

**GUIDE TO THE PRACTICE  
OF  
CRIMINAL LAW  
IN  
WAYNE COUNTY**

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## TABLE OF CONTENTS

Introduction .....	iii
Anatomy of a Case .....	iv
Complaint and Arrest Warrant .....	1
District Courts .....	3
Arraignment and Bond .....	3
Assignment of Counsel .....	11
Client Interview .....	13
Pre-Examination Conference .....	19
Preliminary Examinations .....	20
Search Warrants .....	28
Writs of Habeas Corpus .....	28
Wayne County Court Criminal Division .....	31
Arraignment on the Information .....	31
Guilty Pleas .....	38
Calendar Conference .....	43
Motions .....	45
Final Conference .....	53
Trial .....	57

## TABLE OF CONTENTS

Voucher.....68

Forms.....

- Appearance
- Discovery Request
- Diversion request
- Praecipe for Motion
- Order Granting Discovery
- Pretrial Checklist
- Assignment
- Service Voucher

Misc.....

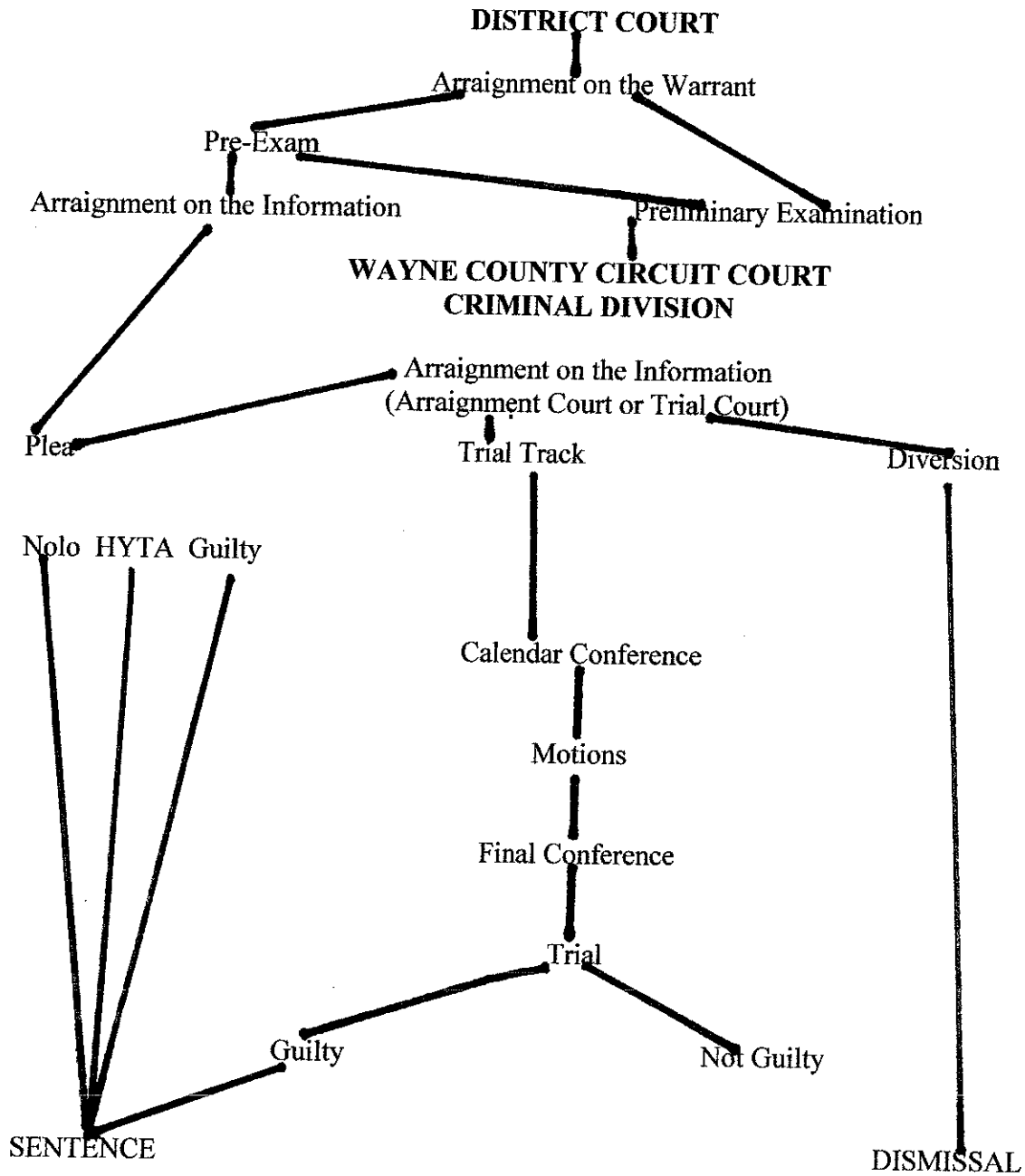
- Jail Information
- Register of Action
- Check Enforcement Program
- Mental Health Jail Diversion
- MCL 762.11 (HYTA)
- MCL 333.7411
- MCL 769.4a ( D.V. diversion)
- Motions
- Fee Schedule
- Third Circuit Court Criminal Roster
- Third Circuit Court Predecessor List
- Wayne County Prosecutor's office
- Notice/requirements to receive assignments
- Prohibited Items In Third Circuit Court Buildings

## **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. They 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 placed 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 percent 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.

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**

8:30 am - 10:00 am  
1:00 pm - 3:30 pm  
7:00 pm - 9:00 pm

### **New Jail**

7:30 am - 10:30 am  
1:00 pm - 2:30 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 forms 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.
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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

-vs-

File No.

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**

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**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.

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**VERIFICATION OF JAIL VISIT**

Client \_\_\_\_\_ was visited in \_\_\_\_\_  
on \_\_\_\_\_ by \_\_\_\_\_, attorney  
Case No. \_\_\_\_\_

\_\_\_\_\_  
Wayne County Deputy Sheriff - Badge No.

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**VERIFICATION OF JAIL VISIT**

Client \_\_\_\_\_ was visited in \_\_\_\_\_  
on \_\_\_\_\_ by \_\_\_\_\_, attorney  
Case No. \_\_\_\_\_

\_\_\_\_\_  
Wayne County Deputy Sheriff - Badge No.

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**VERIFICATION OF JAIL VISIT**

Client \_\_\_\_\_ was visited in \_\_\_\_\_  
on \_\_\_\_\_ by \_\_\_\_\_, attorney  
Case No. \_\_\_\_\_

\_\_\_\_\_  
Wayne County Deputy Sheriff - Badge No.

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**PRE-EXAM CONFERENCE**  
36<sup>th</sup> 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 dual 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 36<sup>th</sup> 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 through.

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 Defendant 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 arraigned: \_\_\_\_\_

Defense Attorney: \_\_\_\_\_

Examination held on: \_\_\_\_\_

Witness called: \_\_\_\_\_

BIND OVER

Bound to Circuit Court to appear on \_\_\_\_\_ at \_\_\_\_\_ m., Courtroom No. \_\_\_\_\_

Bond set in the amount of \$ \_\_\_\_\_ Type of Bond: \_\_\_\_\_

Statute: MCL \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
District Judge/Magistrate

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

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. * <hr/> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%; border: 1px solid black;">CTN *</td> <td style="width:33%; border: 1px solid black;">SID *</td> <td style="width:33%; border: 1px solid black;">DOB *</td> </tr> </table>	CTN *	SID *	DOB *
CTN *	SID *	DOB *			
* Juvenile In the matter of *					

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

**MOTION**

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

**IT IS ORDERED:**

**ORDER**

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.
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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 36<sup>th</sup> 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

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**ADMINISTRATIVE ORDER 2006-04**

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**STATE OF MICHIGAN  
THIRD JUDICIAL CIRCUIT**


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**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.<sup>1</sup>

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

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<sup>1</sup>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 10<sup>th</sup> 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



STATE OF MICHIGAN

CASE NO: 1999909 PA

36TH DISTRICT COURT  
3rd CIRCUIT COURT

INFORMATION  
FELONY

The People of the State of Michigan

vs

JOHN INNOCENT

**Date of Offense**  
04/27/1999 rm

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

**Place of Offense**  
391 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  
PI8432  
Prosecuting Attorney

By \_\_\_\_\_  
Bar Number

## SENTENCING INFORMATION REPORT

Offender: \_\_\_\_\_ SSN: \_\_\_\_\_ Workload: \_\_\_\_\_ Docket Number: \_\_\_\_\_  
 Judge: The Honorable \_\_\_\_\_ Bar No.: \_\_\_\_\_ Circuit No.: CC 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  
 Docket Number: \_\_\_\_\_ 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:	_____	<input type="checkbox"/>
Jail:	_____	<input type="checkbox"/>
Prison:	_____	<input type="checkbox"/>

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 defendant 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.

**PRETRIAL  
SETTLEMENT OFFER  
AND NOTICE OF ACCEPTANCE**

CASE NO. \_\_\_\_\_  
PROS. WAR. NO. \_\_\_\_\_

THE PEOPLE OF THE STATE  
OF MICHIGAN

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 \_\_\_\_\_

\_\_\_\_\_  
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                      -40-                      Defense Attorney    Date

<b>STATE OF MICHIGAN</b> <b>Third Circuit Court</b> <b>Criminal Division</b>	<b>Request by Defendant For</b> <b>Statement of Preliminary</b> <b>Evaluation Of Sentence</b>	<b>Case No.</b> <hr/>
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<b>People</b> <b>of</b> <b>The State of Michigan</b>	vs.	<b>Defendant</b> <b>Name:</b> _____ <b>Address:</b> _____ _____
--	-----	--

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

## **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.

<b>STATE OF MICHIGAN</b> <input type="checkbox"/> <b>THIRD JUDICIAL CIRCUIT COURT</b> <input type="checkbox"/> <b>CRIMINAL DIVISION</b>	<b>SUMMARY STATEMENT OF CALENDAR CONFERENCE</b>	<b>CASE NO.</b> <hr/>
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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**



<p align="center"><b>STATE OF MICHIGAN THIRD JUDICIAL COURT CRIMINAL DIVISION</b></p>	<p>APPLICATION AND CONSENT TO BE CONSIDERED AND ASSIGNED TO THE STATUS OF YOUTHFUL TRAINEE, MCLA 762.11</p>	<p align="center">CASE NO.</p> <hr/>
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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.

## **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 12<sup>th</sup> 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 prepared 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

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.

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 and weigh their probative value on the issue of credibility against their prejudicial effect on the minds of the jurors.

- (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 <input type="checkbox"/> Third Judicial Circuit Court <input type="checkbox"/> Criminal Division	<b>PRAECIPE FOR MOTION</b>	CASE NO. _____
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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 #



<b>STATE OF MICHIGAN</b> <b>Third Judicial Circuit Court</b> <b>Criminal Division</b>	<b>ORDER</b> <b>DENYING / GRANTING</b> <b>MOTION</b>	Case No. _____ <hr/>
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**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**

**ORDER DENYING / GRANTING MOTION**

## **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.



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 \_\_\_\_\_ AT \_\_\_\_\_  
Date 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**

<b>STATE OF MICHIGAN</b> * * * <b>JUDICIAL DISTRICT</b> <b>JUDICIAL CIRCUIT</b> <b>COUNTY PROBATE</b>	<b>WAIVER OF TRIAL BY JURY AND ELECTION TO BE TRIED WITHOUT JURY</b>	<b>CASE NO.</b>  *
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OBI \*  
MI- \* 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 \_\_\_\_\_

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.

