

# Michigan Judicial Institute Magistrate Specialty Webinar

July 22, 2021

## *Pretrial Update*

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## Magistrate Specialty Webinar Jails Task Force Legislative Reforms

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State Court Administrative Office

July 22, 2021



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## Background



### Michigan Joint Task Force on Jail & Pretrial Incarceration

- Bipartisan, inter-branch, county/state partnership.
- Safely reduce jail admissions, length of stay, & costs.
- Made numerous findings and issued 18 policy recommendations.



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# Appearance Citations



- 1. Expanded Authority:** Expands previous 93 day limitation to 1 year misdemeanors.
- 2. Ineligible Offenses:** DV, PPO, period of confinement, serious misdemeanors, assaultive crimes.
- 3. Required Use:** Must be used for eligible misdemeanors punishable by up to 1 year, excluding OWI, *unless:*

## Officer Ability To ARREST rather than CITE

- 1. Reasonable Instructions**
- 2. Identification**
- 3. Community Safety**
- 4. Wellbeing**
- 5. Defendant Requests**
- 6. Other:** Any other reason the officer may deem reasonable to arrest.



# Appearance Citations



- 4. Release Timeframe:** If an officer arrests (rather than cites) a person based on one of those 6 reasons, the person must be charged or released from custody **not later than 3:00 p.m.** the “immediately following day **during which arraignments may be performed.**”
- 5. Damages:** Does not create a right to appearance tickets in lieu of arrest. The legality of the arrest may be challenged, but the person doesn’t have a claim for damage against an officer.



# Warrants & Summons



## Criminal Summons

A magistrate must issue a summons, rather than an arrest warrant, *unless*:

### Ability to Issue WARRANT rather than SUMMONS

1. **Assaultive Crime**
2. **Failure to Appear:** Reason to believe from the complaint that the person will not appear upon a summons.
3. **Public Safety:** Issuing a summons poses a risk to public safety.
4. **Prosecutor Request:** The prosecutor has requested a warrant.

### New SCAO Forms

- DC 225s
- MC 200s

Summons may be mailed to the defendant's last known address



# Warrants & Summons



## Voluntary Presentment



### Arraignment

Judicial officer is available to arraign the defendant within 2 hours.

**\*Presumed a person is not a flight risk.**

### Voluntary Presentment

Defendant wanted on warrant voluntarily presents himself/herself to the court that issued the warrant.

- Not assaultive crime or domestic violence.
- Warrant issued within 1 year.
- Defendant hasn't previously benefited from the procedure on any pending criminal charges.

### Reschedule

Judicial officer is NOT available to arraign the defendant within 2 hours.

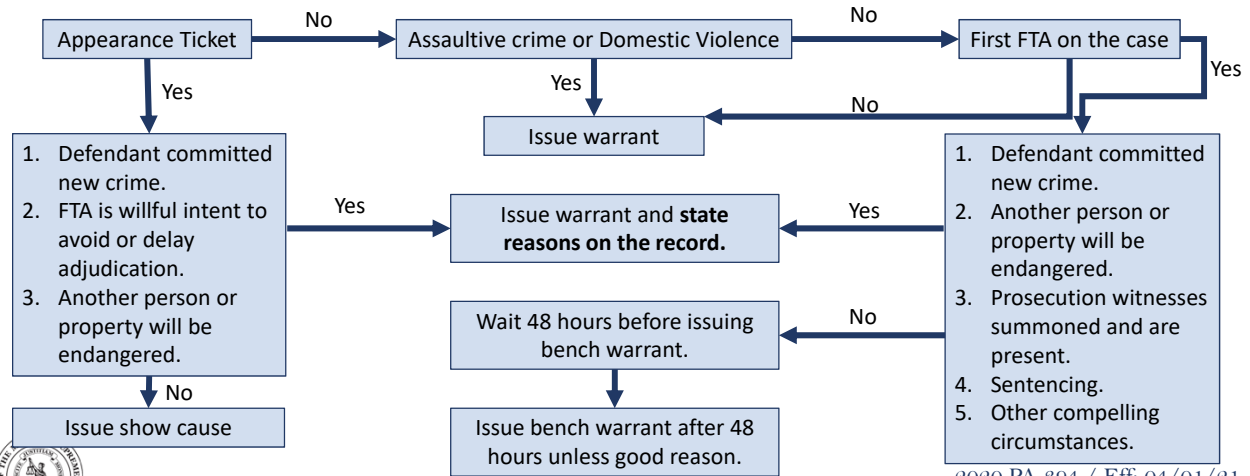
Recall warrant and schedule case for a future arraignment.



# Warrants & Summons



## Failure to Appear



2020 PA 394 / Eff: 04/01/21



# Warrants & Summons



## Out-of-County Arrests



Each district court and county jail shall establish a communication protocol to enable the swift processing of individuals detained on a warrant **from another county**.

