

# Bond/Bail

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### Appendix

Bond Disbursement Procedure  
Surety Bond Process – SCAO Administrative Memorandum 2007-05

## 4.1 Overview

### A. Authority and Purpose

Magistrates have the authority to fix bail and accept bond. (MCL 600.8511[f])

A person charged with a crime is entitled to release on his or her own recognizance, conditional release, or release on money bail. (MCR 6.106[A], MCL 765.6)

The primary purposes of a bond are: (1) to help ensure that the defendant appears in court at all times as directed to do so, and (2) to ensure safety to the public. There are several instances when a magistrate or judge is called upon to make a determination as to whether or not a person will be released on their own recognizance or whether **bail** is required and, if required, to establish an amount of bail. The posting of the bail requires the creation of a contract between the defendant, the bail poster (a third party or a surety), and the court. This contract is known as a **bond**. There are three types of bail for which a bond is required: cash bail (which includes the posting of 10 percent), secured bail, or unsecured bail (personal recognizance). For some offenses, courts do not require any bond at all.

#### 1. Misdemeanor

Release on personal recognizance or cash bail must be determined for all persons charged with misdemeanors. (Const. 1963, art 1, §15, MCR 6.106[A])

#### 2. Felony

##### a. Adult Defendant

Except for those persons specified in MCR 6.106(B), bail must be set for all persons charged with criminal offenses.<sup>1</sup> (Const. 1963, art 1, §15, MCR 6.106[A])

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<sup>1</sup>See *People v Daniels*, 394 Mich 524 (1975), in which the court held: “The statute requiring a cash or surety bond for bail of one charged with a crime alleged to have occurred while he was on bail pursuant to a personal bond (MCL 765.6a) takes precedence over the court rule requiring release on personal recognizance of one incarcerated more than six months to answer for a felony charge (GCR 1963, 789.2).”

Pursuant to MCR 6.104(E)(5), at a felony arraignment in district court, the court must determine what form of pretrial release, if any, is appropriate.

MCR 6.610(H)(2)(d) states that, in a prosecution in which the defendant is charged with a felony or a misdemeanor not cognizable by the district court, the court shall inform the defendant of the right to be released on bond.

#### **b. Juvenile Defendant**

MCR 6.909 is a separate court rule dealing with bail for a juvenile who has been charged with a life offense in district court. See MCL 712A.2(a)(1) for a list of the life offenses for which a juvenile may be charged.

Except as provided in MCR 6.909(A)(2), the magistrate or court must advise the juvenile of a right to bail as provided for an adult accused. The magistrate or the court may order a juvenile released to a parent or guardian on the basis of any lawful condition, including that bail be posted. (MCR 6.909[A][1])

### **B. Role of Arresting Agency**

Pursuant to the Crime Victim's Rights Act, the arresting agency is responsible for providing information to the victim of the reported crime. (MCL 780.751 *et seq.*, MCL 780.811 *et seq.*) Specifically, according to MCL 780.755 and MCL 780.815, the law enforcement agency having responsibility for investigating the crime must give the victim notice of the availability of pretrial release for the defendant and other related information.

### **C. Role of Court Staff and Other Agencies**

Bond investigation is often part of a probation officer's or other court staff person's duties or responsibilities. The investigation is conducted to provide the judge or magistrate with the information appropriate and necessary to determine the type, amount and conditions of the bond.

### **D. Role of Court**

Each time a person appears before the court for arraignment, the magistrate or judge must determine whether bail should be required, if this decision has not previously been made. This process is outlined in MCR 6.106, Pretrial Release. Pursuant to this court rule,

the court may go beyond the mere setting of an amount of bail and type of security required to allow for setting conditions of release. The Legislature has provided authority for conditions reasonably necessary for the protection of named persons to be entered into LEIN.

At the defendant's first appearance before the court, the court must order the defendant be held in custody or released as provided in MCR 6.106. This decision is made after considering various factors, some of which are outlined in MCR 6.106(F)(1). Magistrates and judges may establish bail in any of the following instances:

- at the time of issuance of an arrest warrant.
- at the time of arrest without warrant before the defendant's arraignment.
- at arraignment after execution of the arrest warrant.
- at the time of issuance of a bench warrant.
- at the time of arrest on the bench warrant before the defendant's arraignment.
- at arraignment after execution of the bench warrant.

