

Order

Michigan Supreme Court
Lansing, Michigan

January 24, 2024

Elizabeth T. Clement,
Chief Justice

ADM File No. 2023-36

Brian K. Zahra
David F. Viviano
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Justices

Proposed Amendments of Rules 3.901,
3.915, 3.916, 3.922, 3.932, 3.933, 3.935,
3.943, 3.944, 3.950, 3.952, 3.955, 3.977,
and 6.931 and Proposed Addition of Rule
3.907 of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rules 3.901, 3.915, 3.916, 3.922, 3.932, 3.933, 3.935, 3.943, 3.944, 3.950, 3.952, 3.955, 3.977, and 6.931 and a proposed addition of Rule 3.907 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the [Public Administrative Hearings](#) page.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and
deleted text is shown by strikeover.]

Rule 3.901 Applicability of Rules

(A) [Unchanged.]

(B) Application. Unless the context otherwise indicates:

(1) MCR 3.901-~~3.906~~, ~~3.911~~-3.930, and 3.991-3.993 apply to delinquency proceedings and child protective proceedings;

(2) MCR 3.907 applies only to delinquency proceedings and designated proceedings;

(2)-(5) [Renumbered (3)-(6) but otherwise unchanged.]

[NEW] Rule 3.907 Screening Tools and Risk and Needs Assessments

(A) General. The court must conduct and use screening tools and risk and needs

assessments in accordance with applicable law and the guidelines established by the State Court Administrative Office.

- (B) Risk Screening Tool. A court or court intake worker must use a validated risk screening tool adopted by their county. The court or court intake worker, as applicable, must consider the results, along with the results of the mental health screening tool and the best interests of the juvenile and public when deciding whether to:
- (1) refer the matter to a public or private agency providing available services pursuant to the Juvenile Diversion Act, MCL 722.821 *et seq.*; or
 - (2) proceed on the consent calendar as provided in MCR 3.932(C) or place the matter on the formal calendar as provided in MCR 3.932(D).
- (C) Mental Health Screening Tool. A court or court intake worker must utilize a validated mental health screening tool adopted by their county. The court or court intake worker, as applicable, must consider the results, along with the risk screening tool and the best interests of the juvenile and public when deciding whether to:
- (1) refer the matter to a public or private agency providing available services pursuant to the Juvenile Diversion Act, MCL 722.821 *et seq.*; or
 - (2) proceed on the consent calendar as provided in MCR 3.932(C) or place the matter on the formal calendar as provided in MCR 3.932(D).
- (D) Detention Screening Tool. An individual or agency designated by the court must use a detention screening tool on a juvenile, and the court must consider the results of the tool before a juvenile may be detained in a secure facility pending hearing. A new tool must be used and considered before each placement in a secure facility.
- The court must share the results of the detention screening tool with all parties at least 7 days before a detention hearing as provided in MCR 3.922(B)(4).
- (E) Risk and Needs Assessment. Before disposition and for each juvenile, the court must order a qualified individual or agency to conduct a validated risk and needs assessment.
- (1) Individual's/Agency's Use of Results. The individual or agency conducting an assessment under this subrule must use the results of the assessment to inform a dispositional recommendation that must be filed with the court. The individual or agency must consider all of the following in making its dispositional recommendation:

- (a) The least restrictive setting possible.
 - (b) Public safety.
 - (c) Victim interests.
 - (d) Rehabilitation of the juvenile.
 - (e) Improved juvenile outcomes, including, but not limited to, educational advancement.
- (2) Reporting. The results of the risk and needs assessment along with a written dispositional recommendation must be filed with the court and provided to the juvenile, juvenile's attorney, and prosecuting attorney no less than 7 days before the dispositional hearing as provided in MCR 3.922(B)(4). The written recommendation must include all of the following:
- (a) Overall risk score.
 - (b) Type of supervision.
 - (c) Level of supervision.
 - (d) Length of supervision.
 - (e) Specific terms and conditions, including, but not limited to, frequency of reviews and requirements for early termination of supervision.
- (3) Court's Consideration of Results. The court must consider the results of the assessment when making a dispositional decision regarding a juvenile, including, but not limited to, whether to place a juvenile
- (a) under supervision, including the length, level, and conditions of supervision;
 - (b) on probation; or
 - (c) in out-of-home placement.
- (4) Reassessment. The court must order that a new risk and needs assessment for the juvenile be conducted and used as provided in this subrule (E) if any of the following conditions occur:

