GUIDE TO THE PRACTICE

OF

CRIMINAL LAW

IN

WAYNE COUNTY

by

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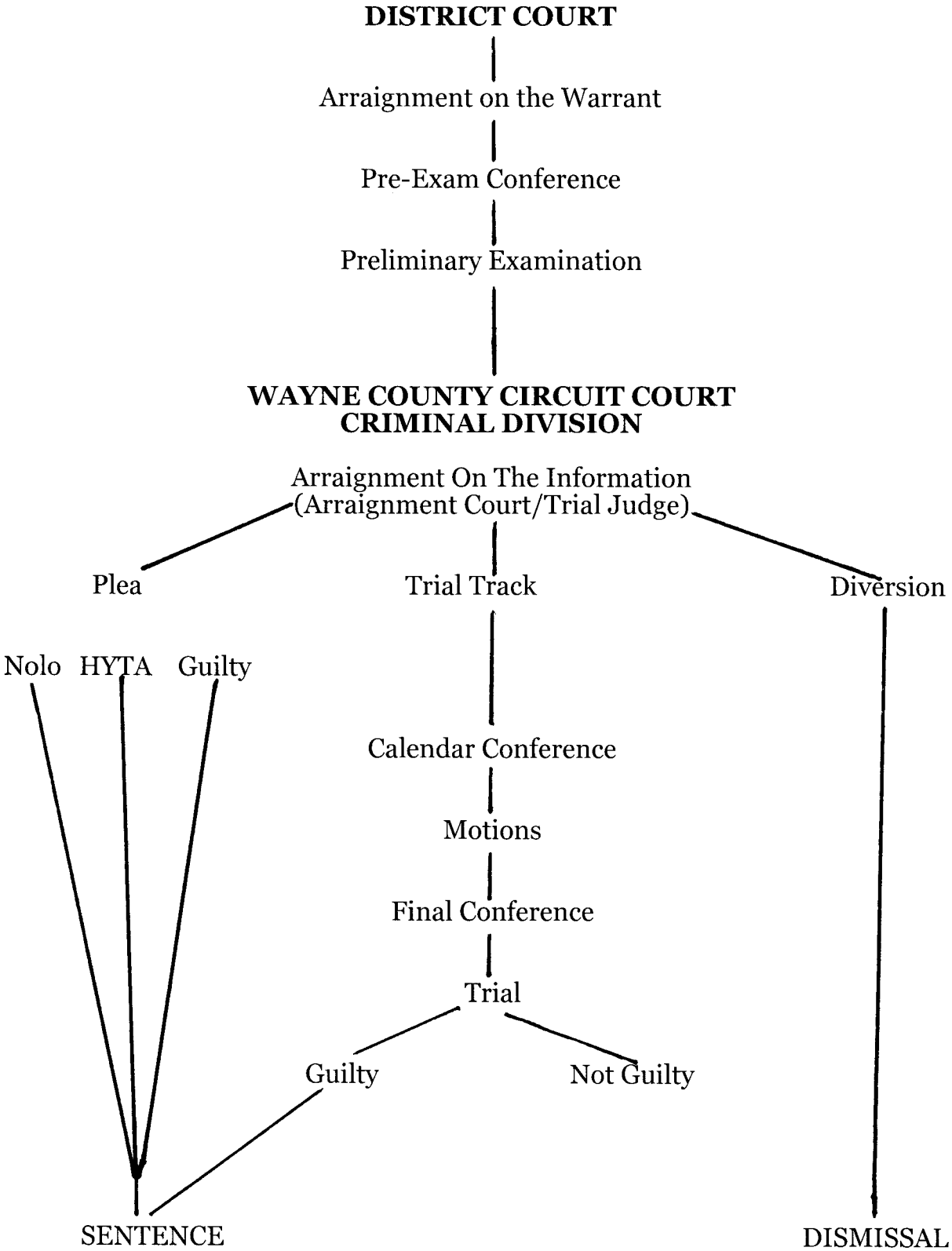
TABLE OF CONTENTS

INTRODUCTION

The purpose of this handbook is to familiarize new attorneys, especially those representing indigent clients, with the practice of criminal law in the County of Wayne. The focus is primarily on the representation of defendants charged with felonies.

This pamphlet is only a beginning. It is not intended as a research tool. Defense counsel is encouraged to refer to the relevant cases, court rules, and statutes, and to consult with more experienced attorneys.

ANATOMY OF A CASE



THE COMPLAINT AND ARREST WARRANT

A crime becomes part of the criminal justice system in two ways. A complaint is made to the police thus alerting them that a crime has occurred, or the police see a crime occurring and arrest the defendant.

In the first instance, a person reports a crime to the police. An officer takes this information and fills out a preliminary complaint report (PCR). This report is then turned over to a sergeant or another officer who is called the officer-in-charge (PIC) of the case. This officer types up an Investigator's Report (write-up) which summarizes all the evidence known to the police at that time.

In the second instance, the police have made a warrantless arrest of a putative defendant. They fill out the same paperwork as described above. The6y may even attempt to interview the person they have in custody.

A third way to start a criminal case, but one used rarely in Wayne County, is by grand jury investigation.

The OIC then takes the write-up to the prosecutor's office to obtain a complaint and a warrant for the perpetrator's arrest. A warrant prosecutor reviews the write-up, talks to the OIC and may even question the complainant. He or she then determines what crime, if any, was committed and also determines whether there is probable cause to believe that the person in custody, or the name suspect, committed the crime.

A complaint is then prepared stating what crime has allegedly occurred. A warrant for the suspect's arrest is also prepared. The OIC takes these two documents and the complainant to a magistrate in the district court. The complainant will be sworn in and the magistrate will ask questions of the complainant and make an independent determination of probable cause. The complainant will also sign the

complaint. In certain cases, such as homicides, the OIC signs the complaint and swears on information and belief that the facts stated to the magistrate are true. If probable cause is found, the magistrate will sign both documents.

These two documents are place in the court file in the district court. Defense counsel should review both documents before the preliminary examination. The complaint must comport with certain rules of pleading and it also informs counsel and the defendant of the exact charge(s) at this stage of the proceedings.

THE DISTRICT COURTS

Wayne County has twenty-three district courts. They have jurisdiction over misdemeanors that carry a maximum of a year in jail. More importantly, the district courts have exclusive jurisdiction over two procedures in felony cases. These two procedures are the arraignment on the complaint and warrant, and the preliminary examination. The district court also shares jurisdiction with Circuit Court in issuing writs of habeas corpus and search warrants.

ARRAIGNMENT AND BOND

A Defendant is arraigned on the complaint and warrant before a magistrate of the district court. The magistrate will inform the defendant of the specific charges and the possible penalties. Since indigent defendants usually are not represented by counsel at this stage, a not guilty plea is officially entered. The indigent defendant will also sign a document requesting the appointment of counsel.

The amount of bond is also fixed at this hearing. The different types of bonds are codified at MCR 6.106. The court will examine the defendant's previous criminal contacts, roots in the community, mental condition including character and reputation, employment history, financial situation, and the seriousness of the crime charged among other factors. See MCR 6.106(F).

There are three kinds of bonds. The first is called release on own recognizance (ROR), more commonly referred to as a personal bond. A monetary amount is fixed by the court, but no money is posted. The defendant promises to pay that amount if he or she fails to appear at the court dates. This kind of bond can have other

conditions attached to it, such as paying off outstanding traffic tickets or maintaining employment.

The second kind of bond is a cash bond in which the payment of ten per cent at the courthouse or jail secures the defendant's release. This is commonly called a ten percent bond. The person posting the bond for the defendant promises to pay the other ninety percent if the defendant fails to appear at the scheduled court dates. When the bond money is posted at the court or jail, that amount minus ten persent is returned to the payor at the end of the case. For instance, if the bond is $5,000/10%, $500 will secure the defendant's release. Then regardless of whether the defendant is found guilty or not guilty, $450 will be returned.

The court may also add conditions to any of the above bonds. MCR 6.106(D) lists some of the conditions which may be placed on a defendant's release.

In order to receive the bond money, the person posting the money must go to the bond office on the ground floor of Frank Murphy Hall of Justice. That person must have picture ID, the bond receipt, and a slip obtained from the clerk of the courtroom where the final disposition occurs, showing that the case has been completed. If the bond receipt is lost, the payor can still receive the refund by signing a form acknowledging receipt of the money. Regardless of whether the bond money was posted at a jail, a district court, or in the circuit court, all monies are returned at the circuit court, criminal division at Frank Murphy Hall of Justice.

If the court finds that the above two kinds of bonds will not assure the defendant's appearance, a surety bond can be set. The court must state on the record why a surety bond is necessary. MCR 6.106(F)(2). A cash amount is again specified, but the cash amount can be satisfied by the posting of a surety. A surety means that property must be pledged to assure the defendant's appearance. The defendant, not

the court, has the option of paying the full cash amount or of posting a surety bond. See MCR 6.106(D)(3).

If the defendant or the defendant's family decides to use a bail bondsman, they should be informed that they will not get any money back.

In the event that a defendant fails to appear, a warrant called a capias is issued for his or her arrest. The posted bond will then be forfeited and the surety will be obligated to pay the balance.

MCR 6.106 also authorizes pre-trial detention in certain cases. Defendants who may find themselves held without bond are:

1. Those charged with murder and treason.

2. Those charged with a violent crime who are also on probation, parole, on bond for another violent felony or have two previous convictions for violent felonies in the last 15 years, if proof of the defendant's guilt is evident or the presumption great.

3. Those charged with criminal sexual conduct first degree, armed robbery or extortion for money or other valuable thing, if the proof of defendant's guilt is evident or the presumption is great, unless the court finds by clear and convincing evidence that the defendant is not likely to flee nor does he present a danger.

A "violent felony" is one which includes not only a violent act but also the threat of a violent act.

If the arraigning court determines that the defendant is to be held without bond, it may hold a hearing. But the right to a hearing is only triggered by a defense request. At the hearing, both the prosecution and the defense can put on witnesses. The rules of evidence do not apply except those pertaining to privilege.

The magistrate's decision is appealable to the court which has appellate jurisdiction. The standard of review is whether there was an abuse of discretion. The detention decision can also be challenged at all subsequent court dates.

Any person held pursuant to this court rule must be tried within 90 days or the trial court must schedule a hearing and set bond.

Practice Note

1. Do not waive the pre-trial detention hearing. Use this hearing to discover what evidence the prosecution has against your client.

MCR 6.106
PRETRIAL RELEASE

Rule 6.106 Pretrial Release

(A) In General. At the defendant's first appearance before a court, 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 subrule (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).

(B) Pretrial Release/Custody Order Under Const 1963, art 1, § 15.
- (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 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.
- (2) A "violent felony" within the meaning of subrule (B)(1) is a felony, an element of which involves a violent act or threat of a violent act against any other person.
- (3) If the court determines as provided in subrule (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.
- (4) The court must state the reasons for an order of custody on the record and on a form approved by the State Court Administrator's Office entitled "Custody Order." The completed form must be placed in the court file.

(C) Release on Personal Recognizance. If the defendant is not ordered held in custody pursuant to subrule (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.

(D) Conditional Release. If the court determines that the release described in subrule (C) 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;
(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, the most restrictive provision of each order shall take precedence over the other court order until the conflict is resolved.
(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 subrule (E), reasonably necessary to ensure the defendant's appearance as required and the safety of the public.

(E) 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 otherwise be assured, money bail, with or without conditions described in subrule (D), may be required.

(1) The court may require the defendant to
(a) post, at the defendant's option,
(i) a surety bond 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 that is executed by a surety approved by the court in an amount equal to 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, with the court's consent, [B] designated real property.

