

Order

Michigan Supreme Court
Lansing, Michigan

November 17, 2021

Bridget M. McCormack,
Chief Justice

ADM File No. 2021-41

Proposed Amendments of Rules 6.001, 6.003, 6.006, 6.102, 6.103, 6.106, 6.445, 6.615, and 6.933 and Proposed Addition of Rules 6.105, 6.441, and 6.450 of the Michigan Court Rules

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

On order of the Court, this is to advise that the Court is considering amendments of Rules 6.001, 6.003, 6.006, 6.102, 6.103, 6.106, 6.445, 6.615, and 6.933 and additions of Rules 6.105, 6.441, and 6.450 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 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Rule 6.001 Scope; Applicability of Civil Rules; Superseded Rules and Statutes

(A) [Unchanged.]

(B) Misdemeanor Cases. MCR 6.001-6.004, 6.005(B) and (C), 6.006, 6.101~~-, 6.102(D)~~ and ~~(F)~~, 6.103, 6.104(A), 6.105-6.106, 6.125, 6.202, 6.425(D)(3), 6.427, 6.430, 6.435, 6.440, 6.441, 6.445(A) ~~(G)~~, 6.450, and the rules in subchapter 6.600 govern matters of procedure in criminal cases cognizable in the district courts.

(C)-(E) [Unchanged.]

Rule 6.003 Definitions

For purposes of subchapters 6.000-6.800:

(1)-(6) [Unchanged.]

- (7) “Technical probation violation” means any violation of the terms of a probation order, including missing or failing a drug test, excluding the following:
- (a) A violation of an order of the court requiring that the probationer have no contact with a named individual.
 - (b) A violation of a law of this state, a political subdivision of this state, another state, or the United States or of tribal law, whether or not a new criminal offense is charged.
 - (c) The consumption of alcohol by a probationer who is on probation for a felony violation of MCL 257.625.
 - (d) Absconding, defined as the intentional failure of a probationer to report to his or her supervising agent or to advise his or her supervising agent of his or her whereabouts for a continuous period of not less than 60 days.

Rule 6.006 Video and Audio Proceedings

- (A) Defendant in the Courtroom or at a Separate Location. District and circuit courts may use two-way interactive video technology to conduct the following proceedings between a courtroom and a prison, jail, or other location: initial arraignments on the warrant or complaint, probable cause conferences, arraignments on the information, motions and hearings for bail, pretrial conferences, pleas, sentencings for misdemeanor offenses, show cause hearings, waivers and adjournments of extradition, referrals for forensic determination of competency, waivers and adjournments of preliminary examinations, hearings for discharge from probation, and hearings on postjudgment motions to amend restitution.
- (B)-(E) [Unchanged.]

Rule 6.102 ~~Arrest on a~~ Warrants and Summons

- (A) Issuance of Summons; Warrant. A court must issue an arrest warrant, or a summons as provided in this rule~~in accordance with MCR 6.103~~, if presented with a proper complaint and if the court finds probable cause to believe that the accused committed the alleged offense.
- (B) [Unchanged.]
- (C) Summons. A court must issue a summons unless otherwise provided in subrule (D).

- (1) Form. A summons must contain the same information as an arrest warrant, except that it should summon the accused to appear before a designated court at a stated time and place.
- (2) Service and Return of Summons. A summons may be served by the court or prosecuting attorney by
 - (a) delivering a copy to the named individual; or
 - (b) leaving a copy with a person of suitable age and discretion at the individual's home or usual place of abode; or
 - (c) mailing a copy to the individual's last known address.

Service should be made promptly to give the accused adequate notice of the appearance date. Unless service is made by the court, the person serving the summons must make a return to the court before the person is summoned to appear.

- (3) If the accused fails to appear in response to a summons, the court may issue a bench warrant pursuant to MCR 6.103.
- (D) Arrest Warrant. A court may issue an arrest warrant, rather than a summons, if any of the following circumstance apply
- (1) the complaint is for an assaultive crime or an offense involving domestic violence, as defined in MCL 764.1a.
 - (2) there is reason to believe from the complaint that the person against whom the complaint is made will not appear upon a summons.
 - (3) the issuance of a summons poses a risk to public safety.
 - (4) the prosecutor has requested an arrest warrant.

(C)-(F) [Relettered (E)-(H) but otherwise unchanged.]

