





Ability to Pay
September 2016

1. If the alleged violation is only for failure to pay, it is recommended a summons be issued and not a bench warrant. If there are other alleged violations, in addition to the failure to pay, then a bench warrant would be appropriate.

Flowchart for Enforcement of Conditional Sentence MCL 769.3

Court order provides for conditional sentence under MCL 769.3.

Court has ordered defendant to pay certain assessments within a time stated in the sentence and, in default of payment, sentence the person as provided by law.

Defendant fails to pay.

Show cause regarding enforcement of conditional portion of sentence issued.

Defendant fails to appear at show cause.

Bench warrant issued for failing to appear at show cause.

Defendant appears before the court.

Defendant claims he/she cannot pay.

Court to determine ability to pay.

MCR 6.425(E)(3), MCL 780.766(11).

Court determines NO ability to pay.

Court determines YES ability to pay.

No incarceration.

MCR 6.425(E)(3)(a).

Court makes a record that Defendant is able to comply without manifest hardship and has not made good faith effort to comply.

MCR 6.425(E)(3)(a),(c).

Enforcement alternatives.

MCR 6.425(E)(3)(b).

After hearing on enforcing the conditional sentence, enter order.

After hearing, enter order.

The Ability to Pay workgroup did not make a recommendation regarding appointment of legal counsel in a proceeding to enforce a conditional sentence.