

# BAIL PARTNERSHIP AGREEMENT TRAINING



**Phil Mayor**  
Senior Staff Attorney  
ACLU Michigan

[pmayor@aclumich.org](mailto:pmayor@aclumich.org)



**Judge Larry Williams**  
Judge  
36<sup>th</sup> District Court

[Larry.williamsjr@36thdistrictcourt.org](mailto:Larry.williamsjr@36thdistrictcourt.org)



**Gerald Evelyn**  
Attorney & Counselor

[geraldevelyn@yahoo.com](mailto:geraldevelyn@yahoo.com)

# TOPICS TO BE COVERED

- ❖ Introduction/Key Takeaways ←
- ❖ The Foundation of the Agreement is YOU
- ❖ Knowing Your Clients' Rights Under Michigan Law
- ❖ Exercise: Hypotheticals and Q&A
- ❖ The Bail Partnership Agreement—Cash Bond
- ❖ The Bail Partnership Agreement—Practical Guidance
- ❖ The Bail Partnership Agreement—Bail Redetermination Hearings
- ❖ Exercise: Hypotheticals and Q&A
- ❖ Failures to Appear
- ❖ Additional Law And Issues Relating To Arraignment
- ❖ Exercise: Hypotheticals and Q&A

# KEY TAKEAWAYS ABOUT BAIL PARTNERSHIP AGREEMENT AND MICHIGAN LAW

- 1 Cash Bail, especially unaffordable bail, is supposed to be the rare exception.
- 2 Cash Bail cannot be imposed unless the court (1) makes a finding that your client is a danger to the public or presents a risk of non-appearance and (2) makes a finding that non-cash conditions can't manage that risk.
- 3 Before imposing cash bail, the court must determine how much your client can afford. If your client's household income is less than 200% of the federal poverty line (\$64,300 for a family of 4 - 2025) the court must presume they cannot afford to pay any bail.
- 4 Bail redetermination hearings are guaranteed for anyone who does not post bail within 24-72 hours, depending on the circumstances.

*If you remember only four things: remember these!*

# OVERVIEW OF HOW BAIL PARTNERSHIP AGREEMENT PROMOTES PUBLIC SAFETY & THE EFFECTIVE ADMINISTRATION OF JUSTICE

<p>1</p>	<p><b>Cash Bail harms defendants, families &amp; communities</b></p>	<ul style="list-style-type: none"> <li>• Pretrial incarceration results in loss of job, housing, educational opportunities, etc.</li> <li>• 500,000 people (63% of total jail pop.) are in jail every night</li> <li>• Daily cost of incarceration to U.S. taxpayers of more than \$38 million. Annual cost is \$14 billion a year.</li> <li>• 9.7% increase in likelihood of being charged with new misdemeanors &amp; 32.3% increase in likelihood of being charged with new felonies</li> </ul>
<p>2</p>	<p><b>Cash Bail forces plea bargains</b></p>	<ul style="list-style-type: none"> <li>• Defendants are 30% more likely to plead guilty when detained, and they receive longer sentences</li> </ul>
<p>3</p>	<p><b>Cash Bail diminishes public safety</b></p>	<ul style="list-style-type: none"> <li>• Compared to identical people released pretrial, low-risk people held 3+ days are arrested 74% more during the pretrial phase and 51% more up to 2 years later</li> <li>• <b>Use of cash bail does not ensure public safety</b></li> </ul>
<p>4</p>	<p><b>Cash Bail does not reduce failures to appear</b></p>	<ul style="list-style-type: none"> <li>• Mere nonappearance vs. willful flight (absconding)</li> <li>• The Bail Project clients appear at over 90% of their court appearances</li> <li>• 2013 study found FTA rates increase the longer a person is detained pretrial</li> </ul>
<p>5</p>	<p><b>Racial disparate impact</b></p>	<ul style="list-style-type: none"> <li>• Both Black and white judges sentence Black offenders more severely than white offenders.</li> </ul>

# TOPICS TO BE COVERED

- ❖ Introduction/Key Takeaways
- ❖ The Foundation of the Agreement is YOU ←
- ❖ Knowing Your Clients' Rights Under Michigan Law
- ❖ Exercise: Hypotheticals and Q&A
- ❖ The Bail Partnership Agreement—Cash Bond
- ❖ The Bail Partnership Agreement—Practical Guidance
- ❖ The Bail Partnership Agreement—Bail Redetermination Hearings
- ❖ Exercise: Hypotheticals and Q&A
- ❖ Failures to Appear
- ❖ Additional Law And Issues Relating To Arraignment
- ❖ Exercise: Hypotheticals and Q&A

