



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

Michigan Hall of Justice

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MEMORANDUM

DATE: August 16, 2016

TO: All Judges
cc: Court Administrators

FROM: Julia Norton, Collections Management Analyst

RE: Ability to Pay Court Rule Amendments

On May 25, 2016, the Michigan Supreme Court adopted amendments to the following Michigan Court Rules: [3.605](#), [3.606](#), [3.928](#), [3.944](#), [3.956](#), [6.001](#), [6.425](#), [6.445](#), [6.610](#), and [6.933](#). The amendments, collectively referred to as the “Ability to Pay” rules, are effective September 1, 2016. The heart of the amendments is the revision of MCR 6.425(E), which added subsection (3) titled Incarceration for Nonpayment. The remaining rule amendments implement the objective of MCR 6.425(E)(3).

The amendment to MCR 6.425(E)(3)(a) provides that

[t]he court shall not sentence a defendant to a term of incarceration, nor revoke probation, for failure to comply with an order to pay money unless the court finds, on the record, that the defendant is able to comply with the order without manifest hardship and that the defendant has not made a good-faith effort to comply with the order.

The following changes carry out this objective:

- The court may impose payment alternatives if a defendant is unable to comply with an order to pay money without manifest hardship. Please note these alternatives are only allowable to the “extent permitted by law.” MCR 6.425(E)(3)(b).
- The court shall consider the following criteria in determining manifest hardship:
 - (i) Defendant’s employment status and history.
 - (ii) Defendant’s employability and earning ability.
 - (iii) The willfulness of the defendant’s failure to pay.

- (iv) Defendant's financial resources.
- (v) Defendant's basic living expenses including but not limited to food, shelter, clothing, necessary medical expenses, or child support.
- (vi) Any other special circumstances that may have bearing on the defendant's ability to pay.

[MCR 6.425(E)(3)(c).]

- MCR 6.425(E)(3) applies to both felony and misdemeanor cases. MCR 6.001(B).
- The court may not sentence a probationer to prison or jail 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 (E). MCR 6.445(G).
- The court shall not sentence a defendant to a term of incarceration for nonpayment unless the court has complied with the provisions of MCR 6.425(E)(3). MCR 6.610(F)(2) (criminal procedure in district court) and MCR 3.606(F) (contempt of court). Regarding MCR 3.606(F), the amendment specifies that proceedings to which the Child Support and Parenting Time Enforcement Act applies are subject to the requirements of that act.
- A juvenile and/or parent shall not be detained or incarcerated for the nonpayment of court-ordered financial obligations as ordered by the court, unless the court determines that the juvenile and/or parent has the resources to pay and has not made a good-faith effort to do so. MCR 3.928, 3.944, 3.956 and 6.933.
- If a defendant makes an application, pursuant to MCR 3.605, for the remission of a penalty, including a bond forfeiture, the court may grant the application without the payment of the costs and expenses incurred in the proceedings for the collection of the penalty. MCR 3.605(D).

If you have questions, please contact me at trialcourtservices@courts.mi.gov or 517-373-8995.