In each court the chief judge will establish court policy on the establishment of bail, and whether it shall be done in each of the instances above, or whether bail will be set only after some of these procedures have occurred. For instance, some courts may not allow bail on a felony arrest warrant before arraignment, or on a bench warrant before arraignment.

## **E. Types of Bail**

### **1. Personal Recognizance**

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

### **2. Money Bail**

Should the court determine that release on personal recognizance is inappropriate, if money bail is required, the court decides whether a 10 percent bond is appropriate, but it is the defendant's decision whether the bond will be posted by the defendant, posted by a third party, secured by a surety approved by the court or, with the court's consent, secured by designated real property. The court cannot require a "cash bond only" in the

full amount without allowing for a surety bond. (MCR 6.106[E]) See also MCL 780.67.

MCL 765.6(2) provides that, if the court fixes a bail amount and allows for the posting of a 10 percent deposit bond, the person accused may post bail by a surety bond in an amount equal to 1/4 of the full bail amount fixed under subsection (1) and executed by a surety approved by the court.

## **4.2 Minimum Standards**

### **4.2.1 Interim Bail Provisions**

#### **A. Felony**

Pursuant to MCR 6.102(D), the court has the option of specifying on the warrant the bail an accused may post to obtain release before arraignment on the warrant and, if the court deems it appropriate, include as a bail condition that the arrest of the accused occur on or before a specified date or within a specified period of time after issuance of the warrant.

If an accused has been arrested pursuant to a warrant that includes an interim bail provision, the accused must either be arraigned promptly or released pursuant to the interim bail provision. (MCR 6.102[F])

Pursuant to MCR 6.102(F)(1)-(4), the accused may obtain release by posting bail on the warrant and by submitting a recognizance to appear (bond) before a specified court at a specified date and time, provided that:

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

The staff comment following MCR 6.102(F) states that the purpose of the language requiring that the accused be arrested in the county where the defendant resides or works is to preclude the availability of interim bail to a person who may be avoiding arrest. In addition, the staff comment states that implicit in subrule (F) is the condition that the accused must be satisfactorily identified.

#### **B. Misdemeanor**

The interim bail statute provides for the release of misdemeanor prisoners by giving bond to the arresting officer and others in certain circumstances not inconsistent with public safety. See MCL 780.581 *et seq.* Note that in felony cases interim bail is only available when the arrest was with a warrant which contains a judge's specification for interim bail.

The interim bail statute applies to misdemeanor or ordinance violations which are punishable by imprisonment for not more than one year, or by a fine, or both. The interim bail statute does not apply to Michigan Vehicle Code offenses. (MCL 780.587) Interim bail in misdemeanor cases is available in arrests with or without a warrant pursuant to MCR 6.102(D). Compare with MCL 780.581(1). See also Section 3.2.3, page 13.

According to MCL 780.581(3), there are four instances when a defendant arrested for a misdemeanor charge may be temporarily denied the right to post interim bail:

1. if the defendant is found under the influence of intoxicating liquors, or a controlled substance, or any combination thereof,
2. if the defendant is unable to establish or demonstrate his or her identity,
3. if the defendant is wanted by authorities to answer to another charge, or
4. if it is otherwise unsafe to release the defendant.

A person shall not be released until he or she can be arraigned or have interim bond set by a judge or district court magistrate if he or she was arrested without a warrant pursuant to MCL 764.15a or a substantially corresponding local ordinance, or if he or she was arrested with a warrant for a violation of 750.81 or 750.81a or a substantially corresponding local ordinance, and the person is a spouse or former spouse of the victim, has or has had a dating relationship with the victim, has had a child in common with the victim, or resides or has resided in the same household as the victim. (MCL 780.582a) "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 two individuals in a business or social context. (MCL 764.15a)

There must be reasonable and articulable grounds for forming the belief that one of the above conditions exists to deny defendant's statutory right to post interim bail. (*People v Coburn*, 140 Mich App 793, 789 [1985])

The defendant may be held only until he or she is in proper condition to be released, or until the next session of court. If held, the defendant must be placed in a holding cell or lockup, if available. (MCL 780.581[3-4])

The minimum amount of bail can be no less than 20 percent of the minimum possible fine. The maximum amount of bail can be no more than the amount of the maximum possible fine. (MCL 780.581[2])

Pursuant to MCL 780.585, a district court judge or district court magistrate may set the amount of interim bail by endorsing the amount on the warrant. The amount so endorsed need not be within the limits applicable where the interim bail is set by a police officer

pursuant to MCL 780.581(2).

