



## **Michigan Supreme Court**

State Court Administrative Office

### **Field Services Division**

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### **MICHIGAN COURT FORMS COMMITTEE**

#### **Delinquency and Designated Forms Workgroup**

#### **Minutes of September 22, 2022 Meeting**

- Present: Mr. Peter Brown, 30th Circuit Court  
Ms. Soleil Campbell, MDHHS  
Ms. Christina Carlsen, 36th Circuit Court  
Ms. Julie Jackson, MDHHS  
Mr. Jeff Johnson, 44th Circuit Court  
Mr. Sean Kerman, 3rd Circuit Court  
Ms. Amanda Pollard, 56th Circuit Court  
Honorable Valerie Snyder, Charlevoix/Emmet Probate Court  
Ms. Kelly Wendt, 6th Circuit Court  
Honorable Tina Yost-Johnson, 37th Circuit Court, Calhoun County  
Ms. Hayley Colosky, Judicial Information Services (Staff)  
Ms. Sheryl Doud, Field Services (Staff)  
Ms. Sheri Lankheet, Field Services (Staff)  
Ms. Tanya Morrow, Field Services (Staff)  
Ms. Rebecca Schnelz, Field Services (Staff)  
Ms. Luciana Viramontes, Field Services, (Staff)
- Absent: Mr. Thomas Hubbert, Cass County Prosecutor's Office  
Mr. Michael Kiehne, Michigan Legal Help  
Ms. Christine Piatkowski, Christine Piatkowski, P.L.C.  
Ms. Amy Byrd, MiFILE (Staff)

#### **1. JC 29, Order to Transfer Case**

The committee reviewed a suggestion for an amendment to the form to more accurately reflect that a receiving court must authorize a requested transfer of the case before the transferring court may order the case transferred. Currently, the form has an order to

transfer the case followed by an acceptance by the receiving court. However, [MCR 3.926\(B\)](#), states in relevant part:

When a minor is brought before the family division of the circuit court in a county other than that in which the minor resides, the court may request transfer of the case to the court in the county of residence before trial. The court shall not order transfer of the case until the court to which the case is to be transferred has granted the request to accept the transfer.

Committee members reported that some counties were receiving acceptances before cases were transferred, while others were still entering an order and then awaiting an acceptance or rejection. Several members indicated that they were unaware of the requirement to obtain acceptance before ordering transfer and expressed concern about the delays that such an acceptance process would create. Members expressed that there is not always a response to requests for transfers and this could delay justice for the juvenile, which has also served as a reason for denial. Additionally, committee members noted that the current form did not require a reason for the rejection to be stated, and the committee felt that this would be a helpful addition to the form. It was also suggested that the form should accommodate both oral and written acceptances for transfer such that if a jurisdiction was able to obtain agreement verbally, that would be sufficient for entry of the order.

The form was revised to include the acceptance for transfer at the top of the form under item 1 with options for 1) verbal approval of the case transfer; 2) written acceptance of the transfer; or 3) written denial of the transfer and the reason why. When the transfer is accepted either verbally or via written acceptance, the court would then issue the order transferring the case.

The form was approved as revised.

STAFF NOTE: During typesetting, SCAO staff removed the portion of item 1 that stated “and a petition has been presented to this court” because the acceptance portion of the form will be completed by either the transferring court when verbal approval is documented, or the receiving court upon their acceptance of the transfer. SCAO staff also renamed the form “Acceptance/Rejection and Order to Transfer Case.”

2. **\*NEW FORM\* – JC 50, Order After Arraignment (Designated Cases)**

The committee reviewed the draft form and all changes made following the last committee meeting. The committee concluded that items 7 and 8, which addressed the juvenile's release, could be combined with checkboxes to indicate whether the juvenile should be released with or without conditions and whether those findings were found on the record or in the written memorandum that would be attached to the order. The committee concluded that while the information was required by court rule, it did not need to be divided into two separate items on the form, and that by combining the items it would resolve any apparent presumption against release that one member felt was reflected by item 7. The committee did not identify anything else missing from the form and agreed that the form should be released once revised.

The form was approved as revised.

STAFF NOTE: During the review process, it was determined that items 4 and 5 of the draft form are procedurally required but not required findings. Those items were removed from the form. Additionally, because the designation hearing can be conducted by a judge or referee, the word "Judge" was removed from item 13.

**3. \*NEW FORM\* – JC 114, Order Regarding Confinement of Juvenile in an Adult Facility**

The committee discussed whether a new form should be created to help courts meet the Interest of Justice Requirements under the federal [Juvenile Justice and Delinquency Prevention Act \(JJDP\)](#).

Effective 12/21/21, [Section 223\(a\)\(11\)\(B\) \[34 U.S.C. 11133\(a\)\(11\)\(B\)\]](#), requires that:

(i) not later than 3 years after December 21, 2018, unless a court finds, after a hearing and in writing, that it is in the interest of justice, juveniles awaiting trial or other legal process who are treated as adults for purposes of prosecution in criminal court and housed in a secure facility—

- (I) shall not have sight or sound contact with adult inmates; and
- (II) except as provided in paragraph (13), may not be held in any jail or lockup for adults;

(ii) in determining under clause (i) whether it is in the interest of justice to permit a juvenile to be held in any jail or lockup for adults, or have sight or sound contact with adult inmates, a court shall consider—

- (I) the age of the juvenile;

- (II) the physical and mental maturity of the juvenile;
- (III) the present mental state of the juvenile, including whether the juvenile presents an imminent risk of harm to the juvenile;
- (IV) the nature and circumstances of the alleged offense;
- (V) the juvenile's history of prior delinquent acts;
- (VI) the relative ability of the available adult and juvenile detention facilities to not only meet the specific needs of the juvenile but also to protect the safety of the public as well as other detained youth; and
- (VII) any other relevant factor; and

