

Personal Protection Orders Minor Respondent

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October 1, 2001

I. COURT JURISDICTION / APPLICABLE LAW / AGE LIMITS

A. Initial jurisdiction / applicable law

1. The juvenile division of the family court has jurisdiction over a proceeding under MCL 600.2950 (domestic relationship PPOs) and MCL 600.2950a (non-domestic relationship stalking PPOs) in which a minor *less than 18 years* of age is the respondent, @. MCL 712A.2(h).
2. If the @ is *less than 18 years* of age, issuance of a PPO under MCL 600.2950 (domestic relationship PPOs) or MCL 600.2950a (non-domestic relationship stalking PPOs) is subject to the juvenile code, MCL 712A.1 to 712A.32. MCL 600.2950(28); MCL 600.2950a(26).

B. Continuing jurisdiction / applicable law

If a court exercised jurisdiction over a child under MCL 712A.2(h), jurisdiction of the **court continues until the order expires**, but **action** regarding the PPO **after the respondent's 18th birthday shall not be subject to this chapter**. MCL 712A.2a(3). (i.e. Where juvenile division of family court issued PPO against minor @ under 18 years, jurisdiction of juvenile division of family court continues until order expires. Action regarding PPO after @'s 18th birthday, however, is not subject to juvenile code. Court would apply adult PPO laws and procedures to action regarding PPO after @'s 18th birthday.)

C. Definitions in Michigan PPO Court Rules

1. "Minor" means a person under the age of 18. MCR 3.702(6).
2. "Minor PPO" means a PPO issued by a court against a minor and under jurisdiction granted by MCL 712A.2(h). MCR 3.702(7). MCR 5.903(E)(1).

D. Note arrest, detention, and dispositional alternatives for @ 17 years or more

While juvenile division of family court has jurisdiction over, and juvenile code applies to 17 year old @, note that @ 17 years or more is subject to arrest, incarceration with adult population, and adult PPO penalties. MCL 600.2950 (23); MCL 600.2950a (20); MCL 600.2950 (11) (a) (i) (ii); MCL 600.2950a (8) (a) (i) (ii); MCL 764.15b(1)(c) (i), (ii); MCL 712A.14(1); MCL 712A.15(5); MCR 3.706(A)(3)(a),(b); MCR 5.984(C); MCR 5.985(D).

II. ISSUANCE OF A PPO AGAINST A MINOR RESPONDENT

A. Applicable Court Rules

Procedure on the issuance, dismissal, modification, or rescission of a minor PPO is pursuant to MCR subchapter 3.700. MCR 5.981; MCR 3.701(A).

B. Types of minor PPOs

The juvenile code provides that the juvenile division of the family court has jurisdiction over a proceeding under MCL 600.2950 (domestic relationship PPOs) and MCL 600.2950a (non-domestic relationship stalking PPOs) in which a minor less than 18 years of age is the ®. MCL 712A.2 (h). MCR subchapter 3.700, governing issuance of a minor PPO, defines "personal protection order" as a protection order "as described under MCL 600.2950 and MCL 600.2950a." MCR 3.702(1). Thus, the only types of PPOs available against minor ®s are the domestic relationship PPO (MCL 600.2950) and the non-domestic relationship stalking PPO (MCL 600.2950a).

1. Domestic relationship PPO

a) Petitioners who may obtain a domestic relationship PPO against a minor ®

A petitioner who shares one of the following relationships with the minor ® may obtain a domestic relationship PPO against the minor ®:

- spouse
- former spouse
- resident or former resident of same household
- child in common
- current or former dating relationship. MCL 600.2950 (1). "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. The term does not include a casual relationship or an ordinary fraternization between two individuals in a business or social context. MCL 600.2950(30)(a).

b) Behaviors that may be restrained by a domestic relationship PPO

- Entering onto premises
- Assaulting, attacking, beating, molesting, or wounding a *named individual**
- Threatening to kill or physically injure a *named individual**
- Removing minor children from the individual having legal custody of the children, except as otherwise authorized by a custody of parenting time order issued by a court of competent jurisdiction
- Purchasing or possessing a firearm

- Interfering with petitioner's efforts to remove petitioner's children or personal property from premises that are solely owned or leased by the individual to be restrained or enjoined
- Interfering with petitioner at petitioner's place of employment or education or engaging in conduct that impairs petitioner's employment or educational relationship or environment
- Having access to information in records concerning a minor child of both petitioner and ® that will inform ® about the address or telephone number of petitioner and petitioner's minor child or about petitioner's employment address
- Engaging in conduct that is prohibited under MCL 750.411h and MCL 750.411i (stalking)
- Any other specific act or conduct that imposes upon or interferes with personal liberty or that causes a reasonable apprehension of violence. MCL 600.2950 (1) (a - j).

*Note that these protections are not limited to "petitioner."

2. Non-domestic relationship stalking PPO

a) Petitioners who may obtain a non-domestic relationship stalking PPO against a minor ®

- Anyone who does not share a domestic relationship with the minor ® and who is being stalked by the minor ® may obtain a non-domestic relationship stalking PPO against the minor ®. (e.g. neighbor, student, co-worker who is being stalked by the minor ®) MCL 600.2950a(1).
- A court shall not issue a non-domestic relationship stalking PPO under MCL 600.2950a if the petitioner is a prisoner. If a PPO is issued in violation of this prohibition, a court shall rescind the PPO upon notification and verification that petitioner is a prisoner. MCL 600.2950a(28). "Prisoner" means a person "subject to" the terms and conditions of parole, probation, pretrial release, or a diversionary program, or to incarceration, detention, or admission to a prison, and who is "accused of, convicted of, sentenced for, or adjudicated delinquent for violation of federal, state or local law." MCL 600.2950a(29)(c).

b) Behaviors that may be restrained by a non-domestic relationship stalking PPO

- i) Stalking behavior as defined in criminal stalking laws. MCL 750.411h or MCL 750.411i. MCL 600.2950a(1).

- 2 or more acts, evidencing continuity of purpose, involving repeated or continuing harassment of another individual (e.g. unconsented contact, following, approaching or confronting, appearing at a workplace or residence, entering onto premises owned, leased, or occupied by the petitioner, telephoning, sending gifts, e-mail, faxes)
- Acts cause petitioner to feel terrorized, frightened, intimidated, threatened, harassed or molested.
- Acts would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed or molested.

ii) Relief may be sought and granted whether or not the ® has been charged or convicted under the criminal stalking laws, MCL 750.411h or MCL 750.411i. MCL 600.2950a(1).

C. Parent/child; child/parent PPOs prohibited

Neither type of PPO is available for a parent to obtain against his or her unemancipated minor child, or for an unemancipated minor child to obtain against his or her parent. "A court shall not issue a PPO ...if either of the following applies: (a) the unemancipated ® is the minor child of the petitioner; (b) the unemancipated petitioner is the minor child of the ®." MCL 600.2950(27); MCL 600.2950a(25). Note that the juvenile code provides alternative remedies to address circumstances such as delinquency; incorrigibility, abuse and neglect.

D. Minor or legally incapacitated individual as *petitioner: next friend*

1. If *petitioner* is a minor or a legally incapacitated individual, the petitioner shall proceed through a *next friend*. The petitioner shall certify that the next friend is not disqualified by statute and that the next friend is an adult. MCR 3.703(E)(1). 9-1-01
2. Unless the court determines that appointment is necessary, the next friend may act on behalf of the minor or legally incapacitated person without appointment. MCR 3.703(E)(2).
3. However, the court *shall* appoint a next friend if the minor is less than 14 years of age. MCR 3.703(E)(2).
4. The next friend is not responsible for the costs of the action. MCR 3.703(E)(2).

E. Guardian ad litem for minor ®

- MCL 712A.17c(10) authorizes the court to appoint a guardian ad litem for a child involved in a proceeding under chapter 12A of the juvenile code, to assist the court in determining a child's best interests. This includes PPO proceedings under MCL 712A.2(h).
- Although the court rule governing guardians ad litem, MCR 5.916, appears to be limited to delinquency and child protective proceedings, MCR 5.901(B)(1), application of MCR 5.916 to PPO *enforcement* proceedings is proper, as indicated by MCR 5.985(B)(1), MCR 5.986(C), and MCR 5.987(C)(T)(a). Application of MCR 5.916 to PPO *issuance* proceedings in appropriate cases also makes sense.
- MCR 5.916(A) provides the court may appoint a guardian ad litem for a party if the court finds that the welfare of a party requires it.

F. Venue

If ® is under 18 years old, venue for the initial action is proper in the county of residence of either petitioner or ®. If the minor ® does not live in Michigan, venue for the initial action is proper in petitioner's county of residence. MCL 712A.2(h). MCR 3.703(E)(2). . (Compare broader venue options for petitioner seeking to restrain adult ®: petitioner may file a PPO action against adult ® in any county in Michigan, regardless of residency. MCR 3.703(E).)

G. Forms

1. The state court administrator shall approve forms for use in "personal protection act" proceedings. The forms shall be made available for public distribution by the clerk of the circuit court. MCR 3.701(B).
2. The state court administrative office shall develop and make available forms for use by an individual who wishes to proceed without an attorney. The forms shall include at least a petition for relief, notice of hearing and proof of service for a PPO under MCL 600.2950 or MCL 600.2950a. MCL 600.2950b(1).
3. Forms shall be written in plain English in a simple and easily understood format, and shall be limited, if practicable, to one page in length. MCL 600.2950b(1).
4. Instructions for the forms shall be written in plain English and shall include a simple and easily understood explanation of the proper method of service and filing of the proof of service. MCL 600.2950b(1).
5. The standard PPO form, at a minimum, shall contain all of the information required under MCL 600.2950 or MCL 600.2950a. MCL 600.2950b(2).