If a district court judge or district court magistrate has set the amount of bail, an arresting officer may not change it. (MCL 780.68)

If a magistrate releases a person pursuant to MCL 780.582a subject to protective conditions, the magistrate shall inform the person on the record, either orally or by a writing that is personally delivered to the person, of the specific conditions imposed and that, if the person violates a condition of release, he or she will be subject to arrest without a warrant and may have his or her bond forfeited or revoked and new conditions of release imposed, in addition to any other penalties that may be imposed if he or she is found in contempt of court. In addition, the magistrate shall immediately direct a law enforcement agency within the jurisdiction of the court, in writing, to enter any interim conditional bond into the Law Enforcement Information Network (LEIN). (MCL 780.582a[5])

## **4.2.2 Bond Investigation**

### **A. Available Options**

Michigan Court Rule 6.106(A) provides that, unless already ordered, the court should take one of the following actions at the defendant's first appearance.

1. Hold the defendant in custody.
2. Release the defendant on personal recognizance or an unsecured appearance bond.
3. Conditionally release the defendant with or without money bail.

### **B. Factors Considered**

Information beyond the factors listed in court rule and statute cannot be used to sanction pretrial detention and is not permissible. The court rule specifically disallows any determination based on race, religion, gender, or economic status. There is a difference between the requirements of the court rule and the statute concerning information that must be placed on the record when setting bail. To alleviate potential appellate questions, it is recommended that the requirements from both the court rule and the statute be combined.

#### **1. Court Rule Considerations**

The information considered relevant in establishing a bond and bond conditions is listed in MCR 6.106(F)(1) and MCL 765.6 and includes:

- defendant's prior criminal record, including juvenile offenses;
- defendant's record of court appearance or nonappearance at court proceedings or flight to avoid prosecution;
- defendant's history of substance abuse or addiction;
- defendant's mental condition, including character and reputation for dangerousness;
- the seriousness of the offense charged, the presence or absence of threats, and the probability of conviction and likely sentence;
- defendant's employment status and history and financial history insofar as these factors relate to the ability to post money bail;

- the availability of responsible members of the community who would vouch for or monitor the defendant;
- facts indicating the defendant's ties to the community, including family ties and relationships, and length of residence; and
- any other facts bearing on the risk of nonappearance or danger to the public.

## **2. Statutory Considerations**

Except as otherwise provided by law, a person accused of a criminal offense is entitled to bail. The amount of bail shall not be excessive and shall be uniform whether the bail bond is executed by the person for whom the bail has been set or by a surety. The court in fixing the amount of the bail shall consider and make findings on the record as to each of the following:

- seriousness of the offense charged,
- protection of the public,
- previous criminal record and the dangerousness of the person accused, and
- probability or improbability of the person accused appearing at the trial of the cause.

(MCL 765.6)

## **3. Record Requirements**

The court rule and statutory requirements differ about what must be placed on the record when setting bail. To alleviate potential appellate questions, requirements from both the court rule and statute should be combined.

### **4.2.3 Order for Custody or Pretrial Release**

As specified in MCR 6.106(B), the court shall release the defendant on personal recognizance unless the court determines that he or she may not be released.

#### **A. Considerations and Statement of Reasons for Custody Order**

If the court determines 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.

##### **1. Considerations for Custody**

- a. If the court finds that proof of the defendant's guilt is evident or the presumption great, the court may deny pretrial release to a defendant charged with:
  - murder or treason, or
  - committing a violent felony and at the time of the commission of the violent felony, the defendant was on probation, parole, or release pending trial for another violent felony, or during the 15 years preceding the commission of the violent felony, the defendant had been convicted of two or more violent felonies under the laws of Michigan or substantially similar laws of the United States or another state arising out of separate incident.
- b. The court may also deny pretrial release to a defendant charged with criminal sexual conduct in the first degree, armed robbery, kidnapping with the intent to extort money or other valuable thing 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. Statement of Reasons and Order**

The court must state the reasons for an order of custody on the record and on a form approved by the State Court Administrative Office titled "Custody Order" (SCAO-Approved form MC 240). The completed form must be placed in the court file.

##### **3. Exceptions for Juvenile Defendant**

MCR 6.909(2) regulates the detention of a juvenile without bail as follows.

**a. Reasons for Detention**

If the proof is evident or if the presumption is great that the juvenile committed the offense, the magistrate or the court may deny bail:

- to a juvenile charged with first-degree murder, second-degree murder, or
- to a juvenile charged with first-degree criminal sexual conduct or armed robbery
  - 1) who is likely to flee, or
  - 2) who clearly presents a danger to others.

