

JUVENILE DELINQUENCY CASES

WCBA Juvenile Law Section Seminar

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1. Preliminary Hearing:

-MCR 3.935(A)(1), w/in **24 hours** after custody excluding Sun, Holiday or juvenile must be released.

-MCR 3.935(B), court determines whether petition should be dismissed, referred to alternate services under Juvenile Diversion Act MCL 722.821, heard on consent calendar under MCR 3.932(C), or continue w/preliminary hearing.

-MCR 3.935(D)(1), probable cause that juvenile committed offense, and other circumstances are present (see list in MCR).

-MCR 3.935(D)(3), juvenile may contest sufficiency of evidence and finding of probable cause; MRE do not apply (except privileges).

2. Discovery:

-(1) MCR 3.922 The following materials are discoverable as of right in all proceedings provided they are requested no later than 21 days before trial unless the interests of justice otherwise dictate:

(a) all written or recorded statements and notes of statements made by the juvenile or respondent that are in possession or control of petitioner or a law enforcement agency, including oral statements if they have been reduced to writing;

(b) all written or recorded nonconfidential statements made by any person with knowledge of the events in possession or control of petitioner or a law enforcement agency, including police reports;

(c) the names of prospective witnesses;

(d) a list of all prospective exhibits;

(e) a list of all physical or tangible objects that are prospective evidence that are in the possession or control of petitioner or a law enforcement agency;

(f) the results of all scientific, medical, or other expert tests or experiments, including the reports or findings of all experts, that are relevant to the subject matter of the petition;

(g) the results of any lineups or showups, including written reports or lineup sheets; and

(h) all search warrants issued in connection with the matter, including applications for such warrants, affidavits, and returns or inventories.

MCR 3.922 corresponds to former Rule 5.922; several changes are made in the discovery provisions: in subrule (A)(1), the language regarding listing of exhibits,

tangible objects, and the results of tests or experiments is modified; new subrule (A)(3) expressly provides that depositions may be taken only with court authorization; new subrule (A)(4) provides that failure to comply with discovery provisions subjects a party to MCR 2.313 sanctions.

-(2) Other discovery may be allowed by the court; depositions may only be taken as authorized by the court.

-(3) Failure to comply with discovery may result in such sanctions, as applicable, as set forth in MCR 2.313.

Notices the Defense must provide:

-(1) **Alibi or insanity:** within 21 days after the juvenile has been given notice of the date of trial, but no later than 7 days before the trial date. The notice shall include a list of the names and addresses of defense witnesses. Prosecution's rebuttal due within 7 days after receipt of notice, but no later than 2 days before the trial date.

-(2) **Support persons and other special arrangements:** Arrangements can be made for these. See MCR 3.922(E). Requires parties to give notice of intent to request certain procedures, including use of a "support person," special arrangements for a closed courtroom or restricted view of a witness, use of a video-taped deposition, or admission of hearsay. See *MCL 712A.17b*; MCR 3.972(C)(2).

3. Pretrial:

The court may direct the parties to appear at a pretrial conference. The scope and effect of a pretrial conference are governed by MCR 2.401, except as otherwise provided in or inconsistent with the rules of this subchapter. This is the parties' opportunity to settle case by plea agreement, or set for trial.

4. Pleas:

Once found guilty of any offense, whether by plea or by trial, the juvenile court judge has very broad power to make orders which are in the child's best interests. In theory, a juvenile found guilty of retail fraud can be dealt with as seriously by the judge as a juvenile convicted of murder, if that's what accomplishment of the child's best interests demands. Accordingly, juveniles tend to get more lenient plea agreements than adults. Considerations of impact of the conviction on adult sentencing guidelines, a juvenile's past history, whether or not the juvenile has independently sought counseling or treatment, the seriousness of the offense, contrition on the part of the offender are among the factors considered during plea negotiations.

5. Motion Practice:

Motion practice in delinquency cases is governed by MCR 2.119, except that a motion to suppress evidence must be filed at least seven days before trial or, in the court's discretion, at trial. MCR 5.922(C). See, generally, *People v Walker (On Rehearing)*, 374 Mich 331 (1965). A motion to suppress evidence in a criminal case must be made in advance of trial. *People v Gray*, 45 Mich App 643, 644 (1973). However, the trial court has discretion to conduct an evidentiary hearing during trial although no pretrial motion was made. *People v Soltis*, 104 Mich App 53, 55 (1981), *People v Leonard*, 81 Mich App 86, 89 (1978) (involuntary confession), and *People v Childers*, 20 Mich App 639, 645–46 (1969) (pretrial identification).