6. The state court administrative office shall develop and make available standardized forms for use by individuals restrained or enjoined without notice to move to modify or to rescind a PPO and to request a hearing. MCL 600.2950b(3).
7. The court shall provide a form prepared under MCL 600.2950b without charge. MCL 600.2950b(4).

H. Commencing a PPO Action

1. PPO action is commenced by filing a petition with a court. MCR 3.703(A).
2. "Petition" refers to a pleading for commencing an *independent action* for personal protection. MCR 3.702(2). A PPO action may not be commenced by filing a motion in an existing case or by joining a claim to an action. MCR 3.703(A). 9-1-01 (Court rule abrogates statutory provision permitting petition for PPO to be joined as claim to action or filing motion in pending action. See MCL 600.2950(1); MCL 600.2950(a)(1)).
3. PPO petition is not considered a motion as defined in MCR 2.119. MCR 3.702(2). 9-1-01
4. There are no fees for filing a PPO action. No summons is issued. MCR 3.703. Note that petitioner is responsible for any fees concerning service. If petitioner is indigent, however, petitioner should check with the court about procedures for waiver of service fees for indigent litigants.

I. Case classification codes.

1. **Adult** ©. Domestic relationship PPOs: [PP]. Non-domestic relationship stalking PPOs: [PF]. MCR 8.117(B)(6)(g) and (h).
2. **Minor** ©. All PPO filings [issuance *and* enforcement] against minors under MCL 712A.2(h): [PJ]. MCR 8.117(E)(5).

J. Assistance for petitioner

1. No attorney required to obtain PPO. MCL 600.2950(b)(1).
2. Upon request, court may provide assistance, but not legal assistance to individuals in completing forms, and may instruct about proper service requirements. MCL 600.2950(b)(4).

3. The family division of the circuit court may provide a domestic violence advocate to assist victims of domestic violence obtain a PPO. The court may use the services of a public or private agency that has a record of service to domestic violence victims. MCL 600.2950c(1). The domestic violence advocate may provide, but is not limited to providing, all of the following assistance:
 - inform victim of the availability of, and assist victim with obtaining, serving, modifying, or rescinding a PPO;
 - provide interpreter for a case involving domestic violence, including request for PPO;
 - provide information about shelters, safety plans, counseling, and other social services;
 - provide generic written materials about Michigan law. MCL 600.2950c(1).
4. A domestic violence victim advocate shall not represent or advocate for a domestic violence victim in court. MCL 600.2950c(2).
5. A domestic violence advocate who provides such assistance does not violate MCL 600.916 (engaging in the unauthorized practice of law). MCL 600.2950c(3).

K. PPO petition requirements

1. Petition must
 - be in writing;
 - state with particularity the facts on which it is based;
 - state the relief sought and the conduct to be restrained;
 - state whether an ex parte order is being sought;
 - *state whether a PPO action involving the same parties has been commenced in another jurisdiction; and*
 - be signed by the party or attorney as provided in MCR 2.114. MCR 3.703(B)
2. *In addition to these requirements, a petition against a minor ® must list*
 - *the minor's name, address and either age or date of birth; and*
 - *if known or can be easily ascertained, the names and addresses of the minor's parent or parents, guardian, or custodian. MCR 3.703(C).*
3. Petitioner may omit his or her residence address from the documents filed with the court, but must provide the court with a mailing address. MCR 3.703(B)(5). MCL 600.2950(3); MCL 600.2950a(3).

4. If petitioner requests an *ex parte* order, the petitioner must set forth specific facts showing that immediate and irreparable injury, loss, or damage will result to the petitioner from the delay required to effect notice or from the risk that notice itself will precipitate adverse action before an order can be issued. MCR 3.703(G).
5. The petition must specify whether there are any other pending actions in this or any other court, or orders or judgments already entered by this or any other court affecting the parties, including the name of the court and the case number, if known. MCR 3.703(D).
6. ® in law enforcement or ® with concealed weapons permit required to carry weapon as employment condition: (In practice, not applicable to minor ® because minor ® would not be so employed.) If ® is
 - a person who is issued a license to carry a concealed weapon AND is required to carry a weapon as a condition of his or her employment;
 - a police officer certified by the Michigan Law Enforcement Officers Training Council Act of 1965 (MCL 28.601 to 28.616);
 - a sheriff;
 - a deputy sheriff; or
 - a member of the Michigan State Police;
 - a local corrections officer;
 - Department of Corrections employee, or;
 - federal law enforcement officer who carries a firearm during the normal course of his or her employment;
 the petitioner *shall notify* the court of ®'s occupation *prior to the issuance* of the PPO. This subsection does not apply to a petitioner who does not know ®'s occupation. MCL 600.2950(2); MCL 600.2950a(2).

L. Penalty for false statement to court to obtain PPO.

A person who knowingly and intentionally makes a false statement to the court in support of a petition for a PPO is subject to the contempt powers of the court. MCL 600.2950(24); MCL 600.2950a(21).

M. Assignment to Judges/Referees

1. If the petition is filed in the same court as a pending action or where an order or judgment already has been entered by that court affecting the parties, it shall be assigned to the same judge. MCR 3.703(D)(1)(a).
2. MCR 5.913(A)(1) provides that a court may assign a referee to conduct a preliminary hearing or preside at a hearing **OTHER THAN...A PROCEEDING ON THE ISSUANCE, MODIFICATION, OR TERMINATION OF A MINOR PPO.** (Compare MCR 5.913 (A)(5) providing that a referee licensed to practice law in Michigan may preside at a hearing for the *enforcement* of a minor PPO, including preliminary hearings, violation hearings, dispositional phase, and supplemental dispositional hearings.)

N. Contact with courts concerning other pending actions or existing orders or judgments.

1. If there are pending actions in another court or orders or judgments already entered by another court affecting the parties, the court *should contact* the court where the pending actions were filed or orders or judgment were entered, *if practicable, to determine any relevant information.* MCR 3.703(D)(1)(b).
2. If the prior action resulted in an order providing for *continuing jurisdiction of a minor* (e.g. custody, delinquency, neglect/abuse, other PPO), and the new action requests relief with regard to the minor, *the court must comply with MCR 3.205.* MCR 3.703(D)(2).
 - a) MCR 3.205 contains notice requirements in cases where there are prior and subsequent orders and judgments affecting minors in multiple courts.
 - b) If an order or judgment has provided for continuing jurisdiction of a minor and proceedings are commenced in another Michigan court having separate jurisdictional grounds for an action affecting that minor, *a waiver or transfer of jurisdiction is not required for the full and valid exercise of jurisdiction by the subsequent court.* MCR 3.205(A).
 - c) MCR 3.205(B)(2) provides if a minor is known to be subject to the prior continuing jurisdiction of a Michigan court, *the plaintiff or other initiating party** must mail written notice of proceedings in the subsequent court to the attention of
 - the clerk or register of the prior court, AND
 - the “appropriate official” of the prior court. (“Appropriate official” means the friend of the court, juvenile officer, or prosecuting attorney, depending on the nature of the prior or subsequent court action and the court involved. MCR 3.205 (B)(1)).

*Note that MCR 3.703(D)(2) requires that the *court* comply with MCR 3.205. Thus it appears that the court issuing the minor PPO, rather than “the plaintiff or other initiating party,” must send notice to the prior court and appropriate official of the prior court.

- d) The notice must be mailed at least 21 days before the date set for hearing. If the fact of continuing jurisdiction is not then known, notice must be given immediately when it becomes known. MCR 3.205(3).
- e) The notice requirement of MCR 3.205(3) is not jurisdictional and does not preclude the subsequent court from entering interim orders before the expiration of the 21 day period, if required by the best interests of the minor. MCR 3.205(B)(4).
- f) Each provision of a prior order remains in effect until the provision is superseded, changed, or terminated by a subsequent order. MCR 3.205(C).

- g) A subsequent court must give due consideration to prior continuing orders of other courts, and may not enter orders contrary to or inconsistent with such orders, *except as provided by law*. MCR 3.205 (C)(2). (Note that MCR 3.706(C)(3) specifically provides that a PPO takes precedence over any existing custody or parenting time order until the PPO has expired, or the court having jurisdiction over the custody or parenting time order modifies the custody or parenting time order *to accommodate the conditions of the PPO*.)
- h) **Duties of official of prior court.** Upon receipt of the notice required by MCR 3.205(B), the “appropriate official” (see above, c) :“friend of the court, juvenile officer, or prosecuting attorney, depending on the nature of the prior or subsequent court action and the court involved”) of the prior court
- *must* provide the subsequent court with copies of all relevant orders then in effect and copies of all relevant records and reports, and
 - *may* appear in person at proceedings in the subsequent court, as the welfare of the minor and interests of justice require. MCR 3.205 (D)(1)(a) and (b).
- i) **Duties of official of subsequent court.** *Upon request* of the prior court, the “appropriate official” of the subsequent court
- *must* notify the appropriate official of the prior court of all proceedings in the subsequent court, and
 - *must* send copies of all orders entered in the subsequent court to the attention of the clerk or register *and* the appropriate official of the prior court. MCR 3.205 (D)(2)(a) and (b).
- j) If a circuit court awards custody of a minor pursuant to MCL 722.26b, the clerk of the circuit court must send a copy of the judgment or order of disposition to the probate court that has prior or continuing jurisdiction of the minor as a result of the guardianship proceedings, regardless whether there is a request. MCR 3.205(D)(3).
- k) Upon receipt of an order from the subsequent court, the “appropriate official” of the prior court must take steps necessary to implement the order in the prior court. MCR 3.205(D)(4).