**b. Place of Confinement**

• **Juvenile Facility**

Except as provided in MCR 6.909(B)(2) and MCR 6.907(B), the juvenile charged with a crime and not released must be placed in a juvenile facility while awaiting trial and, if necessary, sentencing, rather than being placed in a jail or similar facility designed and used to incarcerate adult prisoners.

• **Jailing of Juveniles; Restricted**

On motion of a prosecuting attorney or a superintendent of a juvenile facility where the juvenile is detained, the magistrate or court may order the juvenile confined in a jail or similar facility designed and used to incarcerate adult prisoners upon a showing that the juvenile's habits or conduct are considered a menace to other juveniles, or the juvenile may not otherwise be safely detained in a juvenile facility.

• **Family Division-Operated Facility**

The juvenile shall not be placed in an institution operated by the family division except with the consent of the family division or on order of a court as defined in these rules.

• **Separate Custody of Juvenile**

The juvenile in custody or detention must be maintained separately from the adult prisoners or adult accused, as required by MCL 764.27a.

#### **4. Custody Hearing**

A court having jurisdiction of a defendant may conduct a custody hearing if the defendant is being held in custody pursuant to MCR 6.106(B) and the defendant requests a custody hearing. The purpose of the hearing is to permit the parties to litigate all of the issues relevant to challenging or supporting a custody decision pursuant to MCR 6.106(B). (MCR 6.106[G])

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. The rules of evidence, except those pertaining to privilege, are inapplicable. Unless the court makes the findings required to enter an order pursuant to MCR 6.106(B)(1), the defendant must be ordered released according to MCR 6.106(C) or (D). A verbatim record of the hearing must be made.

#### **B. Considerations for Release**

In a misdemeanor case in which the defendant has been incarcerated for a period of 28 days or more to answer for the same crime or a crime based on the same conduct or arising from the same criminal episode, the defendant must be released on personal recognizance. In computing the 28 days, the court is to exclude periods of delay in MCR 6.004(C)(1)-(6). (MCR 6.004[C])

##### **1. Amount of Bail**

The amount of bail shall be sufficient to assure compliance with the conditions set forth in the bail bond, not oppressive, commensurate with the nature of the offense charged, considerate of the past criminal acts and conduct of the defendant, considerate of the financial ability of the accused, and uniform whether the bail bond is executed by the person for whom bail has been set or by a surety. (MCL 780.64)

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

If a person is arrested for an ordinance violation or a misdemeanor punishable by imprisonment for not more than one year, or a fine, or both, and if the defendant's operator's or chauffeur's license is not expired, suspended, revoked, or canceled, then the court may require the defendant, in place of other security for the defendant's

appearance in court for trial or sentencing or, in addition, to release of the defendant on personal recognizance, to surrender to the court his or her operator's or chauffeur's license. According to MCL 257.311a, the court shall issue the defendant a receipt for the license. (MCL 780.64)

## **2. Conditions of Release**

The court must order the pretrial release of the defendant on personal recognizance, or on conditional release, with or without money bail. (MCR 6.106[C]-[E]) If the release is by personal recognizance it must be 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. (MCR 6.106[C], [D])

In deciding which release to use and what terms and conditions to impose, the court is to consider relevant information, including the factors listed in Section 4.2.2, pages 8 and 9. If the court orders the defendant released on conditions in MCR 6.106(D) that include money bail, the court must state the reasons for its decision on the record. However, the court need not make a finding on each of the enumerated factors. (MCR 6.106[F][2])

## **3. Protective Conditional Bonds - Entry into LEIN**

MCL 765.6b allows a judge or magistrate to release a defendant subject to conditions reasonably necessary for the protection of one or more named persons. If a release is made pursuant to this section, the judge or magistrate must make a finding of the need for protective conditions and inform the defendant on the record (either orally or by a writing personally delivered to the defendant) of the specific conditions imposed and that the defendant will be subject to arrest without a warrant and may have his or her bail forfeited or revoked and new conditions of release imposed if the defendant violates a condition of release, in addition to any other penalties that may be imposed if the defendant is found in contempt.

The order must contain the:

- defendant's full name,
- defendant's height, weight, race, sex, date of birth, hair color, eye color, and any other identifying information the judge or magistrate considers appropriate,
- date the conditions become effective,
- date on which the order expires, and
- conditions imposed.