## 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.

STATE OF MICHIGAN * JUDICIAL DISTRICT * JUDICIAL CIRCUIT * COUNTY PROBATE	<b>SUBPOENA</b> Order to Appear	FILE NO. *
--	------------------------------------	------------

Court Address \* \_\_\_\_\_ Court telephone no. \_\_\_\_\_  
 Police Report No. (if applicable) \_\_\_\_\_

Plaintiff(s) Petitioner(s) * People of the State of Michigan *	V	Defendant(s) Respondent(s) *
* 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 2. *	Date *	Time *

**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.  
**MC 11 (6/97) SUBPOENA, Order to Appear**

Court use only  
 Served    Not Served



**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 \*  
\* personally (including required fees, if any) Attachment  
\* 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 \* Attachment on \* 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 \* Date, \* County, Michigan.

My commission expires: \* Date Signature: \* 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:

Attachment on Day, date, time

Signature on behalf of

**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

Approved, SCAO

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

ORI \_\_\_\_\_ Court Address \_\_\_\_\_ Court Telephone Number \_\_\_\_\_  
 MI- \_\_\_\_\_

THE PEOPLE OF	<input type="checkbox"/> The State of Michigan <input type="checkbox"/> _____ _____
---------------	---

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.

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

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:	\$ <u>60.00</u>	State Fees
	\$ <u>60.00</u>	Crime Victim Fee
	\$ _____	Court Costs
	\$ _____	Attorney Fees
	_____	Restitution
	_____	Other _____
	\$ _____	<b>TOTAL</b>

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

<b>STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT</b>	<b>ORDER FOR DNA SAMPLE</b>	<b>CASE NO.</b>
---	-----------------------------	-----------------

Court address \_\_\_\_\_

Court telephone no. \_\_\_\_\_

<p><input type="checkbox"/> The State of Michigan</p> <p>THE PEOPLE OF <input type="checkbox"/> _____</p>	<b>v</b>	<p>Defendant's/Juvenile's name, address, and telephone no.</p> <p>_____</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;">CTN</td> <td style="width:33%;">SID</td> <td style="width:33%;">DOB</td> </tr> </table>	CTN	SID	DOB
CTN	SID	DOB			
<p><input type="checkbox"/> Juvenile In the matter of _____</p>					

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 \_\_\_\_\_  
Date a DNA sample was taken of the defendant/juvenile and forwarded to 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 fact 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 the 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

speaking. 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 CONVICTON

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).

# **FORMS**

Approved, SCAO

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	APPEARANCE	CASE NO.
--	------------	----------

Court address \_\_\_\_\_ Court telephone no. \_\_\_\_\_

Plaintiff(s)/Petitioner(s)	v	Defendant(s)/Respondent(s)
----------------------------	---	----------------------------

Probate In the matter of \_\_\_\_\_

Juvenile In the matter of \_\_\_\_\_

TO: Clerk of the Court/Register, all attorneys of record, and unrepresented parties: Specify names and addresses

I appear on behalf of \_\_\_\_\_ as

attorney  guardian ad litem and request copies of all papers filed in this case.

Court appointed  Retained by \_\_\_\_\_

I certify that I represent no other interest whatsoever of any party to this cause, except as follows:

\_\_\_\_\_  
Date Signature

\_\_\_\_\_  
Name (type or print) Bar no. Address

\_\_\_\_\_  
Firm name City, state, zip Telephone no.

<b>STATE OF MICHIGAN</b> Third Judicial Circuit Court Criminal Division	<b>APPEARANCE          BY          RETAINED COUNSEL</b>	<b>CASE NO.</b> <hr/>
---	---	--------------------------

**PEOPLE OF THE STATE OF MICHIGAN**

**VS**

---

**Defendant**

**TO THE CLERK OF SAID COURT**

**Please enter my appearance as Retained Counsel for:**

---

**Defendant in above cause.**

---

**Attorney for Defendant**

Detroit, \_\_\_\_\_, 20\_\_\_\_

**P** { Name \_\_\_\_\_  
**R** { Address \_\_\_\_\_  
**I** { Telephone \_\_\_\_\_  
**N** {  
**T** {

Michigan State Bar No. \_\_\_\_\_

**APPEARANCE RETAINED BY COUNSEL**

# DISCOVERY REQUEST- DETROIT - PRE-EXAM OR EXAM ONLY

WAYNE COUNTY PROSECUTORS OFFICE

*THE FOLLOWING INFORMATION IS NEEDED IN ORDER TO RECEIVE DISCOVERY*

*Please call after 24 hours to arrange pick-up of Discovery*

Did the Alleged Crime happen in the City of Detroit? \_\_\_\_\_ Yes \_\_\_\_\_ No.  
If Yes Continue – If No, see below for OUT COUNTY Discovery Coordinator

DATE OF REQUEST: \_\_\_\_\_ TIME: \_\_\_\_\_ AM PM

NAME OF DEFENDANT (PEOPLE -VS-) \_\_\_\_\_

36<sup>TH</sup> DISTRICT CASE #: \_\_\_\_\_

WC PROSECUTOR # OR NAME: \_\_\_\_\_

Date: PRE-EXAM \_\_\_\_\_ EXAM \_\_\_\_\_

By: \_\_\_\_\_ P \_\_\_\_\_  
ATTORNEY / AGENT

TELEPHONE: OFFICE: \_\_\_\_\_ CELL \_\_\_\_\_

**RECEIPT FOR DISCOVERY**  
*PLEASE CHECK THE APPROPRIATE BOX*

APPOINTED  **\$1.00 PER PAGE RETAINED**   
*(CHECK OR MONEY ORDER made Payable to "WAYNE COUNTY PROSECUTOR'S OFFICE")*

**\* GLENDA DAVIS 10<sup>TH</sup> FLOOR (313) 224-8869 (DETROIT DISCOVERY ONLY)**  
**NO: DOMESTIC VIOLENCE, CHILD ABUSE, PATU, OUT COUNTY**

*LINDA WOODS	10 <sup>TH</sup> FL.	(313) 224-5760	(PATU) AUTO THEFT
*CAROL DAWSON	10 <sup>TH</sup> FL.	(313) 224-5857	DOMESTIC VIOLENCE
*SUKETA THAKORE	10 <sup>TH</sup> FL.	(313) 224-8082	CSC 16 & UNDER
Joyce	12 <sup>TH</sup> FL.	(313) 224 2882	HOMICIDE
*DEBORAH HEMINGWAY	10 <sup>TH</sup> FL.	(313) 224-5802	OUT-COUNTY
*DIANE ONNIE	10 <sup>TH</sup> FL.	(313) 967-2211	MISDEMEANORS

AFTER EXAM D36TH DISTRICT AND OUT-COUNTY PLEASE CONTACT THE FOLLOWING:

PAT HARRIS 11<sup>TH</sup> FL. (313) 224-2813

KIM L. WORTHY  
PROSECUTING ATTORNEY  
2009

COUNTY OF WAYNE  
OFFICE OF THE PROSECUTING ATTORNEY  
DETROIT, MI 48226

FRANK MURPHY HALL OF JUSTICE  
1441 ST. ANTOINE STREET  
TELEPHONE: 313 - 224-5277



**REVISED: SEPTEMBER 10, 2008**



KYML WORTHY  
PROSECUTING ATTORNEY

RICHARD P. HATHAWAY  
CHIEF ASSISTANT

DONN FRESARD  
CHIEF OF STAFF

COUNTY OF WAYNE  
OFFICE OF THE PROSECUTING ATTORNEY  
DETROIT, MICHIGAN

1200 FRANK MURPHY HALL OF JUSTICE  
1441 ST. ANTOINE STREET  
DETROIT, MICHIGAN 48226-2302

TEL: (313) 224-5777  
FAX: (313) 224-0974

## OUT-COUNTY DISCOVERY REQUEST

**\*\*\*The following information is needed in order to receive your discovery in a timely manner\*\*\***

Date of Request: \_\_\_\_\_

Defendant's Name: People vs \_\_\_\_\_

Prosecutor's Case No. (CTN #) \_\_\_\_\_

**Exam Date:** \_\_\_\_\_ **City (District Ct):** \_\_\_\_\_

Requested By (Atty): \_\_\_\_\_ P-\_\_\_\_\_

Contact No. \_\_\_\_\_

### RECEIPT FOR DISCOVERY

Appointed (No charge) \_\_\_\_\_ Retained (\$1.00 per page) \_\_\_\_\_

**(Make check / money order payable to "WAYNE COUNTY PROSECUTOR'S OFFICE") \*\*NO CASH\*\***

### DISCOVERY PICKED UP

**\*\*Please sign this sheet to indicate you have received this package\*\***

Date: \_\_\_\_\_

By: \_\_\_\_\_ Agent for Attorney of Record

## **FYI: TO RECEIVE OUT COUNTY DISCOVERIES**, contact the following:

Deborah Hemingway at (313) 791-9841 / Fax (313) 791-9800  
Districts: All districts EXCEPT those below

Dearborn Heights Police Dept, 2<sup>nd</sup> Floor  
25637 Michigan Ave, Dearborn Heights, MI 48125

Warrants Staff at (313) 224-5802 (FMHJ -10<sup>th</sup> Floor)

Districts: 28<sup>th</sup> (Southgate), 30<sup>th</sup> (Highland Pk), 31<sup>st</sup> (Hamtramck), 32A (Harper Wds), 32B (Grosse Pointes)

### **Picking up discovery from other departments, contact the following:**

<b>FYI:</b> CFAB cases:	Suketa Thakore, CFAB Unit, 10 <sup>th</sup> floor
Domestic Violence cases:	Carol Dawson, DV Unit, 10 <sup>th</sup> floor
Detroit cases:	Glenda Davis, Warrants Dept, 10 <sup>th</sup> floor
<b>After exam:</b>	Patricia Harris / Virginia Witherspoon, Trials Division, 11 <sup>th</sup> floor

<b>STATE OF MICHIGAN THIRD JUDICIAL CIRCUIT COURT CRIMINAL DIVISION</b>	<b>REQUEST FOR DIVERSION CONSIDERATION</b>	<b>CASE NO.</b> _____  <b>CTN</b> _____
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THE PEOPLE OF THE  
STATE OF MICHIGAN

V.

Defendant's Name, Address, and Phone Number  	
DOB: _____	SID: _____

Defendant requests placement in the Wayne County Prosecutor's Pre-Trial Diversion Program.

**(1) Prior Record**

- Defendant has no prior record.
- Defendant has prior non-felony contacts (include misdemeanors, juvenile dispositions, 7411, HYTA, etc.):  
\_\_\_\_\_
- Other: \_\_\_\_\_

**(2) Charged Offense(s)**

- The charged offense is "Diversion Eligible" under the Prosecutor's Guidelines
- Other: \_\_\_\_\_

**(3) Restitution**

- No restitution is owed.
- It is agreed that the restitution owed by the defendant is \$ \_\_\_\_\_; this amount will be paid in full within 90 days.
- Other: \_\_\_\_\_

\_\_\_\_\_  
 Defendant Date Defense Attorney Date

**ORDER FOR HEARING**

Defendant's request will be considered by the Court on \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
 Circuit Court Judge Date

## PRE-TRIAL DIVERSION

Date: September 29, 2008  
To: Wayne County Criminal Defense Bar  
From: William J. Heaphy, Jr. (313-224-2887)  
Wayne County Prosecutor's Office  
Director, Pre-Trial Diversion Program

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This memo is meant to serve as an overview of the Diversion Program. For information on specific offenses, please see the accompanying Eligibility List.

### Goals of the Program:

- Ensure prompt disposition of low-level felony cases with minimal use of public resources.
- Encourage early payment of restitution to crime victims.
- Distinguish between offenders who merit criminal sanctions and those who deserve a second chance.