(2) The court may require satisfactory proof of value and interest in property if the court consents to the posting of a bond secured by designated real property.

(F) Decision; Statement of Reasons.

(1) 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.

(2) If the court orders the defendant held in custody pursuant to subrule (B) or released on conditions in subrule (D) that include money bail, the court must

state the reasons for its decision on the record. The court need not make a finding on each of the enumerated factors.

(3) Nothing in subrules (C) through (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.

(G) Custody Hearing.

(1) Entitlement to Hearing. A court having jurisdiction of a defendant may conduct a custody hearing if the defendant is being held in custody pursuant to subrule (B) and a custody hearing is requested by either the defendant or the prosecutor. 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 subrule (B).

(2) Hearing Procedure.

(a) 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.

(b) The rules of evidence, except those pertaining to privilege, are not applicable. Unless the court makes the findings required to enter an order under subrule (B)(1), the defendant must be ordered released under subrule (C) or (D). A verbatim record of the hearing must be made.

(H) Appeals; Modification of Release Decision.

(1) 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. There is no fee for filing the motion. The reviewing court may not stay, vacate, modify, or reverse the release decision except on finding an abuse of discretion.

(2) Modification of Release Decision.

(a) Prior to 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.

(b) Arraignment on Information and Afterwards. 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.

(c) Burden of Going Forward. The party seeking modification of a release decision has the burden of going forward.

(3) Emergency Release. If a defendant being held in pretrial custody under this rule 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 this rule to ensure the appearance of the defendant as required and to protect the public. 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.

(I) Termination of Release Order.

(1) 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, return 90 percent of the deposited money and retain 10 percent.

(2) If the defendant has failed to comply with the conditions of release, the court may issue a warrant for the arrest of the defendant and enter an order revoking the release order and declaring the bail money deposited or the surety bond, if any, forfeited.

(a) The court must mail notice of any revocation order immediately to the defendant at the defendant's last known address and, if forfeiture of bail or bond has been ordered, to anyone who posted bail or bond.

(b) If the defendant does not appear and surrender to the court within 28 days after the revocation date, the court may continue the revocation order and enter judgment for the state or local unit of government against the defendant and anyone who posted bail or bond for an amount not to exceed the full amount of the bail, and costs of the court proceedings, or if a surety bond was posted, an amount not to exceed the full

amount of the surety bond. If the amount of a forfeited surety bond is less than the full amount of the bail, the defendant shall continue to be liable to the court for the difference, unless otherwise ordered by the court. If the defendant does not within that period satisfy the court that there was compliance with the conditions of release other than appearance or that compliance was impossible through no fault of the defendant, the court may continue the revocation order and enter judgment for the state or local unit of government against the defendant alone for an amount not to exceed the full amount of the bond, and costs of the court proceedings.

(c) The 10 percent bail deposit made under subrule (E)(1)(a)(ii)[B] must be applied to the costs and, if any remains, to the balance of the judgment. The amount applied to the judgment must be transferred to the county treasury for a circuit court case, to the treasuries of the governments contributing to the district control unit for a district court case, or to the treasury of the appropriate municipal government for a municipal court case. The balance of the judgment may be enforced and collected as a judgment entered in a civil case.

(3) 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 subrule (I)(1).

ASSIGNMENT OF COUNSEL

The document requesting the appointment of counsel, signed by the defendant at the arraignment, is then transferred to the appointing judge. In theory, each judge assigns counsel on a two-week rotation basis. The assignment clerk notifies attorneys of their appointments. The assigned counsel services' phone number is 224-0593.

After being notified of the appointment to represent an indigent defendant, the attorney must pick up the assignment packet at the Clerk's Office within twenty-four hours. Ideally, this packet should contain the appointment sheet, the Investigator's Write-Up, the defendant's criminal record, a computer print out of any pending cases. The appointment sheet informs the attorney of the defendant's name, address, phone number, the charge, and the date of examination. The attorney should not rely on the write-up or the assignment form to indicate what the charge is, but should always check the court file before the examination to find out the exact charge.

Pre-examination discovery is almost non-existent in the out-county district courts. The prosecutor will let the attorney view the write-up on the day of the examination. (See the chapter entitle Preliminary Examinations, *infra*).

A minimum level of competency is required before an attorney is eligible to receive an assignment. Attorneys interested in receiving assignments should contact the Clerk's office on the ninth floor of Frank Murphy Hall of Justice for a list of the requirements. A separate level of competency is required to represent defendants charged with capital offenses and a special certification is needed to represent juveniles waived from Juvenile Court to Circuit Court.

After accepting an appointment, the attorney is responsible for representing the client in all court proceedings from the preliminary examination through sentencing. MCR 6.005(H) codifies the scope of the trial lawyer's responsibilities.

> (H) Scope of Trial Lawyer's Responsibilities. The responsibilities of the trial lawyer appointed to represent the defendant include
>
> (1) representing the defendant in all trial court proceedings including sentencing and proceedings leading to possible revocation of youthful trainee status,
> (2) filing of interlocutory appeals the lawyer deems appropriate,
> (3) responding to any pre-conviction appeals by the prosecutor, and
> (4) unless an appellate lawyer has been appointed, filing of post-conviction motions for new trial, for a directed verdict or acquittal, to withdraw a plea, or for resentencing.

Attorneys can also sign up to act as house counsel at preliminary examinations. House counsel represents any defendant who has appeared without a lawyer. The representation continues to completion of the case. Attorneys may contact the assignment clerk to sign up.

Practice Note

1. Read MCR 6.005(H) to familiarize yourself with the duties of assigned counsel.

CLIENT INTERVIEWS

After the arraignment, the defendant is either released on bond or sent to the Wayne County Jail. To find out if the client is in the jail, the attorney may phone (313) 224-2222 or (313) 224-0795 and ask for Prisoner Information.

Visiting hours for attorneys are as follows:

Old Jail	New Jail
8:30 am - 10:00 am	7:30 am - 10:30 am
1:00 pm - 3:30 pm	1:00 pm - 2:30 pm
7:00 pm - 9:00 pm	6:00 pm - 9:00 pm

An interview should be conducted as soon as possible. For both jail and office visits, a form verifying the visit must be filled out and attached to the voucher in order to receive compensation. In the case of a jail visit, a sheriff or police officer must sign the form. For an office visit, it is sufficient if only the client signs the form. Failure to attach this form to the voucher will result in a $75 deduction in the fee paid by the county. These form are available in the Clerk's office on the ninth floor.

A standard interview form, based on one used at the Legal Aid and Defenders Office follows this chapter. The first interview should acquaint the attorney with the client's background and the facts of the case. Enough information should be obtained so that the attorney can (1) approach the preliminary examination with a defense already in mind, and (2) make a decision if investigation is needed so it can be started immediately, before witnesses and their memories disappear.

This interview is also important in establishing an attorney-client relationship. Not only will the attorney be assessing the client, but the client will be assessing the attorney.

Bailed clients should be tactfully informed of the proper attire to wear to court. Beepers, cell phones, weapons, and drugs are not part of the proper attire. Make sure your client does not wear clothing which fits the description of the clothing worn by the perpetrator at the time of the crime.

Attorneys should also advise their clients that they will be passing through metal detectors before entering the building. Clients should be encourage to arrive early because of the long lines at the detectors and because their continued freedom may depend on their prompt arrival.

Practice Notes

1. Do not wait until the morning of the preliminary examination to interview the defendant.
2. Use the standard interview form as a guide for eliciting information.
3. Get the "Verification of Visit" form signed.
4. Caution bailed defendants on their attire.
5. Inform jailed defendants' families of the location of the preliminary examination.

INTERVIEW SHEET

Defendant _____ Date_____
Address_____ Phone_____
Years at Address_____ Years in City_____ DOB_____
Soc. Sec.#_____ Military Ser._____ Discharge_____
Citizen_____ Immigration Status_____
Employment History_____
_____
_____
Marital Status_____ Spouse_____
Education_____
Mental problems_____
Substance Abuse_____ Drugs_____Alcohol_____
Parole/Probation_____ Sentence Date & Judge_____
Pending Cases_____
Prior Record_____
Bond_____ Who posted_____Amount_____
Relative/Friend_____
CHARGE_____DATE OF ARREST_____
Place_____
SEARCH (person, house, car?)_____
Items seized_____
STATEMENT____ Oral____ Written____ To whom_____ Date_____
Miranda_____ Voluntary_____
IDENTIFICATION_____ Atty._____ Date_____
Defendant's statement_____
_____
_____
_____
Defenses requiring action: Alibi___Entrapment___Insanity___Prison Duress___520j___
Witnesses (names, addresses, phone)_____
_____
_____
_____
Discovery Problems_____
_____
_____
Action_____
_____
_____
_____

STATE OF MICHIGAN Third Judicial Circuit	ORDER AND CERTIFICATION OF JAIL VISIT	CASE NO.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

File No.

-vs-

Honorable

_____

Defendant.

ORDER

It is ordered that _____

in the above cause, be allowed to visit the above named defendant incarcerated in _____

_____

Dated:_____ _____

HONORABLE

CERTIFICATION OF JAIL OR PRISON VISIT

This will certify that _____

in the above cause, visited the above named defendant, inmate #_____

at _____ on _____.

Dated:_____ _____

Institution Officer

CONSULTATION FORMS

CERTIFICATION OF CONSULTATION

_____
Docket Number

This will certify that _____
Attorney

consulted with _____
Client

at _____ on _____
Place Date

Dated_____ Attorney_____

_____
Client Signature

CERTIFICATION OF CONSULTATION

_____
Docket Number

This will certify that _____
Attorney

consulted with _____
Client

at _____ on _____
Place Date

Dated_____ Attorney_____

_____
Client Signature

VERIFICATION OF JAIL VISIT

Client________________________________ was visited in ____________________________

on ______________________________ by ______________________________________, attorney

Case No. ________________________________

____
Wayne County Deputy Sheriff - Badge No.

VERIFICATION OF JAIL VISIT

Client________________________________ was visited in ____________________________

on ______________________________ by ______________________________________, attorney

Case No. ________________________________

____
Wayne County Deputy Sheriff - Badge No.

VERIFICATION OF JAIL VISIT

Client________________________________ was visited in ____________________________

on ______________________________ by ______________________________________, attorney

Case No. ________________________________

____
Wayne County Deputy Sheriff - Badge No.

VERIFICATION OF JAIL VISIT

Client________________________________ was visited in ____________________________

on ______________________________ by ______________________________________, attorney

Case No. ________________________________

____
Wayne County Deputy Sheriff - Badge No.

PRE-EXAM CONFERENCE

36th District Court only

In order to avoid clogged court dockets, court time pay, and angry witnesses, a conference is held before the scheduled date of the preliminary examination to identify those cases in which the examination will be held. The conference will be held at the Frank Murphy Hall of Justice in either Room 203 or 204 before a judge.

At this conference, the prosecution will also hand you the full discovery packet. You may also be notified of a plea offer. In Wayne County, the pre-exam judge has a duel designation, he/she may accept the waiver of examination as well as the arraignment and plea to a felony.

By way of local practice, the pre-exam judges will not review a bond unless your client waives the preliminary examination.

PRELIMINARY EXAMINATION

A preliminary examination must be scheduled within fourteen days of the arraignment on the complaint and warrant. In order to preserve the issue of the timeliness of the preliminary examination, a motion to dismiss must be made before the commencement of the hearing, and if denied, an appeal must be taken. See MCR 6.110(B)(2).

On the day and time set for the examination, counsel should check in with the clerk in the courtroom. The clerk should be informed if the hearing is going to be held or waived. The clerk should also be apprised as to whether the case is ready to be called.