SCAO-Approved form MC 240 has a specific page designed for including all the information required by this statute. A copy of this form must be immediately forwarded

to a law enforcement agency within the jurisdiction of the court for entry into LEIN. Orders should be canceled with LEIN when a conditional bond is revoked, or when the defendant has been sentenced or the case is dismissed.

#### **4. Release of Juvenile Defendant**

The magistrate or the court may order a juvenile released to a parent or guardian on the basis of any lawful condition, including that bail be posted.

#### **5. Pretrial Release Order**

Conditions can be placed on any type of bond in an effort to assure the defendant's appearance. The nature of the allowable conditions that can be placed on a bond also suggest that objectives concerning the safety of victims or the community in general can be considered.

##### **a. Personal Recognizance**

The conditions of a personal recognizance bond are specified in MCR 6.106(C) and state that the defendant:

- 1) will appear as required,
- 2) will not leave the state without permission of the court, and
- 3) will not commit any crime while released.

##### **b. Conditional Release**

Pursuant to MCR 6.106(D), if the court determines that a release on personal recognizance will not reasonably ensure the appearance of the defendant as required and the safety of the public, the court may order pretrial release on any of the following conditions or combination of conditions that the court determines appropriate. See also MCL 780.69. The conditions include:

- 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) that the defendant is subject to any condition or conditions the court determines reasonably necessary to ensure the appearance of the defendant as required and the safety of the public, which may include requiring the defendant to:

- make reports to a court or agency, as specified by the court or the agency,
- not use alcohol nor illicitly use any controlled substance,
- participate in a substance abuse testing or monitoring program,
- participate in a specified treatment program for any physical or mental condition, including substance abuse,
- comply with restrictions on personal associations, place of residence, place of employment, or travel,
- surrender driver's license or passport,
- comply with a specified curfew,
- continue to seek employment,
- continue or begin an educational program,
- 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,
- not possess a firearm or other dangerous weapon,
- not enter specified premises or areas and not assault, beat, molest, or wound a named person or persons,
- satisfy an injunctive order made a condition of release, or
- comply with any other condition, including the requirement of money bail as described in MCR 6.106(E), reasonably necessary to ensure the defendant's appearance as required and the safety of the public.

If the court orders a bond with conditions that are determined to be reasonably necessary for the protection of any named person, the Order for Pretrial Release/Custody (SCAO-Approved form MC 240) must be sent to the local law enforcement authority for entry into the LEIN system. (MCL 765.6b)

**c. Bail**

If the court determines for reasons stated 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 MCR 6.106(D), may be required as follows.

- 1) The court may require the defendant to post a bond that, *at the defendant's option*, is executed by:
  - a) a surety approved by the court,
  - b) the defendant, or
  - c) another who is not a licensed surety, and secured by either
    - a cash deposit, or its equivalent, for the full bond amount, or
    - a cash deposit of 10 percent of the bond amount, or
    - with the court's consent, designated real property.
- 2) The court may require the defendant to post a bond that, *at the defendant's option*, is executed by:
  - a) a surety approved by the court, or
  - b) the defendant, or by another who is not a licensed surety, and secured by
    - a cash deposit, or its equivalent, for the full bond amount, or
    - with the court's consent, designated real property.

In addition, 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.

(MCR 6.106[E] [emphasis added]) See also MCL 780.67.

**6. Bond Form**

SCAO-Approved form MC 241 (Bond) should be completed in conjunction with the release order, SCAO-Approved form MC 240 (Order for Pretrial Release/Custody). Copies of the forms are included after page 25.

### **C. Bail Deposit**

The person for whom bail has been set shall execute the bail bond and deposit with the clerk of the court before which the proceeding is pending a sum of money equal to 10 percent of the bail but at least \$10.00. A defendant who personally makes the deposit shall be notified that upon the defendant's conviction the defendant's deposit may be used to collect a fine, costs, restitution, assessment, or other payment as provided in MCL 780.68. (MCL 780.66) Note the conflict between statute and court rule discussed above and on the preceding page.

No attorney practicing in this state and no official authorized to admit another to bail or to accept bail shall furnish any part of any security for bail in any criminal action or any proceeding, nor shall any such person act as surety for an accused admitted to bail. (MCL 780.72)

### **D. Alternative Bond Documents**

Courts may require or receive alternative documents in lieu of a cash, percent, or surety bond. Receipt of such documents must be documented in the case file. If the court determines the document should be kept in a location for safe keeping other than the court file, the location of the document should be noted on the register of action. If the case is transferred to another court, such as a bind over to circuit court or a change of venue, the document should be included in the itemization of materials transferred.

