistrate sets interim bond under [MCL 780.582a], the judge or magistrate *shall* consider and *may* impose the condition that the person released shall not have or attempt to have contact of any kind with the victim." MCL 780.582a(2) (emphasis added). "[MCL 780.582a] does not limit the authority of judges or district court magistrates to impose protective or other release conditions under other applicable statutes or court rules." MCL 780.582a(7).

"If a judge or district court magistrate releases under [MCL 780.582a] a person subject to protective conditions, the judge or

district court magistrate shall inform the person on the record, either orally or by a writing that is personally delivered to the person, of the specific conditions imposed and that if the person violates a condition of release, he or she will be subject to arrest without a warrant and may have his or her bond forfeited or revoked and new conditions of release imposed, in addition to any other penalties that may be imposed if he or she is found in contempt of court." MCL 780.582a(3).

"An order or amended order issued under [MCL 780.582a(3)] shall contain all of the following:

> (a) A statement of the person's full name.
>
> (b) A statement of the person's height, weight, race, sex, date of birth, hair color, eye color, and any other identifying information the judge or district court magistrate considers appropriate.
>
> (c) A statement of the date the conditions become effective.
>
> (d) A statement of the date on which the order will expire.
>
> (e) A statement of the conditions imposed, including, but not limited to, the condition prescribed in [MCL 780.582a(3)]." MCL 780.582a(4).

"The judge or district court magistrate shall immediately direct a law enforcement agency within the jurisdiction of the court, in writing, to enter an order or amended order issued under [MCL 780.582a(3)] into the law enforcement information network [(LEIN)] as provided by . . . MCL 28.211 to [MCL 28.215]." MCL 780.582a(5). "If the order or amended order is rescinded, the judge or district court magistrate shall immediately order the law enforcement agency to remove the order or amended order from the [LEIN]." *Id*. See also SCAO Form MC 239, *Removal of Entry From LEIN*.

If a person granted conditional release on bail under MCL 765.6b or MCL 780.582a is subsequently arrested without a warrant for violating the conditions imposed, the arresting police agency or the officer in charge of the jail may release the person on interim bond if, in the opinion of the agency or officer, it is safe to do so. MCL 764.15e(3). The bond may not be more than $500 and must request the person to appear at the opening of court the next business day. *Id*. If the person is held for more than 24 hours before being brought before the court, "the officer in charge of

the jail shall note in the jail records why it was not safe to release the defendant on interim bond[.]" *Id*.

"[I]f an arrestee is released on bail, development of DNA identification revealing the defendant's unknown violent past can and should lead to the revocation of his conditional release. . . . It is reasonable in all respects for the State to use an accepted [DNA] database to determine if an arrestee is the object of suspicion in other serious crimes, suspicion that may provide a strong incentive for the arrestee to escape and flee." *Maryland v King*, 569 US 435, 439, 455 (2013) (holding that the collection and analysis of an arrestee's DNA according to Combined DNA Index System (CODIS)[20] procedures "[a]s part of a routine booking procedure for serious offenses" did not violate the Fourth Amendment where the DNA sample was used to identify the arrestee as the perpetrator of an earlier unsolved rape).

3.5 Denial of Pretrial Release

A. Generally

"*With certain exceptions*, a criminal defendant in Michigan is entitled as a matter of constitutional right to have reasonable bail established for pretrial release." *People v Davis*, 337 Mich App 67, 74 (2021) (emphasis added), citing Const 1963, art 1, § 15. See also MCL 765.5; MCR 6.106(B). This subsection addresses those exceptions.

Although often cited together, MCL 765.5 conflicts with Const 1963, art 1, § 15 and MCR 6.106 insofar as the statute "*prohibits* the trial court from granting pretrial release to [certain] defendant[s] if the proof of the defendant's guilt is evident or the presumption of guilt is great," while the court rule read in conjunction with the constitutional provision "*permits* the trial court to deny pretrial release to [those] defendant[s] . . . if the proof of the defendant's guilt is evident or the presumption of guilt is great, but does not mandate denial of bail." *Davis*, 337 Mich App at 81, 84-85 (addressing the conflict with respect to defendants charged with murder and finding that although the court rule does not "explicitly state the grounds for denial of pretrial release to a defendant charged with murder," it references and closely echoes the constitutional provision, which is "paramount to other laws in this state and is the law to which other laws must conform"). Accordingly, under the court rule and constitutional provision, bail *may* be denied to a defendant when one of the following

[20] For more information on CODIS, see https://www.fbi.gov/about-us/lab/biometric-analysis/codis/codis-and-ndis-fact-sheet.

circumstances applies and when proof of the defendant's guilt is evident or the presumption of guilt is great:

> (1) the defendant is charged with committing a violent felony, and during the 15 years preceding the commission of the violent felony, the defendant had been convicted of two or more violent felonies under the laws of Michigan or substantially similar laws of the United States or another state arising out of separate incidents. Const 1963, art 1, § 15(a); MCR 6.106(B)(1)(a)(*ii*)(B).
>
> (2) the defendant is charged with murder or treason. Const 1963, art 1, § 15(b); MCR 6.106(B)(1)(a)(*i*).
>
> (3) the defendant is charged with CSC-I, armed robbery, or kidnapping with intent to extort money or another valuable thing, "unless the court finds by clear and convincing evidence that the defendant is not likely to flee or present a danger to any other person." Const 1963, art 1, § 15(c); MCR 6.106(B)(1)(b).
>
> (4) the defendant is charged with committing a violent felony, and at the time of the commission of the violent felony, the defendant was on probation, parole, or released pending trial for another violent felony. Const 1963, art 1, § 15(d); MCR 6.106(B)(1)(a)(*ii*)(A).

In *Davis*, the Court found that Const 1963, art 1, § 15 "does not prevent a trial court from granting bail to a defendant charged with murder, nor does the constitutional provision impose upon the trial court the duty to determine whether the proof is evident or the presumption of guilt great before *granting* bail to a person charged with murder or treason." *Davis*, 337 Mich App at 77. However, "failure to determine whether the proof is evident or the presumption is great before *denying* bail therefore would be an abuse of the trial court's discretion."[21] *Id* (emphasis added).

"Nothing in [MCR 6.106] limits the ability of a jail to impose restrictions on detainee contact as an appropriate means of furthering penological goals." MCR 6.106(B)(6).

"DNA identification of a suspect in a violent crime provides critical information to the police and judicial officials in making a determination of the arrestee's future dangerousness[,]" and will thus "inform a court's determination whether the individual should be

[21] The Court did not address whether the holding in this case may apply to the other offenses listed in the constitutional provision and court rule.

released on bail." *Maryland v King*, 569 US 435, 439, 453 (2013) (holding that the collection and analysis of an arrestee's DNA according to Combined DNA Index System (CODIS)[22] procedures "[a]s part of a routine booking procedure for serious offenses" did not violate the Fourth Amendment where the DNA sample was used to identify the arrestee as the perpetrator of an earlier unsolved rape).

The rules of evidence do not apply to proceedings with respect to release on bail or otherwise. MRE 1101(b)(3).

B. Custody Order

"If the court determines as provided in [MCR 6.106(B)(1)] that the defendant may not be released, the court must order the defendant held in custody for a period not to exceed 90 days after the date of the order, excluding delays attributable to the defense, within which trial must begin or the court must immediately schedule a hearing and set the amount of bail." MCR 6.106(B)(3). See also Const 1963, art 1, § 15.

The court must state the reasons for an order of custody on the record and on SCAO Form MC 240b, *Custody Order*. MCR 6.106(B)(4). The completed form must be placed in the court file. *Id*.

"The court may, in its custody order, place conditions on the defendant, including but not limited to restricting or prohibiting defendant's contact with any other named person or persons, if the court determines the conditions are reasonably necessary to maintain the integrity of the judicial proceedings or are reasonably necessary for the protection of one or more named persons." MCR 6.106(B)(5). "If an order under [MCR 6.106(B)(5)] is in conflict with another court order, the most restrictive provisions of the orders shall take precedence until the conflict is resolved." MCR 6.106(B)(5).[23]

C. Custody Hearing

"A court having jurisdiction of a defendant may conduct a custody hearing if the defendant is being held in custody pursuant to [MCR 6.106(B)] and a custody hearing is requested by either the defendant or the prosecutor." MCR 6.106(G)(1). "The purpose of the hearing is to permit the parties to litigate all of the issues relevant to challenging or supporting a custody decision pursuant to [MCR 6.106(B)]." MCR 6.106(G)(1).

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[22] For more information on CODIS, see https://www.fbi.gov/about-us/lab/biometric-analysis/codis/codis-and-ndis-fact-sheet.

[23] See also State Court Administrative Memorandum, *Changes to MCR 6.106 - Pretrial Release*, November 13, 2015.

"At the custody hearing, the defendant is entitled to be present and to be represented by a lawyer, and the defendant and the prosecutor are entitled to present witnesses and evidence, to proffer information, and to cross-examine each other's witnesses." MCR 6.106(G)(2)(a).

"The rules of evidence, except those pertaining to privilege, are not applicable." MCR 6.106(G)(2)(b). "Unless the court makes the findings required to enter an order under [MCR 6.106(B)(1)], the defendant must be ordered released under [MCR 6.106(C) or MCR 6.106(D)]." MCR 6.106(G)(2)(b). "A verbatim record of the hearing must be made." *Id*.

D. Juveniles

"If the proof is evident or if the presumption is great that the juvenile committed the offense, the magistrate or the court may deny bail:

> (a) to a juvenile charged with first-degree murder, second-degree murder, or
>
> (b) to a juvenile charged with first-degree criminal sexual conduct, or armed robbery,
>
> (*i*) who is likely to flee, or
>
> (*ii*) who clearly presents a danger to others." MCR 6.909(A)(2).[24]

"The juvenile in custody or detention must be maintained separately from the adult prisoners or adult accused as required by MCL 764.27a." MCR 6.909(B)(4).

1. Confinement in a Juvenile Facility

"Except as provided in [MCR 6.909(B)(2)] and in MCR 6.907(B), a juvenile charged with a crime and not released must be placed in a juvenile facility while awaiting trial and, if necessary, sentencing, rather than being placed in a jail or similar facility designed and used to incarcerate adult prisoners." MCR 6.909(B)(1).

2. Confinement in a Jail

"On motion of a prosecuting attorney or a superintendent of a juvenile facility in which the juvenile is detained, the magistrate or court may order the juvenile confined in a jail or similar

[24] MCR 6.909 applies to juvenile criminal proceedings in district and circuit courts. MCR 6.001(C).

facility designed and used to incarcerate adult prisoners upon a showing that

> (a) the juvenile's habits or conduct are considered a menace to other juveniles; or
>
> (b) the juvenile may not otherwise be safely detained in a juvenile facility." MCR 6.909(B)(2).

3. Confinement in a Family Division Operated Facility

"The juvenile shall not be placed in an institution operated by the family division of the circuit court except with the consent of the family division or on order of a court as defined in MCR 6.903(C)." MCR 6.909(B)(3).

4. Speedy Trial

"Within 7 days of the filing of a motion, the court shall release a juvenile who has remained in detention while awaiting trial for more than 91 days to answer for the specified juvenile violation unless the trial has commenced. In computing the 91-day period, the court is to exclude delays as provided in MCR 6.004(C)(1)-(6) and the time required to conduct the hearing on the motion." MCR 6.909(C).

3.6 Rationale for Decision Regarding Type of Pretrial Release and Conditions

MCR 6.106(F) addresses factors the court must consider when determining which pretrial release option to use and what terms and conditions to impose.

"In deciding which release to use and what terms and conditions to impose, the court is to consider relevant information, including

> (a) defendant's prior criminal record, including juvenile offenses;
>
> (b) defendant's record of appearance or nonappearance at court proceedings or flight to avoid prosecution;
>
> (c) defendant's history of substance abuse or addiction;
>
> (d) defendant's mental condition, including character and reputation for dangerousness;

> (e) the seriousness of the offense charged, the presence or absence of threats, and the probability of conviction and likely sentence;
>
> (f) defendant's employment status and history and financial history insofar as these factors relate to the ability to post money bail;
>
> (g) the availability of responsible members of the community who would vouch for or monitor the defendant;
>
> (h) facts indicating the defendant's ties to the community, including family ties and relationships, and length of residence[;] and
>
> (i) any other facts bearing on the risk of nonappearance or danger to the public." MCR 6.106(F)(1).

"DNA identification of a suspect in a violent crime provides critical information to the police and judicial officials in making a determination of the arrestee's future dangerousness[,]" and will thus "inform a court's determination whether the individual should be released on bail." *Maryland v King*, 569 US 435, 439, 453 (2013) (holding that the collection and analysis of an arrestee's DNA according to Combined DNA Index System (CODIS)[25] procedures "[a]s part of a routine booking procedure for serious offenses" did not violate the Fourth Amendment where the DNA sample was used to identify the arrestee as the perpetrator of an earlier unsolved rape).

"If the court orders the defendant held in custody pursuant to [MCR 6.106(B)] or released on conditions in [MCR 6.106(D)] that include money bail, the court must state the reasons for its decision on the record." MCR 6.106(F)(2). "The court need not make a finding on each of the enumerated factors." *Id*.

"Nothing in [MCR 6.106(F)] may be construed to sanction pretrial detention nor to sanction the determination of pretrial release on the basis of race, religion, gender, economic status, or other impermissible criteria." MCR 6.106(F)(3).

The rules of evidence do not apply to proceedings with respect to release on bail or otherwise. MRE 1101(b)(3).

[25] For more information on CODIS, see https://www.fbi.gov/about-us/lab/biometric-analysis/codis/codis-and-ndis-fact-sheet.

3.7 Review of Release Decision

A. Appeals

"A party seeking review of a release decision may file a motion in the court having appellate jurisdiction over the court that made the release decision." MCR 6.106(H)(1). "There is no fee for filing the motion." *Id*.

"The reviewing court may not stay, vacate, modify, or reverse the release decision except on finding an abuse of discretion." MCR 6.106(H)(1).

Upon a finding of an abuse of discretion by the lower court in fixing bail, the trial court may only modify the bail provisions (including the amount of the money bail) after having considered the factors mandated by the court rule governing bail (MCR 6.106(F)(1)(a)-(i)). See *People v Weatherford*, 132 Mich App 165, 170 (1984).

B. Modification of Release Decision

1. Before Arraignment on the Information

"Prior to the defendant's arraignment on the information, any court before which proceedings against the defendant are pending may, on the motion of a party or its own initiative and on finding that there is a substantial reason for doing so, modify a prior release decision or reopen a prior custody hearing." MCR 6.106(H)(2)(a).

2. At or Following Arraignment on the Information

"At the defendant's arraignment on the information and afterwards, the court having jurisdiction of the defendant may, on the motion of a party or its own initiative, make a de novo determination and modify a prior release decision or reopen a prior custody hearing." MCR 6.106(H)(2)(b).

3. Burden of Going Forward

"The party seeking modification of a release decision has the burden of going forward." MCR 6.106(H)(2)(c).

The rules of evidence do not apply to proceedings with respect to release on bail or otherwise. MRE 1101(b)(3).

"In reviewing a bail decision, more than perfunctory compliance [with the applicable court rule] is required . . . . Defendants also

must be allowed to present any additional material evidence, which could have originally been considered in the setting of bail, if the evidence was not available when bail was originally set." *People* v *Spicer*, 402 Mich 406, 410-411 (1978).

4. Court Forms

If the release order is modified, SCAO Form MC 240, *Pretrial Release Order*, should be competed.

C. Emergency Release

"If a defendant being held in pretrial custody under [MCR 6.106] is ordered released from custody as a result of a court order or law requiring the release of prisoners to relieve jail conditions, the court ordering the defendant's release may, if appropriate, impose conditions of release in accordance with [MCR 6.106] to ensure the appearance of the defendant as required and to protect the public." MCR 6.106(H)(3). "If such conditions of release are imposed, the court must inform the defendant of the conditions on the record or by furnishing to the defendant or the defendant's lawyer a copy of the release order setting forth the conditions." *Id*. Note that bond conditions are addressed on SCAO Form MC 240, *Pretrial Release Order*, which the defendant should sign.

3.8 Bond Forfeiture

A district court magistrate does not have the authority to sign an order revoking release and forfeiting bond. See MCL 600.8511 (detailing a district court magistrate's authority without granting authority to revoke release or forfeit bond). See also *In re James*, 492 Mich 553, 566, 566 n 22 (2012) (finding that the judge committed misconduct by requiring a district court magistrate to sign bench warrants "in violation of MCL 600.8511," which "permits magistrates to sign arrest warrants, not bench warrants"). See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 8, for information on the procedures regarding bond forfeiture.

3.9 Termination of Release Order

A. Conditions Met

"Except as otherwise provided in [MCR 6.106(I)], if the conditions of the release order are met and the defendant is discharged from all obligations in the case, the court must vacate the release order, discharge anyone who has posted bail or bond, and, return the cash

(or its equivalent) posted in the full amount of the bail, or, if there has been a deposit of 10 percent of the full bail amount for a crime governed by MCL 780.66, return 90 percent of the deposited money and retain 10 percent." MCR 6.106(I)(1).

B. Defendant Not Convicted

"If the accused deposited 10 percent of the full bail amount for a crime governed by MCL 780.66, is discharged from all obligations in the case, and has not been convicted of the charged crime, the court must return to the defendant the entire deposited amount." MCR 6.106(I)(1). See also MCL 780.66(6).

C. Bail or Bond Executed by the Defendant Applied to Fines, Costs, or Assessments

"If money was deposited on a bail or bond executed by the defendant, the money must be first applied to the amount of any fine, costs, or statutory assessments imposed and any balance returned, subject to [MCR 6.106(I)(1)]." MCR 6.106(I)(3). See also MCL 780.66(8); MCL 780.67(7).

"If the court ordered the defendant to pay a fine, costs, restitution, assessment, or other payment, the court shall order the fine, costs, restitution, assessment, or other payment collected out of cash bond or bail personally deposited by the defendant under [MCL 765.1 *et seq*.], and the cash bond or bail used for that purpose shall be allocated as provided in [MCL 775.22]." MCL 765.15(2). "Upon presentation of a certified copy of the order, the treasurer or clerk having the cash, check, or security shall pay or deliver it as provided in the order to the person named in the order or to that person's order." *Id*.

"If the cash, check, or security is in the hands of the sheriff or any officer other than the treasurer or clerk, the officer holding it shall dispose of the cash, check, or security as the court orders upon presentation of a certified copy of the court's order." MCL 765.15(3).

D. Bond or Bail Discharged

"If the bond or bail is discharged, the court shall enter an order to that effect with a statement of the amount to be returned to the surety." MCL 765.28(2). See also MCL 765.15(2) ("If bond or bail is discharged, the court shall enter an order with a statement of the amount to be returned to the depositor.")

E. Table Detailing Disbursement Procedures

See SCAO's table detailing disbursement procedures under different circumstances. See also SCAO Administrative Memorandum 2017-01, *Surety Bond Process*, for additional discussion.

3.10 Revocation of Release on Conviction

"A defendant convicted of an assaultive crime and awaiting sentence shall be detained and shall not be admitted to bail unless the trial court finds by clear and convincing evidence that the defendant is not likely to pose a danger to other persons and that [MCL 770.9b] does not apply." MCL 770.9a(1).

"A defendant convicted of sexual assault of a minor and awaiting sentence shall be detained and shall not be admitted to bail." MCL 770.9b(1).

3.11 Standard of Review

A district court magistrate's decision is reviewed de novo as an appeal of right in district court. *People v Wershe*, 166 Mich App 602, 607 (1988); MCL 600.8515. A bail decision by a district court judge at the close of a preliminary examination does not constitute a review of the initial bail decision made by a magistrate at the arraignment; the bail decision following preliminary examination is a new bail decision and, once entered, it is the decision subject to review and deference as set out in the court rules. *Wershe*, 166 Mich App at 606.

A trial court's decision regarding forfeiture of a bail bond is reviewed for an abuse of discretion. See *In re Forfeiture of Surety Bond*, 208 Mich App 369, 375 (1995); *People v Munley*, 175 Mich App 399, 403 (1989). Similarly, decisions on a motion to set aside a bond forfeiture are reviewed for an abuse of discretion. *In re Forfeiture of Bail Bond*, 229 Mich App 724, 727 (1998).

If a party files a motion seeking review of a release decision, the lower court's order may not be stayed, vacated, modified, or reversed unless the reviewing court finds an abuse of discretion. MCR 6.106(H)(1).[26] If the reviewing court finds an abuse of discretion, it may only modify the release decision after considering the factors set out in MCR 6.106(F)(1)(a)-(i). *People v Weatherford*, 132 Mich App 165, 170 (1984) (trial court should not have increased the amount of the defendant's bail because there was no finding of an abuse of discretion, and because the

[26] MCR 6.106(H)(2) covers modification of a release decision. See Section 3.7(B) for more information.

trial court did not consider any of the court rule factors in raising the amount of bail).

Chapter 4: Criminal Arraignments and Other Preliminary Proceedings

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4.1 Scope Note

This chapter addresses the authority of district court magistrates to conduct first appearances, arraignments, and probable cause conferences as well as the relevant procedures for those proceedings. This chapter also addresses jurisdiction, venue, and a crime victim's rights throughout these proceedings.

See the following Michigan Judicial Institute Pretrial/Trial Quick Reference Materials: a table including information on the jurisdiction of district court judges and magistrates over preliminary matters in criminal proceedings; a flowchart for conducting misdemeanor arraignments; and separate checklists specifically applicable to misdemeanor, felony, and juvenile arraignments in district court.

4.2 District Court Jurisdiction Over Arraignments

The district court has jurisdiction over initial arraignments for all misdemeanors and felonies. See MCL 600.8311(c); MCR 6.008(a); MCR 6.610(D); MCR 6.610(I). The arraignment is when the court formally informs the defendant of the charges against him or her and advises him or her of certain legal rights. MCR 6.610(D).

4.3 Applicable Court Rules

See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 5, for information on court rules applicable to district court proceedings.

4.4 Authority of District Court Magistrate

Note—*Magistrate* and *District Court Magistrate* Definitions: The terms *magistrate* and *district court magistrate* are not always synonymous. According to the Code of Criminal Procedure, a *magistrate* is a *judge* of the district court or municipal court, and this term does *not* include a district court magistrate. MCL 761.1(*l*). The term *district court magistrate* is specifically used in the Code of Criminal Procedure when the subject matter involves a district court magistrate. See also MCR 6.003(4) (defining *court* or *judicial officer* as "a judge, a magistrate, or a district court magistrate authorized in accordance with the law to perform the functions of a magistrate").

"Proceedings involving district court magistrates must be in accordance with relevant statutes and rules." MCR 4.401(A). A district court magistrate may exercise the powers, jurisdiction, and duties of a district

court judge if expressly authorized by the Revised Judicature Act, MCL 600.101 *et seq.*, or by another statute. MCL 761.1(*l*). "Notwithstanding statutory provisions to the contrary, district court magistrates exercise only those duties expressly authorized by the chief judge of the district or division." MCR 4.401(B). Moreover, "[a]n action taken by a district court magistrate may be superseded, without formal appeal, by order of a district judge in the district in which the magistrate serves." MCR 4.401(C). See *People v VanEss*, ___ Mich App ___, ___ (2024) (holding that "the magistrate did not have the authority to take a plea that was binding on the district court judge").

The authority of district court magistrates to conduct criminal proceedings is detailed in several different statutes:

- MCL 600.8511(a)-(d) grant district court magistrates the jurisdiction and duty to arraign and sentence upon pleas of guilty or nolo contendere for several specified violations.

- MCL 600.8511(h) grants district court magistrates the authority to conduct probable cause conferences.[1]

- MCL 600.8513(1) grants district court magistrates the authority to conduct the first appearance of a defendant before the court in all criminal cases. However, MCL 600.8513 does not authorize any district court magistrate to accept a plea of guilty or nolo contendere not expressly authorized pursuant to MCL 600.8511 or MCL 600.8512a.

- MCL 600.8513(2)(a) grants district court magistrates the authority to approve and grant petitions for the appointment of an attorney to represent an indigent defendant accused of any misdemeanor punishable by imprisonment for not more than one year. See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 5, for additional information on a magistrate's authority to appoint counsel.

- MCL 600.8513(2)(c) grants district court magistrates the authority to sign a nolle prosequi dismissing any criminal or ordinance violation case upon the written authorization of the prosecuting or city attorney where no preliminary examination or trial has commenced. See also SCAO Form MC 263, *Motion/ Order of Nolle Prosequi*. After signing a nolle prosequi, the district court magistrate may also release any bail bond or bail bond deposit. MCL 600.8513(2)(c). If the preliminary

[1] MCL 600.8511 further grants district court magistrates the authority to issue arrest warrants, search warrants, and to fix bail and accept bond. These subjects are discussed in Chapter 2 (warrants) and Chapter 3 (bail/bond).

> examination or trial has commenced or if a plea has been accepted, the dismissal order may only be entered by the presiding judge or his or her alternate. *Id.*

See the following for additional information on the authority of district court magistrates:

- Section 4.8(A) (use of audio and video technology);
- Section 4.13(A) (to appoint counsel);
- Section 2.4 (to issue arrest warrants and summons);
- Section 2.21 (to issue search warrants);
- Section 4.5 (to conduct arraignments and first appearances);
- Section 3.1 (to fix bail and accept bond);
- Section 6.2 (to preside over civil infractions and misdemeanors or ordinance violations not punishable by imprisonment);
- Section 5.2 (to preside over enumerated offenses punishable by imprisonment); and
- Section 4.20 (to conduct probable cause conferences).

4.5 Arraignments and First Appearances

In addition to limited jurisdiction under MCL 600.8511(a)-(c), as authorized by the chief judge, to "arraign and sentence upon pleas of guilty or nolo contendere" for certain listed violations that are punishable by no more than 90 or 93 days' imprisonment respectively, a district court magistrate has jurisdiction, as authorized by the chief judge, to arraign defendants and set bond for certain other offenses, including violations of MCL 257.625 (offenses involving the operation of a motor vehicle while intoxicated or visibly impaired), MCL 257.625m (operation of a commercial motor vehicle by a person with an unlawful blood alcohol content), MCL 324.81134 (offenses involving the operation of an ORV while under the influence of alcoholic liquor and/or a controlled substance, while visibly impaired, with an unlawful blood alcohol content, or with any amount of certain controlled substances in the body),[2] and MCL 324.82128 and MCL 324.82129 (offenses involving the operation of a snowmobile while under the influence of alcoholic liquor

[2] Effective March 31, 2015, 2014 PA 405 repealed MCL 324.81135. 2014 PA 405, enacting section 1. However, MCL 600.8511(c) still provides that "the chief judge may authorize the magistrate to arraign defendants and set bond with regard to violations of . . . [MCL 324.81135.]"

and/or a controlled substance, while visibly impaired, with an unlawful blood alcohol content, or with any amount of certain controlled substances in the body).

MCL 600.8511(b) specifically "establishes two different grants of authority." *People v VanEss*, ___ Mich App ___, ___ (2024). "The first is to arraign and sentence upon a guilty or nolo contendere plea for violations of the motor vehicle code, except for violations of MCL 257.625 and MCL 257.625m if the penalty does not exceed 93 days in jail." *VanEss*, ___ Mich App at ___. "The second grant of authority is to arraign and set bond for violations of MCL 257.625 and MCL 257.625m if authorized by the chief judge." *VanEss*, ___ Mich App at ___. "Absent is the authority to sentence upon a plea of guilty or nolo contendere [to violations of MCL 257.625 and MCL 257.625m]." *Id*. at ___. However, "a district court judge has the express authority to supersede any action by a district court magistrate, even without a formal appeal." *Id*. at ___, citing MCR 4.401(C). In *VanEss*, "(1) while there was an offer of a plea by defendant, no plea was actually taken, (2) the magistrate did not have the authority to take a plea that was binding on the district court judge, and (3) because the district court judge had not yet taken a plea and sentenced defendant, defendant's mere offer to plead guilty was not sufficient for jeopardy to have attached before the prosecutor took action to replace the original misdemeanor charge with the felony charge of OWI, high BAC, third offense (OWI 3rd), a felony with a maximum penalty of a $5,000 fine and five years' imprisonment." *VanEss*, ___ Mich App at ___ (concluding that under those circumstances, "the prosecutor was free to amend the complaint and charge defendant with the felony").

MCL 600.8511(d) provides that a district court magistrate, if authorized by the chief judge, has jurisdiction over arraignments for contempt violations and violations of probation when the violation arises directly out of a case in which a judge or district court magistrate conducted the same defendant's arraignment under MCL 600.8511(a), MCL 600.8511(b), or MCL 600.8511(c), or the same defendant's first appearance under MCL 600.8513. MCL 600.8511(d) applies only to offenses punishable by imprisonment for not more than one year, a fine, or both. District court magistrates are not authorized to conduct probation violation hearings, contempt hearings, or sentencing hearings, but may set bond and accept pleas. *Id*.

A district court magistrate may also preside over a defendant's "first appearance" in certain circumstances. MCL 600.8513(1) states:

> "When authorized by the chief judge of the district and whenever a district judge is not immediately available, a district court magistrate may conduct the first appearance of a defendant before the court in all criminal and ordinance violation cases, including acceptance of any written demand

> or waiver of preliminary examination and acceptance of any written demand or waiver of jury trial. However, this section does not authorize a district court magistrate to accept a plea of guilty or nolo contendere not expressly authorized under [MCL 600.8511 or MCL 600.8512a]. A defendant neither demanding nor waiving preliminary examination in writing is deemed to have demanded preliminary examination and a defendant neither demanding nor waiving jury trial in writing is considered to have demanded a jury trial."

If authorized by the chief judge of the district or division, a district court magistrate has a duty "[t]o fix bail and accept bond in all cases." MCL 600.8511(f); see also MCR 4.401(B). See SCAO Form MC 240, *Pretrial Release Order*.

4.6 Record Requirements

Except as provided by law or supreme court rule, all proceedings in district court must be recorded. MCL 600.8331.

> MCR 6.610(C) provides that unless a writing is permitted, a verbatim record must be made of the district court proceedings listed in MCR 6.610(D) and MCR 6.610(F)-(G).[3]MCR 6.610(D) governs arraignments in misdemeanor cases and provides that a writing may be used to inform a defendant of the offense, the maximum sentence, and the defendant's rights. MCR 6.610(F) addresses pleas of guilty or nolo contendere and similarly allows a defendant to be informed of his or her rights in writing. If a defendant is informed of his or her rights in writing, "the court shall address the defendant and obtain from the defendant orally on the record a statement that the rights were read and understood and a waiver of those rights. The waiver may be obtained without repeating the individual rights." MCR 6.610(F)(4).

4.7 Right to a Prompt Arraignment

A. Arraignment "Without Unnecessary Delay"

Michigan law mandates that an arrestee be arraigned "without unnecessary delay." See MCL 764.1b; MCL 764.13; MCL 764.26; *People v Cipriano*, 431 Mich 315, 319 (1988); see also MCR 6.104(A).

[3]Formerly MCR 6.610(E)-(F). See ADM File No. 2018-23, effective May 1, 2020. MCR 6.610(C) was not amended to reflect this change.

"[T]he state constitutional guarantee of due process of law requires an arrestee's prompt arraignment." *People v Mallory*, 421 Mich 229, 239 (1984), citing Const 1963, art 1, § 17.

"[I]n all but the most extraordinary situations," an individual arrested without a warrant may not be detained for more than 48 hours without a judicial determination of probable cause. *People v Whitehead*, 238 Mich App 1, 4 (1999). A delay of more than 48 hours between a defendant's warrantless arrest and the probable cause hearing is presumptively unreasonable and shifts the burden to the government to show the delay was caused by extraordinary circumstances. *Riverside Co v McLaughlin*, 500 US 44, 56-57 (1991). Moreover, a delay of *less* than 48 hours may be unreasonable under certain circumstances. *Id*. at 56.

A probable-cause determination and an arraignment "are not synonymous proceedings." *People v Sanders*, ___ Mich ___, ___ n 4 (2026). "The purpose of a probable-cause determination is to provide a neutral judgment that legal justification exists for an arrest, while the purpose of an arraignment is to provide defendants with notice of the charges brought against them and to allow them to enter a plea." *Id*. (citations omitted).

"Both the constitutional and statutory [arraignment] requirements are designed to advise the arrestee of his constitutional rights and the nature of the charges against him by an impartial judicial magistrate, to insure that the arrestee's rights are not violated, and to afford the arrestee an opportunity to make a statement or explain his conduct in open court if he so desires." *Mallory*, 421 Mich at 239 (citations omitted). "Finally, prompt arraignment affords the arrestee an opportunity to have his right to liberty on bail determined." *Id*.

Express statutory authority for felony arraignments is contained in MCL 764.26:

> "Every person charged with a felony shall, without unnecessary delay after his arrest, be taken before a magistrate or other judicial officer and, after being informed as to his rights, shall be given an opportunity publicly to make any statement and answer any questions regarding the charge that he may desire to answer."

General statutory authority for arraignments following a *warrantless* arrest for an offense of unspecified severity is contained in MCL 764.13:

> "A peace officer who has arrested a person for an offense without a warrant shall without unnecessary delay take the person arrested before a magistrate of the judicial district in which the offense is charged to have been committed, and shall present to the magistrate a complaint stating the charge against the person arrested."

MCR 6.104(A), which applies to both felonies and misdemeanors,[4] provides:

> "**Arraignment Without Unnecessary Delay.** Unless released beforehand, an arrested person must be taken without unnecessary delay before a court for arraignment in accordance with the provisions of [MCR 6.104], or must be arraigned without unnecessary delay by use of two-way interactive video technology in accordance with MCR 6.006(A). The arrested person is entitled to the assistance of an attorney at arraignment unless
>
> > (1) the arrested person makes an informed waiver of counsel or
> >
> > (2) the court issues a personal bond and will not accept a plea of guilty or no contest at arraignment."

B. Consequences of a Lengthy Delay

"'[A]n improper delay in arraignment . . . does not entitle a defendant to dismissal of the prosecution.'" *People v Cain (Cain I)*, 299 Mich App 27, 49 (2012), vacated in part on other grounds 495 Mich 874 (2013)[5], quoting *People v Harrison*, 163 Mich App 409, 421 (1987). However, failure to conduct a district court arraignment without unnecessary delay *may* jeopardize the admissibility of a confession or physical evidence in subsequent court proceedings against the defendant. *Cain I*, 299 Mich App at 49 (citations omitted). "[S]tatements made by a detained arrestee while seized in violation of the Fourth Amendment's requirement of a prompt judicial determination of probable cause must be excluded from evidence unless the prosecution establishes that the statements were sufficiently attenuated from the taint of the unconstitutional conduct." *People v Sanders*, ___ Mich ___, ___ (2026). In determining

[4] See MCR 6.001(A); MCR 6.001(B).

[5] For more information on the precedential value of an opinion with negative subsequent history, see our note.

attenuation, "a reviewing court should consider whether *Miranda*[6] rights were read, the temporal proximity between the constitutional violation and the challenged statements, the presence of intervening circumstances, and the purpose and flagrancy of the police misconduct." *Sanders*, ___ Mich at ___. See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 5, for a detailed discussion of the consequences of a lengthy delay.

4.8 Location of Arraignment

Arraignment and bail procedures vary depending on whether an arrest is made by warrant or without a warrant, and whether an arrest is made in the county in which the offense occurred or in a different county.

A. Video and Audio Technology

Videoconferencing technology is the preferred mode for conducting arraignments for in-custody defendants. MCR 6.006(C)(1). Arraignments are "scheduled to be conducted remotely subject to a request under MCR 2.407(B)(4) to appear in person by any participant, including a victim. . . , or a determination by the court that a case is not suited for videoconferencing under MCR 2.407(B)(5)." MCR 6.006(C)(1). "The use of telephonic, voice, videoconferencing, or two-way interactive video technology, must be in accordance with any requirements and guidelines established by [SCAO], and all proceedings at which such technology is used must be recorded verbatim by the court." MCR 6.006(D). See also MCR 4.401(E) ("[a] district court magistrate may use videoconferencing technology in accordance with MCR 2.407 and MCR 6.006"). For additional information, including a complete list of authorized uses for videoconferencing, see the SCAO's *Michigan Trial Court Standards for Courtroom Technology*.

District court magistrates are authorized by statute to conduct arraignments and set bail using interactive video technology. MCL 767.37a provides, in part:

> "(1) A judge or district court magistrate may conduct initial criminal arraignments and set bail by 2-way interactive video technology communication between a court facility and a prison, jail, or other place where a person is imprisoned or detained. A judge or district court magistrate may conduct initial criminal arraignments and set bail on weekends, holidays, or at any time as determined by the court.

[6] *Miranda v Arizona*, 384 US 436 (1966).

* * *

> (5) This act does not prohibit the use of 2-way interactive video technology for arraignments on the information, criminal pretrial hearings, criminal pleas, sentencing hearings for misdemeanor violations cognizable in the district court, show cause hearings, or other criminal proceedings, to the extent the Michigan supreme court has authorized that use."[7]

B. Arraignment on Arrest by Warrant

1. Arrest by Warrant in County in Which Alleged Offense Occurred

A warrant for an individual's arrest must direct the arresting officer to take the arrestee, without unnecessary delay, before a judge or district court magistrate of the judicial district in which the charged offense occurred. MCL 764.1b.

See also MCR 6.104(A), which provides that an arrested person, if not released beforehand or arraigned by interactive video technology, must be taken without unnecessary delay before a court for arraignment in accordance with the provisions of MCR 6.104. MCR 6.104(B)[8] provides, in relevant part:

> "**Place of Arraignment.** An accused arrested pursuant to a warrant must be taken to a court specified in the warrant. . . . In the alternative, the provisions of this subrule may be satisfied by use of two-way interactive video technology in accordance with MCR 6.006(A)."

See also MCR 4.401(E) ("[a] district court magistrate may use videoconferencing technology in accordance with MCR 2.407 and MCR 6.006").

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[7] Effective January 1, 2013, Administrative Order No. 2012-7 provides that, in certain specific situations, "[t]he State Court Administrative Office is authorized, until further order of [the Michigan Supreme] Court, to approve the use of two-way interactive video technology in the trial courts to allow judicial officers to preside remotely in any proceeding that may be conducted by two-way interactive technology or communication equipment without the consent of the parties under the Michigan Court Rules and statutes." "Notwithstanding any other provision in [MCR 6.006], until further order of the Court, AO No. 2012-7 is suspended." MCR 6.006(E).

[8] Although MCR 6.104(B) is not included in the list of court rules that are expressly applicable to misdemeanors under MCR 6.001(B), MCR 6.104(B) is presumably applicable to misdemeanors under MCR 6.104(A), which *is* expressly applicable to misdemeanors and provides that arraignment is to take place "in accordance with the provisions of [MCR 6.104.]"

2. Arrest By Warrant Outside County in Which Charged Offense Occurred

MCR 6.104(B)[9] provides, in relevant part:

> "**Place of Arraignment.** An accused arrested pursuant to a warrant must be taken to a court specified in the warrant. . . . If the arrest occurs outside the county in which [this court is] located, the arresting agency must make arrangements with the authorities in the demanding county to have the accused promptly transported to the latter county for arraignment in accordance with the provisions of [MCR 6.104]. If prompt transportation cannot be arranged, the accused must be taken without unnecessary delay before the nearest available court for preliminary appearance in accordance with [MCR 6.104(C)]. In the alternative, the provisions of this subrule may be satisfied by use of two-way interactive video technology in accordance with MCR 6.006(A)."[10]

If an accused first appears before the court in a county other than the one in which the offense occurred or, if arrested by warrant, in a county not listed in the arrest warrant, and the accused is not represented by counsel, the court must advise the accused of certain rights and decide whether to release the accused before trial. MCR 6.104(C).[11] Specifically, when an accused appears before a court outside the county in which the alleged offense occurred, the court is responsible for advising the accused that

> "(a) the accused has a right to remain silent,
>
> (b) anything the accused says orally or in writing can be used against the accused in court,
>
> (c) the accused has a right to have a lawyer present during any questioning consented to, and

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[9] Although MCR 6.104(B) is not included in the list of court rules that are expressly applicable to misdemeanors under MCR 6.001(B), MCR 6.104(B) is presumably applicable to misdemeanors under MCR 6.104(A), which *is* expressly applicable to misdemeanors and provides that arraignment is to take place "in accordance with the provisions of [MCR 6.104.]"

[10] See also MCR 4.401(E) ("[a] district court magistrate may use videoconferencing technology in accordance with MCR 2.407 and MCR 6.006").

[11] Although MCR 6.104(C) is not included in the list of court rules that are expressly applicable to misdemeanors under MCR 6.001(B), MCR 6.104(C) may be instructive when conducting an arraignment of a person arrested for a misdemeanor.

> (d) if the accused does not have the money to hire a lawyer, the local indigent criminal defense system will appoint a lawyer for the accused[.]" MCR 6.104(E)(2); see MCR 6.104(C).

An accused's preliminary appearance may be "by way of two-way interactive video technology[.]" MCR 6.104(C).

MCL 764.4 governs arrests by warrant when the arrest and the charged offense do not occur in the same county *and* the offense is one for which bail may not be denied. In such a case, the arrestee has the right to request to be taken before a magistrate of the judicial district in which he or she was arrested. MCL 764.4. In those circumstances:

- The court may take from the person a recognizance with sufficient sureties for the accused's appearance within 10 days before a court in the district in which the charged offense occurred. MCL 764.5.

- The court must certify on the recognizance that the accused was permitted to post bail and must deliver the recognizance to the arresting officer. Without unnecessary delay, the arresting officer must see that the recognizance is delivered to the court in which the accused will be appearing. MCL 764.6.

- If the court refuses to permit the arrestee to post bail or if insufficient bail is offered, the official having charge of the arrestee must take him or her before a magistrate in the judicial district in which the charged offense was committed. MCL 764.7.

- The interim bond provisions in MCL 780.581 apply to misdemeanor arrests by warrant, unless the alleged offense is a violation of MCL 764.15a (warrantless arrest only) or a substantially corresponding local ordinance; a violation of MCL 750.81, if the arrestee is in a specified relationship with the victim, or a substantially corresponding local ordinance; or a violation of MCL 750.81a, if the arrestee is in a specified relationship with the victim. MCL 780.582; MCL 780.582a(1).[12]

MCL 765.6e governs detention on an arrest warrant that originated in another county. "Except in cases in which the person is alleged to have committed an assaultive crime or an offense involving domestic violence, a person who is detained

[12] See Section 3.4 for discussion of interim bond.

on warrant of arrest in a county other than the county from which the warrant originated must be released from custody if the county from which the warrant originated does not make arrangements within 48 hours from the time the person was detained to pick the person up and does not in fact pick the person up within 72 hours after the time the person was detained." MCL 765.6e(1). "If a person is released from custody under [MCL 765.6e], the releasing facility must contact the originating court and obtain a court date for the defendant to appear." MCL 765.6e(1).

Each district court must "establish a communication protocol to enable the swift processing of individuals detained on a warrant of arrest that originated in another county," and also "establish a hearing protocol for individuals detained on a warrant that originated in another county," that includes "the use of 2-way interactive video technology, when appropriate." MCL 764.6f(1)-(2).

3. Interim Bail When Arrest is Made by Warrant

MCR 6.102(H), governing interim bail when arrest is made by warrant, states:

> **"Release on Interim Bail.** If an accused has been arrested pursuant to a warrant that includes an interim bail provision, the accused must either be arraigned promptly or released pursuant to the interim bail provision. The accused may obtain release by posting the bail on the warrant and by submitting a recognizance to appear before a specified court at a specified date and time, provided that
>
> > (1) the accused is arrested prior to the expiration date, if any, of the bail provision;
> >
> > (2) the accused is arrested in the county in which the warrant was issued, or in which the accused resides or is employed, and the accused is not wanted on another charge;
> >
> > (3) the accused is not under the influence of liquor or controlled substance; and
> >
> > (4) the condition of the accused or the circumstances at the time of arrest do not otherwise suggest a need for judicial review of the original specification of bail."

Provisions similar to those in MCR 6.102(H) are also found in MCL 780.581 (interim bail and warrantless arrests), which, subject to the conditions of MCL 780.582a, is made applicable to arrests on warrants by MCL 780.582.[13]

C. Arraignment on Arrest Without a Warrant

1. Warrantless Arrest in County in Which Charged Offense Occurred

MCL 764.15 sets out circumstances under which an officer may arrest a person without a warrant. For example, a police officer may arrest a person without a warrant for a felony, misdemeanor, or ordinance violation that is committed in the officer's presence, MCL 764.15(1)(a), or for a felony committed outside the officer's presence, MCL 764.15(1)(b); additionally, a police officer who has reasonable cause to believe a person committed a felony or a misdemeanor offense punishable by more than 92 days of imprisonment may arrest that person without a warrant and without having witnessed the criminal conduct, MCL 764.15(1)(c)-(d). Additional exceptions to the warrant requirement for misdemeanor arrests include arrests for offenses involving the operation of a vehicle, snowmobile, ORV, or vessel while intoxicated or visibly impaired, MCL 764.15(1)(h)-(l), and arrests for domestic assault, MCL 764.15a.

An accused arrested without a warrant must be taken to a court in the judicial district in which the offense allegedly occurred. MCR 6.104(B).[14] MCL 764.13 provides that a peace officer who arrests an individual without a warrant must, without unnecessary delay, take the arrestee before a magistrate in the district in which the offense occurred and present the magistrate with a complaint stating the offense for which the individual was arrested. See also MCL 780.581(1), which provides:

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[13] See Chapter 3 for additional discussion of bail.

[14] Although MCR 6.104(B) is not included in the list of court rules that are expressly applicable to misdemeanors under MCR 6.001(B), MCR 6.104(B) is presumably applicable to misdemeanors under MCR 6.104(A), which *is* expressly applicable to misdemeanors and provides that arraignment is to take place "in accordance with the provisions of [MCR 6.104.]" Effective May 22, 2017, the Department of Licensing and Regulatory Affairs approved proposed standards submitted pursuant to the Michigan Indigent Defense Commission Act (MIDCA) by the Michigan Indigent Defense Commission, including that "[w]here there are case-specific interim bonds set, counsel at arraignment shall be prepared to make a de novo argument regarding an appropriate bond regardless of and, indeed, in the face of, an interim bond set prior to arraignment which has no precedential effect on bond-setting at arraignment." MIDC Standard 4(A). See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 4 for discussion of the MIDCA.

> "If a person is arrested without a warrant for a misdemeanor or a violation of a city, village, or township ordinance, and the misdemeanor or violation is punishable by imprisonment for not more than 1 year, or by a fine, or both, the officer making the arrest shall take, without unnecessary delay, the person arrested before the most convenient magistrate of the county in which the offense was committed to answer to the complaint."

MCR 6.104(D)[15] provides:

> "**Arrest Without Warrant.** If an accused is arrested without a warrant, a complaint complying with MCR 6.101 must be filed at or before the time of arraignment. On receiving the complaint and on finding probable cause, the court must either issue a warrant or endorse the complaint as provided in MCL 764.1c. Arraignment of the accused may then proceed in accordance with [MCR 6.104(E)]."

MCR 6.101 contains the requirements of a criminal complaint.

> "A complaint is a written accusation that a named or described person has committed a specified criminal offense. The complaint must include the substance of the accusation against the accused and the name and statutory citation of the offense. At the time of filing, specified case initiation information[16] shall be provided in the form and manner approved by the State Court Administrative Office." MCR 6.101(A).

When an individual has been arrested without a warrant, the law requires also that a prompt determination of probable cause be made. See *People v Mallory*, 421 Mich 229, 239 n 4 (1984). Under MCL 764.1c(1), if an individual is in custody after a warrantless arrest, a magistrate must determine if there exists reasonable cause to believe the individual in custody committed the offense; if the court finds reasonable cause, it must either:

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[15] Although MCR 6.104(D) is not included in the list of court rules that are expressly applicable to misdemeanors under MCR 6.001(B), MCR 6.104(D) may be instructive when conducting an arraignment of a person arrested without a warrant for a misdemeanor.

[16] "At a minimum, specified case information shall include the name, an address for service, an e-mail address, and a telephone number of every party[.]" MCR 1.109(D)(2).

- issue a warrant for the accused's arrest according to MCL 764.1b, or

- endorse the complaint according to MCL 764.1c.

If the court endorses the complaint on a finding of reasonable cause, the complaint constitutes a warrant as well as a complaint. MCL 764.1c(2). A magistrate "endorses" the complaint by noting the finding of reasonable cause that a crime was committed and that the individual named in the complaint committed it, and directing that the individual accused of the crime be taken before the court in the district in which the crime allegedly occurred. MCL 764.1c(1)(b).

In addition, MCL 764.9c addresses warrantless arrests for misdemeanors or ordinance violations and provides, subject to certain exceptions, an alternative to formal arraignment. MCL 764.9c(1) provides, in relevant part:

> "Except as provided in [MCL 764.9c(3)], if a police officer has arrested a person without a warrant for a misdemeanor or ordinance violation, instead of taking the person before a magistrate and promptly filing a complaint . . . , the officer may issue to and serve upon the person an appearance ticket as defined in [MCL 764.9f] and release the person from custody. The appearance ticket . . . , or other documentation as requested, must be forwarded to the court, appropriate prosecuting authority, or both, for review without delay."[17]

2. Warrantless Arrest Outside County in Which Charged Offense Occurred

Because most warrantless arrests result from the accused's conduct as witnessed by a law enforcement officer or citizen, warrantless arrests most often are made in the county in which the offense occurred. Exceptions may arise, however, such as when an individual cannot be apprehended immediately but is later located and arrested in another county.

MCR 6.104(B)[18] provides, in relevant part:

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[17] See Section 4.14(D) for additional discussion of MCL 764.9c and appearance tickets. See Section 2.17(A) for information on the issuance and restrictions of appearance tickets

[18] Although MCR 6.104(B) is not included in the list of court rules that are expressly applicable to misdemeanors under MCR 6.001(B), MCR 6.104(B) is presumably applicable to misdemeanors under MCR 6.104(A), which *is* expressly applicable to misdemeanors and provides that arraignment is to take place "in accordance with the provisions of [MCR 6.104.]"

> "**Place of Arraignment.** . . . An accused arrested without a warrant must be taken to a court in the judicial district in which the offense allegedly occurred. If the arrest occurs outside the county in which [this court is] located, the arresting agency must make arrangements with the authorities in the demanding county to have the accused promptly transported to the latter county for arraignment in accordance with the provisions of [MCR 6.104]. If prompt transportation cannot be arranged, the accused must be taken without unnecessary delay before the nearest available court for preliminary appearance in accordance with [MCR 6.104(C)]. In the alternative, the provisions of this subrule may be satisfied by use of two-way interactive video technology in accordance with MCR 6.006(A)."

If an accused first appears before the court in a county other than the one in which the offense occurred and the accused is not represented by counsel, the court must advise the accused of certain rights and decide whether to release the accused before trial. MCR 6.104(C).[19] Specifically, when an accused appears before a court outside the county in which the alleged offense occurred, the court is responsible for advising the accused that

> "(a) the accused has a right to remain silent,
>
> (b) anything the accused says orally or in writing can be used against the accused in court,
>
> (c) the accused has a right to have a lawyer present during any questioning consented to, and
>
> (d) if the accused does not have the money to hire a lawyer, the local indigent criminal defense system will appoint a lawyer for the accused[.]" MCR 6.104(E)(2); see MCR 6.104(C).

An accused's preliminary appearance may be "by way of two-way interactive video technology[.]" MCR 6.104(C).

[19] Although MCR 6.104(C) is not included in the list of court rules that are expressly applicable to misdemeanors under MCR 6.001(B), MCR 6.104(C) may be instructive when conducting an arraignment of a person arrested for a misdemeanor.

3. Interim Bail

Subject to the conditions of MCL 780.582a, "if a magistrate is not available or immediate trial cannot be had," an individual arrested without a warrant for a misdemeanor offense or ordinance violation punishable by imprisonment for not more than one year may be entitled to post an interim bond with the arresting officer or other authorized officer. MCL 780.581(2). The bond amount may not exceed the maximum possible fine for the offense, but may not be less than 20 percent of the minimum possible fine for the offense. *Id*.[20]

D. Special Procedures for Violations of Part 801 of the Natural Resources and Environmental Protection Act (NREPA)

See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 5, for information on arraigning a resident or nonresident who has been arrested without a warrant for a violation of the NREPA.

4.9 Voluntary Appearance

"If a defendant, wanted on a bench or arrest warrant, voluntarily presents himself or herself to the court that issued the warrant within one year of the warrant issuance, the court must either: (1) arraign the defendant, if the court is available to do so within two hours of the defendant presenting himself or herself to the court; or (2) recall the warrant and schedule the case for a future appearance." MCR 6.105(A). See also MCL 762.10d(3). "It is presumed the defendant is not a flight risk when the court sets bond or other conditions of release at an arraignment under [MCR 6.105]." MCR 6.105(A). See also MCL 762.10d(2). However, MCR 6.105 "does not apply to assaultive crimes or domestic violence offenses, as defined in MCL 762.10d, or to defendants who have previously benefited from [MCR 6.105] on any pending criminal charge." MCR 6.105(B). See also MCL 762.10d(1).

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[20] Effective May 22, 2017, the Department of Licensing and Regulatory Affairs approved proposed standards submitted pursuant to the Michigan Indigent Defense Commission Act (MIDCA) by the Michigan Indigent Defense Commission, including that "[w]here there are case-specific interim bonds set, counsel at arraignment shall be prepared to make a de novo argument regarding an appropriate bond regardless of and, indeed, in the face of, an interim bond set prior to arraignment which has no precedential effect on bond-setting at arraignment." MIDC Standard 4(A).

See Section 4.4 for discussion of the MIDCA. See Chapter 8 for additional discussion of bail.

4.10 Communication Protocol

Each district court must "establish a communication protocol to enable the swift processing of individuals detained on a warrant of arrest that originated in another county," and also "establish a hearing protocol for individuals detained on a warrant that originated in another county," that includes "the use of 2-way interactive video technology, when appropriate." MCL 764.6f(1)-(2).

4.11 Fingerprinting

At a defendant's arraignment for a felony or misdemeanor punishable by more than 92 days' imprisonment, the district court must ensure that the accused's fingerprints have been taken as required by law. MCL 764.29; see also MCR 6.104(E)(6).[21] MCL 764.29 provides:

> "(1) At the time of arraignment of a person on a complaint for a felony or a misdemeanor punishable by imprisonment for more than 92 days, the magistrate shall examine the court file to determine if the person has had fingerprints taken as required by [MCL 28.243[22]].
>
> (2) If the person has not had his or her fingerprints taken prior to the time of arraignment for the felony or the misdemeanor punishable by imprisonment for more than 92 days, upon completion of the arraignment, the magistrate shall do either of the following:
>
> > (a) Order the person to submit himself or herself to the police agency that arrested or obtained the warrant for the arrest of the person so that the person's fingerprints can be taken.
> >
> > (b) Order the person committed to the custody of the sheriff for the taking of the person's fingerprints."[23]

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[21] MCR 6.104(E)(6) is not included in the list of court rules that are expressly applicable to misdemeanors under MCR 6.001(B). MCR 6.104(E)(6) references the collection of biometric data rather than fingerprints.

[22] Note that MCL 28.243(3) creates an exception from the requirement to collect biometric data where a person is arrested for violation of MCL 257.904 (driving while license suspended) or a substantially corresponding local ordinance.

[23] See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, for more information on fingerprinting.

4.12 Waiver of Rights

See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 5, for a detailed discussion of the right to waive arraignment and waiver of the right to counsel.

4.13 Required Advice of Rights and Procedures at Misdemeanor Arraignment[24]

When a defendant is arraigned in district court for a misdemeanor offense over which the district court has jurisdiction, the defendant must be given certain specific information. MCR 6.610(D)(1) states:

> "Whenever a defendant is arraigned on an offense over which the district court has jurisdiction, the defendant must be informed of
>
> (a) the name of the offense;
>
> (b) the maximum sentence permitted by law; and
>
> (c) the defendant's right
>
> (*i*) to the assistance of an attorney at all court proceedings, including arraignment, and to a trial;
>
> (*ii*) (if [MCR 6.610(D)(2)] applies)[25] to an appointed attorney; and
>
> (*iii*) to a trial by jury, when required by law."

This information may be given to the defendant in a writing made part of the file or by the court on the record. MCR 6.610(D)(1). See SCAO Form DC 213, *Advice of Rights and Plea Information*.

At a defendant's arraignment for a misdemeanor punishable by more than 92 days' imprisonment, the district court must ensure that the accused's fingerprints have been taken as required by law.[26] MCL 764.29; see also MCR 6.104(E)(6).[27]

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[24] Note that there are some differences in the required procedures for felony arraignments. See MCR 6.104 and MCR 6.610. Procedures for felony arraignments are discussed in Section 4.17.

[25] MCR 6.610(D)(2) governs an indigent defendant's right to appointed counsel when a conviction could result in imprisonment.

[26] See Section 4.10 for discussion of fingerprinting requirements.

[27] MCR 6.104(E)(6) is not included in the list of court rules that are expressly applicable to misdemeanors under MCR 6.001(B). MCR 6.104(E)(6) references the collection of biometric data rather than fingerprints.

If an accused first appears before the court in a county other than the one in which the offense occurred or, if arrested by warrant, in a county not listed in the arrest warrant, and the accused is not represented by counsel, the court must advise the accused of certain rights and decide whether to release the accused before trial.[28] MCR 6.104(C).[29]

See the Michigan Judicial Institute's checklist for misdemeanor arraignments in district court.