Rule 6.103 ~~Failure to Appear~~Summons Instead of Arrest

- (A) In General. Except as provided in MCR 6.615(B), if a defendant fails to appear in court, the court must wait 48 hours, excluding weekends and holidays if the court is closed to the public, before issuing a bench warrant to allow the defendant an opportunity to voluntarily appear before the court.

- (1) This rule does not apply if the case is for an assaultive crime or domestic violence offense, as defined in MCL 764.3, or if the defendant previously failed to appear in the case.
- (2) If this rule does apply, the court may immediately issue a bench warrant only if the court has a specific articulable reason, stated on the record, to suspect any of the following apply:
- (a) the defendant has committed a new crime.
 - (b) a person or property will be endangered if a bench warrant is not issued.
 - (c) prosecution witnesses have been summoned and are present for the proceeding.
 - (d) the proceeding is to impose a sentence for the crime.
 - (e) there are other compelling circumstances that require the immediate issuance of a bench warrant.
- (3) If the defendant does not appear within 48 hours, the court must issue a bench warrant unless the court believes there is good reason to instead schedule the case for further hearing.
- ~~(B) Show Cause. This rule does not abridge a court's authority to issue an order to show cause, instead of a bench warrant, if a defendant fails to appear in court.~~
- ~~(C) Release Order. The court must not revoke a defendant's release order or forfeit bond during the 48-hour period of delay before a warrant is issued.~~
- ~~(A) Issuance of Summons. If the prosecutor so requests, the court may issue a summons instead of an arrest warrant. If an accused fails to appear in response to a summons, the court, on request, must issue an arrest warrant.~~
- ~~(B) Form. A summons must contain the same information as an arrest warrant, except that it should summon the accused to appear before a designated court at a stated time and place.~~
- ~~(C) Service and Return of Summons. A summons may be served by~~
- ~~(1) delivering a copy to the named individual; or~~

- ~~(2) leaving a copy with a person of suitable age and discretion at the individual's home or usual place of abode; or~~
- ~~(3) mailing a copy to the individual's last known address. Service should be made promptly to give the accused adequate notice of the appearance date. The person serving the summons must make a return to the court before which the person is summoned to appear.~~

[NEW] Rule 6.105 Voluntary Appearance

- (A) In General. If a defendant, wanted on a bench or arrest warrant, voluntarily presents himself or herself to the court that issued the warrant within one year of the warrant issuance, the court must either
 - (1) arraign the defendant, if the court is available to do so within two hours of the defendant presenting himself or herself to the court; or
 - (2) recall the warrant and schedule the case for a future appearance.

It is presumed the defendant is not a flight risk when the court sets bond or other conditions of release at an arraignment under this rule.

- (B) Exceptions. This rule does not apply to assaultive crimes or domestic violence offenses, as defined in MCL 762.10d, or to defendants who have previously benefited from this rule on any pending criminal charge.

Rule 6.106 Pretrial Release

(A)-(H) [Unchanged.]

(I) Termination of Release Order.

- (1) [Unchanged.]
- (2) If the defendant has failed to comply with the conditions of release, the court may, pursuant to MCR 6.103, issue a warrant for the arrest of the defendant and enter an order revoking the release order and declaring the bail money deposited or the surety bond, if any, forfeited.

(a)-(c) [Unchanged.]

- (3) [Unchanged.]

[NEW] Rule 6.441 Early Probation Discharge

- (A) **Eligibility.** Except as otherwise provided in statute, a probationer is eligible for early discharge from probation when the probationer has completed half of the original probationary period and all required programming. The court must notify the probationer at the time of sentencing, either orally or in writing, about the probationer's early probation discharge eligibility and the notice process contained in this rule.
- (B) **Notice of Eligibility.** The probation department may file notice with the sentencing court when a probationer becomes eligible for early probation discharge. The notice must be served on the prosecuting attorney and probationer. If the probation department does not file the notice, and the probationer has not violated probation within the last 3 months, the probationer may file the notice with the sentencing court and serve copies to the prosecuting attorney and probation department. The prosecuting attorney must file any written objection to early probation discharge within 14 days of receiving service of the notice.
- (C) **Case Review.** Upon receiving notice under subrule (B), the court must conduct a preliminary review of the case to determine whether the probationer's behavior warrants a reduction in the original probationary term. A court must not deny early discharge because of outstanding court-ordered fines, fees, or costs, if the probationer has an inability to pay and has made good-faith efforts to make payments. Before granting early discharge to a probationer who owes outstanding restitution, the court must consider the impact of early discharge on the victim and the payment of outstanding restitution.
- (D) **Discharge Without a Hearing.** Except as provided in subrule (E), the court must discharge a probationer from probation, without a hearing, if the prosecutor does not submit a timely objection and the court's review in subrule (C) determines the probationer
- (1) is eligible for early probation discharge;
 - (2) achieved all the rehabilitation goals of probation; and
 - (3) is not a specific, articulable, and ongoing risk of harm to a victim that can only be mitigated with continued probation supervision.