(iii) if a court determines under clause (a) that it is in the interest of justice to permit a juvenile to be held in any jail or lockup for adults—

- (I) the court shall hold a hearing not less frequently than once every 30 days, or in the case of a rural jurisdiction, not less frequently than once every 45 days, to review whether it is still in the interest of justice to permit the juvenile to be so held or have such sight or sound contact; and
- (II) the juvenile shall not be held in any jail or lockup for adults, or permitted to have sight or sound contact with adult inmates, for more than 180 days, unless the court, in writing, determines there is good cause for an extension or the juvenile expressly waives this limitation;

The committee agreed that developing a form that lists each of the required factors would be helpful so that the court did not risk losing funding. Committee members felt that adding the factors to each form where detention could be ordered would make the forms more cumbersome and unnecessary for most cases. The committee further suggested that the same form could potentially be used for placement of juveniles in adult facilities under MCL 712.16, although that court rule applies to placement of all juveniles out of sight and sound of adults, rather than just those being charged as an adult that may be within sight and sound of adults. Committee members suggested that if it is possible to develop a single form for both purposes, a reference could be placed on all forms that could lead to a juvenile being detained to advise the court that this separate form should be completed when that placement involves an adult facility.

STAFF NOTE: SCAO reviewed both the federal and state statutes for the development of the form. The form was shared with members of the committee and no concerns were raised. SCAO staff will place the form through the internal review and approval process and will release the form when finalized.

#### **4. JC 57, Supplemental Order of Disposition (Delinquency Proceedings)**

The committee considered a suggestion that was received during the Child Protective Proceedings Workgroup meeting regarding a delinquency form. The suggestor noted that children placed with MDHHS as part of a delinquency proceeding are required to undergo an annual permanency planning review for the purpose of maintaining Title IV funding, no form currently exists for this purpose, and this form could be easily modified for that purpose. The suggestor recommended changing the form title to Supplemental Order of Disposition/Permanency Planning (Delinquency Proceedings) and adding the juvenile's date of removal to the form.

Committee members agreed that the suggested changes would be helpful to ensure that there is no loss of funding in these cases. It was further suggested that item 20 of the form be amended to include the same language and options as item 17 on form JC 19 to ensure that the choices identified for reasonable efforts also satisfied requirements to maintain funding. SCAO staff indicated that the language could be used, and the supporting language for establishing a compelling reason for APPLA that is required by item 17 could also be amended to the last page of form JC 57. The form was renamed "Supplemental Order of Disposition/Permanency Planning (Delinquency Proceedings), and a new item 2 was added with the child's removal date. Other items were renumbered accordingly.

The form was approved as revised.

## **5. JC 108, Order After Hearing on Competency (Delinquency Proceedings)**

The committee considered a suggestion regarding whether the form should identify when a juvenile is deemed incompetent and unable to be restored due to Serious Emotional Disturbance, versus other basis for incompetency. Currently, the form allows the court to check a box indicating that the juvenile is found to be incompetent and unable to be restored. The court is then instructed to check the box dismissing the charges and releasing the juvenile. However, in cases where a qualified forensic mental health examiner reports that there is a substantial probability that the juvenile is unable to be restored due to serious emotional disturbances, [MCL 712A.18s\(5\)](#) provides:

[T]he court may in its discretion, except as provided under the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, order that mental health services be provided to the juvenile by the department of community health, subject to the availability of inpatient care, a community mental health services program, the department of human services, a county department of human services, or another appropriate mental health services provider for a period not to exceed 60 days. The court shall retain jurisdiction over the juvenile throughout the duration of the order.

The entity ordered to provide services under this subsection shall continue to provide services for the duration of the period of treatment ordered by the court.

Committee members agreed that the form should be amended to accommodate findings that the juvenile is deemed incompetent and unable to be restored due to Serious Emotional Disturbance and the possibility that the juvenile could be ordered to participate in mental health treatment. Members agreed that an option to select this finding should be added in the same area as the other findings regarding incompetency. Members also agreed that the finding should direct the court to order either dismissal of the case and placement of the juvenile or mental health treatment for up to 60 days. A new item 6 was drafted to allow the court to order the mental health treatment. The same item also requires the mental health treatment provider to submit a report to the court regarding the juvenile in accordance with [MCL 712A.18s\(6\)](#). The item states, "Mental health services shall be provided to the juvenile by \_\_\_\_\_ for \_\_\_\_\_ days (not to exceed 60 days). The mental health provider shall submit a report regarding the juvenile to the court and the qualified juvenile forensic mental health examiner no later than 14 days before the expiration of the treatment ordered."

Additionally, the committee agreed that the review following submittal of the report could be documented using the same form, but a hearing was not always required. Accordingly, the committee suggested that the order be renamed "Order on Competency," and that item 2 allow the court to check whether the findings are being made after hearing or after review of documentations and additional submissions. Lastly, a note was added to item 6 to indicate that mental treatment could be reordered once for another 60 days following review, but no more than 120 days of treatment could be ordered.

The form was approved as revised.

STAFF NOTE: During the review process, the language within the note was amended to remind that court that the youth rehabilitation act should be considered before ordering mental health services using new item 6. The note states, "The court may order mental health services at its discretion, except as provided under the youth rehabilitation act, MCL 803.301 to 803.309. Treatments may be renewed following review of the mental health provider's report for another period not to exceed 60 days. Treatment shall not exceed 120 days."