A. Right To Counsel

A criminal defendant's right to the assistance of counsel is recognized in the federal and state constitutions and by statute. US Const, Am VI; Const 1963, art 1, § 20; MCL 763.1; MCL 780.981 *et seq*. However, there is no federal or state constitutional right to appointed counsel when a defendant is charged with a misdemeanor and no sentence of imprisonment is imposed. *People v Richert (After Remand)*, 216 Mich App 186, 192-194 (1996). "The indigency determination shall be made and counsel appointed to provide assistance to the defendant as soon as the defendant's liberty is subject to restriction by a magistrate or judge[; r]epresentation includes but is not limited to the arraignment on the complaint and warrant." MIDC Standard 4.[30]

"When a person charged with having committed a crime appears before a magistrate without counsel, the person shall be advised of his or her right to have counsel appointed." MCL 775.16. See also MCR 6.005(A). "If the person states that he or she is unable to procure counsel, the magistrate shall appoint counsel, if the person is eligible for appointed counsel under the [Michigan Indigent Defense Commission Act (MIDCA), MCL 780.981—MCL 780.1003[31]]." MCL 775.16. "The selection of lawyers and the payment for their services shall not be made by the judiciary or employees reporting to the judiciary. Similarly, the selection and approval of, and payment for, other expenses necessary for

[28] See Section 4.8(B)(2) and Section 4.8(C)(2) for discussion of applicable procedures when an arrest is made outside the county in which the offense allegedly occurred.

[29] Although MCR 6.104(C) is not included in the list of court rules that are expressly applicable to misdemeanors under MCR 6.001(B), MCR 6.104(C) may be instructive when conducting an arraignment of a person arrested for a misdemeanor.

[30] The requirement that counsel be appointed for arraignment under MIDC Standard 4 does not conflict with the US Constitution, the Michigan Constitution, or the Michigan Court Rules. *Oakland Co v State of Michigan*, 325 Mich App 247 (2018) (although the US Constitution does not *require* the appointment of counsel at arraignment, appointment at this juncture is not constitutionally prohibited, and through the MIDCA, the Michigan Legislature has enacted a protection greater than that secured by the United States Constitution). "Absent a state constitutional prohibition, states are free to enact legislative 'protections greater than those secured under the United States Constitution[.]'" *Id*. at 269, quoting *People v Harris*, 499 Mich 332, 338 (2016).

providing effective assistance of defense counsel shall not be made by the judiciary or employees reporting to the judiciary." MIDC Standard 5(A). "The court's role shall be limited to: informing defendants of right to counsel; making a determination of indigency and entitlement to appointment; if deemed eligible for counsel, referring the defendant to the appropriate agency (absent a valid waiver). Judges are permitted and encouraged to contribute information and advice concerning the delivery of indigent criminal defense services, including their opinions regarding the competence and performance of attorneys providing such services." MIDC Standard 5(B) "Only in rare cases may a judge encourage a specific attorney be assigned to represent a specific defendant because of unique skills and abilities that attorney possesses. In these cases, the judge's input may be received and the system may take this input into account when making an appointment, however the system may not make the appointment solely because of a recommendation from the judge." MIDC Standard 5 (staff comment).[32] See also MCR 6.610(D)(1)(c), which requires the district court at a misdemeanor arraignment to advise a defendant of his or her right to the assistance of counsel and to appointed counsel under certain circumstances, and MCR 6.005(B),[33] which requires the court, under certain circumstances, to determine whether a defendant is indigent and details the process for determining indigency. If the defendant requests a lawyer and claims financial inability to retain one, the court must refer the defendant to the local funding unit's appointing authority for indigency screening. MCR 6.005(B). If there is no appointing authority, or if the defendant seeks judicial review of the appointing authority's indigency determination, the court must make an indigency determination guided by the factors outlined in

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[31] The MIDCA applies to an indigent defendant who "is being prosecuted or sentenced for a crime for which an individual may be imprisoned upon conviction, beginning with the defendant's initial appearance in court to answer to the criminal charge." MCL 780.983(f)(*i*) (defining "'[i]ndigent criminal defense services'" for purposes of the MIDCA). The MIDCA requires the trial court to "assure that each criminal defendant is advised of his or her right to counsel." MCL 780.991(1)(c). It further requires the indigent criminal defense system to make "[a] preliminary inquiry regarding, and . . . determin[e,] . . . the indigency of any defendant, including a determination regarding whether a defendant is partially indigent, . . . not later than at the defendant's first appearance in court." MCL 780.991(3)(a). The trial court may play a role in the determination of indigency. *Id*. The MIDCA does not violate the separation of powers doctrine of the Michigan Constitution because "any sharing or overlapping of functions required by the [MIDCA] is sufficiently specific and limited that it does not encroach on the constitutional authority of the judiciary." *Oakland Co v State of Michigan*, 325 Mich App 247, 262 (2018). "[T]he [MIDCA] contains no provision authorizing the MIDC to force the judiciary to comply with the minimum standards, nor does the [MIDCA] purport to control what happens in court." *Id*. at 264. See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 4, for discussion of the MIDCA.

[32] See the MIDC's *Frequently Asked Questions About Standard 5* for more information.The link to this resource was created using Perma.cc and directs the reader to an archived record of the page.

[33] MCR 6.005(B) is applicable to both felony and misdemeanor cases. MCR 6.001(A)-(B). Note that MCR 6.005(B) has not yet been amended following the enactment of the Michigan Indigent Defense Commission Act (MIDCA), MCL 780.981 *et seq*. See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, for discussion of the MIDCA.

MCR 6.005(B)(1)-(6). MCR 6.005(B). "A defendant is considered to be indigent if he or she is unable, without substantial financial hardship to himself or herself or to his or her dependents, to obtain competent, qualified legal representation on his or her own. Substantial financial hardship is rebuttably presumed if the defendant receives personal public assistance, including under the food assistance program, temporary assistance for needy families, Medicaid, or disability insurance, resides in public housing, or earns an income less than 140% of the federal poverty guideline. A defendant is also rebuttably presumed to have a substantial financial hardship if he or she is currently serving a sentence in a correctional institution or is receiving residential treatment in a mental health or substance abuse facility." MCL 780.991(3)(b). If a defendant is not fully indigent, he or she may be considered partially indigent. See MCL 780.991(3)(d). See also MCR 6.005(B), which sets forth several factors that guide the determination of indigency:

> "(1) present employment, earning capacity and living expenses;
>
> (2) outstanding debts and liabilities, secured and unsecured;
>
> (3) whether the defendant has qualified for and is receiving any form of public assistance;
>
> (4) availability and convertibility, without undue financial hardship to the defendant and the defendant's dependents, of any personal or real property owned;
>
> (5) the rebuttable presumptions of indigency listed in the MIDC's indigency standard; and
>
> (6) any other circumstances that would impair the ability to pay a lawyer's fee as would ordinarily be required to retain competent counsel." MCR 6.005(B)(1)-(6).

Note also that the MIDC must "promulgate objective standards for indigent criminal defense systems to determine whether a defendant is indigent or partially indigent," which must include "prompt judicial review, under the direction and review of the supreme court[.]" See MCL 780.991(3)(e); Standard for Determining Indigency and Contribution, Judicial Review. The MIDC has set out a minimum standard for determining indigency and contribution "for those local funding units that elect to assume the responsibility of making indigency determinations and for setting the amount that a local funding unit could require a partially indigent defendant to contribute to their defense"; however, "[a] plan that leaves

screening decisions to the court can be acceptable." Standard for Determining Indigency and Contribution, Indigency Determination (a).

Because "[a]ctual indigency determinations may still be made at the arraignment in conformance with the court rule," "[t]he language of MCR 6.005(B) . . . does not expressly conflict with the language of Standard 4, requiring the assignment of counsel as soon as the defendant is deemed eligible for [indigent criminal defense] services, that the indigency determination be made and counsel appointed as soon as the defendant's liberty is subject to restriction, and that representation includes but is not limited to arraignment." *Oakland Co v State of Michigan*, 325 Mich App 247, 270 (2018). It is possible that an on-duty arraignment attorney represent a defendant at arraignment but different counsel be appointed for future proceedings. *Id*.

The court may require the defendant to contribute to the cost of an attorney if the defendant is able to pay part of the cost. MCR 6.005(C).[34] The order of contribution permitted under MCR 6.005(C) is "an on-going obligation during the term of the appointment" to contribute to the cost of an attorney and is distinct from reimbursement for attorney fees, "which suggests an obligation arising after the term of appointment has ended[.]" *People v Jose*, 318 Mich App 290, 298 (2016). Although MCR 6.005(C) "'pertains to contribution . . . [it] does not preclude trial courts from ordering subsequent reimbursement of expenses paid for court-appointed counsel.'" *Jose*, 318 Mich App at 298, quoting *People v Nowicki*, 213 Mich App 383, 386-387, n 3 (1995).

See also SCAO Form MC 222, *Request for Court-Appointed Attorney and Order*.

When authorized by the chief judge of the district, a district court magistrate may "[a]pprove and grant petitions for the appointment of an attorney to represent an indigent defendant accused of any misdemeanor punishable by imprisonment for not more than 1 year[.]" MCL 600.8513(2)(a).

See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 4, for more information on a defendant's right to counsel, including waiver of that right, determining indigency for purposes of appointing counsel, the MIDCA, and situations involving multiple defendants.

[34] MCR 6.005(C) is applicable to both felony and misdemeanor cases. MCR 6.001(A)-(B).

B. Entering a Plea at Arraignment[35]

At arraignment, a plea to the charge must be entered after the court has informed the defendant of the charge as it is stated in the warrant or complaint:

> "At the arraignment of an accused charged with a misdemeanor or an ordinance violation, the magistrate shall read to the accused the charge as stated in the warrant or complaint. The accused shall plead to the charge, and the plea shall be entered in the court's minutes. If the accused refuses to plead, the magistrate shall order that a plea of not guilty be entered on behalf of the accused." MCL 774.1a.

"[MCL 774.1a] calls for the defendant to plead, but directs the magistrate to take no action other than to enter a plea into the court's minutes." *People v VanEss*, ___ Mich App ___, ___ (2024) (observing that "hearing a defendant's plea at arraignment and entering it into the court's minutes suggests a process by which the magistrate may, when authorized, set the matter to proceed to sentencing or . . . the magistrate notes defendant's intent to plead guilty and sets the matter for a formal (binding) plea and sentence before the district court judge"). Notably, "a district court judge has the express authority to supersede any action by a district court magistrate, even without a formal appeal." *Id*. at ___, citing MCR 4.401(C).

With the court's permission, a defendant may stand mute or plead not guilty without a "formal" or "in-court" arraignment by filing a written statement signed by the defendant and any defense attorney of record. MCR 6.610(D)(4) provides:

> "The court may allow a defendant to enter a plea of not guilty or to stand mute without formal arraignment by filing a written statement signed by the defendant and any defense attorney of record, reciting the general nature of the charge, the maximum possible sentence, the rights of the defendant at arraignment, and the plea to be entered. The court may require that an appropriate bond be executed and filed and appropriate and reasonable sureties posted or continued as a condition precedent to allowing the defendant to be arraigned without personally appearing before the court."[36]

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[35] See Chapter 5 for discussion of pleas.

[36] See SCAO Form DC 223, *Plea by Mail*.

C. Pretrial Release

Except as otherwise provided by law, an individual charged with a criminal offense is entitled to bail. MCL 765.6(1); Const 1963, art 1, § 15; MCR 6.106(A). Unless an order has already entered, the court must determine the conditions of a defendant's release at the defendant's arraignment on the complaint and/or warrant. MCR 6.106(A). A court may not deny pretrial release to a person charged with a misdemeanor. Const 1963, art 1, § 15; MCR 6.106(B). For persons charged with misdemeanors, the court must order the release of the defendant on personal recognizance or an unsecured appearance bond, or subject to a conditional release, with or without money bail (10 percent, cash, or surety). MCR 6.106(A)(2)-(3).

See SCAO Form MC 240, *Pretrial Release Order*. See Chapter 3 for more information on pretrial release.

4.14 Misdemeanor Traffic Violations and Appearance Tickets[37]

A. Beginning a Misdemeanor Traffic Case

A misdemeanor traffic case begins in one of three ways:

- when a law enforcement officer serves an individual with a written citation for a traffic violation and the citation is filed in district court, MCR 6.615(A)(1)(a)(subject to the exceptions in MCL 764.9c);[38]
- when a sworn complaint is filed in district court and a summons or an arrest warrant is issued, MCR 6.615(A)(1)(b); or
- when other special procedures authorized by statute are taken,[39] MCR 6.615(A)(1)(c).

The written citation may serve as a sworn complaint and summons that commands the offender's initial appearance in court and, for

[37] See the Michigan Judicial Institute's *Traffic Benchbook* for more information.

[38] "The citation may be prepared electronically or on paper." MCR 6.615(A)(1)(a). The citation must be signed by the officer in accordance with MCR 1.109(E)(4); if a citation is prepared electronically and filed with a court as data, the name of the officer that is associated with issuance of the citation satisfies this requirement." MCR 6.615(A)(1)(a).

[39] Procedures for citing out-of-state motorists, for example. See the Michigan Judicial Institute's *Traffic Benchbook* for more information.

misdemeanor traffic cases, to respond to the violation alleged by the citation. MCR 6.615(A)(2)(a)-(b).

B. Arraignment on a Misdemeanor Citation

A person arrested for a misdemeanor violation of MCL 257.625(1) (operating while intoxicated), MCL 257.625(3) (operating while visibly impaired), MCL 257.625(6) (zero tolerance/minor operation), MCL 257.625(7) (operating while intoxicated or visibly impaired with a minor in the vehicle), MCL 257.625(8) (operating with any amount of certain controlled substances in the body), or MCL 257.625m (operating a commercial motor vehicle with an unlawful blood alcohol content), or for a violation of a local ordinance substantially corresponding to MCL 257.625(1), MCL 257.625(3), MCL 257.625(6), MCL 257.625(8), or MCL 257.625m,[40] must be arraigned on the citation, complaint, or warrant within 14 days of the arrest or service of the warrant. MCL 257.625b(1).

A district court magistrate may conduct arraignments on misdemeanor violations if the magistrate is so authorized by statute and by the judges of the district. MCR 6.615(C).[41]

Failure to Appear or Respond. Generally, a court must issue an order to show cause if "a defendant fails to appear or otherwise respond to any matter pending relative to a misdemeanor citation issued under MCL 764.9c." MCR 6.615(B). However, a "court may immediately issue a bench warrant, rather than an order to show cause, if the court has a specific articulable reason to suspect that any of the following apply and states it on the record:

> (a) the defendant has committed a new crime.
>
> (b) the defendant's failure to appear is the result of a willful intent to avoid or delay the adjudication of the case.
>
> (c) another person or property will be endangered if a warrant is not issued." MCR 6.615(B)(1).

"If a defendant fails to appear or otherwise respond to any matter pending relative to a misdemeanor traffic citation, the court must also initiate the procedures required by MCL 257.321a." MCR 6.615(2).[42]

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[40] See the Michigan Judicial Institute's *Traffic Benchbook* for detailed information on these offenses.

[41] See Section 5.2 for discussion of a district court magistrate's authority.

[42] MCL 257.321a provides for the suspension of an operator's license.

MCL 257.321a provides different procedures depending on the offense involved. Generally, for offenses for which license suspension is allowed under the Michigan Vehicle Code or a substantially corresponding local ordinance that are **not** offenses enumerated in MCL 257.321a(2), the following procedures apply:

- 28 days or more after an individual fails to answer a citation or notice to appear in court or fails to comply with an order or judgment, the court must give notice by mail at the individual's last-known address;

- the notice must indicate that if the individual fails to appear or comply within 14 days after the notice is issued, the individual's license will be suspended, see SCAO Form MC 216, *14-Day Notice, Traffic*;

- if the individual fails to appear or comply within the 14-day period, the court must inform the Michigan Secretary of State within 14 days;

- upon receiving notice, the Michigan Secretary of State must immediately suspend the license of the individual and notify the individual of the suspension by regular mail at that individual's last-known address. MCL 257.321a(1).

For an individual who is charged with or convicted of an enumerated offense in MCL 257.321a(2), the following procedures apply:

- if the individual fails to answer a citation or notice to appear in court or fails to comply with an order or judgment, the court must immediately give notice by first-class mail sent to the individual's last-known address to appear within seven days after the notice is issued;

- the notice must indicate that if the individual fails to appear within seven days after the notice is issued, or fails to comply with the court's order/judgment within 14 days, the Michigan Secretary of State will suspend the individual's license, see SCAO Form 216a, *Notice of Noncompliance*;

- the court must immediately inform the Michigan Secretary of State if the individual fails to appear within the seven-day or 14-day period;

- upon receiving notice, the Michigan Secretary of State must immediately suspend the individual's license and notify the individual of the suspension by first-class mail sent to the individual's last-known address. MCL 257.321a(2).

"Notwithstanding any provision of law to the contrary and except in cases where the complaint is for an assaultive crime or an offense involving domestic violence, in the event that a defendant fails to appear for a court hearing and it is the defendant's first failure to appear in the case, there is a rebuttable presumption that the court must wait 48 hours before issuing a bench warrant to allow the defendant to voluntarily appear. If the defendant does not appear within 48 hours, the court shall issue a bench warrant unless the court believes there is good reason to instead schedule the case for further hearing." MCL 764.3(1). "The court may overcome the presumption under [MCL 764.3(1)] and issue an immediate bench warrant for the defendant's failure to appear if the court has a specific articulable reason to suspect that any of the following apply:

(a) The defendant has committed a new crime.

(b) A person or property will be endangered if a bench warrant is not issued.

(c) Prosecution witnesses have been summoned and are present for the proceeding.

(d) The proceeding is to impose a sentence for the crime.

(e) There are other compelling circumstances that require the immediate issuance of a bench warrant." MCL 764.3(3).

The court must state its reasons for departing from the presumption under MCL 764.3(1) if it issues an immediate bench warrant. MCL 764.3(4). "When a court delays the issuance of a warrant, the court shall not revoke the release order or declare bail money deposited or the surety bond, if any, forfeited. Upon the issuance of the arrest warrant, the court may then enter an order revoking the release order and declaring the bail money deposited, personal recognizance bond, surety bond, or 10% bond, if any, forfeited." MCL 764.3(2).

C. Conducting Hearings

"A misdemeanor case must be conducted in compliance with the constitutional and statutory procedures and safeguards applicable to misdemeanors cognizable by the district court." MCR 6.615(D).

D. Appearance Tickets

When a police officer makes a warrantless arrest for a misdemeanor or ordinance violation, the officer may, instead of bringing the accused before a magistrate and promptly filing a complaint, issue and serve on the offender an appearance ticket, and release the person from custody. MCL 764.9c(1). See Section 2.17 for information regarding the issuance and restrictions of appearance tickets.

"If after the service of an appearance ticket and the filing of a complaint for the offense designated on the appearance ticket the defendant does not appear in the designated local criminal court within the time the appearance ticket is returnable, the court may issue a summons or a warrant as provided in this [MCL 764.9e]." MCL 764.9e(1). "Notwithstanding any provision of law to the contrary, in the event that a defendant fails to appear for a court hearing within the time the appearance ticket is returnable there is a rebuttable presumption that the court must issue an order to show cause why the defendant failed to appear instead of issuing a warrant." MCL 764.9e(2). "The court may overcome the presumption and issue a warrant if it has a specific articulable reason to suspect that any of the following apply:

> (a) The defendant committed a new crime.
>
> (b) The defendant's failure to appear is the result of a willful intent to avoid or delay the adjudication of the case.
>
> (c) Another person or property will be endangered if a warrant is not issued." MCL 764.9e(3).

"If the court overcomes the presumption under [MCL 764.9e(2)] and issues a warrant, the court must state on the record its reasons for doing so." MCL 764.9e(4).

No sworn complaint is necessary for the magistrate's acceptance of an accused's plea on an appearance ticket issued under MCL 764.9c. MCL 764.9g(1). If, however, the accused pleads not guilty to the offense charged in the appearance ticket, a sworn complaint must be filed with the magistrate to proceed with prosecuting the offender, *id.*, and no arrest warrant may issue for an offense listed on an appearance ticket until a sworn complaint is filed, *City of Plymouth v McIntosh*, 291 Mich App 152, 162 (2010). "[N]ot all appearance tickets or citations are considered sworn complaints under the Michigan Vehicle Code or the Code of Criminal Procedure, and not every appearance before the magistrate necessarily is preceded by the issuance of a complaint." *City of Plymouth*, 291 Mich App at 162.

"This procedure[] . . . is designed to ensure that, following a plea of not guilty, until the magistrate has in front of him or her either a sworn complaint or a citation that takes the place of a sworn complaint, further proceedings do not occur." *Id*. Where an appearance ticket is issued for a misdemeanor violation and is in the form of a "Uniform Law Citation" containing the language, "'I declare under the penalties of perjury that the statements above are true to the best of my information, knowledge, and belief[,]'" it constitutes a sworn complaint under MCL 257.727c, MCL 764.1e, and MCR 6.615. *City of Plymouth*, 291 Mich App at 153-154, 154 n 1, 163. A prosecutor is not required to file a second sworn complaint in order to proceed on a not guilty plea. *Id*. at 163.

Similarly, a peace officer may issue a written citation to a person arrested without a warrant for most misdemeanor traffic offenses. See MCL 257.728(1); MCR 6.615(A)(1)(a). If the officer issues a citation for a misdemeanor punishable by imprisonment for not more than 90 days, a magistrate may accept the accused's plea of guilty without the filing of a sworn complaint. MCL 257.728e. However, if the accused pleads not guilty, a sworn complaint must be filed with the magistrate. *Id*.

A district court magistrate may accept an accused's guilty plea without requiring that a sworn complaint be filed when the offense charged falls within the district court magistrate's authority under MCL 600.8511. MCL 764.9g(2).[43]

4.15 Violations of the Marine Safety Act[44]

See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 5, for information on arraignments involving violations of the Marine Safety Act, MCL 324.80101 *et seq*.

4.16 A Crime Victim's Rights Following Misdemeanor Arraignment

Article 3 of the Crime Victim's Rights Act (CVRA), MCL 780.751 *et seq*., assigns certain rights and responsibilities to victims of serious misdemeanors.[45] Although many provisions of Article 3 of the CVRA address a law enforcement agency's or prosecuting attorney's obligations,

[43] See Section 4.5 for discussion of a district court magistrate's authority.

[44] See the Michigan Judicial Institute's *Recreational Vehicles Benchbook* for more information.

[45] Some of the enumerated serious misdemeanors in MCL 780.811(1)(a) are punishable by more than one year in prison and are therefore cognizable in the circuit court. See the Michigan Judicial Institute's *Crime Victim Rights Benchbook* for a detailed and comprehensive discussion of the Crime Victim's Rights Act.

district court magistrate's may find it helpful to be cognizant of the following CVRA requirements and procedures as early as the arraignment:

- **Identifying information about a crime victim.** An officer investigating a serious misdemeanor involving a victim must file with the complaint, appearance ticket, or traffic citation a separate written statement containing the name, address, and telephone number of each victim. MCL 780.812. Victim information is not a matter of public record, and statutory law exempts it from disclosure under the Freedom of Information Act (FOIA), MCL 15.231 *et seq*. MCL 780.812; MCL 780.830.

- **Notice required when the defendant pleads guilty or no contest to a serious misdemeanor.** Within 48 hours of accepting a defendant's guilty or no contest plea to a serious misdemeanor, the court must notify the prosecuting attorney of the plea and the date scheduled for sentencing. MCL 780.816(1). The notice must include the name, address, and telephone number of the victim. *Id*. "The notice is not a public record and is exempt from disclosure under the freedom of information act, [MCL 15.231 to MCL 15.246]." MCL 780.816(1).

- **Notice required when no plea to a serious misdemeanor is accepted.** Even when no plea is accepted at the arraignment and further proceedings are expected, the court must notify the prosecuting attorney of that fact within 48 hours of the arraignment. MCL 780.816(1).

- **Notice requirements in cases involving deferred judgments or delayed sentences.** In all cases, the court, the Department of Corrections (DOC), the Department of Health and Human Services (DHHS), a county sheriff, or a prosecuting attorney must provide notice to a victim if the case against the defendant is resolved by assignment of the defendant to trainee status, by a delayed sentence or deferred judgment of guilt, or in another way that is not an acquittal or unconditional dismissal. In performing this duty, the court, DOC, DHHS, county sheriff, or prosecuting attorney may furnish information or records to the victim that would otherwise be closed to public inspection, including information or records related to a defendant's youthful trainee status. MCL 780.752a; MCL 780.781a; MCL 780.811b(1).[46] Notice must be mailed to the address provided by the victim, except as otherwise provided in MCL 780.861. If the victim is a program participant

[46] See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 2*, Chapter 9, for discussion of deferment and delayed sentencing, including specialized treatment courts.

of the Address Confidentiality Program,[47] the victim may use the address designated by the department of the attorney general. MCL 780.811b(2).

- **Prosecutor's obligation to notify the crime victim.** Within 48 hours after receiving notice from the court that at arraignment, a defendant pleaded guilty or no contest to a serious misdemeanor, or that no plea was accepted, the prosecutor must give the crime victim written notice of the statutory rights specified in MCL 780.816(1)(a)-(f).

- **Victim impact statements (written).** The court may order the preparation of a presentence investigation report (PSIR) in any criminal misdemeanor case. MCL 771.14(1). If a crime victim requests, a written impact statement must be included in the PSIR if one is prepared. MCL 771.14(2)(b). In juvenile delinquency, designated, and serious misdemeanor cases, the victim also has the right to submit an oral or written impact statement if a disposition report or PSIR is prepared. MCL 780.792(1); MCL 780.792(3); MCL 780.824. If no PSIR is prepared in a serious misdemeanor or designated case involving a misdemeanor, the court must notify the prosecuting attorney of the date and time of sentencing at least 10 days before the disposition or sentencing, and the victim may submit a written impact statement to the prosecutor or court. MCL 780.792(2)-(3); MCL 780.825(1).

- **Victim impact statements (oral).** Before imposing sentence and on the record, the trial court is required to "address any victim of the crime who is present at sentencing or any person the victim has designated to speak on the victim's behalf and permit the victim or the victim's designee to make an impact statement." MCR 6.425(D)(1)(c)(iv); MCR 6.610(G)(1)(c)(iv). A crime victim has the right to appear and make an oral impact statement at the sentencing of the defendant irrespective of whether a presentence report is prepared. MCL 780.825(1). A crime victim also has the right to appear and make an oral impact statement at a juvenile's disposition or sentencing. MCL 780.793(1). The victim may elect to remotely provide the oral impact statement. MCL 780.793(1); MCL 780.825(1). The defendant or juvenile must be physically present in the courtroom at the time a victim makes an oral impact statement, unless the court has determined, in its discretion, that the defendant or juvenile is behaving in a disruptive manner or presents a threat to the safety of any individuals in the courtroom. MCL 780.793(3); MCL 780.825(2). The court may

[47] MCL 780.851 *et seq*.

consider any relevant statement provided by the victim regarding the defendant being physically present during the victim's oral impact statement when making its determination. MCL 780.793(3); MCL 780.825(2).

- **Restitution is required of any defendant convicted of a misdemeanor punishable by not more than one year.** Full restitution is not limited to serious misdemeanor convictions. At sentencing for a misdemeanor punishable by imprisonment for one year or less, the court must order the defendant to "make full restitution to any victim of the defendant's course of conduct that gives rise to the conviction[.]" MCL 780.826(2). See also MCR 6.610(G)(1)(e) (requiring the restitution order to indicate a dollar amount).

4.17 Procedure Required for Felony Arraignments in District Court

MCR 6.610(I) specifies the procedure to be employed by a district court when a defendant first appears in district court for arraignment on an offense over which the *circuit* court has trial jurisdiction. Arraignment procedure for felony offenses is also covered by MCR 6.104(E). See the Michigan Judicial Institute's checklist regarding felony arraignment in district court.

When a defendant is arraigned on a felony charge or a misdemeanor charge punishable by more than one year of imprisonment,[48] the court must:

- "inform the accused of the nature of the offense charged, and its maximum possible prison sentence and any mandatory minimum sentence required by law[,]" MCR 6.104(E)(1); see also MCR 6.610(I)(1);

- if the accused is not represented by counsel, inform the accused of the right to be represented by an attorney, MCR 6.610(I)(2)(b);[49]

[48] The Michigan Indigent Defense Commission Act (MIDCA), MCL 780.981 *et seq.*, applies to an indigent defendant who "is being prosecuted or sentenced for a crime *for which an individual may be imprisoned upon conviction*, beginning with the defendant's initial appearance in court to answer to the criminal charge." MCL 780.983(f)(*i*) (defining "'[i]ndigent criminal defense services'" for purposes of the MIDCA) (emphasis supplied). Therefore, the requirements of the MIDCA concerning advice of the right to counsel and appointment of counsel apply whenever imprisonment of *any* length of time is a potential penalty. See Section 4.17(B) for additional discussion of advice of the right to counsel at arraignment. See the Michigan Judicial Institute's *Criminal Proceedings Benchbook Vol. 1*, for discussion of the MIDCA.

[49] See Section 4.17(B) for more information on advising a defendant of the right to counsel at a felony arraignment.

- if the accused is not represented by counsel, advise the accused that he or she has a right to remain silent, that anything said orally or in writing can be used against him or her in court, that he or she is entitled to have an attorney present during any questioning consented to, and that the local indigent criminal defense system will appoint an attorney to represent the accused if he or she cannot afford to hire one, MCL 775.16[50]; MCL 780.991(1)(c)[51]; MCR 6.104(E)(2)(a)-(d); MCR 6.610(I)(2)(c);

- advise the accused of his or her right to be represented by an attorney at all proceedings, MCR 6.104(E)(3);

- inform the accused of the right to a preliminary examination, MCR 6.610(I)(2)(a);

- set a date for a probable cause conference to be held not less than 7 days or more than 14 days after the date of the arraignment, MCL 766.4(1); MCR 6.104(E)(4)[52];

- schedule a preliminary examination for a date not less than 5 days or more than 7 days[53] after the date of the probable cause conference, MCL 766.4(1); MCR 6.104(E)(4);

- if an unrepresented defendant waives the preliminary examination at arraignment, before accepting the waiver the court must determine that the waiver is given freely, understandingly, and voluntarily, MCR 6.610(I)[54];

- inform the accused of the right to be considered for pretrial release, MCR 6.610(I)(2)(d);

- determine whether pretrial release is appropriate and, if so, what form of pretrial release is proper, MCR 6.104(E)(5); and

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[50] Although MCR 6.104(E)(2)(d) has been amended to clarify that the local indigent criminal defense system is responsible for appointing a lawyer to represent an indigent accused, MCL 775.16 has not been amended to reflect this language and still provides that "the magistrate shall appoint counsel[.]"

[51] The Michigan Indigent Defense Commission Act (MIDCA), MCL 780.981 *et seq.*, applies to an indigent defendant who "is being prosecuted or sentenced for a crime *for which an individual may be imprisoned upon conviction*, beginning with the defendant's initial appearance in court to answer to the criminal charge." MCL 780.983(f)(*i*) (defining "'[i]ndigent criminal defense services'" for purposes of the MIDCA) (emphasis supplied). Therefore, the requirements of the MIDCA concerning advice of the right to counsel and appointment of counsel apply whenever imprisonment of *any* length of time is a potential penalty. See Section 4.17(B) for additional discussion of advice of the right to counsel at arraignment. See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, for discussion of the MIDCA.

[52] The prosecuting attorney and defense counsel may agree to waive the probable cause conference. MCL 766.4(2); see also MCR 6.110(A). See Section 4.20 for a discussion of probable cause conferences. See also the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, for discussion of scheduling the probable cause conference and preliminary examination.

- "ensure that the accused has had biometric data collected as required by law," MCR 6.104(E)(6); see also MCL 764.29.[55]

Committee Tip:

Note that different procedures are required under the court rules for arraignments on cases cognizable in the district court and cases cognizable in the circuit court. Specifically, the court rules (MCR 6.104 and MCR 6.610) require the court to inform the defendant of additional rights when arraigning on an offense cognizable in the circuit court, and this information must be given ***orally*** *to the defendant at the arraignment. A writing setting out the defendant's rights and signed by the defendant is not sufficient for felony arraignments and may only be used at arraignments on misdemeanors cognizable in the district court. A verbatim record is* ***always*** *required at arraignments on offenses cognizable in the circuit court, and* ***may be required*** *at arraignments on offenses cognizable in the district court unless a writing is permitted. Misdemeanor arraignments are discussed in* Section 4.13.

"A defendant neither demanding nor waiving preliminary examination in writing is deemed to have demanded preliminary examination and a defendant neither demanding nor waiving jury trial in writing is considered to have demanded a jury trial." MCL 600.8513.

If an accused first appears before the court in a county other than the one in which the offense occurred or, if arrested by warrant, in a county not listed in the arrest warrant, and the accused is not represented by

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[53] "The parties, with the approval of the court, may agree to schedule the preliminary examination earlier than 5 days after the [probable cause] conference." MCL 766.4(4). Additionally, under certain circumstances, the prosecuting attorney may request that the preliminary examination "commence immediately for the sole purpose of taking and preserving the testimony of a victim if the victim is present." *Id*.; see also MCR 6.110(B)(2) (adding that "the defendant [must either be] present in the courtroom or [have] waived the right to be present[]"). See Section 4.20 for a discussion of probable cause conferences. See also the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, for discussion of scheduling the probable cause conference and preliminary examination.

[54] "The defendant may waive the preliminary examination *with the consent of the prosecuting attorney*." MCL 766.7 (emphasis supplied); MCR 6.110(A); see also MCL 766.4(4).

[55] See Section 4.10 for more information on fingerprinting. Note that MCR 6.104(E)(6) contemplates the collection of biometric data while MCL 764.29 contemplates the taking of fingerprints.

counsel, the court must advise the accused of certain rights and decide whether to release the accused before trial.[56] MCR 6.104(C).

The court conducting an accused's arraignment on a circuit court offense is prohibited from "question[ing] the accused about the alleged offense or request[ing] that the accused enter a plea." MCR 6.104(E).

A. Pretrial Release

Except as otherwise provided by law, an individual charged with a criminal offense is entitled to bail. MCL 765.6(1); Const 1963, art 1, § 15; MCR 6.106(A). A defendant arraigned in district court for a felony or misdemeanor not cognizable by the district court must be informed of his or her right to consideration of pretrial release. MCR 6.610(I)(2)(d). In addition, when a defendant is arraigned before a court in the same county in which the offense allegedly occurred, or before the court specified in the complaint or warrant if the defendant was arrested by warrant, the district court must determine whether pretrial release is appropriate and, if so, the court must tailor any conditions of the defendant's pretrial release to the circumstances of the offense and the offender. MCR 6.104(C); MCR 6.104(E)(5); MCR 6.106(A).

MCR 6.104(B) provides:

> "(1) The court may deny pretrial release to
>
> (a) a defendant charged with
>
> (*i*) murder or treason, or
>
> (*ii*) committing a violent felony and
>
> [A] at the time of the commission of the violent felony, the defendant was on probation, parole, or released pending trial for another violent felony, or
>
> [B] during the 15 years preceding the commission of the violent felony, the defendant had been convicted of 2 or more violent felonies under the laws of this state or substantially similar laws of the United States or another state arising out of separate incidents, if the court

[56] See Section 4.8(A)(2) (arrest with a warrant) and Section 4.8(C)(2) (arrest without a warrant) for discussion of applicable procedures when an arrest is made outside the county in which the offense allegedly occurred.

> finds that proof of the defendant's guilt is evident or the presumption great;
>
> (b) a defendant charged with criminal sexual conduct in the first degree, armed robbery, or kidnapping with the intent to extort money or other valuable thing thereby, if the court finds that proof of the defendant's guilt is evident or the presumption great, unless the court finds by clear and convincing evidence that the defendant is not likely to flee or present a danger to any other person."

In general, where the defendant is preliminarily arraigned, "either in person or by way of two-way interactive video technology," before a court in a county other than the county in which the offense occurred, the court must obtain a recognizance from the accused indicating that he or she will appear within the next 14 days before a court specified in the warrant or, in the case of a warrantless arrest, before a court in the judicial district where the offense occurred, or before another designated court. MCR 6.104(C). After receiving the accused's recognizance, the court must certify the recognizance and deliver it to the appropriate court "without delay[.]" *Id*. If the accused is not released, he or she must be promptly transported to the judicial district of the offense. *Id*. "In all cases, the arraignment is then to continue under [MCR 6.104](D), if applicable, and [MCR 6.104](E) either in the judicial district of the alleged offense or in such court as otherwise is designated." MCR 6.104(C).

See Chapter 3 for more information on pretrial release.

B. Advice of Right to Counsel at Felony Arraignments

This subsection provides a brief overview of the required advice of right to counsel at a felony arraignment. For more information on the topics discussed here, including a defendant's right to counsel (and waiver), the Michigan Indigent Defense Commission Act (MIDCA[57]), and determining indigency, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 4.

"[T]he right to counsel attaches at the initial appearance before a judicial officer[.]" *Rothgery v Gillespie Co*, 554 US 191, 199 (2008)

[57]The MIDCA does not violate the separation of powers doctrine of the Michigan Constitution because "any sharing or overlapping of functions required by the [MIDCA] is sufficiently specific and limited that it does not encroach on the constitutional authority of the judiciary." *Oakland Co v State of Michigan*, 325 Mich App 247, 262 (2018). "[T]he [MIDCA] contains no provision authorizing the MIDC to force the judiciary to comply with the minimum standards, nor does the [MIDCA] purport to control what happens in court." *Id*. at 264.

(citations omitted). Whether the prosecutor was involved in or aware of the initial proceeding is irrelevant in determining when a defendant's right to counsel has attached. *Id*. at 198-199. "[A] criminal defendant's initial appearance before a judicial officer, where he [or she] learns the charge against him and his liberty is subject to restriction, marks the start of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel." *Id.* at 213.

When an unrepresented defendant is arraigned in district court for an offense over which the district court does not have trial jurisdiction, the court must inform the defendant of his or her right to the assistance of counsel and to appointed counsel if he or she is indigent. MCR 6.610(I)(2)(b)-(c)."When a person charged with having committed a crime appears before a magistrate without counsel, the person shall be advised of his or her right to have counsel appointed." MCL 775.16. "If the person states that he or she is unable to procure counsel, the magistrate shall appoint counsel, if the person is eligible for appointed counsel under the [Michigan Indigent Defense Commission Act (MIDCA), MCL 780.981—MCL 780.1003[58]]." MCL 775.16.

In addition, two different court rules address the court's responsibility, at a defendant's arraignment on the warrant or complaint, to advise a defendant of his or her right to counsel. MCR 6.005(A); MCR 6.104(E).

MCR 6.005(A)(1) requires the court, at a defendant's arraignment on the warrant or complaint, to advise the defendant of his or her right to the assistance of counsel at all court proceedings. In addition, at a defendant's arraignment on the warrant or complaint, the court must inform the defendant that he or she is entitled to an attorney at public expense if he or she wants an attorney and cannot afford to retain one. MCR 6.005(A)(2). The court must ask the defendant whether he or shewants an attorney's assistance and whether he or she is financially unable to retain one. MCR 6.005(A).

"Court rules providing for advising a defendant concerning his right to counsel at subsequent court proceedings . . . do not conflict

[58] The MIDCA applies to an indigent defendant who "is being prosecuted or sentenced for a crime for which an individual may be imprisoned upon conviction, beginning with the defendant's initial appearance in court to answer to the criminal charge." MCL 780.983(f)(*i*) (defining "'[i]ndigent criminal defense services'" for purposes of the MIDCA). The MIDCA requires the trial court to "assure that each criminal defendant is advised of his or her right to counsel." MCL 780.991(1)(c). It further requires the indigent criminal defense system to make "[a] preliminary inquiry regarding, and . . . determin[e,] . . . the indigency of any defendant, including a determination regarding whether a defendant is partially indigent, . . . not later than at the defendant's first appearance in court." MCL 780.991(3)(a). The trial court may play a role in the determination of indigency. *Id.* See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, for discussion of the MIDCA.

with the language of [MIDC] Standard 4 providing for representation at the arraignment." *Oakland Co v State of Michigan*, 325 Mich App 247, 270 (2018) (additionally holding that although the US Constitution does not *require* the appointment of counsel at arraignment, appointment at this juncture is not constitutionally prohibited, and through the MIDCA, the Michigan Legislature has enacted a protection greater than that secured by the United States Constitution).

MCR 6.104(E)(2) requires a court to convey specific information to a defendant at arraignment "*if the accused is not represented by a lawyer at the arraignment*[.]" (Emphasis added.) If the defendant is not represented by counsel at arraignment, the court must advise the defendant that he or she is entitled to have an attorney present during any questioning to which the defendant has consented and that the local indigent criminal defense system will appoint an attorney to represent the defendant if he or she is indigent.[59] MCR 6.104(E)(2)(c)-(d). See also MCL 775.16 ("[w]hen a person charged with having committed a crime appears before a magistrate without counsel, the person shall be advised of his or her right to have counsel appointed[,]" and the magistrate must appoint counsel if required under the MIDCA).

MCR 6.104(E)(3) further requires the court to advise a defendant at arraignment (whether or not represented by an attorney at the time) that he or she has the right to be represented by an attorney at all subsequent proceedings.[60]

C. Scheduling the Probable Cause Conference and Preliminary Examination[61]

See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 7, for information on probable cause conferences and preliminary examinations and scheduling these types of hearings.

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[59] See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1,* for information on appointed counsel.

[60] The MIDCA requires the trial court to "assure that each criminal defendant is advised of his or her right to counsel." MCL 780.991(1)(c). It further requires the indigent criminal defense system to make "[a] preliminary inquiry regarding, and . . . determin[e,] . . . the indigency of any defendant, including a determination regarding whether a defendant is partially indigent, . . . not later than at the defendant's first appearance in court." MCL 780.991(3)(a). The trial court may play a role in the determination of indigency. *Id.* See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, for discussion of the MIDCA.

[61] See Section 4.20 for discussion of probable cause conferences. See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 7, for a discussion of preliminary examinations. District court magistrates do not have authority to conduct preliminary examinations. MCL 766.1.

4.18 Juvenile Proceedings in District Court

"The courts may use telephonic, voice, or videoconferencing technology under [Subchapter 6.900 of the Michigan Court Rules] as prescribed by MCR 6.006."[62] MCR 6.901(C).

A. Arraignments in Automatic Waiver Cases

Where a specified juvenile violation is alleged, the automatic waiver procedure provides the Criminal Division of the Circuit Court with jurisdiction to hear the case by allowing the prosecutor to file a complaint and warrant in district court rather than filing a petition in the Family Division of Circuit Court. See MCL 600.606(1); MCL 764.1f(1); MCL 712A.2(a)(1).[63]

Subchapter 6.900 of the Michigan Court Rules applies to automatic waiver cases. See MCR 6.001(C). MCR 6.901(B) defines the scope of these rules:

> "The rules apply to criminal proceedings in the district court and the circuit court concerning a juvenile against whom the prosecuting attorney has authorized the filing of a criminal complaint charging a specified juvenile violation instead of approving the filing of a petition in the family division of the circuit court. The rules do not apply to a person charged solely with an offense in which the family division has waived jurisdiction pursuant to MCL 712A.4 [(i.e. traditional waiver proceedings)]."

MCL 764.27 states in part that "[e]xcept as otherwise provided in . . . MCL 600.606," a child under 18 years of age arrested with or without a warrant must be taken immediately before the Family Division of Circuit Court. MCL 600.606 is the automatic waiver provision that operates as an exception to MCL 764.27's mandate that a juvenile first be taken before a Family Division court after his or her arrest. *People v Brooks*, 184 Mich App 793, 797-798 (1990). In *Brooks*, 184 Mich App at 794-795, the trial court suppressed a juvenile defendant's statement to police because the juvenile was not "taken immediately before the family division of the circuit court" as required by MCL 764.27. In reversing the trial court's decision, the Court of Appeals explained:

> "[T]he Legislature intended that those juveniles charged as adult offenders pursuant to [MCL 600.606] fall

[62] MCR 6.006 addresses video and audio proceedings in criminal cases.

[63] See the Michigan Judicial Institute's *Juvenile Justice Benchbook* for more information.

> outside of the juvenile court's jurisdiction. Because [MCL 600.606] divests the juvenile court of jurisdiction and gives the circuit court original jurisdiction in the matter, the mandatory provisions set forth in [MCL 764.27] do not apply to those juveniles charged as adult offenders." *Brooks*, 184 Mich App at 798.

B. Procedure Required for Juvenile Arraignments in District Court

MCR 6.907 specifies the procedure for conducting juvenile arraignments in district court. Specific time limitations apply to juvenile arraignments when the prosecutor has decided to proceed against the juvenile by complaint and warrant for the juvenile's alleged commission of a specified juvenile violation. MCR 6.907(A) provides:

> **"Time.** When the prosecuting attorney authorizes the filing of a complaint and warrant charging a juvenile with a specified juvenile violation instead of approving the filing of a petition in the family division of the circuit court, the juvenile in custody must be taken to the magistrate for arraignment on the charge. The prosecuting attorney must make a good-faith effort to notify the parent of the juvenile of the arraignment. The juvenile must be released if arraignment has not commenced:
>
> (1) within 24 hours of the arrest of the juvenile; or
>
> (2) within 24 hours after the prosecuting attorney authorized the complaint and warrant during special adjournment pursuant to MCR 3.935(A)(3),[64] provided the juvenile is being detained in a juvenile facility."

At a juvenile's arraignment on the complaint and warrant charging him or her with a specified juvenile violation, the court must first determine whether the juvenile is accompanied by a parent, guardian, or adult relative. MCR 6.907(C)(1). The court may conduct a juvenile's arraignment in the absence of the juvenile's parent, guardian, or adult relative, as long as the local funding unit's appointment authority appoints an attorney to appear with the

[64] MCR 3.935(A)(3) requires the Family Division of Circuit Court, upon the prosecuting attorney's request, to adjourn a preliminary hearing in a delinquency proceeding for up to five days to allow the prosecutor to decide whether to proceed under the automatic waiver statutes. See the Michigan Judicial Institute's *Juvenile Justice Benchbook* for more information.

juvenile at arraignment or an attorney retained by the juvenile appears with him or her at arraignment. *Id.*[65]

> **Note:** The Michigan Indigent Defense Commission Act (MIDCA),[66] MCL 780.981 *et seq.*, requires the court to advise the juvenile of the right to counsel, MCL 780.991(1)(c), and requires the indigent criminal defense system to screen the juvenile for eligibility for appointed counsel "not later than at the [juvenile's] first appearance in court[,]" MCL 780.991(3)(a).[67] See also MCL 775.16. See Chapter 17 of the Michigan Judicial Institute's *Juvenile Justice Benchbook* for discussion of the MIDCA as it applies to juveniles.

C. Juvenile Pretrial Release

MCR 6.909 governs the release or detention of juveniles pending trial and other court proceedings.[68]

Bail. Except when bail may be denied, the court must advise a juvenile defendant of the right to bail as it would for adults accused of bailable criminal offenses. MCR 6.909(A)(1). The court may order a juvenile released to a parent or guardian and impose any lawful conditions on the juvenile's release, including the condition that bail be posted. *Id.*

Detention without bail. MCR 6.909(A)(2) specifies the circumstances in which a juvenile may be denied bail:

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[65] Effective May 20, 2014, and applicable to cases in which the defendant is arraigned in district court on or after January 1, 2015, 2014 PA 123 amended MCL 766.4 to require the court, at arraignment for a felony charge, to schedule "a probable cause conference to be held not less than 7 days or more than 14 days after the date of the arraignment[]" and a preliminary examination to be held "not less than 5 days or more than 7 days after the date of the probable cause conference." MCL 766.4(1); see also 2014 PA 123, enacting section 1.

Under MCR 6.907(C)(2), a juvenile's preliminary examination must be scheduled within 14 days of the juvenile's arraignment, and under the special adjournment provision of MCR 3.935(A)(3), this 14-day period may be reduced by as many as three days for time given and used by the prosecutor. Furthermore, MCR 6.911(A) provides that a juvenile may waive his or her right to a preliminary examination if the juvenile is represented by an attorney and makes a written waiver of the right in open court. These court rules have not been amended to reflect the statutory changes adopted by 2014 PA 123.

[66] The MIDCA does not violate the separation of powers doctrine of the Michigan Constitution because "any sharing or overlapping of functions required by the [MIDCA] is sufficiently specific and limited that it does not encroach on the constitutional authority of the judiciary." *Oakland Co v State of Michigan*, 325 Mich App 247, 262 (2018). "[T]he [MIDCA] contains no provision authorizing the MIDC to force the judiciary to comply with the minimum standards, nor does the [MIDCA] purport to control what happens in court." *Id.* at 264.

[67] The MIDCA applies to "[a]n individual less than 18 years of age at the time of the commission of a felony" if "[t]he prosecuting attorney authorizes the filing of a complaint and warrant for a specified juvenile violation under . . . MCL 764.1f." MCL 780.983(a)(*ii*)(D).

[68] See the Michigan Judicial Institute's *Juvenile Justice Benchbook* for detailed information.

> "If the proof is evident or if the presumption is great that the juvenile committed the offense, the magistrate or the court may deny bail:
>
> (a) to a juvenile charged with first-degree murder, second-degree murder, or
>
> (b) to a juvenile charged with first-degree criminal sexual conduct, or armed robbery,
>
> (*i*) who is likely to flee, or
>
> (*ii*) who clearly presents a danger to others."

Juvenile's place of confinement during detention without bail. Generally, a juvenile charged with a crime and not released while awaiting trial or sentencing must be placed in a juvenile facility. MCR 6.909(B)(1). However, on motion of the prosecuting attorney or the superintendent of the juvenile facility where a juvenile is detained, the court may order that the juvenile be lodged in a facility used to incarcerate adult prisoners if the juvenile's conduct is a menace to other juveniles or if "the juvenile may not otherwise be safely detained in a juvenile facility." MCR 6.909(B)(2)(a)-(b). Additionally, if no juvenile facility is reasonably available and it is apparent that the juvenile cannot otherwise be safely detained, the court may place the juvenile in an adult facility. See MCR 6.909(B)(1) and MCR 6.907(B).

A juvenile must not be placed in an institution operated by the Family Division of the Circuit Court unless the family division consents to the placement or the circuit court orders the placement. MCR 6.909(B)(3). A juvenile in custody or otherwise detained must be maintained separately from adult prisoners or defendants pursuant to MCL 764.27a. MCR 6.907(B); MCR 6.909(B)(4).

4.19 A Crime Victim's Rights Following Felony Arraignment

Article 1 of the Crime Victim's Rights Act (CVRA), MCL 780.751 *et seq.*,[69] assigns certain rights and responsibilities to victims of felonies. In addition, some provisions in the Revised Judicature Act assign victim rights. Although most provisions of the CVRA deal with a law enforcement agency's obligations, the court may find it helpful to be

[69] See Section 4.16 for discussion of application of the Crime Victim's Rights Act (CVRA) to *serious misdemeanors*, some of which are punishable by more than one year in prison and are therefore cognizable in the circuit court. See the Michigan Judicial Institute's *Crime Victim Rights Benchbook* for a detailed and comprehensive discussion of the Crime Victim's Rights Act.

cognizant of the following CVRA requirements and procedures as early as the arraignment.

- I**dentifying information about and visual representations of a crime victim are protected.** MCL 780.758(2) provides that a victim's home and work addresses and telephone numbers must not be in the court file or "ordinary" court documents unless they are contained in a trial transcript or are used to identify the place of a crime. Under MCL 780.758(3), information and visual representations of a crime victim are subject to the following:

  > "(a) The home address, home telephone number, work address, and work telephone number of the victim are exempt from disclosure under the [Freedom of Information Act (FOIA), MCL 15.231 *et seq.*], unless the address is used to identify the place of the crime.
  >
  > (b) A picture, photograph, drawing, or other visual representation, including any film, videotape, or digitally stored image of the victim, are exempt from disclosure under the [FOIA], and, if the picture, photograph, drawing, or other visual representation is from a court proceeding that is made available to the public through streaming on the internet or other means, the picture, photograph, drawing, or visual representation may be blurred.
  >
  > (c) The following information concerning a victim of child abuse, criminal sexual conduct, assault with intent to commit criminal sexual conduct, or a similar crime who was less than 18 years of age when the crime was committed is exempt from disclosure under the [FOIA]:
  >
  > > (*i*) The victim's name and address.
  > >
  > > (*ii*) The name and address of an immediate family member or relative of the victim, who has the same surname as the victim, other than the name and address of the accused.
  > >
  > > (*iii*) Any other information that would tend to reveal the identity of the victim, including a reference to the victim's familial or other relationship to the accused."

- **Notice required when the defendant is available for pretrial release.** Within 24 hours of a felony defendant's arraignment, the investigating law enforcement agency must notify the victim "of the availability of pretrial release for the

defendant[.]" MCL 780.755(1). The notice must include the sheriff's or juvenile facility's telephone number and must inform the crime victim that he or she may contact the sheriff or juvenile facility to find out whether the defendant was released from police custody. *Id*. If a victim has requested notification of a defendant's arrest or release under MCL 780.753, the investigating law enforcement agency must promptly notify the victim of these events. MCL 780.755(1).

- **Notice requirements in cases involving deferred judgments or delayed sentences.** In all cases, the court, the Department of Corrections (DOC), the Department of Health and Human Services (DHHS), a county sheriff, or a prosecuting attorney must provide notice to a victim if the case against the defendant is resolved by assignment of the defendant to trainee status, by a delayed sentence or deferred judgment of guilt, or in another way that is not an acquittal or unconditional dismissal. In performing this duty, the court, DOC, DHHS, county sheriff, or prosecuting attorney may furnish information or records to the victim that would otherwise be closed to public inspection, including information or records related to a defendant's youthful trainee status. MCL 780.752a; MCL 780.781a; MCL 780.811b.[70] Notice must be mailed to the address provided by the victim, except as otherwise provided in MCL 780.861. If the victim is a program participant of the Address Confidentiality Program,[71] the victim may use the address designated by the department of the attorney general. MCL 780.811b(2).

- **Notice requirements prior to the defendant's admission to drug treatment court.**[72] Circuit and district courts are authorized to institute or adopt a drug treatment court.[73] MCL 600.1062(1). Family divisions are also authorized to institute or adopt a drug treatment court for juveniles. MCL 600.1062(2). If

[70] See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 2*, Chapter 9, for discussion of deferment and delayed sentencing, including specialized treatment courts.

[71] MCL 780.851 *et seq*.

[72] See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 2*, Chapter 9, for discussion of drug treatment courts.

[73] A drug treatment court, or a circuit or district court seeking to adopt or institute a drug treatment court, must be certified by the State Court Administrative Office. MCL 600.1062(5). A case may be completely transferred from a court of original jurisdiction to a drug treatment court, prior to or after adjudication, if those courts—with the approval of the chief judge and assigned judge of each court, a prosecuting attorney from each court, and the defendant—have executed a memorandum of understanding as provided in MCL 600.1088(1)(a)-(e). See MCL 600.1088(1). Unless a memorandum of understanding provides otherwise, the original court of jurisdiction maintains jurisdiction over the participant until final disposition of the case, but not longer than the probation period established under MCL 771.2. MCL 600.1070(2).

an offender is admitted to a drug treatment court, adjudication of his or her crime may be deferred. MCL 600.1070(1)(a)-(c). A crime victim and others must be permitted to submit a written statement to the court prior to an offender's admission to drug treatment court. MCL 600.1068(4) provides:

> "In addition to rights accorded a victim under the [CVRA], . . . MCL 780.751 to [MCL] 780.834, the drug treatment court must permit any victim of the offense or offenses of which the individual is charged, any victim of a prior offense of which that individual was convicted, and members of the community in which either the offenses were committed or in which the defendant resides to submit a written statement to the court regarding the advisability of admitting the individual into the drug treatment court."

Note: Subject to the agreement of the defendant, the defendant's attorney, the prosecutor, the judge of the transferring court, the judge of the receiving court, and the prosecutor of the receiving drug treatment court's funding unit, a drug treatment court may accept participants from any other jurisdiction based on the participant's residence or the unavailability of a drug treatment court in the jurisdiction where the participant is charged. MCL 600.1062(4).

- **Notice requirements prior to the defendant's admission to veterans treatment court.**[74] Circuit and district courts are authorized to adopt or institute a veterans treatment court.[75] MCL 600.1201(2). If an offender is admitted to a veterans treatment court, adjudication of his or her crime may be deferred. MCL 600.1206(1)(c). Crime victims and community members must be permitted to submit written statements to the veterans treatment court prior to an offender's admission to that court. MCL 600.1205(4) provides:

> "In addition to rights accorded a victim under the [CVRA], . . . MCL 780.751 to [MCL] 780.834, the

[74] See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 2*, Chapter 9, for discussion of veterans treatment courts.

[75] A veterans treatment court, or a circuit or district court seeking to adopt or institute a veterans treatment court, must be certified by the State Court Administrative Office. MCL 600.1201(5). A case may be completely transferred from a court of original jurisdiction to a veterans treatment court, prior to or after adjudication, if those courts—with the approval of the chief judge and assigned judge of each court, a prosecuting attorney from each court, and the defendant—have executed a memorandum of understanding as provided in MCL 600.1088(1)(a)-(e). See MCL 600.1088(1). Unless a memorandum of understanding provides otherwise, the original court of jurisdiction maintains jurisdiction over the participant until final disposition of the case, but not longer than the probation period established under MCL 771.2. MCL 600.1206(2).

> veterans treatment court shall permit any victim of the offense or offenses of which the individual is charged, any victim of a prior offense of which that individual was convicted, and members of the community in which the offenses were committed or in which the defendant resides to submit a written statement to the court regarding the advisability of admitting the individual into the veterans treatment court."

A participant in veterans treatment court must "[p]ay all crime victims' rights assessments under . . . MCL 780.905." MCL 600.1208(1)(d).