#### **1. Driver's License**

Law enforcement or the court may require a person to surrender a driver's license as security for the defendant's appearance in court. Upon conclusion of the trial or imposition of sentence, as applicable, the court shall return the license to the defendant unless other disposition of the license is authorized by law. (MCL 780.64, MCL 257.729, MCR 6.106[D][2][f])

#### **2. Guaranteed Appearance Certificate**

In lieu of a driver's license, a person may leave a guaranteed appearance certificate with the law enforcement officer or the court. The certificate must contain a printed statement that a surety company authorized to do business in Michigan guarantees the appearance of the person whose signature appears on the card or certificate, and that if the defendant fails to appear in court the company will pay any fine, costs, or bond forfeiture imposed on the person not to exceed \$200.00. Upon conclusion of the trial or imposition of sentence, as applicable, the court shall return the certificate to the defendant. (MCL 257.749)

### **3. Passport**

As a condition of bond, the court may require surrender of a passport. A person without a passport might surrender a refugee travel document, which can serve in lieu of a national passport. It may be useful to acquire signature of the owner of the passport or travel document upon return as receipt. Expired passports or travel documents and notification of conviction should be sent to U.S. Immigration, Investigations Bureau, 333 Mt. Elliott Street, Detroit, MI 48207-4381. For further information, contact U.S. Immigration at 313-568-6036. (MCR 6.106[D][2][f])

### **E. Crime Victim's Rights**

The victim of a crime will be given notice by the law enforcement agency having responsibility for investigating the crime that he or she may contact the sheriff to determine whether a defendant has been released from custody pending trial. (MCL 780.755, MCL 780.815)

If the victim wishes not to have contact with the defendant, the arraigning judge can order a no-contact clause in the defendant's bond as a condition of pretrial release. If contact was made by the defendant, the prosecuting attorney may file a petition for bond revocation. A no-contact order as condition of release might contain language ordering the defendant to (1) refrain from making any contact with the victim in person, by mail, by telephone, or through a third party; or (2) leave the home if the parties are still living together. If the defendant cannot leave the residence for some reason, the bond should contain a warning that any future charges or noncompliance with the conditions of bond could jeopardize his or her liberty. (MCR 6.106[D][2][e])

## **4.2.4 Appeals and Modifications**

### **A. Appeals**

A party may move for review of a release decision in the court with appellate jurisdiction. There is no filing fee for the motion. The reviewing court may not stay, vacate, modify, or reverse the release decision except on finding an abuse of discretion. (MCR 6.106[H][1])

After conviction, the court may order that the original bail stand as bail pending appeal or increase or reduce bail. (MCL 780.66[4])

### **B. Modifications**

A release decision may be modified or a custody hearing reopened pursuant to MCR 6.106(H)(2). The party seeking modification has the burden of going forward. See also MCL 780.65.

#### **1. Prior to Arraignment on Information**

Prior to 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.

#### **2. At Arraignment on Information and Afterward**

At the defendant's arraignment on the information and afterward, 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.

#### **3. Emergency Release**

If a defendant being held in pretrial custody pursuant to MCR 6.106(H) is ordered released from custody as a result of a court order or law requiring the release of prisoners to relieve jail conditions, the court ordering the defendant's release may, if appropriate, impose conditions of release in accordance with MCR 6.106 to ensure the appearance of the defendant as required and to protect the public. If such conditions of release are imposed, the court must inform the defendant of the conditions on the record or by furnishing the defendant or the defendant's lawyer a copy of the release or setting forth the conditions and requiring the defendant to sign a bond form (SCAO-Approved form MC 241). (MCR 6.106[H][3])

#### 4. Order

If the release order is modified, form MC 240 (Order Regarding Pretrial Release) should be completed, the box “amended” should be checked and the defendant should sign a new bond form, MC 241, with the new conditions. If the release order contains provisions requiring LEIN entry pursuant to MCL 765.6b and any of the conditions are modified, the box “amended conditions” should be checked on the two LEIN copies so that the local law enforcement authority responsible for entering the order onto LEIN is informed of the changes. The form also contains a check box option to indicate an amended expiration date **if the expiration date is changed at the same time the modified conditions are made**. Do not use this form if only the expiration date is changed; use MC 240a (see item 5 below).