If counsel has to be in another court, it is not only considerate but also a good business practice to phone the examination court and inform the clerk of the conflict and estimate a time of arrival for the clerk. If an attorney fails to call the clerk, the court may remove counsel's appearance and ask house counsel to represent the client. The phone numbers for the examination courtrooms in the 36th District Court are as follows:

Courtroom:	338	965-2294
	339	965-2295
	438	965-2406
	439	965-2407
	538	965-2565
	539	965-2566

At the preliminary examination, the prosecution must prove that (1) there is probable cause to believe that the crime charged was committed and (2) probable cause to believe that the defendant committed the crime. MCR 6.110(E). The defense can also call witnesses to testify. MCR 6.110(C).

When the case is called, the attorney and client sit at the defense table. Before a witness is called, defense counsel should ask that all witnesses who will testify at the hearing or at trial be sequestered and cautioned not to discuss their testimony with the other witnesses. People v Linzey, 112 Mich App 374 (1981).

The prosecution will then call witnesses to testify. Defense counsel cross-examines these witnesses. At the close of proofs, the prosecutor moves to bind the defendant over for trial.

The defense can respond to the motion in three ways. First, if the prosecution has not met its burden, the defense should ask the examining magistrate to dismiss the case. Counsel should explain how the prosecution's proofs are deficient. Second, if the prosecution has established a lesser crime than the one in the complaint, defense counsel should ask the court to bind the defendant over on the lesser offense. Counsel should point out to the court which element the prosecution failed to prove. Finally, if the proofs are overwhelming counsel should still concede nothing. Answer the motion by saying that it is a question of fact for the jury.

Occasionally, the proofs may show another crime of equal or greater penalty. The prosecution can ask to add these counts. If the prosecution asks for a bind over on a higher charge, defense counsel should object and point out that defendant has a right to a new preliminary examination on the higher charge.

A defendant may waive the hearing. If, after speaking with counsel, a defendant chooses to waive the hearing, he or she will sign a document usually entitled "Waiver of Preliminary Hearing." When the case is called, counsel will inform the judge that the defendant wishes to waive the examination. The examining magistrate will then voir dire the defendant on the record to establish that the waiver of this statutory right is done knowingly and voluntarily.

Though exams should usually be held, there are instances when counsel should consider a waiver. These usually occur where the defendant risks a bind over on a higher charge; where if there is a good chance that the witness may not appear at trial, counsel should not preserve the witness's testimony; or where a defendant, free on bond, risks an increase in the bail amount due to the nature of the testimony. There are even some judges who will lower the bond on jailed defendants if they waive the hearing.

Consider with caution the strategy of waiving the examination when there are police witnesses who will be required to testify at a subsequent hearing before a trial judge. The officers at the hearing may conform their testimony to what the officer testified to at the preliminary exam. This will increase the likelihood that the judge will find their testimony credible. By waiving the hearing, the officers at a subsequent hearing testify cold and that is to the defendant's advantage. This strategy is appropriate in drug and gun cases where a search issue requires the holding of an evidentiary hearing before a trial judge.

Even if there is no chance to win a dismissal or a lesser charge, the better practice is to hold the preliminary hearing. This is a terrific opportunity to discover the strengths and weaknesses in the prosecution's case, and to set witnesses up for impeachment later at trial.

In order to prepare for the examination, counsel should review the witnesses' statements and refer to the statute the client is charged with violating and the annotations to that statute. Another good resource on the statutory elements is the Criminal Jury Instructions, second edition. This is the minimum level of preparation for a preliminary examination.

If time permits, counsel should also interview witnesses and visit the scene of the crime. If counsel anticipates evidentiary problems, preparing a memo in advance is a good practice.

As with Detroit cases, discovery in out-county cases can be requested on the tenth floor of Frank Murphy Hall of Justice.

The examining magistrate will also schedule the next court date, the Arraignment on the Information. If the case is a Detroit case, the arraignment is one week later. If the case is an out-county case, the arraignment is two weeks from the bind over.

After the examination is waived or held, defense counsel or the prosecutor can ask for a review of the amount of the bond. The examining magistrate can also *sua sponte* review the bond. If defense counsel is still dissatisfied with the amount of the bond, a request that the case be referred to Pretrial Services is appropriate. If the court agrees to refer the matter to Pretrial Services, counsel should phone that office to insure that the clerk completed the referral papers. Pretrial Services is located on the ninth floor of the Frank Murphy Hall of Justice, or can be reached by phone at (313) 224-0873.

A circuit court judge is required to have a copy of the magistrate's decision on bond before it can be reviewed. Consequently, counsel must make sure that the preliminary examination transcript is ordered. Under exceptional circumstances, the Chief Judge of the Criminal Division will review a bond in the absence of a transcript.

If the case is dismissed after the examination, it is usually done so "without prejudice." This means that the prosecution can re-issue the warrant if it has new evidence. In order to avoid judge-shopping, the second examination must be held before the original preliminary examination magistrate. MCR 6.110(F).

If the discharge client has no previous criminal record, defense counsel should immediately make a request for the return of the defendant's fingerprints (the car that contains the prints), the arrest card, and the mug shots. Each courtroom should have form orders.

Practice Notes

1. Obtain discovery.
2. Review statute and annotations.
3. Check court file for exact charge.
4. If examination is held, ask to have the witnesses sequestered.
5. Conduct a thorough cross examination. If the witness is unavailable for trial, the transcript of his or her testimony from the examination will be admissible. MRE 804(b)(1).
6. If charges are dismissed and the defendant has no prior record, ask for an order authorizing the return of the fingerprints, arrest car and mug shots.
7. If a referral is made to Pretrial Services, check to make sure the clerk has followed thorough.

STATE OF MICHIGAN **CASE NO:**

36TH DISTRICT COURT
3rd Judicial Circuit

RETURN TO CIRCUIT COURT
FELONY

The People of the State of Michigan

Offense Information
Police Agency / Report No.

Date of Offense

Place of Offense

Complainant or Victim

Complaining Witness

Charge(s)

EXAMINATION WAIVED

1. I, the defendant, understand:
   a. I have a right to employ an attorney.
   b. I may request a court appointed attorney if I am financially unable to employ one
   c. I have a right to a preliminary examination where it must be shown that a crime was committed and probable cause exists to charge me with the crime.

2. I voluntarily waive my right to a preliminary examination and understand that I will be bound over to Circuit Court on the charges in the complaint and warrant (or as amended).

_____ _____
Defendant Attorney Bar no Defendant

3. ___ Examination having been waived, the Defenadant is bound over to the Circuit Court for further proceedings.

EXAMINATION HELD

4. ___ Upon examination of the matter I find that an offense not cognizable by a District Judge has been committed and there is probable cause for charging the Defendant with the crime. I bind the Defendant over to the Circuit Court for further proceedings.

Date arrainged: _____ Defense Attorney: _____

Examination held on: _____

Witness called: _____

BIND OVER

Bound to Circuit Couty to appear on _____ at _____m., Courtroom No. _____

Bond set in the amount of $ _____ Type of Bond: _____

Statute: MCL _____

Date: _____ _____
District Judge/Magistrate

Original - Court 1st copy - State Police 2nd copy - Arresting agency 3rd copy - Prosecutor 4th copy - Defendant PROBATE OSM CODE: ROF

STATE OF MICHIGAN * JUDICIAL DISTRICT * JUDICIAL CIRCUIT * COUNTY PROBATE	MOTION AND ORDER FOR THE RETURN OF FINGERPRINTS, ARREST CARD, AND DESCRIPTION	CASE NO. *

ORI *
MI- *
Police Report No. *

Court address
*

Court telephone no.
*

THE PEOPLE OF *__ THE STATE OF MICHIGAN *__ *	V	Defendant's/Juvenile's name, address, and telephone no. *		
		CTN *	SID *	DOB *

*__ Juvenile In the matter of *

Count	CRIME	CHARGE CODE(S) MCL citation/PACC Code
*	*	*
*	*	*
*	*	*

MOTION

I, *_____, state that on *_____
Name (type or print) Date

*__ I was found not guilty of all offense(s) charged in this case.
*__ My case was dismissed without trial

I have had no prior convictions and this is not a criminal sexual conduct case or a crime with or against a child under 16 years of age.

I REQUEST that the fingerprints, arrest card, and description be returned to me by the official holding the information.

_____ _____
Date Signature

ORDER

IT IS ORDERED:

Under MCL 28.243 the State Police and arresting agency shall immediately, without charge and without further demand, return to the defendant/juvenile the fingerprints, arrest card, and description taken or made in the above case.

_____ _____
Date Judge Bar no.

Approved as to form on _____ by _____ Prosecuting official Bar no.	 _____ Attorney for defendant/juvenile Bar no.

Under MCL 769.16a the clerk of the court shall send a copy of this order to the Michigan State Police Central Records Division to delete this criminal history record.

MCL 28.243; MSA 4.463, MCR 5.936(D)

MC 235 (6/93) **MOTION AND ORDER FOR THE RETURN OF FINGERPRINTS, ARREST CARD, AND DESCRIPTION**

STATE OF MICHIGAN Third Judicial Circuit	MOTION AND ORDER TO REDUCE BOND	CASE NO.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

-vs-

File No.

Honorable

_____

Defendant.

MOTION TO REDUCE BOND

I move for reduction of bond for the following reasons _____

_____

_____

_____

_____

Attorney for Defendant

MOTION TO REDUCE BOND

On motion of Defense Counsel and after review by the Court,

IT IS HEREBY ORDERED that the bail bond previously set by the Court is hereby reduced to a ____ personal bond or ____ surety bond in the amount of $_____.

_____ _____

Date Judge

SEARCH WARRANTS

District Court judges and magistrates have the power to issue search warrants. Circuit Court level judges can also issue search warrants although they only do so when the magistrates are unavailable. Rules concerning search warrants are found at MCL 780.561 et seq.

To obtain a copy of a search warrant, the affidavit, and the return, the attorney fills out a request form in the Clerk's Office of the 36th District Court. Search warrants are not filed in the court file, nor are they filed by defendant's name. The attorney will need to know the date the warrant was executed and the address of the home or building searched. The warrant, affidavit, and return are not filed immediately. A two-week delay in filing is standard.

WRIT OF HABEAS CORPUS

District Court judges have the power to issue a writ to any official within their jurisdiction who is detaining a person without benefit of arraignment. In Wayne County Circuit Court only the presiding judge or emergency judge of the Criminal Division may issue a writ. (See Administrative Order 2006-4). When a writ is issued, it orders the custodial officer to bring the prisoner before the court at a time certain so that the judge can decide whether the detention is legitimate.

In Michigan, a person must be taken before an arraigning magistrate forthwith. MCL 764.13. In People v Hamilton, 359 Mich 410 (1960), the Supreme Court held that magistrates are on duty twenty-four hours a day. The police, however, are allowed time for the booking process and for the prisoner's prints to clear. This means that the police check by computer to see if there are any

outstanding warrants for the prisoner's arrest. It generally takes four hours for prints to clear.

Contrary to conventional wisdom, the United States Supreme Court in County of Riverside v McLaughlin, 500 US _, 114 L Ed 2d 49 (1991), did not decide that the police can legitimately hold a person up to 48 hours after a warrantless arrest. Hamilton, supra, is the controlling law in Michigan.

The form for a writ of habeas corpus can be obtained from the Clerk's office. Each form costs one dollar.

If you are running a writ during court hours for a prisoner being held by the Detroit Police Department, fill out the form and take it to a judge. The judge will fill out the time for a hearing and sign the writ. Then take the writ to the Clerk's office for a miscellaneous number. The Clerk's office will also seal the writ. Next take the writ to Control located on Lyndon Avenue in the City of Detroit. The writ commands the police to produce the body at a time certain before the judge signing the writ. At the hearing, the police will bear the burden of explaining why the person is being held or the police may release the Defendant to appear before the court at a later date. After hours you will not be able to obtain a miscellaneous number.