# DEFENSE ATTORNEYS ARE AT THE HEART OF THE BAIL PARTNERSHIP AGREEMENT!

- Defense attorneys must have a **meaningful** and **confidential** opportunity to speak with accused individuals to establish rapport and ensure accuracy and completeness of the Financial Information Intake Form and to gather other relevant information.
- This means you must be given enough time to:
  - Ask about and scrutinize prior criminal history, FTA history, and warrant history.
  - Discuss with your client what types of non-cash conditions they can comply with (e.g., a stable residence they can stay at away from the alleged victim, how conditions might affect employment, ability to attend drug tests, etc.).
  - Never offer a tether without asking your client about their ability to comply with one.

# DEFENSE ATTORNEYS NEED TO KNOW KEY DOCUMENTS

- The full Bail Partnership Agreement is available on the 36<sup>th</sup> District Court's website.
- Also at that link:
  - Financial Information Intake Form – Exhibit G to Appendix I of the Bail Partnership Agreement
  - Notices providing certain updates
  - This training and training deck
  - Annual reports regarding implementation of the Agreement

# TOPICS TO BE COVERED

- ❖ Introduction/Key Takeaways
- ❖ The Foundation of the Agreement is YOU
- ❖ Knowing Your Clients' Rights Under Michigan Law ←
- ❖ Exercise: Hypotheticals and Q&A
- ❖ The Bail Partnership Agreement—Cash Bond
- ❖ The Bail Partnership Agreement—Practical Guidance
- ❖ The Bail Partnership Agreement—Bail Redetermination Hearings
- ❖ Exercise: Hypotheticals and Q&A
- ❖ Failures to Appear
- ❖ Additional Law And Issues Relating To Arraignment
- ❖ Exercise: Hypotheticals and Q&A

# MCR 6.106'S DOUBLE PRESUMPTION AGAINST CASH BAIL

## The General Rule

**FIRST PRESUMPTION:** General rule is release with only standard basic conditions unless evidence supports a finding of danger to public or failure to appear. MCR 6.106(C).

**SECOND PRESUMPTION:** Before considering cash bail, the court must find on the record that other, non-cash conditions won't suffice (e.g., reporting to probation, no contact orders, support from friends or family). MCR 6.106(D), (E).

# MCR 6.106's DOUBLE PRESUMPTION AGAINST CASH BAIL

## Cases Where Pre-trial Detention Without Bail Is Permitted

**MCR 6.106(B)—Cases Where Pre-Trial Detention May Be Ordered:** Under MCR 6.106(B) and Art. I, § 15 of the Michigan Constitution, the court may order pre-trial detention without cash bond in certain cases. See, e.g., Appendix 1, p. 3, Section A.2.c.

- Pre-trial detention without bond in such cases is permitted, but only when the court also finds that “proof of the Accused Individual’s guilt is evident or the presumption great.” Even then, detention is *discretionary* not mandatory. *People v. Davis*, 337 Mich App 67 (2021).
- If pre-trial detention is not ordered pursuant to MCR 6.106(B), the court must still conduct the same ability to pay/flight risk/danger to the public inquiry that applies in all bail cases.

# MCR 6.106's DOUBLE PRESUMPTION AGAINST CASH BAIL

## Other Cases Where the Presumption Against Cash Bail is Modified

### FELONY NON-SUPPORT

- Cash bond is allowed but must normally be affordable.
- MCL 750.165 governs the imposition of cash bond in felony-non support cases.
- It provides that interim bond must initially be set at 25% of the amount the defendant owes or \$500, whichever is greater.
- However, at arraignment the amount must be reduced to zero or an affordable amount unless the court makes a finding of danger to the public or a risk of non-appearance.

### MCL 765.6a Cases

- Some cash bond is required in these cases, but it should be nominal in many cases.
- Statute requires some cash bail for cases in which
  - (1) the alleged crime was committed while defendant was out on a cash bond or surety or
  - (2) the defendant has been convicted of two felonies in five years.
- Cash bond must still be affordable (or nominal) unless the court makes a finding of danger to the public or a risk of non-appearance.