- (a) Six months have passed since the juvenile's last risk and needs assessment.
- (b) The juvenile has experienced a major life event.
- (c) There is a major change in the juvenile's proceedings.

Rule 3.915 Assistance of Attorney

(A)-(D) [Unchanged.]

- (E) Costs. In a child protective proceeding, ~~When an attorney is appointed for a party under this rule, the court may enter an order assessing costs of the representation against the party or against a person responsible for the support of that party~~ after a determination of ability to pay, which order may be enforced as provided by law.

Rule 3.916 Guardian Ad Litem

(A)-(C) [Unchanged.]

- (D) Costs. In a child protective proceeding, ~~The court may assess the cost of providing a guardian ad litem against the party or a person responsible for the support of the party~~ after a determination of ability to pay, and may enforce the order of reimbursement as provided by law.

Rule 3.922 Pretrial Procedures in Delinquency and Child Protection Proceedings

(A) [Unchanged.]

(B) Discovery and Disclosure in Delinquency Matters.

(1)-(3) [Unchanged.]

- (4) At delinquency dispositions, reviews, designation hearings, hearings on alleged violation of court orders or probation, and detention hearings, the following ~~must~~ shall be provided to the respondent, respondent's counsel, and the prosecuting attorney no less than ~~seven~~ (7) days before the hearing:
 - (a) detention screening results, risk and needs assessments results, other assessments, and evaluations to be considered by the court during the hearing;

(b)-(c) [Unchanged.]

(5) [Unchanged.]

(C)-(F) [Unchanged.]

Rule 3.932 Summary Initial Proceedings

(A) Preliminary Inquiry. When a petition is not accompanied by a request for detention of the juvenile, the court may conduct a preliminary inquiry. Except in cases involving offenses enumerated in the Crime Victim's Rights Act, MCL 780.781(1)(g), the preliminary inquiry need not be conducted on the record. After completion and consideration of the results of the risk screening tool and mental health screening tool pursuant to MCR 3.907, ~~the~~ court may, in the interest of the juvenile and the public:

(1)-(5) [Unchanged.]

(B) [Unchanged.]

(C) Consent Calendar.

(1) [Unchanged.]

(2) A case ~~must~~shall not be placed on the consent calendar unless all of the following apply:

(a) ~~the~~ juvenile and the parent, guardian, or legal custodian and the prosecutor, agree to have the case placed on the consent calendar. A case involving the alleged commission of an offense as that term is defined in section 31 of the Crime Victim's Rights Act, MCL 780.781 *et seq.*, ~~must~~shall only be placed on the consent calendar upon compliance with procedures set forth in MCL 780.786b. The court must not consider restitution when determining if the case should be placed on the consent calendar under MCL 712A.2f.

(b) The court considers the results of the risk screening tool and mental health screening tool conducted on the juvenile pursuant to MCR 3.907.

(3)-(4)[Unchanged.]

- (5) Conference. After placing a matter on the consent calendar, the court ~~must~~shall conduct a consent calendar case conference with the juvenile, the juvenile's attorney, if any, and the juvenile's parent, guardian, or legal custodian. The prosecutor and victim may, but need not, be present. At the conference, the court ~~must~~shall discuss the allegations with the juvenile and issue a written consent calendar case plan in accordance with MCL 712A.2f(97). The period for a juvenile to complete the terms of a consent calendar must not exceed 6 months, unless the court determines that a longer period is needed for the juvenile to complete a specific treatment program and includes this determination as part of the consent calendar case record.