> **Note:** Subject to the agreement of the defendant, the defendant's attorney, the prosecutor, the judge of the transferring court, the judge of the receiving veterans treatment court, and the prosecutor of the receiving veterans treatment court's funding unit, a veterans treatment court may accept participants from any other jurisdiction in the state based on either the participant's residence in the receiving jurisdiction or the unavailability of a veterans treatment court in the jurisdiction in which the participant is charged. MCL 600.1201(4).

- **Notice requirements prior to the defendant's admission to mental health court.**[76] Circuit and district courts are authorized to adopt or institute a mental health court. MCL 600.1091(1).[77] If an offender is admitted to a mental health court, he or she may be entitled to discharge and dismissal of the proceedings. MCL 600.1098(2)-(5). Crime victims must be permitted to submit written statements to the mental health court prior to an offender's admission to that court. MCL 600.1094(4) provides:

> "In addition to rights accorded a victim under the [CVRA], . . . MCL 780.751 to [MCL] 780.834, the mental health court shall permit any victim of the offense or

[76] See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 2*, Chapter 9, for discussion of mental health courts.

[77] A mental health court, or a circuit or district court seeking to adopt or institute a mental health court, must be certified by the State Court Administrative Office. MCL 600.1091(4). A case may be completely transferred from a court of original jurisdiction to a mental health court, prior to or after adjudication, if those courts—with the approval of the chief judge and assigned judge of each court, a prosecuting attorney from each court, and the defendant—have executed a memorandum of understanding as provided in MCL 600.1088(1)(a)-(e). See MCL 600.1088(1). Unless a memorandum of understanding provides otherwise, the original court of jurisdiction maintains jurisdiction over the participant until final disposition of the case, but not longer than the probation period established under MCL 771.2. MCL 600.1095(2).

offenses of which the individual is charged as well as any victim of a prior offense of which that individual was convicted to submit a written statement to the court regarding the advisability of admitting the individual into the mental health court."

Note: The court may, but is not required to, "accept participants from any other jurisdiction in [the] state based upon the residence of the participant in the receiving jurisdiction, the nonavailability of a mental health court in the jurisdiction where the participant is charged, and the availability of financial resources for both operations of the mental health court program and treatment services." MCL 600.1091(2).

- **Notice requirements prior to the juvenile's admission to juvenile mental health court.**[78] The family division of a circuit court is authorized to adopt or institute a juvenile mental health court. MCL 600.1099c(1).[79] If a juvenile is admitted to a juvenile mental health court, he or she may be entitled to discharge and dismissal of the proceedings. MCL 600.1099k(2)-(3). Crime victims must be permitted to submit written statements to the juvenile mental health court prior to a juvenile's admission to that court. MCL 600.1099g provides:

  "In addition to rights accorded a victim under the [CVRA], . . . MCL 780.751 to [MCL] 780.834, the juvenile mental health court shall permit any victim of the offense or offenses for which the juvenile has been petitioned to submit a written statement to the court regarding the advisability of admitting the juvenile into the juvenile mental health court."

  Note: The court may, but is not required to, "accept participants from any other jurisdiction in [the]

[78] See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 2*, Chapter 9, for discussion of mental health courts.

[79] A juvenile mental health court, or a family division of circuit court seeking to adopt or institute a juvenile mental health court, must be certified by the State Court Administrative Office. MCL 600.1099c(4). A case may be completely transferred from a court of original jurisdiction to a juvenile mental health court, prior to or after adjudication, if those courts—with the approval of the chief judge and assigned judge of each court, a prosecuting attorney from each court, and the juvenile—have executed a memorandum of understanding as provided in MCL 600.1088(1)(a)-(e). See MCL 600.1088(1). Unless a memorandum of understanding provides otherwise, the original court of jurisdiction maintains jurisdiction over the participant until final disposition of the case. MCL 600.1099h(b). The court may also "receive jurisdiction over the juvenile's parents or guardians under section 6 of chapter XIIA of the probate code of 1939, . . . MCL 712A.6, in order to assist in ensuring the juvenile's continued participation and successful completion of the juvenile mental health court and may issue and enforce any appropriate and necessary order regarding the parent or guardian." MCL 600.1099h(b).

state based upon the residence of the participant in the receiving jurisdiction. MCL 600.1099c(2).

- **Victim impact statements (written).** The court must order the preparation of a presentence investigation report (PSIR) in any criminal felony case. MCL 771.14(1). If a crime victim requests, a written impact statement must be included in the PSIR if one is prepared. MCL 771.14(2)(b); MCL 780.764. In juvenile delinquency, designated, and serious misdemeanor cases, the victim also has the right to submit a written impact statement if a disposition report or PSIR is prepared. MCL 780.792(1); MCL 780.792(3). If no PSIR is prepared in a designated case involving a misdemeanor, the court must "notify the prosecuting attorney of the date and time of sentencing at least 10 days prior to the [disposition or] sentencing[,]" and the victim may submit a written impact statement to the prosecutor or court. MCL 780.792(2)-(3).

- **Victim impact statements (oral).** A crime victim has the right to appear and make an oral impact statement at the sentencing of the defendant or at the disposition or sentencing of the juvenile. MCL 780.765(1); MCL 780.793(1). The victim may elect to remotely provide the oral impact statement. MCL 780.765(1); MCL 780.793(1). The defendant or juvenile must be physically present in the courtroom at the time a victim makes an oral impact statement, unless the court has determined, in its discretion, that the defendant or juvenile is behaving in a disruptive manner or presents a threat to the safety of any individuals in the courtroom. MCL 780.765(2); MCL 780.793(3). The court may consider any relevant statement provided by the victim regarding the defendant being physically present during the victim's oral impact statement when making its determination. MCL 780.765(2); MCL 780.793(3).

4.20 Probable Cause Conferences[80]

"The state and the defendant are entitled to a probable cause conference, unless waived by both parties." MCR 6.108(A). The purpose of a probable cause conference is to allow the prosecutor, defendant, and defense attorney to discuss plea negotiations, bond modifications, stipulations regarding the case, and any other relevant matters. See MCL 766.4(1)(a)-(d).

[80] For additional information, see the SCAO's *Best Practices for Probable Cause Conferences and Preliminary Examinations*.

A. Authority

District court magistrates have jurisdiction "[t]o conduct probable cause conferences and all matters allowed at the probable cause conference, except for the taking of pleas and sentencings, under . . . MCL 766.4, when authorized to do so by the chief district court judge." MCL 600.8511(h); see also MCR 6.108(B) ("[a] district court magistrate may conduct probable cause conferences when authorized to do so by the chief district judge and may conduct all matters allowed at the probable cause conference, except taking pleas and imposing sentences unless permitted by statute to take pleas or impose sentences"). However, "[t]he district court judge must be available during the probable cause conference to take pleas, consider requests for modification of bond, and if requested by the prosecutor, take the testimony of a victim." MCR 6.108(D).

B. Conducting the Probable Cause Conference

"The probable cause conference shall include the following:

> (a) Discussions as to a possible plea agreement among the prosecuting attorney, the defendant, and the attorney for the defendant.
>
> (b) Discussions regarding bail and the opportunity for the defendant to petition the magistrate for a bond modification.
>
> (c) Discussions regarding stipulations and procedural aspects of the case.
>
> (d) Discussions regarding any other matters relevant to the case as agreed upon by both parties." MCL 766.4(1).

See also MCR 6.108(C) ("[t]he probable cause conference shall include discussions regarding a possible plea agreement and other pretrial matters, including bail and bond modification").

Videoconferencing technology is the preferred mode for conducting probable cause conferences for in-custody defendants. MCR 6.006(C)(1). Probable cause conferences are "scheduled to be conducted remotely subject to a request under MCR 2.407(B)(4) to appear in person by any participant, including a victim. . . , or a determination by the court that a case is not suited for videoconferencing under MCR 2.407(B)(5)." MCR 6.006(C)(1). "The use of telephonic, voice, videoconferencing, or two-way interactive video technology, must be in accordance with any requirements and guidelines established by [SCAO], and all proceedings at which such technology is used must be recorded verbatim by the court."

MCR 6.006(D). See also MCR 4.401(E) ("[a] district court magistrate may use videoconferencing technology in accordance with MCR 2.407 and MCR 6.006").

See the Michigan Judicial Institute's checklist for conducting a probable cause conference. For additional information, see the SCAO's *Best Practices for Probable Cause Conferences and Preliminary Examinations*.

C. Waiver of the Probable Cause Conference

The parties may agree to waive the probable cause conference. MCL 766.4(2) provides:

> "The probable cause conference may be waived by agreement between the prosecuting attorney and the attorney for the defendant. The parties shall notify the court of the waiver agreement and whether the parties will be conducting a preliminary examination, waiving the examination, or entering a plea."

See also MCR 6.108(A).

"Because MCR 6.108 expressly permits the waiver of a probable cause conference, it stands to reason that a violation of that rule does not create a jurisdictional defect." *Jones v Chippewa Circuit Court Judge*, ___ Mich App ___, ___ (2026). "Although a judicial determination of probable cause is a prerequisite to keeping a suspect incarcerated following an arrest, neither a preliminary examination nor a probable cause conference is constitutionally required." *Id.* at ___ (holding that "the absence of a probable cause conference does not deprive the district court of its continuing jurisdiction over the case").

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5.1 Scope Note

This chapter addresses the authority of district court magistrates to accept pleas of guilty and nolo contendere (no contest)[1] and to impose sentences for those offenses. This chapter further addresses the relevant procedures for accepting a plea and imposing a sentence, as well as relevant sentencing requirements. See Chapter 6 for information on civil infractions.

5.2 Authority to Accept Misdemeanor Pleas and Sentence Upon a Plea for Specific Violations

Under MCL 600.8511, a district court magistrate has the jurisdiction and duty to "arraign and sentence upon pleas of guilty or nolo contendere for violations of" specified acts, parts of acts, or a local ordinance substantially corresponding to the specified acts or parts of acts, when authorized by the chief judge of the district court district. For additional information on the specified acts for which a district court magistrate may accept pleas and impose sentence, see Section 5.2(A) (nontraffic), Section 5.2(B) (Michigan Vehicle Code), Section 5.2(C) (Natural Resources and Environmental Protection Act), and Section 5.2(D) (contempt or probation violations).

When authorized by the chief judge, presiding judge, or only judge of the district court, a district court magistrate may also "[a]ccept a plea of guilty or nolo contendere and impose sentence for a misdemeanor or ordinance violation punishable by a fine and which is not punishable by imprisonment by the terms of the statute or ordinance creating the offense." MCL 600.8512a(b).

A district court magistrate may not accept a plea of guilty or nolo contendere for an offense unless it is expressly authorized under MCL 600.8511 or MCL 600.8512a. MCL 600.8513(1).

A. Specified Nontraffic Acts or Parts of Acts

Under MCL 600.8511(a), a district court magistrate has authority to sentence upon pleas of guilty or nolo contendere for violations of the following or a local ordinance substantially corresponding the following:

> "(*i*) Part 487 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.48701 to [MCL] 324.48740.

[1] A no contest plea is generally recognized as an alternative to a guilty plea. See MCR 6.610(F)(1)(b).

(*ii*) Part 401 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.40101 to [MCL] 324.40120.

(*iii*) Part 801 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80101 to [MCL] 324.80199.

(*iv*) The motor carrier act, 1933 PA 254, MCL 475.1 to [MCL] 479.43.

(*v*) Motor carrier safety act of 1963, 1963 PA 181, MCL 480.11 to [MCL] 480.25.

(*vi*) Dog law of 1919, 1919 PA 339, MCL 287.261 to [MCL] 287.290.

(*vii*) Section 703 or 915 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1703 and [MCL] 436.1915.

(*viii*) Part 5 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.501 to [MCL] 324.513.

(*ix*) Part 89 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.8901 to [MCL] 324.8907.

(*x*) Part 435 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.43501 to [MCL] 324.43561.

(*xi*) Part 731 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.73101 to [MCL] 324.73111.

(*xii*) Chapter LXXXV of the Michigan penal code, 1931 PA 328, MCL 750.546 to [MCL] 750.552c." MCL 600.8511(a).

The magistrate may sentence upon pleas for these offenses only if:

- authorized by the chief judge of the district court district;[2] and
- the maximum permissible punishment does not exceed 90 days in jail or a fine, or both. MCL 600.8511(a).

[2]District court magistrates can consult their LAO to determine authorization from the chief judge.

B. Michigan Vehicle Code

A district court magistrate has the authority to accept guilty and no contest pleas and to impose sentence pursuant to the Michigan Vehicle Code (MVC), or a substantially corresponding local ordinance, except for offenses involving operating a motor vehicle while intoxicated or impaired under MCL 257.625 and MCL 257.625m, or a substantially corresponding local ordinance. MCL 600.8511(b).

A district court magistrate may accept a plea and impose sentence in a misdemeanor case arising under the MVC or a similar local ordinance only if:

- authorized by chief judge of the district court district;
- the maximum permissible punishment does not exceed 93 days in jail or a fine, or both;
- the defendant pleads guilty or no contest, and;
- the offense is **not** a violation of MCL 257.625 or MCL 257.625m or a substantially corresponding local ordinance.[3] MCL 600.8511(b).

In other words, MCL 600.8511(b) "establishes two different grants of authority." *People v VanEss*, ___ Mich App ___, ___ (2024). "The first is to arraign and sentence upon a guilty or nolo contendere plea for violations of the motor vehicle code, except for violations of MCL 257.625 and MCL 257.625m if the penalty does not exceed 93 days in jail." *VanEss*, ___ Mich App at ___. "The second grant of authority is to arraign and set bond for violations of MCL 257.625 and MCL 257.625m if authorized by the chief judge." *VanEss*, ___ Mich App at ___. "Absent is the authority to sentence upon a plea of guilty or nolo contendere [to violations of MCL 257.625 and MCL 257.625m]." *Id*. at ___ (holding that the magistrate did not have authority to accept the defendant's guilty plea because the defendant was charged with a violation of MCL 257.625 and the penalty exceeded 93 days in jail).

[3] MCL 257.625 and MCL 257.625m address the operation of a motor vehicle and the operation of a commercial motor vehicle, respectively, while under the influence of alcohol, a controlled substance, or other intoxicating substance or a combination thereof as well as related offenses, i.e., allowing another person who is under the influence to operate a vehicle. For a detailed discussion of MCL 257.625, see the Michigan Judicial Institute's *Traffic Benchbook*, Chapter 9.

C. Parts 811 and 821 of the Natural Resources and Environmental Protection Act

A district court magistrate has the authority to accept guilty and no contest pleas and to impose sentences pursuant to part 811 or 821 of the Natural Resources and Environmental Protection Act (NREPA), or a substantially corresponding local ordinance, except for operating an off-road vehicle in violation of MCL 324.81134[4] or a snowmobile in violation of MCL 324.82128 or MCL 324.82129, or a substantially corresponding local ordinance. MCL 600.8511(c).

A district court magistrate may accept a plea and impose sentence in a misdemeanor case arising under the specified parts of the NREPA or a similar local ordinance only if:

- authorized by chief judge of the district court district;
- the maximum permissible punishment does not exceed 93 days in jail or a fine, or both;
- the defendant pleads guilty or no contest, and;
- the offense is not operating an off-road vehicle or snowmobile while intoxicated or impaired governed by MCL 324.81134, MCL 324.82128, or MCL 324.82129, or a substantially corresponding local ordinance. MCL 600.8511(c).

D. Contempt or Probation Violations

A district court magistrate is authorized to accept a plea in regard to a contempt violation or a violation of a condition of probation. MCL 600.8511(d). However, the district court magistrate may not sentence a defendant in these cases. MCL 600.8511(d).

The statute permits a magistrate to accept a plea when authorized by the chief judge of the district court and when the violation arises directly out of a case for which the "district court magistrate conducted the arraignment under [MCL 600.8511(a), MCL 600.8511(b), or MCL 600.8511(c)], or the first appearance under [MCL 600.8513], involving the same defendant." MCL 600.8511(d). Further, MCL 600.8511(d) "applies only to offenses punishable by imprisonment for not more than 1 year or a fine, or both." MCL 600.8511(d). "The district court magistrate may set bond and accept a

[4] MCL 600.8511(c) was last amended by 2014 PA 124, and the statute still lists MCL 324.81135 as one of the four statutes containing exceptions to a district court magistrate's authority to arraign and sentence upon pleas of guilty or nolo contendere for violations of the NREPA. However, the NREPA was amended by 2014 PA 405, which repealed MCL 324.81135.

plea but shall not conduct a violation hearing or sentencing." MCL 600.8511(d).

5.3 Misdemeanor Pleas Generally[5]

A. Available Pleas

A defendant charged with a misdemeanor offense cognizable in district court may stand mute or plead not guilty, guilty, or nolo contendere. See MCL 774.1a—MCL 774.1c; MCR 6.610(F). A district court magistrate may sentence a defendant following a plea of guilty or nolo contendere for specified offenses. MCL 600.8511. Accordingly, a district court magistrate may accept a plea of guilty or nolo contendere to an offense as authorized by statute. See MCL 600.8511; MCL 600.8512a.

MCL 600.8511(b) specifically "establishes two different grants of authority." *People v VanEss*, ___ Mich App ___, ___ (2024). "The first is to arraign and sentence upon a guilty or nolo contendere plea for violations of the motor vehicle code, except for violations of MCL 257.625 and MCL 257.625m if the penalty does not exceed 93 days in jail." *VanEss*, ___ Mich App at ___. "The second grant of authority is to arraign and set bond for violations of MCL 257.625 and MCL 257.625m if authorized by the chief judge." *VanEss*, ___ Mich App at ___. "Absent is the authority to sentence upon a plea of guilty or nolo contendere [to violations of MCL 257.625 and MCL 257.625m]." *Id*. at ___. However, "a district court judge has the express authority to supersede any action by a district court magistrate, even without a formal appeal." *Id*. at ___ ("In the case of a guilty plea, jeopardy attaches when the sentence is imposed"—not when the guilty plea is offered or accepted), citing MCR 4.401(C).

B. Applicable Court Rules

Subchapter 6.600 of the Michigan Court Rules, the section devoted to criminal procedure in district court, contains all the information *expressly* applicable to plea proceedings in district court for offenses over which the district court has trial jurisdiction. Subchapter MCR 6.300 (Pleas) contains detailed information about the kinds of pleas available to defendants charged with criminal offenses cognizable by circuit courts. MCR 6.001(A). MCR 6.001(B) does not include subchapter 6.300 in its list of court rules applicable to misdemeanor

[5]Note that district court magistrates do not have authority to accept pleas and sentence defendants for felony offenses. See MCL 600.8511 (limiting authority to offenses punishable by 90 days in jail or less, 93 days in jail or less, or not more than one year, depending on the offense involved); MCL 600.8512a (limiting authority to offenses punishable by fine only).

plea proceedings in district court. However, provisions contained in subchapter 6.300 pertaining to plea proceedings involving offenses cognizable in circuit court may be instructive whenever MCR 6.610 does not supply a rule specific to plea proceedings involving offenses cognizable in district court.

MCR 6.001(B), which specifically addresses misdemeanor cases, provides: "MCR 6.001 — [MCR] 6.004, [MCR] 6.005(B) and (C), 6.006(A) and (C)-(E), [MCR] 6.101, [MCR] 6.103, [MCR] 6.104(A), [MCR] 6.105 — [MCR] 6.106, [MCR] 6.125, [MCR] 6.202, [MCR] 6.425(D)(3), [MCR] 6.427, [MCR] 6.430, [MCR] 6.435, [MCR] 6.440, [MCR] 6.441, [MCR] 6.445, [MCR] 6.450, [MCR] 6.451, and the rules in subchapter 6.600 govern matters of procedure in criminal cases cognizable in the district courts."

C. Record Requirements for Plea Proceedings

Except when a writing is permitted by law or by court rule, a verbatim record of plea proceedings in district court is required. MCL 600.8331; MCR 6.610(C).See also MCL 774.1a (providing that, at arraignment, the defendant's plea must be entered in the district court's minutes).

Plea agreements. Where a defendant's sentence will result from a plea-based conviction, the trial court must determine whether the parties have made a plea agreement, "which may include an agreement to a sentence to a specific term or within a specific range[.]" MCR 6.302(C)(1).[6] Any agreement "must be stated on the record or reduced to writing and signed by the parties,"[7] and any written agreement must be made part of the case file. *Id*.[8] See also MCR 6.610(F)(5), which specifically requires district courts to place plea agreements on the record:

> "The court shall make the plea agreement a part of the record and determine that the parties agree on all the terms of that agreement. The court shall accept, reject or indicate on what basis it accepts the plea."[9]

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[6] Although the rules set out in subchapter 6.300 of the Michigan Court Rules are not specifically applicable to district court proceedings, see MCR 6.001(B), these rules may be instructive whenever MCR 6.610 does not supply a rule specific to plea proceedings involving offenses cognizable in district court.

[7] "The parties may memorialize their agreement on a form substantially approved by the SCAO." MCR 6.302(C)(1). See SCAO Form MC 414, *Plea Agreement*.

[8] See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 6, for additional discussion of applicable procedures concerning plea agreements.

[9] See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 6, for discussion of plea agreements and sentencing bargains.

D. Defendant Must be Competent

An incompetent defendant cannot tender a valid guilty plea. *Godinez v Moran*, 509 US 389, 400-402 (1993); see also *People v Kline*, 113 Mich App 733, 738 (1982). A defendant is presumed competent to stand trial. MCL 330.2020(1).

When a defendant offers to enter a plea to the crime charged and significant record evidence suggests that the defendant is possibly incompetent, a trial court is obligated to make a separate finding with regard to competency before addressing the defendant's plea. *People v Whyte*, 165 Mich App 409, 414 (1988); *People v Matheson*, 70 Mich App 172, 179 (1976).

Committee Tip:

A district court magistrate should refuse to accept a plea and refer the case to a judge for further proceedings if the defendant appears incompetent. A defendant is incompetent to stand trial if he or she is determined to be "incapable because of his mental condition of understanding the nature and object of the proceedings against him or of assisting in his defense in a rational manner." MCL 330.2020(1).

See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 10, for a detailed discussion on determining a defendant's competency.

5.4 Entering a Plea

At arraignment, a defendant charged with a misdemeanor or ordinance violation *must* enter a plea after the court has informed the defendant of the charge as it is stated in the warrant or complaint. MCL 774.1a. **Note that a magistrate cannot accept a plea of guilty but mentally ill or not guilty by reason of insanity.** See MCL 600.8511 and MCL 600.8512a (authorizing acceptance of a plea of guilty or nolo contendere only).

See the Michigan Judicial Institute's checklist for guilty and no contest pleas.

A. Standing Mute or Pleading Not Guilty

If the defendant refuses to enter a plea at arraignment, the court must order that a plea of not guilty be entered. MCL 774.1a.

With the court's permission, a defendant may stand mute or plead not guilty without a formal arraignment by filing a written statement signed by the defendant and any defense attorney of record. MCR 6.610(D)(4) states:

> "The court may allow a defendant to enter a plea of not guilty or to stand mute without formal arraignment by filing a written statement signed by the defendant and any defense attorney of record, reciting the general nature of the charge, the maximum possible sentence, the rights of the defendant at arraignment, and the plea to be entered. The court may require that an appropriate bond be executed and filed and appropriate and reasonable sureties posted or continued as a condition precedent to allowing the defendant to be arraigned without personally appearing before the court."

B. Pleading Guilty or Nolo Contendere

MCR 6.610(F) outlines the required procedure by which a district court may accept a defendant's plea of guilty or nolo contendere. MCR 6.302 outlines the same procedure, albeit with more detail, for accepting a defendant's plea of guilty or no contest to a charged offense cognizable in circuit court.[10] Before accepting the plea, the district court must "determine that the plea is understanding, voluntary, and accurate."[11] MCR 6.610(F)(1).

C. Written Plea of Guilty or Nolo Contendere

Under very specific circumstances, a case may be completely disposed of in writing and without the defendant ever having to appear personally before the court. Provided some additional requirements are met, MCR 6.610(F)(7) permits a defendant to enter a written plea of guilty or no contest. "Pleas by mail" are regularly used to accommodate traffic offenders from out of state. See SCAO Form DC 223, *Plea by Mail*. MCR 6.610(F)(7) states:

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[10] Although MCR 6.302 is not specifically applicable to offenses cognizable in district court, see MCR 6.001(B), it may be instructive.

[11] See Section 5.8 for detailed discussion of these factors.

> "A plea of guilty or nolo contendere in writing is permissible without a personal appearance of the defendant and without support for a finding that defendant is guilty of the offense charged or the offense to which the defendant is pleading if
>
> > (a) the court decides that the combination of the circumstances and the range of possible sentences makes the situation proper for a plea of guilty or nolo contendere;
> >
> > (b) the defendant acknowledges guilt or nolo contendere, in a writing to be placed in the district court file, and waives in writing the rights enumerated in [MCR 6.610(F)(3)(b)]; and
> >
> > (c) the court is satisfied that the waiver is voluntary.
> >
> > A 'writing' includes digital communications, transmitted through electronic means, which are capable of being stored and printed."

5.5 Guilty and Nolo Contendere Pleas

The court rules expressly applicable to procedural matters involving criminal offenses cognizable in district court and those offenses cognizable in circuit court each contain provisions concerning guilty pleas and nolo contendere (no contest)[12] pleas. MCR 6.610(F) outlines the required procedure by which a district court may accept a defendant's plea of guilty or nolo contendere. MCR 6.302 outlines the same procedure, albeit with more detail, for accepting a defendant's plea of guilty or no contest to a charged offense cognizable in circuit court.[13] See the Michigan Judicial Institute's Criminal Pretrial/Trial Quick Reference Materials web page for several resources that may prove useful in conducting plea proceedings involving guilty and no contest pleas.

"Before accepting a plea of guilty or nolo contendere, the [district] court shall in all cases comply with [MCR 6.610]." MCR 6.610(F). MCR 6.610(F)(1) provides:

[12] A no contest plea is generally recognized as an alternative to a guilty plea. See MCR 6.610(F)(1)(b).

[13] Although the rules set out in subchapter 6.300 of the Michigan Court Rules are not specifically applicable to district court proceedings, see MCR 6.001(B), these rules may be instructive whenever MCR 6.610 does not supply a rule specific to plea proceedings involving offenses cognizable in district court.

> "The court shall determine that the plea is understanding, voluntary, and accurate. In determining the accuracy of the plea,
>
> > (a) if the defendant pleads guilty, the court, by questioning the defendant, shall establish support for a finding that [the] defendant is guilty of the offense charged or the offense to which the defendant is pleading, or
> >
> > (b) if the defendant pleads nolo contendere, the court shall not question the defendant about the defendant's participation in the crime, but shall make the determination on the basis of other available information."

MCR 6.302 describes a detailed process by which the circuit court is to determine whether a plea is understanding, voluntary, and accurate.[14] See MCR 6.302(B)-(D).[15]

A. Guilty Pleas

A guilty plea is a conclusive conviction equivalent to a jury's guilty verdict. *People v Ginther*, 390 Mich 436, 440 (1973) (citations omitted). A defendant's decision to plead guilty "is the most serious step a defendant can take in a criminal prosecution." *People v Thew*, 201 Mich App 78, 95 (1993). Precisely because a guilty plea is the most serious aspect of a defendant's criminal case, a guilty plea "'not only must be voluntary but must be [a] knowing, intelligent ac[t] done with sufficient awareness of the relevant circumstances and likely consequences.'" *Id.*, quoting *Brady v United States*, 397 US 742, 747-748 (1970).

MCR 6.302 describes a detailed process by which a circuit court is to determine whether a plea is understanding, voluntary, and accurate.[16] See MCR 6.302(B)-(D).[17]

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[14] Although the rules set out in subchapter 6.300 of the Michigan Court Rules are not specifically applicable to district court proceedings, see MCR 6.001(B), these rules may be instructive whenever MCR 6.610 does not supply a rule specific to plea proceedings involving offenses cognizable in district court.

[15] See Section 5.8 for detailed discussion of these factors.

[16] Although the rules set out in subchapter 6.300 of the Michigan Court Rules are not specifically applicable to district court proceedings, see MCR 6.001(B), these rules may be instructive whenever MCR 6.610 does not supply a rule specific to plea proceedings involving offenses cognizable in district court.

B. Nolo Contendere (No Contest) Pleas

"A nolo contendere plea does not admit guilt, it merely communicates to the court that the criminal defendant does not wish to contest the state's accusations and will acquiesce in the imposition of punishment." *Lichon v American Universal Ins Co*, 435 Mich 408, 417 (1990). A nolo contendere plea has the same effect as a guilty plea. See MCL 767.37. A nolo contendere plea may be offered for a variety of reasons such as: (1) the defendant's reluctance to relate the details of a particularly sordid crime, (2) the defendant's recollection of the facts may be unclear due to intoxication or because so many similar crimes were committed that defendant cannot differentiate one from another, and (3) the defendant wishes to minimize other repercussions, e.g., civil litigation. *In re Guilty Plea Cases*, 395 Mich 96, 134 (1975). The list is not exhaustive. *Id.*

When a defendant pleads nolo contendere, "the court shall not question the defendant about the defendant's participation in the crime, but shall make the determination on the basis of other available information." MCR 6.610(F)(1)(b); MCL 767.37. If a defendant pleads no contest to a charged offense, with the exception of questioning the defendant about his or her role in the charged offense, the court must proceed in the same manner as if the defendant had pleaded guilty. *Id*.

If a defendant's no contest plea is accepted, MCR 6.302 (not expressly applicable to procedural matters involving offenses cognizable in district court) requires that the court "state why a plea of nolo contendere is appropriate." MCR 6.302(D)(2)(a).

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[17] However, due process "might not be entirely satisfied by compliance with subrules (B) through (D)." *People v Cole*, 491 Mich 325, 330-332, 337-338 (2012) (holding that, "regardless of the explicit wording of" former MCR 6.302(B)-(D), which did not specifically require a trial court to inform a defendant about the possibility of lifetime electronic monitoring, "a court may be required by the Due Process Clause of the Fourteenth Amendment to inform a defendant that mandatory lifetime electronic monitoring is a consequence of his or her guilty or no-contest plea." MCR 6.302(B)(2) was subsequently amended to require this advice by the court). "Because [the Sex Offenders Registration Act (SORA)] is a punitive collateral consequence for the conviction of certain crimes, a defendant must be informed of its imposition before entering a guilty plea" and "the registration requirement must be included in the judgment of sentence." *People v Nunez*, 342 Mich App 322, 334 (2022) (noting that "MCR 6.427(9) provides that for any offense the court must include in the judgment of sentence 'the conditions incident to the sentence'"). While MCR 6.429(A) permits "trial courts to sua sponte amend an invalid judgment of sentence . . . within six months of its entry, [t]he amendment in [*Nunez*] was attempted beyond the six-month limitations period." *Nunez*, 342 Mich App at 329 n 5. The *Nunez* Court concluded that "[it was] too late for the judge to amend or correct the judgment of sentence to add a registration requirement, and the prosecution [was] not empowered to do so by letter." *Id*. at 334. Accordingly, "the failure of the trial court to adhere to the statutory notice requirement and to include SORA registration in the judgment of sentence prevent[ed] any belated application of SORA to [the defendant]" under MCL 28.724(5). *Nunez*, 342 Mich App at 334. Note: MCR 6.429(A) was amended to require at least 14 days' notice and an opportunity to be heard before a court may correct an invalid sentence on its own initiative within the six-month period after entry of the conviction and sentence. See ADM File No. 2024-10, effective May 1, 2026.

Note: The court rules governing criminal procedure in cases involving offenses over which the district court has trial jurisdiction contain no requirement similar to MCR 6.302(D)(2). Though not required, a district court's articulation for the record of its reasons for finding a defendant's nolo contendere plea appropriate would almost certainly assist any appellate review of the case. Both MCR 6.302(D) and MCR 6.610(F) do require that the court determine that the defendant's plea is supported by facts indicating the defendant's participation in the crime charged.

See the Michigan Judicial Institute's Criminal Pretrial/Trial Quick Reference Materials web page for reference guides concerning no contest pleas.

C. Unconditional Guilty Pleas

Generally, guilty and nolo contendere pleas waive all nonjurisdictional defects in the proceedings and waive the right to challenge issues involving the defendant's factual guilt. *People v New*, 427 Mich 482, 488, 491 (1986); see also *People v Eaton*, 184 Mich App 649, 653-654 (1990). However, an unconditional guilty or no contest plea does not necessarily waive a defendant's right to challenge the state's *jurisdictional* authority to bring the defendant to trial. *New,* 427 Mich at 495-496; *Eaton,* 184 Mich App at 658.[18] See also *People v Cook*, 323 Mich App 435, 447 n 3 (2018) (noting that "*New's* construct is still controlling").

Statutes of limitations. The statute of limitations in a criminal case is an affirmative, waivable, nonjurisdictional defense. *People v Bulger*, 462 Mich 495, 517 n 7 (2000), effectively overruled in part on other grounds by *Halbert v Michigan*, 545 US 605, 619-624 (2005); *People v Burns*, 250 Mich App 436, 440, 444-445 (2002). A defendant's unconditional plea of guilty or no contest waives the defendant's right to challenge his or her conviction on the ground that the applicable limitations period had expired. *People v Allen*, 192 Mich App 592, 600 (1992).

[18] Jurisdictional defects have been found where a defendant raises issues such as "improper personal jurisdiction, improper subject matter jurisdiction, double jeopardy, imprisonment when the trial court had no authority to sentence [the] defendant to the institution in question, and the conviction of a defendant for no crime whatsoever." *People v Carpentier*, 446 Mich 19, 47-48 (1994) (Riley, J., concurring) (citations omitted). Nonjurisdictional defects include violations of the Interstate Agreement on Detainers (IAD), *People v Wanty*, 189 Mich App 291, 293 (1991); noncompliance with the 180-day rule, *People v Eaton*, 184 Mich App 649, 657-658 (1990); and claims of unlawful search and seizure, *People v West*, 159 Mich App 424, 426 (1987).

D. Conditional Guilty Pleas

A conditional plea entitles the defendant to appeal a specified pretrial ruling or rulings notwithstanding the plea-based judgment, and to withdraw the plea if a specified pretrial ruling or ruling is overturned on appeal. MCR 6.301(C)(2).[19] The ruling or rulings as to which the defendant reserves the right to appeal must be specified orally on the record or in a writing made a part of the record. *Id.* Conditional pleas require the consent of the court and the prosecutor before being entered. MCR 6.301(C); *People v Andrews*, 192 Mich App 706, 707 (1992).

MCR 6.610 does not discuss conditional pleas and their availability to misdemeanor cases. However, the Michigan Court of Appeals has noted instances of conditional guilty pleas in district court without any negative comment on the process. See, e.g., *City of Owosso v Pouillon*, 254 Mich App 210, 212-213 (2002) (noting a district court took a conditional plea); *People v Lyon*, 227 Mich App 599, 603 (1998) (noting the same). While MCR 6.301(C)(2) is not applicable to misdemeanor cases, it may provide guidance.

For a detailed discussion of conditional guilty pleas, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 6.

5.6 Taking a Plea Under Advisement

MCR 6.302(F), the court rule authorizing a court to take a plea under advisement, is not applicable to misdemeanor pleas. See MCR 6.001(B). In addition, no statute or court rule language has been identified that authorizes district courts to take a misdemeanor guilty plea under advisement. For more information on misdemeanor pleas, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 6.

MCL 257.732(21) explicitly prohibits courts from taking under advisement any traffic offense that requires reporting to the Secretary of State:

> "Notwithstanding any other law of this state, a court shall not take under advisement an offense committed by an individual while operating a motor vehicle for which this act requires a conviction or civil infraction determination to be reported to the secretary of state. A conviction or civil

[19] Although the rules set out in subchapter 6.300 of the Michigan Court Rules are not specifically applicable to district court proceedings, see MCR 6.001(B), these rules may be instructive whenever MCR 6.610 does not supply a rule specific to plea proceedings involving offenses cognizable in district court.

> infraction determination that is the subject of this subsection must not be masked, delayed, diverted, suspended, or suppressed by a court. Upon a conviction or civil infraction determination, the conviction or civil infraction determination must immediately be reported to the secretary of state in accordance with this section."

5.7 Required Advice of Rights at Plea Proceedings

MCR 6.610(F)(1)-(9) governs plea proceedings when the charged offense is cognizable in district court. This section discusses in detail a district court's obligations when a defendant pleads guilty or no contest to an offense over which the district court has jurisdiction.

See the Michigan Judicial Institute's Criminal Pretrial/Trial Quick Reference Materials web page for a checklist and flowchart for proceedings involving misdemeanor guilty and no contest pleas, and a flowchart for proceedings involving misdemeanor not guilty pleas.

A. Advice About the Right To Counsel[20]

MCR 6.610(F)(2) provides:

> "The court shall inform the defendant of the right to the assistance of an attorney. If the offense charged requires on conviction a minimum term in jail, the court shall inform the defendant that if the defendant is indigent the defendant has the right to an appointed attorney. The court shall also give such advice if it determines that it might sentence to a term of incarceration, even if suspended."

B. Waiver of Constitutional Trial Rights

MCR 6.610(F)(3)(b) requires a court to advise a defendant of the trial rights that are waived by a guilty or no contest plea. MCR 6.610(F)(3)(b) provides that the court must advise the defendant

> "that if the plea is accepted the defendant will not have a trial of any kind and that the defendant gives up the following rights that the defendant would have at trial:

[20]See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 4 for discussion of a criminal defendant's right to counsel, and Chapter 6, for a discussion of the right to counsel at plea proceedings.

> (*i*) the right to have witnesses called for the defendant's defense at trial,
>
> (*ii*) the right to cross-examine all witnesses called against the defendant,
>
> (*iii*) the right to testify or to remain silent without an inference being drawn from said silence,
>
> (*iv*) the presumption of innocence and the requirement that the defendant's guilt be proven beyond a reasonable doubt."

The Michigan Supreme Court has specifically approved of a trial court's "grouping" of a defendant's rights in the court's recital of rights to a defendant. *In re Guilty Plea Cases*, 395 Mich 96, 114-115 (1975).[21]

MCR 6.302(B), a rule expressly applicable to matters of procedure involving offenses over which the circuit court has jurisdiction, contains a few details not found in MCR 6.610(F) that may be helpful in assuring that a defendant's plea in district court is understanding and voluntary.[22] MCR 6.302(B) specifically requires that the court speak directly to the defendant(s) and "determine that each defendant understands" the factors listed in MCR 6.302(B)—many, but not all, of which are found in MCR 6.610(F). MCR 6.302(B) requires the court to advise the defendant of the following information not found in MCR 6.610(F):

> "(4) if the plea is accepted, the defendant will be giving up any claim that the plea was the result of promises or threats that were not disclosed to the court at the plea proceeding, or that it was not the defendant's own choice to enter the plea[, and]
>
> (5) if the plea is accepted, the defendant may be giving up the right to appeal issues that would otherwise be appealable if she or he were convicted at trial, Further, any appeal from the conviction and sentence pursuant to the plea will be by application for leave to appeal and not by right[.]" MCR 6.302(B)(4)-(5).

MCR 6.610(F)(4) governs the method by which a district court may inform a defendant (or defendant) of the trial rights listed in MCR 6.610(F)(3)(b). The recital of rights may be made:

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[21] See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 6, for a detailed discussion of the constitutional rights that are waived by a guilty plea, including "*Jaworski* rights," and the permissible grouping of these rights.

> "(a) on the record,
>
> (b) in a writing made part of the file, or
>
> (c) in a writing referred to on the record." MCR 6.610(F)(4).

Except as otherwise provided in MCR 6.610(F)(7) (addressing written pleas), if the court uses a writing as permitted under MCR 6.610(F)(4)(b) or MCR 6.610(F)(4)(c), "the court shall address the defendant and obtain from the defendant orally on the record a statement that the rights were read and understood and a waiver of those rights." MCR 6.610(F)(4). "The waiver may be obtained without repeating the individual rights." *Id*.

Where the defendant "signed an advice of rights form[] . . . recit[ing] the rights contained in MCR 6.302(B)(3) verbatim," and where he "affirmed that these rights were read to him, that he understood them, and that he understood he was relinquishing these rights by pleading guilty," the trial court properly complied with MCR 6.302(B), even if the defendant could not personally read the form due to his limited literacy; "MCR 6.302(B) does not specify a reader—only that the rights on the form were read and understood." *People v Winters*, 320 Mich App 506, 512 (2017).

Right to a trial by jury. Const 1963, art 1, § 20, provides that "*[i]n every criminal prosecution*, the accused shall have the right to a speedy and public trial by an impartial jury[.]" (Emphasis added.) Accordingly, a defendant has a constitutional right to be tried by a jury in misdemeanor cases even when conviction would not result in imprisonment. *People v Antkoviak*, 242 Mich App 424, 463 (2000). In

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[22] However, due process "might not be entirely satisfied by compliance with subrules (B) through (D)." *People v Cole*, 491 Mich 325, 330-332, 337-338 (2012) (holding that, "regardless of the explicit wording of" former MCR 6.302(B)-(D), which did not specifically require a trial court to inform a defendant about the possibility of lifetime electronic monitoring, "a court may be required by the Due Process Clause of the Fourteenth Amendment to inform a defendant that mandatory lifetime electronic monitoring is a consequence of his or her guilty or no-contest plea." MCR 6.302(B)(2) was subsequently amended to require this advice by the court)."Because [the Sex Offenders Registration Act (SORA)] is a punitive collateral consequence for the conviction of certain crimes, a defendant must be informed of its imposition before entering a guilty plea" and "the registration requirement must be included in the judgment of sentence." *People v Nunez*, 342 Mich App 322, 334 (2022) (noting that "MCR 6.427(9) provides that for any offense the court must include in the judgment of sentence 'the conditions incident to the sentence'"). While MCR 6.429(A) permits "trial courts to sua sponte amend an invalid judgment of sentence . . . within six months of its entry, [t]he amendment in [*Nunez*] was attempted beyond the six-month limitations period." *Nunez*, 342 Mich App at 329 n 5. The *Nunez* Court concluded that "[it was] too late for the judge to amend or correct the judgment of sentence to add a registration requirement, and the prosecution [was] not empowered to do so by letter." *Id*. at 334. Accordingly, "the failure of the trial court to adhere to the statutory notice requirement and to include SORA registration in the judgment of sentence prevent[ed] any belated application of SORA to [the defendant]" under MCL 28.724(5). *Nunez,* 342 Mich App at 334. Note: MCR 6.429(A) was amended to require at least 14 days' notice and an opportunity to be heard before a court may correct an invalid sentence on its own initiative within the six-month period after entry of the conviction and sentence. See ADM File No. 2024-10, effective May 1, 2026.

Antkoviak, 242 Mich App at 425-427, the defendant was charged with violating MCL 436.1703(1)(a) (minor in possession of alcohol) and was denied a jury trial by the district court on the ground that conviction would not result in incarceration. The Court of Appeals concluded that Const 1963, art 1, § 20, guarantees a trial by jury to any defendant accused of a *criminal offense*. The Court explained that although MCL 436.1703 proscribes conduct classified as a "petty offense," the conduct prohibited is clearly classified by statute as a "crime" for which a defendant has the right to a trial by jury. *Antkoviak*, 242 Mich App at 471, 481, citing MCL 750.5.

A defendant may waive his or her right to a jury trial with the consent of the prosecutor and the approval of the court. MCL 763.3(1).[23]

C. Advice About Possible Sentence

Before a court may accept a defendant's guilty or no contest plea, the court must inform the defendant of any mandatory minimum jail sentence for a conviction of the offense, as well as the maximum possible penalty permitted by statute. MCR 6.610(F)(3)(a).

The extent to which a trial court may involve itself in sentence negotiations is defined by the Michigan Supreme Court's decisions in *People v Killebrew*, 416 Mich 189 (1982), effectively superseded in part by ADM File No. 2011-19,[24] and *People v Cobbs*, 443 Mich 276 (1993). See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 6, for discussion of sentence negotiations and plea bargains.

5.8 Plea Must Be Understanding, Voluntary, and Accurate

"A no-contest or a guilty plea constitutes a waiver of several constitutional rights, including the privilege against compulsory self-incrimination, the right to a trial by jury, and the right to confront one's accusers." *People v Cole*, 491 Mich 325, 332 (2012). "For a plea to constitute an effective waiver of these rights, the Due Process Clause of the Fourteenth Amendment requires that the plea be voluntary and knowing." *Id.* at 332-333. "This requirement mandates not only that a defendant enter into a plea bargain of their own free will, but that their decision is a knowing, intelligent act done with sufficient awareness of the relevant circumstances and likely consequences." *People v Samuels*, 514 Mich 120, 129 (2024) (cleaned up). "This constitutional requirement

[23] See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 12, for a detailed discussion about jury trial waiver.

[24] Effective January 1, 2014. See 495 Mich lxxix (2013).

has been integrated into the Michigan Court Rules under MCR 6.302." *Samuels*, 514 Mich at 129; see also MCR 6.610(F)(1) and MCL 768.35.

"MCR 6.302(A) states that the court may not accept a plea of guilty or nolo contendere unless it is convinced that the plea is understanding, voluntary, and accurate. Before accepting a plea of guilty or nolo contendere, the court must place the defendant or defendants under oath and personally carry out [MCR 6.302(B)-MCR 6.302(E)]." *Samuels*, 514 Mich at 129(cleaned up); see also MCR 6.610(F)(1).

"A defendant who has entered a plea does not waive his opportunity to attack the voluntary and intelligent character of the plea by arguing that his or her counsel provided ineffective assistance during the plea bargaining process." *People v Horton*, 500 Mich 1034, 1034 (2017), citing *Hill v Lockhart*, 474 US 52, 56-57 (1985), and "overrul[ing] *People v Vonins (After Remand)*, 203 Mich App 173, 175-176 (1993), and *People v Bordash*, 208 Mich App 1 (1994), to the extent that they are inconsistent with *Hill*[.]"

A guilty plea should not be accepted by a trial court until facts sufficient to establish the defendant's guilt have been placed on the record. *People v Haack*, 396 Mich 367, 375 (1976).

The adequacy of the factual basis for a guilty plea is reviewed by examining "whether the factfinder could properly convict on the facts elicited from the defendant at the plea proceeding." *People v Brownfield (After Remand)*, 216 Mich App 429, 431 (1996), citing *People v Booth*, 414 Mich 343, 360 (1982).

Committee Tip:

Some defendants may want to plead guilty; however, if the defendant is unwilling or unable to make a factually sufficient plea, the court cannot accept it.

A. Understanding Plea

Before a district court may accept a defendant's guilty or nolo contendere plea, the court must comply with the requirements of MCR 6.610(F), which requires that the court inform the defendant of his or her right to the assistance of an attorney. MCR 6.610(F)(2).

An understanding plea also requires that a defendant be advised of any mandatory minimum jail sentence that would be imposed for conviction of the charged offense as well as the maximum possible penalty for conviction. MCR 6.610(F)(3)(a). Where the trial court incorrectly advised the defendant that the maximum term of imprisonment for the offense "was 20 years when the correct maximum was 10 years," the defendant was not entitled to withdraw his plea; "[b]ecause defendant was not told that he was facing a sentence less than what it actually was, he [could not] show that he was prejudiced" by the trial court's error. *People v Winters*, 320 Mich App 506, 509-511 (2017) (interpreting the requirement in MCR 6.302(B)(2) to advise the defendant of the maximum possible penalty for conviction).

Before accepting a defendant's guilty or no contest plea, the court must also advise the defendant of his or her right to trial and of the rights attendant to the right to trial. MCR 6.610(F)(3)(b).

MCR 6.302(B), a rule expressly applicable to matters of procedure involving offenses over which the circuit court has jurisdiction, contains a few details not found in MCR 6.610(F) that may be helpful in assuring that a defendant's plea in district court is understanding and voluntary.[25] MCR 6.302(B) specifically requires that the court speak directly to the defendant(s) and "determine that each defendant understands" the factors listed in MCR 6.302(B)—many, but not all, of which are found in MCR 6.610(F).

[25] However, due process "might not be entirely satisfied by compliance with subrules (B) through (D)." *Cole*, 491 Mich at 330-332, 337-338 (holding that, "regardless of the explicit wording of" former MCR 6.302(B)-(D), which did not specifically require a trial court to inform a defendant about the possibility of lifetime electronic monitoring, "a court may be required by the Due Process Clause of the Fourteenth Amendment to inform a defendant that mandatory lifetime electronic monitoring is a consequence of his or her guilty or no-contest plea." MCR 6.302(B)(2) was subsequently amended to require this advice by the court). "Because [the Sex Offenders Registration Act (SORA)] is a punitive collateral consequence for the conviction of certain crimes, a defendant must be informed of its imposition before entering a guilty plea" and "the registration requirement must be included in the judgment of sentence." *People v Nunez*, 342 Mich App 322, 334 (2022) (noting that "MCR 6.427(9) provides that for any offense the court must include in the judgment of sentence 'the conditions incident to the sentence'"). While MCR 6.429(A) permits "trial courts to sua sponte amend an invalid judgment of sentence . . . within six months of its entry, [t]he amendment in [*Nunez*] was attempted beyond the six-month limitations period." *Nunez,* 342 Mich App at 329 n 5. The *Nunez* Court concluded that "[it was] too late for the judge to amend or correct the judgment of sentence to add a registration requirement, and the prosecution [was] not empowered to do so by letter." *Id*. at 334. Accordingly, "the failure of the trial court to adhere to the statutory notice requirement and to include SORA registration in the judgment of sentence prevent[ed] any belated application of SORA to [the defendant]" under MCL 28.724(5). *Nunez*, 342 Mich App at 334. Note: MCR 6.429(A) was amended to require at least 14 days' notice and an opportunity to be heard before a court may correct an invalid sentence on its own initiative within the six-month period after entry of the conviction and sentence. See ADM File No. 2024-10, effective May 1, 2026.

B. Voluntary Plea

In determining a plea's voluntariness, MCR 6.610(F)(6) and MCR 6.302(C)(5)[26] require the court to ask the defendant specific questions before accepting the defendant's guilty or nolo contendere plea:

> "The court must ask the defendant:
>
> > (a) (if there is no plea agreement) whether anyone has promised the defendant anything, or (if there is a plea agreement) whether anyone has promised anything beyond what is in the plea agreement;
> >
> > (b) whether anyone has threatened the defendant; and
> >
> > (c) whether it is the defendant's own choice to plead guilty."

"MCR 6.302(C) specifically addresses whether a plea is voluntary, and it requires a trial court to conduct certain inquiries before accepting the plea." *People v Samuels*, 514 Mich 120, 129 (2024). MCR 6.302(C)(2) "requires a court, that states during a plea hearing that it will sentence the defendant to a specified term or within a specified range, to: (1) inform the defendant that the final sentencing guidelines range may differ from the original preliminary estimate, (2) advise the defendant regarding their right to withdraw the plea pursuant to MCR 6.310(B) if the final sentencing guidelines range as determined at sentencing is different, and (3) provide a numerically quantifiable sentence term or range when providing the preliminary estimate." MCR 6.302, 513 Mich 120 (staff comment).[27] "When a plea agreement exists, the trial court must ask the defendant whether anything has been promised to him beyond what is reflected in the plea agreement, 'whether anyone has threatened the defendant,' and 'whether it is the defendant's own choice to plead guilty.'" *Samuels*, 514 Mich at 129, quoting former MCR 6.302(C)(4). However, compliance with MCR 6.302(C) does not necessarily render a plea voluntary. *Id*. at 130. Indeed, "while the specific requirements of MCR 6.302(C) are directed at ensuring the voluntariness of a defendant's plea, these requirements alone might not form a sufficient inquiry into voluntariness." *Samuels*, 514 Mich at 130.

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[26] Although the rules set out in subchapter 6.300 of the Michigan Court Rules are not specifically applicable to district court proceedings, see MCR 6.001(B), these rules may be instructive whenever MCR 6.610 does not supply a rule specific to plea proceedings involving offenses cognizable in district court. For pleas involving felony offenses cognizable in circuit court. See MCR 6.001(A).

[27] A staff comment does not constitute an authoritative construction by the Court.

"In assessing voluntariness, . . . a defendant entering a plea must be 'fully aware of the direct consequences' of the plea." *People v Cole*, 491 Mich 325, 333 (2012), quoting *Brady v United States*, 397 US 742, 755 (1970). Accordingly, before the court accepts a defendant's guilty or nolo contendere plea, the court should advise the defendant on the record and in writing of the consequences if the defendant engages in misconduct between plea acceptance and sentencing. MCR 6.302(E)(2) (providing that "the court will not be bound by any sentencing agreement or evaluation" if the defendant engages in misconduct after plea acceptance and before sentencing).[28] Misconduct includes, but is not limited to, failing to appear for sentencing, violating a bond condition or violating a sentencing or plea agreement, or failing to obey any other court order. MCR 6.302(E)(2); MCR 6.310(B)(3).

"A defendant's plea is involuntary if, under the totality of the circumstances, their will was overborne such that the decision to plead was not the product of free will." *Samuels*, 514 Mich at 126. In *Samuels*, the prosecutor offered defendant and his twin brother a package-deal plea offer that was contingent on both defendants accepting the plea offer. *Id*. at 127. Although defendant initially objected to the package-deal plea offer at the plea hearing, stating that it was "not right," he apparently "changed his mind once his twin brother's trial counsel indicated that his twin brother wished to plead guilty because defendant then indicated that he also wished to plead guilty." *Id*. at 127. On appeal, the *Samuels* Court observed that "certain aspects of package-deal plea offers might pose a greater danger of inducing false pleas than individual plea offers because of the presence of extraneous factors." *Id*. at 132. However, trial courts are not required to "police the voluntariness of plea offers at the plea colloquy." *Id*. at 132 (stating that "package-deal plea offers are [not] so unique and so coercive that they must always be singled out for special inquiry *before* a plea can be taken"). Instead, "our traditional rules governing evidentiary hearings apply." *Id*. at 133.

A trial court must hold an evidentiary hearing to determine a plea's voluntariness "when the record contains some substantiated allegation that raises a question of fact as to the defendant's claim that his or her guilty plea was involuntary because it was entered on the basis of a promise of leniency to a relative, and when the defendant's testimony at the plea hearing does not directly contradict that allegation . . . ." *Id*. at 133 (affirming the Court of Appeals' holding; quotation marks and citation omitted). "This is not to say that a trial

[28] Although the rules set out in subchapter 6.300 of the Michigan Court Rules are not specifically applicable to district court proceedings, see MCR 6.001(B), these rules may be instructive whenever MCR 6.610 does not supply a rule specific to plea proceedings involving offenses cognizable in district court. For pleas involving felony offenses cognizable in circuit court. See MCR 6.001(A).

court need not consider the special nature of a package-deal plea offer at the plea colloquy." *Id*. at 133. "Due-process concerns mandate that a trial court ensure that a plea is made voluntarily," as does MCR 6.302(A). *Samuels*, 514 Mich at 133. "This may require a consideration of whether a package-deal plea offer is unduly coercive under the facts of a specific case [if] a defendant indicates that such a plea offer has a bearing on the defendant's decision to plead guilty." *Id*. at 134 (declining to hold that "a trial court must sua sponte engage in a special inquiry during the plea hearing whether the mere existence of a package-deal plea offer renders the plea involuntary").

Courts must consider several non-exhaustive factors "in a totality-of-the-circumstances analysis when determining whether a package-deal plea offer has rendered a plea involuntary." *Id*. at 135 (adopting the test set forth by the California Supreme Court in *In re Ibarra*, 34 Cal 3d 277 (1983).

> "First, the court must determine whether the inducement for the plea is proper. The court should be satisfied that the prosecution has not misrepresented facts to the defendant, and that the substance of the inducement is within the proper scope of the prosecutor's business. The prosecutor must also have a reasonable and good faith case against the third parties to whom leniency is promised.
>
> Second, the factual basis for the guilty plea must be considered. If the guilty plea is not supported by the evidence, it is less likely that the plea was the product of the accused's free will. The same would be true if the bargained-for sentence were disproportionate to the accused's culpability.
>
> Third, the nature and degree of coerciveness should be carefully examined. Psychological pressures sufficient to indicate an involuntary plea might be present if the third party promised leniency is a close friend or family member whom the defendant feels compelled to help.
>
> Fourth, a plea is not coerced if the promise of leniency to a third party was an insignificant consideration by a defendant in his choice to plead guilty. For example, if the motivating factor to plead guilty was the realization of the likelihood of conviction at trial, the defendant cannot be said to have been forced into pleading guilty, unless the coercive factors present had nevertheless remained a *substantial factor* in his decision.

> [This] list is by no means exhaustive. Other factors which may be relevant can and should be taken into account at the inquiry. For example, the age of the defendant, whether defendant or the prosecutor had initiated the plea negotiations, and whether charges have already been pressed against a third party might be important considerations." *Id*. at 135-136 (cleaned up).

The *Samuels* Court held that "the nature of the relationship between codefendants is also a relevant factor to be considered at the evidentiary hearing." *Id*. at 136 (noting that application of the *Ibarra* factors is not limited to familial relationships). "It is of course relevant whether the prosecution has probable cause to prosecute the third parties in a package-deal plea offer[.]" *Id*. at 136. "Guided by the *Ibarra* factors, a court should consider the totality of the circumstances and determine whether a defendant's plea was involuntary, i.e., whether the plea was the product of an essentially free and unconstrained choice by its maker, or whether the defendant's will has been overborne and his capacity for self-determination critically impaired[.]" *Id*. at 137 (cleaned up). "[W]here the record raises a question of fact about the voluntariness of such a plea, a trial court must hold an evidentiary hearing to consider the totality of the circumstances in determining whether a defendant's plea was involuntary." *Id*. at 126.