## THE U.S. CONSTITUTION ALSO LIMITS THE USE OF CASH BAIL

Pre-trial detention can only be justified by actual evidence of danger to the public or flight risk. *U.S. v. Salerno*, 481 U.S. 739 (“In our society liberty is the norm, and detention prior to trial . . . is the carefully limited exception.”)

Wealth-based discrimination in the criminal legal system receives heightened scrutiny. See *Bearden v. Georgia*, 461 U.S. 660, 672–673 (unconstitutional to “deprive [one] of [their] conditional freedom simply because, through no fault of [their] own, [they] cannot pay”).

# TOPICS TO BE COVERED

- ❖ Introduction/Key Takeaways
- ❖ The Foundation of the Agreement is YOU
- ❖ Knowing Your Clients' Rights Under Michigan Law
- ❖ Exercise: Hypotheticals and Q&A ←
- ❖ The Bail Partnership Agreement—Cash Bond
- ❖ The Bail Partnership Agreement—Practical Guidance
- ❖ The Bail Partnership Agreement—Bail Redetermination Hearings
- ❖ Exercise: Hypotheticals and Q&A
- ❖ Failures to Appear
- ❖ Additional Law And Issues Relating To Arraignment
- ❖ Exercise: Hypotheticals and Q&A

# PRE-TRIAL RELEASE HYPOTHETICALS FOR DISCUSSION (1 OF 3)

<b>Charge</b>	<ul style="list-style-type: none"><li>• Defendant is accused of getting into a fight with his romantic partner and the mother of two of his children in which he shoved her and knocked her over, giving her a concussion.</li><li>• He is charged with assault GBH and misdemeanor domestic violence.</li></ul>
<b>Defendant criminal history</b>	<ul style="list-style-type: none"><li>• Defendant is charged as habitual fourth based on two prior convictions for drug possession two and five years ago respectively and one from six years ago for felony non-support relating to his two other children by another mother.</li><li>• Defendant is on probation for one of the drug charges.</li><li>• He also has a juvenile adjudication for drug possession and has had two additional arrest warrants (but no convictions) for domestic violence.</li></ul>
<b>Life circumstances</b>	<ul style="list-style-type: none"><li>• Defendant is 27 and has a new job working at McDonalds for minimum wage.</li><li>• He picks up his eldest child from school every day and takes her to her mother's house (his ex-partner). The mother works full time.</li></ul>

# TOPICS TO BE COVERED

- ❖ Introduction/Key Takeaways
- ❖ The Foundation of the Agreement is YOU
- ❖ Knowing Your Clients' Rights Under Michigan Law
- ❖ Exercise: Hypotheticals and Q&A
- ❖ The Bail Partnership Agreement—Cash Bond ←
- ❖ The Bail Partnership Agreement—Practical Guidance
- ❖ The Bail Partnership Agreement—Bail Redetermination Hearings
- ❖ Exercise: Hypotheticals and Q&A
- ❖ Failures to Appear
- ❖ Additional Law And Issues Relating To Arraignment
- ❖ Exercise: Hypotheticals and Q&A

# THE BAIL PARTNERSHIP AGREEMENT AND CASH BOND

## When Can Bond Be Imposed?

The Court cannot impose cash bond unless:

1. It finds **by clear and convincing evidence** that is **particular to the defendant** that they present an **identified and articulable danger** to any person or the public **that cannot be managed by non-cash conditions.**
2. It finds **by a preponderance of the evidence** that is **particular to the defendant** that unaffordable bail **is reasonably necessary** to ensure the Defendant's appearance and that the risk of non-appearance **cannot be managed by non-cash conditions.**

# THE BAIL PARTNERSHIP AGREEMENT AND CASH BOND

What goes in to determining if there is a danger to the public or a flight risk?

- The court must consider any evidence or proffers of evidence you make.
- You must be allowed to examine and rebut any evidence, documents, or reports, that might be used against your client at the arraignment.
- The court can consider the police report but must also consider facts you proffer.
- The fact that a charge is violent or assaultive is NOT enough, on its own, to establish a danger to the public, but the court can consider the specific alleged facts of the offense.
- The court can consider prior failures to appear but must also consider the reasons for the prior FTAs, including whether they were deliberate or attributable to health or poverty related circumstances.

# THE BAIL PARTNERSHIP AGREEMENT AND CASH BOND

## Non-Cash Conditions

The court may not impose any condition (e.g., drug testing, tethers) that requires your client to make payments in order to be released or that requires ongoing payments in order to remain free.