A. Notice and Service Requirements: Personal service of the motion, notice of the hearing on the motion, and any supporting briefs or affidavits must be made at least 7 days before the hearing, 9 days if served by mail. Personal service of the response must be made at least 3 days before the hearing. If service is by mail, add 2 days. For good cause, the court may set different periods for filing and serving motions. MCR 2.119(C).

B. Form of Motions: Unless made during trial, a motion must be in writing, must state with particularity the grounds and authority on which it is based, must state the relief or order sought, and must be signed by the party or attorney filing the motion. MCR 2.119(A). A court may, in its discretion, dispense with or limit oral argument and may require the parties to file briefs in support of and in opposition to a motion. MCR 2.119(E)(3).

Affidavits may be required when a motion is based on facts not appearing in the record. MCR 2.119(E)(2). If an affidavit is filed, it must be based on personal knowledge, state with particularity facts admissible as evidence, and demonstrate that the affiant is competent to testify as a witness. MCR 2.119(B)(1).

C. Motions for Rehearing and Reconsideration: A motion for rehearing or reconsideration must be filed and served within 14 days of the entry of the order disposing of the motion. MCR 2.119(F)(1). No response to the motion may be filed, and no oral argument is allowed unless the court directs otherwise. MCR 2.119(F)(2). The moving party must demonstrate palpable error and show that a different disposition must result from correction of the error. MCR 2.119(F)(3).

6. Trial/Adjudication:

-MCR 3.942(A), w/in **6 months** of filing the petition; unless juvenile is in custody then w/in **63 days**.

-MCR 3.942(C), proof beyond a reasonable doubt and rules of evidence apply.

-MCR 3.911(B), jury demand w/in **14 days** after court gives notice of right or w/in **14 days** of filing counsel appearance whichever is later, **but no later than 21 days before trial**.

-MCR 3.911(C), 5 peremptory challenges of jurors and verdict must be unanimous.

7. Review of Referee Recommendations:

1. MCR 3.991 (corresponds to former Rule 5.991): subrule (A) is amended to provide for entry of an order based on the referee's recommendation if no request for review is filed within 7 days. However, the court has the option of reviewing the recommendation and entering an appropriate order earlier. Once the court has entered an order, the review procedure is no longer available, and a party must file a motion for rehearing under MCR 3.992.

2. Timing:

(B) Form of Request; Time. A party's request for review of a referee's recommendation must:

- (1) be in writing,
- (2) state the grounds for review,
- (3) be filed with the court within 7 days after the conclusion of the inquiry or hearing or within 7 days after the issuance of the referee's written recommendations, whichever is later, and
- (4) be served on the interested parties by the person requesting review at the time of filing the request for review with the court. A proof of service must be filed.

(C) Response. A party may file a written response within 7 days after the filing of the request for review.

(D) Prompt Review; No Party Appearance Required. Absent good cause for delay, the judge shall consider the request within 21 days after it is filed if the minor is in placement or detention. The judge need not schedule a hearing to rule on a request for review of a referee's recommendations.

(E) Review Standard. The judge must enter an order adopting the referee's recommendation unless:

- (1) the judge would have reached a different result had he or she heard the case; or
- (2) the referee committed a clear error of law, which
 - (a) likely would have affected the outcome, or
 - (b) cannot otherwise be considered harmless.

(F) Remedy. The judge may adopt, modify, or deny the recommendation of the referee, in whole or in part, on the basis of the record and the memorandums prepared, or may conduct a hearing, whichever the court in its discretion finds appropriate for the case.

8. Dispositional Phase:

-MCR 3.943(A), to determine what measures the court will take concerning the juvenile found w/in its jurisdiction.

-MCR 3.943(C)(1), all relevant and material evidence allowed at dispositional hearing including oral and written reports and may be received by the court and relied upon to the extent of their probative value.

-MCR 3.943(C)(2), attorney may examine and contest written reports.

- MCR 3.943(E)(2), Court **must** consider increasingly severe sanctions at second and subsequent review hearings.

9. Probation Violations:

-MCR 3.944 Probation Violation. **The probation violation provisions are much more detailed than those found in former Rule 5.944(A).**