The *Samuels* Court determined that there was "a question of fact as to whether defendant voluntarily waived his due-process rights." *Id*. at 138 (observing that the "plea colloquy transcript reveals that defendant indicated a desire to go to trial that only changed after his twin brother stated that he wished to take the plea offer" and "defendant sought to withdraw his plea before sentencing and agreed with the trial court that the package-deal plea offer was coercive"). "Further, defendant's plea-hearing testimony [did] not directly contradict his claim that his plea was involuntarily made." *Id*. at 138 ("Although the record suggests that the prosecution had probable cause to charge defendant's twin brother, that does not end the inquiry under a totality-of-the-circumstances analysis."). In sum, the *Samuels* Court held that "a defendant may be entitled to an evidentiary hearing on the question of voluntariness where the record raises a question of fact as to whether the defendant's plea was induced by a promise of leniency to a third party." *Id*. at 138. "At such an evidentiary hearing, the trial court must conduct a totality-of-the-circumstances inquiry, applying the non-exhaustive *Ibarra* factors where relevant." *Id*. at 138-139 ("remand[ing] the case to the trial court to hold such an evidentiary hearing").

C. Accurate Plea

In determining the accuracy of a guilty plea, "the court, by questioning the defendant, shall establish support for a finding that [the] defendant is guilty of the offense charged *or* the offense to which the defendant is pleading[.]" MCR 6.610(F)(1)(a) (emphasis added).

In determining the accuracy of a nolo contendere plea, "the court shall not question the defendant about the defendant's participation in the crime, but shall make the determination on the basis of other available information." MCR 6.610(F)(1)(b).

5.9 Marine Safety Act Pleas

A person arrested for violating the Marine Safety Act[29] who was given a written notice to appear may tender a plea of guilty or not guilty in person, by representation, or by mail. MCL 324.80168(4). The district court magistrate may accept the plea for purposes of arraignment "with the same effect as though the person personally appeared before him or her." *Id*.

5.10 Accepting a Plea Based on a Citation

Under the MVC, a police officer *must* issue a citation to a person who is arrested without a warrant for "a violation of [the MVC] punishable as a misdemeanor, or an ordinance substantially corresponding to a provision of [the MVC] and punishable as a misdemeanor, under conditions not referred to in [MCL 257.617,[30] MCL 257.619,[31] or MCL 257.727.[32]]" MCL 257.728(1). The citation may serve as a sworn complaint and as a summons to command the initial appearance of the accused and, for misdemeanor traffic cases, to command the accused's response regarding his or her guilt of or responsibility for the violation alleged. MCR 6.615(A)(2)(a)-(b).

A district court magistrate (if authorized to do so under MCL 600.8511(b)) can accept a plea of guilty or not guilty based solely on a citation. MCL 257.728e. However, if the accused pleads not guilty to a misdemeanor, a sworn complaint must be filed with the court before any

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[29] Part 801 of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.80101 *et seq.*

[30] Leaving the scene of an accident resulting in serious impairment of body function or death. MCL 257.617.

[31] Failing to give the proper information and aid after an accident. MCL 257.619.

[32] Requiring a person who was arrested without a warrant for certain specified violations to be arraigned (if an adult) or taken before the family division of circuit court (if a minor) "without unreasonable delay[.]" MCL 257.727.

further proceedings may be conducted. MCL 257.728e. "A warrant for arrest shall not issue for an offense [charged in the citation] until a sworn complaint is filed with the magistrate." MCL 257.728e.

5.11 Refusing To Accept a Plea or Plea Agreement

MCR 6.610(F)(5) permits a district court to reject a plea agreement. The court rule offers no guidance on the procedure or requirements for rejecting a plea made in district court. However, MCR 6.301(A), applicable to procedural matters involving felony offenses, but potentially instructive in cases involving offenses cognizable in district court, permits a court to refuse a defendant's plea as long as the refusal is made pursuant to the court rules. Where a court refuses to accept a defendant's plea, the court must enter a plea of not guilty on the record. *Id*.

5.12 Withdrawing or Challenging a Plea[33]

A. Timing of Motion to Withdraw Plea

A defendant may not challenge a plea on appeal unless the defendant first moves in the trial court to withdraw the plea for noncompliance with applicable court rules. MCR 6.610(F)(8)(a). A defendant may file a motion to withdraw his or her plea before or after sentencing. *Id*. If the motion to withdraw is made after the sentence has been imposed, it must be made within the time for filing a late application for leave to appeal under MCR 7.105(G)(2) (not more than six months after entry of the judgment). MCR 6.610(F)(8)(a); MCR 7.105(G)(2); see also *People v Clement*, 254 Mich App 387, 390, 393 (2002) (applying former MCR 7.103(B)(6)).

B. Standards for Withdrawal of Pleas

When a defendant moves to withdraw his or her plea, the trial court must determine whether a deviation from the court rules occurred during the plea process, and if so, whether the deviation affected the defendant's substantial rights. MCR 6.610(F)(8)(b). If the court concludes that a deviation affecting the defendant's substantial rights occurred, the court must correct the deviation *and* offer the defendant the option of withdrawing his or plea. *Id*. If the court concludes either that no deviation occurred or that any deviation that occurred did not

[33] See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 6, for discussion of withdrawing or challenging a plea. Court rules and caselaw governing the withdrawal of a guilty plea, although not explicitly applicable to offenses cognizable by the district court, may prove useful in applying the court rules governing withdrawal of a misdemeanor plea.

affect the defendant's substantial rights, a defendant may withdraw his or her plea "only if it does not cause substantial prejudice to the [prosecution] because of reliance on the plea." *Id*.

C. Appeal[34]

"An appeal from a misdemeanor case is governed by subchapter 7.100." MCR 6.625(A).

1. Preservation of Right to Appeal

Similar to provisions relative to felony pleas in MCR 6.310(C), MCR 6.610(F)(8) states:

> "The following provisions apply where a defendant seeks to challenge the plea.
>
> (a) A defendant may not challenge a plea on appeal unless the defendant moved in the trial court to withdraw the plea for noncompliance with these rules. Such a motion may be made either before or after sentence has been imposed. After imposition of sentence, the defendant may file a motion to withdraw the plea within the time for filing an application for leave to appeal under MCR 7.105(G)(2).
>
> (b) If the trial court determines that a deviation affecting substantial rights occurred, it shall correct the deviation and give the defendant the option of permitting the plea to stand or of withdrawing the plea. If the trial court determines either a deviation did not occur, or that the deviation did not affect substantial rights, it may permit the defendant to withdraw the plea only if it does not cause substantial prejudice to the people because of reliance on the plea.
>
> (c) If a deviation is corrected, any appeal will be on the whole record including the subsequent advice and inquiries."

[34] See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 6, for a thorough discussion of appeals from plea-based convictions.

2. Advice of Right to Counsel

A district court is required to advise a defendant of his or her right to a court-appointed attorney if the court sentences the defendant to a term of incarceration and the defendant wishes to appeal the conviction.

MCR 6.610(G)(4) states:

> "Immediately after imposing a sentence of incarceration, even if suspended, the court must advise the defendant, on the record or in writing, that:
>
> (a) if the defendant wishes to file an appeal and is financially unable to retain a lawyer, the local indigent criminal defense system's appointing authority will appoint a lawyer to represent the defendant on appeal, and
>
> (b) the request for a lawyer must be made within 14 days after sentencing."

Committee Tip:

It is a good idea to appoint counsel before sentencing if jail is likely.

MCR 6.625(B)-(D) governs the appointment of counsel when requested by an indigent defendant sentenced to a term of incarceration:

> "(B) If the court imposed a sentence of incarceration, even if suspended, and the defendant is indigent, the local indigent criminal defense system's appointing authority must appoint a lawyer if, within 14 days after sentencing, the defendant files a request for a lawyer or makes a request on the record. If the defendant makes a request on the record, the court shall inform the appointing authority of the request that same day. Unless there is a postjudgment motion pending, the appointing authority must act on a defendant's request for a lawyer within 14 days after receiving it. If there is a postjudgment motion pending, the appointing

authority must act on the request after the court's disposition of the pending motion and within 14 days after that disposition. If a lawyer is appointed, the 21 days for taking an appeal pursuant to MCR 7.104(A)(3) and MCR 7.105(A)(3) shall commence on the day of the appointment.

(C) If indigency was not previously determined or there is a request for a redetermination of indigency, the court shall make an indigency determination unless the court's local funding unit has designated this duty to its appointing authority in its compliance plan with the Michigan Indigent Defense Commission. The determination of indigency and, if indigency is found, the appointment of counsel must occur with 14 days of the request unless a postjudgment motion is pending. If there is a postjudgment motion pending, the appointing authority must act on the request after the court's disposition of the pending motion and within 14 days after that disposition.

(D) If a lawyer is appointed, the 21 days for taking an appeal pursuant to MCR 7.104(A)(3) and MCR 7.105(A)(3) shall commence on the day the notice of appointment is filed with the court."

5.13 Sentencing

MCR 6.610(G) governs district court sentencing and applies to all the criminal offenses for which a district court magistrate has authority to sentence upon pleas of guilty or nolo contendere under MCL 600.8511 and MCL 600.8512a. See Section 5.2 for a detailed discussion of the offenses for which a magistrate may impose a sentence. Additionally, SCAO has prepared a chart comparing deferred judgments, delayed sentences, and traditional sentences.

A. Sentencing Requirements

1. Have Defendant's Attorney Present

The court must "require the presence of the defendant's attorney, unless the defendant does not have one or has waived the attorney's presence[.]" MCR 6.610(G)(1)(a).

Note that if a district court magistrate intends to impose a jail term, an indigent defendant has a right to appointed counsel.

MCR 6.610(F)(2). The magistrate has the authority to grant petitions for the appointment of counsel in a misdemeanor case punishable by imprisonment for not more than one year if authorized by the district judge. MCL 600.8513(2)(a). See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 4, for more information about a defendant's right to counsel and the appointment of counsel.

2. Presentence Investigation Report

MCL 771.14 governs the creation of presentence investigation reports (PSIR). The court must provide copies of the PSIR, if one was prepared, to the prosecutor and the defendant's lawyer, or to the defendant if the defendant is not represented by a lawyer, not less than two business days before the day of sentencing. MCR 6.610(G)(1)(b). If the report is not made available at least two business days before the day of sentencing, the party deprived of access to the report is entitled, on oral motion, to an adjournment in order to review the presentence report. *Id.* The prosecutor, defendant's lawyer, or defendant if he or she is not represented by a lawyer, may retain a copy of the report. *Id.*

While the preparation of a PSIR is not required where the maximum sentence does not exceed one year, the court must state a "good reason" for denying a defendant's specific request for the preparation of a PSIR. *People v Shackelford*, 146 Mich App 330, 336 (1985).

Committee Tip:

Because the Crime Victim Rights Act (see MCL 780.764) provides a victim with the right to submit an impact statement to a probation officer preparing a PSIR, the court should require a PSIR whenever there is a victim, unless the prosecutor and defendant (or the defendant's attorney) agree to immediate sentencing, and the victim is present to make an oral impact statement at the sentencing hearing.

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3. Sentencing Procedure

Before imposing sentence and on the record, the court must:

- "provide the defendant's attorney an opportunity to speak on the defendant's behalf," MCR 6.610(G)(1)(c)(i);
- "address the defendant personally in order to permit the defendant to speak or present any information to mitigate the sentence," MCR 6.610(G)(1)(c)(ii);
- "provide the prosecutor an opportunity to speak equivalent to that of the defendant's attorney," MCR 6.610(G)(1)(c)(iii);
- "address any victim of the crime who is present at sentencing or any person the victim has designated to speak on the victim's behalf and permit the victim or the victim's designee to make an impact statement." MCR 6.610(G)(1)(c)(iv).

4. Sentence Imposed and Time Served

The court must "state the sentence being imposed, including the minimum and maximum sentence if applicable, together with any credit for time served to which the defendant is entitled[.]" MCR 6.425(D)(1)(d); see also MCR 6.610(G)(1)(d)(the court must "inform the defendant of credit to be given for time served, if any" before imposing sentence). Further, "if the sentence imposed is not within the guidelines range," the court must "articulate the reasons justifying that specific departure" before imposing sentence. MCR 6.425(D)(1)(e).

5. Restitution

At sentencing, the court must "order the dollar amount of restitution that the defendant must pay to make full restitution as required by law to any victim of the defendant's course of conduct that gives rise to the conviction, or to that victim's estate." MCR 6.610(G)(1)(e). If there is a dispute as to the amount or type of restitution, the prosecuting attorney must demonstrate by a preponderance of the evidence that the amount of the loss sustained by the victim is a result of the offense. *Id*.

B. Limits on Enhancement

"Unless a defendant who is entitled to appointed counsel is represented by an attorney or has waived the right to an attorney, a subsequent charge or sentence may not be enhanced because of this conviction and the defendant may not be incarcerated for violating

probation or any other condition imposed in connection with this conviction." MCR 6.610(G)(3).

C. Required Advice

"Immediately after imposing a sentence of incarceration, even if suspended, the court must advise the defendant, on the record or in writing, that:

> (a) if the defendant wishes to file an appeal and is financially unable to retain a lawyer, the court will appoint a lawyer to represent the defendant appeal, and
>
> (b) the request for a lawyer must be made within 14 days after sentencing." MCR 6.610(G)(3).

This information is included on SCAO Form DC 213, *Advice of Rights*.

D. Rebuttable Presumption Regarding Jail or Probation Sentence

"There is a rebuttable presumption that the court shall sentence an individual convicted of a misdemeanor, other than a serious misdemeanor, with a fine, community service, or other nonjail or nonprobation sentence." MCL 769.5(3). "The court may depart from the presumption under [MCL 769.5(3)] if the court finds reasonable grounds for the departure and states on the record the grounds for the departure." MCL 769.5(4).

"Unlike cases involving felony convictions, there are no sentencing guidelines that a sentencing court must consult when sentencing a person convicted of only a misdemeanor offense." *People of the City of Auburn Hills v Mason*, ___ Mich App ___, ___ (2024). However, MCL 769.5(3) and MCL 769.5(4) "establish a sentencing framework for misdemeanor convictions that is similar to the framework for felony convictions and the legislative sentencing guidelines." *Mason*, ___ Mich App at ___. Accordingly, "a 'nonjail or nonprobation sentence' imposed on 'an individual convicted of a misdemeanor, other than a serious misdemeanor,' pursuant to MCL 769.5(3) is a presumptively proportionate sentence, as a within-guidelines sentence is for a felony conviction." *Mason*, ___ Mich App at ___ ("Just like in the context of sentencing guidelines, the district court was obligated to explain why a departure sentence of 93 days in jail was more suitable than a non-jail or non-probation sentence under MCL 769.5(3)."). "Nonetheless, under MCL 769.5(4), a court imposing a sentence for an ordinary misdemeanor conviction remains free to depart from the presumption in MCL 769.5(4) 'if the court finds reasonable grounds for the departure and states on the record the grounds for the

departure.'" *Mason*, ___ Mich App at ___ (holding that the "[district] court did not adequately justify the imposed sentence," because it "did not consider the circumstances of the offense and did not explain how its departure sentence was more proportionate than a different sentence would have been").

E. Failure to Comply with Sentence

"If the court finds that the sentenced person has not complied with his or her sentence, including a nonjail or nonprobation sentence, the court may issue an order for the person to show cause why he or she should not be held in contempt of court for not complying with the sentence. If the court finds the person in contempt, it may impose an additional sentence, including jail or probation if appropriate." MCL 768.5(5). If the sentenced person is found in contempt "for nonpayment of fines, costs, or other legal financial obligations, the court must find on the record that the person is able to comply with the payments without manifest hardship, and that the person has not made a good-faith effort to do so, before imposing an additional sentence." MCL 769.5(6).

5.14 Fines, Costs, Assessments, and Restitution[35]

MCL 769.1k provides a general statutory basis for a court's authority to impose specified monetary penalties and civil remedies[36] when sentencing a defendant and to collect the amounts owed at any time.

A. Fines

Courts have general authority to impose "any fine authorized by the statute for a violation of which the defendant entered a plea of guilty or nolo contendere or the court determined that the defendant was guilty." MCL 769.1k(1)(b)(*i*).[37] Specific authority to impose a fine, and

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[35] See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 2*, Chapter 8, for detailed information about fines, costs, and assessments. See the Michigan Judicial Institute's *Crime Victim Rights Benchbook*, Chapter 8, for detailed information about restitution.

[36] See *People v Konopka*, 309 Mich App 345, 373 (2015) (holding that "the [court] costs provision of MCL 769.1k(1)(b)(*iii*) is not so punitive[]" to "negate[] the Legislature's civil intent[]" and is therefore a civil remedy).

[37] Former MCL 769.1k(1)(b)(*i*) provided simply for the imposition of "[a]ny fine." However, in *People v Cunningham (Cunningham II)*, 496 Mich 145, 158 n 10 (2014) (reversing 301 Mich App 218 (2013)), the Michigan Supreme Court held that "interpreting MCL 769.1k(1)(b)(*i*) as providing courts with the independent authority to impose 'any fine' would . . . raise constitutional concerns, as 'the ultimate authority to provide for penalties for criminal offenses is constitutionally vested in the Legislature.'" (Citation omitted.) Effective October 17, 2014, 2014 PA 352 amended MCL 769.1k(1)(b)(*i*) to require that any fine imposed be "authorized by the [applicable penal] statute[.]"

the maximum amount of that fine, is often included in the language of the applicable penal statute.

"Subject to [MCL 769.3], if a statute provides that an offense is punishable by imprisonment and a fine, the court may impose imprisonment without the fine or the fine without imprisonment." MCL 769.5(1). "Subject to [MCL 769.3] if a statute provides that an offense is punishable by fine or imprisonment, the court may impose both the fine and imprisonment in its discretion." MCL 769.5(2). The court may require a defendant to pay by wage assignment any fine imposed under MCL 769.1k, and the court may provide that any fine imposed under MCL 769.1k be collected at any time. MCL 769.1k(4) and MCL 769.1k(5).

B. Costs[38]

At the time of sentencing, a delay in sentencing, or entry of a deferred judgment of guilt, the court may impose "[a]ny cost authorized by the statute for a violation of which the defendant entered a plea of guilty or nolo contendere or the court determined that the defendant was guilty," or "[u]ntil December 31, 2026, any cost reasonably related to the actual costs incurred by the trial court without separately calculating those costs involved in the particular case[.]"MCL 769.1k(1)(b)(*ii*)-(*iii*).

"MCL 769.1k(1)(b)(*iii*) "is [not] facially unconstitutional." *People v Johnson*, 336 Mich App 688, 705 (2021).[39] "MCL 769.1k(1)(b)(*iii*)[40] independently authorizes the imposition of costs in addition to those costs authorized by the statute for the sentencing offense," and "[a] trial court possesse[s] the authority under MCL 769.1k, . . . to order defendant to pay court costs." *People v Konopka (On Remand)*, 309 Mich App 345, 350, 358 (2015). "A trial judge does not have unfettered discretion with respect to the amount of costs to impose under [MCL 769.1k(1)(b)(*iii*)] because the costs imposed must be reasonably related to the actual costs incurred by the trial court without separately calculating those costs involved in the particular case." *Johnson*, 336 Mich App at 700 (quotation marks, alteration, and

[38]Note that "[t]he court shall not sentence a defendant to a term of incarceration . . . for failure to comply with an order to pay money unless the court finds, on the record, that the defendant is able to comply with the order without manifest hardship and that the defendant has not made a good-faith effort to comply with the order." MCR 6.425(D)(3)(a). MCR 6.425(D)(3) also addresses payment alternatives and offers guidance for determining manifest hardship. For a detailed discussion of MCR 6.425(D)(3), see the Michigan Judicial Institute's *Criminal Proceedings Benchbook Vol. 2*, Chapter 8.

[39]MCL 769.1k does not violate a defendant's due process or equal protection rights, nor does it violate the constitutional prohibition on ex post facto punishments or the principle of separation of powers. *People v Konopka*, 309 Mich App 345, 365, 367-70, 376 (2015).

[40] This costs provision is a civil remedy. See *People v Konopka*, 309 Mich App 345, 373 (2015).

citation omitted). "[A]lthough the costs imposed . . . need not be separately calculated, . . . the trial court [must] . . . establish a factual basis" demonstrating that "the costs imposed [are] reasonably related to the actual costs incurred by the trial court[.]" *Konopka*, 309 Mich App at 359-360.

"MCL 769.1k(1)(b)(*iii*) does not provide the trial court with the authority to increase the costs imposed on criminal defendants as a means for generating more revenue." *Johnson*, 336 Mich App at 701 (quotation marks and citation omitted; concluding that although MCL 769.1k(1)(b)(*iii*) "is a revenue-generating statute," defendant "failed to show that [the statute] also authorizes courts to administer the revenue so collected" or establish that courts ordering the assessments benefit from a portion of the revenue under circumstances where they do not have control over administration of the revenue). "While . . . use of the funds generated pursuant to MCL 769.1k(1)(b)(*iii*) to finance the operations of the sentencing judge's court, coupled with intense pressure placed on that court by its local funding unit, could create, at a minimum, an appearance of impropriety, [defendant failed] to establish that no set of circumstances exist under which MCL 769.1k(1)(b)(*iii*) would be valid. The fact that the statute might operate unconstitutionally under some conceivable set of circumstances is insufficient." *Johnson*, 336 Mich App at 703 (quotation marks, alterations, and citation omitted).

The imposition of court costs under MCL 769.1k(1)(b)(*iii*) is a tax, rather than a governmental fee, and it must therefore comply with the Distinct-Statement Clause and the separation-of-powers doctrine. *People v Cameron*, 319 Mich App 215, 236 (2017). "[A]lthough it imposes a tax, MCL 769.1k(1)(b)(*iii*) is not unconstitutional[.]" *Cameron*, 319 Mich App at 218.[41]

MCL 769.34(6) addresses the sentencing guidelines and the duties of the court when sentencing, and it generally authorizes the court to order court costs ("As part of the sentence, the court may also order the defendant to pay any combination of a fine, costs, or applicable assessments."). However, "as with MCL 769.1k, MCL 769.34(6) allows courts to impose only those costs or fines that the Legislature has separately authorized by statute" and "does not provide courts with the independent authority to impose any fine or cost." *People v Cunningham*, 496 Mich 145, 158 n 11 (2014).[42] For a complete listing of statutes specifically authorizing the imposition of costs, see the

[41]For a detailed discussion of the categorization of MCL 769.1k(1)(b)(*iii*) as a tax and of the application of the Distinct-Statement Clause and separation-of-powers, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol 2*, Chapter 8.

[42]For a more in-depth discussion of costs, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 2*, Chapter 8.

Michigan Judicial Institute's Table of General Costs, Table of Misdemeanor Offenses for Which Costs are Authorized, and Table of Felony Offenses for Which Costs are Authorized.

Further, a defendant may be ordered to pay any additional costs incurred to compel his or her attendance. MCL 769.1k(2). In addition, MCL 769.1k(4) authorizes a court to order that a defendant pay by wage assignment any of the costs authorized in MCL 769.1k(1). A court may provide for the collection of costs imposed under MCL 769.1k at any time. MCL 769.1k(5).

"A defendant must not be imprisoned, jailed, or incarcerated for the nonpayment of costs ordered under [MCL 769.1k] unless the court determines that the defendant has the resources to pay the ordered costs and has not made a good-faith effort to do so." MCL 769.1k(10). See also MCR 6.425(D)(3) (providing similar preconditions to incarceration for nonpayment in felony proceedings). This determination must be made by a judge; district court magistrates are not authorized to make determinations regarding a defendant's ability to pay. See MCL 600.8511, MCL 600.8512; MCL 600.8512a, MCL 600.8513 (setting forth authority of district court magistrates without granting authority for making ability to pay determinations).

In addition to any costs specifically authorized by offense-specific statutes, MCL 257.729 provides that "[i]n addition to a fine assessed for the charge . . . when found guilty . . . , the magistrate may also add to any fine and costs levied additional costs incurred in compelling the appearance of the person, which additional costs shall be returned to the general fund of the unit of government incurring the costs."

C. Minimum State Costs

MCL 769.1k(1)(a) expressly requires a court to "impose the minimum state costs as set forth in [MCL 769.1j]." MCL 769.1j conditions the imposition of minimum state costs on whether a defendant is ordered to pay other fines, costs, or assessments. If a defendant is ordered to pay any combination of a fine, costs, or applicable assessments, the court must order the defendant to pay a minimum state cost of $50 for each misdemeanor conviction or ordinance violation. MCL 769.1j(1). See also MCL 600.8381(4) ("Beginning October 1, 2003, when fines and costs are assessed by a judge or district court magistrate, the defendant shall be ordered to pay costs of not less than $50.00 for each conviction for a misdemeanor or for any ordinance violation.") The costs imposed under MCL 769.1j(1)(a) constitute a tax, and this tax does not violate the separation of powers requirement under Const 1963, art 3, § 2 or the requirement of Const 1963, art 4, § 32 that "[e]very law which imposes, continues or revives a tax shall distinctly state the tax." *People v Shenoskey*, 320 Mich App 80, 83-84 (2017)

(applying the analysis of MCL 769.1k(1)(b)(*iii*) in *People v Cameron*, 319 Mich App 215 (2017) to MCL 769.1j(1)(a) because the statutes are "closely related").

Further, MCL 769.1k(4) authorizes a court to order that a defendant pay by wage assignment the minimum state costs authorized in MCL 769.1k(1). A court may provide for the collection of minimum state costs imposed under MCL 769.1k at any time. See MCL 769.1k(5). See also the SCAO chart regarding minimum state costs (page 2 of the document).

D. Crime Victim Assessment[43]

Whenever an individual is charged with a crime or ordinance violation and the charge "is resolved by conviction, by assignment of the defendant to youthful trainee status, by a delayed sentence or deferred entry of judgment of guilt, or in another way that is not an acquittal or unconditional dismissal," the court must order the individual to pay a crime victim assessment as a condition of probation or parole. MCL 780.905(1)-(2). The assessment is $75 for a misdemeanor offense or ordinance violation. MCL 780.905(1)(b). In contrast to the minimum state cost, which must be ordered for each conviction arising from a single case,[44] only one crime victim assessment per case may be ordered, even when the case involves multiple offenses. MCL 780.905(2).[45]

MCL 769.1k provides a court with general authority to impose "[a]ny assessment authorized by law" on a defendant at the time a defendant is sentenced, at the time a defendant's sentence is delayed, or at the time entry of an adjudication of guilt is deferred. MCL 769.1k(1)(b)(*v*). MCL 769.1k(4) authorizes a court to order that a defendant pay by wage assignment an assessment imposed pursuant to MCL 769.1k(1)(b)(*v*). A court may provide for the collection of any assessment imposed under MCL 769.1k(1) at any time. MCL 769.1k(5).

See also the SCAO chart regarding crime victim assessments.

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[43] See the Michigan Judicial Institute's *Crime Victim Rights Benchbook* for more information about crime victim assessments.

[44] Minimum state costs are assessed on each count "if any combination of other assessments is also ordered on that count (e.g. fine + cost, fine + restitution, crime victim assessment + restitution, etc.)." SCAO Crime Victim Assessment and Minimum State Cost Charts, p 2, p 2 n 5 (Revised April 1, 2012).

[45] The crime victim assessment is to be "[b]ased upon the [m]ost [s]erious [o]ffense [c]onvicted" in a case. SCAO Crime Victim Assessment and Minimum State Cost Charts, p 1 (Revised April 1, 2012).

E. Restitution

At sentencing, the court must "order the dollar amount of restitution that the defendant must pay to make full restitution as required by law to any victim of the defendant's course of conduct that gives rise to the conviction, or to that victim's estate." MCR 6.610(G)(1)(e). Restitution is mandatory for an offender convicted of a felony, misdemeanor, or ordinance violation. MCL 769.1a(2); MCL 780.766(2); MCL 780.794(2); MCL 780.826(2). Restitution is also mandatory "[f]or an offense that is resolved by assignment of the defendant to youthful trainee status, by a delayed sentence or deferred judgment of guilt, or in another way that is not an acquittal or unconditional dismissal[.]" MCL 780.766(2); MCL 780.826(2). See also MCL 780.794(2), which also requires the court to order restitution "[f]or an offense that is resolved informally by means of a consent calendar diversion or by another informal method that does not result in a dispositional hearing[.]"

If there is a dispute as to the amount or type of restitution, the prosecuting attorney must demonstrate by a preponderance of the evidence that the amount of the loss sustained by the victim is a result of the offense. MCR 6.610(G)(1)(e). MCR 6.430 governs postjudgment motions to amend restitution. The prosecuting attorney, victim, or defendant may file a postjudgment motion to amend an order of restitution "based upon new or updated information related to the injury, damages, or loss for which the restitution was ordered." MCR 6.430(A).

5.15 Fingerprints

Before sentencing, the district court magistrate must determine whether the defendant has been fingerprinted. MCL 769.1(2). If fingerprints have not been taken, the court must order them to be taken and forwarded to the Michigan State Police. MCL 769.16a(5). Note that if the offense is a listed offense as defined in the Sex Offenders Registration Act (SORA), MCL 28.722, fingerprints must be taken and forwarded as provided in the SORA. MCL 769.16a(6).

For non-MVC misdemeanor violations where the court was notified that fingerprints were taken and forwarded to the Michigan State Police, the court clerk must immediately report the conviction to the Michigan State Police. MCL 769.1(2); MCL 769.16a(1). Reporting requirements for other convictions are beyond the scope of this section.

5.16 DNA (Deoxyribonucleic Acid) Identification Profiling System Act (DNA Profiling Act)

This section contains a very brief discussion of the DNA Identification Profiling System Act (DNA Profiling Act), MCL 28.171 *et seq*. For a detailed discussion of this topic, see the Michigan Judicial Institute's *Evidence Benchbook*, Chapter 4.

Among other requirements and provisions, the DNA Profiling Act facilitates the collection of a DNA sample from (1) certain prisoners;[46] (2) anyone arrested for committing or attempting to commit a felony or an offense that would be a felony if committed by an adult, and individuals convicted of certain enumerated misdemeanors (e.g., indecent exposure and offenses involving prostitution or houses of prostitution);[47] and (3) juvenile offenders.[48] See MCL 28.173(a)(*i*)-(*iii*); MCL 28.176(1)(a)-(b). The act also sets out requirements for the collection procedures to be employed, the permissible use of collected DNA samples, and the transmission of DNA samples to the Michigan State Police. See MCL 28.175 and MCL 28.176.

MCL 764.26a sets forth the procedure for processing arrest records, biometric data, and fingerprints when charges are dismissed before trial.

5.17 Misdemeanor Sanctions

Violations of the acts or substantially corresponding local ordinances for which a district court magistrate has the authority to sentence upon a plea of guilty or nolo condendere may be penalized by criminal, civil, and licensing sanctions depending on the nature of the offense. Upon sentencing, a district court magistrate should complete SCAO Form MC 219, *Judgment of Sentence, Commitment to Jail*.[49]

Further, all required fines, costs, assessments, and restitution must be ordered in addition to any sentence and/or probation. See Section 5.14.

A. Punishment Not Specified by Statute

If a punishment is not specified by the applicable statute and the defendant is convicted of a crime designated as a misdemeanor under

[46] See MCL 791.233d for information on the authority to collect a DNA sample from a prisoner.

[47] See MCL 750.520m for information on a law enforcement agency's authority to collect a DNA sample from an adult and certain juveniles.

[48] See MCL 803.307a and MCL 803.225a for information on the authority of the Department of Health and Human Services to collect a DNA sample from certain juveniles.

[49] This form is also available in Spanish.

the Michigan Penal Code or in any other act of the state of Michigan, "the person is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both." MCL 750.504.

However, note that MCL 257.901(2) provides a general penalty for misdemeanor violations of the MVC. "Unless another penalty is provided in [the MVC[50]] or by the laws of [Michigan], a person convicted of a misdemeanor for the violation of [the MVC] shall be punished by a fine of not more than $100.00, or by imprisonment for not more than 90 days, or both." MCL 257.901(2).

B. Probation and Delayed Sentencing

MCL 771.1(1) permits the court to place the defendant on probation:

> "In all prosecutions for felonies, misdemeanors, or ordinance violations other than murder, treason, criminal sexual conduct in the first or third degree, armed robbery, or major controlled substance offenses, if the defendant has been found guilty upon verdict or plea[51] and the court determines that the defendant is not likely again to engage in an offensive or criminal course of conduct and that the public good does not require that the defendant suffer the penalty imposed by law, the court may place the defendant on probation under the charge and supervision of a probation officer." MCL 771.1(1).

If the defendant is placed on probation, "the court may delay sentencing the defendant for not more than 1 year to give the defendant an opportunity to prove to the court his or her eligibility for probation or other leniency compatible with the ends of justice and the defendant's rehabilitation[.]" MCL 771.1(2). "When sentencing is delayed, the court shall enter an order stating the reason for the delay upon the court's records. The delay in passing sentence does not deprive the court of jurisdiction to sentence the defendant at any time during the period of delay." *Id.*

"[T]he plain language of MCL 771.1(2) does not deprive a sentencing judge of jurisdiction if a defendant is not sentenced within one year after the imposition of a delayed sentence[.]" *People v Smith*, 496 Mich

[50] See e.g., MCL 257.601b, providing for a higher sentence when a moving violation occurs in a work zone, at an emergency scene, or in a school zone during certain times.

[51] MCR 6.302 sets forth the procedures for pleas of guilty and nolo contendere in cases cognizable in the circuit court or court of equivalent jurisdiction. See MCR 6.001(A). MCR 6.302(F) provides that "[t]he court may take the plea under advisement."

133, 143 (2014).[52] Rather, "[a]fter the one-year statutory limitation elapses, sentencing may no longer be delayed for the purpose of permitting a defendant the opportunity to prove that he] is worthy of leniency, and the judge is required to sentence [the] defendant as provided by law." *Id.* at 142.

If probation is ordered, the district court magistrate should enter an order delaying sentence pursuant to SCAO Form MC 294.

A district court magistrate may determine the period and conditions of probation by order. Generally, the term of probation for a misdemeanor cannot exceed two years. MCL 771.2(1).[53] The sentence of probation must include, at a minimum, the conditions specified in MCL 771.3(1) if appropriate.[54] The minimum conditions are included on SCAO Form MC 243, *Order of Probation*.

For a detailed discussion of probation and permissible probation terms, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 2*, Chapter 9, §§9.3–9.4.

Committee Tip:

Note that the MVC requires convictions to be abstracted as required by MCL 257.732. MCL 257.8a defines conviction *to include "[a] final conviction, the payment of a fine, a plea of guilty or nolo contendere if accepted by the court, or a finding of guilt for a criminal law violation or a juvenile adjudication, probate court disposition, or juvenile disposition for a violation that if committed by an adult would be a crime, regardless of whether the penalty is rebated or suspended." See also People v McCann, 314 Mich App 605, 613 (2016) (noting that "[a]lthough a trial judge has discretion to delay*

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[52]Overruling *People v McLott,* 70 Mich App 524 (1976), *People v Turner,* 92 Mich App 485 (1979), *People v Dubis,* 158 Mich App 504 (1987), *and People v Boynton*, 185 Mich App 669 (1990), "to the extent they hold that a court loses jurisdiction to sentence a defendant as a remedy for a violation of MCL 771.1(2)." *Smith (Ryan)*, 496 Mich at 142.

[53]Except for certain convictions, detailed in MCL 771.2a and MCL 768.36. MCL 771.2(1).

[54]Under the Michigan Regulation and Taxation of Marihuana Act (MRTMA), MCL 333.27951 *et seq*., a trial court "may not prohibit MRTMA-compliant marijuana use as a probation condition *solely* because such use violates federal law." *People v Hess*, ___ Mich ___, ___ (2026). Under MCL 771.3(1)(a), a probationer must not violate federal criminal law; even so, the probation act "is inconsistent with the MRTMA insofar as it automatically bars probationers from MRTMA-compliant marijuana use based on the CSA [federal Controlled Substances Act]." *Hess*, ___ Mich at ___. The *Hess* Court left unanswered "whether and under what circumstances a trial court may prohibit MRTMA-compliant marijuana use as a discretionary condition of probation under MCL 771.3(3)." *Hess*, ___ Mich at ___ (quotation marks and citation omitted).

sentencing[,] . . . the [MVC] regards [a guilty] plea . . . as a conviction"). Abstracting requirements are not mentioned in MCL 771.1, and thus, do not appear to be implicated by that statute. Accordingly, a court should send timely abstracts to the Secretary of State for convictions under the MVC, regardless of whether probation or a delayed sentence has been ordered.

"[A] trial court may not require the Secretary of State to amend driving records when a conviction is dismissed following [a] guilty plea and delayed sentencing[under MCL 771.1]"; although MCL 257.732(1)(b) of the MVC "requires a trial court to forward abstracts to the Secretary of State following the dismissal of charges, . . . it does not command the secretary to take specific action in response," and MCL 257.732(22) prohibits a court from ordering the expunction of a Secretary of State record of a reportable offense that has been set aside or dismissed. *McCann*, 314 Mich App at 614 (citations omitted).

For more information on sentencing, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 2*. For more information on probation, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 2*, Chapter 9, §§9.3–9.4.

5.18 Licensing Sanctions

"The Secretary of State has the statutory power to review driving records and determine sanctions." *People v Greenlee*, 133 Mich App 734, 737 (1984). "[I]t [is] not within the jurisdiction of the district court to place a civil defendant on probation and restrict his [or her] driving privileges." *Id.*

The following subsections briefly address available licensing sanctions. For a detailed discussion of licensing sanctions, see See the Michigan Judicial Institute's *Traffic Benchbook*, Chapter 1.

The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions.

Committee Tip:

Generally, the imposition of licensing sanctions is the responsibility of the Michigan Secretary of State (SOS), and the court orders the SOS to impose the licensing sanction in a notation on the abstract of conviction. A district court magistrate can only order licensing sanctions for some 93-day misdemeanors within his or her sentencing authority pursuant to MCL 600.8511(b), but should nonetheless be aware of all the criminal offenses involving court-imposed licensing sanctions for purposes of advising defendants at arraignment of the effect of a plea or conviction. The Offense Code Index For Traffic Violations includes a table detailing traffic offenses and the applicable sanctions.

A. Abstracts of Convictions

"Each municipal judge and each clerk of a court of record shall keep a full record of every case in which an individual is charged with or cited for a violation of [the MVC] or a local ordinance substantially corresponding to [the MVC] regulating the operation of vehicles on highways[.]" MCL 257.732(1).

"Except as provided in [MCL 257.732(16)], the municipal judge or clerk of the court of record shall prepare and forward to the secretary of state an abstract of the court record as follows:

> (a) Not more than 5 days after a conviction, forfeiture of bail, or entry of a civil infraction determination or default judgment upon a charge of or citation for violating or attempting to violate [the MVC] or a local ordinance substantially corresponding to [the MVC] regulating the operation of vehicles on highways." MCL 257.732(1)(a).[55]

"The abstract or report required under [MCL 257.732] must be made upon a form furnished by the secretary of state. An abstract must be certified by signature, stamp, or facsimile signature of the individual

[55] MCL 257.732(1)(b) and MCL 257.732(1)(c) are not included because a district court magistrate does not have the authority to impose sentences for the listed offenses. See MCL 600.8511(b)-(c).

required to prepare the abstract as correct. An abstract or report must include all of the following:

> (a) The name, address, and date of birth of the individual charged or cited.
>
> (b) The number of the individual's operator's . . . license, if any.
>
> (c) The date and nature of the violation.
>
> (d) The type of vehicle driven at the time of the violation[.]
>
> (e) The date of the conviction, finding, forfeiture, judgment, or civil infraction determination.
>
> (f) Whether bail was forfeited.
>
> (g) Any license restriction, suspension, or denial ordered by the court as provided by law.
>
> (h) The vehicle identification number and registration plate number of all vehicles that are ordered immobilized or forfeited.
>
> (i) Other information considered necessary to the secretary of state." MCL 257.732(3).

Certain offenses do not require submission of an abstract. See MCL 257.732(16).[56]

"Except as provided in [the MVC] and notwithstanding any other provision of law, a court shall not order expunction of any violation reportable to the secretary of state under [MCL 257.732]." MCL 257.732(22).

Upon receipt of an abstract, the secretary of state must determine an individual's eligibility to attend a basic driver improvement course. MCL 257.320d.[57]

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[56]If an offense or civil infraction that does not require submission of an abstract has a statutorily increased fine or penalty for second or subsequent violations, for example texting while driving under MCL 257.602b, the court may not be able to determine whether the person has a previous violation because the violation will not be part of the person's driving record. In this instance, the court can check the Judicial Data Warehouse (JDW) to see whether there is a record. Effective January 1, 2022, "all trial courts must submit all case data including nonpublic and financial records to the [JDW.]" See ADM File No. 2021-14. While not every court reported data to the JDW prior to January 1, 2022, it is possible that there will be a record of the person because courts can search by name and see all of the reported criminal and civil cases for a particular person. **Note** that the JDW contains information that may not be pertinent to the particular inquiry, and district court magistrates must avoid reviewing information that may be deemed ex parte communications.

B. Points

Except as otherwise provided in MCL 257.320a and MCL 257.629c, "[n]ot more than 5 days after receipt of a properly prepared abstract from a court of [Michigan] or another state, the secretary of state shall record the date of conviction, civil infraction determination, or probate court disposition, and the number of points for each, based on the [formula set out in MCL 257.320a(1)]." MCL 257.320a(1).[58]

"[T]he court shall not submit, and the secretary of state shall discard and not enter on the master driving record, an abstract for a conviction . . . for . . . [a] nonmoving violation that is not the basis for the secretary of state's suspension, revocation, or denial of an operator's . . . license." MCL 257.732(16)(b). Similarly, "[t]he court shall not submit, and the secretary of state shall discard and not enter on the master driving record, an abstract for a conviction . . . for . . . [a] violation of [MCL 257.201 *et seq.*] that is not the basis for the secretary of state's suspension, revocation, or denial of an operator's license." MCL 257.732(16)(c).

C. License Denial

MCL 257.303(1) lists conditions that require the secretary of state to deny issuance of an operator's license. Although most of the enumerated circumstances are outside the scope of this manual, an individual's application for a license must be denied if the individual's "license is suspended, revoked, denied, or canceled in any state. If the suspension, revocation, denial, or cancellation is not from the jurisdiction that issued the last license to the individual, the secretary of state may issue a license after the expiration of 5 years from the effective date of the most recent suspension, revocation, denial, or cancellation." MCL 257.303(1)(c). See also MCL 257.303(2) ("[o]n receiving the appropriate records of conviction, the secretary of state shall . . . deny issuance of an operator's . . . license"). In addition, certain individuals with certain enumerated convictions, juvenile dispositions, or civil infraction determinations must also be denied an operator's license. See MCL 257.303(1)(i)-(j).

D. License Revocation

"On receiving the appropriate records of conviction, the secretary of state shall revoke the operator's . . . license of an individual and deny issuance of an operator's . . . license to an individual" who has a

[57] See the Michigan Judicial Institute's *Traffic Benchbook*, Chapter 1, for more information on the basic driver improvement course requirements.

[58] For a detailed discussion of points, see the Michigan Judicial Institute's *Traffic Benchbook*, Chapter 1.

conviction or a combination of convictions for the offenses specified in the statute. MCL 257.303(2).

E. License Suspension

MCL 257.319 sets forth a list of convictions for which suspension of a person's driver's license is mandatory. "The secretary of state shall immediately suspend an individual's license as provided in [MCL 257.319] on receiving a record of the individual's conviction for a crime described in [MCL 257.319], whether the conviction is under a law of [Michigan], a local ordinance that substantially corresponds to a law of [Michigan], a law of another state that substantially corresponds to a law of [Michigan], or, beginning October 31, 2010, a law of the United States that substantially corresponds to a law of [Michigan]." MCL 257.319(1). Note that a suspension will result from a conviction for an attempted misdemeanor traffic offense for which suspension is mandatory. MCL 257.204b.

"If the secretary of state receives records of more than 1 conviction of an individual that results from the same incident, a suspension must be imposed only for the violation to which the longest period of suspension applies[.]" MCL 257.319(12).

Failure to answer a citation or notice to appear or failure to comply with an order or judgment may result in a mandatory license suspension. See MCL 257.321a(1)-(3); MCR 4.101(G)(2)(b).

F. Vehicle Immobilization

Under MCL 257.904d(1), vehicle immobilization may be a mandatory or discretionary sanction for a conviction of certain enumerated offenses. Similarly, immobilization is authorized if the person violates any of the enumerated offenses found in MCL 257.904d(2) "during a period of suspension, revocation, or denial[.]"

"The court may order vehicle immobilization under [MCL 257.904d] under either of the following circumstances:

> (a) The defendant is the owner, co-owner, lessee, or co-lessee of the vehicle operated during the violation.
>
> (b) The owner, co-owner, lessee, or co-lessee knowingly permitted the vehicle to be operated in violation of [MCL 257.625(2) or MCL 257.904(2)] regardless of whether a conviction resulted." MCL 257.904d(4).

When vehicle immobilization applies, "[t]he defendant shall provide to the court the vehicle identification number and registration plate number of the vehicle involved in the violation." MCL 257.904d(3).

Exceptions. Certain violations and certain vehicles are exempt from vehicle immobilization. See MCL 257.904d(7), which states that "[MCL 257.904d] does not apply to any of the following:

> (a) A suspension, revocation, or denial based on a violation of the support and parenting time enforcement act, . . . [MCL 552.601 to MCL 552.650].
>
> (b) A vehicle that is registered in another state or that is a rental vehicle.
>
> (c) A vehicle owned by the federal government, [Michigan], or a local unit of government of [Michigan].
>
> (d) A vehicle not subject to registration under [MCL 257.216].
>
> (e) Any of the following:
>
> > (*i*) A violation of [MCL 257.201 *et seq*].
> >
> > (*ii*) A violation of [MCL 257.501 *et seq*].
> >
> > (*iii*) A violation for failure to change address.
> >
> > (*iv*) A parking violation.
> >
> > (*v*) A bad check violation.
> >
> > (*vi*) An equipment violation.
> >
> > (*vii*) A pedestrian, passenger, or bicycle violation, other than a violation of [MCL 436.1703(1) or MCL 436.1703(2)], or a local ordinance substantially corresponding to [MCL 436.1703(1) or MCL 436.1703(2)], or [MCL 257.624a or MCL 257.624b] or a local ordinance substantially corresponding to [MCL 257.624a or MCL 257.624b].
> >
> > (*viii*) A violation of a local ordinance substantially corresponding to a violation described in [MCL 257.904d(7)(*i*)-(*vii*)." MCL 257.904d(7).

The length of time a vehicle may be immobilized depends on the offense. See MCL 257.904d(1)-(2).

"If a defendant is ordered imprisoned for the violation for which immobilization is ordered, the period of immobilization shall begin at the end of the period of imprisonment." MCL 257.904d(6).

The execution of an immobilization order is governed by MCL 257.904e, which provides:

"(1) A court shall order a vehicle immobilized under [MCL 257.904d] by the use of any available technology approved by the court that locks the ignition, wheels, or steering of the vehicle or otherwise prevents any person from operating the vehicle or that prevents the defendant from operating the vehicle. If a vehicle is immobilized under this section, the court may order the vehicle stored at a location and in a manner considered appropriate by the court. The court may order the person convicted of violating [MCL 257.625] or a suspension, revocation, or denial under [MCL 257.904] to pay the cost of immobilizing and storing the vehicle.

(2) A vehicle subject to immobilization under this section may be sold during the period of immobilization, but shall not be sold to a person who is exempt from paying a use tax under [MCL 205.93(3)], without a court order.

(3) A defendant who is prohibited from operating a motor vehicle by vehicle immobilization shall not purchase, lease, or otherwise obtain a motor vehicle during the immobilization period.

(4) A person shall not remove, tamper with, or bypass or attempt to remove, tamper with, or bypass a device that he or she knows or has reason to know has been installed on a vehicle by court order for vehicle immobilization or operate or attempt to operate a vehicle that he or she knows or has reason to know has been ordered immobilized.

(5) A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $100.00, or both.

(6) To the extent that a local ordinance regarding the storage or removal of vehicles conflicts with an order of immobilization issued by the court, the local ordinance is preempted.

(7) If a peace officer stops a vehicle that is being operated in violation of an immobilization order, the vehicle shall be impounded pending an order of a court of competent jurisdiction.

(8) The court shall require the defendant or a person who provides immobilization services to the court under this section to certify that a vehicle ordered immobilized by the court is immobilized as required."

"Except as otherwise provided in [MCL 257.904d(11) and MCL 257.904d(13)], an order required to be issued under [MCL 257.904d] shall not be suspended." MCL 257.904d(5).

"Beginning October 31, 2010, if the person obtains a restricted operator's . . . license from the secretary of state and an ignition interlock device is properly installed in the vehicle, the court shall suspend the immobilization order issued under [MCL 257.904d(1)(c)] for a conviction under [MCL 257.625l(2)]." MCL 257.904d(11).

"Vehicle immobilization under [MCL 257.904d] is subject to [MCL 257.304] if the defendant obtains a restricted license under [MCL 257.304]." MCL 257.904d(13).

"Beginning October 31, 2010, the court may reinstate vehicle immobilization issued under [MCL 257.904d(1)(c)] for a conviction under [MCL 257.625*l*(2)] if an ignition interlock device is tampered with, circumvented, or disabled, or if the person's restricted operator's . . . license is suspended or revoked." MCL 257.904d(12).

G. Vehicle Forfeiture

Vehicle forfeiture may be required following a conviction of certain enumerated offenses. MCL 257.625n(1). Forfeiture of the vehicle used in the offense will occur if the defendant owns the vehicle in whole or in part; if the defendant leases the vehicle, it will be returned to the lessor. *Id.* "The vehicle may be seized under a seizure order issued by the court having jurisdiction upon a showing of probable cause that the vehicle is subject to forfeiture or return to the lessor." MCL 257.625n(2). "The forfeiture of a vehicle is subject to the interest of the holder of a security interest who did not have prior knowledge of or consent to the violation." MCL 257.625n(3).

H. Vehicle Impoundment

Vehicle impoundment is a required sanction when a person is convicted of an offense punishable under MCL 257.904(1)(b) or MCL 257.904(1)(c)[59] or a substantially corresponding local ordinance, and it is a permissible sanction for convictions under MCL 257.904(1)(a) or a substantially corresponding local ordinance. MCL 257.904b(1)-(2). For details regarding impoundment procedure, see MCL 257.904b.

Impoundment is also a sanction for certain ignition interlock violations. See MCL 257.625*l*.

I. Registration Denial

Registration denial is required for multiple violations of MCL 257.625, MCL 257.625m, and MCL 257.904. MCL 257.219(1)(d) provides:

> "The secretary of state shall refuse issuance of a registration or a transfer of registration [if] . . . (d) [a]t the time of the application, the operator's or chauffeur's license of the owner or co-owner or lessee or co-lessee is suspended, revoked, or denied, except for an applicant who has been issued a license under [MCL 257.304], or the operator has never been licensed by this state for a third or subsequent violation of [MCL 257.625] or [MCL 257.625m], a local ordinance substantially corresponding to [MCL 257.625 or MCL 257.625m], or a law of another state substantially corresponding to [MCL 257.625 or MCL 257.625m], or for a fourth or subsequent suspension or revocation under [MCL 257.904]."

5.19 Failure to Comply With Judgment or Order

Generally, a court must issue an order to show cause if "a defendant fails to appear or otherwise respond to any matter pending relative to a misdemeanor citation issued under MCL 764.9c." MCR 6.615(B). However, a "court may immediately issue a bench warrant, rather than an order to show cause, if the court has a specific articulable reason to suspect that any of the following apply and states it on the record:

(a) the defendant has committed a new crime.

---

[59]Note that MCL 257.904 no longer has subdivision (1)(b) or (1)(c). 1994 PA 450 omitted MCL 257.904(1)(c) and 1998 PA 341 omitted all of the subdivisions from MCL 257.904(1). 1998 PA 341 included MCL 257.904(3)(a)-(b), which contained language very similar to what was formerly in MCL 257.904(1)(b)-(c). The former MCL 257.904(1)(b)-(c) stated that a person who violated MCL 257.904(1) was guilty of a misdemeanor punishable as follows: "(b) For a violation, other than a violation punishable under subdivision a), by imprisonment for not more than 90 days, or by a fine of not more than $500.00, or both. Unless the vehicle was stolen or used with the permission of a person who did not knowingly permit an unlicensed driver to operate the vehicle, the registration plates of the vehicle shall be confiscated. (c) For a second or subsequent violation punishable under subdivision (b), by imprisonment for not more than 1 year, or a fine of not more than $1,000.00, or both. Unless the vehicle was stolen, the registration plates of the vehicle shall be confiscated." Currently, MCL 257.904(3)(a)-(b) provide that a person who violates MCL 257.904(1)-(2) is guilty of a misdemeanor as follows: "(a) For a first violation, by imprisonment for not more than 93 days or a fine of not more than $500.00, or both. Unless the vehicle was stolen or used with the permission of a person who did not knowingly permit an unlicensed driver to operate the vehicle, the registration plates of the vehicle shall be canceled by the secretary of state on notification by a peace officer. (b) For a violation that occurs after a prior conviction, by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both. Unless the vehicle was stolen, the registration plates of the vehicle shall be canceled by the secretary of state on notification by a peace officer."

(b) the defendant's failure to appear is the result of a willful intent to avoid or delay the adjudication of the case.

(c) another person or property will be endangered if a warrant is not issued." MCR 6.615(B)(1).

"If a defendant fails to appear or otherwise respond to any matter pending relative to a misdemeanor traffic citation, the court must also initiate the procedures required by MCL 257.321a." MCR 6.615(2).[60]

MCL 257.321a provides different procedures depending on the offense involved.

Generally, for offenses for which license suspension is allowed under the Michigan Vehicle Code or a substantially corresponding local ordinance that are **not** offenses enumerated in MCL 257.321a(2), the following procedures apply:

- 28 days or more after an individual fails to answer a citation or notice to appear in court or fails to comply with an order or judgment, the court must give notice by mail at the individual's last-known address;
- the notice must indicate that if the individual fails to appear or comply within 14 days after the notice is issued, the individual's license will be suspended, see SCAO Form MC 216, *14-Day Notice*;
- if the individual fails to appear or comply within the 14-day period, the court must inform the Michigan Secretary of State within 14 days;
- upon receiving notice, the Michigan Secretary of State must immediately suspend the license of the individual and notify the individual of the suspension by regular mail at that individual's last-known address. MCL 257.321a(1).

For an individual who is charged with or convicted of an enumerated offense in MCL 257.321a(2), the following procedures apply:

- if the individual fails to answer a citation or notice to appear in court or fails to comply with an order or judgment, the court must immediately give notice by first-class mail sent to the individual's last-known address to appear within seven days after the notice is issued;

[60] MCL 257.321a provides for the suspension of an operator's license.

- the notice must indicate that if the individual fails to appear within seven days after the notice is issued, or fails to comply with the court's order/judgment within 14 days, the Michigan Secretary of State will suspend the individual's license, see SCAO Form 216a, *Notice of Noncompliance*;

- the court must immediately inform the Michigan Secretary of State if the individual fails to appear within the seven-day or 14-day period;

- upon receiving notice, the Michigan Secretary of State must immediately suspend the individual's license and notify the individual of the suspension by first-class mail sent to the individual's last-known address. MCL 257.321a(2).

"Notwithstanding any provision of law to the contrary and except in cases where the complaint is for an assaultive crime or an offense involving domestic violence, in the event that a defendant fails to appear for a court hearing and it is the defendant's first failure to appear in the case, there is a rebuttable presumption that the court must wait 48 hours before issuing a bench warrant to allow the defendant to voluntarily appear. If the defendant does not appear within 48 hours, the court shall issue a bench warrant unless the court believes there is good reason to instead schedule the case for further hearing." MCL 764.3(1). "The court may overcome the presumption under [MCL 764.3(1)] and issue an immediate bench warrant for the defendant's failure to appear if the court has a specific articulable reason to suspect that any of the following apply:

(a) The defendant has committed a new crime.

(b) A person or property will be endangered if a bench warrant is not issued.

(c) Prosecution witnesses have been summoned and are present for the proceeding.

(d) The proceeding is to impose a sentence for the crime.

(e) There are other compelling circumstances that require the immediate issuance of a bench warrant." MCL 764.3(3).

The court must state its reasons for departing from the presumption under MCL 764.3(1) if it issues an immediate bench warrant. MCL 764.3(4). "When a court delays the issuance of a warrant, the court shall not revoke the release order or declare bail money deposited or the surety bond, if any, forfeited. Upon the issuance of the arrest warrant, the court may then enter an order revoking the release order and declaring the bail money deposited, personal recognizance bond, surety bond, or 10% bond, if any, forfeited." MCL 764.3(2).

5.20 Appealing the District Court Magistrate's Decision

"Appeals of right may be taken from a decision of the district court magistrate to the district court in the district in which the magistrate serves by filing a written claim of appeal in substantially the form provided by MCR 7.104 within 7 days of the entry of the decision of the magistrate. No fee is required on the filing of the appeal, except as otherwise provided by statute or court rule. The action is heard de novo by the district court." MCR 4.401(D).

See Section 5.12 for information about challenging or withdrawing a plea.

Chapter 6: Civil Infractions

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6.1 Scope Note

This chapter addresses civil infraction actions. There are three broad types of civil infractions: (1) traffic civil infractions, (2) municipal civil infractions, and (3) state civil infractions. Traffic civil infractions are governed by the Michigan Vehicle Code, municipal civil infractions are governed by Chapter 87 of the Revised Judicature Act (RJA), and state civil infractions are governed by Chapter 88 of the RJA. MCL 600.113(2). Additionally, MCR 4.101 addresses civil infraction actions. See the Michigan Judicial Institute's table comparing the procedures and sanctions applicable to traffic, municipal, and state civil infractions.