# THE BAIL PARTNERSHIP AGREEMENT AND CASH BOND

For almost all Accused Individuals, cash bail shall be set at an amount less than or equal to the amount that the Accused Individual can afford ....”

This means that any time cash bail is contemplated, the court **must** make an inquiry into how much your client can afford.

If your client’s household income is less than 200% of the federal poverty guidelines, there is a presumption that your client cannot afford any cash bail. As a practical matter, most criminal defendants will fall below these thresholds, particularly if they qualify for appointed counsel.

Household Size	200% of Federal Poverty Line (2025)
1	\$31,300
2	\$42,300
3	\$53,300
4	\$64,300
8	\$108,300

# THE BAIL PARTNERSHIP AGREEMENT AND CASH BOND

What money can the court consider?

The court can consider “only such assets or income that are available and accessible to the Accused Individual at the time of the Arraignment.” The defendant must be “actually capable of paying without manifest hardship. Manifest hardship includes but is not limited to: having to forego ordinary or necessary living expenses such as housing, food, medical, childcare, or transportation costs.”

## In other words:

- The court can't expect your clients to take on debt to family or friends to pay bond.
- Your client must actually be able to access the funds in question or have someone who can immediately help.
- The court **cannot** base bond on what your client could afford to pay a bondsman.

**FINANCIAL INFORMATION INTAKE FORM (March 2025)**

Name: \_\_\_\_\_

Are you receiving government assistance such as disability, food stamps, housing vouchers, social security, Bridge card? (Check one) Yes \_\_\_\_\_ No \_\_\_\_\_

MONTHLY INCOME	AMOUNT	MONTHLY EXPENSES	AMOUNT
Monthly Income	\$	Rent / Mortgage / Utilities	\$
Income of Other Household Members Available and Accessible to You (such as spouse)	\$	Loan Payments / Credit Card Payments	\$
	\$	Child Care / Child Support / Alimony	\$
		Health Care/ Medical / Dental	\$
		Fines, fees, restitution, bail in other cases	\$
		Other (such as gas, insurance, food)	\$
<b>Total Estimated Monthly Income</b>	<b>\$</b>	<b>Total Estimated Monthly Expense</b>	<b>\$</b>

Please explain any other current conditions (examples: marital status, kids/dependents, length of residency, mental health, disability, loss of income):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2025 Poverty Level			
Household size	100%	140%	200%
1	\$15,650	\$21,910	\$31,300
2	\$21,150	\$29,610	\$42,300
3	\$26,650	\$37,310	\$53,300
4	\$32,150	\$45,010	\$64,300

For a **personal bond**, without other disqualifying factors, anything below 200% of the poverty level is a presumptive qualification.

For an **appointed attorney**, income level below 140% of the poverty level is a presumed qualification.

For Poverty Level: each additional person add: \$5,500 for 100% | \$7,700 for 140% | \$11,000 for 200%

# THE BAIL PARTNERSHIP AGREEMENT AND CASH BOND

## Financial Information Intake Form

This form reflects 2025 Federal Poverty Guidelines. The form will be updated annually on the 36<sup>th</sup> District Court webpage.

# TOPICS TO BE COVERED

- ❖ Introduction/Key Takeaways
- ❖ The Foundation of the Agreement is YOU
- ❖ Knowing Your Clients' Rights Under Michigan Law
- ❖ Exercise: Hypotheticals and Q&A
- ❖ The Bail Partnership Agreement—Cash Bond
- ❖ The Bail Partnership Agreement—Practical Guidance ←
- ❖ The Bail Partnership Agreement—Bail Redetermination Hearings
- ❖ Exercise: Hypotheticals and Q&A
- ❖ Failures to Appear
- ❖ Additional Law And Issues Relating To Arraignment
- ❖ Exercise: Hypotheticals and Q&A

# THE BAIL PARTNERSHIP AGREEMENT – PRACTICAL GUIDANCE

## Tips For Interviewing Your Client

### Allegations and Facts

- Review the police report. You are entitled to it. Talk to your client about the allegations.
- Discuss with your client the reasons for any FTA history, if applicable.
- Consider how the allegations or facts might demonstrate lack of flight risk or lack of recurring danger.
- Consider non-cash conditions that work for your client.

### Finances

- Understand household income (wages, etc.) and major expenses.
- Be sure to consider any issues of self-incrimination.
- Find out how much your client can *actually* afford without taking on debt and be ready to proffer that.
- Remember the 200% poverty line presumption!