Each district court shall establish a hearing protocol for individuals detained on a warrant from another county. Must include 2-way interactive video technology, when appropriate.

Timelines	
Arrangements	48 hours
Pick-Up	72 hours

\*Excluding assaultive crimes and domestic violence.  
\*\*Jail must contact originating court to obtain court date for appearance.



2020 PA 394 / Eff: 04/01/21

## Judgment and Sentence



Rebuttable presumption that courts will sentence individuals convicted of a **non-serious misdemeanor** with a fine, community service, or other **nonjail/nonprobation** sentence.

- ↳ Depart with **reasonable grounds** stated **on the record**.
- ↳ May hold in contempt for non-compliance with sentence.



2020 PA 395 / Eff: 03/24/21

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## Holmes Youthful Trainee Act (HYTA)



Effective October 1, increases HYTA eligibility for offenses committed on or after the defendant's 18<sup>th</sup> birthday but before his or her 26<sup>th</sup> birthday.

Prosecutor must consent to HYTA for offenses committed on or after the defendant's 21<sup>st</sup> birthday.



2020 PA 396 / Eff: 03/24/21

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# Probation



## Sentence of Probation



The court must determine the “rehabilitation goals” of probation at sentencing. The court must also consider input from the victim and must specifically address the harm caused, as well as the victim’s safety needs and other concerns.

Probationers may virtually report to their probation officers as directed.

### Conditions of Probation Must

1. Be individually tailored to the probationer;
2. Specifically address the assessed risks and needs of the probationer;
3. Be designed to reduce recidivism; and
4. Be adjusted if the court determines adjustments are appropriate.

2020 PA 397 / Eff: 04/01/21



# Probation



## Early Probation Discharge - Eligibility



After a defendant completes half of the original probation period, the defendant may be eligible for an early discharge.

- ↳ Defendant must be notified at sentencing of his or her eligibility, the requirements, and procedure in MCL 771.2(3).
- ↳ **Ineligible** offenses contained in MCL 771.2(10) and as otherwise provided in MCL 771.2a and MCL 768.36.

2020 PA 397 / Eff: 04/01/21



# Probation



## Early Probation Discharge - Notice



If the probationer has completed all required programming, the probation department **may** notify the sentencing court that the probationer may be eligible for early discharge.

- ↳ If the probation department **does not** notify the court, and the probationer has not violated probation within the last 3 months, the probationer may notify the court.
- ↳ This subsection does not prohibit a court from considering a probationer for early discharge at the court's discretion.



2020 PA 397 / Eff: 04/01/21

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# Probation



## Early Probation Discharge - Review



Upon notice, the court may review the probationer's conduct to determine if early discharge is warranted. A probationer who has made good-faith efforts to make payments must not be considered ineligible due to an inability to pay for probation, fines, fees, or costs. If outstanding **restitution:**

- ↳ The court must consider the impact of early discharge on the victim and restitution payment.
- ↳ If good-faith effort to pay restitution, the court may grant early discharge or retain on probation (up to max term) with **sole condition of continuing restitution payments.**



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# Probation



## Early Probation Discharge - Hearing



The court may grant an early discharge **without** a hearing unless:

- ↳ **Felonies:** Victim requested notice under the Crime Victim's Rights Act.
- ↳ **Misdemeanors:** Offenses contained in MCL 771.2(7).

The court must also conduct a hearing if their initial review determines a probationer is not deserving of an early discharge. Court must find at the hearing either:

- ↳ Specific rehabilitative goal not yet achieved; or
- ↳ Specific, articulable, and ongoing risk of harm to victim that can only be mitigated with continued probation.

2020 PA 397 / Eff: 04/01/21



# Probation



## Probation Violations

**Legislative Intent:** "...the granting of probation is a matter of grace requiring the agreement of the probationer to its granting and continuance."

### Revocation and Incarceration Only Imposed For:

1. Repeated technical violations
2. New criminal behavior
3. As otherwise allowed in MCL 771.4b; or
4. Upon the request of the probationer

Courts may no longer provide for the apprehension, detention, or confinement of probation on the basis of "conduct inconsistent with the public good."

2020 PA 397 / Eff: 04/01/21



# Probation



## Technical Probation Violations

A technical probation violation is any violation, **except:**

Non-Technical Violation
1. No-contact order violation
2. Violating the law of this state, a political subdivision, another state, or the United States, <b>whether or not a new criminal offense is charged.</b>
3. Consuming alcohol when on probation for a felony violation of MCL 257.625 (OWI, etc.).
4. Absconding – Intentional failure of a probationer to report to his or her supervising agent or to advise of his or her whereabouts for a continuous period of not less than 60 days.