This chapter discusses the procedures for presiding over a civil infraction action. Detailed discussion of specific civil infractions is outside the scope of this manual. The Michigan Judicial Institute's *Traffic Benchbook* discusses several common traffic civil infractions in detail.

6.2 Authority of District Court Magistrate

"A district court magistrate may hear, preside over, and conduct any of the following in civil infraction actions under [the Michigan vehicle code (MVC)], MCL 257.746, the Michigan Regulation and Taxation of Marijuana Act [(MRTMA)], MCL 333.27951 to [MCL 333.27967], or [MCL 600.8719] or [MCL 600.8819] of [the Revised Judicature Act (RJA)], or in civil fine actions under the Michigan Medical Marihuana Act [(MMMA)], MCL 333.26421 to [MCL 333.26430], as applicable:

(a) Admissions.

(b) Admissions with explanation.

(c) Motions to set aside default or withdraw admissions.

(d) Informal hearings." MCL 600.8512(1).

"In exercising the authority conferred under [MCL 600.8512(1)], a district court magistrate may administer oaths, examine witnesses, and make findings of fact and conclusions of law." MCL 600.8512(2).

"If a defendant is determined to be responsible for a civil infraction, or, under the [MMMA], a civil fine, the district court magistrate may impose the civil sanctions authorized by the [MVC], MCL 257.907, the [MRTMA], or [MCL 600.8827] of [the RJA], as applicable." MCL 600.8512(2).

MCL 600.8512a also provides that a district court magistrate may "[a]ccept an admission of responsibility, decide a motion to set aside a default or withdraw an admission, or order civil sanctions for a civil

infraction and order an appropriate civil sanction permitted by the statute or ordinance defining the act or omission." MCL 600.8512a(a).

A. Required Traffic Law Training Course

> "A district court magistrate shall not conduct an informal hearing in a civil infraction action involving a traffic or parking violation governed by the Michigan vehicle code, 1949 PA 300, MCL 257.1 to [MCL] 257.923, until he or she has successfully completed a special training course in traffic law adjudication and sanctions. The course must be given periodically by the state court administrator." MCL 600.8512(3).

B. Limitations of Authority

> "A district court magistrate may exercise the authority conferred by this section only to the extent expressly authorized by the chief judge, presiding judge, or only judge of the district court district." MCL 600.8512(4). See also MCL 600.8512a (setting forth powers of a district court magistrate "[o]nly to the extent expressly authorized by the chief judge, presiding judge, or only judge of the district court district"); MCR 4.401(B) ("Notwithstanding statutory provisions to the contrary, district court magistrates exercise only those duties expressly authorized by the chief judge of the district or division.")

6.3 Jurisdiction Over Civil Infraction Actions

"The district court has jurisdiction over civil infraction actions." MCL 600.8301(2). See also MCL 600.8703(2) ("[t]he district court and any municipal court have jurisdiction over municipal civil infraction actions[]"); MCL 600.8803(2) ("[t]he district court and any municipal court have exclusive jurisdiction over state civil infraction actions); MCL 257.741(2) (noting that the district court and any municipal court have jurisdiction over traffic civil infraction actions).

Minors. "If the individual cited is a minor, that individual may appear in court or admit responsibility for a civil infraction without the necessity of appointment of a guardian or next friend." MCL 257.741(5). See also MCL 600.8803(5) (governing state civil infractions and using substantially similar language). The district court or any municipal court has "jurisdiction over the minor and may proceed in the same manner and in all respects as if that individual were an adult." MCL 257.741(5). See also MCL 600.8803(5) (governing state civil infractions using substantially similar language).

Chapter 87 of the RJA, governing municipal civil infractions, does not specifically address minors, but does note without qualification that

"[t]he district court and any municipal court have jurisdiction over municipal civil infraction actions." MCL 600.8703(2).

6.4 Venue for Civil Infraction Actions

"Venue in civil infraction actions shall be determined as follows:

> (a) In a district of the first class, venue shall be in the county where the civil infraction occurred.
>
> (b) In a district of the second class, venue shall be in the district where the civil infraction occurred.
>
> (c) In a district of the third class, venue shall be in the political subdivision where the civil infraction occurred, except that when the violation is alleged to have taken place within a political subdivision where the court is not required to sit, the action may be heard or an admission entered in any political subdivision within the district where the court is required to sit." MCL 600.8312(6). See also MCL 257.741(4) (venue in district court traffic civil infraction cases is governed by MCL 600.8312); MCL 600.8703(4) (venue in the district court is governed by MCL 600.8312); MCL 600.8803(4) (venue in the district court is governed by MCL 600.8312).

See also *City of Riverview v Sibley Limestone*, 270 Mich App 627, 638 (2006) (in a civil infraction action regarding a blasting company operating without the required permit, the civil infraction occurred at the blasting site, not where the effects of the blast were felt; accordingly, proper venue was in the place where the civil infraction occurred, Trenton, not the place where the effects were felt, Riverview).

6.5 Time Guidelines for Processing Civil Infraction Actions

"The time specified in a citation for appearance must be within a reasonable time after the citation is issued pursuant to [MCL 257.682] or [MCL 257.742]." MCL 257.741(3). Administrative Order No. 2013-12 provides that "90% of all civil infraction cases, including traffic, nontraffic, and parking cases, should be adjudicated within 35 days from the date of filing and 98% within 84 days." However, "90% of all citations [for juvenile traffic and ordinance violations] should have adjudication and disposition completed within 63 days from the date of first appearance and 98% within 126 days."[1] Administrative Order No. 2013-12.

6.6 SCAO-Approved Forms for Use in Civil Infraction Matters

There are several SCAO-approved court forms available for use in civil infraction actions. These forms apply to traffic and nontraffic proceedings, and must be filed in the district court. The forms are accessible on the Michigan One Court of Justice website.

6.7 Court Rule Governing Civil Infraction Actions

MCR 4.101 addresses all three types of civil infraction actions.

A. Citation

Generally, a civil infraction action of any type (traffic, state, or municipal) may be initiated by a law enforcement officer serving a written citation on the alleged violator and filing it with the district court. MCR 4.101(A)(1).

Additional service options are available when the citation involves parking violations and municipal civil infractions:

> "(a) If the infraction is a parking violation, the action may be initiated by an authorized person placing a citation securely on the vehicle or mailing a citation to the registered owner of the vehicle.
>
> (b) If the infraction is a municipal civil infraction, the action may be initiated by an authorized local official serving a written citation on the alleged violator. If the infraction involves the use or occupancy of land or a building or other structure, service may be accomplished by posting the citation at the site and sending a copy to the owner by first-class mail." MCR 4.101(A)(1)(a)-(b).

1. Citation as Complaint

"The citation serves as the complaint in a civil infraction action, and may be prepared electronically or on paper. The citation must be signed by the officer in accordance with MCR 1.109(E)(4); if a citation is prepared electronically and filed with a court as data, the name of the officer that is associated with

[1]See the Michigan Judicial Institute's *Traffic Benchbook*, Chapter 2, for a more detailed discussion of jurisdiction over civil infractions committed by minors.

issuance of the citation satisfies this requirement." MCR 4.101(A)(1).

2. Amendment of Citation

"A violation alleged on a citation may not be amended except by the prosecuting official or a police officer for the plaintiff." MCR 4.101(A)(2).

3. Citation as Summons

"The citation serves as a summons to command

(a) the initial appearance of the defendant; and

(b) a response from the defendant as to his or her responsibility for the alleged violation." MCR 4.101(A)(3)(a)-(b).

4. Warrants

"A warrant may not be issued for a civil infraction unless permitted by statute." MCR 4.101(A)(4).

B. Appearance

"Depending on the nature of the violation and on the procedure appropriate to the violation, a defendant may appear in person, by videoconferencing technology, by representation, or by mail." MCR 4.101(B)(1).

"A defendant may not appear by making a telephone call to the court, but a defendant may telephone the court to obtain a date to appear." MCR 4.101(B)(2).

C. Default

"A clerk of the court may enter a default after certifying, on a form to be furnished by the court,[2] that the defendant has not made a scheduled appearance, or has not answered a citation within the time allowed by statute." MCR 4.101(B)(3).

"If a defendant fails to appear or otherwise to respond to any matter pending relative to a civil infraction action, the court:

(a) must enter a default against the defendant;

[2] See SCAO Form CIA 07, *Default Judgment, Civil Infraction.*

(b) must make a determination of responsibility, if the complaint is sufficient;

(c) must impose a sanction by entering a default judgment;

(d) must send the defendant a notice of the entry of the default judgment and the sanctions imposed; and

(e) may retain the driver's license of a nonresident as permitted by statute, if the court has received that license pursuant to statute. The court need not retain the license past its expiration date." MCR 4.101(B)(4).

1. Traffic Civil Infraction

"If a defendant fails to appear or otherwise to respond to any matter pending relative to a traffic civil infraction, the court

(a) must notify the secretary of state of the entry of the default judgment, as required by MCL 257.732, and

(b) must initiate the procedures required by MCL 257.321a." MCR 4.101(B)(5).

2. State Civil Infraction

"If a defendant fails to appear or otherwise to respond to any matter pending relative to a state civil infraction, the court must initiate the procedures required by MCL 257.321a." MCR 4.101(B)(6).

D. Appearance by Police Officer at Informal Hearing

"If a defendant requests an informal hearing, the court shall schedule an informal hearing and notify the police officer who issued the citation to appear at the informal hearing." MCR 4.101(C)(1).

"The attendance of the officer at the hearing may not be waived." MCR 4.101(C)(2).

"Except when the court is notified before the commencement of a hearing of an emergency preventing an on-duty officer from appearing, failure of the police officer to appear as required by this rule shall result in a dismissal of the case without prejudice." MCR 4.101(C).

E. Motion to Set Aside Default Judgment[3]

"A defendant may move to set aside a default judgment within 14 days after the court sends notice of the judgment to the defendant. The motion

> (a) may be informal,
>
> (b) may be either written or presented to the court in person,
>
> (c) must explain the reason for the nonappearance of the defendant,
>
> (d) must state that the defendant wants to offer a defense to or an explanation of the complaint, and
>
> (e) must be accompanied by a cash bond equal to the fine and costs due at the time the motion is filed." MCR 4.101(D)(1).

"For good cause, the court may

> (a) set aside the default and direct that a hearing on the complaint take place, or
>
> (b) schedule a hearing on the motion to set aside the default judgment." MCR 4.101(D)(2).

"A defendant who does not file this motion on time may use the procedure set forth in MCR 2.603(D)." MCR 4.101(D)(3). "A motion to set aside . . . a default judgment, except when grounded on lack of jurisdiction over the defendant, shall be granted only if good cause is shown and a statement of facts showing a meritorious defense, verified in the manner prescribed by MCR 1.109(D)(3), is filed." MCR 2.603(D)(1). "Except as provided in MCR 2.612, if personal service was made on the party against whom the default was taken, the . . . default judgment if one has been entered, may be set aside only if the motion is filed . . . if a default judgment has been entered, within 21 days after the default judgment was entered." MCR 2.603(D)(2)(b).

[3] See SCAO Form CIA 04, *Motion to Set Aside Default Judgment and Order*.

F. Response to Citation[4]

A defendant who receives a civil infraction citation may respond in one of three ways: (1) admission without explanation, (2) admission with explanation, or (3) a denial of responsibility. See MCR 4.101(E).

1. Admission Without Explanation

"Except as provided in [MCR 4.101(E)(4)], an admission without explanation may be offered to and accepted by

> (a) a district judge;
>
> (b) a district court magistrate as authorized by the chief judge, the presiding judge, or the only judge of the district; or
>
> (c) other district court personnel, as authorized by a judge of the district." MCR 4.101(E)(1).

2. Admission With Explanation

"Except as provided in [MCR 4.101(E)(4)], an admission with explanation may be written or offered orally to a judge or district court magistrate, as authorized by the district judge." MCR 4.101(E)(2)

3. Denial of Responsibility

"Except as provided in [MCR 4.101(E)(4)], a denial of responsibility must be made by the defendant appearing at a time set either by the citation or as the result of a communication with the court." MCR 4.101(E)(3).

4. Trailway Municipal Civil Infraction Exception

"If the violation is a trailway municipal civil infraction, and there has been damage to property or a vehicle has been impounded, the defendant's response must be made at a formal hearing." MCR 4.101(E)(4).

G. Contested Actions

"An informal hearing will be held unless

[4] For further discussion of a defendant's available responses to a traffic civil infraction citation, see Section 6.14.

(a) a party expressly requests a formal hearing, or

(b) the violation is a trailway municipal civil infraction which requires a formal hearing pursuant to MCL 600.8717(4)." MCR 4.101(F)(1).

1. Notice

"The provisions of MCR 2.501(C) regarding the length of notice of trial assignment do not apply in civil infraction actions." MCR 4.101(F)(2).

2. Default

"A defendant who obtains a hearing date other than the date specified in the citation, but who does not appear to explain or contest responsibility, is in default, and the procedures established by [MCR 4.101(B)(4)-(6)] apply." MCR 4.101(F)(3).

3. Videoconferencing

"For any hearing held under [MCR 4.101] and subject toMCR 2.407(B)(5),[5]the use of videoconferencing technology to conduct remote proceedings is presumed." MCR 4.101(F)(4).

H. Post-determination Orders

"A court may not increase a scheduled civil fine because the defendant has requested a hearing." MCR 4.101(G)(1). "The court may waive fines, costs and fees, pursuant to statute or court rule, or to correct clerical error." MCR 4.101(G)(4).

1. Traffic Civil Infraction Actions

"Upon a finding of responsibility in a traffic civil infraction action, the court:

(a) must inform the secretary of state of the finding, as required by MCL 257.732; and

(b) must initiate the procedures required by MCL 257.321a, if the defendant fails to pay a fine or to comply with an order or judgment of the court." MCR 4.101(G)(2)(a)-(b).

[5]MCR 2.407 addresses videoconferencing.

2. State Civil Infraction Actions

"Upon a finding of responsibility in a state civil infraction action, the court must initiate the procedures required by MCL 257.321a(1), if the defendant fails to pay a fine or to comply with an order or judgment of the court." MCR 4.101(G)(3).

I. Appeals

1. Formal Hearing

"An appeal following a formal hearing is a matter of right. Except as otherwise provided in this rule, the appeal is governed by subchapter 7.100 [of the Michigan Court Rules]." MCR 4.101(H)(1).

Defendant's appeal. "A defendant who appeals must post with the district court, at the time the appeal is taken, a bond equal to the fine and costs imposed." MCR 4.101(H)(1)(a). "A defendant who has paid the fine and costs is not required to post a bond." *Id*.

"If a defendant who has posted a bond fails to comply with the requirements of MCR 7.104(D), the appeal may be considered abandoned, and the district court may dismiss the appeal on 14 days' notice to the parties pursuant to MCR 7.113." MCR 4.101(H)(1)(b). "The court clerk must promptly notify the circuit court of a dismissal and the circuit court shall dismiss the claim of appeal." *Id*. "If the appeal is dismissed or the judgment is affirmed, the district court may apply the bond to the fine and costs." *Id*.

Plaintiff's appeal. "A plaintiff's appeal must be asserted by the prosecuting authority of the political unit that provided the plaintiff's attorney for the formal hearing." MCR 4.101(H)(1)(c). "A bond is not required." *Id*.

2. Informal Hearing

"An appeal following an informal hearing is a matter of right, and must be asserted in writing, within 7 days after the decision, on a form to be provided by the court. The appeal will result in a de novo formal hearing." MCR 4.101(H)(2).

Defendant's appeal. "A defendant who appeals must post a bond as provided [MCR 4.101(H)(1)(a)]. If a defendant who has posted a bond defaults by failing to appear at the formal hearing, or if the appeal is dismissed or the judgment is

affirmed, the bond may be applied to the fine and costs." MCR 4.101(H)(2)(a).

Plaintiff's appeal. "A plaintiff's appeal must be asserted by the prosecuting authority of the political unit that is responsible for providing the plaintiff's attorney for the formal hearing. A bond is not required." MCR 4.101(H)(2)(b).

3. No Appeal from Admission of Responsibility

"There is no appeal of right from an admission of responsibility. However, within 14 days after the admission, a defendant may file with the district court a written request to withdraw the admission, and must post a bond as provided in [MCR 4.101(H)(1)(a)]. If the court grants the request, the case will be scheduled for either a formal hearing or an informal hearing, as ordered by the court. If the court denies the request, the bond may be applied to the fine and costs." MCR 4.101(H)(3).

Part I—Traffic Civil Infractions

6.8 Initiating a Traffic Civil Infraction Action

"Except as otherwise provided in [the Revised Judicature Act,] [a] civil infraction action involving a traffic or parking violation is governed by the Michigan vehicle code[.]" MCL 600.113(2)(a).

"A civil infraction action is commenced upon the issuance and service of a citation as provided in [MCL 257.742]." MCL 257.741(1).[6] See also MCR 4.101(A)(1) ("a civil infraction action may be initiated by a law enforcement officer serving a written citation on the alleged violator and filing the citation in the district court"; "[t]he citation serves as the complaint in a civil action and may be prepared electronically or on paper"). The citation serves as the complaint, may be prepared electronically or on paper, and must be signed by the officer in accordance with MCR 1.109(E)(4). MCR 4.101(A)(1). The name of the officer associated with issuance of the citation satisfies the signature requirement if the citation is prepared electronically. *Id*.

[6] "A police officer who, knowing the statement is false, makes a materially false statement in a citation issued under [MCL 257.742] is guilty of perjury, a felony punishable by imprisonment for not more than 15 years, and in addition is in contempt of court." MCL 257.744a.

"The plaintiff in a civil infraction action must be either this state if the alleged civil infraction is a violation of [the MVC], or a political subdivision if the alleged civil infraction action is a violation of a local ordinance of that subdivision that substantially corresponds to a provision of [the MVC]." MCL 257.741(1).

6.9 Technical Requirements of Traffic Citations and Parking Violation Notices

The required format of a citation issued under MCL 257.742(1)-(3), discussed in Section 6.8, is set forth by MCL 257.727c and MCL 257.743.

"Each citation shall be numbered consecutively, be in a form as determined by the secretary of state, the attorney general, the state court administrator, and the director of the department of state police[.]" MCL 257.727c(1). A citation must consist of the following:

> "(a) The original which shall be a complaint or notice to appear by the officer and shall be filed with the court in which the appearance is to be made.
>
> (b) The first copy which shall be retained by the local traffic enforcement agency.
>
> (c) The second copy which shall be delivered to the alleged violator if the violation is a misdemeanor.
>
> (d) The third copy which shall be delivered to the alleged violator if the violation is a civil infraction."[7] MCL 257.727c(1).

"The citation serves as a summons to command (a) the initial appearance of the defendant; and (b) a response from the defendant as to his or her responsibility for the alleged violation." MCR 4.101(A)(3).

A. Contents of the Citation[8]

A citation issued pursuant to MCL 257.742 must contain the following:

---

[7] With proper prior approval, "the citation may be appropriately modified as to content or number of copies to accommodate law enforcement and local court procedures and practices. Use of this citation for other than moving violations is optional." MCL 257.727c(2).

[8] With proper prior approval, "the citation may be appropriately modified as to content or number of copies to accommodate law enforcement and local court procedures and practices. Use of this citation for other than moving violations is optional." MCL 257.727c(2).

- The name of the state or political subdivision acting as plaintiff;
- The name and address of the person to whom the citation is issued;
- The civil infraction alleged;[9]
- The place where the person must appear in court;
- The telephone number of the court;
- The time at or by which the appearance must be made. MCL 257.743(1). "The time specified in a citation for appearance must be within a reasonable time after the citation is issued pursuant to [MCL 257.682] or [MCL 257.742]." MCL 257.741(3).

In addition, the issuing officer must sign the citation. MCR 4.101(A)(1). If the citation is prepared electronically and filed with the court as data, including the issuing officer's name satisfies the signature requirement. *Id*. A complaint must be considered signed under oath in certain circumstances. See MCL 257.727c. See Section Section 6.9(B) for more information.

A citation must also inform the defendant that he or she, at or by the time specified for appearance, may:

- Admit responsibility for the civil infraction in person, by representation, or by mail.
- Admit responsibility for the civil infraction with explanation in person, by representation, or by mail.
- Deny responsibility for the civil infraction by either:
  - Appearing in person for an informal hearing without the opportunity of being represented by an attorney; or
  - Appearing in court for a formal hearing before a judge, with the opportunity of being represented by an attorney. MCL 257.743(2).[10]

"The citation shall inform the defendant that if the person desires to admit responsibility 'with explanation' other than by mail or to have an informal hearing or a formal hearing, the person must apply to the

[9] "A violation alleged on a citation may not be amended except by the prosecuting official or a police officer for the plaintiff." MCR 4.101(A)(2).

[10] See Section 6.14 for more information on admitting or denying responsibility.

court in person, by mail, or by telephone, within the time specified for appearance and obtain a scheduled date and time to appear for a hearing." MCL 257.743(3). "A hearing date may be specified on the citation." *Id*.

"The citation shall contain a notice in boldface type that the failure of a person to appear within the time specified in the citation or at the time scheduled for a hearing or appearance will result in entry of a default judgment against the person and in the immediate suspension of the person's operator's or chauffeur's license." MCL 257.743(4). "Timely application to the court for a hearing or return of the citation with an admission of responsibility and with full payment of applicable civil fines and costs constitute a timely appearance." *Id*.

B. Signed Under Oath[11]

A complaint signed by a police officer must be treated as made under oath if the violation alleged in the complaint:

- is a civil infraction or a misdemeanor or ordinance violation for which the maximum permissible penalty does not exceed 93 days in jail or a fine, or both;
- occurred or was committed in the signing officer's presence, or under circumstances permitting the officer's issuance of a citation under MCL 257.625a (warrantless arrests for operating while intoxicated offenses) or MCL 257.728(8) (citations issued after investigation of a traffic accident); and
- if the complaint contains the following statement immediately above the date and signature of the officer:

  "'I declare under the penalties of perjury that the statements above are true to the best of my information, knowledge, and belief.'" MCL 257.727c(3).

C. Parking Violation Notice

"A parking violation notice may be issued by a police officer, including a limited duty officer, or other personnel duly authorized by the city, village, township, college, or university to issue that parking violation notice under its ordinance." MCL 257.742(7). "If a parking violation notice other than a citation is attached to a motor

[11] The citation must include the issuing officer's signature. See Section 6.9(A) for more information on citation content requirements.

vehicle, and if an admission of responsibility is not made and the civil fine and costs, if any, prescribed by ordinance for the violation are not paid at the parking violations bureau, a citation may be filed with the court described in [MCL 257.741(4)] and a copy of the citation may be served by first-class mail upon the registered owner of the vehicle at the owner's last known address." MCL 257.742(7). "The citation filed with the court pursuant to [MCL 257.742(7)] need not comply in all particulars with [MCL 257.727c and MCL 257.743] but must consist of a sworn complaint containing the allegations stated in the parking violation notice and must fairly inform the defendant how to respond to the citation." MCL 257.742(7).

6.10 Authority to Issue a Citation

"The form of a citation issued under [MCL 257.742(1)-(3)] or [MCL 257.742(9)] shall be as prescribed in [MCL 257.727c and MCL 257.743]."[12] MCL 257.742(4).

A. Officer Witnesses Violation

"A police officer who witnesses a civil infraction may stop and temporarily detain the offender for the purpose of issuing a written citation." *People v Chapo*, 283 Mich App 360, 366 (2009), citing MCL 257.742(1), which states:

> "If a police officer witnesses an individual violating [the MVC] or a local ordinance substantially corresponding to [the MVC] and that violation is a civil infraction, that police officer may stop the individual, detain the individual temporarily for purposes of making a record of vehicle check, and prepare and subscribe, as soon as possible and as completely as possible, an original and 3 copies of a written citation, which must be a notice to appear in court for 1 or more civil infractions."

"If a police officer of a village, city, township, or county, or a police officer who is an authorized agent of a county road commission, witnesses an individual violating [the MVC] or a local ordinance substantially corresponding to [the MVC] within that village, city, township, or county and that violation is a civil infraction, that police officer may pursue, stop, and detain the individual outside the village, city, township, or county where the violation occurred for the purpose of exercising the authority and performing the duties

[12] See Section 6.9(B) for a discussion of the requirements under MCL 257.727c, and Section 6.9(A) on requirements under MCL 257.743.

prescribed in [MCL 257.742] and [MCL 257.749], as applicable." MCL 257.742(1).

B. Load, Weight, Height, Length, or Width Violations

"If a police officer has reason to believe that the load, weight, height, length, or width of a vehicle or load are in violation of [MCL 257.717, MCL 257.719, MCL 257.719a, MCL 257.722, MCL 257.724, MCL 257.725, or MCL 257.726[13]] and that violation is a civil infraction, that police officer may require the driver of the vehicle to stop, and the police officer may investigate, weigh, or measure the vehicle or load. If, after personally investigating, weighing, or measuring the vehicle or load, the police officer determines that the load, weight, height, length, or width of the vehicle or load are in violation of [MCL 257.717, MCL 257.719, MCL 257.719a, MCL 257.722, MCL 257.724, MCL 257.725, or MCL 257.726], the police officer may temporarily detain the driver of the vehicle for purposes of making a record or vehicle check and issue a citation to the driver or owner of the vehicle as provided in those sections." MCL 257.742(2).

C. Officer's Personal Investigation of Accident

"A police officer may issue a citation to an individual who is a driver of a motor vehicle involved in an accident when, based upon personal investigation, the officer has reasonable cause to believe that the individual is responsible for a civil infraction in connection with the accident." MCL 257.742(3). See also *People v Estabrooks*, 175 Mich App 532, 537 (1989) ("[a] police officer may stop and detain a driver involved in a motor vehicle accident for the purpose of issuing a citation for a civil infraction when . . . based upon the officer's personal investigation, the officer has reasonable cause to believe that the driver is responsible for a civil infraction").

D. Officer's Personal Investigation of Violation Based on Witness Complaint

"A police officer may not stop a driver for a civil infraction solely on the basis of a witness' complaint." *Estabrooks*, 175 Mich App at 537, citing MCL 257.743(3). Rather, the statute requires the officer to investigate and have a reasonable belief that a civil infraction occurred. See *Estabrooks*, 175 Mich App at 538. MCL 257.742(3) states:

> "A police officer may issue a citation to an individual who is a driver of a motor vehicle when, based upon

[13]These sections set forth the maximum permissible width, height, weight, and height for certain vehicles and vehicle loads.

> personal investigation by the police officer of a complaint by someone who witnessed the individual violating [the MVC] or a local ordinance substantially corresponding to [the MVC] and that violation is a civil infraction, the officer has reasonable cause to believe that the individual is responsible for a civil infraction and if the prosecuting attorney or attorney for the political subdivision approves in writing the issuance of the citation." MCL 257.742(3).

6.11 Serving and Filing a Citation or Parking Notice Violation

A. General Service and Filing Requirements

"Except as otherwise provided by court rule or statute, a civil infraction action may be initiated by a law enforcement officer serving a written citation on the alleged violator and filing the citation in the district court." MCR 4.101(A)(1). See also MCL 257.742(5), which states that "[t]he officer shall inform the individual of the alleged civil infraction or infractions and shall deliver the third copy of the citation to the alleged offender."[14] "The citation serves as the complaint in a civil infraction action and may be prepared electronically or on paper. The citation must be signed by the officer in accordance with MCR 1.109(E)(4); if a citation is prepared electronically and filed with a court as data, the name of the officer that is associated with issuance of the citation satisfies this requirement." MCR 4.101(A)(1).

"If the infraction is a parking violation, the action may be initiated by an authorized person placing a citation securely on the vehicle or mailing a citation to the registered owner of the vehicle." MCR 4.101(A)(1)(a). See also MCL 257.742(6).

"If a parking violation notice other than a citation is attached to a motor vehicle, and if an admission of responsibility is not made and the civil fine and costs, if any, prescribed by ordinance for the violation are not paid at the parking violations bureau, a citation may be filed with the court described in [MCL 257.741(4)] and a copy of the citation may be served by first-class mail upon the registered owner of the vehicle at the owner's last known address." MCL 257.742(7). "The citation filed with the court pursuant to [MCL 257.742(7)] need not comply in all particulars with [MCL 257.727c and MCL 257.743] but must consist of a sworn complaint containing the

[14] A written citation consists of "an original and 3 copies." MCL 257.742(1).

allegations stated in the parking violation notice and must fairly inform the defendant how to respond to the citation." MCL 257.742(7).

B. Depositing Citation With Court

"At or before the completion of his or her tour of duty a police officer to whom a citation book has been issued and who has recorded the occurrence of a vehicle law violation upon a citation shall deliver to his or her police chief or to a person duly authorized by the police chief to receive citations all copies of such citation duly signed." MCL 257.728a(1). "The police chief or a person duly authorized by the police chief shall deposit the original of the citation with the court having jurisdiction over the offense not later than 3 days after the date of the citation, excluding Saturdays, Sundays, and legal holidays." *Id*.[15]

"The citation shall be considered to have been deposited with the court as required under [MCL 257.728a(1)] if the original of the citation is mailed not later than 2 days after the date of the citation as specified under [MCL 257.728a(2)]." MCL 257.728a(2). "Mailing shall be accomplished by enclosing the original of the citation in a sealed envelope with first class postage fully prepaid, addressed to the court, and depositing the envelope and contents in the United States government mail." *Id*.

6.12 Sworn Complaint Requirements

"If an officer issues a citation under [MCL 257.742] for a civil infraction or if a citation is issued under [MCL 257.742] for a parking or standing violation, the court may accept an admission with explanation or an admission or denial of responsibility upon the citation without the necessity of a sworn complaint."[16] MCL 257.744. "If the person denies responsibility for the civil infraction, further proceedings shall not be had until a sworn complaint is filed with the court." *Id*. "[A] sworn traffic citation filed with the district court constitutes a sworn complaint for purposes of MCL 257.744[.]" *People v Ferency*, 133 Mich App 526, 530 (1984).

"A warrant for arrest under [MCL 257.321a] for failure to appear on the civil infraction citation shall not issue until a sworn complaint relative to the civil infraction is filed with the court." MCL 257.744.

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[15] MCL 257.728a does not address the consequences of a violation of the 3-day rule.

[16] See Section 6.14 for more information on admitting or denying responsibility.

"Notwithstanding any provision of law to the contrary and except in cases where the complaint is for an assaultive crime or an offense involving domestic violence, in the event that a defendant fails to appear for a court hearing and it is the defendant's first failure to appear in the case, there is a rebuttable presumption that the court must wait 48 hours before issuing a bench warrant to allow the defendant to voluntarily appear. If the defendant does not appear within 48 hours, the court shall issue a bench warrant unless the court believes there is good reason to instead schedule the case for further hearing." MCL 764.3(1). "The court may overcome the presumption under [MCL 764.3(1)] and issue an immediate bench warrant for the defendant's failure to appear if the court has a specific articulable reason to suspect that any of the following apply:

(a) The defendant has committed a new crime.

(b) A person or property will be endangered if a bench warrant is not issued.

(c) Prosecution witnesses have been summoned and are present for the proceeding.

(d) The proceeding is to impose a sentence for the crime.

(e) There are other compelling circumstances that require the immediate issuance of a bench warrant." MCL 764.3(3).

The court must state its reasons for departing from the presumption under MCL 764.3(1) if it issues an immediate bench warrant. MCL 764.3(4). "When a court delays the issuance of a warrant, the court shall not revoke the release order or declare bail money deposited or the surety bond, if any, forfeited. Upon the issuance of the arrest warrant, the court may then enter an order revoking the release order and declaring the bail money deposited, personal recognizance bond, surety bond, or 10% bond, if any, forfeited." MCL 764.3(2).

6.13 Special Requirements for Nonresidents

"When a nonresident is stopped under [MCL 257.742] for a civil infraction, the police officer making the stop shall issue to that person a citation as provided in [MCL 257.727c and MCL 257.742]." MCL 257.749(1). "The officer shall release the nonresident upon his or her personal recognizance." MCL 257.749(2).

"If a magistrate is available for an immediate appearance, upon demand of the person stopped, the officer immediately shall take the nonresident driver before the magistrate to answer to the civil infraction alleged. If the nonresident defendant requests a formal hearing, the hearing shall be scheduled as provided in [MCL 257.747]." MCL 257.749(3).

"If the person who is released upon his or her personal recognizance as provided in [MCL 257.749(2)] fails to appear as required in the citation or for a scheduled formal hearing, the court having jurisdiction and venue over the civil infraction shall enter a default judgment against the person." MCL 257.749(4).

6.14 Defendant's Options When a Citation Is Issued

"A person to whom a citation is issued under [MCL 257.742] shall appear by or at the time specified in the citation and may respond to the allegations in the citation as provided in [MCL 257.745]." MCL 257.745(1).[17] A defendant may appear by mail or in person. See the Michigan Judicial Institute's appearance by mail checklist and appearance in person checklist.

A. Admit Responsibility Without Explanation

A district court magistrate, authorized by the chief judge, the presiding judge, or the only judge of the district, may accept an admission without explanation. MCR 4.101(E)(1)(b).[18]

"If the person wishes to admit responsibility for the civil infraction, the person may do so by appearing in person, by representation, or by mail." MCL 257.745(2).[19] "A defendant may not appear by making a telephone call to the court, but a defendant may telephone the court to obtain a date to appear." MCR 4.101(B)(2). "If appearance is made by representation or mail, the court may accept the admission with the same effect as though the person personally appeared in court." MCL 257.745(2). "Upon acceptance of the admission, the court may order any of the sanctions permitted under [MCL 257.907]." MCL 257.745(2).

"There is no appeal of right from an admission of responsibility." MCR 4.101(H)(3). "However, within 14 days after the admission, a defendant may file with the district court a written request to withdraw the admission, and must post a bond as provided in [MCR 4.101(H)(1)(a)]." MCR 4.101(H)(3). "If the court grants the request, the case will be scheduled for either a formal hearing or an informal hearing, as ordered by the court." *Id*. "If the court denies the request, the bond may be applied to the fine and costs." *Id*.

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[17] "If the violation is a trailway municipal civil infraction, and there has been damage to property or a vehicle has been impounded, the defendant's response must be made at a formal hearing." MCR 4.101(E)(4). See also MCL 600.8717(4).

[18] Except as provided in MCR 4.101(E)(4) regarding trailway municipal civil infractions.

[19] See SCAO Form DC 223, *Plea by Mail*.

B. Admit Responsibility With Explanation

"Except as provided in [MCR 4.101(E)(4)], an admission with explanation may be written or offered orally to a judge or district court magistrate, as authorized by the district judge." MCR 4.101(E)(2).

"If the person wishes to admit responsibility for the civil infraction 'with explanation', the person may do so in either of the following ways:

> (a) By appearing by mail.[20]
>
> (b) By contacting the court in person, by mail, by telephone, or by representation to obtain from the court a scheduled date and time to appear, at which time the person shall appear in person or by representation." MCL 257.745(3).

"A defendant may not appear by making a telephone call to the court, but a defendant may telephone the court to obtain a date to appear." MCR 4.101(B)(2). "A defendant who obtains a hearing date other than the date specified in the citation, but who does not appear to explain or contest responsibility, is in default, and the procedures established by [MCR 4.101(B)(4)-(6)] apply."[21] MCR 4.101(F)(3). The use of videoconferencing technology to conduct remote proceedings is presumed for any civil infraction action hearing. MCR 4.101(F)(4). A hearing held by videoconference must be held in accordance with MCR 2.407. MCR 4.101(F)(4).

"If a person admits responsibility for a civil infraction 'with explanation' under [MCL 257.745(3)], the court shall accept the admission as though the person has admitted responsibility under [MCL 257.745(2)] and may consider the person's explanation by way of mitigating any sanction which the court may order under [MCL 257.907]." MCL 257.745(4). "If appearance is made by representation or mail, the court may accept the admission with the same effect as though the person personally appeared in court, but the court may require the person to provide a further explanation or to appear in court." *Id*.

"There is no appeal of right from an admission of responsibility." MCR 4.101(H)(3). "However, within 14 days after the admission, a defendant may file with the district court a written request to withdraw the admission, and must post a bond as provided in [MCR

[20] See SCAO Form DC 223, *Plea by Mail*.

[21] See Section 6.7(C) for information on default procedures.

4.101(H)(1)(a)]." MCR 4.101(H)(3). "If the court grants the request, the case will be scheduled for either a formal hearing or an informal hearing, as ordered by the court." *Id*. "If the court denies the request, the bond may be applied to the fine and costs." *Id*.

C. Deny Responsibility

"If the person wishes to deny responsibility for a civil infraction, the person shall do so by appearing for an informal or formal hearing." MCL 257.745(5). "Unless the hearing date is specified on the citation, the person shall contact the court in person, by representation, by mail, or by telephone, and obtain a scheduled date and time to appear for an informal or formal hearing." *Id*. "A defendant may not appear by making a telephone call to the court, but a defendant may telephone the court to obtain a date to appear." MCR 4.101(B)(2). "The court shall schedule an informal hearing, unless the person expressly requests a formal hearing." MCL 257.745(5). "If the hearing date is specified on the citation, the person shall appear on that date for an informal hearing unless the person contacts the court at least 10 days before that date in person, by representation, by mail, or by telephone to request a formal hearing." *Id*.

"A defendant who obtains a hearing date other than the date specified in the citation, but who does not appear to explain or contest responsibility, is in default, and the procedures established by [MCR 4.101(B)(4)-(6)] apply."[22] MCR 4.101(F)(3). The use of videoconferencing technology to conduct remote proceedings is presumed in any civil infraction action hearing. MCR 4.101(F)(4). A hearing held by videoconference must be held in accordance with MCR 2.407. MCR 4.101(F)(4).

"If a hearing is scheduled by telephone, the court shall mail the defendant a confirming notice of that hearing by regular mail to the address appearing on the citation or to an address which may be furnished by the defendant." *Id*. "An informal hearing shall be conducted pursuant to [MCL 257.746[23]] and a formal hearing shall be conducted pursuant to [MCL 257.747[24]]." MCL 257.745(5).

"Except as provided in [MCR 4.101(E)(4)], a denial of responsibility must be made by the defendant appearing at a time set either by the citation or as the result of a communication with the court." MCR 4.101(E)(3).

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[22] See Section 6.7(C) for information on default procedures.

[23] See Section 6.15.

[24] See Section 6.16.

6.15 Informal Hearings

"An informal hearing will be held unless

> (a) a party expressly requests a formal hearing, or
>
> (b) the violation is a trailway municipal civil infraction which requires a formal hearing pursuant to MCL 600.8717(4)." MCR 4.101(F)(1). See also MCL 257.745(5) (when the defendant wishes to deny responsibility, "[t]he court shall schedule an informal hearing, unless the person expressly requests a formal hearing").

See also the Michigan Judicial Institute's informal hearing checklist and informal hearing worksheet.

A. Conducting the Hearing

"An informal hearing shall be conducted by a district court magistrate when authorized by the judge or judges of the district court district or by a judge of a court listed in [MCL 257.741(2)]." MCL 257.746(1).

"A district court magistrate may administer oaths, examine witnesses, and make findings of fact and conclusions of law at an informal hearing." MCL 257.746(1). "The judge or district court magistrate shall conduct the informal hearing in an informal manner so as to do substantial justice according to the rules of substantive law but shall not be bound by the statutory provisions or rules of practice, procedure, pleading, or evidence, except provisions relating to privileged communications." *Id*.

"There shall not be a jury at an informal hearing." MCL 257.746(1).

"For any hearing held under [MCR 4.101], and subject to MCR 2.407(B)(5),[25] the use of videoconferencing technology to conduct remote proceedings is presumed." MCR 4.101(F)(4).

"Each municipal judge and each clerk of a court of record shall keep a full record of every case in which an individual is charged with or cited for a violation of [the MVC] or a local ordinance substantially corresponding to [the MVC] regulating the operation of vehicles on highways[.]" MCL 257.732(1). However, "[a] verbatim record of an informal hearing shall not be required." MCL 257.746(1).

[25] MCR 2.407 addresses videoconferencing.

B. No Representation at Hearing

"At an informal hearing the person cited may not be represented by an attorney nor may the plaintiff be represented by the prosecuting attorney or attorney for a political subdivision." MCL 257.746(2).

C. Discovery

Discovery is not permitted in a civil infraction action. MCR 2.301(A)(3).

D. Notice and Subpoenas

"Notice of a scheduled informal hearing shall be given to the citing police agency, which agency may subpoena witnesses for the plaintiff." MCL 257.746(3).[26] "The defendant may also subpoena witnesses." *Id*. See also MCR 4.101(C)(1), requiring the court to "notify the police officer who issued the citation to appear at the informal hearing." "The attendance of the officer at the hearing may not be waived." MCR 4.101(C)(2). "Except when the court is notified before the commencement of a hearing of an emergency preventing an on-duty officer from appearing, failure of the police officer to appear as required by [MCR 4.101] shall result in a dismissal of the case without prejudice." MCR 4.101(C).

"The provisions of MCR 2.501(C) regarding the length of notice of trial assignment do not apply in civil infraction actions." MCR 4.101(F)(2).

E. Determining Responsibility

The district court magistrate must find the person responsible for a civil infraction by a preponderance of the evidence. MCL 257.6b(c).

"Preponderance of the evidence means such evidence as, when weighted with that opposed to it, has more convincing force and the greater probability of truth." *People v Cross*, 281 Mich App 737, 740 (2008) (quotation marks omitted).

"If the judge or district court magistrate determines by a preponderance of the evidence that the person cited is responsible for a civil infraction, the judge or magistrate shall enter an order against the person as provided in [MCL 257.907]."[27] MCL 257.746(4).

[26] "Witness fees for a witness on behalf of the plaintiff are payable by the district control unit of the district court for the place where the hearing occurs, by the city or village when the hearing involves an ordinance violation in a district where the district court is not functioning, or by the county when the hearing involves a violation of [the MVC] in a district where the district court is not functioning." MCL 257.746(3).

"Otherwise, a judgment shall be entered for the defendant, but the defendant shall not be entitled to costs of the action." *Id*. The preponderance of the evidence test, as it relates to civil infraction actions, does not violate due process. *People v Ferency*, 133 Mich App 526, 536 (1984).

See also SCAO Form CIA 02, *Judgment*.

F. Appeals

"The plaintiff and defendant shall be entitled to appeal an adverse judgment entered at an informal hearing." MCL 257.746(5). "An appeal following an informal hearing is a matter of right, and must be asserted in writing, within 7 days after the decision, on a form to be provided by the court."[28] MCR 4.101(H)(2). "The appeal will result in a de novo formal hearing." *Id*. "[A]n appeal shall be de novo in the form of a scheduled formal hearing as follows:

> (a) The appeal from a judge of the district court shall be heard by a different judge of the district.
>
> (b) The appeal from a district court magistrate shall be heard by a judge of the district." MCL 257.746(5).

See also MCR 4.401(D) ("[a]ppeals of right may be taken from a decision of the district court magistrate to the district court in the district in which the magistrate serves . . . [and] [t]he action is heard de novo by the district court"); MCL 600.8515. Additionally, "[a]n action taken by a district court magistrate may be superseded, without formal appeal, by order of a district judge in the district in which the magistrate serves." MCR 4.401(C).

"An appeal from a municipal judge shall be a trial de novo in the circuit court." MCL 257.746(5).

Defendant's appeal. "A defendant who appeals must post a bond as provided in [MCR 4.101(H)(1)(a)]." MCR 4.101(H)(2)(a). "If a defendant who has posted a bond defaults by failing to appear at the formal hearing, or if the appeal is dismissed or the judgment is affirmed, the bond may be applied to the fine and costs." *Id*.

Plaintiff's appeal. "A plaintiff's appeal must be asserted by the prosecuting authority of the political unit that is responsible for

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[27] See Section 6.18 for more information on ordering a fine and costs under MCL 257.907.

[28] See SCAO Form CIA 05, *Claim of Appeal of Right/Request to Withdraw Admission and Order, Civil Infraction*. Note that MCR 4.401(D), which generally addresses appeals of magistrate decisions, requires a claim of appeal to be written "in substantially the same form provided by MCR 7.104[.]"

providing the plaintiff's attorney for the formal hearing." MCR 4.101(H)(2)(b). "A bond is not required." *Id.*

Appeal from an admission of responsibility. "There is no appeal of right from an admission of responsibility. However, within 14 days after the admission, a defendant may file with the district court a written request to withdraw the admission, and must post a bond as provided in [MCR 4.101(H)(1)(a)]. If the court grants the request, the case will be scheduled for either a formal hearing or an informal hearing, as ordered by the court. If the court denies the request, the bond may be applied to the fine and costs." MCR 4.101(H)(3).

6.16 Formal Hearings

District court magistrates do not have the authority to conduct formal hearings. "A formal hearing shall be conducted only by a judge of a court having jurisdiction over civil infraction actions under [MCL 257.741(2)]." MCL 257.747(1).

A formal hearing must be held upon the express request of a party, or if the violation involves a railway municipal civil infraction which requires a formal hearing pursuant to MCL 600.8717(4). MCR 4.101(F)(1). See also MCL 257.745(5) (when the defendant wishes to deny responsibility, "[t]he court shall schedule an informal hearing, unless the person expressly requests a formal hearing").

For information about formal hearing procedure, see MCL 257.747 and the Michigan Judicial Institute's *Traffic Benchbook*, Chapter 1.

6.17 Entering Default Judgment for Failure to Answer a Citation or Appear for a Scheduled Hearing

"If the person to whom a citation is issued for a civil infraction fails to appear as directed by the citation or other notice, at a scheduled appearance under [MCL 257.745(3)(b) or MCL 257.745(4)[29]], at a scheduled informal hearing, or at a scheduled formal hearing, the court shall enter a default judgment against that person and the person's license shall be suspended pursuant to [MCL 257.321a] until that person appears in court and all matters pertaining to the violation are resolved or until the default judgment is set aside." MCL 257.748. See also MCL 257.6b(d) (*civil infraction determination* includes "a determination that a person is responsible for a civil infraction by . . . [a] default judgment, for failing to appear as directed by citation or other notice, at a scheduled appearance under [MCL 257.745(3)(b) or MCL 257.745(4)], at a scheduled

[29]Appearances under MCL 257.745(3)-(4) are discussed in Section 6.14(B).

informal hearing under [MCL 257.746], or at a scheduled formal hearing under [MCL 257.747]").

MCR 4.101(B) also addresses the actions a court must take if a defendant fails to appear or otherwise respond to any matter pending relative to a civil infraction action. See Section 6.7(C) for a discussion of MCR 4.101(B). The court rule specifically addresses traffic civil infractions, stating that "[i]f a defendant fails to appear or otherwise to respond to any matter pending relative to a traffic civil infraction, the court

> (a) must notify the secretary of state of the entry of the default judgment, as required by MCL 257.732,[30] and
>
> (b) must initiate the procedures required by MCL 257.321a."[31] MCR 4.101(B)(5).

"A defendant may move to set aside a default judgment within 14 days after the court sends notice of the judgment to the defendant." MCR 4.101(D)(1). See Section 6.7(E) for a detailed discussion on setting aside a default judgment.

6.18 Civil Fines, Costs, and Assessments for Traffic Civil Infractions[32]

"Each district of the district court and each municipal court may establish a schedule of civil fines, costs, and assessments to be imposed for civil infractions that occur within the respective district or city." MCL 257.907(7). "If a schedule is established, it must be prominently posted and readily available for public inspection." *Id*. "A schedule need not include all violations that are designated by law or ordinance as civil infractions." *Id*. "A schedule may exclude cases on the basis of a defendant's prior record of civil infractions or traffic offenses, or a combination of civil infractions and traffic offenses." *Id*.

"The state court administrator shall annually publish and distribute to each district and court a recommended range of civil fines and costs for first-time civil infractions." MCL 257.907(8). "This recommendation is not binding on the courts that have jurisdiction over civil infractions but is intended to act as a normative guide for judges and district court

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[30] See the Michigan Judicial Institute's *Traffic Benchbook*, Chapter 1, for information on abstracting requirements under MCL 257.732.

[31] See the Michigan Judicial Institute's *Traffic Benchbook*, Chapter 1, for information on suspending an individual's license under MCL 257.321a.

[32] This section discusses the ordering of civil fines, costs, and assessments. See Section 6.19 for information on waiving a fine, costs, or assessment. In addition, see the Michigan Judicial Institute's table summarizing the information discussed in this section.

magistrates and a basis for public evaluation of disparities in the imposition of civil fines and costs throughout this state." *Id.*

"Fines, costs, and other financial obligations imposed by the court must be paid at the time of assessment, except when the court allows otherwise, for good cause shown." MCR 1.110. See also MCL 257.907(2) ("[p]ermission may be granted for payment of a civil fine and costs to be made within a specified period of time or in specified installments but, unless permission is included in the order or judgment, the civil fine and costs must be payable immediately").

A. Civil Fines

In general, "a person found responsible or responsible 'with explanation' . . . for a civil infraction under [the MVC] or a local ordinance that substantially corresponds to a provision of [the MVC], the person must be ordered to pay a civil fine of not more than $100.00." MCL 257.907(2)(a). However, MCL 257.907(2) provides for alternative civil fine amounts for certain enumerated civil infractions.

"A court may not increase a scheduled civil fine because the defendant has requested a hearing." MCR 4.101(G)(1).

1. Specific Fines and Fine Amounts

MCL 257.907(2)[33] provides specific fines and fine amounts for certain MVC violations:

- "If the civil infraction was a moving violation that resulted in an at-fault collision with another vehicle, an individual, or any other object, the civil fine ordered under [MCL 257.907] is increased by $25.00 but the total civil fine must not be more than $100.00." MCL 257.907(2)(b).

- "For a violation of [MCL 257.240, damages or violation of law resulting from use or ownership of vehicle by another after title transfer], the civil fine ordered under [MCL 257.907] is $15.00." MCL 257.907(2)(c). See also MCL 257.240(3).

- "For a violation of [MCL 257.312a(4)(a), first violation of motorcycle indorsement[34]], the civil fine ordered

[33] This list represents the civil infractions relevant to the scope of this benchbook. It does not include the civil infractions listed for commercial vehicle violations.

[34] "For a violation that occurs after 1 or more prior judgments, the individual is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $500.00, or both." MCL 257.312a(4)(b).

under [MCL 257.907] must not be more than $250.00." MCL 257.907(2)(d).

- For a violation of MCL 257.602b(1), holding or using a mobile electronic device while operating a motor vehicle, the civil fine ordered under MCL 257.907 must be "either of the following:

  (A) If the violation does not involve an accident, $100.00 for a first offense and $250.00 for a second or subsequent offense.

  (B) If the violation involves an accident for which the individual is at fault, $200.00 for a first offense and $500.00 for a second or subsequent offense." MCL 257.907(2)(h)(*i*). See also MCL 257.602b(4)(a)-(b); MCL 257.602b(6).

- For a violation of MCL 257.602b(2), holding or using a mobile electronic device, while operating a commercial motor vehicle or school bus, the civil fine ordered under MCL 257.907 must be "either of the following:

  (A) If the violation does not involve an accident, $200.00 for a first offense and $500.00 for a second or subsequent offense.

  (B) If the violation involves an accident for which the individual is at fault, $400.00 for a first offense and $1,000.00 for a second or subsequent offense."[35] MCL 257.907(2)(h)(*ii*). See also MCL 257.602b(5)(a)-(b); MCL 257.602b(6).

- For a violation of MCL 257.627c(2), "exceeding a posted speed limit by 10 miles per hour or more in a work zone while workers are present, on the basis of a recorded image produced by an automated speed enforcement system:

[35]Because texting while driving is not required to be abstracted, there is not a reliable way for a district court magistrate to determine whether the offense is a second or subsequent offense because prior offenses will not be in a person's driving record. It is possible that this information could be obtained by searching the Judicial Data Warehouse. Effective January 1, 2022, "all trial courts must submit all case data including nonpublic and financial records to the [JDW.]" See ADM File No. 2021-14. While not every court reported data to the JDW prior to January 1, 2022, it is possible that there will be a record of the person because courts can search by name and see all of the reported criminal and civil cases for a particular person. **Note** that the JDW contains information that may not be pertinent to this particular inquiry, and district court magistrates must avoid reviewing information that may be deemed ex parte communications. If the district court magistrate has been made aware that an offense is a second or subsequent offense, the increased fine should be applied according to the statute.

(b) For a second violation [of MCL 257.627c(2)] that occurs less than 3 years after a written warning is issued under [MCL 257.627c(2)(a)], the individual is responsible for a civil infraction and must be ordered to pay a civil fine of not more than $150.00.

(c) For a third or subsequent violation [of MCL 257.627c(2)] that occurs less than 3 years after a second or subsequent violation, the individual is responsible for a civil infraction and must be ordered to pay a civil fine of not more than $300.00." MCL 257.627c(2). See also MCL 257.907(2)(i).

- "For a violation of [MCL 257.674(1)(s), disabled parking violations], or a local ordinance that substantially corresponds to [MCL 257.674(1)(s)], the civil fine ordered under [MCL 257.907] must not be less than $100.00 or more than $250.00." MCL 257.907(2)(j).

- For a violation of [MCL 257.676a(3), sale or display for sale of produce or merchandise within highway right-of-way in violation of permit], the civil fine ordered under [MCL 257.907] must not be more than $10.00." MCL 257.907(2)(k).

- "For a violation of [MCL 257.676c, soliciting business at the scene of an accident or disabled vehicle], the civil fine ordered under [MCL 257.907] is $1,000.00." MCL 257.907(2)(*l*).

- "For a violation of [MCL 257.682, failure to stop for school bus,] or a local ordinance that substantially corresponds to [MCL 257.682], the civil fine ordered under [MCL 257.907] must not be less than $100.00 or more than $500.00." MCL 257.907(2)(m).

- "For a violation of [MCL 257.710d, child not properly secured in a child restraint system], the civil fine ordered under [MCL 257.907] must not be more than $10.00, subject to [MCL 257.907(11)[36]]." MCL 257.907(2)(n).

- "For a violation of [MCL 257.710e, seat belt violations], the civil fine and court costs ordered

[36] MCL 257.907(11) allows the court to waive the civil fine in certain circumstances. See the Michigan Judicial Institute's *Traffic Benchbook*, Section 1.21(B) for more information on waiving a fine for a violation of MCL 257.710d.

> under [MCL 257.907] must be $25.00." MCL 257.907(2)(o).

2. "Fines Doubled for Moving Violations in Work Zone, Emergency Scene, School Zone, or School Bus Zone

"Notwithstanding any other provision of [the MVC], a person responsible for a moving violation in a work zone, at an emergency scene, or in a school zone during the period beginning 30 minutes before school in the morning and through 30 minutes after school in the afternoon, or in a school bus zone is subject to a fine that is double the fine otherwise prescribed for that moving violation." MCL 257.601b(1).

3. Minimum Fines For Violating Maximum Speed Limit

MCL 257.629c(1) provides the minimum fine amounts for maximum speed limit violations:

> "Notwithstanding [MCL 257.320a and MCL 257.907], a person who is determined responsible or responsible 'with explanation' for a civil infraction for violating the maximum speed limit on a limited access freeway or part of a limited access freeway upon which the maximum speed limit is 55 miles per hour or more shall be ordered by the court to pay a minimum fine . . . only according to the following schedule, except as otherwise provided in [MCL 257.629c(2)[37]] and [MCL 257.629c(3)]:"

Miles per hour over the speed limit	Minimum Fine
1– 5	$10
6–10	$20

[37] MCL 257.629c(2) provides that MCL 257.629c(1) "does not apply to a person operating a vehicle or vehicle combination for which the maximum rate of speed is established pursuant to [MCL 257.627(5)] or [MCL 257.627(7);]" however, 2016 PA 445 amended MCL 257.627, and those subsections have been deleted and changed. The former MCL 257.627(5) and MCL 257.627(7) addressed a person operating a passenger vehicle drawing another vehicle or trailer and a person operating a school bus, respectively. See MCL 257.627. MCL 257.629c has not been amended to reflect the changes made by 2016 PA 445. And "[f]or a violation of a maximum speed limit on a limited access freeway by a person operating a vehicle or vehicle combination described in [MCL 257.629c(2)], points shall be assessed under [MCL 257.320a] and fines shall be assessed under [MCL 257.907]." MCL 257.629c(3).

Miles per hour over the speed limit	Minimum Fine
11–15	$30
16–25	$40
26 or over	$50

4. Distribution of Fines

"Except as provided in [MCL 257.909(2), MCL 257.909(3), and MCL 257.909(6)], a civil fine that is ordered under [MCL 257.907] for a violation of [the MVC] or other state statute must be exclusively applied to the support of public libraries and county law libraries in the same manner as is provided by law for penal fines assessed and collected for violation of a penal law of [Michigan]." MCL 257.909(1).[38]

"A civil fine ordered for a violation of [MCL 257.682] that is a camera-based violation as defined in [MCL 257.682] must be paid to the county treasurer or the county treasurer's designee and be distributed by the county treasurer or the county treasurer's designee to the school district that operates the school bus and be used for school transportation safety-related purposes as provided in [MCL 257.682]." MCL 257.909(3). "A civil fine ordered for a violation of a code or ordinance of a local authority that substantially corresponds to [MCL 257.682] that is a camera-based violation as defined in [MCL 257.682] must be paid to the county treasurer or the county treasurer's designee and be distributed by the county treasurer or the county treasurer's designee to the school district that operates the school bus and be used for school transportation safety-related purposes as provided in [MCL 257.682]." MCL 257.909(4). "A county treasurer may enter into a contract with and designate a private vendor to process a civil fine described in [MCL 257.907(3)] or [MCL 257.907(4)]." MCL 257.909(5). "A private vendor . . . may be a private vendor contracted by a school district to install, operate, and provide support to a stop-arm camera system on a school bus under . . . MCL 257.1820." MCL 257.909(5). "A civil fine that is ordered under [MCL 257.907] for a violation of [MCL 257.627c] must be paid to the state

[38] "[MCL 257.909(1)] is intended to maintain a source of revenue for public libraries which previously received penal fines for misdemeanor violations of [the MVC] which are now civil infractions." MCL 257.909(2).

transportation department." MCL 257.909(6). "The state transportation department shall deposit any civil fines described in [MCL 257.907(6)] into the work zone safety fund created in [MCL 257.907a]." MCL 257.909(6).