# THE BAIL PARTNERSHIP AGREEMENT – PRACTICAL GUIDANCE

## Tips For Arguing Bond

- Be ready to argue why prior FTAs will not predict future FTAs (e.g., be ready to explain health or poverty related explanations for prior FTAs or to explain differences between prior cases and this one).
- Be ready to argue why prior criminal conduct doesn't render your client a danger to the public.
  - Find out if your client previously pled guilty to get out of jail
  - Prior violent criminal history should only be relevant if the current charges establish a pattern of harm
  - Prior *arrests*, on their own, don't prove anything
  - Be aware of elapsed time since prior conduct and any life changes your client has experienced
- Remember that the judge *must* consider least restrictive, non-financial, release conditions. Be sure to proffer release conditions that your client can realistically complete.
- Remember that a serious charge *is not enough* as a grounds to impose cash bond. An individualized analysis is required.
- Remember that there must be a nexus between the condition of release and addressing a danger to the public/flight risk.

# THE BAIL PARTNERSHIP AGREEMENT – PRACTICAL GUIDANCE

## Tethers Should Not Be a Kneejerk Alternative to Cash Bail

- Be sure to have discussed with a client the possibility of realistically complying with tethers before advocating for them.
- Lawyers must realize (and should remind judges) that getting a tether attached can take several days. If the client will lose their job or suffer collateral consequences as a result of any delays, highlight this for the Court.
- Tethers, drug tests, and other forms of surveillance are serious infringements on a defendant's liberty. Advocates must be prepared to argue that they are not proportionate to any flight risk or danger to the public, and courts must take these arguments seriously.
- Compliance with tethers should be reviewed every 30 days and a defense motion to remove a tether should be considered.

---

## THE BAIL PARTNERSHIP AGREEMENT- PRACTICAL GUIDANCE

Your client has the right to competent representation. If confronted with new allegations or evidence during the arraignment, tell the court you need additional time to consult with the defendant and consider whether a continuance is necessary.



**STOP & SLOW DOWN IF YOU NEED  
MORE TIME WITH YOUR CLIENT!!!**

# TOPICS TO BE COVERED

- ❖ Introduction/Key Takeaways
- ❖ The Foundation of the Agreement is YOU
- ❖ Knowing Your Clients' Rights Under Michigan Law
- ❖ Exercise: Hypotheticals and Q&A
- ❖ The Bail Partnership Agreement—Cash Bond
- ❖ The Bail Partnership Agreement—Practical Guidance
- ❖ The Bail Partnership Agreement—Bail Redetermination Hearings ←
- ❖ Exercise: Hypotheticals and Q&A
- ❖ Failures to Appear
- ❖ Additional Law And Issues Relating To Arraignment
- ❖ Exercise: Hypotheticals and Q&A

# THE BAIL PARTNERSHIP AGREEMENT- BAIL DETERMINATION HEARINGS

## The basics

There are two types of Bail Redetermination hearings

### Hearings in cases where bond was supposed to be unaffordable:

If the court imposed Cash Bond in an amount the court found to be **unaffordable**, the defendant is entitled to a Bail Redetermination hearing **within 48-72 hours\*** (or the next business day) if they have not yet posted bond.

### Hearings in cases where bond was supposed to be affordable:

If the court imposed Cash Bond in an amount the court found to be **affordable**, the defendant is entitled to a Bail Redetermination hearing **the next day** if they have not yet posted bond.

\*If the original arraignment was on a Wednesday, the redetermination hearing will be scheduled to occur on Friday unless Friday is a court holiday.

# THE BAIL PARTNERSHIP AGREEMENT- BAIL DETERMINATION HEARINGS

## Overview of Process

### If Bail Was Intended to Be Affordable

- Hearing occurs the next day.
- The court must inquire why bond was not posted.
- Be ready to explain why your client was unable to post bond and argue for a reduction or elimination.
- Review of prior bond decision is *de novo*.
- Evidence from original arraignment may be considered.

### If Bail Was Intentionally Unaffordable

- Hearing occurs 48-72 hours after arraignment.
- The court must make a *de novo* determination of whether your client should be detained due to a public danger or risk of non-appearance.
- Evidence from original arraignment may be considered.