Any judge who refuses, even negligently, to consider a petition for a writ of habeas corpus is guilty of misfeasance in office. MCL 600.4313.

THE THIRD JUDICIAL CIRCUIT
OF MICHIGAN

711 COLEMAN A. YOUNG MUNICIPAL CENTER
2 WOODWARD AVENUE
DETROIT, MICHIGAN 48226-3413

ADMINISTRATIVE ORDER 2006-04

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT

SUBJECT: PROCEDURE FOR THE ISSUANCE OF WRITS OF HABEAS CORPUS IN THE THIRD JUDICIAL CIRCUIT

IT IS ORDERED:

Pursuant to MCR 8.110(C) and 3.303, the following procedure regarding the issuance of writs of habeas corpus shall be followed in the Third Judicial Circuit:

1. A miscellaneous case number from the County Clerk's Office in the Criminal Division shall be assigned to each writ of habeas corpus on the first available business day after the writ is granted.

2. Each issued writ of habeas corpus shall be placed on the record on the first available business day after the writ is granted.

3. Only the Presiding Judge or Super-Alternate Judge of the Criminal Division shall act on requests for writs of habeas corpus on pre-charged matters during court hours.

4. Only the Emergency Judge shall act on any requests for a writ of habeas corpus during non-court hours.

5. Requests for writs of habeas corpus on post-conviction matters shall continue to be assigned to the Civil Division Judges pursuant to Administrative Order 2005-09.

MARY BETH KELLY
CHIEF JUDGE
THIRD JUDICIAL CIRCUIT

Dated: May 24, 2006

WAYNE COUNTY CIRCUIT COURT
CRIMINAL DIVISION

All felony trial occur in the Frank Murphy Hall of Justice. This building houses the 28 circuit court judge who preside over the criminal docket.

ARRAIGNMENT ON THE INFORMATION

After the preliminary examination, the prosecution issues a document called an Information. This document details the charge that the defendant must face at trial. It must match the charge that the magistrate found at the preliminary examination. It will also list the names of all known witnesses. MCL 767.40a.

At the arraignment, the court asks defense counsel how the defendant pleads. If the defendant wishes to plea not guilty, counsel should answer that the client stands mute to the charge. The court will then officially enter a plea of not guilty. Defense counsel should also inform the court whether the defendant wishes the Information read aloud or whether the defendant waives the reading of the Information because he or she knows what the charge is. Pleas of guilty are discussed below.

Arraignments on the Information (AOI) take place at 9:00 a.m. in the Frank Murphy Hall of Justice. There are four arraigning judges. Non-capital cases are assigned to these judges on a blind draw basis.[1]

An arraigning judge is usually one who is a light sentencer and/or one before whom a waiver trial or a dispositive motion may result in a certain measure of success. These judges do not preside over jury trials. Jury trial cases are parceled

[1]Capital cases are assigned directly to a trial judge by blind draw. An arraignment on the information is held before the trial judge.

out on a blind draw basis to the rest of the bench. A list of the arraigning judges, as well as the alternates to each judge, follows this chapter. To find out who the arraigning judge is, call (313) 224-2505 or (313) 224-2425. Assignments are made at least 48 hours before the arraignment date.

By the AOI date, the defendant, after a conference with defense counsel, should be prepared to decide whether he or she wants to plead guilty or not guilty. If the defendant opts for a trial, a decision must be made on whether it should be a jury trial or a bench trial.

On the day of the AOI, counsel should check in with the clerk of the courtroom and ask for a copy of the Information, a discovery order, and the Sentencing Information Report (SIR) which contains the sentencing guidelines (See Sentencing, *infra*).

Then, counsel should talk to the prosecutor to find out if a plea or sentence bargain has been offered. These offers are decided the day before by the floor prosecutor, who generally is not in the courtroom. If counsel wants to negotiate a different bargain than the one offered, counsel should ask the courtroom prosecutor where the floor prosecutor can be found. Counsel must inform the client of all prosecutorial offers. Counsel should also be prepared to discuss the sentence guidelines with the defendant.

Plea offers can be accepted as late as the final conference. After that day, only two options remain to the client - plead as charged ("on the nose") or go to trial.

Often a defendant is reluctant to plead guilty because he or she does not know what sentence they will receive. The Court, after reviewing any documents submitted by both sides or even after being just told briefly about the case by both sides, will state in writing on the form what he or she believes the sentence will be

after a plea is tendered and a presentence report is compiled. On the day of sentence, if the court determines that the sentence must exceed that listed on the form, the defendant is allowed to withdraw the plea. This is called a Cobbs plea. See People v Cobbs, 443 Mich 276 (1993).

There are three ways a defendant can avoid the stigma of a criminal conviction. First, there is the Wayne County Pre-trial Diversion Program. The requirements are that the crime be non-assaultive and that the defendant have no prior criminal convictions. Most drug and gun offenses are also excluded.

If the client meets the requirements, counsel should ask the courtroom prosecutor for their file and then counsel should take the prosecutor's file with the client to the 10th floor, to see a diversion prosecutor who heads the Diversion Program. If the prosecutor agrees to review the case, counsel must secure an adjournment of the pretrial so that an investigation into the client's background can be completed.

On the adjourned date, if the client is accepted into the program, a waiver of the right to speedy trial is secured from the client, the conditions of the diversion program are explained, and the client is formally accepted into the program. The client does not plead guilty. If the client successfully completes the program, which usually lasts a year, the charges are dismissed.

If the defendant violates the conditions of the diversion program, the case starts back up at the pretrial stage. A diverted defendant does not have a due process right to a hearing before being removed from the program.

The second program is called HYTA which is an acronym for Holmes Youthful Trainee Act. This act is found at MCL 762.11 et. seq. An applicant must be between the ages of 17 and 21 years old. Crimes carrying life in prison, major controlled

substance offenses and traffic offenses are excluded under the act. Form applications can be found in the courtroom. Both the defendant and a parent or guardian must sign the application. The arraignment is then adjourned so that a presentence report can be compiled. Even if the presentence investigator does not recommend HYTA status, the judge can still exercise discretion and assign the defendant to youthful trainee status. The defendant is required under the statute to offer a plea of guilty, but a judgment of conviction is not entered. If the judge refuses to assign the individual to youthful trainee status and a guilty plea has already been tendered to the court, the court may proceed to enter a judgement of guilty and sentence the defendant.

The judge, even if he or she places the defendant on youthful trainee status, does have the option under the act to place a defendant in prison for up to three years. This, however, is a rarely invoked provision, one which is probably left over from the days when a defendant charged with a life offense could be considered for youthful trainee status.

This statute is jurisdictional, so even after sentence, counsel can request that the defendant be assigned to HYTA status. If the defendant successfully completes this program, the charges are dismissed. If the defendant's status as a youthful offender is revoked, the court can enter an adjudication of guilt and proceed to sentencing.

The third way to avoid a criminal conviction is for first-time drug offenders only. Under MCL 333.7411, the judge can place them on probation and if they successfully complete probation, the charges are dismissed. This section of the drug statute only applies when the defendant is charged with the possession or use of a minimal amount of a controlled substance. See the statute for the specific crimes it

covers. This statute applies whether the conviction is obtained by a plea or after a trial.

Section 333.7411, has two unique features. First, it can be used by a defendant who has a criminal record, as long as the prior convictions are not for drug offenses. Second, it can apply to a person who went to trial and was convicted.

If the defendant stands mute to the charge and wants a waiver or bench trial before the AOI judge, a document entitled "Waiver of Jury Trial" must be signed by counsel and the client. The prosecutor must agree to the bench trial. Counsel must explain to the client what the differences are between the two types of trial so that the decision to give up a jury trial is done knowingly. The court will voir dire the defendant on the record to make sure that the defendant understands what is happening. A date for trial is then agreed upon by all.

If the defendant wants a jury trial, a trial judge will be selected by a computer blind draw. A date is then given for the calendar conference before that judge. It is usually held on Friday of the same week as the AOI.

AOI JUDGES

Judge Chylinski	Courtroom 202
Judge Ewell	Courtroom 302
Judge Groner	Courtroom 303
Judge Braxton	Courtroom 304

199990

STATE OF MICHIGAN

36TH DISTRICT COURT
3rd CIRCUIT COURT

INFORMATION
FELONY

CASE NO: 1999909 PA

The People of the State of Michigan

vs

JOHN INNOCENT

Offense Information

Date of Offense
04/27/1999 rm

Police Agency Report No.
82DP4-99/4/3

Place of Offense
891 Michigan, DETROIT

Complainant or Victim
HAROLD HOMEOWNER

Complaining Witness
INFO AND BELIEF

State of Michigan, County of Wayne
In the name of the People of the State of Michigan: The Prosecuting Attorney for this county appears before the Court and informs the Court that on the date and at the location above described, the Defendant(s)

COUNT 1 DEFENDANT(S) 01,02 HOME INVASION - 2ND DEGREE
did break and enter, or did enter without permission, a dwelling located at 8910 Michigan, with the intent to commit a larceny therein; contrary to MCL 750.110a(3). [750.110A3]
FELONY: 15 Years and/or $3,000.00

HABITUAL OFFENDER - THIRD OFFENSE NOTICE DEFENDANT(S)01
Take notice that the defendant was twice previously convicted of a felony or an attempt to commit a felony in that on or about 10/13/94, he or she was convicted of the offense of B&E Occ Dwelling in violation of 750.110 in the Recorders Court for Wayne, state of MI; and that on or about 06/14/94, he or she was convicted of the offense of R&C 0/100 in violation of 750.535-A in the Recorders court for Wayne, state of MI.
Therefore, defendant is subject to the penalties provided by MCL 769.11; MSA 28.1083. [769.11]
PENALTY: Twice the maximum sentence on primary offense or lesser term

and against the peace and dignity of the State of Michigan.

Date _____

John D. O'Hair
P18432
Prosecuting Attorney

By _____
Bar Number

SENTENCING INFORMATION REPORT

Offender: _____ **SSN:** _____ **Workload:** _____ **Docket Number:** _____

Judge: The Honorable _____ **Bar No.:** _____ **Circuit No.:** 00 **County:** 82

Conviction Information

Conviction PACC: 750.145D2F **Offense Title:** Computers-Internet-Communicating to Commit Crime-15 Years>

Crime Group: Person **Offense Date:** 04/30/2007

Crime Class: Class B **Conviction Count:** 1 of 2 **Scored as of:** 04/30/2007

Statutory Max: 240 **Habitual:** No **Attempted:** No

Prior Record Variable Score

PRV1: 0 **PRV2:** 0 **PRV3:** 0 **PRV4:** 0 **PRV5:** 0 **PRV6:** 0 **PRV7:** 10

Total PRV: 10

PRV Level: C

Offense Variable

OV1: 0 **OV2:** 0 **OV3:** 5 **OV4:** 10 **OV5:** 0 **OV6:** 0 **OV7:** 0

OV8: 0 **OV9:** 0 **OV10:** 15 **OV11:** 50 **OV12:** 25 **OV13:** 0 **OV14:** 0

OV16: 0 **OV17:** 0 **OV18:** 0 **OV19:** 0 **OV20:** 0

Total OV: 105

OV Level: VI

Sentencing Guideline Range

Guideline Minimum Range : 57 to 95

Minimum Sentence

	Months	Life
Probation:		☐
Jail:		
Prison:		☐

Sentence Date: _____

Guideline Departure: _____ **Consecutive Sentence:** _____

Concurrent Sentence: Yes

Sentencing Judge: _____ **Date:** _____

Prepared By.