B. Costs

"Except as otherwise provided, a person found responsible or responsible 'with explanation' for a civil infraction must pay costs as provided in [MCL 257.907(4).]" MCL 257.907(2).

"If a civil fine is ordered under [MCL 257.907(2)], the judge or district court magistrate shall summarily tax and determine the costs of the action, which are not limited to the costs taxable in ordinary civil actions, and may include all expenses, direct and indirect, to which the plaintiff has been put in connection with the civil infraction, up to the entry of judgment." MCL 257.907(4). "Costs must not be ordered in excess of $100.00." *Id*. "A civil fine ordered under [MCL 257.907(2)] must not be waived unless costs ordered under [MCL 257.907(4)] are waived." MCL 257.907(4).

MCL 257.729 also authorizes the imposition of certain costs:

> "In addition to a fine assessed for the . . . civil infraction when . . . determined responsible, the magistrate may also add to any fine and costs levied additional costs incurred in compelling the appearance of the person, which additional costs shall be returned to the general fund of the unit of government incurring the costs."

"Except as otherwise provided by law, costs are payable to the general fund of the plaintiff." MCL 257.907(4).

C. Assessments

"In addition to any civil fines or costs ordered to be paid under [MCL 257.907], the judge or district court magistrate shall order the defendant to pay a justice system assessment of $40.00 for each civil infraction determination, except for a parking violation or a violation for which the total fine and costs imposed are $10.00 or less." MCL 257.907(12).

"On payment of the assessment, the clerk of the court shall transmit the assessment collected to the state treasury to be deposited into the justice system fund created in . . . MCL 600.181." MCL 257.907(12).

"An assessment levied under [MCL 257.907(12)] is not a civil fine for purposes of [MCL 257.909]." MCL 257.907(12).

6.19 Waiving Civil Fines, Costs, and Assessments

"The court may waive fines, costs and fees, pursuant to statute or court rule, or to correct clerical error." MCR 4.101(G)(4).

"A civil fine ordered under [MCL 257.907(2)] must not be waived unless costs ordered under [MCL 257.907(4)] are waived." MCL 257.907(4).

A. Mandatory Waiver

A court must waive any ordered civil fine, costs, and assessment in the following circumstances:

- **Defective safety equipment violation under MCL 257.683.**

  "If a person has received a civil infraction citation for defective safety equipment on a vehicle under [MCL 257.683], the court shall waive a civil fine, costs, and assessments on receipt of certification by a law enforcement agency that repair of the defective equipment was made before the appearance date on the citation." MCL 257.907(9).

- **Failing to carry or display registration certificate under MCL 257.223.**

  "If a person has received a citation for a violation of [MCL 257.223], the court shall waive any civil fine, costs, and assessment, on receipt of certification by a law enforcement agency that the person, before the appearance date on the citation, produced a valid registration certificate that was valid on the date the violation of [MCL 257.223] occurred." MCL 257.907(13).

- **Failing to produce certificate of insurance under MCL 257.328.**

  "If a person has received a citation for a violation of [MCL 257.328(1)] for failing to produce a certificate of insurance under [MCL 257.328(2)], the court . . . shall waive any fine, costs, and any other fee or assessment otherwise authorized under [the MVC] on receipt of verification by the court that the person, before the appearance date on the citation, produced valid proof of insurance that was in effect at the time the violation of [MCL 257.328(1)] occurred." MCL 257.907(14).[39] "Insurance obtained subsequent to the time of the

violation does not make the person eligible for a waiver under [MCL 257.907(14)]." *Id.*

However, "[i]f, before the appearance date on a citation issued under [MCL 257.328(1)], the defendant submits proof to the court that the motor vehicle had insurance meeting the requirements of [MCL 500.3101 and MCL 500.3102], at the time the violation of [MCL 257.328(1)] occurred, all of the following apply:

(a) The court shall not assess a fine or costs.

(b) The court shall not forward an abstract of the court record to the secretary of state.

(c) The court may assess a fee of not more than $25.00 that shall be paid to the court funding unit." MCL 257.328(3).

B. Discretionary Waiver

"Before [April 2, 2025], the court may waive any civil fine, cost, or assessment against an individual who received a civil infraction citation for a violation of [MCL 257.710d (child not properly secured in a child restraint system)] if the individual, before the appearance date on the citation, supplies the court with evidence of acquisition, purchase, or rental of a child seating system meeting the requirements of [MCL 257.710d]." MCL 257.907(11).

"Beginning [April 2, 2025], the court may waive any civil fine, cost, or assessment against an individual who received a civil infraction citation for a violation of [MCL 257.710d] if the individual, before the appearance date on the citation, supplies the court with evidence of acquisition of a child seating system that meets the requirements of [MCL 257.710d] and evidence that the individual has received education from a certified child passenger safety technician." MCL 257.907(11).

See also MCL 600.8513(2)(b) ("If authorized by the chief judge of the district, a district court magistrate may . . . [s]uspend payment of court fees by an indigent party in any civil, small claims, or summary proceedings action, until after judgment has been entered.")

[39]Additionally, the court may waive the fee of not more than $25 set out in MCL 257.328(3)(c). MCL 257.907(14).

6.20 Treatment, Education, and Rehabilitation Programs

"In addition to a civil fine and costs ordered under [MCL 257.907(2)] and [MCL 257.907(4)] and the justice system assessment ordered under [MCL 257.907(12)], the judge or district court magistrate may order the individual to attend and complete a program of treatment, education, or rehabilitation." MCL 257.907(5). See also MCL 257.602b(8) (a court must order an individual who is responsible for 3 or more civil infractions of MCL 257.602b(1) - holding or using a mobile electronic device while operating a motor vehicle - within a 3-year period to complete a basic driver improvement course within a reasonable time as determined by the court).

Part II—Municipal and State Civil Infractions

6.21 Initiating a Civil Infraction Action

Municipal civil infraction actions and state civil infraction actions are commenced upon the issuance of a citation as provided under MCL 600.8707 (municipal) or MCL 600.8807 (state). MCL 600.8703(1); MCL 600.8803(1). See also MCR 4.101(A)(1) ("a civil infraction action may be initiated by a law enforcement officer serving a written citation on the alleged violator and filing the citation in the district court").

The plaintiff in a municipal civil infraction action is the political subdivision whose ordinance has been violated. MCL 600.8703(1). The plaintiff in a state civil infraction action is the state. MCL 600.8803(1). If the ordinance is a temporary vessel speed limit established by the county emergency management coordinator or sheriff under . . . MCL 324.80146, the county or municipality that requested the speed limit is considered to be the political subdivision whose ordinance has been violated." MCL 600.8703(1).

6.22 Citation Form Requirements

"Each citation shall be numbered consecutively, be in a form as approved by the state court administrator, and consist of the following parts:

> (a) The original, which is a complaint and notice to appear by the [authorized official or law enforcement officer] and shall be filed with the court in which the appearance is to be made.
>
> (b) The first copy, which shall be retained by the [ordinance enforcement agency or the law enforcement agency].

(c) The second copy, which shall be issued to the alleged violator if the violation is a misdemeanor.

(d) The third copy, which shall be issued to the alleged violator if the violation is a [municipal civil infraction or a state civil infraction]." MCL 600.8705(1); MCL 600.8805(1).

"The citation serves as a summons to command (a) the initial appearance of the defendant; and (b) a response from the defendant as to his or her responsibility for the alleged violation." MCR 4.101(A)(3).

A. Modification

"With the prior approval of the state court administrator, the citation may be modified as to content or number of copies to accommodate law enforcement and local court procedures and practices. Use of this citation for violations other than [municipal civil infractions or state civil infractions] is optional." MCL 600.8705(2); MCL 600.8805(2).

B. Treatment as Under Oath — Municipal Civil Infraction Citations

"A citation for a municipal civil infraction signed by an authorized local official shall be treated as made under oath if the violation alleged in the citation occurred in the presence of the authorized local official signing the complaint and if the citation contains the following statement immediately above the date and signature of the official: 'I declare under the penalties of perjury that the statements above are true to the best of my information, knowledge, and belief.'" MCL 600.8705(3).

C. Treatment as Under Oath — State Civil Infraction Citations

"A complaint for a state civil infraction signed by a law enforcement officer shall be treated as made under oath if the complaint contains the following statement immediately above the date and signature of the officer: 'I declare under the penalties of perjury that the statements above are true to the best of my information, knowledge, and belief.'" MCL 600.8805(3).

6.23 Citation Content Requirements

All state and municipal civil infraction citations must contain:

- the plaintiff's name (the state is the plaintiff in a state civil infraction action);

- the defendant's name and address;
- the civil infraction alleged;
- the place where the defendant must appear in court;
- the court's telephone number; and
- the time at or by which the appearance must be made. MCL 600.8709(1); MCL 600.8809(1).

Further, all state and municipal civil infraction citations must inform the defendant that he or she may do one of the following:

- admit responsibility for the municipal civil infraction or state civil infraction in person, by representation, or by mail;
- admit responsibility for the municipal civil infraction or state civil infraction "with explanation" in person, by representation, or by mail; or
- deny responsibility for the municipal civil infraction or state civil infraction by doing either of the following:
  - appearing in person for an informal hearing before a judge or a district court magistrate, without the opportunity of being represented by an attorney; or
  - appearing in court for a formal hearing before a judge, with the opportunity of being represented by an attorney. MCL 600.8709(2); MCL 600.8809(2).

A. Additional Requirements for Municipal Civil Infraction Citations

A municipal civil infraction citation must also inform the defendant of all of the following:

> "(a) That if the defendant desires to admit responsibility 'with explanation' in person or by representation, the defendant must apply to the court in person, by mail, by telephone, or by representation within the time specified for appearance and obtain a scheduled date and time for an appearance.
>
> (b) That if the defendant desires to deny responsibility, the defendant must apply to the court in person, by mail, by telephone, or by representation within the time specified for appearance and obtain a scheduled date

> and time to appear for a hearing unless a hearing date is specified on the citation.
>
> (c) That a hearing shall be an informal hearing unless a formal hearing is requested by the defendant or the plaintiff political subdivision.
>
> (d) That at an informal hearing the defendant must appear in person before a judge or district court magistrate, without the opportunity of being represented by an attorney.
>
> (e) That at a formal hearing the defendant must appear in person before a judge with the opportunity of being represented by an attorney." MCL 600.8709(3).

Finally, "[t]he citation shall contain a notice in boldfaced type that the failure of the defendant to appear within the time specified in the citation or at the time scheduled for a hearing or appearance is a misdemeanor and will result in entry of a default judgment against the defendant on the municipal civil infraction. Except as provided in [MCL 600.8709(5)], return of the citation with an admission of responsibility and with full payment of applicable civil fines and costs, return of the citation with an admission of responsibility with explanation, or timely application to the court for a scheduled date and time for an appearance under [MCL 600.8709(3)(a)] or a hearing under [MCL 600.8709(3)(b)] constitutes a timely appearance." MCL 600.8709(4).

Trailway municipal civil infractions. "A citation that may be issued for a trailway municipal civil infraction shall be designed to allow the authorized local official to indicate that the defendant is required to appear at a formal hearing." MCL 600.8709(5).

"An authorized local official issuing a citation for a trailway municipal civil infraction shall require the defendant to appear at a formal hearing if either or both of the following apply:

> (a) The trailway municipal civil infraction caused damage to a natural resource or facility.
>
> (b) The authorized local official impounds the vehicle." MCL 600.8709(5).

B. Additional Requirements for State Civil Infraction Citations

A state civil infraction citation must also inform the defendant "that if the defendant desires to admit responsibility 'with explanation' other

than by mail or to have an informal hearing or a formal hearing, the defendant must apply to the court in person, by mail, by telephone, or by representation within the time specified for appearance and obtain a scheduled date and time to appear for a hearing. A hearing date may be specified on the citation." MCL 600.8809(3).

Finally, "[t]he citation shall contain a notice in boldfaced type that the failure of the defendant to appear within the time specified in the citation or at the time scheduled for a hearing or appearance will result in entry of a default judgment against the defendant on the state civil infraction and a refusal by the secretary of state to issue or renew an operator's or chauffeur's license for the defendant. Timely application to the court for a hearing, return of the citation with an admission of responsibility with explanation, or return of the citation with an admission of responsibility and with full payment of applicable civil fines and costs constitutes a timely appearance." MCL 600.8809(4).

6.24 Authority to Issue a Citation — Municipal Civil Infractions

Only an authorized local official may issue a municipal civil infraction citation. *Orion Twp v Munro*, 235 Mich App 572, 574-575 (1999).

There are three separate circumstances under which an authorized local official can issue a citation:

- An authorized local official must issue a citation when the official witnesses a person violate an ordinance when the violation of the ordinance is a municipal civil infraction. MCL 600.8707(1).[40]

- An authorized local official may issue a citation when, based upon investigation, the official has reasonable cause to believe that the person is responsible for a municipal civil infraction. MCL 600.8707(2).

- An authorized local official may issue a citation when, based upon the investigation of a complaint by someone who witnessed a violation of an ordinance that constitutes a municipal civil infraction, the official has reasonable cause to believe the person is responsible for a municipal civil infraction and the prosecuting attorney or other attorney

[40] "An authorized local official who, knowing the statement is false, makes a materially false statement in a citation issued under [MCL 600.8707] is guilty of perjury, a felony punishable by imprisonment for not more than 15 years, and in addition is in contempt of court." MCL 600.8713.

for the political subdivision employing the authorized local official approves in writing the issuance of the citation. MCL 600.8707(2).

A. Service

An authorized local official must prepare an original and three copies of a citation, and must personally serve the third copy of the citation upon the alleged violator, except as provided in MCL 600.8707(4). MCL 600.8707(1); MCL 600.8707(3).

"In a municipal civil infraction action involving the use or occupancy of land or a building or other structure, a copy of the citation need not be personally served upon the alleged violator but may be served upon an owner or occupant of the land, building, or structure by posting the copy on the land or attaching the copy to the building or structure. In addition, a copy of the citation shall be sent by first-class mail to the owner of the land, building, or structure at the owner's last known address." MCL 600.8707(4). A citation served under MCL 600.8707(4) "shall be processed in the same manner as a citation served personally upon a defendant pursuant to [MCL 600.8707(1) or MCL 600.8707(2)]." MCL 600.8707(5).

B. Municipal Ordinance Violations Bureau

"Except under the circumstances described in [MCL 600.8709(5)(a) or MCL 600.8709(5)(b)[41]], if a county, city, village, or township has established a municipal ordinance violations bureau, an authorized local official of the county, city, village, or township may issue and serve a municipal ordinance violation notice, instead of a citation, under the same circumstances and upon the same persons as provided in [MCL 600.8707] for the service of a citation." MCL 600.8707(6).

"If an authorized local official issues and serves a municipal ordinance violation notice and if an admission of responsibility is not made and the civil fine and costs, if any, prescribed by ordinance for the violation are not paid at the municipal ordinance violations bureau, a citation may be filed with the court described in [MCL 600.8703(4)] and a copy of the citation may be served by first-class mail upon the alleged violator at his or her last known address." MCL 600.8707(6).

[41] MCL 600.8709(5)(a)-(b) address trailway municipal civil infractions where damage was caused to a natural resource or facility and where the authorized local official impounded the vehicle.

"The citation filed with the court pursuant to this subsection need not comply in all particulars with [MCL 600.8705 and MCL 600.8709] but shall consist of a sworn complaint containing the allegations stated in the municipal ordinance violation notice and shall fairly inform the defendant how to respond to the citation." MCL 600.8707(6). "A citation issued under this subsection shall be processed in the same manner as a citation issued personally to a defendant pursuant to [MCL 600.8707(1) or MCL 600.8707(2)]." MCL 600.8707(6).

6.25 Authority to Issue a Citation — State Civil Infractions

State civil infraction citations are issued by a law enforcement officer, and the officer may issue a citation under three different circumstances. MCL 600.8807.[42]

The law enforcement officer must "prepare and subscribe, as soon as possible and as completely as possible, an original and 3 copies of a citation." MCL 600.8807(1). The law enforcement officer must personally serve the third copy of the citation upon the alleged violator. MCL 600.8807(4).

A. Officer Witnesses Violation

"A law enforcement officer who witnesses a person violating state law, the violation of which is a state civil infraction, may stop the person, [and] detain the person temporarily for the purpose of issuing a citation[.]" MCL 600.8807(1).

B. Officer Personally Investigates an Accident

"A law enforcement officer may issue a citation to a person if, based upon personal investigation, the officer has reasonable cause to believe that the person is responsible for a state civil infraction in connection with an accident." MCL 600.8807(2).

C. Officer Investigates a Complaint

"Except as otherwise provided in [MCL 600.8807(2) regarding accident investigation], a law enforcement officer may issue a citation to a person if, based upon the officer's personal investigation of a complaint by someone who witnessed the person violating state law,

[42] "A law enforcement officer who, knowing the statement is false, makes a materially false statement in a citation issued under [MCL 600.8807] is guilty of perjury, a felony punishable by imprisonment for not more than 15 years, and in addition is in contempt of court." MCL 600.8813. See also *People v Lively*, 470 Mich 248, 254 (2004) (noting that MCL 600.8813 requires that the false statement be material).

the violation of which is a state civil infraction, the officer has reasonable cause to believe that the person is responsible for a state civil infraction and if the prosecuting attorney approves in writing the issuance of the citation." MCL 600.8807(3).

6.26 State Civil Infraction Citations Issued to Nonresidents of Michigan

"When a person who is not a resident of [Michigan] is issued a citation for a civil infraction under [MCL 600.8807], the person may recognize to the law enforcement officer or to the court for his or her appearance by leaving with the officer or court a sum of money not to exceed $100.00." MCL 600.8808(1). An officer receiving a deposit of money must give the person depositing the money a receipt and a written citation. MCL 600.8808(2). "At or before the completion of his or her tour of duty, a law enforcement officer taking a deposit of money shall deliver the deposit of money and the citation either to the court named in the citation or to the agency chief or person authorized by the agency chief to receive deposits. The agency chief or person authorized shall deposit the money and the citation with the court in the same manner as prescribed for citations in [MCL 600.8805]. A failure to deliver the money deposited is embezzlement of public money." MCL 600.8808(3).

"If the person who posts a deposit fails to appear as required in the citation or for a scheduled informal or formal hearing, the court having jurisdiction and venue over the civil infraction shall enter a default judgment against the person, and the money deposited shall be forfeited and applied to any civil fine or costs ordered under [MCL 600.8827]. MCL 600.8808(4).

6.27 Defendant's Response to Citation

"A person to whom a citation is issued under [MCL 600.8707 or MCL 600.8807] shall appear by or at the time specified in the citation and, except as otherwise provided by [MCL 600.8709(5)[43]], may respond to the allegations in the citation as provided in [MCL 600.8715 if the citation is for a municipal civil infraction or MCL 600.8815 if the citation is for a state civil infraction]." MCL 600.8715(1); MCL 600.8815(1). A defendant may respond to the citation by appearing by mail, by representation, or in person. See MCR 4.101(E). See the Michigan Judicial Institute's appearance by mail checklist and appearance in person checklist.

[43]This subsection addresses certain types of trailway municipal civil infractions for which a formal hearing is required.

A. Admit Responsibility

A defendant may admit responsibility for a municipal civil infraction or a state civil infraction by:

- appearing in person,
- by representation, or
- by mail. MCL 600.8715(2); MCL 600.8815(2).

"If appearance is made by representation or mail, the court may accept the admission with the same effect as though the defendant personally appeared in court. Upon acceptance of the admission, the court may order any of the sanctions permitted under [MCL 600.8727 or MCL 600.8827]." MCL 600.8715(2); MCL 600.8815(2).

For any hearing held under MCR 4.101 and subject to MCR 2.407(B)(5), the use of videoconferencing technology to conduct remote proceedings is presumed. MCR 4.101(F)(4).

B. Admit Responsibility "With Explanation"

A defendant may admit responsibility "with explanation" for a municipal civil infraction or a state civil infraction by:

- appearing by mail; or
- contacting the court in person, by mail, by telephone, or by representation to schedule a time for the defendant to appear in court in person or by representation. MCL 600.8715(3); MCL 600.8815(3).

"If a defendant admits responsibility for [a municipal civil infraction or a state civil infraction] 'with explanation' under [MCL 600.8715(3) or MCL 600.8815(3)], the court shall accept the admission as though the defendant has admitted responsibility under [MCL 600.8715(2) or MCL 600.8815(2)] and may consider the defendant's explanation by way of mitigating any sanction that the court may order under [MCL 600.8727]." MCL 600.8715(4); MCL 600.8815(4).

"If appearance is made by representation or mail, the court may accept the admission with the same effect as though the defendant personally appeared in court, but the court may require the defendant to provide a further explanation or to appear in court." MCL 600.8715(4); MCL 600.8815(4). For any hearing held under MCR 4.101 and subject to MCR 2.407(B)(5),the use of videoconferencing technology to conduct remote proceedings is presumed. MCR 4.101(F)(4).

The defendant's explanation may serve to mitigate the sanction imposed, but the citation cannot be dismissed after a defendant has admitted responsibility. *In re Justin*, 490 Mich 394, 414 n 41 (2012) ("There is absolutely no statutory authority permitting a judge to dismiss a case 'after explanation.'")

C. Deny Responsibility

"If the defendant wishes to deny responsibility for a [municipal civil infraction or a state civil infraction], the defendant shall do so by appearing for an informal or formal hearing." MCL 600.8715(5); MCL 600.8815(5).

"If the hearing date is not specified on the citation, the defendant shall contact the court in person, by representation, by mail, or by telephone, and obtain a scheduled date and time to appear for an informal or formal hearing." MCL 600.8715(5); MCL 600.8815(5). For any hearing held under MCR 4.101 and subject to MCR 2.407(B)(5), the use of videoconferencing technology to conduct remote proceedings is presumed. MCR 4.101(F)(4).

1. Municipal Civil Infractions

"If the hearing date is specified on the citation, the defendant shall appear on that date. The hearing shall be an informal hearing, unless a formal hearing is requested by the defendant or the plaintiff as provided by [MCL 600.8717]. MCL 600.8715(5).[44]

MCL 600.8717(1) provides that "[t]he court shall schedule a formal hearing if either the defendant or the plaintiff expressly requests a formal hearing[.]" The request must be received by the court at least 10 days before the hearing date, and may be made in person, by representation, by mail, or by telephone. MCL 600.8717(2). The party requesting the formal hearing must notify the other party or parties at least 10 days before the hearing date. MCL 600.8717(3). The notification may be made in person, by representation, by mail, or by telephone. *Id.*

"If a hearing is scheduled by telephone, the court shall mail the defendant a confirming notice of that hearing by regular mail to the address appearing on the citation or to an address that is furnished by the defendant." MCL 600.8715(5).

[44]The court is required to schedule a formal hearing for a trailway municipal civil infraction action if the infraction caused damage to a natural resource or facility or if the authorized official impounded a vehicle. MCL 600.8717(4).

"An informal hearing shall be conducted pursuant to [MCL 600.8719], and a formal hearing shall be conducted pursuant to [MCL 600.8721]." MCL 600.8715(5).

2. State Civil Infractions

"If the hearing date is specified on the citation, the defendant shall appear on that date for an informal hearing unless the defendant contacts the court at least 10 days before that date in person, by representation, by mail, or by telephone to request a formal hearing." MCL 600.8815(5).

"The court shall schedule an informal hearing, unless the defendant expressly requests a formal hearing." MCL 600.8815(5). "If the defendant expressly requests a formal hearing, the court shall schedule a formal hearing. If an informal or formal hearing is scheduled by telephone, the court shall mail the defendant a confirming notice of that hearing by regular mail to the address appearing on the citation or to an address that is furnished by the defendant." MCL 600.8815(5).

"An informal hearing shall be conducted pursuant to [MCL 600.8819], and a formal hearing shall be conducted pursuant to [MCL 600.8821]." MCL 600.8815(5).

D. Court's Acceptance of Defendant's Response to a Citation

"If [an authorized local official issues a citation under MCL 600.8707, or a law enforcement officer issues a citation under MCL 600.8807], the court may accept an admission with explanation or an admission or denial of responsibility upon the citation without the necessity of a sworn complaint." MCL 600.8711; MCL 600.8811.

"If the defendant denies responsibility for the [municipal civil infraction or the state civil infraction], further proceedings shall not be held until a sworn complaint is filed with the court." MCL 600.8711; MCL 600.8811.

Further, "[a] warrant for arrest for failure to appear on [a] municipal civil infraction citation under [MCL 600.8727(9)] shall not be issued until a sworn complaint relative to the municipal civil infraction is filed with the court." MCL 600.8711.

"Notwithstanding any provision of law to the contrary and except in cases where the complaint is for an assaultive crime or an offense involving domestic violence, in the event that a defendant fails to appear for a court hearing and it is the defendant's first failure to appear in the case, there is a rebuttable presumption that the court

must wait 48 hours before issuing a bench warrant to allow the defendant to voluntarily appear. If the defendant does not appear within 48 hours, the court shall issue a bench warrant unless the court believes there is good reason to instead schedule the case for further hearing." MCL 764.3(1). "The court may overcome the presumption under [MCL 764.3(1)] and issue an immediate bench warrant for the defendant's failure to appear if the court has a specific articulable reason to suspect that any of the following apply:

> (a) The defendant has committed a new crime.
>
> (b) A person or property will be endangered if a bench warrant is not issued.
>
> (c) Prosecution witnesses have been summoned and are present for the proceeding.
>
> (d) The proceeding is to impose a sentence for the crime.
>
> (e) There are other compelling circumstances that require the immediate issuance of a bench warrant." MCL 764.3(3).

The court must state its reasons for departing from the presumption under MCL 764.3(1) if it issues an immediate bench warrant. MCL 764.3(4). "When a court delays the issuance of a warrant, the court shall not revoke the release order or declare bail money deposited or the surety bond, if any, forfeited. Upon the issuance of the arrest warrant, the court may then enter an order revoking the release order and declaring the bail money deposited, personal recognizance bond, surety bond, or 10% bond, if any, forfeited." MCL 764.3(2).

6.28 Informal Hearings

If authorized, "[a] district court magistrate may conduct an informal hearing and may administer oaths, examine witnesses, and make findings of fact and conclusions of law at an informal hearing." MCL 600.8719(1); MCL 600.8819(1).

"The judge or district court magistrate shall conduct the informal hearing in an informal manner so as to do substantial justice according to the rules of substantive law, but is not bound by the statutory provisions or rules of practice, procedure, pleading, or evidence, except provisions relating to privileged communications." MCL 600.8719(1); MCL 600.8819(1). For any hearing held under MCR 4.101 and subject to MCR 2.407(B)(5), the use of videoconferencing technology to conduct remote proceedings is presumed. MCR 4.101(F)(4).

At an informal hearing:

- there is no jury;
- a verbatim record is not required;
- the defendant is not represented by an attorney; and
- the plaintiff is not represented by the prosecuting attorney or attorney for a political subdivision. MCL 600.8719(1)-(2); MCL 600.8819(1)-(2).

Notice. "Notice of a scheduled informal hearing shall be given to the plaintiff." MCL 600.8719(3); MCL 600.8819(3).

A. Witnesses

"The plaintiff and defendant may subpoena witnesses." MCL 600.8719(3); MCL 600.8819(3).

"Witness fees need not be paid in advance to a witness." MCL 600.8719(3); MCL 600.8819(3).

Municipal civil infractions. "Witness fees for a witness on behalf of the plaintiff are payable by the district control unit of the district court for the place where the hearing occurs, or by the city or village if the hearing involves an ordinance violation in a district where the district court is not functioning." MCL 600.8719(3).

State civil infractions. "Witness fees for a witness on behalf of the plaintiff are payable by the district control unit of the district court for the place where the hearing occurs." MCL 600.8819(3).

B. District Court Magistrate's Determination

"If the judge or district court magistrate determines by a preponderance of the evidence that the defendant is responsible for a [municipal civil infraction or a state civil infraction], the judge or magistrate shall enter an order against the defendant as provided in [MCL 600.8727 for municipal civil infractions or MCL 600.8827 for state civil infractions]. Otherwise, a judgment shall be entered for the defendant, but the defendant is not entitled to costs of the action." MCL 600.8719(4); MCL 600.8819(4).

See also MCL 600.113(3) ("A determination that a defendant is responsible for a civil infraction and thus subject to civil sanctions shall be by a preponderance of the evidence.")

"Preponderance of the evidence means such evidence, as, when weighed with that opposed to it, has more convincing force and the

greater probability of truth." *People v Cross*, 281 Mich App 737, 740 (2008) (quotation marks omitted).

C. Appeals

1. Municipal Civil Infractions

"The plaintiff and defendant are entitled to appeal an adverse judgment entered at an informal hearing. An appeal from a municipal judge shall be a trial de novo in the circuit court. In other instances, an appeal shall be de novo in the form of a scheduled formal hearing as follows:

> (a) The appeal from a judge of the district court shall be heard by a different judge of the district.
>
> (b) The appeal from a district court magistrate shall be heard by a judge of the district." MCL 600.8719(5).

2. State Civil Infractions

"The plaintiff or defendant may appeal an adverse judgment entered at an informal hearing. An appeal from a municipal judge shall be a bench trial de novo in the circuit court. In other instances, an appeal shall be de novo in the form of a scheduled formal hearing as follows:

> (a) The appeal from a judge of the district court shall be heard by a different judge of the district.
>
> (b) The appeal from a district court magistrate shall be heard by a judge of the district." MCL 600.8819(5).

6.29 Formal Hearings

District court magistrates do not have the authority to conduct formal hearings. See MCL 600.8721(1) and MCL 600.8821(1) ("A formal hearing shall be conducted only by a judge of the district court or a municipal court.").

"An informal hearing will be held unless

> (a) a party expressly requests a formal hearing, or

> (b) the violation is a trailway municipal civil infraction which requires a formal hearing pursuant to MCL 600.8717(4)." MCR 4.101(F)(1).

For more information about formal hearing procedure, see MCL 600.8721 (municipal civil infractions) or MCL 600.8821 (state civil infractions).

6.30 Entering a Default Judgment for Failure to Answer a Citation or Appear for a Scheduled Hearing

"If the defendant fails to appear as directed by the citation or other notice at a scheduled appearance under [MCL 600.8715(3)(b) or MCL 600.8715(4) for municipal civil infractions, or MCL 600.8815(3)(b) or MCL 600.8815(4) for state civil infractions], at a scheduled informal hearing, or at a scheduled formal hearing, the court shall enter a default judgment against the defendant." MCL 600.8723; MCL 600.8823(1).

In state civil infraction proceedings, "[u]nless the court has granted an adjournment for good cause shown, the court shall enter a judgment for the defendant if the law enforcement officer who issued the citation for a state civil infraction fails to appear at a scheduled informal hearing or if the prosecuting attorney fails to appear or is unable to proceed at a scheduled formal hearing, but the defendant is not entitled to costs of the action." MCL 600.8823(2).

MCR 4.101(B) also addresses the actions a court must take if a defendant fails to appear or otherwise respond to any matter pending relative to a civil infraction action. See Section 6.7(C) for a discussion of MCR 4.101(B).

"A defendant may move to set aside a default judgment within 14 days after the court sends notice of the judgment to the defendant." MCR 4.101(D)(1). See Section 6.7(E) for a detailed discussion on setting aside a default judgment.

6.31 Civil Fines, Costs, and Assessments

District court magistrates may impose sanctions permitted under MCL 600.8727(2), MCL 600.8727(5), and MCL 600.8827(2), only to the extent expressly authorized by the chief judge or only judge of the district court district. MCL 600.8727(6); MCL 600.8827(5).

Municipal civil infractions and state civil infractions are not lesser included offenses of a criminal offense or an ordinance violation that is not a civil infraction. MCL 600.8727(1); MCL 600.8827(1).

If a defendant is determined to be responsible or responsible "with explanation" for a municipal civil infraction or a state civil infraction, the district court magistrate may order the defendant to pay:

- a civil fine;[45]
- costs as provided in MCL 600.8727(3) for municipal civil infractions or MCL 600.8827(3) for state civil infractions;
- the justice system assessment as provided in MCL 600.8727(4) for municipal civil infractions, or MCL 600.8827(4) for state civil infractions; and
- for municipal civil infractions, if applicable, damages and expenses as provided in MCL 600.8733(2). MCL 600.8727(2); MCL 600.8827(2).

"In the order of judgment, the judge or district court magistrate may grant a defendant permission to pay a civil fine, costs, assessment, and damages and expenses within a specified period of time or in specified installments. Otherwise, the civil fine, costs, assessment, and damages and expenses are due immediately." MCL 600.8727(2) (municipal civil infractions). See also MCL 600.8827(2) (state civil infractions), which contains substantially similar language with the exception of damages and expenses; MCR 1.110 ("Fines, costs, and other financial obligations imposed by the court must be paid at the time of assessment, except when the court allows otherwise, for good cause shown.").

"A court may not increase a scheduled civil fine because the defendant has requested a hearing." MCR 4.101(G)(1).

A list of the maximum fines for specified state civil infractions is available on the Michigan One Court of Justice website. See also the Michigan Judicial Institute's table summarizing the fines, fees, and costs for state civil infractions and the table summarizing the fines, fees, and costs for municipal civil infractions.

A. Costs

"If a defendant is ordered to pay a civil fine under [MCL 600.8727(2) or MCL 600.8827(2)], the judge or district court magistrate shall summarily tax and determine the costs of the action, which are not limited to the costs taxable in ordinary civil actions and may include all expenses, direct and indirect, to which the plaintiff has been put in connection with the [municipal civil infraction or state civil

[45] A civil fine ordered under MCL 600.8827 for a violation of a state statute must be exclusively applied to the support of public libraries and county law libraries. MCL 600.8831.

infraction], up to the entry of judgment." MCL 600.8727(3); MCL 600.8827(3).

"Costs of not more than $500.00 must be ordered." MCL 600.8727(3); MCL 600.8827(3).

Municipal civil infractions. "Except as otherwise provided by law, costs shall be payable to the general fund of the plaintiff." MCL 600.8727(3).

State civil infractions. Costs in a state civil infraction action in the district court "must be distributed as provided in [MCL 600.8379]." MCL 600.8827(3). MCL 600.8379 addresses fines and costs assessed in the district court and requires that all fines and costs be paid to the clerk of the court. MCL 600.8379(1). MCL 600.8379 sets out how the clerk of the court must appropriate fines and costs in detail.

"Costs in a state civil infraction action in a municipal court must be paid to the county." MCL 600.8827(3).

B. Justice System Assessment

"Effective October 1, 2003, in addition to any fine or cost ordered to be paid under [MCL 600.8727(2) for municipal civil infractions or MCL 600.8827(2) for state civil infractions], the judge or district court magistrate shall order the defendant to pay a justice system assessment of $10.00. Upon payment of the assessment, the clerk of the court shall transmit the assessment collected to the state treasurer for deposit in the justice system fund created in [MCL 600.181]." MCL 600.8727(4); MCL 600.8827(4).

C. Costs Incurred in Compelling the Appearance of the Defendant

"If the defendant in a [municipal civil infraction action or state civil infraction action] is determined responsible for a [municipal civil infraction or state civil infraction, respectively], the judge or district court magistrate, in addition to any fine, costs, and assessment imposed under [MCL 600.8727 for municipal civil infractions or MCL 600.8827 for state civil infractions], may assess additional costs incurred in compelling the appearance of the defendant, which additional costs shall be returned to the general fund of the unit of government incurring the costs." MCL 600.8735; MCL 600.8835.

D. Writ or Order - Municipal Civil Infractions

"In addition to ordering the defendant to pay a civil fine, costs, a justice system assessment, and damages and expenses, the judge or

district court magistrate may issue a writ or order under [MCL 600.8302]." MCL 600.8727(5).

In relevant part, MCL 600.8302 provides that "the district court may issue and enforce any judgment, writ, or order necessary to enforce the ordinance." MCL 600.8302(4).

E. Waiver of Fines, Costs, and Fees

"The court may waive fines, costs and fees, pursuant to statute or court rule, or to correct clerical error." MCR 4.101(G)(4). See also MCL 600.8513(2)(b) ("If authorized by the chief judge of the district, a district court magistrate may . . . [s]uspend payment of court fees by an indigent party in any civil, small claims, or summary proceedings action, until after judgment has been entered.")

F. Schedule of Fines, Costs, and Assessments

"Each district of the district court and each municipal court may establish a schedule of civil fines, costs, and assessments to be imposed for [municipal civil infractions or state civil infractions] that occur within the district or city. If a schedule is established, it [must] be prominently posted and readily available for public inspection." MCL 600.8727(7); MCL 600.8827(6).

Municipal civil infractions. "A schedule need not include all municipal civil infractions. A schedule may exclude cases on the basis of a defendant's prior record of municipal civil infractions." MCL 600.8727(7).

State civil infractions. "A schedule need not include all violations that are designated by law as state civil infractions." MCL 600.8827(6).

G. Default in Payment

1. Municipal Civil Infractions

"A default in the payment of a civil fine, costs, assessment, or damages or expenses ordered under [MCL 600.8727(2)-(4)] or an installment of the fine, costs, assessment, or damages or expenses may be collected by a means authorized for the enforcement of a judgment under chapter 40 [of the Revised Judicature Act] or chapter 60 [of the Revised Judicature Act]." MCL 600.8727(8).

2. State Civil Infractions

"A default in the payment of a civil fine, costs, or assessment ordered under [MCL 600.8827(2)-(4)] or an installment of the fine, costs, or assessment may be collected by a means authorized for the enforcement of a judgment under chapter 40 [of the Revised Judicature Act] or chapter 60 [of the Revised Judicature Act]." MCL 600.8827(7).

H. Failure to Appear or Comply with an Order or Judgment

1. Municipal Civil Infractions

"If after the service of an appearance ticket and the filing of a complaint for the offense designated on the appearance ticket the defendant does not appear in the designated local criminal court within the time the appearance ticket is returnable, the court may issue a summons or a warrant as provided in [MCL 764.9e]." MCL 764.9e(1). "Notwithstanding any provision of law to the contrary, in the event that a defendant fails to appear for a court hearing within the time the appearance ticket is returnable there is a rebuttable presumption that the court must issue an order to show cause why the defendant failed to appear instead of issuing a warrant." MCL 764.9e(2). "The court may overcome the presumption and issue a warrant if it has a specific articulable reason to suspect that any of the following apply:

> (a) The defendant committed a new crime.
>
> (b) The defendant's failure to appear is the result of a willful intent to avoid or delay the adjudication of the case.
>
> (c) Another person or property will be endangered if a warrant is not issued." MCL 764.9e(3).

"If the court overcomes the presumption under [MCL 764.9e(2)] and issues a warrant, the court must state on the record its reasons for doing so." MCL 764.9e(4).

"If a defendant fails to comply with an order or judgment issued pursuant to [MCL 600.8727] within the time prescribed by the court, the court may proceed under [MCL 600.8729,[46] MCL 600.8731,[47] or MCL 600.8733[48]], as applicable." MCL 600.8727(9).

[46] Permitting civil contempt proceedings.

2. State Civil Infractions

"If after the service of an appearance ticket and the filing of a complaint for the offense designated on the appearance ticket the defendant does not appear in the designated local criminal court within the time the appearance ticket is returnable, the court may issue a summons or a warrant as provided in [MCL 764.9e]." MCL 764.9e(1). "Notwithstanding any provision of law to the contrary, in the event that a defendant fails to appear for a court hearing within the time the appearance ticket is returnable there is a rebuttable presumption that the court must issue an order to show cause why the defendant failed to appear instead of issuing a warrant." MCL 764.9e(2). "The court may overcome the presumption and issue a warrant if it has a specific articulable reason to suspect that any of the following apply:

> (a) The defendant committed a new crime.
>
> (b) The defendant's failure to appear is the result of a willful intent to avoid or delay the adjudication of the case.
>
> (c) Another person or property will be endangered if a warrant is not issued." MCL 764.9e(3).

"If the court overcomes the presumption under [MCL 764.9e(2)] and issues a warrant, the court must state on the record its reasons for doing so." MCL 764.9e(4).

I. Civil Contempt

MCL 600.8729 (municipal civil infractions) and MCL 600.8829 (state civil infractions) provide authority and procedures for requiring the defendant to show cause why the defendant should not be held in civil contempt for defaulting in the payment of a civil fine, costs, assessment, damages, or expenses. District court magistrates *do not* have the authority to conduct civil contempt proceedings or issue a bench warrant. See MCL 600.8511 (discussing the jurisdiction and duties of a district court magistrate without including an authorization for conducting civil contempt proceedings or issuing a bench warrant); MCL 600.8512 (setting forth authority of district court magistrates over civil infraction or civil fine actions and not including

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[47]Permitting the plaintiff in a municipal civil infraction action brought for a violation involving the use or occupation of land, a building, or other structure to obtain a lien on the property involved if a defendant fails to pay a civil fine, cost, or assessment within 30 days after the date on which payment is due. MCL 600.8731(1).

[48]Permitting additional penalties connected with a trailway municipal civil infraction action. MCL 600.8733.

civil contempt proceedings or bench warrants); MCL 600.8512a (setting forth authority of district court magistrates over civil infraction actions and not including civil contempt proceedings or bench warrants). See also *In re James*, 492 Mich 553, 566-567 (2012) (finding that the judge committed misconduct by requiring a district court magistrate to sign bench warrants "in violation of MCL 600.8511[,]" and noting that the judge was the only person "who had legal authority to sign bench warrants[]").

J. Criminal Liability

"A defendant who fails to answer a citation or notice to appear in court for a municipal civil infraction is guilty of a misdemeanor." MCL 600.8727(10).

"A defendant who fails to comply with an order or judgment issued under [MCL 600.8827, regarding state civil infractions,] is guilty of a misdemeanor." MCL 600.8827(8).

Chapter 7: Small Claims

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7.1 Scope Note

This chapter addresses small claims actions. Chapter 84 of the Revised Judicature Act, MCL 600.8401 *et seq.* governs small claims actions. Subchapter 4.300 of the Michigan Court Rules also addresses small claims actions.

7.2 Authority of District Court Magistrate

"A small claims hearing may be conducted . . . by a district court magistrate who is an attorney licensed to practice in [Michigan] and who is authorized to do so by the chief judge of the district court district as provided in [MCL 600.8514]." MCL 600.8427.

In the small claims division, a district court magistrate who is an attorney licensed to practice law in this state, if authorized by the chief judge of the district, may:

- administer oaths,
- examine witnesses,
- make findings of fact and conclusions of law,
- and recommend a judgment in the case. MCL 600.8514.

"In doing so, the magistrate shall perform all functions which a district judge could perform in trying a case in the small claims division. A recommended judgment shall become a final judgment as of the date the judgment was recommended unless an appeal is taken within 7 days after the judgment was recommended." MCL 600.8514.

"Magistrates shall exercise the same powers and perform the same duties as deputy clerks of the district court for the purpose of carrying out the provisions of [C]hapter 84 [(the small claims division chapter of the Revised Judicature Act)] although they shall not be considered deputy clerks." MCL 600.8545.

7.3 Small Claims Division

"A small claims division is created in each district as a division of the district court." MCL 600.8401. The purpose of the small claims division is to handle relatively minor civil cases for which the recovery of money is the primary purpose in an efficient, uncomplicated, inexpensive, and fair manner. See MCL 600.8411(2). "The small claims division of the district court shall sit at least once each 30 days at the locations at which the

district court is required to sit pursuant to [MCL 600.8251]." MCL 600.8416(1). See Chapter 1 for a discussion of MCL 600.8251.

An index of the SCAO-approved forms for use in small claims actions can be accessed on the Michigan One Court of Justice website.

A. Procedural Rules Governing Small Claims Actions

Small claims trials must be conducted "in an informal manner so as to do substantial justice between the parties according to the rules of substantive law[.]" MCL 600.8411(2).

Small claims actions are governed by the procedural provisions of Chapter 84 of the Revised Judicature Act, MCL 600.8401 *et seq.*, and by subchapter 4.300 of the Michigan Court Rules. MCR 4.301. "After judgment, other applicable Michigan Court Rules govern actions that were brought in a small claims division." *Id.* Statutory provisions or rules of practice, procedure, pleading, or evidence, except provisions related to privileged communications,[1] do not apply in the small claims division. MCL 600.8411(2).

B. Required Notice of Right to Removal

"Before the commencement of a trial in the small claims division, the district court judge or magistrate shall inform both parties, orally or in writing, of the right to removal before trial to the general civil division and of all rights waived if they choose to remain in the small claims division." MCL 600.8411(1). See also MCL 600.8402(3) (requiring the affidavit commencing the action to inform both parties of the right to removal before trial and to the rights waived if they stay in the small claims division); MCL 600.8408(4) ("Before commencement of a trial, the plaintiff or defendant may, upon demand, require that the trial be conducted before a district court judge and not a magistrate, or may remove the case from the small claims division to the general civil division of the district court.")

C. Rights Waived in Small Claims Actions

If the parties elect to proceed in the small claims division, they waive the right to an attorney, the right to a jury, the right to recover more than the applicable jurisdictional amount prescribed by MCL 600.8401, and the right to appeal (except as otherwise provided in MCL 600.8427). MCL 600.8412. See also MCL 600.8408(4) (noting that

[1]For a discussion of privileged communications, see the Michigan Judicial Institute's *Evidence Benchbook*, Chapter 1.

if parties commence a trial in the small claims division, both parties waive all rights mentioned in MCL 600.8412).

D. Removal

"A party may demand that the action be removed from the small claims division to the trial court for further proceedings by

> (1) signing a written demand for removal and filing it with the clerk at or before the time set for hearing; or
>
> (2) appearing before the court at the time and place set for hearing and demanding removal." MCR 4.306(A).

See also MCL 600.8408(4) (stating that either party may remove the case from the small claims division before the commencement of a trial); SCAO Form DC 86, *Small Claims Demand for Removal*.

"On receiving a demand for removal, the court shall, by a written order filed in the action, direct removal to the trial court for further proceedings." MCR 4.306(B). "The order must direct a defendant to file a written answer and serve it as provided in MCR 2.107[2] within 14 days after the date of the order." MCR 4.306(B)(1). "The party demanding removal must promptly serve the order on the opposing party and file proof of service with the court." MCR 4.306(B)(2). "There is no fee for the removal, order, or mailing." MCR 4.306(B)(3). The order directing removal is entered on a form separate from the demand. See SCAO Form DC 86o, *Small Claims Order for Removal*.

See the Michigan Judicial Institute's checklist regarding small claims procedures, including removal.

E. After-Hours Filing and Hearings

"A clerk or deputy clerk of the district may be available for filing of claims with the small claims division after regular court hours at the discretion of the presiding judge." MCL 600.8416(2).

"Scheduling of small claims hearings shall be done to lessen as much as possible the time that it is necessary for a plaintiff or defendant to be absent from employment. A judge of the district court may be available to hear small claims after regular court hours if the

[2] "Notwithstanding any other provision of [MCR 2.107], until further order of the Court, all service of process except for case initiation must be performed using electronic means (e-Filing where available, email, or fax, where available) to the greatest extent possible. Email transmission does not require agreement by the other party(s) but should otherwise comply as much as possible with the provisions in [MCR 2.107(C)(4)]." MCR 2.107(G)

presiding judge determines that evening hours will facilitate the adjudication of small claims cases." MCL 600.8416(3).

F. Limitations on Number of Filings

"Within a district court district a person shall not file more than the following number of claims in the small claims division in 1 week:

> (a) Except as provided in subdivision (b), a person shall not file more than 5 claims.
>
> (b) A person shall not file more than 20 claims on behalf of a county, city, village, or township." MCL 600.8407(2).

G. Prohibited Actions in the Small Claims Division

"Actions of fraud and actions of libel, slander, assault, battery, or other intentional torts shall not be instituted in the small claims division." MCL 600.8424(1). However, there are three exceptions:

- an action for fraud under MCL 600.2952;
- an action for fraud under the Michigan Consumer Protection Act (MCL 445.901–MCL 445.922); and
- an action under MCL 324.73109 (the Natural Resources and Environmental Protection Act). MCL 600.8424(1)(a)-(b).

7.4 Jurisdiction

The small claims division has jurisdiction over cases for the recovery of money in which the amount claimed does not exceed $7,000. MCL 600.8401.

"A person having a claim in excess of [$7,000] may institute an action in the small claims division but may not claim or recover more than the jurisdictional amount." MCL 600.8425(1). See also MCR 4.302(D) (requiring the actual amount of the claim to be stated and requiring the claim to state that by commencing the action the plaintiff waives any claim to the excess over the statutory limitation, and that the amount equal to the statutory limitation, exclusive of costs, is claimed by the action; and providing that a judgment on the claim is a bar to a later action in any court to recover the excess).

7.5 Venue

A. First Class Districts

"Except [where the action is filed against a city, village, township, county, or a local or intermediate school district], in districts of the first class actions in the small claims division shall be filed in the county in which the cause of action arose or in the county in which the defendant is established or resides or is employed." MCL 600.8415(1). "If there is more than 1 defendant, actions shall be filed in the county in which any defendant is established or resides or is employed." *Id.*

"In districts of the first class actions in the small claims division against a city, village, or township shall be filed in the county in which the city, village, or township is located." MCL 600.8415(3). "In districts of the first class actions in the small claims division against a county shall be filed in that county." *Id*.

"In districts of the first class, actions in the small claims division against a local or intermediate school district shall be filed in the county in which the local or intermediate school district has its principal administrative office." MCL 600.8415(4).

B. Second and Third Class Districts

Except [where the action is filed against a city, village, township, county, or a local or intermediate school district], in districts of the second or third class actions in the small claims division shall be filed in the district in which the cause of action arose or in the district in which the defendant is established or resides or is employed." MCL 600.8415(2). "If there is more than 1 defendant, actions shall be filed in the district in which any defendant is established or resides or is employed." *Id.*

"In districts of the second or third class actions in the small claims division against a city, village, or township shall be filed in the district in which the city, village, or township is located." MCL 600.8415(3). "In districts of the second or third class actions in the small claims division against a county shall be filed in the district in which the county seat of the county is located." *Id*.

"In districts of the second or third class, actions in the small claims division against a local or intermediate school district shall be filed in the district in which the local or intermediate school district has its principal administrative office." MCL 600.8415(4).

7.6 Parties to a Small Claims Action

A. Assignees and Third Party Beneficiaries

"A claim shall not be filed or prosecuted in the small claims division by an assignee of a claim or by a third party beneficiary under a third party beneficiary contract." MCL 600.8407(1). Assignees are prohibited from participating in all stages of a case brought in the small claims division, including postjudgment proceedings. *The Cadle Co v City of Kentwood*, 285 Mich App 240, 250 (2009). Accordingly, the assignment of small claims judgments is barred by MCL 600.8407(1). *The Cadle Co*, 285 Mich App at 250.

B. Generally Prohibited Parties

Except as otherwise provided in Chapter 84 of the Revised Judicature Act, MCL 600.8401 *et seq.*, MCL 600.8408(1) specifically prohibits certain parties from taking part in the "filing, prosecution, or defense of litigation in the small claims division[,]" including:

- an attorney at law, except on the attorney's own behalf;
- a collection agency or agent or employee of a collection agency; or
- a person other than the plaintiff and defendant. MCL 600.8408(1).

The prohibition on attorney participation in small claims actions includes postjudgment enforcement proceedings in the small claims division. *In re Goehring*, 184 Mich App 360, 363-364 (1990). However, an attorney may file for removal of a small claims action to the district court. *In re Lafayette Towers*, 200 Mich App 269, 275 (1993).

C. Governmental Units as a Party

"Except as provided in [MCL 600.8424(3)] the state, a political subdivision of the state, or any other governmental agency shall not be a party to an action in the small claims division." MCL 600.8424(2). MCL 600.8424(3) provides that "[a] county, city, village, township, or local or intermediate school district may file an action in the small claims division." Further, "[a]n action may be filed in the small claims division against a country, city, village, township, or local or intermediate school district, but a party may not assert a claim with respect to which the county, city, village, township, or local or intermediate school district has immunity." *Id.*

1. Persons Who May File a Claim on Behalf of a County, City, Village, Township, or Local Intermediate School District

"A person shall not file a claim on behalf of a county, city, village, township, or local or intermediate school district unless that person is an elected or appointed officer or an employee of the county, city, village, township, or local or intermediate school district who has knowledge of the facts surrounding the complaint and who is authorized by the governing body of the county, city, village, township, or local or intermediate school district to file the claim." MCL 600.8407(3).

2. Persons Who May Represent a County, City, Village, Township, or Local Intermediate School District

"A county, city, village, township, or local or intermediate school district as plaintiff or defendant may be represented only by an elected or appointed officer or an employee who has direct and personal knowledge of the facts in dispute. If the officer or employee who has direct and personal knowledge of the facts in dispute is no longer an officer or employee of the plaintiff or defendant, the representation may be made by that officer's successor or that employee's supervisor, or by a member of the governing body of the county, city, village, township, or local or intermediate school district. In addition, a person may not represent a county, city, village, township, or local or intermediate school district in the small claims division unless authorized to appear in the case by the governing body of the county, city, village, township, or local or intermediate school district." MCL 600.8408(3).

D. Sole Proprietorship, Partnership, or Corporation

1. Persons Who May File a Claim on Behalf of a Sole Proprietorship, Partnership, or Corporation

"A person shall not file a claim on behalf of a sole proprietorship or a partnership unless that person is the proprietor, a partner in the plaintiff partnership, or a full-time salaried employee of the plaintiff having knowledge of the facts surrounding the complaint. A person shall not file a claim on behalf of a corporation unless that person is a full-time, salaried employee having knowledge of the facts surrounding the complaint." MCL 600.8407(3).

2. Persons Who May Represent a Sole Proprietorship, Partnership, or Corporation

"A sole proprietorship, partnership, or corporation as plaintiff or defendant may be represented by an officer or employee who has direct and personal knowledge of facts in dispute. If the officer or employee who has direct and personal knowledge of facts in dispute is no longer employed by the defendant or plaintiff or is medically unavailable, the representation may be made by that person's supervisor, or by the sole proprietor, a partner, or an officer or a member of the board of directors of a corporation." MCL 600.8408(2).

7.7 Commencing a Small Claims Action

"An action shall be commenced in the small claims division by filing with the clerk or a deputy clerk of the district court an affidavit and 1 copy of the affidavit for each defendant to be served." MCL 600.8402(1). See also MCR 4.302(A). "The form and contents of the affidavit shall be as prescribed by statute and the state court administrator." MCL 600.8402(1). See also SCAO Form DC 84/84n, *Small Claims Affidavit* and *Small Claims Notice of Hearing*; MCR 4.302(A).[3] "A party filing a case initiating document . . . shall provide specified case information in the form and manner established by the State Court Administrative Office and as specified in other applicable rules." MCR 1.109(D)(2). See also MCR 6.101(A). "At a minimum, specified case information shall include the name, an address for service, an e-mail address, and a telephone number of every party[.]" MCR 1.109(D)(2). If there are multiple plaintiffs or defendants, the additional parties are listed on an addendum completed and attached to the affidavit. See SCAO Form DC 84a, *Small Claims Affidavit Addendum*.

The affidavit must be signed. MCR 4.302(B). See also MCR 1.109(E)(2) (requiring every filed document to be signed by at least one attorney of record or the party if not represented by an attorney). "If the plaintiff is an individual, the affidavit must be signed by the plaintiff or the plaintiff's guardian, conservator, or next friend." *Id.* "If the plaintiff is a sole proprietorship, a partnership, or a corporation, the affidavit must be signed by a person authorized to file the claim by MCL 600.8407(3)." MCR 4.302(B). "If a document is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party."

[3] "Printed affidavit forms for the commencement of actions in the small claims division shall be available at the office of each clerk and deputy clerk of the district court who shall prepare such affidavit for a claimant upon request." MCL 600.8403. Further, instruction sheets (prepared by the state court administrator) explaining how the small claims division functions and how to commence and defend an action will be given to the claimant upon the filing of a claim. MCL 600.8401a(1). See SCAO Form DC84info, *Small Claims Overview*.

MCR 1.109(E)(3). Electronic signatures are acceptable if they are made in accordance with MCR 1.109(E). See MCR 1.109(E)(4).

The affidavit "must be verified by oath and affirmation" "of the party or someone having knowledge of the facts stated[.]" MCR 1.109(D)(1)(f); MCR 1.109(D)(3)(a).

A. Required Contents of Affidavit

The affidavit must include:

- A printed notice directing the defendant to appear and answer as prescribed in MCL 600.8404. MCL 600.8402(1).
- The full and correct name of the plaintiff. MCL 600.8402(2); MCR 4.302(C)(1).[4]
- A statement whether the plaintiff is a corporation, partnership, sole proprietorship, or individual. MCL 600.8402(2); MCR 4.302(C)(1).
- The plaintiff's assumed name or business name, if any at the time the claim arose. MCL 600.8402(2); MCR 4.302(C)(1).
- A notice in boldface type to both parties of the right to removal before trial from magistrate jurisdiction and the right to removal before trial to the general civil division. MCL 600.8402(3).
- Notice to both parties of rights waived if they choose to remain in the small claims division.[5] MCL 600.8402(3).
- The nature and amount of the claim in concise, nontechnical language. MCR 4.302(A).[6]
- The date or dates when the claim arose. MCR 4.302(A).