* Note also that mandatory notification duties of court clerk upon issuance of PPO include notification of Friend of the Court if respondent is identified in pleadings as a person who may have access to information concerning petitioner and a child of petitioner or respondent, and that information is contained in Friend of the Court records, MCL 600.2950(15)(f); MCL 600.2950a(12)(f).

O. Existing custody and parenting time orders.

1. Contact with the court having prior jurisdiction.

The court issuing the PPO

- *must* contact the court having jurisdiction over the parenting time or custody matter as provided in MCR 3.205, (see above, N.2.),
- *and, where practicable, the judge should consult* with that court as contemplated in MCR 3.205 (C)(2) regarding the impact upon custody and parenting time rights before issuing the PPO. (see above, N.2. g). MCR 3.706(C)(1).

2. PPO conditions modifying custody and parenting time provisions.

If @'s custody or parenting time rights will be adversely affected by the PPO, the issuing court shall determine

- whether conditions should be specified in the PPO which would accommodate @'s rights,
- or whether the situation is such that the safety of the petitioner and minor children would be compromised by such conditions. MCR 3.706(C)(2).

3. Effect of PPO re: exiting custody or parenting time order.

A PPO takes precedence over any existing custody or parenting time order until

- the PPO has expired, or
 - the court having jurisdiction over the custody or parenting time order modifies the custody or parenting time order *to accommodate the conditions of the PPO*. MCR 3.307(C)(3).
- a) If @ or petitioner wants the existing custody or parenting time order modified, the @ or petitioner must file a motion with the court having jurisdiction of the custody or parenting time order and request a hearing. The hearing must be held within 21 days after the motion is filed. MCR 3.706 (C)(3)(a).
 - b) Proceedings to modify custody and parenting time orders are subject to MCR 3.200, "Domestic Relations Actions." MCR 3.706(C)(3)(b).
 - c) For best practices recommendations concerning PPOs when there are existing custody or parenting time orders, see M. Lovik, *Domestic Violence Benchbook*, Michigan Judicial Institute, Section 12-8.

P. Mutual PPOs.

A PPO shall not be made mutual. Correlative separate PPOs are prohibited unless both parties have properly petitioned the court. MCL 600.2950(8). MCL 600.2950a(5). See also MCR 3.706(B).

Q. Standard for issuance: Domestic Relationship PPO

1. The court *shall issue* a domestic relationship PPO if the court determines that there is *reasonable cause* to believe ® *may commit* one or more of the acts listed in MCL 600.2950(1), (e.g. assaults, threats, interference with employment or education, conduct interfering with personal liberty, conduct causing reasonable apprehension of violence, stalking.) MCL 600.2950(4).
2. In determining whether *reasonable cause* exists, the court *shall consider* all of the following:
 - a) testimony, documents, other evidence offered in support of request for PPO;
 - b) whether ® previously has committed or threatened to commit one or more of the acts listed in MCL 600.2950(1). MCL 600.2950(4).
3. "Reasonable cause:" facts and circumstances that would lead a fair-minded person of average intelligence to believe ...
4. The court *shall not refuse* to issue a domestic relationship PPO solely due to the absence of any of the following:
 - a) police report;
 - b) medical report;
 - c) report or finding of administrative agency;
 - d) physical signs of abuse or violence. MCL 600.2950(6).
5. The court shall *not issue* a domestic relationship PPO *prohibiting entry onto premises* if *all* of the following apply:
 - a) ® is not the spouse of petitioner, and
 - b) ® or minor ®'s parent, guardian, or custodian has a property interest in the premises, and
 - c) petitioner or minor petitioner's parent, guardian, or custodian has no property interest in the premises. MCL 600.2950(5).
6. **Ex parte domestic relationship PPOs.**

An ex parte domestic relationship PPO *shall* be issued and effective without written or oral notice to ® or ®'s attorney *if* it clearly appears from specific facts shown by verified complaint, written motion, or affidavit

- that immediate and irreparable injury, loss or damage will result from the delay required to effectuate notice or

- that notice itself will precipitate adverse action before a PPO can be issued. MCL 600.2950(12).

R. Standard for issuance: Non-Domestic Relationship Stalking PPO

1. MCL 600.2950a does not specify a standard of proof. Standard of proof in civil cases, unless otherwise specified in statute, is *preponderance of evidence*.
2. Ex parte non-domestic relationship PPOs.

An ex parte non-domestic relationship PPO shall *not* be issued and effective without written or oral notice to @ or @’s attorney *unless* it clearly appears from specific facts shown by verified complaint, written motion, or affidavit

- a) that immediate and irreparable injury, loss or damage will result from the delay required to effectuate notice or
- b) that notice itself will precipitate adverse action before a PPO can be issued. MCL 600.2950a(9).

S. Procedure for issuance: all ex parte PPOs

1. The court must rule on a request for an ex parte PPO within 24 hours of the filing of the petition. MCR 3.705(A)(1).
2. If it clearly appears from specific facts shown by verified complaint, written petition, or affidavit that the petitioner is entitled to the relief sought, an ex parte order *shall be granted if* immediate and irreparable injury, loss, or damage will result from the delay required to effectuate notice ~~or that notice itself will precipitate adverse action before a PPO can be issued.~~ MCR 3.705(A)(2). (Note court rule language differs from language in non-domestic stalking PPO statute, MCL 600.2950a(9), re: standard for issuance for ex parte non-domestic stalking PPO.)
3. A permanent record or memorandum must be made of any non-written evidence, argument, or other representations made in support of issuance of an ex parte PPO. MCR 3.705(A)(2).
4. An ex parte PPO is valid for not less than 182 days. MCL 600.2950(13). MCL 600.2950a(10). MCR 3.705(A)(3).
5. An ex parte PPO must state its expiration date. MCR 3.705(A)(3).
6. If the court refuses to grant an ex parte PPO it shall
 - state the reasons *in writing* AND
 - advise the petitioner of the right to request a hearing as provided in MCR 3.705(B). MCR 3.705(A)(5).

(See also MCL 600.2950 (7), MCL 600.2950a(4): If the court refuses to grant a PPO, the court shall state "immediately" in writing the "specific" reasons it refuses to issue the PPO.)

- a) If petitioner does not request a hearing within 21 days of the entry of the order, the order denying the PPO is *final*. MCR 3.705(A)(5). (For minor PPO, any *final* order is appealable to the Court of Appeals *by right*. See MCR 5.993(A)(4). Appeals involving minor PPOs must comply with MCR 3.700 and MCR 5.993. Compare adult Ⓢ, no appeal of right from order denying PPO unless hearing held under MCR 3.705(B)(6). See MCR 3.709(B)(1)(a)).
 - b) The court is not required to advise petitioner of the right to a hearing if the *court determines, after interviewing the petitioner, that the petitioner's claims are sufficiently without merit that the action should be dismissed without a hearing.* MCR 3.705(A)(5).
7. If an ex parte PPO is entered, petitioner must serve the *petition and PPO* as provided in MCR 3.706(D). However, failure to make service does not affect the PPO's validity or effectiveness. MCR 3.705(A)(4). See service requirements, below, "Service of PPO," II.Y.
8. Ⓢ has opportunity to challenge and attempt to modify or terminate ex parte PPO. See II.AA, Modification or Termination of PPO.
- a) The State Court Administrative Office shall develop and make available forms for use by Ⓢ restrained or enjoined without notice to move to modify or terminate a PPO and request a hearing. MCL 600.2950b(3).
 - b) **Motion fees.** As of 7-1-00, in conjunction with an action brought under MCL 600.2950 or MCL 600.2950a, a motion fee shall not be collected for a motion to dismiss a petition, a motion to modify, or terminate a PPO, or a motion to show cause for a violation of a PPO. MCL 600.2529(1)(e). (Given language of MCL 712A.2(h) (juvenile division of family court has jurisdiction over a "proceeding under" MCL 600.2950 and MCL 600.2950a in which a minor under 18 years in the Ⓢ), it appears that this provision also applies to minor PPOs.)

T. All PPOs: issuance hearing procedures

1. The court shall schedule a hearing on the petition as soon as possible in the following instances, unless it determines, after interviewing the petitioner, that the claims are sufficiently without merit that the action should be dismissed without a hearing:

- a) petitioner does not request an ex parte PPO; or
 - b) the court refuses to issue an ex parte PPO and petitioner subsequently requests a hearing. MCR 3.705(B)(1).
2. Notice. Petitioner shall serve notice of the hearing, *along with the petition*, on ® as provided in MCR 2.105(A). If ® is a minor, and the whereabouts of ®'s parent or parents, guardian, or custodian are known, petitioner shall *also serve* in the same manner notice of the hearing and the petition on ®'s *parent or parents, guardian, or custodian*. MCR 3.705(B)(2).
- a) *One day* before the hearing is deemed sufficient notice. MCR 3.705(B)(2).
 - b) MCR 2.105(A) provides that process may be served on a resident or nonresident individual by
 - delivering a summons and a copy of the complaint to the ® personally; MCR 2.105(A)(1); or
 - sending a summons and a copy of the complaint by registered or certified mail, return receipt requested, and delivery restricted to the addressee. Service is made when the ® acknowledges receipt of the mail. A copy of the return receipt signed by the ® must be attached to proof showing service under MCR 2.105(A)(2). MCR 2.105(A)(2).
 - c) MCR 2.103(A) provides that process in civil actions may be served by any legally competent adult who is *not a party* or an officer of a corporate party.
3. The hearing shall be held on the record. MCR 3.705(B)(3).
4. Petitioner must attend the hearing. If petitioner fails to attend the hearing, the court may
 - adjourn and reschedule the hearing; or
 - dismiss the petition. MCR 3.705(B)(4).
- (Note: Before dismissal for failure of petitioner to attend hearing, court should consider likelihood of intimidation, interference by ®.)
5. If ® fails to appear at a hearing on the petition, *and* the court determines that petitioner made diligent attempts to serve ®, whether ® was served or not, the PPO may be entered without further notice to ® if the court determines that petitioner is entitled to relief. MCR 3.705(B)(5).
6. At the conclusion of the hearing, the court shall:
 - state *on the record* the reasons for granting or denying a PPO; and
 - enter an appropriate order; and
 - state *in writing* the reasons for *denying* a PPO. MCR 3.75(B)(6).