GUILTY PLEAS

If a defendant decides to plead guilty, a guilty plea form is filled out and signed. The form must disclose if any deals or promises were offered to the defndant to induce the plea. The form lists the constitutional rights a defendant gives up by pleading guilty. These rights should be explained to the defendant.

The judge will voir dire the defendant to see if the plea is given voluntarily, intelligently, and understandingly. MCR 6.302. This means it will be established on the record that the defendant has a certain level of education, that no other promises were made except those listed on the form, and that it is the defendant's choice, after conferring with counsel, to plead guilty.

Finally, the court is required to establish facts that show that the defendant committed the crime. This means that the defendant has to state what he or she did during the crime. If the defendant cannot admit this factual basis, the defendant is either not ready to plead guilty or is in fact not guilty and should be going to trial.

If the plea is accepted or taken under advisement, a date is set for sentencing. The client is then sent to talk to a presentence investigator, who will compile a report which includes a recommendation as to what an appropriate sentence is for the defendant.

Oftentimes, a defendant does not want to admit to guilt, but wishes to take advantage of a good plea bargain. An example of this kind of situation is where a defendant may also be facing civil liability for the crime. In such a case, a nolo contendere plea may be appropriate. Such a plea means that the defendant does not contest the charge. The factual basis for the plea, rather than coming from the defendant's own lips, is usually established by the court referring to the preliminary examination transcript or to a PCR. The prosecution and the judge must agree to the

no contest plea and defense counsel must offer a legitimate reason for the defendant not admitting guilt.

A no contest plea has the same effect as a guilty plea in that it is a criminal conviction and it subjects the defendant to the same range of punishment as a guilty plea. But generally it is not admissible in a civil proceeding except to support a defense against a claim asserted by the person who entered the plea. MRE 410(2). See also MRE 803(22).

Practice Notes

1. Ask for a copy of the Information, SIR, and a discovery order.
2. Find out if the prosecutor is offering a plea or sentence agreement.
3. Inform defendant of all offers.
4. If a guilty plea is to be offered, explain to the defendant what questions the judge will ask. Check to make sure that the defendant can establish a factual basis.
5. Familiarize yourself with the Diversion Program, HYTA and §7411.
6. Before pleading a client guilty, familiarize yourself with immigration law and federal sentencing guidelines. A guilty plea in a state court proceeding may have hidden consequences.
7. A person who pleads guilty to or is found guilty of a sex offense should be advised that the parole board is less likely to grant them parole on their first outdate and that there are reporting requirements and public notice requirements.
8. Familiarize yourself with conditional pleas. MCR 6.301(C)(2).
9. Familiarize yourself with PA 511 at MCL 791.401 to see if your client is eligible for a non-prison program.

STATE OF MICHIGAN
THIRD JUDICIAL COURT
CRIMINAL DIVISION

PRETRIAL SETTLEMENT OFFER AND NOTICE OF ACCEPTANCE

CASE NO. _____

PROS. WAR. NO. _____

THE PEOPLE OF THE STATE OF MICHIGAN
v

Defendant's Name

SID | LPD

PRETRIAL SETTLEMENT OFFER

☐ No charge reduction ☐ Charge reduction

COUNT: SPECIFY CHARGE(S)	PACC	ATTEMPT 750.92	STATUTORY MAXIMUM PENALTY

☐ Sentence Agreement ☐ Agree to Guideline Sentence ☐ Sentence Recommendation

_____

_____

_____

_____

_____

☐ People agree to PA 511 sentence ☐ People object to PA 511 sentence

☐ Sentence is mandatorily consecutive by law to _____

☐ People agree to withdraw notice to enhance sentence.

☐ Dismiss _____ in exchange for plea in this case.

☐ Other prosecutorial agreement _____

_____

Date

_____
Prosecuting Attorney

NOTICE OF ACCEPTANCE

I HEREBY ACCEPT THE ABOVE PRETRIAL SETTLEMENT OFFER AND WAIVE THE FOLLOWING RIGHTS:

1. THE RIGHT TO A JURY TRIAL OR TRIAL BY THE COURT WITH THE PROSECUTOR'S CONSENT.
2. THE RIGHT TO BE PRESUMED INNOCENT UNLESS PROVEN GUILTY BEYOND A REASONABLE DOUBT.
3. THE RIGHT TO CONFRONT AND QUESTION THE WITNESSES AGAINST ME.
4. THE RIGHT TO HAVE THE COURT COMPEL WITNESSES TO COME TO COURT AND TESTIFY FOR ME.
5. THE RIGHT TO TESTIFY AT MY TRIAL. THE RIGHT TO REMAIN SILENT AND NOT HAVE MY SILENCE USED AGAINST ME.
6. THE RIGHT TO CLAIM MY PLEA WAS THE RESULT OF PROMISES OR THREATS NOT DISCLOSED TO THE COURT, OR THAT IT WAS NOT MY CHOICE TO PLEAD GUILTY.
7. THE RIGHT TO APPEAL AS OF RIGHT AS TO CONVICTION AND SENTENCE.

_____ _____ _____ _____
Defendant Date Defense Attorney Date

Form #71 (5/98)

Distribution
White—Court File
Yellow—Prosecutor
Pink—Defense Attorney

STATE OF MICHIGAN Third Circuit Court Criminal Division	Request by Defendant For Statement of Preliminary Evaluation Of Sentence	Case No. _____

People of The State of Michigan	vs.	Defendant Name: _____ Address: _____ _____

Charge: _____

Defendant's Request

My client is interested in entering a plea. Accordingly, I therefore request the Court to state on the Record a Preliminary Evaluation of the length of sentencing that, on the basis of the information available, appears to be appropriate for the charged Offense.

_____ Date

_____ Attorney for Defendant

Statement of Preliminary Evaluation Of Sentence Length

On the basis of information available, the Court's Preliminary Evaluation of Sentence length is _____

_____

_____

It is understood that the above evaluation does not bind the Judge's sentencing discretion and a Defendant who pleads Guilty or Nolo Contendere in reliance on an evaluation may withdraw the plea if the Judge later determines that the appropriate sentence must exceed the preliminary evaluation. A decision not to sentence in conformity with a preliminary evaluation is not automatically a basis for reversal. A defendant who pleads Guilty or Nolo Contendere with the knowledge of the sentence and who later seeks appellate sentence relief must expect to be denied relief on the grounds that the plea demonstrates the defendant's agreement that the sentence is proportionate to the Offense and Offender.

_____ Defendant

_____ Judge

_____ Defense Attorney

_____ Date

STATE OF MICHIGAN THIRD JUDICIAL COURT CRIMINAL DIVISION	APPLICATION AND CONSENT TO BE CONSIDERED AND ASSIGNED TO THE STATUS OF YOUTHFUL TRAINEE, MCLA 762.11	CASE NO. _____

THE PEOPLE OF THE STATE OF MICHIGAN

vs

_____

I have been advised by my counsel (lawyer) of my constitutional rights of:

(1) A jury trial or a trial by Court alone.
(2) To remain silent at trial.
(3) To be confronted with witnesses at trial.
(4) Presumption of my innocence at trial.
(5) Burden of proof required at trial.
(6) To be proven guilty beyond a reasonable doubt at trial.

I have been informed that under the provisions of the Holmes Youthful Trainee Act, I may:

(1) Be committed to jail up to three (3) years.
(2) Be placed on probation for up to three (3) years.
(3) Have my status revoked by the Court at its discretion.
(4) Have criminal proceedings reinstated against me.

I hereby waive my constitutional right to a speedy trial and apply to this Honorable Court to and consent that it may consent to a pre-acceptance investigation by the Probation Department for the purpose of obtaining information useful to this Honorable Court in determining my suitability for assignment to the status of Youthful Trainee.

_____
(Applicant)

_____
(Parent or Guardian)

I certify that I have explained the provisions of the Act to my client, and he states that he fully understands.

_____
(Signature of attorney for defendant)

White — Original to remain with Court file.
Yellow — Pre-acceptance referral to be attached to second copy for transmission to the Probation Department.
Pink — Third copy to applicant.
Goldenrod — Fourth copy attached to mittimus.

FORM #60 (2/98)

APPLICATION AND CONSENT
YOUTHFUL TRAINEE STATUS

CALENDAR CONFERENCE

At the calendar conference, the court will ask if there are any motions to be filed. A motion day and final conference are then scheduled for the same day. This is usually three weeks hence which allows enough time for the stenographer to file the preliminary examination transcript and for counsel to prepare motions.

STATE OF MICHIGAN ☐THIRD JUDICIALCIRCUIT COURT ☐CRIMINAL DIVISION	SUMMARY STATEMENT OF CALENDAR CONFERENCE	CASE NO. _____

THE PEOPLE OF THE STATE OF MICHIGAN

-vs-

_____ Charge: _____

AKA: _____ _____

CALENDAR CONFERENCE HELD BEFORE THE HONORABLE _____

Calendar Conference Conducted on: _____

Motions shall be time-stamped and filed no later than: _____

Motions timely filed will be heard on: _____

Final Conference will be conducted on: _____

Trial will commence on or about: _____

Motion for Discovery heard/waived. Discovery allowed/denied with regard to:

_____

Bond modification, if any: _____

The Prosecutor represents to the Court that a guilty plea would be acceptable to the charge of:

_____

_____

until the close of the Final Conference. In the event such plea is accepted by the Court, the Prosecutor would make the following commitment(s):

_____

ANY PLEA OFFERS TO BE CONVEYED TO DEFENDANT BY: _____ (Date)

Estimated length of trial: _____

Number of People's witnesses: _____

Number of Defense witnesses: _____

Jury trial or waiver trial: _____

Asst. Prosecuting Attorney at Calendar Conference: _____

Defense Counsel at Calendar Conference: Name _____

Other pending cases: Address _____

_____ _____

_____ Phone _____

Special Conditions; Record of Negotiations Fax _____

Distribution: Email _____

White - Court Copy
Canary - Prosecuting Attorney
Pink - Docket Control Center
Goldenrod - Defense Counsel

_____
Judge

SUMMARY STATEMENT
of
CALENDAR CONFERENCE

Form # 32(Rev. 6-2002)

MOTIONS

All motions must include a memorandum of law in support of the relief requested, a praecipe (notice of hearing date) and proof of service on the prosecution. The prosecution must receive a copy of the motion seven days before the hearing date. The motion can be mailed to the Clerk's Office and the Prosecutor's Office, or it can be served in person. If serving in person, the attorney takes the motion first to the 12th floor (the Prosecutor's Office) of the Frank Murphy Hall of Justice. The clerk will stamp all copies, keep a copy for their office and return the original and remaining copies. The original is taken to the Clerk's Office on the ninth floor where it must be time-stamped and filed with the court. There is no filing fee.

Since the motion date may also be the evidentiary hearing date, counsel should be prepare not only to argue the motion, but also to examine witnesses. If the defense needs prosecution witnesses for the hearing and would like the prosecutor to produce them, the motion should clearly identify those necessary witnesses.

There are essentially four kinds of motions: those that are dispositive of the case, those that seek the court's help in preparing for trial, those that seek either to gain knowledge about the prosecution's case or to limit the prosecutor's use of evidence that is more prejudicial than probative, and those that seek to place the defendant in a more advantageous position. There is no bright line dividing these kinds of motions.

Dispositive motions include motions to suppress evidence which if granted result in the prosecution being unable to proceed with the case. For instance, where the defendant is charged with possession of heroin and the heroin is seized in violation of the defendant's Fourth Amendment rights, suppression of the heroin will also mean that the case must be dismissed. A motion to suppress usually requires

an evidentiary hearing, so even if the motion is denied, counsel has had the opportunity to cross-examine prosecution witnesses and find out more about the case.