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[4] "An individual, sole proprietorship, partnership, or corporation may be sued in the small claims division in any name used in any advertisement, sign, invoice, sales slip, register tape, business card, contract, or other communication or document, published, displayed or issued to the public in the course of its business. Any judgment in such a name shall be valid if the business is accurately identified by a location or mailing address where or through which the business is carried on." MCL 600.8426. See also MCR 4.301(C)(2).

[5] Parties waive the right to attorney, right to a jury, right to recover more than the statutory amount, and right to an appeal (but parties may appeal district court magistrate's ruling to district court judge). MCL 600.8412.

[6] If the plaintiff is claiming an amount in excess of the statutory limitation, the actual amount of the claim must be stated and the plaintiff must waive any claim to the excess over the statutory limitation. MCR 4.302(D). For information about the statutory limitation and claims in excess of that limitation, see Section 7.4.

- The form, captioning, signing, and verifying of documents as set forth in MCR 1.109(D)-(E). MCR 4.302(A).

B. Filing Fees

"A fee of the following amount, as applicable, shall be charged and collected for the filing of the affidavit for the commencement of any action:

> (a) $25.00, if the amount in controversy does not exceed $600.00.
>
> (b) $45.00, if the amount in controversy exceeds $600.00 but does not exceed $1,750.00.
>
> (c) $65.00, if the amount in controversy exceeds $1,750.00." MCL 600.8420(1).

The fees collected under MCL 600.8420(1) must be distributed as required by MCL 600.8420(3)-(5). An electronic filing system fee of $5.00 is also required.[7] MCL 600.1986(1)(d). However, if requested, this system fee must be waived for indigent individuals. See MCR 2.002(A)(2); MCR 2.002(B)-(E). "Notwithstanding any other provision of [MCR 2.002], courts must enable a litigant who seeks a fee waiver to do so by an entirely electronic process." MCR 2.002(L).

For more information on e-filing and the waiver of fees, see the Michigan Judicial Institute's *Civil Proceedings Benchbook*, Chapter 1.

C. Counterclaims

"If the defendant files a verified answer stating any new matter which constitutes a counterclaim, the court may grant a continuance upon request of either party." MCL 600.8422.

"If a defendant in a small claims action has a claim against the plaintiff, which claim is for an amount over the jurisdiction of the small claims division but of a nature which would be subject to counterclaim in accordance with rules of the supreme court, he [or she] may commence an action against the plaintiff in a court of competent jurisdiction and file with the clerk or deputy clerk of the small claims division wherein the plaintiff has commenced his [or her] action, at or before the time set for the trial of the small claims action, an affidavit in a form prescribed by the supreme court setting

[7] Courts cannot collect an electronic filing fee after February 28, 2031. MCL 600.1993.

forth the fact of the commencement of such action by the defendant." MCL 600.8423(1).

The defendant making a counterclaim "shall attach to the affidavit a true copy of the complaint filed by him [or her] against [the] plaintiff, and pay to the clerk or deputy clerk the sum of $1.00 for a transmittal fee, and shall mail to the plaintiff a copy of the affidavit and complaint at or before the time above stated." MCL 600.8423(1).

The district court magistrate must order that the small claims action be transferred to the court set forth in the affidavit and must transmit all files and papers in the action to the other court, and the actions must then be tried together in the other court. MCL 600.8423(1).

"The plaintiff in the small claims action shall not be required to pay to the clerk of the court to which the action is transferred any transmittal, appearance or filing fee in the action." MCL 600.8423(2).

D. Discovery

Discovery is not permitted in a small claims action. MCR 2.301(A)(3).

Committee Tip:

A defendant may file a counterclaim on the day of the hearing. The magistrate should inquire about the nature of the counterclaim to determine whether it is a claim for damages or an expression of a defense to the plaintiff's claim. The counterclaim might be a delay tactic. The district court magistrate should let the plaintiff choose whether he or she would prefer an adjournment or to proceed with the hearing.

7.8 Service and Notice

"Upon the filing of the affidavit, the clerk or deputy clerk shall cause a copy of the affidavit to be served upon each defendant with a notice directing the defendant to appear and answer before a judge of the small claims division." MCL 600.8404(1). See also MCR 4.303(A).

A. Required Contents of Notice

"The notice shall be in a form prescribed by the state court administrator and shall inform the defendant of all of the following:

> (a) When and where to appear.
>
> (b) That the defendant and the plaintiff are to bring all books, papers, and witnesses needed to establish any claim or defense.
>
> (c) That failure to appear may result in a judgment against the defendant of up to the applicable jurisdictional amount as prescribed by [MCL 600.8401], or the amount of the claim stated in the affidavit, whichever is less, together with costs of the action.
>
> (d) That if settlement of the dispute is made before or at the hearing, the defendant may be charged with costs incurred by the plaintiff in initiating the action.
>
> (e) That, even if the defendant does not have a legal defense, the defendant may appear to request installment payments pursuant to [MCL 600.8410]." MCL 600.8404(1). See also MCR 4.303(A).

The information required by MCL 600.8404(1)(a) appears on the notice of hearing, which the court completes and includes with the affidavit served on the defendant. See SCAO Form DC 84/84n, *Small Claims Affidavit* and *Small Claims Notice of Hearing*. The information required by MCL 600.8404(1)(b)-(e) appears in the Important Information for the Defendant and Important Information for Both Parties sections of the small claims affidavit.

"The date for the appearance of the defendant provided in the notice shall not be less than 15 days nor more than 45 days after the date of the notice." MCL 600.8406(1). "The person filing the claim shall receive from the clerk a copy of the affidavit and notice of hearing." *Id.* "The clerk shall inform the plaintiff and defendant that evening and Saturday court hours may be made available upon written request and need shown." MCL 600.8404(2).

B. Methods of Service

Under MCL 600.8405 service may be accomplished using either:

- certified mail, return receipt requested; or
- personal service; or

- upon a showing that service of process cannot reasonably be made by either certified mail or personal service, the court may issue an order permitting service to be made in any other manner reasonably calculated to give actual notice and opportunity to be heard.

If service is by certified mail the mail must be deliverable to the addressee only, unless the defendant is a corporation or a partnership. MCL 600.8405. "If the defendant is a corporation or a partnership, the certified mail described in MCL 600.8405 need not be deliverable to the addressee only, but may be deliverable to and signed for by an agent of the addressee." MCR 4.303(B).

"Where service by certified mail is made, it shall be made by the clerk and the receipt of mailing together with the return card signed by the defendant shall constitute proof of service." MCL 600.8405. Service or attempted service is recorded on SCAO Form DC 84p, *Small Claims Proof of Service*, which is completed by the court or a process server and identifies the documents served as the affidavit, the notice of hearing, and the overview. See SCAO Form DC 84info, *Small Claims Overview*.

C. Timing of Service

"If a defendant is not personally served or did not sign the certified mail return receipt at least 7 days before the appearance date, there shall not be jurisdiction to render judgment[.]" MCL 600.8406(2). However, if the defendant appears on the appearance date and does not request a continuance, the small claims division has jurisdiction to render a judgment. *Id.* "If the defendant was not served within the minimum time specified, the matter, upon request of either party, shall be continued for not less than 7 days." *Id.*

"If the notice is not served upon the defendant at least 7 days before the appearance date, the plaintiff may apply to the clerk or deputy clerk for a new notice setting a new date for the appearance of the defendant which shall be not less than 15 days nor more than 30 days after the date of the issuance of the new notice." MCL 600.8406(1). See also MCR 4.303(C). "The further notice may be served as provided in MCR 2.105." MCR 4.303(C).

D. Service Fees

"A fee in an amount equal to the prevailing postal rate for the service provided shall be charged and collected for each defendant to whom a copy of the affidavit is mailed by the clerk." MCL 600.8420(2). However, if requested, this service fee must be waived for indigent individuals. See MCR 2.002(A)(2); MCR 2.002(B)-(E).

"Notwithstanding any other provision of [MCR 2.002], courts must enable a litigant who seeks a fee waiver to do so by an entirely electronic process." MCR 2.002(L).

For more information on the waiver of fees, see the Michigan Judicial Institute's *Civil Proceedings Benchbook*, Chapter 1.

"Except as otherwise provided in [Chapter 84 of the Revised Judicature Act (RJA)], a fee or charge shall not be collected by an officer for any service rendered under [Chapter 84 of the RJA] or for the taking of affidavits for use in connection with any action commenced under [Chapter 84 of the RJA]." MCL 600.8420(2).

"If the affidavit and notice to appear and answer are served by personal service, the person serving the process is entitled to the same fee and mileage as for the service of a summons and complaint out of the district court." MCL 600.8420(6).

E. Dismissal for Lack of Progress

A court may order that a case be dismissed for lack of progress on the motion of a party or on its own initiative if no progress has been made within 91 days after the last action. MCR 4.303(D)(1). "The court must serve notice of the proposed dismissal on the parties at least 14 days before the court orders the case dismissed." MCR 4.303(D)(2). See SCAO Form DC 542, *Small Claims Notice of Intent to Dismiss for No Progress*. "A dismissal under [MCR 4.303(D)] is without prejudice unless the court orders otherwise." MCR 4.303(D)(3). See SCAO Form DC 542o, *Small Claims Dismissal for No Progress*, which provides for dismissal with or without prejudice.

7.9 Appearance

"The plaintiff shall appear on the date shown in the notice of hearing and have all books, papers, and witnesses necessary to prove the claim." MCL 600.8406(1).

"If the parties appear, the court shall hear the claim as provided in MCL 600.8411. In accordance with MCR 2.407,[8] the court may allow the use of videoconferencing technology by any participant . . . . The trial may be adjourned to a later date for good cause." MCR 4.304(A).

[8] MCR 2.407 addresses videoconferencing.

A. Nonappearance of Defendant

"If a defendant fails to appear, judgment may be entered by default if the claim is liquidated, or on the ex parte proofs the court requires if the claim is unliquidated." MCR 4.304(B)(1).

Under the Servicemembers Civil Relief Act, 50 USC 3931 "applies to any civil action or proceeding . . . in which the defendant does not make an appearance." 50 USC 3931(a). In such an action, "the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit" either "stating whether or not the defendant is in military service and showing necessary facts to support the affidavit," or, "if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service." 50 USC 3931(b)(1). The affidavit requirement "may be satisfied by a statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury." 50 USC 3931(b)(4). See SCAO Form MC 500, *Servicemembers Civil Relief Act Verified Statement*. The default judgment option on SCAO Form DC 85, *Small Claims Dismissal or Judgment*, states that the court received a verified statement from the plaintiff about the defendant's military status and that the court has complied with the Servicemembers Civil Relief Act.

"If in an action covered by [50 USC 3931] it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant." 50 USC 3931(b)(2). "In an action covered by [50 USC 3931] in which the defendant is in military service, the court shall grant a stay of proceedings for a minimum period of 90 days . . . upon application of counsel, or on the court's own motion, if the court determines that—(1) there may be a defense to the action and a defense cannot be presented without the presence of the defendant; or (2) after due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists." 50 USC 3931(d). Such a stay "shall not be controlled by procedures or requirements under [50 USC 3932]." 50 USC 3931(e).

"If based upon the affidavits filed in such an action, the court is unable to determine whether the defendant is in military service, the court, before entering judgment, may require the plaintiff to file a bond in an amount approved by the court." 50 USC 3931(b)(3).

See the Michigan Judicial Institute's checklist regarding small claims procedures, including default judgments.

B. Nonappearance of Plaintiff

"If the plaintiff fails to appear, the claim may be dismissed for want of prosecution, the defendant may proceed to trial on the merits, or the action may be adjourned, as the court directs." MCR 4.304(B)(2).

C. Nonappearance of Both Parties

"If all parties fail to appear, the claim may be dismissed for want or prosecution or the court may order another disposition, as justice requires." MCR 4.304(B)(3).

7.10 Conduct of Trial

Before the small claims trial begins, the district court magistrate must inform the parties, orally or in writing, of the following rights and the waiver of these rights if they choose to proceed in the small claims division:

- the right of removal to the general civil division of the district court;
- the right to counsel;
- the right to trial by jury;
- the right to recover more than the $7,000 jurisdictional limit;
- the right to appeal (except cases heard by a district court magistrate may be appealed to the district court judge, MCL 600.8427). MCL 600.8411(1); MCL 600.8412.

Committee Tip:

If you get a sense that no actual dispute exists between the parties and the only concern is payment, consider reading the affidavit and claim aloud and asking the defendant if he or she is disputing the plaintiff's claims. The magistrate may be able to avoid taking all the proofs by first determining whether there really is a dispute or whether the only concern is payment and/or collection.

A small claims trial must be conducted in an informal manner so as to do substantial justice between the parties. MCL 600.8411(2). During the trial:

- witnesses must be sworn;
- the rules of substantive law must be applied;
- statutory provisions and rules of practice, procedure, pleading, or evidence do **not** apply (except the rules regarding privileged communications[9]);
- there is no jury;
- no verbatim record of the proceedings is made; and
- "the sole object of [a small claims trial] is to dispense expeditious justice between the parties." MCL 600.8411(2).

Committee Tip:

The specific elements necessary to each claim will be dependent on the underlying substantive legal issue. There are several elements common to most small claims actions: (1) the identity of the defendant who is alleged to owe something to the plaintiff; (2) a request for the recovery of a specific amount of money that falls within the jurisdictional limit; (3) some proof that the defendant owes the plaintiff the money alleged; (4) some proof regarding the time period contemplated for payment of the money the defendant is alleged to owe the plaintiff; and (5) some proof regarding the terms of any agreement between the plaintiff and the defendant, if applicable.

Keep in mind that parties may present facts that are irrelevant to the claim or to the applicable legal issue. Further, parties may present evidence that is not reliable. While the rules of evidence do not apply to small claims proceedings, the district court magistrate should still evaluate the reliability of evidence presented in order to provide substantial justice to both parties.

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[9] For a discussion of privileged communications, see the Michigan Judicial Institute's *Evidence Benchbook*, Chapter 1.

*The court should instruct the parties to direct all questions to the court and **not** to directly engage with each other.*

See the Michigan Judicial Institute's checklist regarding small claims procedures, including conducting a trial.

7.11 Judgment

"All judgments of the small claims division shall be conclusive upon the plaintiff and the defendant and shall be in a form prescribed by the supreme court." MCL 600.8413. See SCAO Form DC 85, *Small Claims Dismissal or Judgment*.

"A judgment must be entered at the time of the entry of the court's findings, and must contain the payment and stay provisions required by MCL 600.8410(2)." MCR 4.305(A). "A copy of the judgment shall be given in court, delivered, or mailed immediately to each plaintiff and defendant following entry of the judgment." MCL 600.8410(6). An instruction sheet must be offered to the plaintiff at the same time the copy of the judgment is provided explaining how and under what circumstances the plaintiff may request the court to issue execution, attachment, or garnishment to enforce payment of the judgment. MCL 600.8409(2). See SCAO Form DC 85info, *Collecting a Small Claims Judgment*. Delivery of the instruction sheet is recorded on the certificate of service in SCAO Form DC 85.

An action to enforce a small claims judgment can be taken for six years from the date of judgment. See MCL 600.5809(3).

"After judgment, other applicable Michigan Court Rules govern actions that were brought in a small claims division." MCR 4.301.

"[T]he district court has jurisdiction and power to make any order proper to fully effectuate the district court's jurisdiction and judgments." MCL 600.8315.

A. Payment and Stay Provisions

"The judge shall order that a judgment in the small claims division shall be satisfied by payment to the clerk or the plaintiff either in a lump sum or in installments in amounts and at times as the judge considers just and reasonable under the circumstances. The judge shall also provide for a stay of further proceedings to collect the judgment while the defendant is in compliance with the order of the court." MCL 600.8410(2).

B. Required Warning

"The judgment shall include a warning that the defendant's failure to pay the judgment pursuant to its terms or any installment payment ordered may result in execution against the defendant's property and that the defendant may be compelled to appear for an examination of the defendant's assets." MCL 600.8410(4).

C. Execution, Attachment, or Garnishment

"For good cause shown, the judge may reinstate an installment payment judgment previously not performed or the judge may alter the amount of installment payments and the time of payment of the judgment and shall authorize execution, attachment, or garnishment to issue where it appears that the defendant has not paid according to the terms of the judgment." MCL 600.8410(3).

"A fee of $15.00 shall be charged and collected for the issuance of a writ of execution, attachment, or garnishment and for the issuance of a judgment debtor discovery subpoena." MCL 600.8420(2). However, if requested, this fee must be waived for indigent individuals. See MCR 2.002(A)(2); MCR 2.002(B)-(E). "Notwithstanding any other provision of [MCR 2.002], courts must enable a litigant who seeks a fee waiver to do so by an entirely electronic process." MCR 2.002(L).

For more information on the waiver of fees, see the Michigan Judicial Institute's *Civil Proceedings Benchbook*, Chapter 1.

"Whenever a judgment is rendered in any court, execution to collect the same may be issued to the sheriff, bailiff, or other proper officer of any county, district, court district or municipality of this state." MCL 600.6001.

"Attachment or garnishment shall **not** issue from the small claims division prior to judgment[.]" MCL 600.8409 (emphasis added). However, "execution may issue in the manner prescribed by law and the judgment may be enforced in any other manner provided by law and not prohibited under the provisions of [Chapter 84 of the Revised Judicature Act]." MCL 600.8409(1).

MCR 4.305(C) instructs that "[a] writ of garnishment may not be issued to enforce the judgment until the expiration of 21 days after it was entered. If a judgment had been ordered to be paid by installments, an affidavit for a writ of garnishment must so state and must state that the order has been set aside or vacated."

"A writ of garnishment issued by the small claims division of the district court remains in effect as to periodic payments as provided in [MCL 600.4012]." MCL 600.8410a.

The SCAO-approved court forms regarding garnishment can be accessed on the Michigan One Court of Justice website. For more information regarding garnishment procedures see MCL 600.6201 *et seq.* and MCR 3.101.

D. Failure of Defendant to Pay Judgment in Full at Time Judgment is Entered

"If the defendant is not present when the judgment is entered, or is present but does not immediately pay the full amount of the judgment when the judgment is entered, the judge shall order that the defendant, within 30 days after the date of entry of the judgment, pay the judgment in full or disclose in writing to the plaintiff and the court his or her place of employment and the location of his or her accounts in state or federally chartered banks, savings and loan associations, and credit unions." MCL 600.8410(5).

"If the defendant fails to pay the judgment according to the terms and conditions thereof, the clerk or deputy clerk of the court, on application of the plaintiff, shall certify such judgment on a form prescribed by the supreme court." MCL 600.8418.

E. Prevailing Party Entitled to Costs

"The prevailing party in any action in the small claims division is entitled to costs of the action and also the costs of execution upon a judgment rendered therein. The costs shall include cost of service of the notice for the appearance of the defendant." MCL 600.8421.

F. Settlement

"Before or at the hearing the parties may make a settlement upon those terms as they may agree. The settlement shall be in writing and signed by both parties. Upon filing of the settlement with the court, the judge shall review the settlement and may enter it as the judgment of the court or may require that a full hearing take place." MCL 600.8410(1).

Committee Tip:

Some courts are utilizing mediation prior to the hearing in order to resolve the dispute without a hearing. District court magistrates should discuss this option with their chief judge.

G. Appeals

Either party may appeal a district court magistrate's decision within seven days of the decision and obtain a new trial before the district judge. MCL 600.8427. There is no further right to appeal. *Id.* See also *Schomaker v Armour, Inc*, 217 Mich App 219, 226 (1996) (holding that parties may not appeal from a small claims judgment by filing for superintending control in the circuit court because such action would undermine the purpose of the small claims division).

7.12 Modifying or Vacating a Judgment

"A judgment of the small claims division may be modified or vacated in the same manner as judgments in other civil actions, except that an appeal may not be taken." MCR 4.305(B). However, either party may appeal a district court magistrate's decision within seven days of the decision and obtain a new trial before the district judge. MCL 600.8427.

For a detailed discussion on modification or vacation of judgments, see the Michigan Judicial Institute's *Civil Proceedings Benchbook*, Chapter 8. See also MCR 2.610 (motion for judgment notwithstanding the verdict); MCR 2.611 (new trials, amendment of judgments); and MCR 2.612 (relief from judgment or order).

7.13 Setting Aside a Default Judgment

District court magistrates do **not** have authority to set aside a default judgment in a small claims case. See MCL 600.8427 (providing district court magistrates with small claims authority and not including the authority to hear a motion to set aside a default judgment); MCL 600.8514 (same).

For a detailed discussion of setting aside default judgments, see the Michigan Judicial Institute's *Civil Proceedings Benchbook*, Chapter 4. See also MCR 2.603 (default and default judgment); SCAO Form MC 99, *Motion and Affidavit to Set Aside Default (Civil)*, and SCAO Form MC 99a, *Order Regarding Motion to Set Aside Default*.

7.14 Examples of Common Areas of Substantive Law at Issue in Small Claims Proceedings

Actions for fraud, libel, slander, assault, battery, or other intentional torts cannot be commenced in the small claims division; however, actions for dishonored checks under MCL 600.2952(6) and the Consumer Protection Act actions are exceptions to this rule. MCL 600.8424(1).

Acts that may be relevant to a small claims action include:

- Payment of Wages and Fringe Benefits Act, MCL 408.471 *et seq.*
- Motor Vehicle Service and Repair Act, MCL 257.1301 *et seq.*
- Seller Disclosure Act, MCL 565.951 *et seq.*
- Occupational Code, MCL 339.2401 e*t seq.*
- Unlawful eviction or interference of possession, MCL 600.2918.
  - Allows a person who is ejected in a forcible and unlawful manner to recover possession and three times the amount of his or her actual damages or $200, whichever is greater. MCL 600.2918(1).
  - Allows any tenant whose possessory interest is unlawfully interfered with by the owner to recover possession and his or her actual damages or $200, whichever is greater. MCL 600.2918(2).
- Bad checks, MCL 600.2952.
  - A maker who fails to pay a dishonored check, draft, or order for payment of money may be liable to the payee for: (1) the full amount of the check; (2) civil damages of twice the check amount or $100, whichever is greater; and (3) costs of $250. MCL 600.2952(4). However, note that there are different rules for deferred presentment transactions (payday loans), under the Deferred Presentment Service Transactions Act, MCL 487.2121 *et seq.*
- Landlord-Tenant Act, MCL 554.601 *et seq.*
  - Landlord's action for damages, MCL 554.613.
- Shopping Reform and Modernization Act, MCL 445.311 *et seq.*

- Insurance Code (Motor Vehicle, Personal, and Property Protection), MCL 500.3101 *et seq.*

  - Under the "mini-tort" provision, MCL 500.3135, a person may recover damages to a motor vehicle up to $1,000 for accidents occurring before July 1, 2020, and up to $3,000 for accidents occurring on or after July 1, 2020,[10] to the extent damages are not covered by insurance. MCL 500.3135(3)(e).

- Michigan Consumer Protection Act, MCL 445.901 *et seq.*

  - A person may claim reasonable attorney fees plus actual damages or $250, whichever is greater, for a violation of the Michigan Consumer Protection Act. MCL 445.911(2).

- Rental-Purchase Agreement Act, MCL 445.951 *et seq.*

  - A person may claim reasonable attorney fees plus actual damages or $250, whichever is greater, for violation of the Rental-Purchase Agreement Act. MCL 445.964(2).

[10] See also MCL 500.2105(6), which states that the amendments made to the No-Fault Act by 2019 PA 21 apply beginning July 1, 2020.

Chapter 8: Marriage

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8.1 Authority of District Court Magistrate

A district court magistrate may perform or solemnize marriages anywhere in Michigan. MCL 551.7(1)(b); MCL 600.8316(1). See the American Bar Association's Formal Opinion 485, issued February 14, 2019, regarding performing same-sex marriages. Though not binding authority, the opinion may be considered persuasive.

See also the Michigan Judicial Institute's checklist outlining a magistrate's duties when performing a marriage.

8.2 Marriage Generally

Marriage is a civil contract requiring the consent of parties capable in law of contracting, a marriage license, and solemnization. MCL 551.2. An individual who is 18 years of age or older may contract marriage. MCL 551.103(1). Contrary to MCL 551.1, MCL 551.3, and MCL 551.4, individuals of the same sex may marry. See *Obergefell v Hodges*, 576 US 644, 675-676 (2015) (holding that the Fourteenth Amendment of the United States Constitution requires a state to license a marriage between two people of the same sex).

Committee Tip:

Language barriers may play a role in a marriage ceremony, and an interpreter can assist in this situation. If you require appointments for marriage ceremonies, make arrangements for an interpreter or advise the parties to bring an interpreter. Consult your court's language access plan for more information on how to proceed. See Administrative Order No. 2013-8 (requiring each court to adopt a language access plan by way of local administrative order). See also the One Court of Justice website for a list of certified foreign language interpreters.

8.3 License Requirements

A marriage license is necessary to effectuate a legal marriage. MCL 551.2. "A marriage license issued is void unless a marriage is solemnized under the license within 33 days after the application." MCL 551.103a.

Misdemeanor. Performing a wedding ceremony when the parties do not have a valid marriage license is a misdemeanor punishable by a fine of $100 or 90 days in jail. MCL 551.106.

A. Residents

If either party is a resident of Michigan, the resident must obtain a license from the county clerk of the county in which he or she resides. MCL 551.101.

B. Nonresidents

Nonresidents of Michigan must apply for their marriage license in the county in which the marriage ceremony is to be performed. MCL 551.101.

8.4 Witness Requirements

Two witnesses, 18 years of age or older, other than the officiating magistrate must be present at the ceremony. MCL 551.9 (requiring presence of two witnesses); MCL 551.103(2) (requiring witnesses to be at least 18 years of age). Both of these witnesses must sign the marriage license indicating they witnessed the parties marrying declare to take each other as "husband and wife." MCL 551.9 (requirement to be present and witness vow); MCL 551.103(2) (requirement to sign).

Committee Tip:

Note that MCL 551.9, which still requires a declaration that the parties take each other as "husband and wife" has not been amended since the United States Supreme Court's decision holding that the Fourteenth Amendment of the United States Constitution requires a state to license a marriage between two people of the same sex. Obergefell v Hodges, 576 US 644, 675-676 (2015). *Accordingly, appropriate alternative language may be used. It is recommended that the magistrate ask the couple how they prefer to be addressed during the ceremony and pronounced at the end of the ceremony. Often, a couple will ask for suggestions, some examples include: married; husband and wife; wife and wife; husband and husband; spouses for life; wives for life; and, husbands for life.*

8.5 Script Requirements

Although the statutes do not require a specific script for a marriage ceremony, the parties to the marriage are required to solemnly declare that "they take each other as husband and wife[.]" MCL 551.9. This joining declaration must be done in front of the magistrate and the two witnesses. *Id*. Note that MCL 551.9 has not been amended since the United States Supreme Court's decision holding that the Fourteenth Amendment of the United States Constitution requires a state to license a marriage between two people of the same sex. *Obergefell v Hodges*, 576 US 644, 675-676 (2015). Accordingly, appropriate alternative language may be used, see the Committee Tip in Section 8.4 for examples.

See also the Michigan Judicial Institute's sample scripts for a marriage ceremony.

8.6 Fees

Magistrates "shall charge a fee of $10.00 that shall be deposited in the treasury of the district control unit at the end of each month." MCL 600.8316(1). Fees paid under MCL 600.8316 "shall be remitted to the district court in which the . . . magistrate performing the marriage serves." *Id.* "A . . . magistrate may waive the fee for performing a marriage ceremony if the parties to the marriage are indigent." MCL 600.8316(2). Magistrates may not take or receive any other or greater fee or reward for performing a marriage. MCL 600.2513.

Misdemeanor. Accepting any compensation above the $10.00 fee is a misdemeanor. MCL 600.2519. If convicted of the misdemeanor, the magistrate will be assessed treble damages and the violation is cause for forfeiture of appointment as a magistrate. *Id*.

8.7 Records

The magistrate must keep an accurate record of all marriages performed in a book expressly used for that purpose. MCL 551.104.

A. Certificate of Marriage

It is the officiating magistrate's duty to fill in (typewritten or legible print) the marriage certificate. MCL 551.104. The magistrate must fill in the spaces regarding:

- the time and place of the marriage;
- the names and residences of two witnesses; and

- the magistrate's own signature in certification that the marriage has been performed by him or her. MCL 551.104.

The magistrate must deliver the duplicate license and certificate to one of the parties joined in marriage. MCL 551.104.

B. Filing Certificate of Marriage

The magistrate must return the completed original marriage certificate to the issuing county clerk within 10 days from the date of the ceremony. MCL 551.104.

Misdemeanor. Failure to return the original marriage certificate to the county clerk within that time period is a misdemeanor offense, punishable by a fine not to exceed $100, 90 days' imprisonment, or both. MCL 551.107.

C. Correcting Errors

"Whenever it is alleged that the facts are not correctly stated in any certificate or license of marriage heretofore registered in [Michigan], the county clerk of the county in which the certificate or license of marriage has been recorded shall require such evidence to be presented in the form of an affidavit or otherwise as may be necessary to establish the alleged facts and when so established the original record shall be changed to accord with the same. Such evidence shall be approved by the circuit court by ex parte order." MCL 551.111.

Glossary

A

Accused

- For purposes of the Code of Criminal Procedure, *accused* or a similar word "means an individual or, unless a contrary intention appears, a public or private corporation, partnership, or unincorporated or voluntary association." MCL 761.1(p).

Alcoholic liquor

- For purposes of the Michigan Vehicle Code, *alcoholic liquor* means "any liquid or compound, whether or not medicated, proprietary, patented, and by whatever name called, containing any amount of alcohol including any liquid or compound described in . . . MCL 436.1105." MCL 257.1d.[1] MCL 436.1105(3) defines *alcoholic liquor* as "any spirituous, vinous, malt, or fermented liquor, powder, liquids, and compounds, whether or not medicated, proprietary, or patented, and by whatever name called, containing 1/2 of 1% or more of alcohol by volume that are fit for use for food purposes or beverage purposes as defined and classified by the commission according to alcoholic content as belonging to 1 of the varieties defined in [Chapter 1 of the Michigan Liquor Control Code of 1998]."

Appearance ticket

- For purposes of MCL 764.9c to MCL 764.9g, *appearance ticket* means "a complaint or written notice issued and subscribed by a police officer or other public servant authorized by law or

[1]The citation to MCL 436.1105(2) in MCL 257.1d has not been amended to MCL 436.1105(3) to reflect the numbering changes made by 2005 PA 320, effective December 27, 2005.

ordinance to issue it directing a designated person to appear in a designated local criminal court at a designated future time in connection with his or her alleged commission of a designated violation or violations of state law or local ordinance." MCL 764.9f(1).

Appointing authority

- For purposes of the Deaf Persons' Interpreters Act, *appointing authority* means "a court or a department, board, commission, agency, or licensing authority of this state or a political subdivision of this state or an entity that is required to provide a qualified interpreter in circumstances described under [MCL 393.503a]." MCL 393.502(a). MCL 393.503a provides that "[i]f an interpreter is required as an accommodation for a deaf or deaf-blind person under state or federal law, the interpreter shall be a qualified interpreter."

Assaultive crime

- For purposes of MCL 762.10d, MCL 764.1a, MCL 764.3, and MCL 765.6e *assaultive crime* "includes any of the following:

  (*i*) A violation described in [MCL 770.9a].

  (*ii*) A violation of . . . MCL 750.81 to [MCL] 750.90g, not otherwise included in [MCL 762.10d(5)(a)(*i*), MCL 764.1a(9)(a)(*i*), MCL 764.3(5)(a)(*i*), or MCL 765.6e(2)(a)(*i*), respectively].

  (*iii*) A violation of . . . MCL 750.110a, [MCL] 750.136b, [MCL] 750.234a, [MCL] 750.234b, [MCL] 750.234c, [MCL] 750.349b, [or MCL] 750.411h, or any other violent felony.

  (*iv*) A violation of a law of another state or of a political subdivision of this state or of another state that substantially corresponds to a violation described in [MCL 762.10d(5)(a)(*i*)-(*iii*), MCL 764.1a(9)(a)(*i*)-(*iii*), MCL 764.3(5)(a)(*i*)-(*iii*), or MCL 765.6e(2)(a)(*i*)-(*iii*), respectively]." MCL 762.10d(5)(a); MCL 764.1a(9)(a); MCL 764.3(5)(a); MCL 765.6e(2)(a).

- For purposes of MCL 764.9c and MCL 765.6b(6), *assaultive crime* means "that term as defined in [MCL 770.9a.]" MCL 764.9c(9)(a); MCL 765.6b(6)(a). MCL 770.9a, defines *assaultive crime* as "an offense against a person described in [MCL 750.81c(3), MCL 750.82, MCL 750.83, MCL 750.84, MCL 750.86, MCL 750.87, MCL 750.88, MCL 750.89, MCL 750.90a, MCL 750.90b(a), MCL 750.90b(b), MCL 750.91, MCL 750.200–MCL 750.212a, MCL 750.316, MCL 750.317, MCL 750.321, MCL

750.349, MCL 750.349a, MCL 750.350, MCL 750.397, MCL 750.411h(2)(b), MCL 750.411h(3), MCL 750.411i, MCL 750.520b, MCL 750.520c, MCL 750.520d, MCL 750.520e, MCL 750.520g, MCL 750.529, MCL 750.529a, MCL 750.530, or MCL 750.543a–MCL 750.543z]." MCL 770.9a(3).

Authorized local official

- For purposes of Chapter 87 of the Revised Judicature Act, *authorized local official* means "a police officer or other personnel of a county, city, village, township, or regional parks and recreation commission created under . . . MCL 46.352, legally authorized to issue municipal civil infraction citations." MCL 600.8701(a).

Automated driving system

- For purposes of the Michigan Vehicle Code, *automated driving system* means "hardware and software that are collectively capable of performing all aspects of the dynamic driving task for a vehicle on a part-time or full-time basis without any supervision by a human operator." MCL 257.2b(1).

Automated motor vehicle

- For purposes of the Michigan Vehicle Code, *automated motor vehicle* means "a motor vehicle on which an automated driving system has been installed, either by a manufacturer of automated driving systems or an upfitter that enables the motor vehicle to be operated without any control or monitoring by a human operator. Automated motor vehicle does not include a motor vehicle enabled with 1 or more active safety systems or operator assistance systems, including, but not limited to, a system to provide electronic blind spot assistance, crash avoidance, emergency braking, parking assistance, adaptive cruise control, lane-keeping assistance, lane departure warning, or traffic jam and queuing assistance, unless 1 or more of these technologies alone or in combination with other systems enable the vehicle on which any active safety systems or operator assistance systems are installed to operate without any control or monitoring by an operator." MCL 257.2b(2).

Automated speed enforcement system

- For purposes of the MVC, *automated speed enforcement system* "means an electronic traffic sensor system that does both of the following:

> (a) Automatically detects a vehicle exceeding the posted speed limit using a lidar system or another technology that must not be either of the following:
>
> (*i*) A radar system.
>
> (*ii*) Less capable than a lidar system.
>
> (b) Produces a recorded image of the vehicle described in [MCL 257.2c(1)(a)] that shows all of the following:
>
> (*i*) A clear and legible identification of the vehicle's registration plate.
>
> (*ii*) The location where the recorded image was taken.
>
> (*iii*) The date and time when the recorded image was taken." MCL 257.2c(1).

Automated speed enforcement system operator

- For purposes of the MVC, *automated speed enforcement system operator* "means an individual trained and certified to operate and monitor an automated speed enforcement system by the automated speed enforcement unit within the state transportation department." MCL 257.2c(2).

B

Before

- For purposes of the Code of Criminal Procedure, *taken*, *brought*, or *before* "a magistrate or judge for purposes of criminal arraignment or the setting of bail means either" physical presence before a judge or district court magistrate or presence before a judge or district court magistrate by use of 2-way interactive video technology. MCL 761.1(t).

Bicycle

- For purposes of the Michigan Vehicle Code, *bicycle* means "a device propelled by human power upon which a person may ride, having either 2 or 3 wheels in a tandem or tricycle arrangement, all of which are over 14 inches in diameter." MCL 257.4.

Biometric data

- For purposes of MCL 28.241 *et seq*. (governing criminal history records of the Michigan State Police), *biometric data* means "all of the following:

  (*i*) Fingerprint images recorded in a manner prescribed by the [Michigan State Police].

  (*ii*) Palm print images, if the arresting law enforcement agency has the electronic capability to record palm print images in a manner prescribed by the [Michigan State Police].

  (*iii*) Digital images recorded during the arrest or booking process, including a full-face capture, left and right profile, and scars, marks, and tattoos, if the arresting law enforcement agency has the electronic capability to record the images in a manner prescribed by the [Michigan State Police].

  (*iv*) All descriptive data associated with identifying marks, scars, amputations, and tattoos." MCL 28.241a(b).

C

Case or court proceeding

- For purposes of MCR 1.111, concerning foreign language interpreters, *case or court proceeding* means "any hearing, trial, or other appearance before any court in this state in an action, appeal, or other proceeding, including any matter conducted by a judge, magistrate, referee, or other hearing officer." MCR 1.111(A)(1).

Certified foreign language interpreter

- For purposes of MCR 1.111, concerning foreign language interpreters, *certified foreign language interpreter* means "a person who meets all of the following criteria:

  (a) has passed a foreign language interpreter test administered by the State Court Administrative Office or a similar state or federal test approved by the state court administrator,

  (b) has met all the requirements established by the state court administrator for this interpreter classification,

> (c) is registered with the State Court Administrative Office, and
>
> (d) provides foreign language interpreter services independently or on behalf of a registered interpreter firm." MCR 1.111(A)(4).

Chauffeur

- For purposes of the Michigan Vehicle Code, *chauffeur*:

> "(1) . . . means any of the following:
>
> (a) A person who operates a motor vehicle as a motor carrier under the motor carrier act, . . . MCL 475.1 to [MCL] 479.42, or a motor carrier of passengers as defined in . . . MCL 474.103.[2]
>
> (b) A person who is employed for the principal purpose of operating a motor vehicle with a GVWR of 10,000 pounds or more.
>
> (c) A person who operates a bus or school bus.
>
> (2) For purposes of subsection (1)(b), a person shall be considered to be employed for the principal purpose of operating a motor vehicle when the person's employment customarily involves transporting for gain or hire any merchandise for display, sale, or delivery.
>
> (3) 'Chauffeur' does not include any of the following:
>
> (a) A farmer or an employee of a farmer operating a vehicle exclusively in connection with the farming operations of the farmer.
>
> (b) A fire fighter or a member of a fire department operating an ambulance.
>
> (c) Emergency medical services personnel operating an ambulance. As used in this subdivision, 'emergency medical services personnel' means that term as defined in . . . MCL 333.20904.
>
> (d) State transportation department employees whose work consists of operating vehicles with a gross vehicle weight rating of 10,000 pounds or more for the purpose of transporting highway and bridge maintenance

[2]Effective March 21, 2017, 2016 PA 349 amended MCL 474.103 to remove the definition of *motor carrier of passengers* and to instead define only *motor carrier*. MCL 257.6 has not been amended to reflect the changes made by 2016 PA 349.

materials and supplies for all aspects of state trunkline maintenance, including winter maintenance and facilities maintenance.

(e) County road commission employees and other employees of local units of government who do not drive their own vehicles and whose work consists of hauling road building materials and supplies for the road commission or for other municipal purposes.

(f) A person operating a motor vehicle for a volunteer program who only receives reimbursement for the costs of operating the motor vehicle.

(g) A person who operates a motor home for personal pleasure.

(h) A parent or parent's designee for the purpose of transporting pupils to or from school and school related events.

(i) A transportation network company driver.

(j) A limousine driver.

(k) A taxicab driver." MCL 257.6.

Citation

- For purposes of the Michigan Vehicle Code, *citation* means "a complaint or notice upon which a police officer shall record an occurrence involving 1 or more vehicle law violations by the person cited." MCL 257.727c(1).

- For purposes of Chapter 87 of the Revised Judicature Act, *citation* means "a written complaint or notice to appear in court upon which an authorized local official records the occurrence or existence of 1 or more municipal civil infractions by the person cited." MCL 600.8701(b).

- For purposes of Chapter 88 of the Revised Judicature Act, *citation* means "a written complaint or notice to appear in court upon which a law enforcement officer records the occurrence or existence of 1 or more state civil infractions by the person cited." MCL 600.8801(3)(a).

Civil infraction

- For purposes of the Michigan Vehicle Code, *civil infraction* means "an act or omission prohibited by law which is not a

crime as defined in . . . MCL 750.5 . . . and for which civil sanctions may be ordered." MCL 257.6a.

- For purposes of the Revised Judicature Act, *civil infraction* means "an act or omission that is prohibited by a law and is not a crime under that law or that is prohibited by an ordinance, . . . and is not a crime under that ordinance and for which civil sanctions may be ordered. Civil infraction includes, but is not limited to, the following:

  (*i*) A violation of the Michigan vehicle code, . . . designated as a civil infraction.

  (*ii*) A violation of a city, township, or village ordinance substantially corresponding to a provision of the Michigan vehicle code, . . . if the ordinance designates the violation as a civil infraction.

  (*iii*) A violation of an ordinance adopted under . . . MCL 257.941 to [MCL] 257.943.

  (*iv*) A violation of a city, township, or village ordinance adopting the uniform traffic code promulgated under . . . MCL 257.951 to [MCL] 257.954, if the uniform traffic code designates the violation as a civil infraction.

  (*v*) A violation of an ordinance adopted by the governing board of a state university or college under . . . MCL 390.891 to [MCL] 390.893, if the ordinance designates the violation as a civil infraction.

  (*vi*) A violation of regulations adopted by a county board of commissioners under . . . MCL 46.201.

  (*vii*) A municipal civil infraction.

  (*viii*) A state civil infraction.

  (*ix*) A violation of the pupil transportation act, . . . MCL 257.1801 to [MCL] 257.1877, designated as a civil infraction." MCL 600.113(1)(a).

Civil infraction action

- For purposes of the Michigan Vehicle Code and the Revised Judicature Act, *civil infraction action* is defined as "a civil action in which the defendant is alleged to be responsible for a civil infraction." MCL 257.741(1); MCL 600.113(1)(b).

Civil infraction determination

- For purposes of the Michigan Vehicle Code, *civil infraction determination* means "a determination that a person is responsible for a civil infraction by 1 of the following:

  (a) An admission of responsibility for the civil infraction.

  (b) An admission of responsibility for the civil infraction, 'with explanation'.

  (c) A preponderance of the evidence at an informal hearing or formal hearing on the question under [MCL 257.746 or MCL 257.747].

  (d) A default judgment, for failing to appear as directed by a citation or other notice, at a scheduled appearance under [MCL 257.745(3)(b) or MCL 257.745(4)], at a scheduled informal hearing under [MCL 257.746], or at a scheduled formal hearing under [MCL 257.747]." MCL 257.6b.

- For purposes of Chapter 88 of the Revised Judicature Act, *civil infraction determination* means "a determination that a defendant is responsible for a state civil infraction by 1 of the following:

  (*i*) An admission of responsibility for the state civil infraction.

  (*ii*) An admission of responsibility for the state civil infraction, 'with explanation'.

  (*iii*) A preponderance of the evidence at an informal hearing or formal hearing on the question under [MCL 600.8819 or MCL 600.8821], respectively.

  (*iv*) A default judgment, for failing to appear as directed by a citation or other notice, at a scheduled appearance under [MCL 600.8815(3)(b) or MCL 600.8815(4)], at an informal hearing under [MCL 600.8819], or at a formal hearing under [MCL 600.8821]." MCL 600.8801(3)(b).

Commercial motor vehicle

- For purposes of the Michigan Vehicle Code, *commercial motor vehicle* means:

"(1) . . . [A] motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if 1 or more of the following apply:

(a) It is designed to transport 16 or more passengers, including the driver.

(b) It has a gross vehicle weight rating or gross vehicle weight, whichever is greater, of 26,001 pounds or more.

(c) It has a gross combination weight rating or gross combination weight, whichever is greater, of 26,001 pounds or more, inclusive of towed units with a gross vehicle weight rating or gross vehicle weight, whichever is greater, of more than 10,000 pounds.

(d) A motor vehicle carrying hazardous material and on which is required to be posted a placard as defined and required under [49 CFR 100–49 CFR 199].

(2) A commercial motor vehicle does not include a vehicle used exclusively to transport personal possessions or family members for nonbusiness purposes." MCL 257.7a.

Commercial quadricycle

- For purposes of the Michigan Vehicle Code, *commercial quadricycle* means "a vehicle that satisfies all of the following:

  (a) The vehicle has fully operative pedals for propulsion entirely by human power.

  (b) The vehicle has at least 4 wheels and is operated in a manner similar to a bicycle.

  (c) The vehicle has at least 6 seats for passengers.

  (d) The vehicle is designed to be occupied by a driver and powered either by passengers providing pedal power to the drive train of the vehicle or by a motor capable of propelling the vehicle in the absence of human power.

  (e) The vehicle is used for commercial purposes.

  (f) The vehicle is operated by the owner of the vehicle or an employee of the owner of the vehicle." MCL 257.7b.

Commission

- For purposes of Chapter 9 of the Michigan Court Rules, *commission* "means the Judicial Tenure Commission." MCR 9.201(A).

Complaint

- For purposes of the Code of Criminal Procedure, *complaint* means "a written accusation, under oath or upon affirmation, that a felony, misdemeanor, or ordinance violation has been committed and that the person named or described in the accusation is guilty of the offense." MCL 761.1(c).

- For purposes of Chapter 9 of the Michigan Court Rules, *complaint* "is a written document issued at the direction of the commission, alleging specific charges of misconduct in office, mental or physical disability, or some other ground that warrants action under Const 1963, art 6, § 30." MCR 9.201(I).

Controlled substance

- For purposes of the Michigan Vehicle Code, *controlled substance* means "a controlled substance or controlled substance analogue as defined in [MCL 333.7104.]" MCL 257.8b. MCL 333.7104(3) defines *controlled substance* as "a drug, substance, or immediate precursor included in schedules 1 to 5 of [MCL 333.7201 *et seq*.]" MCL 333.7104(4) defines *controlled substance analogue* as "a substance the chemical structure of which is substantially similar to that of a controlled substance in schedule 1 or 2 and that has a narcotic, stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than the narcotic, stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in schedule 1 or 2 or, with respect to a particular individual, that the individual represents or intends to have a narcotic, stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than the narcotic, stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in schedule 1 or 2. Controlled substance analogue does not include 1 or more of the following:

  (a) A controlled substance.

  (b) A substance for which there is an approved new drug application.

> (c) A substance with respect to which an exemption is in effect for investigational use by a particular person under 21 USC 355, to the extent conduct with respect to the substance is pursuant to the exemption.
>
> (d) Any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance."

- For purposes of MCL 257.625c, *controlled substance* means "that term as defined in . . . MCL 333.7104." MCL 257.625c(4)(a). MCL 333.7104(3) defines *controlled substance* as "a drug, substance, or immediate precursor included in schedules 1 to 5 of [MCL 333.7201 *et seq.*]"

Conviction

- For purposes of the Michigan Vehicle Code, *conviction* means "any of the following:

> (a) A final conviction, the payment of a fine, a plea or guilty or nolo contendere if accepted by the court, or a finding of guilt for a criminal law violation or a juvenile adjudication, probate court disposition, or juvenile disposition for a violation that if committed by an adult would be a crime, regardless of whether the penalty is rebated or suspended.
>
> (b) A conviction defined in federal law under 49 CFR 383.5, regarding the operation of a commercial motor vehicle or the operation of a noncommercial motor vehicle operated by a person licensed to operate a commercial motor vehicle." MCL 257.8a.

Co-occurring disorder

- For purposes of Chapter 10C of the Revised Judicature Act of 1961, *co-occurring disorder* "means having 1 or more disorders relating to the use of alcohol or other controlled substances of abuse as well as any serious mental illness, serious emotional disturbance, or developmental disability. A diagnosis of co-occurring disorders occurs when at least 1 disorder of each type can be established independent of the other and is not simply a cluster of symptoms resulting from 1 disorder." MCL 600.1099b(a).

Counterclaim

- For purposes of the Revised Judicature Act, *counterclaim* "includes setoff and recoupment." MCL 600.111.

Crime

- For purposes of the Crime Victim's Rights Act, Article 1, *crime* means "a violation of a penal law of this state for which the offender, upon conviction, may be punished by imprisonment for more than 1 year or an offense expressly designated by law as a felony." MCL 780.752(1)(b).

D

Dangerous animal

- For purposes of the Dangerous Animals Act, *dangerous animal* means "a dog or other animal that bites or attacks a person, or a dog that bites or attacks and causes serious injury or death to another dog while the other dog is on the property or under the control of its owner. However, a dangerous animal does not include any of the following:

  (*i*) An animal that bites or attacks a person who is knowingly trespassing on the property of the animal's owner.

  (*ii*) An animal that bites or attacks a person who provokes or torments the animal.

  (*iii*) An animal that is responding in a manner that an ordinary and reasonable person would conclude was designed to protect a person if that person is engaged in a lawful activity or is the subject of an assault.

  (*iv*) Livestock." MCL 287.321(a).

Dangerous weapon

- For purposes of MCL 764.1f(2)(b), *dangerous weapon* means "1 or more of the following:

  (*i*) A loaded or unloaded firearm, whether operable or inoperable.

  (*ii*) A knife, stabbing instrument, brass knuckles, blackjack, club, or other object specifically designed or customarily carried or possessed for use as a weapon.

  (*iii*) An object that is likely to cause death or bodily injury when used as a weapon and that is used as a weapon or carried or possessed for use as a weapon.

(*iv*) An object or device that is used or fashioned in a manner to lead a person to believe the object or device is an object or device described in subparagraphs (*i*) to (*iii*)." MCL 764.1f(2)(b).

Data

- For purposes of MCR 1.109(A)(1), in which the term *court records* is defined, *data* "refers to any information entered in the case management system that is not ordinarily reduced to a document but that is still recorded information, and any data entered into or created by the statewide electronic-filing system." MCR 1.109(A)(1)(b)(*iii*).

Dating relationship

- For purposes of MCL 764.1a, *dating relationship* "means frequent, intimate associations primarily characterized by the expectation of affectional involvement. Dating relationship does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context." MCL 764.1a(9)(b).

- For purposes of MCL 764.15a(b), *dating relationship* means "frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context." MCL 764.15a(b).

- For purposes of MCL 780.582a(1)(b), *dating relationship* means "that term as defined in . . . MCL 600.2950." MCL 600.2950(30)(a) defines *dating relationship* as "frequent, intimate associations primarily characterized by the expectation of affectional involvement. Dating relationship does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context."

Deaf person

- For purposes of the Deaf Persons' Interpreters Act, *deaf person* means "a person whose hearing is totally impaired or whose hearing, with or without amplification, is so seriously impaired that the primary means of receiving spoken language is through other sensory input; including, but not limited to, lip reading, sign language, finger spelling, or reading." MCL 393.502(b).

Deaf-blind person

- For purposes of the Deaf Persons' Intepreters Act, *deaf-blind person* means "a person who has a combination of hearing loss and vision loss, such that the combination necessitates specialized interpretation of spoken and written information in a manner appropriate to that person's dual sensory loss." MCL 393.502(c).

Deaf interpreter

- For purposes of the Deaf Persons' Interpreters Act, *deaf interpreter* or *intermediary interpreter* means "any person, including any deaf or deaf-blind person, who is able to assist in providing an accurate interpretation between spoken English and sign language or between variants of sign language by acting as an intermediary between a deaf or deaf-blind person and a qualified interpreter." MCL 393.502(e).

-

Defendant

- For purposes of the Crime Victim's Rights Act, Article 1, *defendant* means "a person charged with, convicted of, or found not guilty by reason of insanity of committing a crime against a victim." MCL 780.752(1)(d).

- For purposes of the Crime Victim's Rights Act, Article 3, *defendant* means "a person charged with or convicted of having committed a serious misdemeanor against a victim." MCL 780.811(1)(c).

Developmental disability

- For purposes of Chapter 10C of the Revised Judicature Act of 1961, *developmental disability* "means that term as defined in . . . [MCL 330.1100a]." MCL 600.1099b(c).

District court magistrate

- For purposes of the Code of Criminal Procedure, *magistrate* does not include a district court magistrate unless specifically preceded by the words *district court*. See MCL 761.1(*l*).

Division

- For purposes of the Deaf Persons' Interpreters Act, *division* means "the division on deaf and hard of hearing of the department of labor and economic growth." MCL 393.502(d).

District of the first class

- For purposes of the Revised Judicature Act, *district of the first class* means "a district consisting of 1 or more counties and in which each county comprising the district is responsible for maintaining, financing and operating the district court within its respective county except as otherwise provided in [the Revised Judicature Act]." MCL 600.8103(1).

District of the second class

- For purposes of the Revised Judicature Act, *district of the second class* means "a district consisting of a group of political subdivisions within a county and in which the county where such political subdivisions are situated is responsible for maintaining, financing and operating the district court except as otherwise provided in [the Revised Judicature Act]." MCL 600.8103(2).

District of the third class

- For purposes of the Revised Judicature Act, *district of the third class* means "a district consisting of 1 or more political subdivisions within a county and in which each political subdivision comprising the district is responsible for maintaining, financing and operating the district court within its respective political subdivision except as otherwise provided in [the Revised Judicature Act]." MCL 600.8103(3).

Document

- For purposes of the Michigan Court Rules, *document* means "a record produced on paper or a digital image of a record originally produced on paper or originally created by an approved electronic means, the output of which is readable by sight and can be printed to 8 $^{1/2}$ x 11 inch paper without manipulation." MCR 1.109(B).

- For purposes of MCR 1.109(A)(1), in which the term *court records* is defined, *documents* "include, but are not limited to, pleadings, orders, and judgments." MCR 1.109(A)(1)(b)(*i*).

Domestic violence

- For purposes of MCL 762.10d. MCL 764.1a, MCL 764.3, MCL 764.9c, and MCL 765.6b(6), *domestic violence* means "that term as defined in . . . MCL 400.1501." MCL 762.10d(5)(b); MCL 764.1a(9)(c); MCL 764.3(5)(b); MCL 764.9c(3)(a); MCL 765.6b(6)(b). MCL 400.1501(d) defines *domestic violence* as "the

occurrence of any of the following acts by an individual that is not an act of self-defense: (*i*) [c]ausing or attempting to cause physical or mental harm to a family or household member[;] (*ii*) [p]lacing a family or household member in fear of physical or mental harm[;] (*iii*) [c]ausing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress[;] [and/or] (*iv*) [e]ngaging in activity toward a family or household member that would cause a reasonable individual to feel terrorized, frightened, intimidated, threatened, harassed, or molested."

E

Electric bicycle

- For purposes of the Michigan Vehicle Code, *electric bicycle* "means a device upon which an individual may ride that satisfies all of the following:

  (a) The device is equipped with all of the following:

  (*i*) A seat or saddle for use by the rider.

  (*ii*) Fully operable pedals for human propulsion.

  (*iii*) An electric motor of not greater than 750 watts.

  (b) The device falls within 1 of the following categories:

  (*i*) Class 1 electric bicycle. As used in this subparagraph, 'class 1 electric bicycle' means an electric bicycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that disengages or ceases to function when the electric bicycle reaches a speed of 20 miles per hour.

  (*ii*) Class 2 electric bicycle. As used in this subparagraph, 'class 2 electric bicycle' means an electric bicycle that is equipped with a motor that propels the electric bicycle to a speed of no more than 20 miles per hour, whether the rider is pedaling or not, and that disengages or ceases to function when the brakes are applied.

  (*iii*) Class 3 electric bicycle. As used in this subparagraph, 'class 3 electric bicycle' means an electric bicycle that is equipped with a motor that provides assistance only when the rider is pedaling and that

disengages or ceases to function when the electric bicycle reaches a speed of 28 miles per hour." MCL 257.13e.

Electric skateboard

- For purposes of the Michigan Vehicle Code, *electric skateboard* "means a wheeled device that has a floorboard designed to be stood upon when riding that is no more than 60 inches long and 18 inches wide, is designed to transport only 1 person at a time, has an electrical propulsion system with power of no more than 2,500 watts, and has a maximum speed on a paved level surface of not more than 25 miles per hour. An electric skateboard may have handlebars and, in addition to having an electrical propulsion system with power of no more than 2,500 watts, may be designed to also be powered by human propulsion." MCL 257.13f.

Electronic filing system fee

- For purposes of Chapter 19A of the Revised Judicature Act, *electronic filing system fee* means "the fee described in [MCL 600.1986]." MCL 600.1985(g).

Electronic monitoring device

- For purposes of MCL 765.6b(6), *electronic monitoring device* "includes any electronic device or instrument that is used to track the location of an individual or to monitor an individual's blood alcohol content, but does not include any technology that is implanted or violates the corporeal body of the individual." MCL 765.6b(6)(c).

Electronic signature

- For purposes of the Michigan Court Rules, *electronic signature* "means an electronic sound, symbol, or process, attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. The following form is acceptable: /s/ *John L. Smith*." MCR 1.109(E)(4)(a).

Emergency scene

- For purposes of MCL 257.601b, *emergency scene* means "a traffic accident, a serious incident caused by weather conditions, or another occurrence along a highway or street for which a police

officer, firefighter, or emergency medical personnel are summoned to aid an injured victim." MCL 257.601b(5)(a).

F

Felony

- For purposes of the Code of Criminal Procedure, *felony* means "a violation of a penal law of this state for which the offender, upon conviction, may be punished by imprisonment for more than 1 year or an offense expressly designated by law to be a felony." MCL 761.1(f).