Missed/failed drug test is a technical violation



# Probation



## Technical Probation Violations



Maximum sentence for technical violations is capped as follows:

Technical Violation	Maximum Jail Sentence	
	Misdemeanor	Felony
1 <sup>st</sup> Violation	5 Days	15 Days
2 <sup>nd</sup> Violation	10 Days	30 Days
3 <sup>rd</sup> Violation	15 Days	45 Days
4 <sup>th</sup> Violation	Any number	Any number

Caps don't apply to most Domestic Violence and Stalking offenses

May be extended up to 45 days if awaiting placement in treatment facility and doesn't have a safe alternative to await treatment.

Single violation if multiple arise out of the same transaction.



# Probation



## Technical Probation Violations - Summons

Establishes a rebuttable presumption for a summons or show cause for technical probation violations rather than a bench warrant. The court may overcome the presumption by finding and stating on the record:

### Courts Ability to Issue Bench Warrant for Technical PV:

1. Probationer presents an immediate danger to himself or herself, another person, or the public.
2. The probationer has left court-ordered inpatient treatment without the court's or treatment facility's permission.
3. A summons or order to show cause has already been issued for the technical probation violation and the probationer failed to appear as ordered.

A probationer detained on a technical PV must be brought to a hearing as soon as possible. If the hearing isn't held within the applicable jail sanction, the probationer must be returned to community supervision.

2020 PA 397 / Eff: 04/01/21



# Reclassification and Civil Infractions



MCL	Offense
257.208b	Driver Education and Limousine Record Violations
257.239	Motor Vehicles – Failing to Endorse and Deliver Certificate of Title to Transferee
257.312a	Motorcycles – Operation Without Endorsement (1 <sup>st</sup> Violation)
257.325	Motor Vehicles – Allowing Unlicensed Minor to Operate
257.624b(4)	Motor Vehicle – Transfer of to Avoid Impoundment
257.677a	Snow on Highway – Obstructing Vision
257.682c	Motor Vehicles – Operating Commercial Snow Removal Vehicle Without Flashing Lights
257.698(5)	Motor Vehicles – Use/Possession of Flashing Lights
257.698(6)	Motor Vehicles/Sale of Flashing Lights/Unauthorized Use of Emergency Vehicle
257.707c(2)	Motor Vehicles – New – Excessive Noise
257.707c(4)	Motor Vehicles – Sale or Installation of a Muffler Causing Excessive Noise
257.707c(6)	Motor Vehicles – Dealer Sale of Noncompliant Vehicle

2020 PA 382  
Eff: 10/01/21



# Driver License Suspensions



## Offenses

- The SOS is no longer required to suspend a license for the following violations:
  1. Alcohol – Use of Fraudulent Identification by Minor
  2. Alcohol – Furnishing Fraudulent Identification to Minor
  3. Alcohol – Purchase/Consumption/Possession by Minor – 2<sup>nd</sup> or Subsequent
  4. Offenses Related to the False Report or Threatened Use of Certain Explosives Involving a School.
  5. Alcohol – Selling/Furnishing to Minor – 2<sup>nd</sup> or Subsequent
- Repealed MCL 257.319e – License suspension for controlled substance violations
- Repealed MCL 333.7408a(1) & (2) – required court to impose license suspension for violations of Public Health Code.
- Requires SOS to waive reinstatement fees for current suspensions and immediately reinstate licenses.

Eff: 10/01/21



# Driver License Suspensions



## FAC/FCJ Suspensions (MCL 257.321a)

Section	Former Section	Amended Section
321a(1)	93-day misdemeanor for FAC/FCJ	Repealed
321a(2)	14-day notice for FAC/FCJ if violation reportable to SOS (MCL 257.732)	14-day notice on violation <b>“for which license suspension is allowed under this act.”</b>
321a(3)	7- and 14-day notices for FAC/FCJ violations of MCL 257.625	Expanded to include (1) reckless driving, (2) any driving violation resulting in injury, death, or serious impairment, and (3) a serious offense involving a motor vehicle.
321a(4)	7- and 14-day notices for FAC/FCJ for violations of MCL 436.1703(1)(b) or (c), MCL 257.624a, and MCL 257.624b	Repealed
321a(6)–(8)	10-day notice for FAC on parking violations	Repealed
321a(9)	14-day notice for state civil infractions.	Repealed

Eff: 10/01/21



# Mandatory Jail Minimums



Eliminated, and authorized the suspension of, certain mandatory jail minimums for numerous offenses in the followings Public Acts:

- Public Health Code
- Motor Vehicle Code
- Revised School Code
- Natural Resources and Environmental Protection Act
- Railroad Code

Please review page 25 of the Legislative Analysis for a complete list of offenses.



Eff: 10/01/21

# Next Steps?



- Pretrial/Bail Reform
- Michigan Jail Reform Advisory Council



# Questions?