A motion to quash the information is also a dispositive motion. If it succeeds, the case is dismissed without prejudice. A motion to quash is based on the transcript of the preliminary examination. Since that record cannot be enlarged by testimony in the trial court, there is no evidentiary hearing.

Motions to dismiss for lack of a speedy trial, on double jeopardy grounds, and for denial of due process in failing to make a timely arrest are three more examples of dispositive motions.

The second category of motions are those which request help from the court in preparing for trial. For instance, motions for the appointment at state expense of an expert witness or an investigator may be filed. The defense can also ask the court to order the prosecution to produce certain res gestae witnesses. MCL 767.40(a)(5).

An example of the third kind of motion is a motion in limine. This motion limits or bars the prosecution from using certain evidence. Counsel should bring a motion in limine regarding the defendant's prior criminal record. Prior convictions are usually relevant only on the issue of credibility. The danger is that once a jury hears that the defendant is a convicted felon, they will cease to listen to the evidence and just convict based on a bad man theory. The purpose of this motion, then, is to limit the prosecution's use of the defendant's record. An evidentiary hearing is not required. This motion merely requires the trial court to examine the previous convictions an weigh their probative value on the issue of credibility against their prejudicial effect on the minds of the jurors.

A motion to suppress the defendant's oral or written statements require an evidentiary hearing, as does a motion to suppress out-of-court and in-court identifications of the defendant by witnesses.

The prosecution may also bring motions seeking to use evidence that it may not ordinarily be allowed to use, such as similar act evidence. It bears the burden of giving notice of its intent to use MRE 404(b) acts against the defendant. If notice is given, the defense should respond with written objections.

There are also motions to join cases or defendants and conversely to sever counts and defendants. This is an example of the fourth category of motions.

Motion practice is extremely important. It is a process whereby counsel can chip away at the prosecution's case even before trial. The less evidence against the defendant, the greater the chance of a not guilty verdict. It is also a means to establish a strategic advantage. There is no definite number of motions. Counsel should be creative.

Finally, although discovery seems fairly standard and routine in criminal cases, there may still be information in the police file that has not been turned over to defense counsel. Counsel should not hesitate to file a formal motion asking for specific items or for Brady material, that is evidence which is exculpatory. A Reed motion is one which seeks to discover deals cut between the prosecution and its informant. People v Reed, 393 Mich 342 (1974). In homicide cases, counsel should request the complete morgue file, not just the autopsy report. In all cases, counsel should request a computer printout from the LEIN of the criminal records of the defendant and any witnesses. These records are more complete than the criminal records generated from the State of Michigan.

Counsel should also view the physical evidence before trial. The standard discovery order authorizes this. Counsel may contact the OIC to set up an appointment.

Read MCR 6.201 on discovery immediately following this section.

After the court rules on the motion, counsel must make sure that the court signs an order and places it in the court file. Defense counsel should also ask for a copy of the order. The rule is that **COURTS SPEAK ONLY THROUGH THEIR ORDERS**. This means that a transcript of a hearing showing how the judge ruled is not sufficient. Counsel must get the order signed. See the sample praecipe which includes a form order.

Practice Notes

1. A motion must be accompanied by a notice of hearing (praecipe), memorandum in support, and proof of service.
2. Prosecution gets seven (7) days notice.
3. If you want the prosecution to produce witnesses under its control, list the names of the witnesses in the motion.
4. Be prepared on motion day to hold the evidentiary hearing.
5. Carry blank orders with you so immediately after the ruling the judge can sign the order. **Courts speak only through their orders**.
6. Read MCR 6.201.

MCR 6.201 DISCOVERY

(A) Mandatory Disclosure. In addition to disclosures required by provisions of law other than MCL 767.94a, a party upon request must provide all other parties:

(1) the names and addresses of all lay and expert witnesses whom the party may call at trial; in the alternative, a party may provide the name of the witness and make the witness available to the other party for interview; the witness list may be amended without leave of the court no later than 28 days before trial;

(2) any written or recorded statement pertaining to the case by a lay witness whom the party may call at trial, except that a defendant is not obliged to provide the defendant's own statement;

(3) the curriculum vitae of an expert the party may call at trial and either a report by the expert or a written description of the substance of the proposed testimony of the expert, the expert's opinion, and the underlying basis of that opinion;

(4) any criminal record that the party may use at trial to impeach a witness;

(5) a description or list of criminal convictions, known to the defense attorney or prosecuting attorney, of any witness whom the party may call at trial; and

(6) a description of and an opportunity to inspect any tangible physical evidence that the party may introduce at trial, including any document, photograph, or other paper, with copies to be provided on request. A party may request a hearing regarding any question of costs of reproduction. On good cause shown, the court may order that a party be given the opportunity to test without destruction any tangible physical evidence.

(B) Discovery of Information Known to the Prosecuting Attorney. Upon request, the prosecuting attorney must provide each defendant:

(1) any exculpatory information or evidence known to the prosecuting attorney;

(2) any police report and interrogation records concerning the case, except so much of a report as concerns a continuing investigation;

(3) any written or recorded statements by a defendant, codefendant, or accomplice pertaining to the case, even if that person is not a prospective witness at trial;

(4) any affidavit, warrant, and return pertaining to a search or seizure in connection with the case; and

(5) any plea agreement, grant of immunity, or other agreement for testimony in connection with the case.

(C) Prohibited Discovery.

(1) Notwithstanding any other provision of this rule, there is no right to discover information or evidence that is protected from disclosure by constitution, statute, or privilege, including information or evidence protected by a defendant's right against self-incrimination, except as provided in subrule (2).

(2) If a defendant demonstrates a good-faith belief, grounded in articulable fact, that there is a reasonable probability that records protected by privilege are likely to contain material information necessary to the defense, the trial court shall conduct an in camera inspection of the records.

(a) If the privilege is absolute, and the privilege holder refuses to waive the privilege to permit an in camera inspection, the trial court shall suppress or strike the privilege holder's testimony.

(b) If the court is satisfied, following an in camera inspection, that the records reveal evidence necessary to the defense, the court shall direct that such evidence as is necessary to the defense be made available to defense counsel. If the privilege is absolute and the privilege holder refuses to waive the privilege to permit disclosure, the trial court shall suppress or strike the privilege holder's testimony.

(c) Regardless of whether the court determines that the records should be made available to the defense, the court shall make findings sufficient to facilitate meaningful appellate review.

(d) The court shall seal and preserve the records for review in the event of an appeal

(i) by the defendant, on an interlocutory basis or following conviction, if the court determines that the records should not be made available to the defense, or

(ii) by the prosecution, on an interlocutory basis, if the court determines that the records should be made available to the defense.

(e) Records disclosed under this rule shall remain in the exclusive custody of counsel for the parties, shall be used only for the limited purpose approved by the court, and shall be subject to such other terms and conditions as the court may provide.

(D) Excision. When some parts of material or information are discoverable and other parts are not discoverable, the party must disclose the discoverable parts and may excise the remainder. The party must inform the other party that nondiscoverable information has been excised and withheld. On motion, the court must conduct a hearing *in camera* to determine whether the reasons for excision are justifiable. If the court upholds the excision, it must seal and preserve the record of the hearing for review in the event of an appeal.

(E) Protective Orders. On motion and a showing of good cause, the court may enter an appropriate protective order. In considering whether good cause exists, the court shall consider the parties' interests in a fair trial; the risk to any person of harm, undue annoyance, intimidation, embarrassment, or threats; the risk that evidence will be fabricated; and the need for secrecy regarding the identity of informants or other law enforcement matters. On motion, with notice to the other party, the court may permit the showing of good cause for a protective order to be made *in camera*. If the court grants a protective order, it must seal and preserve the record of the hearing for review in the event of an appeal.

(F) Timing of Discovery. Unless otherwise ordered by the court, the prosecuting attorney must comply with the requirements of this rule within 21 days of a request under this rule and a defendant must comply with the requirements of this rule within 21 days of a request under this rule.

(G) Copies. Except as ordered by the court on good cause shown, a party's obligation to provide a photograph or paper of any kind is satisfied by providing a clear copy.

(H) Continuing Duty to Disclose. If at any time a party discovers additional information or material subject to disclosure under this rule, the party, without further request, must promptly notify the other party.

(I) Modification. On good cause shown, the court may order a modification of the requirements and prohibitions of this rule.

(J) Violation. If a party fails to comply with this rule, the court, in its discretion, may order the party to provide the discovery or permit the inspection of materials not previously disclosed, grant a continuance, prohibit the party from introducing in evidence the material not disclosed, or enter such other order as it deems just under the circumstances. Parties are encouraged to bring questions of noncompliance before the court at the earliest opportunity. Wilful violation by counsel of an applicable discovery rule or an order issued pursuant thereto may subject counsel to appropriate sanctions by the court. An order of the court under this section is reviewable only for abuse of discretion.

STATE OF MICHIGAN ☐ Third Judicial Circuit Court ■ Criminal Division	**PRAECIPE FOR MOTION**	CASE NO. _____

THE PEOPLE OF THE STATE OF MICHIGAN,

-VS-

_____
Defendant

TO THE ASSIGNMENT CLERK:

Please place a Motion for (here state nature of motion in brief Form)_____

_____.

on the Motion Docket for _____ before Judge_____

Date: _____.

_____
Attorney for Defendant Michigan State Bar #

_____
Address

_____
City/State/Zip Telephone #

NOTE: UNDER MCR 2.107(c)(1) or (2)

PROOF OF SERVICE

(7 Days notice required)

I swear that on _____I served a copy of the attached motion and praecipe upon the Wayne County Prosecutor, Criminal Division by (mail) (personal) service. (Cross out one)

Sworn and subscribed before me
on: _____

_____
Notary Public

_____
County

_____
My Commission Expires

_____
Attorney for Defendant

7 Day Notice waived _____
Date

_____
Prosecuting Official Michigan State Bar #

STATE OF MICHIGAN Third Judicial Circuit Court Criminal Division	ORDER DENYING / GRANTING MOTION	Case No. _____

THE PEOPLE OF THE STATE OF MICHIGAN

vs.

_____
Defendant

At a Session of Said Court held in The Frank Murphy Hall of Justice

at Detroit in Wayne County on_____

PRESENT: Honorable _____
Judge

A Motion for :_____having been filed; and

---

the People having filed and answer in opposition; and the Court having reviewed the briefs and records in the Cause and being fully advised in the premises;

IT IS ORDERED THAT the Motion for_____

_____be and

is hereby ☐ denied ☐ granted.

_____
Judge

FINAL CONFERENCE

At the conclusion of motions or hearings, the court will set a date for trial. In Wayne County, these dates are firm. The attorney must not agree to a trial date unless he or she is available that day.

The prosecution will also give counsel a list of the witnesses it intends to produce and call at trial. It does this by checking off witnesses' names on the witness list. Once a name is checked off, the prosecution has a duty to produce this witness at trial. The prosecution is not required to produce this list at the final pretrial conference, but it must give the list to counsel at least thirty days in advance of trial. MCL 767.40a.

Generally, plea and sentence bargains in both capital and non-capital cases are not accepted after the final conference. After that court date, a defendant can only plead guilty to the original charge with no sentence agreement or promise.

Wayne County Prosecutor's Office Witness List

The People of the State of Michigan — Circuit Court No. 99-09999

vs.

Detroit Case No. 99-4-

JOHN INNOCENT

George L. Gish
Clerk Of Recorder's Court

Teola P. Hunter
Wayne County Clerk

Attorney for Defendant

The names and residences of the witnesses for the People in the above entitled cause are listed below. The witnesses the People intend to produce at trial, pursuant to MCLA 767.40a(3), are designated by an "X" in the boxes to the left.