(6)-(7) [Unchanged.]

- (8) Access to Consent Calendar Case Records. Records of consent calendar proceedings ~~must~~shall be nonpublic. Access to consent calendar case records is governed by MCL 712A.2f(75).

(9)-(11) [Unchanged.]

(D) [Unchanged.]

Rule 3.933 Acquiring Physical Control of Juvenile

(A) [Unchanged.]

- (B) Custody With Court Order. When a petition is presented to the court, and probable cause exists to believe that a juvenile has committed an offense, the court may issue an order to apprehend the juvenile. The order may include authorization to

(1)-(2) [Unchanged.]

However, a juvenile may not be detained in a secure facility pending hearing unless the court has considered the results of a detention screening tool conducted on the juvenile under MCR 3.907.

(C)-(D) [Unchanged.]

Rule 3.935 Preliminary Hearing

(A) [Unchanged.]

(B) Procedure.

(1)-(2) [Unchanged.]

(3) After considering the results of a juvenile's risk screening tool and mental health screening tool, ~~t~~The court ~~must~~shall determine whether the petition should be dismissed, whether the matter should be referred to alternate services pursuant to the Juvenile Diversion Act, MCL 722.821 *et seq.*, whether the matter should be heard on the consent calendar as provided by MCR 3.932(C), or whether to continue the preliminary hearing.

(4)-(8) [Unchanged.]

(C) Determination Whether to Release or Detain.

(1) Factors. In determining whether the juvenile is to be released, with or without conditions, or detained, the court ~~must~~shall consider the following factors:

(a)-(f) [Unchanged.]

(g) the court's ability to supervise the juvenile if placed with a parent or relative, ~~and~~

(h) the results of a detention screening tool, and

(h) [Relettered (i) but otherwise unchanged.]

(2) [Unchanged.]

(D) Detention.

(1) Conditions for Detention. A juvenile may be ordered detained or continued in detention if the court finds probable cause to believe the juvenile committed the offense, the results of the detention screening tool have been considered pursuant to MCR 3.907, and that one or more of the following circumstances are present:

(a)-(g) [Unchanged.]

(2)-(4) [Unchanged.]

(E) Release; Conditions.

(1) [Unchanged.]

- (2) Violation of Conditions of Release. If a juvenile is alleged to have violated the conditions set by the court and the court has consulted the results of the detention screening tool as provided under MCR 3.907, the court may order the juvenile apprehended and detained immediately. The court may then modify the conditions or revoke the juvenile's release status after providing the juvenile an opportunity to be heard on the issue of the violation of conditions of release.
- (F) Bail. In addition to any other conditions of release, the court may require a parent, guardian, or legal custodian to post bail.
- (1)-(3) [Unchanged.]
- (4) Return of Bail. If the conditions of bail are met, the court ~~must~~shall discharge any surety.
- (a) If disposition imposes ~~restitution reimbursement or costs~~, the bail money posted by the parent must first be applied to the amount of restitution reimbursement and costs, and the balance, if any, returned.
- (b) [Unchanged.]
- (5) Forfeiture. If the conditions of bail are not met, the court may issue a writ for the apprehension of the juvenile and enter an order declaring the bail money, if any, forfeited.
- (a) [Unchanged.]
- (b) If the juvenile does not appear and surrender to the court within 28 days from the forfeiture date, or does not within the period satisfy the court that the juvenile is not at fault, the court may enter judgment against the parent and surety, if any, for the entire amount of the bail ~~and, when allowed, costs of the court proceedings.~~

Rule 3.943 Dispositional Hearing

(A)-(D) [Unchanged.]

(E) Dispositions.