#### 5. Extension of Expiration Date

In the event the court must extend **only** the expiration date of a bond containing conditions which necessitate LEIN entry pursuant to MCL 765.6b, form MC 240a, Order Extending Bond for Protection of Named Person(s), should be used. It is not necessary to complete a new bond form (MC 241).

## **4.2.5 Termination of Pretrial Release Order**

### **A. Conditions Met**

#### **1. Court Rule Provisions**

If the conditions of the pretrial release order are met and the defendant is discharged from all obligations in the case, the court must vacate the release order and discharge anyone who has posted bond. If the bond was posted by the defendant, and a cash bond or 10 percent bond was posted, the money must be first applied to the amount of any fine, costs, or statutory assessments imposed and any balance returned. If the bond was posted by a third party and there has been a deposit of 10 percent of the bond amount, the court should return 90 percent of the deposited money and retain 10 percent. If the bond posted by a third party was a cash bond, the court should return 100 percent of the deposited money. (MCR 6.106[I][1], [3])

#### **2. Statutory Provisions**

When the conditions of the bail bond have been performed and the accused has been discharged from all obligations in the cause, the court shall order the fine, costs, restitution, assessment, or other payment collected out of the cash deposit. If the bond was a 10 percent bond, the court shall return to the accused 90 percent of the sum and retain costs of 10 percent of the amount deposited, except that if the accused has not been convicted of the charge, the entire sum deposited shall be returned to the accused. (MCL 765.15[2], MCL 780.66[6], [8], MCL 780.67[6])

Rules of practice set forth in any statute, if not in conflict with Michigan Court Rules, are effective until superseded by rules adopted by the Supreme Court. (MCR 1.104)

### **B. Conditions Not Met**

#### **1. Court Rule Provisions**

If the defendant has failed to comply with the conditions of release, the court may issue a warrant for the defendant's arrest 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 bond has been ordered, to anyone who posted bond.

- b. If the defendant does not appear and surrender to the court within 28 days after the revocation date or does not within the period satisfy the court that there was compliance with the conditions of release 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 and anyone who posted bond for the entire amount of the bond and costs of the court proceedings.

If the bond posted was a surety bond for 1/4 the full bail amount pursuant to MCL 765.6(2), the judgment against the surety shall be for the amount of the surety bond and the defendant shall be liable to the court for the difference, pursuant to MCL 765.28.

- c. The 10 percent bond deposit made pursuant to MCR 6.106(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.

(MCR 6.106[I][2]) See also MCL 780.63.

See the Appendix at the end of this section for information on the surety bond process.

## 2. Statutory Provisions

If the accused does not comply with the conditions of the bail bond, the court having jurisdiction shall enter an order declaring the bail to be forfeited. Notice of the order of forfeiture shall be mailed promptly by the court to the accused at his or her last-known address. If the accused does not appear and surrender to the court having jurisdiction within 30 days from the date of the forfeiture, or within that period satisfy the court that appearance and surrender by the accused is impossible and without his fault, the court shall enter judgment for the state or local unit of government against the accused for the amount of the bail and costs of the court proceedings.

The deposit made in accordance with MCL 780.66(1) shall be applied to the payment of costs. If any amount of the deposit remains after the payment of costs, it shall be applied to payment of the judgment and transferred to the treasury of the unit of government in which the court is located. The balance of the judgment may be enforced and collected in the same manner as a judgment entered in a civil action. (MCL 780.66[7])

### **C. Disbursement of Money Bail**

Once a person has met all obligations to the court, the bond is disbursed. “All obligations” does not include compliance with sentence. When the bond has been posted by the defendant and the defendant is found guilty, MCR 6.106(I)(3) states: “... 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).” (Emphasis added.) If the bond is posted by a third party or a surety, the Michigan Supreme Court ruled in *People v Brow*, 253 Mich 140; 234 NW 117 (1931), against the continuance of a bond past sentencing without the consent of the sureties.

If the court ordered a defendant who has made a cash deposit in accordance with MCL 780.66(1) to pay a fine, costs, restitution, assessment, or other payment, the court shall order the fine, costs, restitution, assessment, or other payment collected out of the cash deposit. If a person is subject to any combination of fines, costs, restitution, assessments, or payments arising out of the same criminal proceeding, money collected from that person for the payment of fines, costs, restitution, assessments, or other payments shall be allocated as provided in MCL 775.22. (MCL 780.66[8])

See the Appendix at the end of this section for a chart on the bond disbursement procedure.