	NAMES	RESIDENCES (List next leave/furlough dates for all police witnesses) (list phone numbers for all civilian witnesses)
☑	Harold Homeowner	891 Michigan
☑	Mary Harvey	5278 Addison
☐	PO JAMES MILLER BADGE 911	4PCT
☐	PO ERIC JONES BADGE 877	4PCT
☐	PO DAVID LEVALLEY BADGE 1151	4PCT
☐	PO DAVID WASMUND BADGE 4243	4PCT
☑	INV M MURRY	4PCT
☐		
☐		
☐		
☐		
☐		
☐		
☐		
☐		
☐		
☐	INV KENNETH EMERSON I-230	WESTSIDE B&E TASK FORCE 2ND PCT 596-5220
	OIC	ADDRESS & TELEPHONE #

Police Department/Precinct/Section : DPD/B&E TASK FORCE WEST 2PCT

Warrant APA — Date: 4/20/99

Trial APA-Final Witness List — Date: / /

STATE OF MICHIGAN ☐ THIRD JUDICIAL CIRCUIT COURT ☐ RECORDER'S COURT	**FINAL PRE-TRIAL CONFERENCE SUMMARY AND FIRM TRIAL DATE CONTRACT**	CASE No. _____

THE PEOPLE OF THE STATE OF MICHIGAN
— vs —

Date: _____

_____

AKA: _____ **SID:** _____

ASSISTANT PROSECUTOR AND DEFENSE ATTORNEY

This form must be completed and presented to the Judge before the Final Pre-Trial Conference.

FINAL SETTLEMENT OFFER

The Prosecutor's Final Settlement Offer of

_____ Charge _____ Sentence _____ Other (Specify)

is available until the Final Pre-Trial Conference is concluded. No settlement offers will be made after this date. The only disposition after the Final Pre-Trial Conference will be by plea of guilty as charged or trial.

STIPULATIONS

The Prosecutor and Defense Counsel hereby agree to the following stipulations:

☐ Auto Theft Case: Auto Owner Waived.
☐ Narcotics Case: Chain Of Evidence Waived, and/or ☐ Chemist Waived.
☐ Other stipulations _____

_____

_____

_____

TRIAL LENGTH AND DATE

The Prosecutor and Defense Counsel represent that all pretrial motions and discovery have been completed and that all required witnesses are available for trial.

Number of Witnesses: Prosecution _____ Defense _____

Type of Trial: _____ Estimated Length of Trial: _____ (Specify in half days)

TRIAL WILL COMMENCE ON _____ Date AT _____ Time

ACCEPTANCE OF NOTICE AND FIRM TRIAL DATE CONTRACT

Counsel for all parties accept notice of the trial date and waive all matters preliminary to trial except as entered on the record at the Final Conference. Defense Counsel and the Assistant Prosecutor confirm their availability on the trial date. All parties are to sign below.

_____ Counsel For Defense

_____ Assistant Prosecuting Attorney

_____ Defendant

_____ Judge

WHITE—Court Copy
GREEN—Docket Control
CANARY—Prosecutor's Office
PINK—Defense Attorney
GOLDENROD—Defendant

FINAL PRE—TRIAL CONFERENCE SUMMARY AND FIRM TRIAL-DATE CONTRACT

Form #33

Original - Court 2nd copy - Defendant/Juvenile attorney
1st copy - Defendant/Juvenile 3rd copy - Prosecutor

STATE OF MICHIGAN * JUDICIAL DISTRICT * JUDICIAL CIRCUIT * COUNTY PROBATE	WAIVER OF TRIAL BY JURY AND ELECTION TO BE TRIED WITHOUT JURY	CASE NO. *

ORI * Court Address * Court telephone no. *

MI- *

THE PEOPLE OF * __ The State of Michigan * * _____	V	Defendant's/Juvenile's name, address and telephone no. *		
		CTN *	SID *	DOB *

__ Juvenile In the matter of _____

I, * _____, defendant/juvenile in the above case, hereby voluntarily waive and
Name
relinquish my right to a trial by jury and elect to be tried by a judge of the court in which the case may be pending. I fully understand that under the laws of this state I have a constitutional right to a trial by jury.

_____ _____
Date Signature

_____
Defendant/Juvenile attorney signature Bar no.

*
Name (type or print)

Prosecutor's consent:

_____
Signature Bar no.

*
Name (type or print)

THE COURT FINDS:

1. Defendant/Juvenile has been arraigned and properly advised of the right to a jury trial.
2. Defendant/Juvenile has had an opportunity to consult with counsel.
3. Waiver occurred in open court as required by law.

Approved:

_____ _____ _____
Date Judge Bar no.

MC 260 (6/97) **WAIVER OF TRIAL BY JURY AND ELECTION TO BE TRIED WITHOUT JURY**
MCL 712A.2d(7); MSA 27.3178(598.2d)(7), MCL 763.3, MSA 28.858, MCR 6.402(B)

TRIAL

Jury trials begin with jury selection which is called the voir dire. A panel of jurors will be brought to the courtroom from the pool of jurors waiting on the tenth floor for jury service.

Before jury selection, counsel should arrange to review the jurors' questionnaires. These questionnaires give defense counsel background information about each juror. The questionnaires are stored in the Jury Commission on the tenth floor. MCR 2.510(C)(2).

The purpose of the voir dire is to make sure that prospective jurors are qualified to sit as jurors and have no preconceived ideas which would render them prejudiced against the defendant or the particular defense that is being used. The court can decide whether to conduct the voir dire itself or whether to let the attorneys question the prospective jurors as well. MCR 2.511(C). If a juror is challenged for cause or peremptorily and the challenge is sustained, that juror must immediately be replaced before other challenges are made. MCR 2.511(F).

There are an unlimited number of challenges for cause. The basis for such challenges are found at MCR 2.511(D).

Peremptory challenges, or ones for which no reason must be given, are limited. In the trial of a life offense, there are twelve peremptory challenges. In the trial of any other offense, there are five peremptory challenges. The number of peremptory challenges change when there are co-defendants. See MCR 6.412(E). In exceptional circumstances, the number of peremptory challenges can be increased. MCR 6.412 (E)(2). The prosecution has the same number of peremptory challenges as the defense.

In order to secure witnesses for trial, blank subpoenas can be obtained from the Clerk's Office on the ninth floor. By checking off the appropriate box, the same form can be used to subpoena people as well as documents. Once a subpoena is served, the return must be placed in the court file. Without proof that the subpoena was served, it cannot be enforced in the event that the subpoenaed person does not appear.

Trial techniques are taught in other seminars and are beyond the scope of this pamphlet. However, one practice is so important it must be mentioned now: counsel must preserve all errors for appeal by making objections. Not every defendant is found not guilty. In the event of conviction, the defendant will probably appeal. If the trial attorney has not preserved errors by making objections, the error cannot be raised on appeal, or if raised, it is subjected to a more stringent standard of review.

If a judge overrules the objection, do not withdraw the objection. If it is withdrawn, it is not preserved for appeal.

Practice Notes

1. Review MCR 2.511(D) for challenges for cause. Read Batson v Kentucky 476 US 79 (1986) and its progeny.
2. Make sure the Return on the subpoena is signed.
3. Make objections. State the basis of the objection.
4. In order to make a record, what you say must be taken down by the court reporter. Court reporters are trained to take down only the judge's comments when someone is speaking at the same time as the judge. Make sure that you are not talking over the judge.
5. See People v Tyburski, 445 Mich 606 (1994) for making a record regarding voir dire.

Original - Return 1st copy - Witness 2nd copy - File 3rd copy - Extra

STATE OF MICHIGAN * JUDICIAL DISTRICT * JUDICIAL CIRCUIT * COUNTY PROBATE	SUBPOENA Order to Appear	FILE NO. *

Court Address *

Court telephone no. *

Police Report No. (if applicable)

Plaintiff(s) Petitioner(s)		Defendant(s) Respondent(s)
* People of the State of Michigan * *	V	*
* Civil * Criminal		Charge *
* Probate In the matter of *		

In the Name of the People of the State of Michigan. TO: *

*

*

If you require special accommodations to use the court because of disabilities, please contact the court immediately to make arrangements.

YOU ARE ORDERED to appear personally at the time and place stated below:
You may be required to appear from time to time and day to day until you are excused.

1. * The court address above * Other:*

Day	Date	Time
2.*	*	*

YOU ARE ALSO ORDERED to:

__ 3. Testify at trial / examination / hearing.
__ 4. Produce the following items: _____
__ 5. Testify as to your assets, and bring with you the items listed in line 4 above.
__ 6. Testify at deposition.
__ 7. MCL 600.6119 prohibition against transferring or disposing of property attached.
__ 8. Other: _____

* 9.

Person requesting subpoena	Telephone no.
*	*
Address *	
City State Zip *	

NOTE: If you are requesting that an examination of a debtor be heard before a judge, or if you checked item 7, the judge must issue the subpoena. For debtor examinations before the judge, the affidavit of debtor examination on the other side of this form must also be completed.

FAILURE TO OBEY THE COMMANDS OF THE SUBPOENA OR APPEAR AT THE STATED TIME AND PLACE MAY SUBJECT YOU TO PENALTY FOR CONTEMPT OF COURT.

*
_____ _____
Date Judge/Clerk/Attorney Bar no.

Court use only
__ Served __ Not Served

MC 11 (6/97) **SUBPOENA, Order to Appear** MCL 600.1455, 600.1701, 600.6110; 600.6119; MSA 27A.1455, 27A.1701, 27A.6110, 27A.6119, MCR 2.506

SUBPOENA

RETURN OF SERVICE **Case No. ***

TO PROCESS SERVER: You must make and file your return with the court clerk. If you are unable to complete service, you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NON-SERVICE

___ OFFICER CERTIFICATE	OR	___ AFFIDAVIT OF PROCESS SERVER
I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party [MCR 2.104 (A)(2), and that: (notary not required)		Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notary required)

*___ I served a copy of the subpoena, together with *_____
Attachment
*___ personally (including required fees, if any)
*___ by registered or certified mail (copy of return receipt attached) on:

Name(s)	Complete address(es) of service	Day, date, time

*___ After diligent search and inquiry, I have been unable to find and serve the following person(s):

_____

I have made the following efforts in attempting to serve process:

_____

*___ I have personally attempted to serve the subpoena and required fees, if any, together with *_____ on *_____
Attachment Name
at *_____ and have been unable to complete service because the address was incorrect at the time of filing.

Service fee	Miles Traveled	Mileage fee	Total fee
$		$	$

_____
Signature
*_____
Title

Subscribed and sworn to before me on *_____, *_____ County, Michigan.
Date

My commission expires: *_____ Signature: *_____
Date Deputy court clerk/Notary public

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the subpoena and required fees, if any, together with:

_____ on _____
Attachment Day, date, time

_____ on behalf of _____
Signature

AFFIDAVIT FOR JUDGMENT DEBTOR EXAMINATION

I request that the court issue a subpoena which orders the party named on this form to be examined under oath before a judge concerning the money or property of:
for the following reasons:

Under penalty of contempt of court, I declare that the above statements are true to the best of my information, knowledge, and belief.

_____ _____
Date Signature

MCR 2.105

White - Court Pink - Defendant
Canary - Prosecutor Gold-Defendant's Attorney

Approved, SCAO

STATE OF MICHIGAN THIRD JUDICIAL COURT CRIMINAL DIVISION	ORDER OF ACQUITTAL/DISMISSAL OR REMAND	CASE NO.

ORI
MI-

Court Address

Court Telephone Number

THE PEOPLE OF ☐ The State of Michigan ☐ _____	v	Defendant's name, address, and telephone no.

CTN	SID	DOB

Count	CRIME	CHARGE CODE(S) MCL citation/PACC Code

IT IS ORDERED:

☐ 1. The case is dismissed on the motion of the court ☐ with ☐ without prejudice.