(See also MCL 600.2050(7), MCL 600.2950a(4): If the court refuses to grant a PPO, the court shall state "*immediately*" in writing the "*specific*" reasons it refuses to issue the PPO. If a hearing is held, the court also "*immediately*" shall state on the record the "*specific*" reasons it refuses to issue the PPO.)

U. Dismissal of PPO prior to issuance

Except as specified in MCR 3.705(A) (ex parte PPO issuance procedures) and MCR 3.705(B) (PPO hearing procedures), an action for a PPO may be dismissed *only upon motion by the petitioner* prior to issuance of the PPO. There is no fee for such a motion. MCR 3.704. 9-1-01

1. MCR 3.705(A)(5) provides for dismissal of ex parte PPO action by the court if the court determines, after interviewing petitioner, that petitioner's claims are sufficiently without merit that the action should be dismissed without a hearing.
2. MCR 3.705(B)(1) provides for dismissal of PPO action by court if, after petitioner's request for hearing, the court determines, after interviewing the petitioner, that petitioner's claims are sufficiently without merit that the action should be dismissed without a hearing.
3. MCR 3.705(B)(4) provides for dismissal of PPO petition (or hearing adjournment and rescheduling) by court if, after petitioner's request for hearing, petitioner fails to attend hearing.
4. i.e. Court clerks should not process PPO action dismissals, prior to issuance of PPO, without explicit court direction on particular PPO petition pursuant to MCR 3.704.

V. Contents of PPO

MCR 3.706(A)(1-7) provides that an order granting a PPO must include the following:

1. A **statement** that the PPO has been entered, listing the type or types of conduct enjoined.
2. A **statement** that the PPO is effective when signed by the judge and is immediately enforceable.
3. A **statement** that violation of the PPO will subject ® to either of the following:
 - a) If ® is 17 years of age or more, immediate arrest and, if ® is found guilty of criminal contempt, imprisonment for not more than 93 days and may be fined not more than \$500; or
 - b) If ® is less than 17 years of age, immediate apprehension and, if ® is found in contempt, the dispositional alternatives listed in MCL 712A.18.

(Note statutory language differs from court rule:

"A PPO shall include all of the following and to the extent practicable the following shall be contained in a single form:"

- a) *If ⑥ is 17 years of age or more, immediate arrest and "civil and criminal contempt powers of the court" and if ⑥ is found guilty of criminal contempt, ⑥ "shall be imprisoned" for not more than 93 days and "may be fined" not more than \$500.*
- b) *If ⑥ is less than 17 years of age, immediate apprehension "or being taken into custody," and subject to the dispositional alternatives listed in MCL 712A.18..)(MCL 600.2950(11)(a); MCL 600.2950a(8)(a)).*

4. An expiration date clearly stated on the face of the PPO.
5. A statement that the PPO is enforceable anywhere in Michigan by any law enforcement agency.
6. Identification of the law enforcement agency designated by the court to enter the PPO into LEIN.
7. For ex parte PPOs, a statement that, within 14 days after being served with or receiving actual notice of the order, respondent may file a motion to modify or terminate the PPO and a request for a hearing, and that motion forms and filing instructions are available from the clerk of the court. MCR 3.706(A)(1-7). See also MCL 600.2950(11)(g), MCL 600.2950a(8)(g). 9-1-01

W. Effectiveness of PPO

A PPO is effective and immediately enforceable when signed by a judge (i.e. before LEIN entry and before service). MCL 600.2950(9); MCL 600.2950a(6).

- Service requirements do not prohibit immediate effectiveness of PPO or immediate enforcement under MCL 600.2950(21) and (22) or MCL 600.2950a(18) and (19). MCL 600.2950(18); MCL 600.2950a(15).

X. Responsibilities of court clerk and designated law enforcement agency upon issuance of PPO.

1. **Court clerk** immediately upon issuance of PPO, and without requiring proof of service, shall:
 - a) File a true copy of the PPO with the law enforcement agency designated by the court in the PPO.
 - b) Provide petitioner with not less than 2 true copies of the PPO. MCL 600.2950(15); MCL 600.2950a(12).

- c) Inform petitioner that petitioner may take a true copy of the PPO to the law enforcement agency designated by the court in the PPO to be entered into LEIN immediately. MCL 600.2950(16); MCL 600.2950a(13).
 - d) If ® is identified in the pleadings as a law enforcement officer, notify the officer's employing law enforcement agency, if known, about the existence of the PPO. MCL 600.2950(15)(c); MCL 600.2950a(12)(c).
 - e) If the PPO prohibits ® from purchasing or possessing a firearm, notify the concealed weapon licensing board in ®'s county of residence about the existence and contents of the PPO. MCL 600.2950(15)(d); MCL 600.2950a(12)(d).
 - f) If ® is identified in the pleadings as a Department of Corrections employee, notify the state Department of Corrections about the existence of the PPO. MCL 600.2950(15)(e); MCL 600.2950a(12)(e).
 - g) If ® is identified in the pleadings as a person who may have access to information concerning petitioner or a child of petitioner or ®, and that information is contained in friend of the court records, notify the friend of the court for the county in which the information is located about the existence of the PPO. MCL 600.2950(15)(f); MCL 600.2950a(12)(f).
2. Law enforcement agency designated in PPO as responsible for LEIN entry that receives a true copy of the PPO from the court clerk or from petitioner immediately and without requiring proof of service shall enter the PPO into LEIN as provided by the LEIN Policy Council Act of 1974, MCL 28.211 to 28.216. MCL 600.2950(17); MCL 600.2950a(14).

Y. Service of PPO

1. Statutory provisions regarding PPO service provide for PPO service *or oral notification by law enforcement officer or clerk of court.*
- a) A PPO shall be served personally or by registered or certified mail, return receipt requested, delivery restricted to addressee at ®'s last known address or addresses, or by any other manner provided in the Michigan court rules. MCL 600.2950(18); MCL 600.2950a(15).
 - b) If ® has not been served, a law enforcement officer or clerk of the court who knows that a PPO exists *may*, at any time,
 - i) serve ® with a *true copy* of the PPO or
 - ii) advise ® about the existence of the PPO,
 - the specific conduct enjoined,
 - the penalties for violating the PPO, and
 - where ® may obtain a copy of the PPO. MCL 600.2950(18); MCL 600.2950a(15).

- c) *If ® is less than 18 years of age, ®'s parent, guardian, or custodian also shall be served personally or by registered or certified mail, return receipt requested, delivery restricted to last known address or addresses of ®'s parent, guardian, or custodian. MCL 600.2950(18); MCL 600.2950a(15).*
- d) A proof of service or proof of oral notice shall be filed with the clerk of the court issuing the PPO. MCL 600.2950(18); MCL 600.2950a(15).
- e) Service requirements do not prohibit immediate effectiveness of PPO or its immediate enforcement under MCL 600.2950(21) and (22) or MCL 600.2950a(18) and (19). MCL 600.2950(18); MCL 600.2950a(15).

2. MCR 3.706 governs service of PPOs.

- a) Petitioner shall serve the PPO on ® as provided in MCR 2.105(A). *If ® is a minor, and the whereabouts of ®'s parent or parents, guardian, or custodian are known, the petitioner also in the same manner shall serve the PPO on ®'s parent or parents, guardian, or custodian. MCR 3.706 (D).*
 - i) MCR 2.105(A) provides that process may be served on a resident or nonresident individual by
 - delivering a summons and a copy of the complaint to the ® personally; MCR 2.105(A)(1); or
 - sending a summons and a copy of the complaint by registered or certified mail, return receipt requested, and delivery restricted to the addressee. Service is made when the ® acknowledges receipt of the mail. A copy of the return receipt signed by the ® must be attached to proof showing service under MCR 2.105(A)(2). MCR 2.105(A)(2).
 - b) On an appropriate showing, the court may allow service in another manner as provided in MCR 2.105(I). MCR 3.706(D).
 - i) MCR 2.105(I) provides that on a showing that service of process cannot reasonably be made as provided by this rule, the court may by order permit service of process to be made in any other manner reasonably calculated to give the ® actual notice of the proceedings and an opportunity to be heard.
 - ii) A request for an order under MCR 2.105(I) must be made in a verified motion dated not more than 14 days before it is filed. The motion must set forth sufficient facts to show that process cannot be served under this rule and must state ®'s address or last known address, or that no address of the ® is known. If the name or present address of the ® is unknown, the moving party must set forth facts showing diligent inquiry to ascertain it. A hearing on the motion is not required unless the court so directs. MCR 2.105(I)(2).