### Procedure

- Attorneys seeking Diversion for their clients should apply as early as possible, preferably on the date of the AOI or Pre-Exam.
- HYTA-eligible defendants should seek HYTA.
- "Request for Diversion Consideration" forms should be filled out and submitted to the Court, and a hearing date should be set. Two weeks is typically needed to review and investigate a Diversion Request.
- After the date is set, attorneys should bring their client and the Prosecutor's File to the 10<sup>th</sup> Floor Visitor's Lobby. The attorney, client and Diversion APA will meet and briefly discuss the program; a follow-up interview will be scheduled.
- Most Diversion applicants are completely unfamiliar with the criminal justice system. Attorneys should make sure that their client's are aware of and prepared for appointments, court dates, and payment deadlines.
- A recommendation for (or against) placement in the Diversion Program will be made on the court date. Often, the recommendation will depend on payment of restitution or the supervision fee to be made that morning. Attorneys should contact their clients after the follow-up interview and make sure that their clients know what their obligations are.

### Prior Record

- In general, defendants with no prior record, or limited, non-assaultive misdemeanor or juvenile contacts will be eligible for Diversion.
- Exceptions might be made for defendants with extremely old criminal contacts, if there has been a long history of law-abiding behavior and if other equitable circumstances exist.

### Restitution

- Restitution should be paid in full prior to acceptance into the Diversion Program.
- Defendants will sometimes be accepted upon payment of half the total restitution owed, but only after demonstrating their good faith and an ability to pay the balance within 120 days of the AOI.

### Other Conditions

- Other conditions of the program generally include payment of a supervision fee, regular reporting, and community service. Diversion participants are expected to maintain stable residence and employment and to obey the law.
- Depending on the individual defendant, or the facts of a particular case, some conditions may be held in abeyance; other conditions may be added. These might include: counseling for substance abuse, anger management, or other behavioral health problems; drug screening; the Wayne County Alternative Work Force; GED classes and/or vocational training.

### Revocation

- The decision place or continue a defendant in Diversion is entirely within the discretion of the Office of the Wayne County Prosecutor. Following a decision to revoke a defendant's Diversion status, a Pre-Trial will be scheduled and the parties will be notified by mail.

## Diversion Eligibility

Date: February 24, 2009  
From: William J. Heaphy, Jr.  
Wayne County Prosecutor's Office  
Director, Pre-Trial Diversion Program

### Cases Considered for Diversion

- Embezzlement<sup>1</sup>
- Larceny<sup>1</sup>
- False Pretenses<sup>1,2</sup>
- Insurance Fraud<sup>1,2</sup>
- Computer Fraud<sup>1,2</sup>
- Identity Theft<sup>1,2</sup>
- False Felony Report
- Poss./Del. Unauthorized A/V Recordings
- Poss./Del. Counterfeit Property
- Uttering and Publishing
- Credit Card Cases (FTD)
- Check – NSF and/or No Account
- Retail Fraud
- Larceny in a Building
- B&E Building
- Home Invasion III
- B&E Coin Box
- Poss. Burglar Tools
- Malicious Destruction of Property
- Arson - Personal Property
- RCSP
- UDAA / UTUA
- Failure to Return Rental Property
- Larceny / B&E Motor Vehicle
- License / Document / Ins.Cert. Forgery
- Misc. Motor Vehicle Code Violations<sup>3</sup>
- Poss. Taser
- Resisting and Obstructing

### Cases Not Considered

- All Assaults
- All Homicides
- All CSC Cases
- Kidnapping
- Home Invasion I & II
- Arson – Dwelling
- Arson – Real Property
- Extortion
- Perjury
- Obstruction of Justice
- Stalking
- CCW
- Poss. Sawed-Off Shotgun
- Poss. Brass Knuckles
- Larceny from a Person
- Fleeing and Eluding
- OUIL – 3<sup>rd</sup>
- Felonious Driving
- Controlled Substance Offenses<sup>4</sup>

### Notes

- 1) For theft cases, the value of money or goods taken must be less than \$10,000. Exceptions may be made in cases where the amount at issue is between \$10,000 and \$20,000. Cases involving amounts over \$20,000 will generally not be considered.
- 2) Fraud cases will be considered where the culpability of the defendant is relatively low and where the conduct at issue is relatively simple. Crimes involving complex schemes, large amounts of money, and/or multiple fraudulent actions are inappropriate for Diversion.
- 3) Offenses such as Intent to Pass False Title and Odometer Tampering will be considered but, as stated above, only where the culpability of the defendant is relatively low.
- 4) Drug Offenders should request a sentence under MCL 333.7411 or request placement in Drug Court.

<b>STATE OF MICHIGAN</b> <input type="checkbox"/> Third Judicial Circuit Court <input type="checkbox"/> Recorder's Court	<b>PRAECIPE FOR MOTION</b>	<b>CASE NO.</b> <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/>
--	------------------------------------	---

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: \_\_\_\_\_, 19 \_\_\_\_.

\_\_\_\_\_  
*Attorney for Defendant* *Michigan State Bar #*

\_\_\_\_\_  
*Address*

\_\_\_\_\_  
*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, Recorder's Court Section by *(mail) (personal)* service. (Cross out one)

Sworn and subscribed before me

on: \_\_\_\_\_

\_\_\_\_\_  
 Notary Public

\_\_\_\_\_  
 County

\_\_\_\_\_  
 My Commission Expires

\_\_\_\_\_  
*Attorney for Defendant*

7 Day Noticed waived \_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Prosecuting Official* *Michigan State Bar #*

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE  
CRIMINAL DIVISION

PEOPLE OF THE STATE OF MICHIGAN  
vs

Case No. \_\_\_\_\_

**ORDER GRANTING DISCOVERY FOR DEFENDANT**

At a session of said Court held in  
Frank Murphy Hall of Justice, on

Date: \_\_\_\_\_

Present Honorable \_\_\_\_\_

**IT IS HEREBY ORDERED** that pursuant to MCR 6.201 the prosecution provide the following to defendant's counsel:

1. The names and address of all lay and expert witnesses that the prosecution intends to call at trial.
  2. Accurate copies of all written and recorded statements by witnesses that the prosecution intends to call at trial.
  3. Accurate copies of all reports produced by or for expert witnesses the prosecution intends to call at trial.
  4. Accurate copies of the criminal records of the defendant.
  5. Accurate copies of all documents, photographs, or other papers in the control or custody of the prosecution relating to or concerning this case, including but not limited to any scientific, technical or laboratory reports, i.e. forensic testing, autopsy reports, blood tests, etc.
  6. Description of and an opportunity for Defendant's counsel to inspect any tangible evidence in the custody and /or control of the prosecution.
  7. Any exculpatory evidence or information known to the prosecution.
  8. Accurate copies of all police reports, dispatch tapes, 911 tapes, field notes or other writings in the custody and/or control of the prosecution concerning this case.
  9. Accurate copies of all affidavits, warrants and returns pertaining to searches and seizures in connection with this case.
  10. Accurate copies of all plea agreements, grants of immunity or other agreements for testimony in connection with this case.
  11. Accurate copies of all written or recorded statements made by defendant to police or the prosecution in the custody and / or control of the prosecution.
- Disclosure shall be made within 14 days of the issuance of this order.  
Copies made under this Order shall be at Court expense.

\_\_\_\_\_  
Circuit Court Judge

# PRETRIAL CHECKLIST

## A. NOTICE

1. Rape shield \_\_\_\_ Due by \_\_\_\_\_
2. Alibi \_\_\_\_ Due by \_\_\_\_\_
3. Wit list \_\_\_\_ Due by \_\_\_\_\_
4. Evidence list \_\_\_\_ Due by \_\_\_\_\_
5. Voir Dire \_\_\_\_ Due by \_\_\_\_\_
6. Mental def. \_\_\_\_ Due by \_\_\_\_\_

## B. MOTIONS

Date due

1. Wade/issue
2. Walker/issue
3. Suppress/issue
4. Quash/issue
5. Bad acts/issue
6. Expert/issue
- 7.

## C. SPECIAL DISCOVERY

Date due

1. Omnibus request
2. Patrol car video
3. P.Jacket view
- 4.
- 5.

## D. INVESTIGATIVE REQUESTS

Due by

Inv.

Done

- 1.
- 2.
- 3.

## E. SUBPOENAS

Due by

Inv.

Done

1. APA list, unendorsed
2. Defense
3. Special

## F. EXHIBITS (Notice to APA and Court—See A-3 and 4)

- 1.
- 2.

## G. MOTION IN LIMINE

1. Bad Acts, prior convictions, Med. Evidence and Business Record stips

## H. CLOTHES FOR DEFENDANT?

## I. WITNESS PREP

1. Direct/Cross
2. Presentation/behavior/clothes
3. Review Statements/transcripts/maps/charts
4. Impeachment Chart

## J. JURY INSTRUCTIONS/STANDARD&SPECIALS

Theory of the case worksheet case name \_\_\_\_\_  
Trial date \_\_\_\_\_ Pretrial motions \_\_\_\_\_

1. Your theory of the case and your defense position:

---

---

2. Why is it your best theory of the case? \_\_\_\_\_

---

---

3. What are the facts beyond change with which you are confronted?

---

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---

---

4. What are the best facts for you? \_\_\_\_\_

---

---

---

5. List the key prosecution wits and after each one note what you hope to accomplish by XE of each one: \_\_\_\_\_

---

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---

---

6. List your potential wits and what each will give your defense: \_\_\_\_\_

---

---

7. What further investigation would you do? \_\_\_\_\_

---

---

8. Evidentiary issues you have to deal with? \_\_\_\_\_

---

---

9. Theme or slogan of your defense? \_\_\_\_\_

---

---

10. What sort of demonstrative evidence could you use? \_\_\_\_\_

---

---



**COUNTY OF WAYNE  
DEPARTMENT OF MANAGEMENT AND BUDGET**

DATE 8-20-09

**SERVICE VOUCHER  
PERSONAL SERVICE**

W.C. DEPT. WCCP - Criminal Division

FOR ACCOUNTING USE ONLY

VENDOR NO. \_\_\_\_\_

VOUCHER NO. \_\_\_\_\_

CHECK NO. \_\_\_\_\_

CASH:  
GL NO. \_\_\_\_\_ 00000 \_\_\_\_\_

TREAS. CODE \_\_\_\_\_

FED. TAX ID. NO. OR SOC. SEC. NO. \_\_\_\_\_ PAYEE'S NAME (LAST) (FIRST) (MIDDLE INIT.) \_\_\_\_\_

on file  
STREET NO. AND NAME \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_  
MICH.

**METHOD OF PROCESSING:**

CDA

MANUAL

WIRE TRANSFER\*

PARTY REPR OR SVS TYPE (LAST NAME ONLY) (FOR PARTY REPR)	BAR NO. ATTY'S ONLY	APPTG. JUDGE INITIALS ATTY'S ONLY	ACCT. NO.	COUNTY DEPT. CASE NO. MUST BE FILED IN
			<u>83513220814010</u>	

ORIGINAL CHARGE \_\_\_\_\_ AMT \_\_\_\_\_

DATE	DESCRIPTION OF SERVICES RENDERED	FEE OR COST

EXTENSIONS CHECKED	PAYMENT AUTH'D. (BUDGET)	<b>TOTAL</b>
--------------------	--------------------------	--------------

I hereby certify that the services described above were rendered to the County, and that no part of the same has been previously paid.