If the probationer owes outstanding restitution but has made a good-faith effort to make payments, the court may retain the probationer on probation with the sole condition of continuing restitution payments.

(E) **Hearing Requirement.** The court must hold a hearing after conducting the review in subrule (C) if

- (1) the prosecutor submits a timely objection, or
- (2) a circumstance identified in MCL 771.2(7) is applicable, or
- (3) the court reviewed the case and does not grant an early discharge or retain the probationer on probation with the sole condition of continuing restitution payment.

If the hearing is held pursuant to MCL 771.2(7), the prosecuting attorney shall notify the victim of the date and time of the hearing. Both the probationer and victim, if applicable, must be given an opportunity to be heard at the hearing.

(F) **Discharge After Hearing.** Upon the conclusion of the hearing, the court must either grant early discharge or, if applicable, retain the probationer on probation with the sole condition of continuing restitution payments, if the probationer proves by a preponderance of the evidence that he or she

- (1) is eligible for early probation discharge;
- (2) achieved all the rehabilitation goals of probation; and
- (3) is not a specific, articulable, and ongoing risk of harm to a victim that can only be mitigated with continued probation supervision.

(G) **Impact on Sentencing.** The eligibility for early probation discharge under this rule must not influence the court's sentencing decision regarding the length of the original probationary period.

(H) **Motions.** This rule does not prohibit a defendant from motioning, a probation officer from recommending, or the court from considering, a probationer for early discharge from probation at the court's discretion at any time during the duration of the probation term.

Rule 6.445 Probation Violation and Revocation

(A) **Issuance of Summons; Warrant.** The court may issue a bench warrant, summons, or show cause upon ~~On~~ finding probable cause to believe that a probationer has committed a non-technical violation ~~violated a condition~~ of probation, ~~the court may.~~ The court must issue a summons or show cause, rather than a bench warrant, upon

finding probable cause to believe a probationer has committed a technical violation of probation unless the court states on the record a specific reason to suspect that one or more of the following apply

- (1) the probationer presents an immediate danger to himself or herself, another person, or the public.~~issue a summons in accordance with MCR 6.103(B) and (C) for the probationer to appear for arraignment on the alleged violation, or~~
- (2) the probationer has left court-ordered inpatient treatment without the court's or the treatment facility's permission.~~issue a warrant for the arrest of the probationer.~~
- (3) A summons or show cause has already been issued for the technical probation violation and the probationer failed to appear as ordered.

An arrested probationer must promptly be brought before the court for arraignment on the alleged violation.

- (B) Arraignment on the Charge. At the arraignment on the alleged probation violation, the court must
 - (1) [Unchanged.]
 - (2) inform the probationer whether the alleged violation is charged as a technical or non-technical violation of probation, and the maximum possible jail or prison sentence.

(2)-(5) [Renumbered (3)-(6) but otherwise unchanged.]
- (C) Scheduling or Postponement of Hearing. The hearing of a probationer being held in custody for an alleged probation violation must be held within the permissible jail sentence for the probation violation, but in no event longer than 14 days after the arrest~~arraignment~~ or the court must order the probationer released from that custody pending the hearing. If the alleged violation is based on a criminal offense that is a basis for a separate criminal prosecution, the court may postpone the hearing for the outcome of that prosecution.
- (D) [Unchanged.]
- (E) The Violation Hearing.
 - (1) [Unchanged.]