- iii) Service of process may not be made under MCR 2.105(I) before entry of the court's order permitting it. MCR 2.105(I)(3).
 - c) Failure to serve the PPO does not affect its validity or effectiveness. MCR 3.706(D)
3. MCR 2.103(A) provides that process in civil actions may be served by any legally competent adult who is *not a party* or an officer of a corporate party.
4. MCR 2.104 governs proof of service.
- a) Proof of service may be made by:
 - i) written *acknowledgment of the receipt* of a summons and a copy of the complaint, dated and signed *by the person to whom service is directed* or by a person authorized under these rules to receive the service of process;
 - ii) a *certificate* stating the facts of service, including the manner, time, date, and place of service, *if service is made within the State of Michigan by*
 - a sheriff,
 - a deputy sheriff or bailiff, if that officer holds office in the county in which the court issuing process is held,
 - an appointed court officer,
 - an attorney for a party; or
 - iii) an *affidavit* stating the facts of service, including the manner, time, date, and place of service, and indicating the process server's official capacity, if any. MCR 2.104(A)(1-3).
 - b) The place of service must be described by giving the address where the service was made or, if the service was not made at a particular address, by another description of the location. MCR 2.104(A)
 - c) If the manner of service used requires sending a copy of the summons and complaint by mail, the party requesting issuance of the summons is responsible for arranging the mailing and filing the proof of service. MCR 2.104(C) .
 - d) Failure to file the proof of service does not effect the validity of the service. MCR 2.104(B).

Z. Responsibilities of court clerk and designated law enforcement agency upon service, termination, modification or extension of PPO.

1. **Court clerk** immediately shall notify law enforcement agency responsible for LEIN entry when

- a) court clerk receives proof that ® has been served, or
- b) PPO is terminated, modified, or extended by court order.
MCL 600.2950(19); MCL 600.2950a(16). See also MCR 3.707(A)(3), MCR 3.707(B)(2).

(Question: For minor ®, does court clerk notify law enforcement agency when court clerk receives proof of service for *either* ® or ®'s parent(s), guardian, or custodian, or only when proof of service is received for *both* ® and ®'s parent(s), guardian, or custodian? Best practice recommendation: Notify upon receipt of proof of service for respondent only.)

2. **Law enforcement agency** designated in PPO as responsible for LEIN entry immediately shall enter or cause to be entered into LEIN, as provided by the LEIN Policy Council Act of 1974, MCL 28.211 to 28.216, information received from court clerk re:

- a) court clerk has received proof that ® has been served, or
- b) PPO is terminated, modified or extended by court order. MCL 600.2950(20); MCL 600.2950a(17).

(Question: For minor ®, does law enforcement agency change LEIN screen entry to "served" upon receipt of proof of service for *either* ® or ®'s parent(s), guardian, or custodian, or only when proof of service is received for *both* ® and ®'s parent(s), guardian, or custodian? Best practice recommendation: Change LEIN screen to "served" upon receipt of proof of service for respondent only.)

AA. Modification or termination of PPO

1. **Motion filing**

- a) Petitioner may file a *motion* to modify or terminate the PPO and *request a hearing at any time* after the PPO is issued. MCR 3.707(A)(1)(a). 9-1-01
- b) Respondent may file a *motion* to modify or terminate the PPO and *request a hearing within 14 days after being served with, or receiving actual notice of, the PPO unless good cause is shown for filing the motion after 14 days have elapsed.* MCR 3.707(A)(1)(b). 9-1-01
- c) Note that court rule contemplates *motion and hearing*, rather than stipulation, to modify or terminate PPO.

2. **Notice and service of motion**

The moving party shall serve the motion to modify or terminate the PPO and the notice of hearing *at least 7 days* before the hearing date as provided in MCR 2.105(A)(2) at the mailing address or addresses provided to the court. On appropriate showing, the court may allow service in another manner as provided in MCR 2.105(I). MCR 3.707(A)(1)(c). 9-1-01

- a) MCR 2.105(A)(2) provides that process may be served on a resident or non-resident individual by sending a summons and a copy of the complaint by registered or certified mail, return receipt requested, and delivery restricted to the addressee. Service is made when the [addressee] acknowledges receipt of the mail. A copy of the return receipt signed by the [addressee] must be attached to proof showing service. MCR 2.103(A) provides that process in civil actions may be served by any legally competent adult who is *not a party* or an officer of a corporate party.
- b) Note that MCR 3.707(A)(1)(c) does not provide for *personal service* (MCR 2.105(A)(1)) of motion to modify or terminate PPO, limiting service to mail under MCR 2.105(A)(2).
- c) See II.Y.2 b., above, re: alternative service by court order under MCR 2.105(I).
- d) MCR 3.707(A)(1)(c) does not set forth requirement regarding service of the motion to modify or terminate a PPO and notice of hearing where respondent is a minor. However, MCR 2.105(B)(2) provides that service of process may be made on a minor by serving a summons and a copy of the complaint on a person having care and control of the minor and with whom the minor resides.
- e) If the moving party is a respondent who is
 - issued a license to carry a weapon as a condition of employment,
 - a police officer certified by the MLEOTC Act of 1965, MCL 28.601 to 28.616,
 - a sheriff,
 - a deputy sheriff,
 - a member of the Michigan State Police,
 - a local corrections officer,
 - a Department of Corrections employee, or
 - a federal law enforcement officer who carries a firearm during the normal course of employment,

providing notice *one day* before the hearing is deemed sufficient notice to petitioner. MCR 3.707(A)(1)(c).

3. **Hearing on motion to modify or terminate**

a) The court must schedule and hold a hearing on a motion to modify or terminate a PPO within 14 days of the filing of the motion. MCR 3.707(A)(2).

b) If the respondent is a person described in MCL 600.2950(2) or MCL 600.2950a(2), (i.e. a designated individual requiring weapon for employment, I.A.A.2.3, above), the court shall schedule the hearing on the motion within 5 days after the filing of the motion. MCR 3.707(A)(2).
9-1-01.

c) Compare statutory provisions. If respondent is a person described in MCL 600.2950(2) or MCL 600.2950a(2), (i.e. a designated individual requiring weapon for employment, I.A.A.2.3, above), *and the PPO prohibits respondent from purchasing or possessing a firearm*, the court shall schedule the hearing on the motion to modify or rescind an ex parte PPO within 5 days after the filing of the motion to modify or rescind. MCL 600.2950(14); MCL 600.2950a(11).

4. **Notice of modification or termination**

If a PPO is modified or terminated, the clerk immediately must notify the law enforcement agency specified in the PPO of the change. MCR 3.707(A)(3).

5. **Service of modified or terminated order**

A modified or terminated order must be served as provided in MCR 2.107. MCR 3.707(A)(3).*

a) MCR 2.107 provides that service on a party must be made by delivery or by mailing to the party at the address stated in the party's pleadings. MCR 2.107(C).

b) Delivery to a party within MCR 2.107 means handing it to the party personally; or leaving it at the party's usual residence with some person of suitable age and discretion residing there. MCR 2.107(C)(2).

c) Mailing under MCR 2.107 means enclosing it in a sealed envelope with first class postage fully prepaid, addressed to the person to be served, and depositing the envelope and its contents in the U.S. mail. Service by mail is complete at the time of mailing.

d) MCR 2.103(A) provides that process in civil actions may be served by any legally competent adult who is not a party, or an officer of a corporate party.

e) Neither MCR 3.707(A)(3) nor MCR 2.107 addresses service upon a minor.

f) MCR 2.107(B) governs service upon a party for whom an attorney has appeared in the action and provides that service must be made on the attorney except in particular circumstances. See MCR 2.107(B).

*Note: Best practice recommendation for service of modified or terminated PPO is to follow MCR 3.706(D) (court rule regarding service of PPO), rather than MCR 3.707(A)(3) (court rule regarding service of modified or terminated order), as compliance with MCR 3.706(D) will better ensure appropriate notice of modified or terminated PPO to respondent and minor respondent's parent(s), guardian or custodian, as well as to petitioner.

6. **Minors and legally incapacitated individuals**

Petitioners or respondents who are minors or legally incapacitated individuals must proceed through a next friend, as provided in MCR 3.703(F). MCR 3.707(C). 9-1-01

7. **Fees**

There are no motion fees for modifying or terminating a PPO. MCR 3.707(C). 9-1-01

BB. **Extension of PPO**

1. **Motion filing**

- a) Petitioner may file an ex parte motion to extend the effectiveness of the PPO, without hearing, by requesting a new expiration date.
- b) The motion must be filed with the court that issued the PPO no later than 3 days before the PPO is to expire.
- c) The court must act on the motion within 3 days after it is filed.
- d) Failure to timely file a motion to extend the effectiveness of the PPO does not preclude petitioner from filing a new PPO action regarding the same respondent, as provided in MCR 3.703. MCR 3.707(B)(1). 9-1-01

2. **Notice of extension**

- a) If the expiration date on a PPO is extended, an amended PPO must be entered.
- b) The clerk must immediately notify the law enforcement agency specified in the PPO of the change. MCR 3.707(B)(2). 9-1-01

3. **Service of extended PPO**

The amended/extended PPO must be served on respondent as provided in MCR 2.107. (See comments above, II. AA.5., re: MCR 2.107.) MCR 3.707(B)(2). 9-1-01

4. **Minors and legally incapacitated individuals**

Petitioners or respondents who are minors or legally incapacitated individuals must proceed through a next friend, as provided in MCR 3.703(F). MCR 3.707(C). 9-1-01

5. Fees

There are no motion fees for extending a PPO. MCR 3.707(C). 9-1-01

CC. Appeals from entry of PPO

1. Except as provided by MCR 3.709, appeals concerning adult @ must comply with MCR 7.200. Appeals involving minor PPO actions under the juvenile code must additionally comply with MCR 5.993.
2. a) MCR 3.709 provides that either party has an *appeal of right* from
 - i) an order granting or denying a PPO after a hearing under MCR 3.705(B)(6), or
 - ii) the ruling on @'s first motion to rescind or modify the order if an ex parte order was entered. MCR 3.709(B)(1).
- b) MCR 3.709 further provides that appeals of all other orders are by *leave* to appeal.
3. a) Compare MCR 5.993. The following orders are appealable to the Court of Appeals by *right*:
 - i) an order of disposition placing a minor under the supervision of the court or removing the minor from the home;
 - ii) an order terminating parental rights;
 - iii) any order required by law to be appealed to the Court of Appeals; and
 - iv) any *final* order. MCR 5.993(A)(1-4).
- b) MCR 5.993 further provides that all orders not listed in MCR 5.993(A) are appealable to the Court of Appeals by *leave*.