Signature \_\_\_\_\_  
Department/Division \_\_\_\_\_  
Date/Title \_\_\_\_\_

**MANAGEMENT & BUDGET APPROVAL**

Signature \_\_\_\_\_  
Date \_\_\_\_\_

- Distribution: 1. Yellow - Management & Budget  
2. Pink - Remittance Copy  
3. Green - Initiating Department

**MISC.**

## Information Sheet

### VISITATION

A Valid Michigan driver's license or a Michigan state I.D. is required for all visitors on the inmate visitation list. Visitors are allowed one (1) 30-minute visit on assigned days. All visitors must be at least 17 years of age. An adult must supervise persons in the lobby less than 17 years of age. Disruptive visitors will be permanently removed from the visitation list. Visitors for inmate workers will be scheduled on Saturdays at the same hours listed below. Visiting days are in alphabetical order by inmates' last name. The hours are as followed:

New Jail DIV. I		Old Jail DIV. II	
7:30 A.M. – 10:30 A.M.		8:30 A.M. – 10:00 A.M.	
Monday	A - H	1:00 P.M. – 3:30 P.M.	
Wednesday	I - Q	7:00 P.M. – 9:00 P.M.	
Friday	R - Z	Monday	A - C
6:00 P.M. – 9:00 P.M.		Tuesday	D - H
Tuesday	A - H	Wednesday	I - M
Thursday	I - Q	Thursday	N - S
Friday	R - Z	Friday	T - Z

No smoking, food, drinks, pagers, cell phones, or cigarettes are allowed in the facility.

### INMATE PROPERTY & MONEY ORDERS

Money orders will be accepted 24 hours, 7 days a week at the New Jail DIV. I located at 570 Clinton, Detroit, MI 48226. Any Questions please call property at (313) 224-0799.

Property hours of operation are 9:00 A.M. - 4:30 P.M. Monday thru Friday. The inmate property room is closed on weekends and holidays. All money orders must be made out to the inmate and include the inmate's number as well as the name and address of the person bringing the money order. (Money orders must be \$100 or less.)

---

### INMATE CLOTHING EXCHANGE

Inmate clothing exchanges are done by **appointment only**. All appointment times are prompt; if you are late for your appointment, you will be turned away, **NO EXCEPTIONS**. Inmates have to go to court at least one (1) time while being a part of this facility before receiving a clothing exchange. Personal hygiene items, cigarettes, and underclothing will not be accepted. Clothing exchange hours are 8:00 A.M. - 1:00 P.M. Monday – Friday. The Clothing Exchange Department is closed on Thursdays, weekends, & holidays. Any Questions or to make an appointment call (313) 224-8346.

### MEDICAL INQUIRIES

All medications and medical questions must be directed to the medical department in the New Jail DIV I. (313) 224-0656.

## INMATE MAIL

Inmate mail must be addressed to the below listed addresses (Depending on where the inmate is housed) and include the inmates name and inmate number. All mail that does not include the complete address will be returned to sender.

John Doe # 123456  
570 Clinton Ward No.  
Detroit, MI 48226

John Doe # 123456  
525 Clinton Ward No.  
Detroit, MI 48226

## BOND POLICY AND PROCEDURE

Bonds will be accepted at the Wayne County Jail 365 days a year, 24 hours a day with the following exceptions:

From 8:30 A.M. to 4:30 P.M. Monday thru Friday, cash bonds and fines should be paid at the 3<sup>rd</sup> Circuit Court and 36<sup>th</sup> District Court. After the bond has been paid at the court, the receipt must be brought to the Wayne County Jail for processing. Anyone posting bond must be at least 18 years of age.

New inmates coming from other agencies or courts cannot be released until that inmate has been processed thru the Wayne County Jail system.

## BOND PROCESSING

The bond officer will write the inmates' name on the bond list as you arrive at the bond window in first come-first serve order. Each inmate will be processed in order, unless the inmate has not arrived from the courts or other agencies. Once the bond process begins, a L.E.I.N. check will be ran on the inmate for any additional wants or warrants. Any additional charges found must be paid before the inmate is released from the Wayne County Jail.

## METHODS OF PAYMENT

Monies accepted for payment of bonds are as followed:

---

~~Denominations of \$20 or larger will be accepted. Only cashiers check and certified~~  
checks made out to the Sheriff of Wayne County will be accepted for the amount of the bond. Money orders, personal checks, loose and/or rolled coins **will not be accepted**. A separate check must be made out for each charge. Discovery Card, Visa Card, Master Card, and the American express Card are also accepted. All Credit Cards used for bonds are subject to an 8% processing fee from the Government Payment Services Inc.

## IDENTIFICATION

Identification must be in the form of a valid driver's license or state identification card. Valid out of state driver's license or state identification are also accepted.

**REGISTER OF ACTIONS**  
CASE NO. 09-018771-01-FC

State of Michigan v Anthony Talmadge Prather

09/09/2009

Case Type: **Capital Felonies**  
Date Filed: **07/29/2009**  
Location: **Criminal Division**  
Case Number History: **09715765-01**  
Case Tracking Number: **09715765-01**

**PARTY INFORMATION**

<p><b>Defendant</b> <input checked="" type="checkbox"/> <b>Prather, Anthony Talmadge</b> SID: MI3451889e</p>	<p>Male Black 06/14/1975 5' 10" , 180 lbs</p>	<p><b>Lead Attorneys</b>  <i>Retained</i></p>
<p><b>Plaintiff</b>     <b>State of Michigan</b></p>	<p>Geyer, Betsy Lynn (313) 224-2734(W)</p>	

**CHARGE INFORMATION**

Charges: Prather, Anthony Talmadge	Statute	Level	Date
1. Criminal Sexual Conduct - First Degree (person Under Thirteen, Defendant 17 Year	750520B2B	.	07/09/2009
2. Criminal Sexual Conduct - First Degree (person Under Thirteen, Defendant 17 Year	750520B2B	.	07/09/2009
3. Criminal Sexual Conduct - First Degree (person Under Thirteen, Defendant 17 Year	750520B2B	.	07/09/2009
4. Criminal Sexual Conduct - First Degree(relationship)	750520B1B	.	07/09/2009
5. Criminal Sexual Conduct - Second Degree(relationship)	750520C1B	.	07/09/2009
6. Criminal Sexual Conduct - Second Degree (person Under Thirteen, Defendant 17 Yea	750520C2B	.	07/09/2009

**EVENTS & ORDERS OF THE COURT**

**DISPOSITIONS**

07/16/2009 **Plea** (Judicial Officer: James, Sylvia A)  
 1. Criminal Sexual Conduct - First Degree (person Under Thirteen, Defendant 17 Year Defendant Stand Mute: Plea of Not Guilty Entered by Court  
 2. Criminal Sexual Conduct - First Degree (person Under Thirteen, Defendant 17 Year Defendant Stand Mute: Plea of Not Guilty Entered by Court  
 3. Criminal Sexual Conduct - First Degree (person Under Thirteen, Defendant 17 Year Defendant Stand Mute: Plea of Not Guilty Entered by Court  
 4. Criminal Sexual Conduct - First Degree(relationship) Defendant Stand Mute: Plea of Not Guilty Entered by Court  
 5. Criminal Sexual Conduct - Second Degree(relationship) Defendant Stand Mute: Plea of Not Guilty Entered by Court  
 6. Criminal Sexual Conduct - Second Degree (person Under Thirteen, Defendant 17 Yea Defendant Stand Mute: Plea of Not Guilty Entered by Court

**OTHER EVENTS AND HEARINGS**

07/16/2009 **Recommendation for Warrant**  
 07/16/2009 **Warrant Signed**  
 07/16/2009 **Arraignment on Warrant (9:00 AM)** (Judicial Officer James, Sylvia A)  
     Parties Present  
     Result: Defendant Stands Mute; Plea Of Not Guilty Entered By Court  
 07/16/2009 **Interim Condition for Prather, Anthony Talmadge**  
     - Cash or Surety  
     \$300,000.00  
 07/29/2009 **Preliminary Examination (9:00 AM)** (Judicial Officer James, Sylvia A)  
     Parties Present

07/29/2009 **Result: Held: Bound Over**  
07/29/2009 **Bond Continued** (Judicial Officer: James, Sylvia A )  
07/29/2009 **Bound Over** (Judicial Officer: James, Sylvia A )  
07/30/2009 **Refer To Pre-Trial Services For a Bond Review**  
*DUE DATE 08/05/09 SID# BOND TYPE: C/S BOND 50,000AMOUNT: \$*  
08/05/2009 **Arraignment On Information** (9:00 AM) (Judicial Officer Hathaway, Michael)  
Parties Present  
Result: Held  
08/05/2009 **Disposition Conference** (9:00 AM) (Judicial Officer Hathaway, Michael)  
Parties Present  
Result: Held  
08/05/2009 **Attorney Stand In** (Judicial Officer: Hathaway, Michael )  
*Atty. Susan Reed, P 26897*  
08/24/2009 **Calendar Conference** (9:00 AM) (Judicial Officer Thomas, Deborah A)

## Check Enforcement Program F.A.Q.'s

**Q:** What is the check enforcement program?

**A:** Prior to prosecution, writers of bad checks are notified in the mail. They are required to pay restitution for the amount of the check plus a small handling fee. They are also required to complete a brief refresher class intended to prevent recurrence of future bad checks.

**Q:** What is the scope of the program, and what are the benefits to the public?

**A:** The program is limited to checks written to Wayne County merchants. Participating merchants are able to recover a substantial amount of restitution without having to pursue a complaint in court.

**Q:** Is the program voluntary?

**A:** Participation in the program is voluntary, but people who decline to comply with the conditions of the program face criminal prosecution.

**Q:** How effective is the program?

**A:** In 2005, the check enforcement program recovered full restitution on over 3,200 checks and collected over \$825,000 in restitution.

**Q:** What is the contact information for the Check Enforcement Program?

**A:** Questions about the program should be directed to **(800) 572-7353** or **(800) 701-9486**.

## F.A.Q. – MENTAL HEALTH JAIL DIVERSION

- *What is the difference between the Mental Health Jail Diversion and Pre-Trial Diversion?*

Despite sharing the word "Diversion" in their titles, the two programs are fundamentally different. Mental Health Diversion (formally, the "Behavioral Health / Expedited Plea Program") seeks to divert mentally ill defendants from the jail and into community based treatment. Pre-Trial Diversion seeks to divert eligible offenders away from the criminal process.

"Mental Health" Diversion is available for incarcerated, probation-eligible defendants with a diagnosed behavioral health problem; it usually results in a conviction and sentence of probation. "Pre-Trial Diversion" is available for low-level, first-time offenders and results in dismissal of the charge(s) against the defendant.

- *Can a defendant qualify for both programs?*

Yes, but such cases are relatively rare. The principal goal of the Mental Health Program is to ensure that the County Jail does not function as a psychiatric hospital or homeless shelter of last resort. Under the terms of its funding, the services offered by the Mental Health Program are meant for the jail population exclusively. At the same time, defendants eligible for Pre-Trial Diversion (first-time offenders charged with low-level property offenses) are almost never incarcerated by the time their cases are bound over. As a result, there is very little overlap between the two programs.

- *What are the eligibility criteria for the Mental Health Diversion Program?*

In addition to the requirement that a defendant must be incarcerated in order to qualify for treatment under the Mental Health Program, a defendant must also have a diagnosed behavioral health issue (mental illness, serious emotional disturbance, or developmental disability) and be probation eligible.

The behavioral health determination is ultimately made by medical staff and social workers in the jail, but APA's and defense attorneys can certainly do their part to help flag these cases. Developmental disability, in particular, might not be obviously apparent to jail staff during their screening process.

The determination of probation eligibility is, of course, made in the best interest of justice by the Prosecutor's Office. As with any other case, this involves an analysis of the sentencing guidelines, the charge(s), and the wishes of the victim.

As a general rule, most property offenses and controlled substance offenses with "0" or straddle-cell guidelines will be eligible.

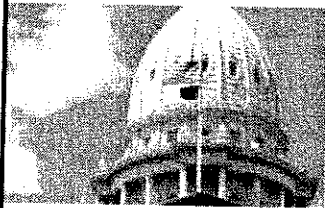
Under some circumstances, assaultive offenses will be considered, but only with the victim's consent.