# THE BAIL PARTNERSHIP AGREEMENT- BAIL DETERMINATION HEARINGS

## Practice Pointers

- You need to review with your client what happened at the original arraignment.
- If it's an affordable Bail Redetermination hearing, be prepared to explain why bond actually is **not** affordable and what, if anything, would be.
- Be prepared to rebut any arguments the court relied upon to find your client a flight risk or danger to the public. Probe the details of prior FTAs or violent allegations with your client.

**Note that some defendants do not pay bail on purpose.** This is particularly true of people with holds in other jurisdictions who want to get credit for time-served. If your client is not paying on purpose, be ready to inform the court that your client is not seeking a change in bond for this reason. If you so inform the court, it may continue the bond without raising any issues under the Agreement.

## APPEALS OF BAIL DETERMINATIONS

- An adverse bail decision may be appealed to the circuit court, as of right, pursuant to MCR 6.106(H). (And circuit court decisions, in turn, are appealable as of right to the Court of Appeals.)
- The best practice is to file any appeal ASAP, and in **less than 21 days**.
- If a client wants to appeal, you should order the transcript of both the arraignment and the Bail Redetermination hearing immediately and on an expedited basis.
- Appeals apply an abuse of discretion standard.
- Strategically, in a felony case, you should consider whether an appeal to the circuit court will be more or less effective than arguing bond *de novo* after the case is bound over. This may depend on whether you intend to waive the preliminary exam.

# TOPICS TO BE COVERED

- ❖ Introduction/Key Takeaways
- ❖ The Foundation of the Agreement is YOU
- ❖ Knowing Your Clients' Rights Under Michigan Law
- ❖ Exercise: Hypotheticals and Q&A
- ❖ The Bail Partnership Agreement—Cash Bond
- ❖ The Bail Partnership Agreement—Practical Guidance
- ❖ The Bail Partnership Agreement—Bail Redetermination Hearings
- ❖ Exercise: Hypotheticals and Q&A ←
- ❖ Failures to Appear
- ❖ Additional Law And Issues Relating To Arraignment
- ❖ Exercise: Hypotheticals and Q&A

## PRE-TRIAL RELEASE HYPOTHETICALS FOR DISCUSSION (2 OF 3)

<b>Charge</b>	<ul style="list-style-type: none"><li>• Retail fraud.</li><li>• Defendant allegedly shoplifted several hundred dollars of goods from Target.</li><li>• Defendant was given \$500 bond at his original arraignment, which the court found to be affordable.</li><li>• This is a bail redetermination hearing.</li></ul>
<b>Defendant criminal history</b>	<ul style="list-style-type: none"><li>• Convicted of retail fraud on five different occasions</li><li>• Defendant initially failed to appear for trial during their second conviction and the trial had to be rescheduled.</li><li>• Defendant appeared for the rescheduled trial and was convicted.</li></ul>
<b>Life circumstances</b>	<ul style="list-style-type: none"><li>• Defendant is homeless, and sometimes resides at a homeless shelter, sometimes crashes on his sister's couch</li></ul>

# TOPICS TO BE COVERED

- ❖ Introduction/Key Takeaways
- ❖ The Foundation of the Agreement is YOU
- ❖ Knowing Your Clients' Rights Under Michigan Law
- ❖ Exercise: Hypotheticals and Q&A
- ❖ The Bail Partnership Agreement—Cash Bond
- ❖ The Bail Partnership Agreement—Practical Guidance
- ❖ The Bail Partnership Agreement—Bail Redetermination Hearings
- ❖ Exercise: Hypotheticals and Q&A
- ❖ Failures to Appear 
- ❖ Additional Law And Issues Relating To Arraignment
- ❖ Exercise: Hypotheticals and Q&A

# FAILURES TO APPEAR

Know why people fail to appear

## Non-appearance v. Willfully avoiding prosecution (absconding)

- Many failures to appear are the result of practical issues: the threat of job loss, lack of childcare, lack of transportation.
- The Bail Project has bailed out over 23,000 people nationwide. 90% of those people show up to court, and 30% have their cases dismissed or they are found not guilty once able to fight their case from a position of freedom.
- Studies show that personal bonds are at least as effective as cash bond at ensuring that people come back to court.

See, e.g., Arpit Gupta, Christopher Hansman, & Ethan Frenchman, *The Heavy Costs of High Bail: Evidence from Judge Randomization*, 45 *Journal of Legal Studies* 471, 475 (2016); Michael R. Jones, *Unsecured Bonds: The As Effective and Most Efficient Pretrial Release Option*, Pre-Trial Justice Institute Report at 11 (October 2013) (concluding that “unsecured bonds offer decisionmakers the same likelihood of court appearance as do secured bonds”).