- (2) Judicial Findings. At the conclusion of the hearing, the court must make findings in accordance with MCR 6.403 and, if the violation is proven, whether the violation is a technical or non-technical violation of probation.
- (F) Pleas of Guilty. The probationer may, at the arraignment or afterward, plead guilty to the violation. Before accepting a guilty plea, the court, speaking directly to the probationer and receiving the probationer's response, must
- (1) advise the probationer that by pleading guilty the probationer is giving up the right to a contested hearing and, if the probationer is proceeding without legal representation, the right to a lawyer's assistance as set forth in subrule (B)(~~32~~)(b),
 - (2)-(3) [Unchanged.]
 - (4) establish factual support for a finding that the probationer is guilty of the alleged violation and whether the violation is a technical or non-technical violation of probation.
- (G) Sentencing. If the court finds that the probationer has violated a condition of probation, or if the probationer pleads guilty to a violation, the court may continue probation, modify the conditions of probation, extend the probation period, or revoke probation and impose a sentence of incarceration pursuant to law. The court may not sentence the probationer to prison without having considered a current presentence report and may not sentence the probationer to prison or jail (including for failing to pay fines, costs, restitution, and other financial obligations imposed by the court) without having complied with the provisions set forth in MCR 6.425(B) and (D).
- (H) [Unchanged.]

[NEW] Rule 6.450 Technical Probation Violation Acknowledgment

- (A) Acknowledgment. In lieu of initiating a probation violation proceeding under MCR 6.445, the court may allow a probationer to acknowledge a technical probation violation without a hearing. The acknowledgement must be in writing and advise the probation of the following information
- (1) the probationer has a right to contest the alleged technical probation violation at a formal probation violation hearing;
 - (2) the probationer is entitled to a lawyer's assistance at the probation violation hearing and at all subsequent court proceedings, and that the court will

appoint a lawyer at public expense if the probationer wants one and is financially unable to retain one;

- (3) the court will not revoke probation or sentence the probationer to incarceration as a result of the acknowledgment, but the court may continue probation, modify the conditions of probation, or extend probation;
 - (4) if the probationer violates probation again, the court may consider the acknowledgment a prior technical probation violation conviction for the purposes of determining the maximum jail or prison sentence and probation revocation eligibility authorized by law;
 - (5) acknowledging a technical probation violation may delay the probationer's eligibility for an early discharge from probation.
- (B) Review. Upon acknowledgment of a technical probation violation by a probationer, the court may continue probation, modify the conditions of probation, or extend the term of probation. The court may not impose a sentence of incarceration or revoke probation for acknowledging a technical probation violation under this rule, but the court may count the acknowledgment for the purpose of identifying the number of technical probation violations under MCL 771.4b.

Rule 6.615 Misdemeanor ~~Traffic~~ Cases

- (A) Citation; Complaint; Summons; Warrant.
- (1) A misdemeanor ~~traffic~~ case may be initiated by one of the following procedures:
 - (a) Subject to the exceptions in MCL 764.9c, sService by a law enforcement officer on the defendant of a written citation, and the filing of the citation in the district court. The citation may be prepared electronically or on paper. The citation must be signed by the officer in accordance with MCR 1.109(E)(4); if a citation is prepared electronically and filed with a court as data, the name of the officer that is associated with issuance of the citation satisfies this requirement.
 - (b) The filing of a sworn complaint in the district court and the issuance of a summons or an arrest warrant. ~~A citation may serve as the sworn complaint and as the basis for a misdemeanor warrant.~~
 - (c) [Unchanged.]

- (2) The citation ~~may~~ serve as a sworn complaint and as a summons to command
- (a) [Unchanged.]
 - (b) for misdemeanor traffic cases, a response from the defendant as to his or her guilt of the violation alleged.
- (B) Appearances; Failure To Appear. If a defendant fails to appear or otherwise to respond to any matter pending relative to a misdemeanor traffic citation issued under MCL 764.9c, the court shall issue an order to show cause proceed as provided in this subrule.
- (1) The court may immediately issue a bench warrant, rather than an order to show cause, if the court has a specific articulable reason to suspect that any of the following apply and states it on the record:
 - (a) the defendant has committed a new crime.
 - (b) the defendant's failure to appear is the result of a willful intent to avoid or delay the adjudication of the case.
 - (c) another person or property will be endangered if a warrant is not issued.
 - (2) If a defendant fails to appear or otherwise respond to any matter pending relative to a misdemeanor traffic citation, the court must also initiate the procedures required by MCL 257.321a.
 - (1) ~~If the defendant is a Michigan resident, the court~~
 - (a) ~~must initiate the procedures required by MCL 257.321a for the failure to answer a citation; and~~
 - (b) ~~may issue a warrant for the defendant's arrest.~~
 - (2) ~~If the defendant is not a Michigan resident,~~
 - (a) ~~the court may mail a notice to appear to the defendant at the address in the citation;~~
 - (b) ~~the court may issue a warrant for the defendant's arrest; and~~