☐ 2. The defendant's motion for dismissal is granted ☐ with ☐ without prejudice and the case is dismissed.

☐ 3. The defendant's motion for dismissal is granted in part ☐ with ☐ without prejudice and the following charge(s) is/are dismissed: _____

_____

☐ 4. Defendant is acquitted on all charge(s) in this case after trial by ☐ judge ☐ jury.

☐ 5. Defendant is acquitted after trial by ☐ judge ☐ jury only on the following charge(s):

_____

_____

☐ 6. Defendant shall be immediately discharged from confinement in this case.

☐ 7. Bond is canceled and shall be returned after costs are deducted.

☐ 8. Bond/bail is continued on the remaining charge(s).

☐ 9. The case is remanded to the _____district court for further proceedings for the following reasons:

_____ _____ _____

Date Judge Bar No.

If item 1, 2, or 4 is checked, the clerk of the court shall send a photocopy of this order to the Michigan State Police Central Records Division to create a criminal history record as required under MCL 769. 16a.

MC 262 (3/03) sjs **ORDER OF ACQUITTAL/DISMISSAL OR REMAND**

STATE OF MICHIGAN THIRD JUDICIAL CIRCUIT COURT CRIMINAL DIVISION	ORDER OF CONVICTION AND SENTENCE	CASE NO./SUFFIX

THE PEOPLE OF THE STATE OF MICHIGAN v

_____

DEFENDANT

1. At a session of the court on _____ before the Hon. JAMES R. CHYLINSKI

a Judge of the court, the defendant was convicted by ☐ JURY ☐ COURT ☒ PLEA of the offense(s)_____

_____

_____

_____

PACC CODE(S)

2. The defendant was in court for sentence on _____ and was sentenced by the court to:

☒ Jail confinement for _____ days/months.

Release upon payment of:

$ 60.00	State Fees
$ 60.00	Crime Victim Fee
$	Court Costs
$	Attorney Fees
	Restitution
	Other
$	TOTAL

☒ Waive all other costs and fees.

☐ Other _____

RECOMMENDATION _____

_____

☐ HIV testing was ordered on _____.

The defendant was represented by ATTORNEY _____ BAR# _____

and is to be given credit for _____ days served in JAIL.

SAID CREDIT TO BE APPLIED TO MINIMUM AND MAXIMUM SENTENCE.

COMMITMENT PAPERS TO ISSUE.

_____

Judge

Form#5

Approved, SCAO

Original - Court
1st copy - Law enforcement agency/Sheriff

2nd copy - Defendant/Juvenile
3rd copy - Prosecuting attorney

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT	ORDER FOR DNA SAMPLE	CASE NO.

Court address

Court telephone no.

THE PEOPLE OF ☐ The State of Michigan ☐ _____	v	Defendant's/Juvenile's name, address, and telephone no.		
		CTN	SID	DOB

☐ Juvenile In the matter of _____

1. The defendant/juvenile was convicted of or found responsible for violation(s) or attempted violation(s) as prescribed in MCL 28.176 which require that a DNA sample be taken.

2. The defendant/juvenile is ☐ on bond ☐ incarcerated in _____.

IT IS ORDERED:

3. The defendant/juvenile shall provide a DNA sample to the _____
Name of investigating law enforcement agency/sheriff

to be forwarded to the Department of State Police in accordance with MCL 712A.18k, MCL 28.171 to 28.176, MCL 750.520m,

and State Police Rules by _____.
sentence date

☐ 4. The investigating law enforcement agency/sheriff named above shall file a return with the court that the sample was taken.

_____ _____ _____
Date Judge Bar no.

Complete and file the Certification and Return if the DNA sample has already been taken or if ordered in 4 above.

CERTIFICATION AND RETURN

I certify and return that on _____ a DNA sample was taken of the defendant/juvenile and forwarded to
Date

the Department of State Police.

_____ _____
Date Law enforcement agent/sheriff

See other side for list of persons subject to DNA profiling under MCL 750.520m.

DEFENSES

As with trial techniques, a discussion of defense is beyond the scope of this pamphlet. However, defense counsel must be alert to the fact that some defenses require notice to the other side without which counsel will be barred from using the defense or from calling witnesses in support of that defense. These are:

Alibi	MCL 768.20. Notice must be given at least ten days before trial. If notice is not given, only the defendant can testify to this defense.
Insanity	MCL 768.20a. Give notice at least 30 days in advance of trial, so that the defendant can be referred to the forensic center for testing. Defense has the burden of proof by a preponderance of the evidence.
Duress	MCL 768.20b. Notice only required if using as a defense to prison escape.
Entrapment	Must be raised by a motion for an entrapment hearing. The judge decides the issue.
MCL 750.520j	Notice of intent to use evidence of the victim's past sexual relationship with the defendant or evidence of sexual acts that are the origin of pregnancy, semen, or disease must be given within 10 days after arraignment.

Practice Notes

1. Do not assume that the above list is all inclusive.

2. Read MCR 6.201 to see what the defense is obligated to turn over to the prosecution upon request.

SENTENCING

Proper representation of the client at sentencing starts immediately after the conviction. Defense counsel should explain to the client that he or she will be interviewed by a presentence investigator who compiles a Presentence Report (PSR) and suggests an appropriate sentence. The client should not antagonize this person. The client should be cautioned that anything he or she tells the investigator will be checked out. If the defendant is caught in a lie, it will be reflected in the report.

The client should not, however, admit to any crimes other than that for which he or she was convicted. (A person convicted of robbery armed should not admit to snorting coke on the weekends nor to any other uncharged robberies.) In the instance of a no contest plea, the client should politely decline to state his or her version of the offense. Likewise, clients who will appeal should be alerted to the fat that what is told to an investigator is admissible at a retrial if they are successful on appeal.

Counsel should obtain a copy of the Presentence Report and the Sentencing Information Report (SIR) before the sentence date. MCR 6.425(B) states that the court must give counsel the opportunity to review the report before the day of sentence.

Review both the Presentence Report and the guidelines with the client. The defendant has a right to be sentenced on the basis of accurate information. If there

are errors in the report, defense counsel must have those corrected. It is not enough for the judge just to acknowledge the error or to correct only the copy of the PSR in his or her possession. If the client is sentenced to prison, the PSR becomes part of the prison and parole file. If all copies of the PSR are not corrected, that error may hold up a client's parole. If there are any additions to the report, counsel must advise the judge.

If objections to inaccuracies in the Presentence Report are not raised at sentencing, the issue will not be preserved for appeal. People v Hernandez, 443 Mich 1 (1993). This is also true of errors in the scoring of the guidelines. People v Mitchell, 454 Mich 145 (1997).

The court is allowed to depart from the guidelines if the defense can show substantial and compelling reasons for doing so. Substantial and compelling has been defined as objective and verifiable in te context of drug cases. Counsel should file a motion supported by a memorandum of law with documentation of the substantial and compelling reasons for a downward departure. This can include letters from co-workers, friends, family, and others; proof of employment; proof of selfless acts; voluntary efforts at rehabilitation.

Counsel also has an opportunity to speak on the defendant's behalf in an attempt to minimize the crime, maximize the client's good characteristics, and suggest alternatives to imprisonment. Counsel should also prepare the defendant to say a few words. This may be the first and only time the judge hears the defendant

speak. He or she will be taking the measure of this person. It is extremely important for the defendant to make a good impression.

In a situation where the client wants to remain silent, his silence cannot be used by the judge to increase the sentence under the pretext that he or she is failing to show remorse. Mitchell v United States, __ US _ (1999) (Fifth Amendment right to remain silent extends to the sentencing phase, even if the conviction was by way of a plea).

If there has been a Cobbs plea, a request for consideration under section 7411, other drug programs available through the court (Drug Court & Prosecutor's D.O.D.S.), or a petition for HYTA status, counsel should find out the court's decision before sentence. If the court cannot comply with the Cobbs sentence, a decision must be made whether to proceed to sentence or whether a motion should be made to withdraw the plea and go to trial. If the trial court accepts a defendant's plea after reading the Presentence Report, it must then impose the agreed upon sentence. MCR 6.302(C)(3)(b).

Defense counsel should ask the court to give the defendant credit for any time served in custody awaiting trial. MCL 769.11b. Defense counsel should also make sure that the client understands the right to appeal and how to request a court-appointed appellate lawyer.

WAYNE COUNTY THIRD JUDICIAL CIRCUIT
ADULT DRUG COURT PROGRAM

The Third Judicial Circuit Court Adult Drug Court Program primarily targets and offers a sentencing alternative to prison bound non-violent felony offenders who are addicted to prescription drugs, illicit drugs and/or alcohol.

The Adult Drug Court Program is a comprehensive, intensive program of judicial supervision which utilizes frequent and random drug testing, graduated incentives and sanctions, in conjunction with community resources to facilitate achievement of a better life for participants and the community.

The Adult Drug Court Program seeks to provide direction and leadership to participants of our Program, by establishing alliances between the criminal justice system, treatment providers, educators and other community stake holders to assist the participant in becoming drug free, and eliminating future drug abuse and criminality.

Participants appear before Supervising Drug Court Judges at regular status hearings while undergoing appropriate substance abuse treatment. Judges are actively involved in participants' progress while in the program, and are frequently involved with an offender after completion of the program.

Various incentives exist for participants who comply with program requirements including but not limited to, verbal encouragement, reduction in their reporting schedule and the avoidance of jail or prison time. There are also sanctions imposed for those participants who fail to comply. Typical sanctions include increased drug testing, community service, fines, specialized classes, NA/AA meetings, warrants, increased reporting and time in jail.

THE WAYNE COUNTY PROSECUTOR'S DRUG OFFENSE DELAYED SENTENCE PROGRAM

Effective 3-31-04

DRUG CASES ONLY (no G.H.B)

Footnote: Although D.O.D.S. only accepts drug cases, D.O.D.S. is different from Drug Court. Drug Court accepts "seriously addicted" individuals who are charged with non-violent offenses, i.e. Retail Fraud, U & P, Drugs, B & E Motor Vehicles, etc.

NO PRIOR FELONY CONVICTIONS

NO PRIOR H.Y.T.A., DIVERSION, 333.7411, OR PLEA UNDER ADVISE-MENT

NO OTHER PENDING CASE

NO GUNS ASSOCIATED WITH PRESENT CASE (other weapons will be reviewed on a case by case basis)

NO CASES INVOLVING 50 GRAMS OR MORE EXCEPT MARIJUANA

A DELAYED SENTENCE IS DISCRETIONARY WHEN THE DEFENDAN HAS A PRIOR MISDEMEANOR CONVICTION

A DELAYED SENTENCE IS DISCRETIONARY WHEN THE DEFENDANT HAS A PRIOR JUVENILE CONVICITON

A DELAYED SENTENCE IS DISCRETIONARY WHEN THE DEFENDANT HAS PRIOR CONTACT WITH THE CRIMINAL JUSTICE SYSTEM, BUT NO CONVICTION

A DELAYED SENTENCE IS DISCRETIONARY WHEN THERE IS A SEARCH WARRANT

DISCRETION SHALL BE EXERCISED BY SUPERVISORY PROSECUTION PERSONNEL, I.E. DOCKET ATTORNEYS OR THE PROGRAM COORDINATOR, A.P.A. SHARON GRIER

Practice Notes

1. Work the guidelines out before the day of sentence so you are prepared to attack the scoring.

2. Review the PSR with your client so that you can bring errors or new material to the judge's attention.

3. Make sure your objections are on the record so they are preserved for appellate review.

4. If there are errors to be corrected, make sure they are corrected on the copies of the PSR and SIR that accompany the client to the prison. MCR 6.425(D)(3)(b).