### **4.3 Forms**

- 1) MC 240 - Order Regarding Pretrial Release/Custody.
- 2) MC 240a - Order Extending Bond for Protection of Named Person(s).
- 3) MC 241 - Bond.
- 4) MC 218 - Order Revoking Release and Forfeiting Bond, Notice of Intent to Enter Judgment.
- 5) MC 238 - Judgment after Bond Forfeiture.
- 6) MC 239 - Removal of Entry from LEIN.

## APPENDIX 4

Bond Disbursement Procedure

Surety Bond Process

(rev. 5/08)

### BOND DISBURSEMENT PROCEDURE

ACTIVITY	CASH BOND		PERCENT BOND	
	Posted by Defendant	Posted by Third Party	Posted by Defendant	Posted by Third Party
Failure to Appear	Send Bond Forfeiture Notice. Issue Bench Warrant. After 28-30 days, forfeit bond.  MCR 6.106(I)(2) MCL 780.67(8)	Send Bond Forfeiture Notice. Issue Bench Warrant. After 28-30 days, forfeit bond.  MCR 6.106(I)(2) MCL 780.67(8)	Send bond Forfeiture Notice. Issue Bench Warrant. After 28-30 days, forfeit bond; 10% to bond cost, 90% to bond forfeiture.  MCR 6.106(I)(2) MCL 780.66(7)	Send Bond Forfeiture Notice. Issue Bench Warrant. After 28-30 days, forfeit bond; 10% to bond cost, 90% to bond forfeiture.  MCR 6.106(I)(2)
Found Not Guilty or Case Dismissed	Return bond in full.  MCL 780.67(6)	Return bond in full .  MCL 780.67(6)	Keep 10% [MCR 6.106(I)(1)] Return bond in full [MCL 780.66(6)] <sup>1</sup>	Keep 10% [MCR 6.106(I)(1)] Return bond in full [MCL 780.66(6)] <sup>2</sup>
Found Guilty	After sentencing apply to fine & cost. Return balance.  MCR 6.106(I)(3) MCL 765.15(2) MCL. 780.67(7)	After sentencing, return to poster unless permission given to apply to fine & cost.  MCL 780.67(6)	Ater sentencing, apply 10% to bond cost, 90% to fine & cost. Return balance.  MCR 6.106(I)(2)(c) MCL 780.66(8)	After sentencing, apply 10% to bond cost, return balance to poster unless permission given to apply to fine & cost.  MCL 780.66(8)

<sup>2</sup> Conflict exists between statute and court rule. SCAO Bond Form MC 241 complies with the interpretation that when statute and court conflict on procedural matters, the court rule take precedence.

**BOND DISBURSEMENT**

ACTIVITY	CASH BOND		PERCENT BOND	
	Posted by Defendant	Posted by Third Party	Posted by Defendant	Posted by Third Party
Fail to Pay Balance of Fine & Cost	Issue Bench Warrant, set bond on warrant equal to no more than double the fine assessed.  MCL 780.63-64	Issue Bench Warrant, set bond on warrant equal to no more than double the fine assessed.  MCL 780.63-64	Issue Bench Warrant, set bond on warrant equal to no more than double the fine assessed.  MCL 780.63-64	Issue Bench Warrant, set bond on warrant equal to no more than double the fine assessed.  MCL 780.63-64
Fail to appear after arrest on warrant when bond posted	Send Bond Forfeiture Notice, Issue Bench Warrant. After 28-30 days, forfeit bond, applying to fine & cost.  MCR 6.106(I)(2) MCL 765.15(1) MCL 780.67(8)	Send Bond Forfeiture Notice, Issue Bench Warrant. After 28-30 days, forfeit bond.  MCR 6.106(I)(2) MCL 780.67(8)	Send Bond Forfeiture Notice, Issue Bench Warrant. After 28-30 days, forfeit bond, MCL 780.66(7), MCL 765.15(1).  10% to bond cost, 90% to fine & cost. MCR 6.106(I)(2)	Send Bond Forfeiture Notice, Issue Bench Warrant. After 28-30 days, forfeit bond, MCL 780.66(7).  10% to bond cost, 90% to bond forfeiture. MCR 6.106(I)(2)

MCR 6.106 (Pre-Trial Release)  
MCL 765.15 (Code of Criminal Procedure)  
MCL 780.66-67 (Traffic and Misdemeanor Procedure)