- (1) If the juvenile has been found to have committed an offense and the court has considered the results of a risk and needs assessment pursuant to MCR

3.907, the court may enter an order of disposition as provided by MCL 712A.18.

- (2) In making second and subsequent dispositions in delinquency cases, the court must consider imposing increasingly severe sanctions, which may include imposing additional conditions of probation; extending the term of probation; ~~imposing additional costs~~; ordering a juvenile who has been residing at home into an out-of-home placement; ordering a more restrictive placement; ordering state wardship for a child who has not previously been a state ward; or any other conditions deemed appropriate by the court. Waiver of jurisdiction to adult criminal court, either by authorization of a warrant or by judicial waiver, is not considered a sanction for the purpose of this rule.

(3)-(7) [Unchanged.]

(F) [Unchanged.]

Rule 3.944 Probation Violation

(A) [Unchanged.]

(B) Detention Hearing; Procedure. At the detention hearing:

(1)-(5) [Unchanged.]

(6) The court must consider the results of a detention screening tool in accordance with MCR 3.907.

(C)-(D) [Unchanged.]

(E) Disposition of Probation Violation; Reporting.

(1) [Unchanged.]

(2) If, after hearing, the court finds that the juvenile has violated a court order under MCL 712A.2(a)(2) to (4), ~~and the court may order that the juvenile is ordered to be placed in a secure facility if it has considered the results of a detention screening tool in accordance with MCR 3.907.~~ And the order requiring the juvenile to be placed in a secure facility must ~~shall~~ include all of the following individualized findings by the court:

(a)-(e) [Unchanged.]

- (3) [Unchanged.]
- (F) Failure to Pay Restitution~~Determination of Ability to Pay~~. A juvenile ~~and/or parent~~ must~~shall~~ not be detained or incarcerated solely because of nonpayment of restitution. If the juvenile for the nonpayment of court ordered financial obligations as ordered by the court, unless the court determines that the juvenile and/or parent has the resources to pay and has not made a good-faith effort to pay restitution, the court may revoke or alter the terms and conditions of probation as provided in MCL 712A.30~~de se.~~

Rule 3.950 Waiver of Jurisdiction

- (A)-(C) [Unchanged.]
- (D) Hearing Procedure. The waiver hearing consists of two phases. Notice of the date, time, and place of the hearings may be given either on the record directly to the juvenile or to the attorney for the juvenile, the prosecuting attorney, and all other parties, or in writing, served on each individual.
- (1) [Unchanged.]
- (2) Second Phase. If the court finds the requisite probable cause at the first-phase hearing, or if there is no hearing pursuant to subrule (D)(1)(c), the second-phase hearing must~~shall~~ be held to determine whether the interests of the juvenile and the public would best be served by granting the motion. However, if the juvenile has been previously subject to the general criminal jurisdiction of the circuit court under MCL 712A.4 or 600.606, the court must~~shall~~ waive jurisdiction of the juvenile to the court of general criminal jurisdiction without holding the second-phase hearing.
- (a)-(c) [Unchanged.]
- (d) The court, in determining whether to waive the juvenile to the court having general criminal jurisdiction, must~~shall~~ consider and make findings on the following criteria, giving greater weight to the seriousness of the alleged offense and the juvenile's prior record of delinquency than to the other criteria:
- (i) the seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines; and the use of a firearm or other dangerous weapon,~~and the effect on any victim;~~

- (ii) [Unchanged.]
 - (iii) the juvenile's prior record of delinquency that would be a crime if committed by an adult~~including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior;~~
 - (iv) the juvenile's programming history, including, but not limited to, any out-of-home placement or treatment and the juvenile's past willingness to participate meaningfully in available programming;
 - (v) the adequacy of the ~~punishment or~~ programming available to rehabilitate and hold accountable the juvenile in the juvenile justice system and the juvenile's amenability to treatment;
 - (vi) the dispositional options available for the juvenile;
 - (vii) the juvenile's developmental maturity, emotional health, and mental health;
 - (viii) if the juvenile is a member of a federally-recognized Indian tribe, culturally honoring traditional values of the juvenile's tribe; and
 - (ix) the impact on any victim.
- (e) [Unchanged.]