- *What is the procedure for referring a defendant for evaluation?*

Ideally, most eligible defendants are identified by the jail soon after booking. With the assistance of the Case Differentiation Unit, the Prosecutor's Office is notified and the necessary paperwork is forwarded to the court. This includes a Participation Consent to be signed by the Defendant, a Referral for the jail, and a Plea Form specifying that the sentence will include Mental Health Treatment as a condition of probation.

For further information, please call William J. Heaphy, Jr. of the Wayne County Prosecutor's Office (313-224-2887) or Ray Bennett of the Case Differentiation Unit (734-624-4195).





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**MICHIGAN LEGISLATURE**  
 95th Legislature Regular Session  
 Michigan Compiled Laws Complete Through PA 57 of 2009  
 House: Adjourned until Tuesday, July 14, 2009 1:30:00 PM  
 Senate: Adjourned until Tuesday, July 14, 2009 10:00:00 AM

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- Navigation**
- ← Documents →
  - MCL Chapter Index
  - 📁 Chapters 760 - 777
  - 📁 Act 175 of 1927
  - 📁 175-1927-II
  - 📁 Section 762.11

**Section 762.11**

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**THE CODE OF CRIMINAL PROCEDURE (EXCERPT)  
 Act 175 of 1927**

**762.11 Criminal offense by individual between ages 17 and 20; assignment to status of youthful trainee; exceptions; definitions.**

- Legislature**
- Bills
  - Calendars
  - Committee Bill Records
  - Committee Meetings
  - Concurrent Resolutions
  - Initiatives
  - Joint Resolutions
  - Journals
  - Legislators
  - Public Acts (Signed Bills)
  - Resolutions
  - Session Schedules
  - Basic Legislative Search
  - Adv Legislative Search
  - Laws**
  - SBT (Repealed)
  - Often Requested Laws
  - Requested Repeals
  - Basic MCL Search
  - Advanced MCL Search
  - Public Act MCL Search
  - Constitution Search
  - Chapter Index
  - Executive Orders
  - Historical Documents
  - MCL Tables
  - More**
  - Color Picker
  - Publications

Sec. 11.

(1) Except as provided in subsections (2) and (3), if an individual pleads guilty to a criminal offense, committed on or after the individual's seventeenth birthday but before his or her twenty-first birthday, the court of record having jurisdiction of the criminal offense may, without entering a judgment of conviction and with the consent of that individual, consider and assign that individual to the status of youthful trainee.

(2) Subsection (1) does not apply to any of the following:

(a) A felony for which the maximum penalty is imprisonment for life.

(b) A major controlled substance offense.

(c) A traffic offense.

(d) A violation, attempted violation, or conspiracy to violate section 520b, 520c, 520d, or 520e of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, and 750.520e, other than section 520d(1)(a) or 520e(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.520d and 750.520e.

(e) A violation, attempted violation, or conspiracy to violate section 520g of the Michigan penal code, 1931 PA 328, MCL

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mcl 762 11

750.520g, with the intent to commit a violation of section 520b, 520c, 520d, or 520e of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, and 750.520e, other than section 520d(1)(a) or 520e(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.520d and 750.520e.

(3) The court shall not assign an individual to the status of youthful trainee if any of the following apply:

(a) The individual was previously convicted of or adjudicated for a listed offense for which registration is required under the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.732.

(b) If the individual is charged with a listed offense for which registration is required under the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.732, the individual fails to carry the burden of proving by clear and convincing evidence that he or she is not likely to engage in further listed offenses.

(c) The court determines that the offense involved any of the following:

(i) A factor set forth in section 520b(1)(a) to (h) of the Michigan penal code, 1931 PA 328, MCL 750.520b.

(ii) A factor set forth in section 520c(1)(a) to (l) of the Michigan penal code, 1931 PA 328, MCL 750.520c.

(iii) A factor set forth in section 520d(1)(b) to (e) of the Michigan penal code, 1931 PA 328, MCL 750.520d.

(iv) A factor set forth in section 520e(1)(b) to (f) of the Michigan penal code, 1931 PA 328, MCL 750.520e.

(4) As used in this section:

(a) "Listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

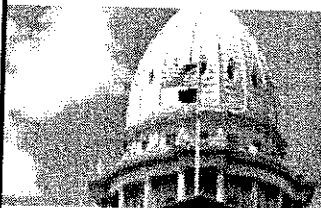
(b) "Traffic offense" means a violation of the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or a violation of a local ordinance substantially corresponding to that act, that involves the operation of a vehicle and, at the time of the violation, is a felony or a misdemeanor.

**History:** Add. 1966, Act 301, Eff. Jan. 1, 1967 ;-- Am. 1978, Act 77, Eff. Sept. 1, 1978 ;-- Am. 1988, Act 4, Imd. Eff. Feb. 5, 1988 ;-- Am. 1993, Act 293, Eff. Jan. 1, 1994 ;-- Am. 2004, Act 239, Eff. Oct. 1, 2004

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- Navigation**
- ← Documents →
  - MCL Chapter Index
  - Chapter 333
  - Act 368 of 1978
  - 368-1978-7
  - 368-1978-7-74
  - Section 333.7411

## Section 333.7411

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### PUBLIC HEALTH CODE (EXCERPT) Act 368 of 1978



**333.7411 Probation of individual with no previous conviction; entering adjudication of guilt upon violation of probation; discharge and dismissal without adjudication of guilt; nonpublic record of arrest and discharge and dismissal; effect of civil fine for first violation; requiring individual to attend course of instruction or rehabilitation program; failure to complete instruction or program as violation of probation; screening and assessment; participation in rehabilitative programs; payment of costs; failure to complete program as violation of probation.**

Sec. 7411.

(1) When an individual who has not previously been convicted of an offense under this article or under any statute of the United States or of any state relating to narcotic drugs, coca leaves, marihuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under section 7403(2)(a)(v), 7403(2)(b), (c), or (d), or of use of a controlled substance under section 7404, or possession or use of an imitation controlled substance under section 7341 for a second time, the court, without entering a judgment of guilt with the consent of the accused, may defer further proceedings and place the individual on probation upon terms and conditions that shall include, but are not limited to, payment of a probation supervision fee as prescribed in section 3c of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.3c. The terms and conditions of probation may include participation in a drug treatment court under chapter 10A of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided.

#### Legislature

- Bills
- Calendars
- Committee Bill Records
- Committee Meetings
- Concurrent Resolutions
- Initiatives
- Joint Resolutions
- Journals
- Legislators
- Public Acts (Signed Bills)
- Resolutions
- Session Schedules
- Basic Legislative Search
- Adv Legislative Search
- Laws**
- SBT (Repealed)
- Often Requested Laws
- Requested Repeals
- Basic MCL Search
- Advanced MCL Search
- Public Act MCL Search
- Constitution Search
- Chapter Index
- Executive Orders
- Historical Documents
- MCL Tables
- More**
- Color Picker

Publications  
Related Sites  
Legislative PDA Pages  
**Syndication**  
 Bill Updates   
**Recently Viewed**  
mcl 333 7411  
mcl 762 11

Upon fulfillment of the terms and conditions, the court shall discharge the individual and dismiss the proceedings. Discharge and dismissal under this section shall be without adjudication of guilt and, except as provided in subsection (2)(b), is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions under section 7413. There may be only 1 discharge and dismissal under this section as to an individual.

(2) The records and identifications division of the department of state police shall retain a nonpublic record of an arrest and discharge or dismissal under this section. This record shall be furnished to any or all of the following:

(a) To a court, police agency, or office of a prosecuting attorney upon request for the purpose of showing that a defendant in a criminal action involving the possession or use of a controlled substance, or an imitation controlled substance as defined in section 7341, covered in this article has already once utilized this section.

(b) To a court, police agency, or prosecutor upon request for the purpose of determining whether the defendant in a criminal action is eligible for discharge and dismissal of proceedings by a drug treatment court under section 1076(4) of the revised judicature act of 1961, 1961 PA 236, MCL 600.1076.

(c) To the state department of corrections, a law enforcement agency, a court, or the office of a prosecuting attorney upon request of the department, law enforcement agency, court, or office of a prosecuting attorney, subject to all of the following conditions:

(i) At the time of the request, the individual is an employee of the department, law enforcement agency, court, or office of prosecuting attorney or an applicant for employment with the department, law enforcement agency, court, or office of prosecuting attorney.

(ii) If the individual is an employee of the department, law enforcement agency, court, or prosecuting attorney, the date on which the court placed the individual on probation occurred after March 25, 2002.

(iii) The record shall be used by the department of corrections, law enforcement agency, court, or prosecuting attorney only to determine whether an employee has violated his or her conditions of employment or whether an applicant meets criteria for employment.

(3) For purposes of this section, a person subjected to a civil fine for a first violation of section 7341(4) shall not be considered to have previously been convicted of an offense under this article.

(4) Except as provided in subsection (5), if an individual is convicted of a violation of this article, other than a violation of section 7401(2)(a)(i) to (iv) or section 7403(2)(a)(i) to (iv), the court as part of the sentence, during the period of confinement or the period of probation, or both, may require the individual to attend a course of instruction or rehabilitation program approved by the department on the medical, psychological, and social effects of the misuse of drugs. The court may order the individual to pay a fee, as approved by the director, for the instruction or program. Failure to complete the instruction or program shall be considered a violation of the terms of probation.

(5) If an individual is convicted of a second violation of section 7341(4), before imposing sentence under subsection (1), the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services, to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. As part of the sentence imposed under subsection (1), the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs. The person shall pay for the costs of the screening, assessment, and rehabilitative services. Failure to complete a program shall be considered a violation of the terms of the probation.

**History:** 1978, Act 368, Eff. Sept. 30, 1978 ;-- Am. 1984, Act 347, Eff. Mar. 29, 1985 ;-- Am. 1988, Act 144, Imd. Eff. June 6, 1988 ;-- Am. 1993, Act 169, Eff. Sept. 30, 1993 ;-- Am. 2002, Act 79, Imd. Eff. Mar. 25, 2002 ;-- Am. 2004, Act 225, Eff. Jan. 1, 2005

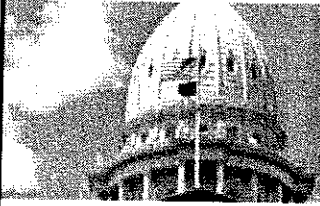
**Popular Name:** Act 368

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**MICHIGAN LEGISLATURE**

95th Legislature Regular Session  
Michigan Compiled Laws Complete Through PA 57 of 2009  
House: Adjourned until Tuesday, July 14, 2009 1:30:00 PM  
Senate: Adjourned until Tuesday, July 14, 2009 10:00:00 AM

- [Home](#)
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- Navigation**
- ← Documents →
  - MCL Chapter Index
  - 📄 Chapters 760 - 777
  - 📄 Act 175 of 1927
  - 📄 175-1927-IX
  - 📄 Section 769.4a

### Section 769.4a

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#### THE CODE OF CRIMINAL PROCEDURE (EXCERPT) Act 175 of 1927

- Legislature**
- Bills
  - Calendars
  - Committee Bill Records
  - Committee Meetings
  - Concurrent Resolutions
  - Initiatives
  - Joint Resolutions
  - Journals
  - Legislators
  - Public Acts (Signed Bills)
  - Resolutions
  - Session Schedules
  - Basic Legislative Search
  - Adv Legislative Search
  - Laws**
  - SBT (Repealed)
  - Often Requested Laws
  - Requested Repeals
  - Basic MCL Search
  - Advanced MCL Search
  - Public Act MCL Search
  - Constitution Search
  - Chapter Index
  - Executive Orders
  - Historical Documents
  - MCL Tables
  - More**
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**769.4a Assault on spouse, former spouse, individual with child in common, dating relationship, or household resident; plea or finding of guilty; deferral of proceedings and order of probation; previous convictions; adjudication of guilt upon violation of probation; mandatory counseling program; costs; circumstances for entering adjudication of guilt; discharge and dismissal; limitation; nonpublic record; definitions.**

Sec. 4a.