(e) ~~if the court has received the driver's license of a nonresident, pursuant to statute, it may retain the license as allowed by statute. The court need not retain the license past its expiration date.~~

(C) Arraignment. An arraignment in a misdemeanor ~~traffic~~ case may be conducted by

(1)-(2) [Unchanged.]

(D) Contested Cases. A misdemeanor ~~traffic~~ case must be conducted in compliance with the constitutional and statutory procedures and safeguards applicable to misdemeanors cognizable by the district court.

Rule 6.933 Juvenile Probation Revocation

(A) ~~General Procedure. When a juvenile, who was placed on juvenile probation and committed to an institution as a state ward, is alleged to have violated juvenile probation, the court shall proceed as provided in MCR 6.445(A) (F).~~ Issuance of Summons; Warrant. When a juvenile, who was placed on juvenile probation and committed to an institution as a state ward, is alleged to have violated juvenile probation, on finding probable cause to believe that a probationer has violated a condition of probation, the court may

(1) issue a summons in accordance with MCR 6.102 for the probationer to appear for arraignment on the alleged violation, or

(2) issue a warrant for the arrest of the probationer.

An arrested probationer must promptly be brought before the court for arraignment on the alleged violation.

(B) Arraignment on the Charge. At the arraignment on the alleged probation violation, the court must

(1) ensure that the probationer receives written notice of the alleged violation,

(2) advise the probationer that

(a) the probationer has a right to contest the charge at a hearing, and

(b) the probationer is entitled to a lawyer's assistance at the hearing and at all subsequent court proceedings, and that the court will appoint a lawyer at public expense if the probationer wants one and is financially unable to retain one,

- (3) if requested and appropriate, appoint a lawyer,
 - (4) determine what form of release, if any, is appropriate, and
 - (5) subject to subrule (C), set a reasonably prompt hearing date or postpone the hearing.
- (C) Scheduling or Postponement of Hearing. The hearing of a probationer being held in custody for an alleged probation violation must be held within 14 days after the arraignment or the court must order the probationer released from that custody pending the hearing. If the alleged violation is based on a criminal offense that is a basis for a separate criminal prosecution, the court may postpone the hearing for the outcome of that prosecution.
- (D) Continuing Duty to Advise of Right to Assistance of Lawyer. Even though a probationer charged with probation violation has waived the assistance of a lawyer, at each subsequent proceeding the court must comply with the advice and waiver procedure in MCR 6.005(E).
- (E) The Violation Hearing.
- (1) Conduct of the Hearing. The evidence against the probationer must be disclosed to the probationer. The probationer has the right to be present at the hearing, to present evidence, and to examine and cross-examine witnesses. The court may consider only evidence that is relevant to the violation alleged, but it need not apply the rules of evidence except those pertaining to privileges. The state has the burden of proving a violation by a preponderance of the evidence.
 - (2) Judicial Findings. At the conclusion of the hearing, the court must make findings in accordance with MCR 6.403.
- (F) Pleas of Guilty. The probationer may, at the arraignment or afterward, plead guilty to the violation. Before accepting a guilty plea, the court, speaking directly to the probationer and receiving the probationer's response, must
- (1) advise the probationer that by pleading guilty the probationer is giving up the right to a contested hearing and, if the probationer is proceeding without legal representation, the right to a lawyer's assistance as set forth in subrule (B)(2)(b),

- (2) advise the probationer of the maximum possible jail or prison sentence for the offense,
- (3) ascertain that the plea is understandingly, voluntarily, and accurately made, and
- (4) establish factual support for a finding that the probationer is guilty of the alleged violation.

(B)-(E) [Relettered (G)-(J) but otherwise unchanged.]

Staff Comment: The proposed amendments would make the rules consistent with recent statutory revisions that resulted from recommendations of the Michigan Joint Task Force on Jail and Pretrial Incarceration.

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 March 1, 2022 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 filing a comment, please refer to ADM File No. 2021-41. 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.

November 17, 2021

Clerk