III. ENFORCEMENT OF A PPO AGAINST A MINOR RESPONDENT

A. Applicable Court Rules

- Proceedings to enforce a minor PPO where the @ is under 18 are governed by MCR subchapter 5.900. MCR 3.708(A)(2).
- MCR 5.981 - 5.989 apply only to minor PPO proceedings. MCR 5.901(B)(5).
- Unless indicated otherwise in the court rules, contempt proceedings for the enforcement of a minor PPO where @ is under 18 are governed by MCR 5.982- 5.989.

- Proceedings to enforce a PPO issued against an adult, or to enforce a minor PPO still in effect when the @ is 18 or older, are governed by MCR 3.708. MCR 3.708(A)(2).

B. Statutory enforcement authority

A PPO is enforceable under MCL 600.2950(23), (25); MCL 600.2050a(20), (22); MCL 764.15b; and MCL 600.1701 et seq. MCR 3.708 (A)(1).

1. MCL 600.2950(23) and MCL 600.2950a(20) provide that a respondent 17 years of age or more who refuses or fails to comply with a PPO is subject to criminal contempt powers of court, and if found guilty, *shall* be imprisoned for not more than 93 days and *may* be fined not more than \$500. An individual who is less than 17 years of age and who refuses or fails to comply with a PPO is subject to the dispositional alternatives listed in Section 18 of the juvenile code, MCL 712A.18. The criminal penalty provided for in these sections may be imposed in addition to any penalty that may be imposed for another criminal offense arising from the same conduct.
2. MCL 600.2950(25) and MCL 600.2950a(22) provide that a domestic relationship PPO and a non-domestic relationship stalking PPO also are enforceable under
 - MCL 712A.1 to 712A.31(Juvenile Code), and
 - MCL 764.15b (warrantless arrest authority for law enforcement officer who has reasonable cause to believe @ is violating or has violated a PPO; enforcement procedures following arrest; enforcement procedures following show cause).
3. MCL 600.1701 et seq provides for civil contempt proceedings and sanctions.

C. Mechanisms to initiate enforcement proceedings for PPO violation

1. Adult @:
 - a) warrantless arrest, or
 - b) motion to show cause (and bench warrant or order to appear)
2. Minor @:
 - a) apprehension without court order, or
 - b) supplemental petition (and order to apprehend or summons to appear)

D. Assignment of matters to referees.

Only a referee licensed to practice law in Michigan may preside at a hearing for the enforcement of a minor PPO, including preliminary hearings, violation hearings, dispositional phases, and supplemental disposition hearings. MCR 5.913(A)(5).

E. Initiation of enforcement proceedings by supplemental petition

1. Any request for *court action* against a minor for purposes of enforcing a minor PPO must be in writing by means of a supplemental petition. The supplemental petition must contain a specific description of facts constituting a violation of the PPO. MCR 5.982(C).
2. The supplemental petition may be submitted only by
 - the original petitioner,
 - a law enforcement officer,
 - a prosecuting attorney,
 - a probation officer, or
 - a caseworker. MCR 5.982(C)(2).
3. "Original petitioner" means, in the context of minor PPO enforcement proceedings, the person who originally petitioned for the minor PPO. MCR 5.903(E)(2).

F. Initiation of contempt proceeding by original petitioner

1. **Filing supplemental petition.**
If minor @ allegedly violates a minor PPO, the original petitioner may submit a supplemental petition to have @ found in contempt.
2. **Court response to filing.**
Upon receiving the supplemental petition, the court shall either:
 - a) set a date for a preliminary hearing on the supplemental petition, to be held as soon as practicable, and issue a summons to appear, or
 - b) issue an order authorizing a peace officer or other person designated by the court to apprehend @. MCR 5.983(A)(1-2).
 - c) Question: What factors and what standard of proof required for court to
 - set matter for hearing, or
 - order apprehension of @?
 - i) Best practice recommendation: Consider standard set forth in MCR 5.985(F) concerning detention pending the violation hearing: "probable cause exists to believe that the minor violated the minor PPO AND there is substantial likelihood of retaliation or continued violation by @ OR there is substantial likelihood that ...@ will fail to appear at the next court proceeding." Based upon information available to the court from petitioner and other sources, consider factors listed in MCR 5.985(E), governing detention pending the violation hearing:
 - @'s family ties and relationships;

- ®'s prior juvenile delinquency or minor PPO record, if any;
- ®'s record of appearance or non-appearance at court proceedings;
- the violent nature of the alleged violation;
- ®'s prior history of committing acts that result in bodily injury to others;
- ®'s character and mental condition;
- the court's ability to supervise the minor if placed with a parent or relative;
- the likelihood of retaliation or [continued] violation of the PPO by ®;
- any other factor indicating the ®'s ties to the community, risk of non-appearance, and the danger to the ® or the original petitioner if ® [is not apprehended].

ii) Consider also MCL 712A.15(2)(f) concerning custody pending hearing. Custody pending hearing is limited to...those who have allegedly violated a PPO and for whom it appears there is a substantial likelihood of retaliation or continued violation.

3. Service of supplemental petition and summons.

If the court sets a date for a preliminary hearing upon receiving the supplemental petition, the petitioner, at least 7 days before the preliminary hearing, shall serve as provided in MCR 5.920, the *supplemental petition and summons* on ® and, if the relevant address or addresses are known or easily ascertainable, on ®'s parent or parents, guardian, or custodian. MCR 5.983(B).

- MCR 5.920 provides that in a juvenile court proceeding, the summons must be issued and served on the parent or person with whom the minor resides, other than a court-ordered custodian, directing such person to appear with the minor for trial.
 - If the person summoned is not the parent, the parent shall be notified by service as provided in MCR 5.920(B)(4).
 - The court may direct that the child's appearance in court is unnecessary.* MCR 5.920(B)(2)(a). *Note that application of this provision would not be appropriate in the context of PPO violation proceedings.
- MCR 5.920(B)(4)(a) provides that the summons must be served by delivering the summons *personally, except* in the following circumstances:

- If personal service of the summons is impracticable or cannot be achieved, the court may direct that it be served by registered or certified mail, addressed to the last known address of the party, return receipt requested. MCR 5.920(B)(4)(b)
 - If the court finds service cannot be made because the whereabouts of the person to be summoned has not been determined after reasonable effort, the court may direct any manner of substituted service, including publication. MCR 5.920(B)(4)(c).
 - Note that MCR 5.920(B)(5) provides that if summons is served by registered mail, it must be sent at least 7 days earlier than "subrule (a) requires" for personal service of a summons if the party to be served resides in Michigan, or 14 days earlier than required "by subrule (a) " if the party to whom the summons is addressed resides outside Michigan. "Subrule (a)" discusses time of service for summons for particular types of hearings, without reference to the 7 day service requirement for summons regarding PPO enforcement set forth in MCR 5.983(B). Arguably, the court could determine that the additional "7 days earlier" and "14 days earlier" requirements do not apply to the summons for PPO enforcement under MCR 5.983(B), when the summons is mailed, given the nature of the PPO enforcement proceedings, the need for prompt PPO enforcement action, and the fact that "subrule (a)" does not mention the 7 day service requirement for summons regarding PPO enforcement.
- c) The summons shall direct the person to whom it is addressed to appear with the minor (unless the minor's appearance has been excused under MCR5.920(B)(2)(a)) at a time and place specified by the court and must
- identify the nature of the hearing;
 - explain the right to an attorney and the right to trial by judge or jury;
 - have a copy of the petition attached to the summons.
MCR 5.920(B)(3)(a), (b), (d).

4. **Court's order to apprehend ® in response to filing of supplemental petition.**

- a) The court order to apprehend ® may include authorization to :
- enter specified premises as required for the purpose of bringing the minor before the court, and
 - detain the minor pending preliminary hearing if it appears there is a substantial likelihood of retaliation or continued violation.*
MCR 5.983(C).

* Note that as a practical matter, if the court has determined that @ should be apprehended and has issued the order to apprehend, the order should include authorization to detain. Otherwise the officer is in the odd position of determining, upon apprehension of @ pursuant to court order, whether there is a need to detain @; and the officer would be making an independent evaluation of the "substantial likelihood of retaliation or continued violation" by @, which the court presumably already evaluated in issuing the order to apprehend.