(E)-(G) [Unchanged.]

Rule 3.952 Designation Hearing

(A)-(B) [Unchanged.]

(C) Hearing Procedure.

(1)-(2) [Unchanged.]

(3) Factors to be Considered. In determining whether to designate the case for trial in the same manner as an adult, the court must consider all the following

factors, giving greater weight to the seriousness of the alleged offense and the juvenile's prior delinquency record than to the other factors:

- (a) the seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines; and the use of a firearm or other dangerous weapon; and the effect on any victim;
- (b) [Unchanged.]
- (c) the juvenile's prior record of delinquency that would be a crime if committed by an adult, including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior;
- (d) the juvenile's programming history, including, but not limited to, any out-of-home placement or treatment, and the juvenile's past willingness to participate meaningfully in available programming;
- (e) the adequacy of the ~~punishment or programming~~ available to rehabilitate and hold accountable the juvenile in the juvenile justice system and the juvenile's amenability to treatment; and
- (f) the dispositional options available for the juvenile;
- (g) the juvenile's developmental maturity, emotional health, and mental health;
- (h) if the juvenile is a member of a federally-recognized Indian tribe, culturally honoring traditional values of the juvenile's tribe; and
- (i) the impact on any victim.

(D)-(E) [Unchanged.]

Rule 3.955 Sentencing or Disposition in Designated Cases

- (A) [Unchanged.]
- (B) Burden of Proof. After the court has considered the results of the risk and needs assessment pursuant to MCR 3.907, the court shall enter an order of disposition unless the court determines that the best interests of the public would be served by

sentencing the juvenile as an adult. The prosecuting attorney has the burden of proving by a preponderance of the evidence that, on the basis of the criteria in subrule (A), it would be in the best interests of the public to sentence the juvenile as an adult.

(C)-(E) [Unchanged.]

Rule 3.977 Termination of Parental Rights

(A) General.

(1) [Unchanged.]

(2) Parental rights of the respondent over the child may not be terminated unless termination was requested in an original, amended, or supplemental petition by:

(a)-(d) [Unchanged.]

(e) the state children's ~~advocate~~ombudsman, or

(f) [Unchanged.]

(3) [Unchanged.]

(B)-(K) [Unchanged.]

Rule 6.931 Juvenile Sentencing Hearing

(A)-(E) [Unchanged.]

(F) Postjudgment Procedure; Juvenile Probation and Commitment to State Wardship. If the court retains jurisdiction over the juvenile, places the juvenile on juvenile probation, and commits the juvenile to state wardship, the court ~~must~~shall comply with subrules (1)-(10~~1~~):

(1) ~~The court shall enter a judgment that includes a provision for reimbursement by the juvenile or those responsible for the juvenile's support, or both, for the cost of care and services pursuant to MCL 769.1(7). An order assessing such cost against a person responsible for the support of the juvenile shall not be binding on the person, unless an opportunity for a hearing has been given and until a copy of the order is served on the person, personally or by first class mail to the person's last known address.~~

(2)-(11) [Renumbered (1)-(10) but otherwise unchanged.]

Staff Comment (ADM File No. 2023-36): The proposed amendments would implement the Justice for Kids and Communities legislation and align with recommendations of the Michigan Task Force on Juvenile Justice Reform.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by May 1, 2024 by clicking on the “Comment on this Proposal” link under this proposal on the [Court’s Proposed & Adopted Orders on Administrative Matters](#) page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When submitting a comment, please refer to ADM File No. 2023-36. Your comments and the comments of others will be posted under the chapter affected by this proposal.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 24, 2024

Handwritten signature of Larry S. Royster in black ink.

Clerk