(1) When an individual who has not been convicted previously of an assaultive crime pleads guilty to, or is found guilty of, a violation of section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, and the victim of the assault is the offender's spouse or former spouse, an individual who has had a child in common with the offender, an individual who has or has had a dating relationship with the offender, or an individual residing or having resided in the same household as the offender, the court, without entering a judgment of guilt and with the consent of the accused and of the prosecuting attorney in consultation with the victim, may defer further proceedings and place the accused on probation as provided in this section. However, before deferring proceedings under this subsection, the court shall contact the department of state police and determine whether, according to the records of the department of state police, the accused has previously been convicted of an assaultive crime or has previously availed himself or herself of this section. If the search of the records reveals an arrest for an assaultive crime but no disposition, the court shall contact the arresting agency and the court that had jurisdiction over the violation to determine the disposition of that arrest for purposes

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mcl 762 11

of this section.

(2) Upon a violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed as otherwise provided in this chapter.

(3) An order of probation entered under subsection (1) may include any condition of probation authorized under section 3 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.3, including, but not limited to, requiring the accused to participate in a mandatory counseling program. The court may order the accused to pay the reasonable costs of the mandatory counseling program. The court also may order the accused to participate in a drug treatment court under chapter 10A of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082. The court may order the defendant to be imprisoned for not more than 12 months at the time or intervals, which may be consecutive or nonconsecutive and within the period of probation, as the court determines. However, the period of imprisonment shall not exceed the maximum period of imprisonment authorized for the offense if the maximum period is less than 12 months. The court may permit day parole as authorized under 1962 PA 60, MCL 801.251 to 801.258. The court may permit a work or school release from jail.

(4) The court shall enter an adjudication of guilt and proceed as otherwise provided in this chapter if any of the following circumstances exist:

(a) The accused commits an assaultive crime during the period of probation.

(b) The accused violates an order of the court that he or she receive counseling regarding his or her violent behavior.

(c) The accused violates an order of the court that he or she have no contact with a named individual.

(5) Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against the person. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.

(6) There may be only 1 discharge and dismissal under this section with respect to any individual. The department of state police shall retain a nonpublic record of an arrest and discharge and dismissal under this section. This record shall be furnished to a court or police agency upon request pursuant to subsection (1) or to an office of prosecuting attorney for the purpose of showing that a defendant in a criminal action under section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, or a local ordinance substantially corresponding to section 81 of



that act has already once availed himself or herself of this section or for the purpose of determining whether the defendant in a criminal action is eligible for discharge and dismissal of proceedings by a drug treatment court under section 1076(5) of the revised judicature act of 1961, 1961 PA 236, MCL 600.1076.

(7) As used in this section:

(a) "Assaultive crime" means 1 or more of the following:

(i) That term as defined in section 9a of chapter X.

(ii) A violation of chapter XI of the Michigan penal code, 1931 PA 328, MCL 750.81 to 750.90g.

(iii) A violation of a law of another state or of a local ordinance of a political subdivision of this state or of another state substantially corresponding to a violation described in subparagraph (i) or (ii).

(b) "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

**History:** Add. 1978, Act 353, Imd. Eff. July 14, 1978 ;-- Am. 1980, Act 471, Eff. Mar. 31, 1981 ;-- Am. 1994, Act 68, Eff. July 1, 1994 ;-- Am. 2001, Act 208, Eff. Apr. 1, 2002 ;-- Am. 2004, Act 220, Eff. Jan. 1, 2005 ;-- Am. 2006, Act 663, Imd. Eff. Jan. 10, 2007

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## **MOTIONS IN LIMINE IN CRIMINAL CASES**

### **DEFINED:**

MRE 103© inadmissible evidence should not be suggested to the jury in any way and MRE 104 Preliminary determinations of admissibility.

*Lapasinskas v. Quick*, 17 Mich App 733, 737, n1 (1969), defined as “a motion, heard in advance of jury selection, which asks the court to instruct defendant, its counsel, and witnesses not to mention certain facts unless and until permission of the court is first obtained outside the presence and hearing of the jury.” In advantage of such a motion does not have to object in the jury’s presence to evidence, which is logically relevant.

### **WHEN**

Before trial or during trial, *United States v Wilson*, 490 F Supp 713 (ED Mich 1980).

### **RULINGS:**

Always put all ruling on motions in limine in a court order. Remember rulings are always subject to reconsideration during the course of trial as well.

### **OFFENSIVE MOTIONS REQUIRING NOTICE:**

Rape Shield Law MCL 750.520j- 10 days after arraignment in circuit court.

Catch All hearsay Exception MRE 803(24)

Syndrome Evidence *People v. Beckley*

Child’s Statement about sexual acts- MRE 803(A)

Similar Acts MRE 404(b) (Prosecution notice requirement)

### **OFFENSIVE MOTIONS NOT REQUIRING NOTICE:**

Evidence of character MRE 404(a), 608, and 609

Expert Testimony MRE 702 and 703 (Remember New Text MRE 703)

Hearsay MRE 801, 803, and 804

Summaries MRE 1006

## **DEFENSIVE MOTIONS**

Relevance- MRE 401

Prejudice- MRE 403 (required for effective assistance)

In response to any notice of:

Similar acts under MRE 404B

Child's statement about sexual act MRE 803A

Catch All MRE 803(24)

Syndrome Evidence *People v. Beckley; People Peterson; People v. Lukity*, 460 Mich 484 (1999)

Withdrawn Plea MRE 410

Witness Competency MRE 601

Expert Testimony

Hearsay evidence MRE 801, 803, 804

Co-conspirator's declaration (required for effective assistance)

Witness who will take the Fifth, *People v. Gearns*, 457 Mich 170 (1998)

Bloody Photographs, *People v. Falkner*, 389 Mich 682 (1973)

## **REVERSAL, RECONSIDERATION, AND REPEATED OBJECTION**

Reversal during trial requires repeating the objections and new objections or offer of proof. SEE MRE 103(a)(1) & (2); *People v. Hernandez*, 423 Mich at 352 n 3 (may object outside the presence of the jury)

**ORDER MODIFYING PAYMENT OF  
EXPERT WITNESS FEES IN  
ASSIGNED FELONY CASES**

**STATE OF MICHIGAN  
THIRD JUDICIAL CIRCUIT**

Pursuant to MCR 8.110(C)(2)(c) and 3(f) expert witnesses in assigned felony cases shall be paid according to the following schedule:

**Psychiatric cases in which the maximum penalty is life imprisonment:**


Interview and written evaluation	\$500.00
Attendance in court	\$300.00

**Other experts:**

Interview and written evaluation	\$300.00
Attendance in court	\$250.00

This revised payment schedule is effective for cases assigned on or after December 1, 1998.

Dated: December 4, 1998

  
Michael F. Sagala  
Chief Judge

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**ADMINISTRATIVE ORDER 1998-03**

**STATE OF MICHIGAN**  
**THIRD JUDICIAL CIRCUIT**

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**SUBJECT: ASSIGNED COUNSEL FEES FOR CRIMINAL DIVISION CASES**

**IT IS ORDERED:**

The attached fee schedule representing fees for assigned counsel on criminal division cases is adopted for all assignments made on or after March 30, 1998.

Counsel appointed for indigent defendants may make no expenditure, other than for subpoena fees, for which he or she expects reimbursement except upon prior approval and the order of the trial judge on motion for good cause shown.

In any case in which more than one criminal offense is charged, payment shall be made for only the charge carrying the greatest potential term of imprisonment.

Counsel is required to consult with the defendant prior to the preliminary exam. If the defendant is in jail, counsel must attach to the fee voucher evidence of a jail visit in order to secure payment for that visit.

Counsel may petition the Chief Judge of the Third Judicial Circuit for payment of extraordinary fees.

Joint Administrative Order 1993-01 and associated fee schedule are rescinded and replaced by this Order and Administrative Order 1998-04.

Date 3/24/98

*Michael F. Sappala*

Michael F. Sappala

Chief Judge

Third Judicial Circuit of Michigan

**THIRD JUDICIAL CIRCUIT COURT  
FEE SCHEDULE FOR ASSIGNED COUNSEL - CRIMINAL DIVISION  
(Effective for assignments made on or after March 30, 1998)**

**I CRIMINAL CASES IN THE TRIAL COURT - GRADUATED, EVENT-BASED SCHEDULE**

EVENT	SENTENCE (MONTHS)			LIFE MAX	NATURAL LIFE
	24-60	84-120	168-240		
Preliminary Examination	90	110	130	150	190
Arrignment on Information	40	50	60	70	90
Investigation & Prep.	110	140	170	200	250
Plan	110	140	170	200	250
Motion	60	70	90	100	130
Final Conference	40	50	60	70	90
Trial, Half Day	90	110	130	150	190
Trial, Full Day	180	220	260	300	380
Sentence	60	70	90	100	130

**MISCELLANEOUS EVENTS**

Jail Visits:	\$ 50	(One per non-capital and two per capital case unless more are approved by Chief Judge)
Calendar Conference:	\$ 50	
Evidentiary & Walker Hearings:	\$ 80 Half	\$160 Full
All Adjourned Hearings (Except those adjourned by Defense)	One half of regular fee	

The rates in the above table will be paid in all cases, except under those circumstances listed below.

**EXCEPTIONS**

1. Multiple Cases with Same Defendant:  
100% of event fee for case with most serious charge  
50% of event fee for each other case
2. Diversion:  
Before preliminary exam \$100  
After exam - paid per schedule
3. Probation Violation or Extradition Hearing \$ 75

**II. ACTIVITY AT THE APPELLATE LEVEL**

**Non-frivolous Motion for New Trial together with  
Memorandum of Law by Trial Counsel after a Jury or  
Non-jury trial:**