- b) Upon apprehending a minor @ under a court order, the officer shall comply with MCR 5.984(B),(C). MCR 5.983(C)(2). (See below, G., "Apprehension of alleged violator.")
- c) MCL 712A.2c provides that a court may issue an order authorizing a peace officer or other person designated by the court to apprehend a juvenile who is alleged to have violated a PPO issued under MCL 712A.2(h).
 - The order shall set forth specifically the identity of the juvenile to be sought and the house, building, or other location or place where there is probable cause to believe the juvenile is to be found. MCL 712A.2c.
 - A person who interferes with the lawful attempt to execute an order issued under MCL 712A.2c is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$100 or both. MCL 712A.2c.

5. Question: Do the proceedings set forth in MCR 5.983, limited in the caption and subrule (A) to initiation of contempt proceedings by "original petitioner" apply also to initiation of contempt proceedings by petitioners other than the original petitioner (e.g. law enforcement officer, prosecuting attorney, probation officer, or caseworker, listed as potential "petitioners" in MCR 5.982(C)?

Note that service requirements of MCR 3.983(B) discuss responsibilities of "petitioner," not "original petitioner."

Best practice recommendation: Consider procedures in MCR 5.983 applicable to all petitioners (law enforcement officer, prosecuting attorney, probation officer, or caseworker) as well as to original petitioner, and that such other petitioners *could* file supplemental petition to initiate contempt proceedings even if minor @ had not been apprehended.

It appears, however, that the court rules anticipate that the *original petitioner* should file the supplemental petition to initiate contempt proceedings when there is no apprehension of @. This practice would mirror the adult PPO enforcement practice in which the petitioner files the motion to show cause to initiate enforcement proceedings against an adult @ when there has been no arrest of the adult @ for the alleged PPO violation. See MCR 3.708(B)(1),(2).

G. Apprehension of minor ® without a court order.

1. Statutory authority in juvenile code.

Pursuant to the juvenile code, any local police officer, sheriff or deputy sheriff, state police officer, county agent or probation officer of any court of record may, without the order of the court, immediately take into custody any child who is *violating or has violated* a PPO issued pursuant to MCL 712A.2(h) by the court under MCL 600.2950 or MCL 600.2950a. MCL 712A.14(1).

- a) Note: MCL 712A.14(1) does not set forth the “reasonable cause” standard articulated in PPO warrantless arrest statute, MCL 764.15b(1). Note also that MCL 712A.14(1) does not address the authority of the officer to apprehend the minor ® based upon receipt of information from another law enforcement officer. Question: Do the “reasonable cause” standard, and authority to arrest based upon information received from another officer, apply to apprehension of minor ® without a court order for PPO violation under MCL 712A.14(1)?
- b) MCL 764.15b(1) provides that a peace officer, without a warrant, may arrest and take into custody an individual when the officer *has or receives positive information* that another law enforcement officer has *reasonable cause* to believe *all* of the following apply:
 - i) A PPO has been *issued under* MCL 600.2950 or MCL 600.2950a. (Note that the PPO statutes provide that “if the ® is less than 18 years of age, issuance of a PPO *under* MCL 600.2950 or MCL 600.2950a is *subject to* the Juvenile Code, MCL 712A.1 to 712A.32. See MCL 600.2950(28); MCL 600.2950a(26).
 - ii) The ® is violating or has violated the PPO.
 - iii) The PPO states on its face that violation subjects ® to immediate arrest and either of the following
 - if ® is 17 years of age or older, to criminal contempt of court and, if found guilty of criminal contempt, to imprisonment for not more than 93 days and to a fine of not more than \$500;
 - if ® is less than 17 years of age, to the dispositional alternatives listed in MCL 712A.18.

2. When @ has not been served or has not received notice of the PPO, the juvenile code does not address apprehension of the minor @. It appears, however, that the provisions of the PPO statutes governing immediate enforceability of PPOs and enforcement procedures where @ has not been served or has not received notice of the PPO do apply to minor @s. Also, due process considerations suggest application of these enforcement procedures to minor @s who have not been served or have not received notice of the PPO.

a) The PPO statutes provide that "subject to [the subsections setting forth procedures for enforcement when @ has not been served, MCL 600.2950(22) and MCL 600.2950a(19)], a PPO is immediately enforceable anywhere in this state by any law enforcement agency that

- has received a *true copy* of the PPO,
 - is shown a *copy* of it, or
 - has verified its existence on the LEIN as provided by the LEIN Policy Council Act of 1974, MCL 28.211 to 28.216.
- MCL 600.2950(21); MCL 600.2950a(18).

b) The PPO statutes provide that if @ has not been served, the law enforcement agency or officer responding to a call alleging a violation of a PPO

i) shall serve @ with a true copy of the PPO; or

ii) advise @ of the existence of the PPO,
the specific conduct enjoined,
the penalties for violating the PPO, and
where @ may obtain a copy of the PPO.

iii) The law enforcement officer *shall enforce* the PPO; and

iv) immediately enter or cause to be entered into LEIN that @ has *actual notice* of the PPO.

v) If @ has not received notice of the PPO, @ shall be given an opportunity to comply with the PPO before the officer makes a custodial arrest for violation of the PPO.

vi) The failure to immediately comply with the PPO shall be grounds for an immediate custodial arrest.

vii) This subsection does not preclude arrest under MCL 764.15 and 764.15a, or a proceeding under MCL 712A.14*

*Note that MCL 712A.14 is the section of the juvenile code governing apprehension of a minor @ without a court order for PPO violation.

MCL 600.2950(22); MCL 600.2950a(19).

c) The PPO statutory provisions governing service of PPOs require that in the case of a minor @, both the minor @ and the minor @'s parent, guardian, or custodian must be served with the PPO. These provisions also specifically state that *[the service requirements] do not prohibit the immediate effectiveness of a PPO or its immediate enforcement under MCL 600.2950(21) and (22) or MCL 600.2950a(18) and (19)*. See MCL 600.2950(18) ; MCL 2950a(15).

- i) The reference in the provisions concerning service of minor PPOs, MCL 600.2950(18); MCL 2950a(15), To the sections governing procedures for enforcement where @ has not been served, *MCL 600.2950(21) and (22) or MCL 600.2950a(18) and (19)*, indicate that those enforcement sections do apply to minor @s.
- ii) The specific direction in the provisions concerning service of minor PPOs that *the service requirements do not prohibit the immediate effectiveness of a PPO or its immediate enforcement under MCL 600.2950(21) and (22) or MCL 600.2950a(18) and (19)*, indicate that the law enforcement officer responding to a call alleging a violation of a PPO can apprehend the minor @ without a court order after providing the minor @ with service or verbal notification, even if the minor @'s parent(s), guardian, or custodian have not been served with the PPO.

H. Procedures immediately following apprehension of minor @ without a court order

1. If such an officer or county agent takes a child coming within the provisions of the juvenile code into custody, he or she immediately *shall attempt* to notify the parent or parents, guardian or custodian. MCL 712A.14(1).
2. While awaiting the arrival of the parent or parents, guardian or custodian, a child under 17 years taken into custody under the provisions of the juvenile code shall not be held in any detention facility unless the child is completely isolated so as to prevent any verbal, visual, or physical contact with any adult prisoner. MCL 712A.14(1).
3. *Unless the child requires immediate detention, as provided for in the juvenile code, the officer shall accept the written promise of the parent(s), guardian or custodian, to bring the child to the court at a time fixed therein.* MCL 712A.14(1). (See below, I., "Detention of minor @ pending preliminary hearing" for standard for immediate detention of minor @.)
4. The child then *shall be released* to the custody of the of the parent or parents, guardian, or custodian. MCL 712A.14(1).

5. See also MCR 5.984(A): When an officer apprehends a minor for violation of a minor PPO without a court order for apprehension, and does not warn and release the minor, the officer may accept a written promise of the minor's parent or parents, guardian, or custodian to bring the minor to court, and release the minor to the parent(s), guardian, or custodian. (i.e. Officer apprehending, without court order, minor PPO violator has option to warn and release the minor ®.)

I. Detention of minor ® pending preliminary hearing: law enforcement responsibilities

1. a) When, pursuant to a *court order*, an officer apprehends a minor in relation to a minor PPO and the order specifies that the minor is to be brought directly to court; or
- b) when, *without a court order*, an officer apprehends a minor for an alleged violation of a minor PPO and either
 - i) the officer has failed to get a written promise from the minor's parent(s), guardian, or custodian to bring the minor to court, or
 - ii) it appears to the officer that there is a *substantial likelihood of retaliation or violation by the minor*,

the officer immediately shall do all of the following. MCR 5.984(B)

2. If the whereabouts of the minor's parent or parents, guardian or custodian are known, inform the minor's parent or parents, guardian, or custodian of
 - a) the minor's apprehension, and
 - b) the minor's whereabouts, and
 - c) of the need for the parent or parents, guardian, or custodian to be present at the preliminary hearing. MCR 5.984(B)(1).
3. Take the minor
 - a) before the court for a preliminary hearing, or
 - b) to a place designated by the court pending the scheduling of the preliminary hearing. MCR 5.984(B)(2)
4. Prepare a *custody statement* for submission to the court including
 - a) the *grounds for*, and the *time*, and *location* of detention; and
 - b) the *names* of the persons notified and the *times* of notification, or the *reason* for failure to notify. MCR 5.984(B)(3).

5. "Ensure" that a supplemental petition is prepared and filed with the court. MCR 5.984(B)(4).

Question: Who will prepare and file the supplemental petition, prosecutor or law enforcement officer? Local practice? Law enforcement officer must "ensure" that it is done.

