

# Pretrial Release

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## Pretrial Release

### 2-01 INTRODUCTION

#### A. Authority and Purpose

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 purpose of a bond is to help ensure that the defendant appears in court at all times as directed.

#### 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.*) 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 Probation Officer

When a bond investigation is part of a probation officer's responsibilities, the investigation is conducted to provide the judge or district court magistrate with the information appropriate and necessary to determine the type, amount, and conditions of the bond.

Particular guidelines and procedures for probation officers to follow when conducting bond investigations will vary to meet the needs of each particular jurisdiction. While some courts may require an extensive amount of verified information, others expect a less comprehensive effort to help expedite the process of establishing an appropriate bond. The length and complexity of a bond investigation should be established by an agreement between the court and the probation department.

#### D. Role of Court

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).

## **2-02 BOND INVESTIGATION**

### **A. Establishing File**

Generally, a file is not established until a presentence investigation is requested. However, if probation officers are responsible for bond investigation, a file should be established at this time.

### **B. Investigation Procedure**

#### **1. Personal Interview**

The bond investigation begins with a personal interview of the defendant under the scope of the factors allowed pursuant to MCR 6.106(F). The information collected is verified to ensure the accuracy of statements made by the defendant. Personal or telephone contacts with employers, counselors, spouses or family members, landlords, probation/parole officers, community members, and courts are the primary sources used to verify the information. Criminal and driving histories are also typically obtained and examined.

#### **2. Factors Considered**

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

- a. prior criminal record (includes juvenile) (nonpublic record, see Section 8),
- b. record of court appearances/nonappearances (nonpublic record, see Section 8),
- c. substance abuse history,
- d. mental condition,
- e. reputation for dangerousness,
- f. seriousness of offense,
- g. probability of conviction,
- h. presence of threats,
- i. employment status and history,
- j. availability of responsible members of community to vouch for or monitor the defendant,

- k. ties to the community,
- l. length of residence,
- m. family ties, and
- n. other factors bearing on risk of nonappearance or danger to the public.

Information beyond these factors 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.

### **C. Report and Recommendation to Judge**

A written report and recommendation should be provided to the court before the district court arraignment. The format of this report is not dictated by any statute or court rule. The content and style of the report should reflect the needs and requirements of the parties who will be using it as the case progresses.

The report should consider and reflect the factors in MCR 6.106(F) so the judge or district court magistrate has the necessary information for establishing bond. In accordance with court rules, the report should recommend a personal recognizance bond unless it is determined that a recognizance release will not ensure the defendant's appearance or that such release will present a danger to the public. (MCR 6.106[C])

## **2-03 ORDER FOR PRETRIAL RELEASE OR CUSTODY**

### **A. Considerations and Statement of Reasons**

As specified in MCR 6.106(B)(1), the court may deny pretrial release to a defendant who is charged with murder or treason, criminal sexual conduct in the first degree, armed robbery, kidnapping with the intent to extort, or committing a violent felony.

#### **1. Custody Order**

If the court determines 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. The court must state the reasons for an order of custody on the record and on the form approved by the State Court Administrative Office entitled "Custody Order." See SCAO-Approved form MC 240, Order for Pretrial Release/Custody, in the Section 2 Appendix.

#### **2. Release Order**

According to MCR 6.106(C) and (D), if the defendant is not ordered held in custody, the court must order the pretrial release on personal recognizance or an unsecured appearance bond, or conditional release with or without money bail. See SCAO-Approved form MC 240, Order for Pretrial Release/Custody, in the Section 2 Appendix.

In deciding which release to use and what terms and conditions to impose, if any, the court is to consider relevant information, including the following factors that are specified by MCR 6.106(F)(1). While the court must state the reasons for its decision on the record, the court does not have to make a finding on each of the factors. (MCR 6.106[F][2])

- 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.
- i. Any other factors bearing on the risk of nonappearance or danger to the public.

## **B. Conditions of Release**

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

### **1. Personal Recognizance**

MCR 6.106(C) sets forth the conditions of a personal recognizance bond. These conditions are that the defendant:

- a. will appear as required,
- b. will not leave the state without permission of the court, and
- c. will not commit any crime while released.

### **2. Conditional Release**

If the court determines that a release on personal recognizance will not reasonably ensure the appearance of the defendant and the safety of the public, the court may order pretrial release on the condition or combination of conditions that the court determines appropriate according to MCR 6.106(D). These conditions include:

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

The court may also require the defendant to:

- 1) make reports to a court agency, as specified by the court or the agency,
- 2) not use alcohol nor illicitly use any controlled substance,

- 3) participate in a substance abuse testing or monitoring program,
- 4) participate in a specified treatment program for any physical or mental condition, including substance abuse,
- 5) comply with restrictions on personal associations, place of residence, place of employment, or travel,
- 6) surrender driver's license or passport,
- 7) comply with a specified curfew,
- 8) continue to seek employment,
- 9) continue or begin an educational program,
- 10) 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,
- 11) not possess a firearm or other dangerous weapon,
- 12) not enter specified premises or areas and not assault, beat, molest, or wound a named person or persons,
- 13) satisfy an injunctive order made a condition of release, or
- 14) 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 and the safety of the public.

### **3. Money Bail**

If the court determines for reasons stated on the record that the defendant's appearance and the safety of the public cannot be assured, money bail with or without the conditions set forth in MCR 6.106(D) may be required. As specified in MCR 6.106(E), the court may require the defendant to post a bond that is executed, at the defendant's option, by either a surety approved by the court, or by the defendant or another who is not a licensed surety. If the defendant opts for a bond without a surety, it must be secured by either a cash deposit or its equivalent for the full bond amount, a cash deposit of 10 percent of the bond amount, or real property. The court has the option whether to offer the 10 percent bond.

#### **4. 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 that 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.

- a. **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 257.749, MCL 780.64, MCR 6.106[D][2][f])
- b. **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)
- c. **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 US Immigration, Investigations Bureau, 333 Mt. Elliott Street, Detroit, MI 48207-4381. For further information, contact US Immigration at 313-568-6036. (MCR 6.106[D][2][f])

#### **5. LEIN Entry**

If the court orders a bond with conditions that are determined to be reasonably necessary for the protection of any 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) The court must order cancellation of the bond conditions from LEIN when the bond is revoked or otherwise terminated.

## **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. See the Section 2 Appendix for copies of the forms.

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

The victim of a crime will be given notice 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/district court magistrate 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 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. (MCL 765.6b, MCR 6.106[D][2])

If the defendant is charged with a crime involving domestic violence, the arraigning judge/district court magistrate may order the defendant to carry or wear a global positioning system (GPS) device as a condition of release. The judge/district court magistrate also may, with the victim's informed consent, order the defendant to provide the victim with an electronic receptor device capable of receiving the GPS information from the defendant's device. If the judge/district court magistrate orders the GPS device, he or she must also order the defendant not to purchase or possess a firearm. (MCL 765.6b)

APPENDIX 2

[Order for Pretrial Release/Custody \(MC 240\)](#)

[Bond \(MC 241\)](#)

[Order Extending Bond for Protection of Named Person\(s\) \(MC 240a\)](#)

[Removal of Entry from LEIN \(MC 239\)](#)