# FAILURES TO APPEAR

## Know the Partnership Agreement's FTA Provisions

All of the information described in this training apply equally to Accused Individuals arrested on *capias* warrants.

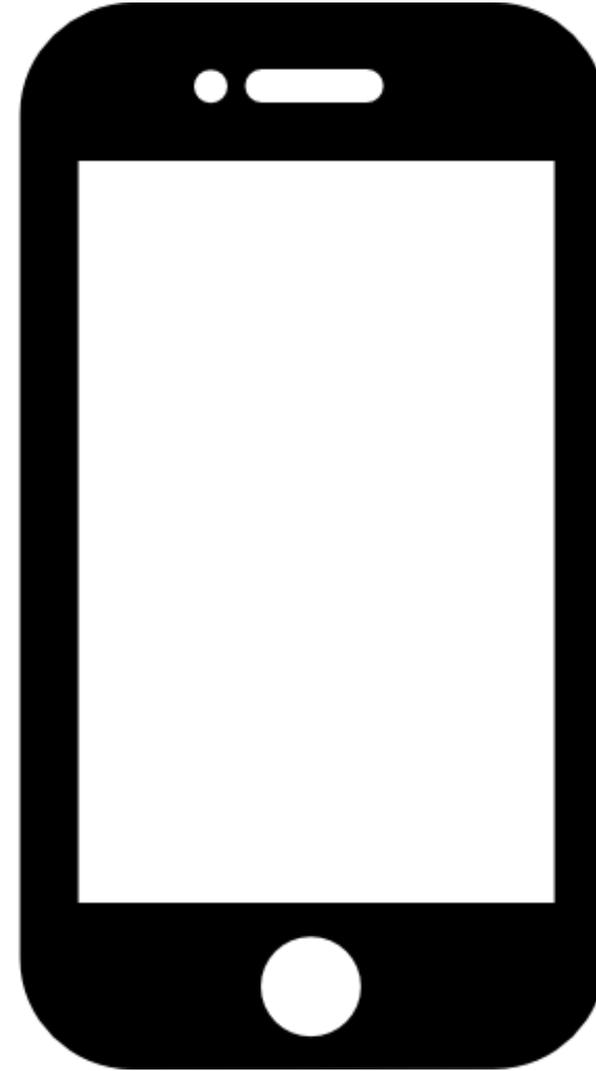
The court can consider the failure to appear that resulted in the *capias* warrant as a factor when assessing the risk of non-appearance. But the court must also consider explanations for the FTA and consider other non-cash measures for ensuring appearance in the future.

For misdemeanor cases (other than assaults, MCL 750.81, 750.82, 750.81a, 750.82a), the first time a defendant misses a hearing, it will automatically be rescheduled instead of a *capias* warrant being issued.

# FAILURES TO APPEAR

## Prevent Them From Happening

- All Accused Individuals will be able to sign up for text reminders in the courthouse.
- Be sure to offer to sign Accused Individuals up immediately for reminders online.
- Sign up here!  
<https://www.36thdistrictcourt.org/online-services/court-date-reminders>
- Research shows that text reminders are the single most effective way of making sure people come back to court!



# TOPICS TO BE COVERED

- ❖ Introduction/Key Takeaways
- ❖ The Foundation of the Agreement is YOU
- ❖ Knowing Your Clients' Rights Under Michigan Law
- ❖ Exercise: Hypotheticals and Q&A
- ❖ The Bail Partnership Agreement—Cash Bond
- ❖ The Bail Partnership Agreement—Practical Guidance
- ❖ The Bail Partnership Agreement—Bail Redetermination Hearings
- ❖ Exercise: Hypotheticals and Q&A
- ❖ Failures to Appear
- ❖ Additional Law And Issues Relating To Arraignment ←
- ❖ Exercise: Hypotheticals and Q&A

# FAILURES TO APPEAR

## Statutes and Court Rules

Except in cases involving assaultive offenses or crimes involving domestic violence, anyone with an outstanding bench warrant can voluntarily present themselves at court within 1 year of the warrant being issued and be arraigned within two hours. A defendant who follows these procedures is presumed not to be a flight risk. MCL 762.10d; newly amended MCR 6.105.