**\$ 125**

**Transcript:**

**Every 400 pages or major fraction thereof other  
than guilty plea cases**

**200**

**Guilty plea cases**

**100**

**Claim of Appeal Brief and All Proceedings:**

**Other than guilty plea cases**

**500**

**Guilty plea cases**

**350**

**Visit to Prison Facilities:**

**Wayne County facilities**

**75**

**Camp Pellston and all Upper Peninsula facilities**

**400**

**All others**

**200**

**Appeal to Higher Court for each one-half day spent in trial court:**

**75**

**Appearance at Habeas Corpus:**

**50**

**III. MISCELLANEOUS ACTIVITY**

**Show-ups:**

**Full day standby**

**200**

**Per hour**

**50**

**Psychiatric cases in which the maximum penalty is life  
Imprisonment:**

**Interview and written evaluation**

**300**

**Attendance in court**

**150**

**Other Experts:**

**Interview and written evaluation**

**200**

**Attendance in court**

**150**

**Interpreters:**

**Per day**

**150**

**Half day**

**75**

# 11TH CIRCUIT COURT CRIMINAL DIVISION ROSTER - FRANK MURPHY HALL OF JUSTICE

JUDGE	ROOM	TELEPHONE	COURT CLERK	JUDICIAL SUPPORT	COURT REPORTER	PHONE NO.
EWELL, Edward Jr. Presiding Judge	302	224-2520	Tel Aviv Clark	Joanne Gaskin	M. Yvonne Lowmie	224-7513
ALLEN, David J.	702	224-4655	Barbara Banks	Erica Richardson	Sheila Love	224-5809
BERRY, Annette J.	402	224-4679	Judy Williams	Gary Evans	Sharon Burrell	
BILL, Gregory D.	701	224-2491	Brenda Moore	Laurie Bathurst	Becky Bauer	967-6928
BOYKIN, Ulysses W.	603	224-2275	Dominga Clark	Zoretha Coleman	Regina Veasy	224-2144
BRAXTON, Margie R.	304	224-2477	Erma Body	Louvena Pugh	Angell Cyars	224-2231
CALLAHAN, James A.	503	224-5246	Irene Lamar	Cathleen Beicher	Teria Carrington	224-6921
CALLAHAN, Michael James	703	224-5237	Beulah Artis	Nancy Chopp	Jeff Goldsmith	224-6912
CHYLINSKI, James R.	202	224-5501	Tojuana Steele	Mary Maiga	Suzanne Kinsey	224-7217
EVANS, Vonda R.	802	224-5440	Kelly Garland	Lillian Rowe	Cynthia Gardner	224-2143
FRESARD, Patricia S.	804	224-2461	Yolanda Mendoza	Nancy Hames	Matthew Dreger	224-2455
GRONER, David A.	303	224-2464	LaTonya Bell	Yvonna Abraham	Carolyn Howard	224-6585
HATHAWAY, Cynthia Gray	801	224-2120	Rosalyn Gamble	Charmaine Madrigal	Glenda Merritt	224-6953
HATHAWAY, Daniel R.	604	224-2441	Tina Cook	Paul Caradonna	Gary Coury	224-7578
HATHAWAY, Michael	501	224-2417	Jane Bassette	Alicia F. Green	Rochelle Waldrip	224-7101
JACKSON, Thomas E.	G-1	224-5435	Dawn Brown	Ann-Therese O'Sullivan	Melissa Harding	224-6998
JONES, Vera Massey	G-2	224-2487	Marilyn Craig	Marilyn Harvill	Janice Payne	224-1975
KENNY, Timothy, M.	602	224-5170	Lynda Gray	Deborah Lee	Shedria Blackman	224-7788
MCCREE, Wade H.	204	224-2421	Liza Jones	Jewell Davis Johnson	Deborah Wilson	224-2363
MORROW, Bruce U.	404	224-0415	Mark Ulatowski	Karla Lamar	Sean Allen	224-7044
PARKER, Linda V.	401	224-2481	Shelly McLean	Tracy Young	Martin Friedman	224-6946
ROBBINS, Kevin F.	203	224-5234	Darrin Gilbert	N/A	36th Dist Reporter	
RYAN, Daniel P.	504	224-5231	Denise Morris	Charmaine Ziegeler	Linda Cavanagh	224-6813
SKUTT, Richard M.	403	224-5192	Wendy Browning	Andrea Willis	Jeffrey Jones	224-6087
STRONG, Craig S.	803	224-2484	Lisa Peterson	Diane Martin	Doreen Pickett	224-7556
SULLIVAN, Brian R.	601	224-2789	Jane Fischer	Loretta Borne	Donna Rapp	224-6640
THOMAS, Deborah A.	502	224-5210	Dorothy Ransburg	Cherisse Haynes	Janine Davis	224-6768
YOUNGBLOOD, Carole	704	224-0391	Regina McGee	Janet Wolters	Betty Sanders	224-6658

## FMJH COURT OFFICES

<b>FMJH COURT ADMINISTRATION</b>	307A	224-2719	Keili D. Moore, Deputy Court Administrator
	301B	224-2506	Yolanda Gatson
	301C	224-2509	Marsha Pickens
<b>ASSIGNED COUNSEL SERVICES</b>	909	224-0593	Mary Wilson, Manager
<b>COURT REPORTING SERVICES</b>	909	224-7706	Debbie McGinnis, Chief Reporter
	917	224-2086	Appellate Counsel
	915	224-6222	Exam Transcripts
<b>DRUG COURT</b>	917	224-0070	Frances Fogel-Gibson, Coordinator
<b>JURY SERVICES FMJH</b>	907	224-0998	MaryKay Wimsatt, Director
<b>MENTAL HEALTH COURT</b>	911	224-7903	Deborah Price, Coordinator
<b>OFFICE OF THE GENERAL COUNSEL</b>	100	224-0215	Kimberly Reed Thompson, Deputy
	301CAYMC	224-8078	
	913	224-2269	
	1st Fl.	224-2495	
	1st Fl	224-2496	
	931	224-5895	
	G-6	224-2623	
		224-6408	
		224-7595	
		224-2467	

## COUNTY CLERK DEPARTMENTS

<b>ADMINISTRATION</b>	914	224-2505	Julia Penn, Department Administrator
<b>APPEALS &amp; FILE ROOM</b>	901	224-6309	Lori Thorpe, Supervisor
<b>CASE INITIATION</b>	905	224-2526	
<b>SYSTEMS</b>	905	224-2610	Cheryl Harper, Supervisor
<b>COURTY CLERK INFORMATION</b>	901	224-2766	
<b>COURTROOM CLERK</b>	920	224-8087	Mysell Sewell, Department Manager
<b>FILE ROOM</b>	906	224-5859	David Baxter, Department Supervisor
<b>FINANCIAL SERVICES UNIT</b>	901	224-0130	
<b>BOND/CASHER OFFICE</b>	102	224-2414	Maude Page, Dept. Manager
	102	224-7194	Kimberly Martin, Asst. Director
	904	224-5519	
<b>BUILDING AUTHORITY</b>	Gr Fl - FMJH	224-2555	
<b>HELP DESK-ITSB</b>	750- PB	224-0157	
<b>SECURITY DESK-FMHJ</b>	1st fl - lobby	224-2400	

## OTHER USEFUL NUMBERS

<b>Buildings &amp; Facilities Mgmt.</b>	792 CAYMC	224-5729
Theresa Plotzke, Director	792 CAYMC	224-2764
<b>Case Processing</b>	770 CAYMC	224-7174
<b>Court Collections Unit</b>	CAYMC	224-7247
<b>Diversions</b>	10th Fl-FMHJ	224-2887
<b>Executive Court Administration</b>	711 CAYMC	224-5261
<b>Felony Non-Support</b>	410 FMJH	224-5297
<b>Human Resources</b>	720 CAYMC	224-7018
Sick Call-In Voice Mail-CAYMC	224-5779	224-7018
<b>Legal Aid Defender's Ofc.</b>	613 Abbott, Det	967-5555
<b>Probation Department</b>	426 Clinton St	224-7935
<b>Sheriff Detail</b>	G-8	224-2405
James Davis, Commander	G-8	224-2408
<del>Theresa Pickett, Lieutenant</del>	G-8	224-2404
<b>Thirty-Sixth District Court</b>	421 Madison	965-5104
<b>Wayne City Prosecutor's Office</b>	12th Fl FMJH	224-5777
<b>Wayne County Jail</b>	525 Clinton St.	224-0786



# THIRD CIRCUIT COURT - CRIMINAL DIVISION

## PREDECESSOR LIST FOR DOCKET PURPOSES

AOI DOCKETS	Predecessor	Predecessor	Predecessor	Predecessor	Predecessor	Predecessor	Predecessor
Braxton, Margie R.	Silverman, Lawrence D.	Drain, Gershwin A.	Hathaway, Amy P.	Roberson, Dalton	Gardner, Sam	Murphy J.	DeMasco, R.
Chylinski, James R.	Chylinski, James R.	Drake, Maggie W.	Docket 303	Evans, Robert L.	Connor, Edward	Krause, Paul	Cotter, Thomas
Groner, David A.	Drake's Docket	Hathaway, Richard P.	Kenny, Timothy M.	Fort Hood, Karen			
Ewell, Edward, Jr.*	Evans, Vonda R.						
Ewell, Edward, Jr.*	McCree, Wade H.						

PRE-EXAM / AOI DOCKETS	Predecessor	Predecessor	Predecessor	Predecessor	Predecessor	Predecessor	Predecessor
McCree, Wade H.	Cathalan, William Leo	McCree, Wade H.					
Robbins, Kevin F.	Milhouse, Donna R.						

FNS DOCKET	Predecessor	Predecessor	Predecessor	Predecessor	Predecessor	Predecessor	Predecessor
McCree, Wade H.	Bill Callahan						

TRIAL DOCKETS	Predecessor	Predecessor	Predecessor	Predecessor	Predecessor	Predecessor	Predecessor
Allen, David J.	Worthy, Kym L.	Lucas, William	Hood, Denise Page	Cooper, Evelyn K.			
Berry, Annette J.	O'Brian, John Patrick	Sapala, Michael F.	Boyle, Patricia	Colombo, Robert J. Sr.			
Bill, Gregory Dean	Chylinski, James R.	Jobes, Clarice	Hood, Harold	Leonard, Donald	Scallan, John	Murphy, Frank	
Boykin, Ulysses W.	Collins, Jeffery	Edwards, Prentis	Hathaway, Richard P.	Cernovale, Dominick	Clean, Samuel		
Callahan, James A.	Docket "503"	Groner, David A.	Docket 610	Davenport, Elin	Job, O.Z.	VanZile, Donald	
Callahan, Michael, James	Docket "703"	Ford, Geraldine Blodson	Kosciński, Arthur	Sweeney, Henry S.			
Evans, Vonda R.	Ewell, Edward, Jr.	Kerwin, David P.	Bader, Wendy M.				
Fresard, Patricia S.	Hathaway, Diane Marie	Docket "510"	Sapala, Michael				
Hathaway, Cynthia Gray	Hathaway, David P.	Hague, William	Grosz, Gerald				
Hathaway, Daniel A.	Docket "510"	Pollock, Thomas	Waterstone, Mary				
Hathaway, Michael	Hague, William	Evans, Vonda R.	Roberts, James				
Jackson, Thomas, E.	Pollock, Thomas	Best, George A. II	Brown, Helen E.				
Jones, Vera Massey	Evans, Vonda R.	Hathaway, Amy P.	Zolkowski, Robert L.				
Kenny, Timothy M.	Best, George A. II	Zahra, Brian	Waterstone, Mary M.				
Morrow, Bruce U.	Hathaway, Amy P.	Stempler, Jeanne	Gills, John H. Jr.				
Parker, Linda V.	Zahra, Brian	Boyle, Terrance	Thomas, Edward M.				
Ryan, Daniel P.	New Docket	Curtis, Daphne Means	Nelson, Susan B.				
Skutt, Richard, M.	Boyle, Terrance	Docket "704"					
Strong, Craig S.	Thomas, Deborah A.						
Sullivan Brian R.	Youngblood, Carole F.						
Thomas, Deborah A.							
Youngblood, Carole F.							

Random Reassignments to Trial Dockets**	Predecessor	Predecessor	Predecessor	Predecessor	Predecessor	Predecessor	Predecessor
Townsend, Leonard	Hathaway, James						
Hathaway, Richard P.	Tennen, Harvey F.						
Fort Hood, Karen	Cunningham, R.						

Random Reassignments to AOI Dockets**	Predecessor	Predecessor	Predecessor	Predecessor	Predecessor	Predecessor	Predecessor
Tennen, Harvey F.	Hathaway, Richard P.	Laster, Clarence					

Footnotes	Footnote	Footnote	Footnote	Footnote	Footnote	Footnote	Footnote
*Presiding Judge:							
**Post-Conviction, Post Judgment and Violator matters will be randomly re-assigned;							
Judge Harvey Tennen's Pre Sentence matters to be heard by Judge James R. Chylinski, per docket directive 2003-09.							
(*) Judge Thomas Brookover Docket (V).							