- For purposes of the DNA Identification Profiling System Act, *felony* means "a violation of a penal law of this state for which the offender may be punished by imprisonment for more than 1 year or an offense expressly designated by law to be a felony." MCL 28.172(e).

Financially able to pay for interpretation costs

- For purposes of MCR 1.111, concerning foreign language interpreters, a person is *financially able to pay for interpretation costs* if "the court determines that requiring reimbursement of interpretation costs will not pose an unreasonable burden on the person's ability to have meaningful access to the court." MCR 1.111(A)(3). For purposes of MCR 1.111, a person is *financially able to pay for interpretation costs* when:

  "(a) The person's family or household income is greater than 125% of the federal poverty level; and

  (b) An assessment of interpretation costs at the conclusion of the litigation would not unreasonably impede the person's ability to defend or pursue the claims involved in the matter." MCR 1.111(A)(3).

G

Guaranteed appearance certificate

- For purposes of the Michigan Vehicle Code, *guaranteed appearance certificate* "means a card or certificate containing a printed statement that a surety company authorized to do business in this state guarantees the appearance of the person

whose signature appears on the card or certificate, and that the company, if the person fails to appear in court at the time of trial or sentencing or to pay any fines or costs imposed under this act, will pay any fine, costs, or bond forfeiture imposed on the person in a total amount not to exceed $200.00." MCL 257.728(5)(d).

H

Highway

- For purposes of the Michigan Vehicle Code, *highway* means "the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel." MCL 257.20.

Hold

- For purposes of MCL 257.602b, *hold* means "to physically support with any part of the hands, arms, or shoulders." MCL 257.602b(12)(a).

I

Indigent criminal defense services

- For purposes of the Michigan Indigent Defense Commission Act, *indigent criminal defense services* means "local legal defense services provided to a defendant and to which both of the following conditions apply: (*i*) [t]he defendant is being prosecuted or sentenced for a crime for which an individual may be imprisoned upon conviction, beginning with the defendant's initial appearance in court to answer to the criminal charge[, and] (*ii*) [t]he defendant is determined to be indigent under [MCL 780.991(3)]." MCL 780.983(f).

Indigent criminal defense system

- For purposes of the Michigan Indigent Defense Commission Act, *indigent criminal defense system* means either "[t]he local unit of government that funds a trial court[,]" or "[i]f a trial court is funded by more than 1 local unit of government, those local units of government, collectively." MCL 780.983(h).

Intermediary interpreter

- For purposes of the Deaf Persons' Interpreters Act, *intermediary interpreter* or *deaf interpreter* means "any person, including any deaf or deaf-blind person, who is able to assist in providing an accurate interpretation between spoken English and sign language or between variants of sign language by acting as an intermediary between a deaf or deaf-blind person and a qualified interpreter." MCL 393.502(e).

Interpret/interpretation

- For purposes of MCR 1.111, concerning foreign language interpreters, *interpret* and *interpretation* mean "the oral rendering of spoken or written communication from one language to another without change in meaning." MCR 1.111(A)(5).

Intoxicating substance

- For purposes of the MCL 257.625, *intoxicating substance* means "any substance, preparation, or a combination of substances and preparations other than alcohol or a controlled substance, that is either of the following:

  (*i*) Recognized as a drug in any of the following publications or their supplements:

  (A) The official United States pharmacopoeia.

  (B) The official homeopathic pharmacopoeia of the United States.

  (C) The official national formulary.

  (*ii*) A substance, other than food, taken into a person's body, including, but not limited to, vapors or fumes, that is used in a manner or for a purpose for which it was not intended, and that may result in a condition of intoxication." MCL 257.625(25)(a).

J

Jail

- For purposes of the Code of Criminal Procedure, *jail* "or a similar word includes a juvenile facility in which a juvenile has

been placed pending trial under [MCL 764.27a]." MCL 761.1(h).

Judge

- For purposes of Chapter 9 of the Michigan Court Rules, *judge* "means:

  (1) a person who is serving as a judge or justice of any court of the judicial branch of state or local government by virtue of election, appointment, or assignment;

  (2) a magistrate or a referee of any such court; or

  (3) a person who formerly held such office if a request for investigation was filed during the person's term of office. If the person is no longer a judge and the alleged misconduct relates to the person's actions as a judge, it is not necessary that the request for investigation be filed during the former judge's-term of office; nothing in this paragraph deprives the Attorney Grievance Commission of its authority to proceed against a former judge." MCR 9.201(B).

Judicial district

- For purposes of the Code of Criminal Procedure, *judicial district* means "(*i*) [w]ith regard to the circuit court, the county[;] (*ii*) [w]ith regard to municipal courts, the city in which the municipal court functions or the village served by a municipal court under . . . MCL 600.9928[;] (*iii*) [w]ith regard to the district court, the county, district, or political subdivision in which venue is proper for criminal actions." MCL 761.1(i)

Juvenile

- For purposes of the Code of Criminal Procedure, *juvenile* means "a person within the jurisdiction of the circuit court under . . . MCL 600.606." MCL 761.1(j).

- For purposes of the Crime Victim's Rights Act, Article 2, *juvenile* means "an individual alleged or found to be within the court's jurisdiction under . . . [MCL 712A.2(a)(1)], for an offense, including, but not limited to, an individual in a designated case." MCL 780.781(1)(e).

Juvenile facility

- For purposes of the Code of Criminal Procedure, *juvenile facility* means "a county facility, an institution operated as an agency of the county or family division of circuit court, or an

institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to [MCL] 803.309, to which a juvenile has been committed under [MCL 768.27a]." MCL 761.1(k).

Juvenile mental health court

- For purposes of Chapter 10C of the Revised Judicature Act of 1961, *juvenile mental health court* "means all of the following:

  (*i*) A court-supervised treatment program for juveniles who are diagnosed by a mental health professional with having a serious emotional disturbance, co-occurring disorder, or developmental disability.

  (*ii*) Programs designed to adhere to the 7 common characteristics of a juvenile mental health court as described under [MCL 600.1099c(3)].

  (*iii*) Programs designed to adhere to the 10 essential elements of a mental health court promulgated by the Bureau of Justice Assistance, or amended, that include all of the following characteristics:

    (A) A broad-based group of stakeholders representing the criminal justice system, the juvenile justice system, the mental health system, the substance abuse treatment system, any related systems, and the community guide the planning and administration of the court.

    (B) Eligibility criteria that address public safety and a community's treatment capacity, in addition to the availability of alternatives to pretrial detention for juveniles with mental illnesses, and that take into account the relationship between mental illness and a juvenile's offenses, while allowing the individual circumstances of each case to be considered.

    (C) Participants are identified, referred, and accepted into mental health courts, and then linked to community-based service providers as quickly as possible.

    (D) Terms of participation are clear, promote public safety, facilitate the juvenile's engagement in treatment, are individualized to correspond to the level of risk that each juvenile presents to the

community, and provide for positive legal outcomes for those individuals who successfully complete the program.

(E) In accordance with the Michigan indigent defense commission act, [MCL 780.981–MCL 780.1003], provide legal counsel to juvenile respondents to explain program requirements, including voluntary participation, and guide juveniles in decisions about program involvement. Procedures exist in the juvenile mental health court to address, in a timely fashion, concerns about a juvenile's competency whenever they arise.

(F) Connect participants to comprehensive and individualized treatment supports and services in the community and strive to use, and increase the availability of, treatment and services that are evidence based.

(G) Health and legal information are shared in a manner that protects potential participants' confidentiality rights as mental health consumers and their constitutional rights. Information gathered as part of the participants' court-ordered treatment program or services is safeguarded from public disclosure in the event that participants are returned to traditional court processing.

(H) A team of criminal justice, if applicable, juvenile justice, and mental health staff and treatment providers receives special, ongoing training and assists mental health court participants to achieve treatment and criminal and juvenile justice goals by regularly reviewing and revising the court process.

(I) Criminal and juvenile justice and mental health staff collaboratively monitor participants' adherence to court conditions, offer individualized graduated incentives and sanctions, and modify treatment as necessary to promote public safety and participants' recovery.

(J) Data are collected and analyzed to demonstrate the impact of the juvenile mental heath court, its performance is assessed periodically, procedures are modified accordingly, court processes are institutionalized, and support for the court in the

community is cultivated and expanded." MCL 600.1099b(e).

L

Law enforcement officer

- For purposes of Chapter 88 of the Revised Judicature Act, *law enforcement officer* means "any of the following:

  (*i*) A sheriff or deputy sheriff.

  (*ii*) An officer of the police department of a city, village, or township, or the marshal of a city, village, or township.

  (*iii*) An officer of the Michigan state police.

  (*iv*) A conservation officer.

  (*v*) A security employee employed by the state pursuant to . . . MCL 28.6c.

  (*vi*) A motor carrier officer appointed pursuant to . . . MCL 28.6d.

  (*vii*) A public safety officer employed by a university as authorized by either of the following:

    (A) 1965 PA 278, MCL 390.711 to [MCL] 390.717.

    (B) 1990 PA 120, MCL 390.1511 to [MCL] 390.1514.

  (*viii*) If authorized by the governing body of a political subdivision, a constable of the political subdivision.

  (*ix*) A park and recreation officer commissioned pursuant to . . . MCL 324.1606.

  (*x*) A state forest officer commissioned pursuant to . . . MCL 324.83107.

  (*xi*) An officer, employee, or agent of the department of agriculture enforcing, pursuant to authority granted by the director of agriculture, a statute administered, a rule promulgated, or an order issued by the department of agriculture or the director of agriculture." MCL 600.8801(3)(c).

LEIN

- For purposes of MCL 765.6b, *LEIN* means "the law enforcement information network regulated under the C.J.I.S. policy council act, 1974 PA 163, MCL 28.211 to [MCL] 28.215, or by the department of state police." MCL 765.6b(11).

License

- For purposes of the Michigan Vehicle Code, *license* means "any driving privileges, license, temporary instruction permit, commercial learner's permit, or temporary license issued under the laws of this state pertaining to the licensing of persons to operate motor vehicles." MCL 257.25.

Limousine

- For purposes of the Michigan Vehicle Code, *limousine* "means that term as defined in [MCL 257.2102]." MCL 257.25c. MCL 257.2102(d) provides that *limousine* "means a self-propelled motor vehicle used in the carrying of passengers and the baggage of the passengers for hire with a seating capacity of 8 passengers or fewer, including the driver. Limousine does not include a commercial vehicle. Limousine also does not include a vehicle operated by any of the following:

  (*i*) A county, city, township, or village as provided by law, or other authority incorporated under 1963 PA 55, MCL 124.351 to [MCL] 124.359.

  (*ii*) An authority incorporated under the metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to [MCL] 124.426, or that operates a transportation service pursuant to an interlocal agreement under the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to [MCL] 124.512.

  (*iii*) Operating under a contract entered into under 1967 (Ex Sess) PA 8, MCL 124.531 to [MCL] 124.536, or 1951 PA 35, MCL 124.1 to [MCL] 124.13.

  (*iv*) An authority incorporated under the public transportation authority act, 1986 PA 196, MCL 124.451 to [MCL] 124.479, or a nonprofit corporation organized under the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to [MCL] 450.3192, that provides transportation services.

(*v*) An authority financing public improvements to transportation systems under the revenue bond act of 1933, 1933 PA 94, MCL 141.101 to [MCL] 141.140.

(*vi*) A person that is only operating limousines to provide the transportation of passengers for funerals.

(*vii*) An employer that is only using the vehicle, or on whose behalf the vehicle is being used, to transport its employees to and from their place of employment."

Limousine driver

- For purposes of the Michigan Vehicle Code, *limousine driver* "means that term as defined in [MCL 257.2102]." MCL 257.25d. MCL 257.2102(f) provides that *limousine driver* "means an individual who uses a limousine to provide transportation services to potential passengers."

Livestock

- For purposes of the Dangerous Animals Act, *livestock* means "animals used for human food and fiber or animals used for service to human beings. Livestock includes, but is not limited to, cattle, swine, sheep, llamas, goats, bison, equine, poultry, and rabbits. Livestock does not include animals that are human companions, such as dogs and cats." MCL 287.321(b).

M

Magistrate

- For purposes of the Code of Criminal Procedure, *magistrate* means "a judge of the district court or a judge of a municipal court. Magistrate does not include a district court magistrate, except that a district court magistrate may exercise the powers, jurisdiction, and duties of a magistrate if specifically provided in this act, the revised judicature act . . . MCL 600.101 to [MCL] 600.9947, or any other statute. This definition does not limit the power of a justice of the supreme court, a circuit judge, or a judge of a court of record having jurisdiction of criminal cases under this act, or deprive him or her of the power to exercise the authority of a magistrate." MCL 761.1(*l*).

- For purposes of the Public Health Code, *magistrate* means "a judge authorized to issue warrants by the laws of this state." MCL 333.1105(4).

Mental health professional

- For purposes of Chapter 10C of the Revised Judicature Act of 1961, *mental health professional* "means an individual who is trained and experienced in the area of mental illness or developmental disabilities and who is 1 of the following:

  (*i*) A physician.

  (*ii*) A psychologist.

  (*iii*) A registered professional nurse licensed or otherwise authorized to engage in the practice of nursing under part 172 of the public health code, . . . MCL 333.17201 to [MCL] 333.17242].

  (*iv*) A licensed master's social worker licensed or otherwise authorized to engage in the practice of social work at the master's level under part 185 of the public health code, . . . MCL 333.18501 to [MCL] 333.18518.

  (*v*) A licensed professional counselor licensed or otherwise authorized to engage in the practice of counseling under part 181 of the public health code, . . . MCL 333.18101 to [MCL] 333.18117.

  (*vi*) A marriage and family therapist licensed or otherwise authorized to engage in the practice of marriage and family therapy under part 169 of the public health code, . . . MCL 333.16901 to [MCL] 333.16915." MCL 600.1099b(f).

Minor offense

- For purposes of the Code of Criminal Procedure, *minor offense* means "a misdemeanor or ordinance violation for which the maximum permissible imprisonment does not exceed 92 days and the maximum permissible fine does not exceed $1,000.00." MCL 761.1(m).

Misdemeanor

- For purposes of the Code of Criminal Procedure, *misdemeanor* means "a violation of a penal law of this state that is not a felony or a violation of an order, rule, or regulation of a state agency that is punishable by imprisonment or a fine that is not a civil fine." MCL 761.1(n).

Mobile electronic device

- For purposes of MCL 257.602b, *mobile electronic device* means "an electronic device that is not permanently installed in a motor vehicle, including, but not limited to, a device capable of text messaging, voice communication, entertainment, navigation, accessing the internet, or producing email. Mobile electronic device does not include either of the following:

  (*i*) A radio designed for the Citizens Band Service or the Amateur Radio Service of the Federal Communications Commission or a commercial 2-way radio communications device or equipment permanently installed in a motor vehicle.

  (*ii*) A medical device that is designed to be worn, including, but not limited to, an insulin pump." MCL 257.602b(12)(b).

Motor vehicle

- For purposes of the Michigan Vehicle Code, *motor vehicle* means "every vehicle that is self-propelled, but for purposes of chapter 4, motor vehicle does not include industrial equipment such as a forklift, a front-end loader, or other construction equipment that is not subject to registration under this act. Motor vehicle does not include a power-driven mobility device when that power-driven mobility device is being used by an individual with a mobility disability. Motor vehicle does not include an electric patrol vehicle being operated in compliance with the electric patrol vehicle act . . . MCL 257.1571 to [MCL] 257.1577. Motor vehicle does not include an electric personal assistive mobility device. Motor vehicle does not include an electric carriage. Motor vehicle does not include a commercial quadricycle. Motor vehicle does not include an electric bicycle. Motor vehicle does not include an electric skateboard." MCL 257.33.

Moving violation

- For purposes of MCL 257.601b and MCL 257.601c, *moving violation* means "an act or omission prohibited under [the Michigan Vehicle Code] or a local ordinance substantially corresponding to [the Michigan Vehicle Code] that occurs while a person is operating a motor vehicle, and for which the person is subject to a fine." MCL 257.601b(5)(b); MCL 257.601c(3).

- For purposes of MCL 257.601d and MCL 257.907, *moving violation* means "an act or omission prohibited under [the Michigan Vehicle Code] or a local ordinance substantially corresponding to [the Michigan Vehicle Code] that involves the operation of a motor vehicle, and for which a fine may be assessed." MCL 257.601d(4). See also MCL 257.907(16) (containing substantially similar language).

Multiple district area

- For purposes of MCL 600.8320, *multiple district area* means "an area composed of either of the following:

  (*i*) Two or more districts of the district court within a county participating or proposing to participate in a multiple district plan.

  (*ii*) Two adjoining districts of the first class." MCL 600.8320(1)(a).

Multiple district plan

- For purposes of MCL 600.8320, *multiple district plan* means "an arrangement in which a district judge or district court magistrate is authorized to conduct arraignments, set bail or recognizances, provide for the appointment of counsel, or make determinations of probable cause and issue warrants, for all of the participating districts within a multiple district area." MCL 600.8320(1)(b).

Municipal civil infraction

- For purposes of the Revised Judicature Act, *municipal civil infraction* means "a civil infraction involving a violation of an ordinance, ... Municipal civil infraction includes, but is not limited to, a trailway municipal civil infraction. Municipal civil infraction does not include a violation described in [MCL 600.113(1)(a)(*i*)-(*vi*) or MCL 600.113(1)(a)(*ix*)] or any act or omission that constitutes a crime under any of the following:

  (*i*) Article 7 of the public health code . . . .

  (*ii*) The Michigan penal code . . . .

  (*iii*) The Michigan vehicle code . . . .

  (*iv*) The Michigan liquor control code . . . .

  (*v*) Part 801 of the natural resources and environmental protection act . . . .

> (*vi*) The aeronautics code . . . .
>
> (*vii*) Part 821 of the natural resources and environmental protection act . . . .
>
> (*viii*) Part 811 of the natural resources and environmental protection act . . . .
>
> (*ix*) The railroad code . . . .
>
> (*x*) Any law of this state under which the act or omission is punishable by imprisonment for more than 90 days." MCL 600.113(1)(c).

Municipal civil infraction action

- For purposes of the Revised Judicature Act, *municipal civil infraction action* means "a civil action in which the defendant is alleged to be responsible for a municipal civil infraction. Municipal civil infraction action includes, but is not limited to, a trailway municipal civil infraction action." MCL 600.113(1)(d).

Municipal civil infraction determination

- For purposes of Chapter 87 of the Revised Judicature Act, *municipal civil infraction determination* means "a determination that a defendant is responsible for a municipal civil infraction by 1 of the following:

  > (*i*) An admission of responsibility for the municipal civil infraction.
  >
  > (*ii*) An admission of responsibility for the municipal civil infraction, 'with explanation'.
  >
  > (*iii*) A preponderance of the evidence at an informal hearing or formal hearing on the question under [MCL 600.8719 or MCL 600.8721], respectively.
  >
  > (*iv*) A default judgment for failing to appear as directed by a citation or other notice at a scheduled appearance under [MCL 600.8715(3)(b) or MCL 600.8715(4)], at an informal hearing under [MCL 600.8719], or at a formal hearing under [MCL 600.8721]." MCL 600.8701(c).

Municipal ordinance violation notice

- For purposes of MCL 600.8707(6), *municipal ordinance violation notice* means "a notice, other than a citation, directing a person to appear at a municipal ordinance violations bureau in the

city, village, township, or county in which the notice is issued and to pay the fine and costs, if any, prescribed by ordinance for the violation of the ordinance." MCL 600.8707(6).

N

Neutral

- For purposes of Chapter 9 of the Michigan Court Rules, *neutral* "means one or more judges or former judges appointed by the Supreme Court at the commission's request to hold hearings on a complaint against a respondent." MCR 9.201(E).

O

Offense

- For purposes of the Crime Victim's Rights Act, Article 2, *offense* "means 1 or more of the following:

  (*i*) A violation of a penal law of this state for which a juvenile offender, if convicted as an adult, may be punished by imprisonment for more than 1 year or an offense expressly designated by law as a felony.

  (*ii*) A violation of [MCL 750.81] (assault and battery, including domestic violence), [MCL 750.81a] (assault; infliction of serious injury, including aggravated domestic violence), [MCL 750.115] (breaking and entering or illegal entry), [MCL 750.136b(7)] (child abuse in the fourth degree), [MCL 750.145] (contributing to the neglect or delinquency of a minor), [MCL 750.145d] (using the internet or a computer to make a prohibited communication), [MCL 750.233] (intentionally aiming a firearm without malice), [MCL 750.234] (discharge of a firearm intentionally aimed at a person), [MCL 750.235] (discharge of an intentionally aimed firearm resulting in injury), [MCL 750.335a] (indecent exposure), or [MCL 750.411h] (stalking)[.]

  (*iii*) A violation of [MCL 257.601b(2)] (injuring a worker in a work zone) or [MCL 257.617a] (leaving the scene of a personal injury accident)[,] . . . or a violation of [MCL 257.625] (operating a vehicle while under the influence of or impaired by intoxicating liquor or a controlled

> substance, or with unlawful blood alcohol content)[,] . . . if the violation involves an accident resulting in damage to another individual's property or physical injury or death to another individual.
>
> (*iv*) Selling or furnishing alcoholic liquor to an individual less than 21 years of age in violation of section 33 of the former 1933 (Ex Sess) PA 8, or . . . MCL 436.1701, if the violation results in physical injury or death to any individual.
>
> (*v*) A violation of section [MCL 324.80176(1)] or [MCL 324.80176(3)] (operating a vessel while under the influence of or impaired by intoxicating liquor or a controlled substance, or with unlawful blood alcohol content)[,] . . . if the violation involves an accident resulting in damage to another individual's property or physical injury or death to any individual.
>
> (vi) A violation of a local ordinance substantially corresponding to a law enumerated in subparagraphs (*i*) to (*v*).
>
> (*vii*) A violation described in subparagraphs (*i*) to (*vi*) that is subsequently reduced to a violation not included in subparagraphs (*i*) to (*vi*)." MCL 780.781(1)(g).

Operate/Operating

- For purposes of the Michigan Vehicle Code, *operate* or *operating* means "1 or more of the following:

  > (a) Being in actual physical control of a vehicle. This subdivision applies regardless of whether or not the person is licensed under [the MVC] as an operator or chauffeur.
  >
  > (b) Causing an automated motor vehicle to move under its own power in automatic mode upon a highway or street regardless of whether the person is physically present in that automated motor vehicle at that time. This subdivision applies regardless of whether the person is licensed under this act as an operator or chauffeur. As used in this subdivision, 'causing an automated motor vehicle to move under its own power in automatic mode' includes engaging the automated technology of that automated motor vehicle for that purpose." MCL 257.35a.

- For purposes of MCL 257.602b, *operate* means "to drive or assume physical control of a motor vehicle on a public way, street, road, or highway, including operation while temporarily stationary because of traffic, road conditions, a traffic light, or a stop sign. Operate does not include a motor vehicle that is lawfully parked." MCL 257.602b(12)(c).

Operator

- For purposes of the Michigan Vehicle Code, *operator* means "a person, other than a chauffeur, who does either of the following:

  (a) Operates a motor vehicle upon an highway or street.

  (b) Operates an automated motor vehicle upon a highway or street." MCL 257.36.

Operating while intoxicated

- For purposes of the Michigan Vehicle Code, *operating while intoxicated* means "any of the following:

  (a) The person is under the influence of alcoholic liquor, a controlled substance, or other intoxicating substance or a combination of alcoholic liquor, a controlled substance, or other intoxicating substance.

  (b) The person has an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine or, beginning 5 years after the state treasurer publishes a certification under [MCL 257.625(28)], the person has an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

  (c) The person has an alcohol content of 0.17 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine." MCL 257.625(1).

Operating while intoxicated offense

- For purposes of MCL 764.9c, *operating while intoxicated offense* "means a violation of any of the following:

  (*i*) . . . MCL 257.625 [or MCL] 257.625m.

  (*ii*) A local ordinance substantially corresponding to a violation listed in [MCL 764.9c(9)(b)(*i*)].

(*iii*) A law of an Indian tribe substantially corresponding to a violation listed in [MCL 764.9c(9)(b)(*i*)].

(*iv*) A law of another state substantially corresponding to a violation listed in [MCL 764.9c(9)(b)(*i*)].

(*v*) A law of the United States substantially corresponding to a violation listed in [MCL 764.9c(9)(b)(*i*)]." MCL 764.9c(9)(b).

Ordinance

- For purposes of Chapter 87 of the Revised Judicature Act, MCL 600.113(1)(a), and MCL 600.113(1)(c), *ordinance* "includes a temporary vessel speed limit established by a county emergency management coordinator or sheriff under . . . MCL 324.80146[.]" MCL 600.8701(d).

Ordinance violation

- For purposes of the Code of Criminal Procedure, *ordinance violation* means "either of the following: (*i*) [a] violation of an ordinance or charter of a city, village, township, or county that is punishable by imprisonment or a fine that is not a civil fine[;] (*ii*) [a] violation of an ordinance, rule, or regulation of any other governmental entity authorized by law to enact ordinances, rules, or regulations that is punishable by imprisonment or a fine that is not a civil fine." MCL 761.1(o).

Owner

- For purposes of the Dangerous Animals Act, *owner* means "a person who owns or harbors a dog or other animal." MCL 287.321(c).

- For purposes of the Dog Law of 1919, *owner* "when applied to the proprietorship of a dog means every person having a right of property in the dog, and every person who keeps or harbors the dog or has it in his [or her] care, and every person who permits the dog to remain on or about any premises occupied by him [or her]." MCL 287.261(2)(c).

P

Partially Indigent

- For purposes of the Michigan Indigent Defense Commission Act, *partially indigent* means "a criminal defendant who is unable to afford the complete cost of legal representation, but is

able to contribute a monetary amount toward his or her representation." MCL 780.983(k).

Parking

- For purposes of the Michigan Vehicle Code, *parking* means "standing a vehicle, whether occupied or not, upon a highway, when not loading or unloading except when making necessary repairs." MCL 257.38.

Parking violation notice

- For purposes of the MCL257.742(7), *parking violation notice* means "a notice, other than a citation, directing a person to appear at a parking violations bureau in the city, village, or township in which, or of the college or university for which, the notice is issued and to pay the fine and costs, if any, prescribed by ordinance for the parking or standing of a motor vehicle in violation of the ordinance." MCL 257.742(9)(a).

Participant

- For purposes of MCR 4.101(F)(4), *participant* is defined in MCR 2.407(A)(1). MCR 2.407(A)(1) states that *participants* "include, but are not limited to, parties, counsel, and subpoenaed witnesses, but do not include the general public."

- For purposes of Chapter 10C of the Revised Judicature Act of 1961, *participant* "means a juvenile who is admitted into a juvenile mental health court." MCL 600.1099b(g).

Party

- For purposes of MCR 1.111, party "means a person named as a party or a person with legal decision-making authority in the case or court proceeding." MCR 1.111(A)(2).

Person

- For purposes of the Code of Criminal Procedure, *person* or a similar word means "an individual or, unless a contrary intention appears, a public or private corporation, partnership, or unincorporated or voluntary association." MCL 761.1(p).

- For purposes of the Crime Victim's Right Act, Article 1, *person* means "an individual, organization, partnership, corporation, or governmental entity." MCL 780.752(1)(j).

- For purposes of the Crime Victim's Right Act, Article 2, *person* means "an individual, organization, partnership, corporation, or governmental entity." MCL 780.781(1)(h).

- For purposes of the Crime Victim's Right Act, Article 3, *person* means "an individual, organization, partnership, corporation, or governmental entity." MCL 780.811(1)(e).

- For purposes of the Michigan Vehicle Code, *person* means "every natural person, firm, copartnership, association, or corporation and their legal successors." MCL 257.40.

Personal vehicle

- For purposes of the Michigan Vehicle Code, *personal vehicle* "means that term as defined in [MCL 257.2102]." MCL 257.40c. MCL 257.2102(h) provides that *personal vehicle* "means a motor vehicle with a seating capacity of 8 passengers or fewer, including the driver, that is used by a transportation network company driver that satisfies both of the following:

  (*i*) The vehicle is owned, leased, or otherwise authorized for use by the transportation network company driver.

  (*ii*) The vehicle is not a taxicab, limousine, or commercial vehicle."

Power-driven mobility device

- For purposes of the Michigan Vehicle Code, *power-driven mobility device* means "a mobility device powered by a battery, fuel, or other engine and used by an individual with a mobility disability for the purpose of locomotion. Notwithstanding any other provisions of this act, the requirements of this act apply to a power-driven mobility device while that device is being operated on a street, road, or highway in this state." MCL 257.43c.

Preliminary chemical breath analysis

- For purposes of the Michigan Vehicle Code, *preliminary chemical breath analysis* means "the on-site taking of a preliminary breath test from the breath of a person for the purpose of detecting the presence of any of the following within the person's body:

  (a) Alcoholic liquor.

  (b) A controlled substance, as that term is defined in . . . MCL 333.7104.

(c) Any other intoxicating substance, as that term is defined in [MCL 257.625].

(d) Any combination of the substances listed in subdivisions (a) to (c)." MCL 257.43a

Present

- For purposes of MCL 257.627c, *present* "means located in proximity to a roadway that is not protected by a guardrail or barrier." MCL 257.627c(10).

Preferred mode

- For purposes of the Code of Criminal Procedure, *preferred mode* means "scheduled to be conducted remotely subject to a request under MCR 2.407(B)(4) to appear in person by any participant, including a victim as defined by [MCL 780.752(1)(m)] or a determination by the court that a case is not suited for videoconferencing under MCR 2.407(B)(5)." MCR 6.006(B)(2); MCR 6.006(C)(1).

Prison

- For purposes of the Code of Criminal Procedure, *prison* "or a similar word includes a juvenile facility in which a juvenile has been placed pending trial under [MCL 764.27a]." MCL 761.1(h).

Program participant

- For purposes of the Address Confidentiality Program Act, *program participant* "means an individual who is certified by the department of the attorney general as a program participant under MCL 780.855." MCL 780.853(n).

Prosecuting attorney

- For purposes of the Code of Criminal Procedure, *prosecuting attorney* means "the prosecuting attorney for a county, an assistant prosecuting attorney for a county, the attorney general, the deputy attorney general, an assistant attorney general, a special prosecuting attorney, or, in connection with the prosecution of an ordinance violation, an attorney for the political subdivision or governmental entity that enacted the ordinance, charter, rule, or regulation upon which the ordinance violation is based." MCL 761.1(r).

- For purposes of the Crime Victim's Rights Act, *prosecuting attorney* means "the prosecuting attorney for a county, an

assistant prosecuting attorney for a county, the attorney general, the deputy attorney general, an assistant attorney general, or a special prosecuting attorney." MCL 780.752(1)(*l*).

Provoke

- For purposes of the Dangerous Animals Act, *provoke* means "to perform a willful act or omission that an ordinary and reasonable person would conclude is likely to precipitate the bite or attack by an ordinary dog or animal." MCL 287.321(d).

Q

Qualified foreign language interpreter

- For purposes of MCR 1.111, *qualified foreign language interpreter* "means a person who meets all of the following criteria:

  (a) has passed the written English proficiency exam administered by the State Court Administrative Office or a similar state or federal test approved by the state court administrator,

  (b) within the two calendar years preceding their registration application to become a qualified foreign language interpreter, has passed the consecutive or simultaneous portion of a foreign language interpreter test administered by the State Court Administrative Office or a similar state or federal test approved by the state court administrator (if testing exists for the language),

  (c) is actively engaged in becoming certified by continuing to test on each portion of the oral examination in each calendar year,

  (d) has been determined by the court after voir dire to be competent to provide interpretation services for the proceeding in which the interpreter is providing services,

  (e) meets the requirements established by the state court administrator for this interpreter classification,

  (f) is registered with the State Court Administrative Office, and

(g) provides foreign language interpretation services independently or on behalf of a registered interpreter firm." MCR 1.111(A)(6).

Qualified interpreter

- For purposes of the Deaf Persons' Interpreters Act, *qualified interpreter* means "a person who is certified through the national registry of interpreters for the deaf or certified through the state by the division." MCL 393.502(f).

R

Record

- For purposes of MCL 600.1428, *record* means "information of any kind that is recorded in any manner and that has been created by a court or filed with a court in accordance with supreme court rules." MCL 600.1428(4).

Registered interpreter firm

- For the purposes of MCR 1.111, *registered interpreter firm* means "an entity that employs or contracts with certified or qualified foreign language interpreters to provide foreign language interpretation services and that is registered with the State Court Administrative Office as required by MCR 8.127(C)(2)." MCR 1.111(A)(7).

Request for investigation

- For purposes of Chapter 9 of the Michigan Court Rules, *request for investigation* "is an allegation of judicial misconduct, physical or mental disability, or other circumstance that the commission may undertake to investigate under Const 1963, art 6, § 30, and MCR 9.220." MCR 9.201(H).

Respondent

- For purposes of Chapter 9 of the Michigan Court Rules, *respondent* "is a judge against whom a request for investigation has been filed." MCR 9.201(C).

S

Sample

- For purposes of the DNA Identification Profiling System Act, *sample* means "a portion of an individual's blood, saliva, or tissue collected from the individual." MCL 28.172(g).

School bus zone

- For purposes of MCL 257.601b, *school bus zone* means "the area lying within 20 feet of a school bus that has stopped and is displaying 2 alternately flashing red lights at the same level, except as described in [MCL 257.682(2)]." MCL 257.601b(5)(c).

School property

- For purposes of MCL 764.15(1)(n), *school property* means "that term as defined in . . . MCL 333.7410." MCL 333.7410(8)(b) defines *school property* as "a building, playing field, or property used for school purposes to impart instruction to children in grades kindergarten through 12, when provided by a public, private, denominational, or parochial school, except those building used primarily for adult education or college extension courses."

School zone

- For purposes of MCL 257.601b and MCL 257.627a, *school zone* means "school property on which a school building is located and the adjacent property. A school zone extends not more than 1,000 feet from the school property line in any direction. If 2 or more schools occupy the same property or adjacent properties, 1 of the following applies, as applicable:

  (*i*) If the hours of instruction at the schools are the same, then a single combined school zone shall be established.

  (*ii*) If the hours of instruction at the schools are different, overlapping school zones shall be established." MCL 257.601b(5)(d); MCL 257.627a(1)(c).

Serious emotional disturbance

- For purposes of Chapter 10C of the Revised Judicature Act of 1961, *serious emotional disturbance* "means that term as defined in . . . [MCL 330.1100d]." MCL 600.1099b(h).

Serious impairment of a body function

- For purposes of the Michigan Vehicle Code, *serious impairment of a body function* "includes, but is not limited to, 1 or more of the following:

  (a) Loss of a limb or loss of use of a limb.

  (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.

  (c) Loss of an eye or ear or loss of use of an eye or ear.

  (d) Loss or substantial impairment of a bodily function.

  (e) Serious visible disfigurement.

  (f) A comatose state that lasts for more than 3 days.

  (g) Measurable brain or mental impairment.

  (h) A skull fracture or other serious bone fracture.

  (i) Subdural hemorrhage or subdural hematoma.

  (j) Loss of an organ." MCL 257.58c.

Serious injury

- For purposes of the Dangerous Animals Act, *serious injury* means "permanent, serious disfigurement, serious impairment of health, or serious impairment of a bodily function of a person." MCL 287.321(e).

Serious mental illness

- For purposes of Chapter 10C of the Revised Judicature Act of 1961, *serious mental illness* "means that term as defined in . . . [MCL 330.1100d]." MCL 600.1099b(i).

Serious misdemeanor

- For purposes of MCL 764.9c, MCL 769.5, and the Crime Victim's Rights Act, Article 3, "[e]xcept as otherwise defined in this article, as used in this article[, *serious misdemeanor*] means 1 or more of the following:

(*i*) A violation of [MCL 750.81], assault and battery, including domestic violence.

(*ii*) A violation of [MCL 750.81a], assault; infliction of serious injury, including aggravated domestic violence.

(*iii*) Beginning January 1, 2024, a violation of [MCL 750.81c(1)], threatening a [DHHS'] employee with physical harm.

(*iv*) A violation of [MCL 750.115], breaking and entering or illegal entry.

(*v*) A violation of [MCL 750.136b(7)], child abuse in the fourth degree.

(*vi*) A violation of [MCL 750.145], contributing to the neglect or delinquency of a minor.

(*vii*) A misdemeanor violation of [MCL 750.145d], using the internet or a computer to make a prohibited communication.

(*viii*) Beginning January 1, 2024, a violation of [MCL 750.174a(2)] or [MCL 750.174a(3)(b)], embezzlement from a vulnerable adult of an amount less than $200.00.

(*ix*) Beginning January 1, 2024, a violation of [MCL 750.174a(3)(a)], embezzlement from a vulnerable adult of an amount of $200.00 to $1,000.00.

(*x*) A violation of [MCL 750.233], intentionally aiming a firearm without malice.

(*xi*) A violation of [MCL 750.234], discharge of a firearm intentionally aimed at a person.

(*xii*) A violation of [MCL 750.235], discharge of an intentionally aimed firearm resulting in injury.

(*xiii*) A violation of [MCL 750.335a], indecent exposure.

(*xiv*) A violation of [MCL 750.411h], stalking.

(*xv*) A violation of [MCL 257.601b(2)], injuring a worker in a work zone.

(*xvi*) Beginning January 1, 2024, a violation of [MCL 257.601d(1)], moving violation causing death.

(*xvii*) Beginning January 1, 2024, a violation of [MCL 257.601d(2)], moving violation causing serious impairment of a body function.

(*xviii*) A violation of [MCL 257.617a], leaving the scene of a personal injury accident.

(*xix*) A violation of [MCL 257.625], operating a vehicle while under the influence of or impaired by intoxicating liquor or a controlled substance, or with an unlawful blood alcohol content, if the violation involves an accident resulting in damage to another individual's property or physical injury or death to another individual.

(*xx*) Selling or furnishing alcoholic liquor to an individual less than 21 years of age in violation of [MCL 436.1701], if the violation results in physical injury or death to any individual.

(*xxi*) A violation of [MCL 324.80176(1) or MCL 324.80176(3)], operating a vessel while under the influence of or impaired by intoxicating liquor or a controlled substance, or with an unlawful blood alcohol content, if the violation involves an accident resulting in damage to another individual's property or physical injury or death to any individual.

(*xxii*) A violation of a local ordinance substantially corresponding to a violation enumerated in subparagraphs (*i*) to (*xxi*).

(*xxiii*) A violation charged as a crime or serious misdemeanor enumerated in subparagraphs (*i*) to (*xxii*) but subsequently reduced to or pleaded to as a misdemeanor. As used in this subparagraph, 'crime' means that term as defined in [MCL 780.752(1)(b)]." MCL 764.9c(9)(c); MCL 769.5(7); MCL 780.811(1)(a).

Sexual assault of a minor

- For purposes of MCL 770.9b, *sexual assault of a minor* "means a violation of any of the following:

  "(*i*) . . . MCL 750.520b, [MCL] 750.520c, and [MCL 750.520d(1)(b)-(e)], in which the victim of the offense is a minor.

  (*ii*) . . . [MCL 750.520d(1)(a)], if the actor is 5 or more years older than the victim.

> (*iii*) . . . MCL 750.520g, for assaulting an individual with the intent to commit criminal sexual conduct described in subparagraphs (*i*) and (*ii*)." MCL 770.9b(3)(b).

Snowmobile

- For purposes of MCL 324.82101 *et seq.*, *snowmobile* "means any motor-driven vehicle that is designed for travel primarily on snow or ice and that utilizes sled-type runners or skis, an endless belt tread, or any combination of these or other similar means of contact with the surface upon which it is operated, but is not a vehicle that must be registered under . . . MCL 257.1 to [MCL] 257.923." MCL 324.82101(x).

Social networking site

- For purposes of MCL 257.602b, *social networking site* means "any web-based service that allows individuals to construct a profile within a founded system and communicate with other users of the site for social or amusement purposes." MCL 257.602b(12)(d).

Specified juvenile violation

- For purposes of MCL 764.1f, *specified juvenile violation* means "any of the following:

> (a) A violation of [MCL 750.72, MCL 750.83, MCL 750.86, MCL 750.89, MCL 750.91, MCL 750.316, MCL 750.317, MCL 750.349, MCL 750.520b, MCL 750.529, MCL 750.529a, or MCL 750.531].
>
> (b) A violation of [MCL 750.84 or MCL 750.110a(2)], if the juvenile is armed with a dangerous weapon. . . .
>
> (c) A violation of [MCL 750.186a], regarding escape or attempted escape from a juvenile facility, but only if the juvenile facility from which the individual escaped or attempted to escape was 1 of the following:
>
> > (*i*) A high-security or medium-security facility operated by the [Department of Health and Human Services] or a county juvenile agency.
> >
> > (*ii*) A high-security facility operated by a private agency under contract with the family independence agency or a county juvenile agency.
>
> (d) A violation of [MCL 333.7401(2)(a)(*i*) or MCL 333.7403(2)(a)(*i*)].

(e) An attempt to commit a violation described in subdivisions (a) to (d).

(f) Conspiracy to commit a violation described in subdivisions (a) to (d).

(g) Solicitation to commit a violation described in subdivisions (a) to (d).

(h) Any lesser included offense of a violation described in subdivisions (a) to (g) if the individual is charged with a violation described in subdivisions (a) to (g).

(i) Any other violation arising out of the same transaction as a violation described in subdivisions (a) to (g) if the individual is charged with a violation described in subdivisions (a) to (g)." MCL 764.1f(2).

State civil infraction

- For purposes of the Revised Judicature Act, *state civil infraction* means "a civil infraction involving either of the following:

  (*i*) A violation of state law that is designated by statute as a state civil infraction.

  (*ii*) A violation of a city, township, village, or county ordinance that is designated by statute as a state civil infraction." MCL 600.113(1)(e).

State civil infraction action

- For purposes of the Revised Judicature Act, *state civil infraction action* means "a civil action in which the defendant is alleged to be responsible for a state civil infraction." MCL 600.113(1)(f).

Street or highway

- For purposes of the Michigan Vehicle Code, *street or highway* means "the entire width between boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel." MCL 257.64.

T

Taken

- For purposes of the Code of Criminal Procedure, *taken*, *brought*, or *before* "a magistrate or judge for purposes of criminal

arraignment or the setting of bail means either" physical presence before a judge or district court magistrate or presence before a judge or district court magistrate by use of 2-way interactive video technology. MCL 761.1(t).

Taxicab

- For purposes of the Michigan Vehicle Code, *taxicab* "means that term as defined in [MCL 257.2102]." MCL 257.67c. MCL 257.2102(i) provides that *taxicab* "means a motor vehicle with a seating capacity of 8 passengers or fewer, including the driver, that is equipped with a roof light and that carries passengers for a fee usually determined by the distance traveled. Taxicab does not include a commercial vehicle."

Taxicab driver

- For purposes of the Michigan Vehicle Code, *taxicab driver* "means that term as defined in [MCL 257.2102]." MCL 257.67d. MCL 257.2102(k) provides that *taxicab driver* "means an individual who uses a taxicab to provide transportation services to potential passengers."

Temporary traffic control device

- For the purposes of MCL 257.79d, *temporary traffic control device* "means a traffic control device that is installed for a limited time period during construction, maintenance, public utility work, reconstruction, repair, resurfacing, or surveying as described in [MCL 257.79d(1)]." MCL 257.79d(2).

Torment

- For purposes of the Dangerous Animals Act, *torment* means "an act or omission that causes unjustifiable pain, suffering, and distress to an animal, or causes mental and emotional anguish in the animal as evidenced by its altered behavior, for a purpose such as sadistic pleasure, coercion, or punishment that an ordinary and reasonable person would conclude is likely to precipitate the bite or attack." MCL 287.321(f).

Trailway municipal civil infraction

- For purposes of the Revised Judicature Act, *trailway municipal civil infraction* means "a municipal civil infraction involving the operation of a vehicle on a recreational trailway at a time, in a place, or in a manner prohibited by ordinance." MCL 600.113(1)(g).

Trailway municipal civil infraction action

- For purposes of the Revised Judicature Act, *trailway municipal civil infraction action* means "a civil infraction action in which the defendant is alleged to be responsible for a trailway municipal civil infraction." MCL 600.113(1)(h).

Transportation network company

- For purposes of the Michigan Vehicle Code, *transportation network company* "means that term as defined in [MCL 257.2102]." MCL 257.76a. MCL 257.2102(*l*) provides that *transportation network company* "means a person operating in [Michigan] that uses a digital network to connect transportation network company riders to transportation network company drivers who provide transportation network company prearranged rides. Transportation network company does not include a taxi service, transportation service arranged through a transportation broker, ridesharing arrangement, or transportation service using fixed routes at regular intervals."

Transportation network company digital network

- For purposes of the Michigan Vehicle Code, *digital network* "means that term as defined in [MCL 257.2102]." MCL 257.12c. Although MCL 257.2102 does not define *digital network*, MCL 257.2102(m) defines *transportation network company digital network* to mean "an online-enabled application, website, or system offered or utilized by a transportation network company that enables the prearrangement of rides with transportation network company drivers."

Transportation network company driver

- For purposes of the Michigan Vehicle Code, *transportation network company driver* "means that term as defined in [MCL 257.2102]." MCL 257.76b. MCL 257.2102(n) provides that *transportation network company driver* "means an individual who satisfies all of the following:

  (*i*) Receives connections to potential passengers and related services from a transportation network company in exchange for payment of a fee to the transportation network company.

  (*ii*) Uses a personal vehicle to offer or provide transportation network company prearranged rides to transportation network company riders upon connection through a

Transportation network company prearranged ride

- For purposes of the Michigan Vehicle Code, *transportation network company prearranged ride* "means that term as defined in [MCL 257.2102]." MCL 257.76c. MCL 257.2102(o) provides that *transportation network company prearranged ride* "means the provision of transportation by a transportation network company driver to a transportation network company rider, beginning when a transportation network company driver accepts a ride requested by a transportation network company rider through a digital network controlled by a transportation network company, continuing while the transportation network company driver transports the requesting transportation network company rider, and ending when the last requesting transportation network company rider departs from the personal vehicle. Transportation network company prearranged ride does not include a shared-expense carpooling or vanpooling arrangement or transportation provided using a taxicab, limousine, or other vehicle."

Transportation network company rider

- For purposes of the Michigan Vehicle Code, *transportation network company rider* "means that term as defined in [MCL 257.2102]." MCL 257.76d. MCL 257.2102(p) provides that *transportation network company rider* "means an individual who uses a transportation network company's digital network to connect with a transportation network company driver who provides a transportation network company prearranged ride to the transportation network company rider in the transportation network company driver's personal vehicle between points chosen by the transportation network company rider."

U

Upfitter

- For purposes of the MVC, *upfitter* "means a person that modifies a motor vehicle after it was manufactured by installing an automated driving system in that motor vehicle to convert it to an automated motor vehicle. Upfitter includes a subcomponent system producer recognized by the secretary of state that develops or produces automated driving systems." MCL 257.2b(16).

Use a mobile electronic device

- For purposes of MCL 257.602b other than MCL 257.602b(2), *use a mobile electronic device* means "using a mobile electronic device to do any task, including, but not limited to, any of the following:

  (*i*) Send or receive a telephone call.

  (*ii*) Send, receive, or read a text message.

  (*iii*) View, record, or transmit a video.

  (*iv*) Access, read, or post to a social networking site." MCL 257.602b(13).

- For purposes of MCL 257.602b(2), *use a mobile electronic device* means "1 or more of the following:

  (a) using a mobile electronic device to do any task, including, but not limited to, any of the following:

  (*i*) Send or receive a telephone call.

  (*ii*) Send, receive, or read a text message.

  (*iii*) View, record, or transmit a video.

  (*iv*) Access, read, or post to a social networking site.

  (b) Reaching for a mobile electronic device in a manner that requires a driver to maneuver so that the driver is no longer in a seated driving position, restrained by a seat belt that is installed as required by 49 CFR 393.93 and adjusted in accordance with the vehicle manufacturer's instructions." MCL 257.602b(2).

V

Vehicle

- For purposes of the Michigan Vehicle Code, *vehicle* means "every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices exclusively moved by human power or used exclusively upon stationary rails or tracks and except, only for the purpose of titling and registration under this act, a mobile home as defined in [MCL 125.2302.]" MCL 257.79.

Vehicle immobilization

- For purposes of MCL 257.904d, *vehicle immobilization* means "requiring the motor vehicle involved in the violation immobilized in a manner provided in [MCL 257.904e]." MCL 257.904d(8)(b).

Vessel

- For purposes of the Natural Resources and Environmental Protection Act, Part 801, Marine Safety, *vessel* means "every description of watercraft used or capable of being used as a means of transportation on water." MCL 324.80104(t).

Victim

- For purposes of the Crime Victim's Rights Act, Article 1, *victim* means "any of the following:

  (*i*) An individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime, except as provided in subparagraph (*ii*), (*iii*), (*iv*), or (*v*).

  (*ii*) The following individuals other than the defendant if the victim is deceased, except as provided in subparagraph (*v*):

    (A) The spouse of the deceased victim.

    (B) A child of the deceased victim if the child is 18 years of age or older and sub-subparagraph (A) does not apply.

    (C) A parent of the deceased victim if sub-subparagraphs (A) and (B) do not apply.

    (D) The guardian or custodian of a child of the deceased victim if the child is less than 18 years of age and sub-subparagraphs (A) to (C) do not apply.

    (E) A sibling of the deceased victim if sub-subparagraphs (A) to (D) do not apply.

    (F) A grandparent of the deceased victim if sub-subparagraphs (A) to (E) to not apply.

  (*iii*) A parent, guardian, or custodian of the victim, if the victim is less than 18 years of age, who is neither the

defendant nor incarcerated, if the parent, guardian, or custodian so chooses.

(*iv*) A parent, guardian, or custodian of a victim who is mentally or emotionally unable to participate in the legal process if he or she is neither the defendant nor incarcerated.

(*v*) For the purpose of submitting or making an impact statement only, if the victim as defined in subparagraph (*i*) is deceased, is so mentally incapacitated that he or she cannot meaningfully understand or participate in the legal process, or consents to the designation as a victim of the following individuals other than the defendant:

(A) The spouse of the victim.

(B) A child of the victim if the child is 18 years of age or older.

(C) A parent of the victim.

(D) The guardian or custodian of a child of the victim if the child is less than 18 years of age.

(E) A sibling of the victim.

(F) A grandparent of the victim.

(G) A guardian or custodian of the victim if the victim is less than 18 years of age at the time of the commission of the crime and that guardian or custodian is not incarcerated." MCL 780.752(1)(m).

- For purposes of the Crime Victim's Rights Act, Article 2, *victim* means "any of the following:

(*i*) A person who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of an offense, except as provided in subparagraph (*ii*), (*iii*), (*iv*), or (*v*).

(*ii*) The following individuals other than the juvenile if the victim is deceased, except as provided in subparagraph (*v*):

(A) The spouse of the deceased victim.

(B) A child of the deceased victim if the child is 18 years of age or older and sub-subparagraph (A) does not apply.

(C) A parent of a deceased victim if sub-subparagraphs (A) and (B) do not apply.

(D) The guardian or custodian of a child of a deceased victim if the child is less than 18 years of age and sub-subparagraphs (A) to (C) do not apply.

(E) A sibling of the deceased victim if sub-subparagraphs (A) to (D) do not apply.

(F) A grandparent of the deceased victim if sub-subparagraphs (A) to (E) do not apply.

(*iii*) A parent, guardian, or custodian of a victim who is less than 18 years of age and who is neither the juvenile nor incarcerated, if the parent, guardian, or custodian so chooses.

(*iv*) A parent, guardian, or custodian of a victim who is mentally or emotionally unable to participate in the legal process if he or she is neither the juvenile nor incarcerated.

(*v*) For the purpose of submitting or making an impact statement only, if the victim as defined in subparagraph (*i*) is deceased, is so mentally incapacitated that he or she cannot meaningfully understand or participate in the legal process, or consents to the designation as a victim of the following individuals other than the juvenile:

(A) The spouse of the victim.

(B) A child of the victim if the child is 18 years of age or older.

(C) A parent of the victim.

(D) The guardian or custodian of a child of the victim if the child is less than 18 years of age.

(E) A sibling of the victim.

(F) A grandparent of the victim.

(G) A guardian or custodian of the victim if the victim is less than 18 years of age at the time of the commission of the crime and that guardian or custodian is not incarcerated." MCL 780.781(1)(j).

- For purposes of the Crime Victim's Rights Act, Article 3, *victim* means "any of the following:

  (*i*) An individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a serious misdemeanor, except as provided in subparagraph (*ii*), (*iii*), (*iv*), or (*v*).

  (*ii*) The following individuals other than the defendant if the victim is deceased, except as provided in subparagraph (*v*):

  (A) The spouse of the deceased victim.

  (B) A child of the deceased victim if the child is 18 years of age or older and sub-subparagraph (A) does not apply.

  (C) A parent of a deceased victim if sub-subparagraphs (A) and (B) do not apply.

  (D) The guardian or custodian of a child of a deceased victim if the child is less than 18 years of age and sub-subparagraphs (A) to (C) do not apply.

  (E) A sibling of the deceased victim if sub-subparagraphs (A) to (D) do not apply.

  (F) A grandparent of the deceased victim if sub-subparagraphs (A) to (E) do not apply.

  (*iii*) A parent, guardian, or custodian of a victim who is less than 18 years of age and who is neither the defendant nor incarcerated, if the parent, guardian, or custodian so chooses.

  (*iv*) A parent, guardian, or custodian of a victim who is so mentally incapacitated that he or she cannot meaningfully understand or participate in the legal process if he or she is not the defendant and is not incarcerated.

  (*v*) For the purpose of submitting or making an impact statement only, if the victim as defined in subparagraph (*i*) is deceased, is so mentally incapacitated that he or she cannot meaningfully understand or participate in the legal process, or consents to the designation as a victim of the following individuals other than the defendant:

(A) The spouse of the victim.

(B) A child of the victim if the child is 18 years of age or older.

(C) A parent of the victim.

(D) The guardian or custodian of a child of the victim if the child is less than 18 years of age.

(E) A sibling of the victim.

(F) A grandparent of the victim.

(G) A guardian or custodian of the victim if the victim is less than 18 years of age at the time of the commission of the crime and that guardian or custodian is not incarcerated." MCL 780.811(1)(h).

Videoconferencing

- For purposes of Subchapter 2.400 of the Michigan Court Rules, *videoconferencing* "means the use of an interactive technology, including a remote digital platform, that sends video, voice, and/or data signals over a transmission circuit so that two or more individuals or groups can communicate with each other simultaneously using video codecs, monitors, cameras, audio microphones, and audio speakers. It includes use of a remote video platform through an audio-only option." MCR 2.407(A)(2).

Violent felony

- For purposes of MCL 762.10d, MCL 764.1a, MCL 764.3, and MCL 765.6e, *violent felony* "means that term as defined in . . . MCL 791.236." MCL 762.10d(5)(c); MCL 764.1a(9)(d); MCL 764.3(5)(c); MCL 765.6e(2)(c). "As used in [MCL 791.236], 'violent felony' means an offense against a person in violation of MCL 750.82, [MCL] 750.83, [MCL] 750.84, [MCL] 750.86, [MCL] 750.87, [MCL] 750.88, [MCL] 750.89, [MCL] 750.316, [MCL] 750.317, [MCL] 750.321, [MCL] 750.349, [MCL] 750.349a, [MCL] 750.350, [MCL] 750.397, [MCL] 750.520b, [MCL] 750.520c, [MCL] 750.520d, [MCL] 750.520e, [MCL] 750.520g, [MCL] 750.529, [MCL] 750.529a, [or MCL] 750.530." MCL 791.236(20).

- For purposes of MCR 6.106(B)(1), *violent felony* means "a felony, an element of which involves a violent act or threat of a violent act against any other person." MCR 6.106(B)(2).

Vulnerable adult

- For purposes of MCL 764.1a, *vulnerable adult* means "that term as defined in . . . MCL 750.145m." MCL 764.1a(9)(b). MCL 750.145m(u) defines *vulnerable adult* as "1 or more of the following: (*i*) [a]n individual age 18 or over who, because of age, developmental disability, mental illness, or physical disability requires supervision or personal care or lacks the personal and social skills required to live independently[;] (*ii*) [a]n adult as defined in . . . [MCL 400.703(1)(b);] (*iii*) [a]n adult as defined in . . . MCL 400.11."

W

Work zone

- For purposes of the Michigan Vehicle Code, *work zone* "means a portion of a street or highway open to vehicular traffic and adjacent to a barrier, berm, lane, or shoulder of a street or highway within which construction, maintenance, public utility work, reconstruction, repair, resurfacing, or surveying is being conducted by 1 or more individuals and that meets any of the following:

  (a) Is between both of the following:

  (*i*) A sign notifying the beginning of work.

  (*ii*) An 'end road work' sign or, if no sign is posted, the last temporary traffic control device before the normal flow of traffic resumes.

  (b) Is between a 'begin work convoy' sign and an 'end work convoy' sign.

  (c) If a moving or stationary vehicle or equipment exhibiting a rotating beacon or strobe light is used, is between both of the following points:

  (*i*) A point that is 150 feet behind the rear of the vehicle or equipment or that is the point from which the beacon or strobe light is first visible on the street or highway behind the vehicle or equipment, whichever is closer to the vehicle or equipment.

  (*ii*) A point that is 150 feet in front of the front of the vehicle or equipment or that is the point from which the beacon or strobe light is first visible on the street or

highway in front of the vehicle or equipment, whichever is closer to the vehicle or equipment." MCL 257.79d(1).

Writing

- For purposes of the Code of Criminal Procedure, *writing* or *written* or a similar term "refers to words printed, painted, engraved, lithographed, photographed, copied, traced, or otherwise made visible to the eye." MCL 761.1(w).

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