Except in cases involving assaultive offenses or crimes involving domestic violence, a bench warrant presumptively\* should not issue for 48 hours after a defendant fails to appear for a hearing, and bail should not be revoked during that time, to allow the defendant to voluntarily appear. MCL 764.3; newly amended MCR 6.103.

\*The presumption can be overcome on various grounds as provided in MCL 764.3(3).

# AMERICANS WITH DISABILITIES ACT (ADA)

## Who is covered?

- Everyone. The ADA defines “disability” broadly as “(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (c) being regarded as having such an impairment. 42 U.S.C. section 12102. There are extremely high rates of disabilities amongst the incarcerated and criminally accused populations.
- Major life activities “include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.” *Id.*

## What are you looking for?

- Reasonable accommodations
  - A reasonable accommodation under Section 504 is a change, adaptation, or modification to a policy, program, service, or workplace which will allow a qualified person with a disability to participate fully in a program, take advantage of a service, or perform a job.
  - Accommodations are typically grouped into four categories: presentation, response, setting, and timing and scheduling.
- Inability to pay as a *result* of a disability and/or the poverty programs upon which disabled people rely (like SSI)
- SSI and SSDI or other state and federal monetary benefits cannot be used to pay bail
- Consider whether previous FTAs or alleged technical violations were *themselves* a result of inadequate accommodations or an inability to comply with onerous release conditions

# TOPICS TO BE COVERED

- ❖ Introduction/Key Takeaways
- ❖ The Foundation of the Agreement is YOU
- ❖ Knowing Your Clients' Rights Under Michigan Law
- ❖ Exercise: Hypotheticals and Q&A
- ❖ The Bail Partnership Agreement—Cash Bond
- ❖ The Bail Partnership Agreement—Practical Guidance
- ❖ The Bail Partnership Agreement—Bail Redetermination Hearings
- ❖ Exercise: Hypotheticals and Q&A
- ❖ Failures to Appear
- ❖ Additional Law And Issues Relating To Arraignment
- ❖ Exercise: Hypotheticals and Q&A ←

# PRE-TRIAL RELEASE HYPOTHETICALS FOR DISCUSSION (3 OF 3)

<b>Charge</b>	<ul style="list-style-type: none"><li>• Carjacking</li><li>• Defendant and a co-conspirator allegedly induced co-conspirator's ex-girlfriend to meet in a dark parking lot</li><li>• Allegedly pretended to be armed by sticking hands in their pockets to resemble a firearm and threatened to shoot the victim if she didn't get out of the car and turn the car over to them.</li><li>• At arraignment, defendant was given a bond of \$100,000 cash/surety, which the court found to be unaffordable. This is a bail redetermination hearing.</li></ul>
<b>Defendant criminal history</b>	<ul style="list-style-type: none"><li>• Defendant has a prior conviction for driving without insurance.</li><li>• He missed a hearing during those proceedings because he did not have a way to get to court.</li><li>• He was later arrested on a capias warrant and convicted after that.</li></ul>
<b>Life circumstances</b>	<ul style="list-style-type: none"><li>• Defendant is 18 years old and resides with his mother</li></ul>

## SOURCES

- Heaton, P., Mayson, S., & Stevenson, M. (2017). The downstream consequences of misdemeanor pretrial detention. *Stan. L. Rev.*, 69, 711.
- Lowenkamp, C. T., VanNostrand, M., & Holsinger, A. M. (2013). The hidden costs of pretrial detention. *LJAF*.
- Lum, K., Ma, E., & Baiocchi, M. (2017). The causal impact of bail on case outcomes for indigent defendants in New York City. *Observational Studies*, 3(1), 38-64.
- Michigan Joint Task Force on Jail and Pretrial Incarceration Report and Recommendations. (2020).
- Pretrial Criminal Justice Research. (2013). *LJAF*.
- Sawyer, W., & Wagner, P. (2022). *Mass Incarceration: The Whole Pie 2022*. Prison Policy Initiative. Pretrial Justice Institute. (2017). Pretrial justice: How much does it cost?
- Schlesinger, T. (2005). Racial and ethnic disparity in pretrial criminal processing. *Justice Quarterly*, 22(2), 170-192.
- Spohn, C. (1990). The sentencing decisions of black and white judges: Expected and unexpected similarities. *Law and Society Review*, 1197-1216.
- Steffensmeier, D., & Britt, C. L. (2001). Judges' race and judicial decision making: Do black judges sentence differently?. *Social Science Quarterly*, 82(4), 749-764.
- The Bail Project Internal Data