WAYNE COUNTY PROSECUTOR'S OFFICE

Rob Moran, Chief of Trials

6/1/2009

Ewell 302 PATU, DV

**BRADLEY COBB (213-0178)**

Groner 303 Matrix  
Braxton 304 Matrix

**RAY MAGUIRE (213-0745)**

Robbins 203 PEH Matrix  
McCree 204 PEH

**MICHAEL WAGNER TEAM (213-1759)**

Berry 402 <sup>Leick</sup> Angela 4-5806  
Skutt 403 Beadle 4-2861  
Morrow 404 Walsh 4-5872  
L. Parker 401 Zeiger 4-5761

Ehlfeldt 4-5774

**DARYL CARSON TEAM (213-0568)**

M. Hathaway 501 Willis 4-5782  
D. Thomas 502 Doddamani 7-2431  
Callahan 503 Lawrence 4-2195  
Ryan 504 Gorzelewski 4-2892

Abdelnour 4-5833  
Simon 4-8757

**TOM DAWSON TEAM (213-0461)**

Sullivan 601 Edwards 7-6821  
Kenny 602 Surma 4-5827  
Boykin 603 DeGrazia 4-0467  
D. Hathaway 604 Slameka 4-6417  
Jones G-2 Tusar 4-8801

Towns 7-6855  
Coyle 4-6305

**LISA COYLE TEAM (213-1957)**

Bill 701 Burton 4-8246  
Youngblood 704 Grier 4-4327  
Allen 702 Tink 4-5798  
M. Callahan 703 Stanford 4-6278  
Chylinski 202 Baker 4-6728

Hagaman 4-6410  
Raymond 4-5899

**PAT MUSCAT TEAM (213-0600)**

C. Hathaway 801 Haywood 4-5762  
Evans 802 Hutting, Andrea 4-6704  
Strong 803 Glenn 4-0585  
Fresard 804 Lambert 4-8705  
Jackson G-1 Logan 4-6303

Prasad 4-5818  
Samuels 4-6429

Charles Kellett-----4-5858 (8-12 NOON)  
William Heaphy-----4-2887 ----**Diversion Program**  
Bert Ware-----4-2728  
Denise Smith-----4-6650  
Wanda Lloyd-----4-5744

Keith Wright-----4-2897  
Diane Onnie-----7-2211  
Glenda Davis-----266

Carol Dawson-----121---**Domestic Violence**

### **APA**

Duane Brown-----4-5756 ROOM 1045  
Opolla Brown-----4-5731 ROOM 1033  
Rebecca Camargo-----4-2696 ROOM 1033  
Nicole Clay-Cooper-----943-4027 ROOM DEARBORN PD  
Shelley Drain-----967-3527 PPO COURT 224-0120  
Michelle Jarczewski -----237-2521 outcounty  
Sabrina Johnson-----575-9427 Room 1043  
Thomas Lee -----237-2549 DVTF/Taylor 734-374-1430  
Mary Rubio -----4-2621 room 1031  
Emily Wolfe -----4-5775 room 1040  
Trisha Worthington -----4-8833 room 1033

### **Advocates Domestic Violence**

Tiffany Collins-----4-7011  
Mechelle Donahoo -----4-0207  
Sallie Glispie -----4-8365  
Jennifer Gossard -----4-8362

Suketa Thakore-----4-8082--- **CFAB 15 years and under**

### **APA**

Keith Clark-----967-6888 room 1018  
Betsy Geyer -----4-2734 room 1018  
Louisa Papalas -----4-8454 room 1040  
Angela Povilaitis -----967-2267 room 1019  
Shannon Walker -----4-5628 room 1019  
Lora Weingarden -----4-8081 room 1037  
Michael Woodyard -----4-5766 room 1037

### **Advocates**

Paula Haran -----4-7376    Larry Love -----4-6645    Linda Smith ---4-8751

**Drug Unit** Frank Simone---224-2893

Ron Robinson-----7-2269

Sarah DeYoung-----4-8825

Christina Guirguis-----4-8788

**Auto Theft**--- Ron Hassisnger----4-0307

Linda Woods-----4-5760

Dennis Doherty-----7-6851

Michelle LaFlora-----4-2737

Lindsey Calhoun-----4-7014

**Elder Abuse**

Tom Wenzel----4-5776

Cory Newman-----4-8844

Qiana Lillard-----7-2329

Jaime Powell-----4-2898

Robin Hunter (secretary)-----4-5626

Advocate- Dwane White-----4-8445

**Sex Crime 13 – 15** Jessica Griglio ----967-2336

**WARRANTS**

Keith Wright, Chief, 224.2897  
Barbara Smith, Deputy Chief, 224.5634  
Rita Lewis, 224.5777  
Demetria Brue, 224.8446  
Javier Villegas, 224.8780  
Kelli Gleason, 224.5777  
Kathleen McClorey, 224.5777  
Heather Lewis, 224.8861  
Frank Bernacki, 224.5785

**CSC**

Danielle Hagaman-Clark, 224.5777  
Tanya Abdelnour, 224.5833  
Suzette Samuels, 224.6429

# HOMICIDE UNIT SIGN-IN SHEET

SUN MON TUE WED THU FRI SAT SUN \_\_\_\_\_, 2009

<u>APA</u>	<u>HOLIDAY</u>	<u>CT RM/LOC</u>
MAHMOUND AWAD		
DAVID BRAXTON		
CARIN GOLDFARB		
AUGUSTUS HUTTING		
NICOLE JAMES		
MOLLY KETTLER		
CHRISTINE KOWAL		
ROBERT MORAN		
CAROLE MURRAY		
LISA SCREEN		
ATHINA SIRINGAS		
ROBERT STEVENS		
LAWRENCE TALON		
ELIZABETH WALKER		
LAW INTERN (S):		
JOYCE NORFOLK-ANDERSON		

## NOTICE


Pursuant to 3<sup>rd</sup> Judicial Circuit Court Administrative Order 2006-08, Section IV B(1)(c), membership in the Wayne County Criminal Defense Bar Association (WCCDBA) is now required for certification by the Wayne County Criminal Advocacy Program (CAP). Failure to join the WCCDBA by August 21, 2009 may result in your removal from the Assigned Counsel List.

Membership in the WCCDBA requires attorney to complete a WCCDBA application and remit \$20.00 in annual dues to WCCDBA Treasurer Steve Makowski at 2241 Oak Street, Wyandotte, Michigan 48192. Checks may be made out to the Wayne County Criminal Defense Bar Association or W.C.C.D.B.A. Application forms will be available in the attorney lounge and library at Frank Murphy Hall of Justice.

The Cap Board will verify addresses of everyone on the Assigned Counsel list. It is a long standing policy that to be CAP certified you must attend the appropriate number of CAP seminars and that you have either a Wayne County office or live in Wayne County. Anyone who does not list their business address in the Michigan Bar Journal as an address in Wayne County may need to provide proof to the CAP board that they either have an office in Wayne County or that they live in Wayne County. **YOU DO NOT HAVE TO LIST YOUR BUSINESS ADDRESS AS BEING IN WAYNE COUNTY IN THE MICHIGAN BAR JOURNAL** to be on the Assigned Counsel List, however if you do not list your Wayne County address as your address in the Michigan bar Journal you may be asked to verify it. Proof of verification to the CAP Board can be a photocopy of your driver's license (marking out D.L. # and D.O.B.), a copy of your lease or mortgage, or other appropriate documentation *with an explanation*. Failing to verify your Wayne County address or residence may result in your removal from the list by the CAP Board.

Please mail your verification of a Wayne County office or residency in Wayne County to:

Honorable Michael M. Hathaway  
Chair Wayne County Criminal Advocacy Program  
Frank Murphy Hall of Justice  
1441 St. Antoine, Courtroom 501  
Detroit, Michigan 48226

  
\_\_\_\_\_  
HONORABLE MICHAEL M. HATHAWAY  
Chair Wayne County Criminal Advocacy Program

**INFORMATION ON PRACTICE IN  
THE THIRD JUDICIAL CIRCUIT COURT CRIMINAL DIVISION**

- Eligibility to practice in Wayne County Circuit Court, Criminal Division, is governed by the Criminal Assigned Counsel Committee. Presiding, Judge Edward Ewell, Jr. is chairman of the committee.
- **Attorneys must be in good standing and have active status with the Michigan Bar.**
- **Attorneys must have a bona fide office or residence in Wayne County.**
- **Attorneys must annually attend a required number of Criminal Advocacy Program (CAP) seminars.**
- The Assignment Clerk holds house counsel day once every quarter. The date is posted in the attorney lounge and in the Assigned Counsel Services Office. Assignments are made to attorneys in order of their arrival on sign-up day. On house counsel day, line-up assignments are given out, as are those for 36<sup>th</sup> District Court and house counsel for pre-exams courtrooms.
- Line-ups are covered by an attorney for a 24 hour period. During the 24 hours, counsel is expected to be available on short notice to observe line-ups.
- House Counsel attorneys are expected to cover exams in felony exam Courtrooms at 36<sup>th</sup> District Court on a given day and pre-exams in designated courtrooms.
- Judges in Wayne County Circuit Court, Criminal Division rotate every two weeks on assignments. They assign attorneys to cases for examination in all district and municipal courts in Wayne County.
- To be assigned capital cases, an attorney must apply to the Attorney Review Committee.



Mary Wilson, Manager of Assigned Counsel Services,  
(313) 224-7706

Criminal Advocacy Program (CAP) information:  
Alicia Green, (313) 224-2417

## PROHIBITED ITEMS IN THIRD CIRCUIT COURT BUILDINGS

*The following items are prohibited in all Third Circuit Court buildings, which include courtrooms and office in: Coleman A. Young Municipal Center, 2 Woodward Avenue, Detroit; Friend of the Court office, Penobscot Building, 645 Griswold, Detroit; Family Division – Juvenile Complex, 1025 East Forest, Detroit, and Frank Murphy Hall of Justice, 1441 St. Antoine, Detroit*

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Alcoholic Beverages	Handcuffs
Ammunition	Headphones (with cords)
Aerosols or any spray device	Heavy Metal Objects
Batteries	Highlighters or Markers (except attorneys with a current Bar Card)
Bingo Markers	Illegal Drugs
Box cutters	Knives (any kind)
Brass Knuckles	Large Bags of any kind, including: duffle bags, backpacks, oversize purses
Bug Spray	Large Perfume Bottles
Bullets (anything resembling or similar)	Mace, Pepper Spray
Cameras / Recording Devices	Master Locks
Can Openers of any kind, including P38's	Nail Clippers / Metal nail files
Cans—aluminum and metal	Needles of any kind, except with medical documentation
Cell phones and pagers, except when kept on vibrate or silent mode	Noisemakers of any kind
Cell phones with cameras	Paints of any kind
Chains	Palm Pilots (except attorneys with a current Bar Card)
Cigarette Lighters/Matches	Pencil Sharpener
Combs—metal or rattail	Radios (or headsets)
Cord-like Objects, including ropes, chains straps, heavy belts, and wires	Razors or Razor Blades
Curling Irons	Safety Pins
Darts	Scissors
Drug Paraphernalia	Screwdrivers
Explosive Materials or Objects	Spikes
Flatware (which includes knives, forks or spoons)	Staplers or Staple removers
Food or Beverages	Tools of any sort (which includes hammers, saw, measuring tape, etc.)
Glass or Mirrors of any kind, including glass bottles of any kind	Tweezers
Guns or replicas of guns	Video Games, giga pets, gameboys, etc.
Grease Pencil	Weapon-like objects, including bats, clubs, batons, irons
Hair Clippers	Weapons, including toys or replicas (except law enforcement with ID)
Hair Spray	Whistles

**PLEASE NOTE: Other items deemed dangerous by Third Circuit Court security personnel will also be prohibited. All surrendered items will be confiscated and not returned. This notice is made pursuant to MCR 8.110 and the inherent authority of the Chief Judge to insure the safety and security of the Court and those in attendance.**