6. While awaiting the arrival of the parent(s), guardian, or custodian, appearance before the court, or otherwise, a minor *under 17* years of age must be maintained separately from adult prisoners to prevent any verbal, visual, or physical contact with an adult prisoner. MCR 5.984(C).
7. Question: Where may a minor @ under 17 years of age be held pending the preliminary hearing? Applicability of MCL 712A.14(3)? MCL 712.15(3)? (See below, "Detention pending violation hearing," III.L.4.)
8. A minor *not less than 17* years of age may be held in a cell or secure area of any secure facility designed to incarcerate *adults* (i.e. jail), MCL 712A.15(5).
Question: may a minor not less than 17 years of age be held in a secure facility designed to restrict the movements and activities of *juvenile offenders*? See MCL 712A.15(3). (See below, "Detention pending violation hearing," III.L.4.c.)

J. Detention of minor @ pending preliminary hearing: court responsibilities

1. The court must designate a judge, referee, or other person who may be contacted by the officer taking a minor *under 17* into custody when the court is not open. In each county there must be a designated facility open at all times at which an officer may obtain the name of the person to be contacted for *permission to detain the minor pending preliminary hearing*. MCR 5.984(D).
2. Questions: What procedure, standard, and factors are required with regard to obtaining permission of the judge, referee, or other designated court person to detain the minor pending preliminary hearing?
 - a) Telephone conference? Hearing? Order? See MCL 712A.14(2)?
 - b) Question: Where may a minor @ under 17 years of age be held pending the preliminary hearing? Any difference, at point where "permission to detain" is sought or obtained, in applicability of MCL 712A.14(3)? MCL 712.15(3)?
 - c) Best practice recommendation: Consider standard set forth in MCR 5.985(F) concerning detention pending the violation hearing: "probable cause exists to believe that the minor violated the minor PPO AND there is substantial likelihood of retaliation or continued violation by @ OR there is substantial likelihood that ...@ will fail to appear at the next court proceeding." Consider factors listed in MCR 5.985(E), governing detention pending the violation hearing:

- ®'s family ties and relationships;
- ®'s prior juvenile delinquency or minor PPO record, if any;
- ®'s record of appearance or non-appearance at court proceedings;
- the violent nature of the alleged violation;
- ®'s prior history of committing acts that result in bodily injury to others;
- ®'s character and mental condition;
- the court's ability to supervise the minor if placed with a parent or relative;
- the likelihood of retaliation or [continued] violation of the PPO by ®;
- any other factor indicating the ®'s ties to the community, risk of non-appearance, and the danger to the ® or the original petitioner if ® is released.

K. Domestic violence incidents: additional law enforcement responsibilities

1. Report writing.

MCL 764.15c(2) provides that a law enforcement officer must prepare a domestic violence report after investigating or intervening in a domestic violence incident. "Domestic violence incident" is defined as an incident *reported* to a law enforcement agency involving *allegations* of one or both of the following:

- a violation of a PPO issued under MCL 600.2950;
- a crime committed by an individual against his or her spouse, an individual with whom he or she has a child in common, or an individual who resides or has resided in the same household. MCL 764.15c(4)

a) The report must contain specific information set forth in MCL 764.15c(2), including all of the following:

- address, date, and time of incident being investigated;
- victim's name, address, home and work telephone numbers, race, sex, and date of birth;
- suspect's name, address, home and work telephone numbers, race, sex, date of birth, and information describing the suspect and whether an injunction or restraining order covering the suspect exists;
- name, address, home and work telephone numbers, race, sex, and date of birth of any witness, including a child of the victim or suspect, and the relationship of the witness to the victim or suspect;
- name of the person who called the law enforcement agency;
- relationship of victim and suspect;
- whether alcohol or controlled substance use was involved in the incident, and by who it was used;
- brief narrative describing the incident and the circumstances that led to it;

- whether and how many times the suspect physically assaulted the victim and a description of any weapon or object used;
 - a description of all injuries sustained by the victim and an explanation of how the injuries were sustained;
 - if the victim sought medical attention, information concerning where and how the victim was transported, whether the victim was admitted to a hospital or clinic for treatment, and the name and telephone number of the attending physician;
 - a description of any property damage reported by the victim or evident at the scene;
 - a description of any previous domestic violence incidents between the victim and the suspect;
 - date and time of the report and the name, badge number, and signature of the law enforcement officer completing the report.
- b) The law enforcement agency must retain the completed domestic violence report in its files.
- c) The law enforcement agency also must file a copy of the completed domestic violence report with the prosecuting attorney within 48 hours after the domestic violence incident is reported to the law enforcement agency. MCL 764.15c(3).

2. Notice of victim rights

MCL 764.15c(1) provides that after investigating or intervening in a domestic violence incident (as defined above, K.1,) a law enforcement officer must provide the victim with a copy of a written notice of victim rights that includes all of the following:

- the name and phone number of the responding police agency;
- the name and badge number of the responding officer;
- a statement informing the victim how to obtain a copy of the police report;
- a list of local domestic violence and other resources
- a statement that information about emergency shelter, counseling services, and the legal rights of domestic violence victims is available from the resources;
- information about obtaining a PPO;
- a statement that the victim's legal rights include the right to go to court and file a motion for an order to show cause and a hearing if the abuser is violating or has violated the PPO and has not been arrested.

L. Out-of-county violation

1. Optional notification to issuing jurisdiction at time of apprehension

Subject to MCR 5.985(H), if a minor is apprehended for violation of a minor PPO in a jurisdiction other than the jurisdiction where the minor PPO was issued, the apprehending jurisdiction may notify the issuing jurisdiction that it may request that the ® be returned to the issuing jurisdiction for enforcement proceedings. MCR 5.984(E).

2. **Mandatory notification to issuing jurisdiction following preliminary hearing**
If a minor is apprehended for violation of a minor PPO in a jurisdiction other than the jurisdiction where the minor PPO was issued, and the apprehending jurisdiction conducts the preliminary hearing, and the apprehending jurisdiction has not already notified the issuing jurisdiction that it may request that the @ be returned to the issuing jurisdiction for enforcement proceedings, the apprehending jurisdiction *shall* so notify the issuing jurisdiction immediately following the preliminary hearing. MCR 5.985(H).
3. Question: who notifies, law enforcement or court? Best practice recommendation: court should provide notification. This practice mirrors the statutory notification provisions for minor PPOs, MCL 764.15b(6) and adult PPOs, MCL 764.15b(5).
4. **Jurisdiction**
MCL 764.15b(6) provides that the family division of the circuit court has jurisdiction to conduct contempt proceedings based upon a violation of a PPO issued pursuant to MCL 712A.2(h) by the family division of the circuit court in any county of this state.
5. MCL 764.15b(6) further provides that the family division of circuit court that *conducts the preliminary inquiry shall notify* the family division of circuit court that issued the PPO that the issuing court may request that @ be returned to that county for enforcement proceedings. *If the family division of circuit court that issued the PPO requests that @ be returned to that county for enforcement proceedings, the county of the requesting court shall bear the cost of transporting @ to that county.*
6. A contempt proceeding brought in a court other than the one that issued the minor PPO shall be entitled "In the matter of Contempt of [Respondent], a minor." *The clerk shall provide a copy of the contempt proceeding to the court that issued the minor PPO.* MCR 5.982(D).
7. Question: When there has been no arrest or apprehension of the minor @, is it permissible to file a supplemental petition in a county other than the issuing county?
 - The language and context of MCL 764.15b(6) (which follows provisions discussing initiation of adult PPO enforcement proceedings by show cause) suggest that it may be permissible to file the supplemental petition in the county of the violation rather than in the issuing county. Also MCR 3.708(A)(3) is not limited to proceedings initiated by arrest or apprehension of the minor @.
 - However, the minor PPO court rules concerning notification for out-of-county violations, MCR 5.984(E) and MCR 5.985(H), are limited to cases in which the minor was *apprehended* in a jurisdiction other than the issuing jurisdiction.

8. Questions: Do the specific notification provisions in MCR 5.984(E) and MCR 5.985(H) supercede the general notification provisions in MCR 3.205 when a minor ® has been apprehended for a PPO violation? See "Contact with courts concerning other pending actions or judgments," above, II.N.2.a.

If, when there has been *no arrest or apprehension* of ®, a petitioner is permitted to file a supplemental petition in a county other than the issuing county, do the notification provisions of MCR 3.205 apply? Or do the statutory notification provisions of MCL 764.15b(6) suffice?

M. Preliminary hearing

1. Time

a) Commencement.

i) Minor in custody. If ®

was apprehended or arrested for violation of a minor PPO, or was apprehended or arrested under a court order, *and* ® is taken into court custody or is *jailed*,

the preliminary hearing *must commence no later than 24 hours* after the minor was apprehended or arrested, excluding Sundays and holidays, or *the minor must be released*.

ii) Minor not in custody. Otherwise, the preliminary hearing must commence *as soon as practicable after*

the apprehension or arrest, or

submission of a supplemental petition *by the original petitioner*.

MCR 5.985(A)(1).

(See discussion re: "original petitioner," above, III.F.5.)

b) General adjournment. The court may adjourn the hearing for up to 14 days:

i) to secure the attendance of witnesses or the minor's parent, guardian, or custodian, or

ii) for other good cause shown. MCR 5.985(A)(2).

2. Procedure

a) The court shall determine whether the parent, guardian, or custodian has been notified and is present. The preliminary hearing may be conducted without a parent, guardian, or custodian *provided a guardian ad litem or attorney* appears with the minor. MCR 5.985(B)(1).

(See discussion re: guardian ad litem, above, II.E.)

b) Unless waived by ®, the court shall read the allegations in the supplemental petition, and ensure that ® has received written notice of the alleged violation. MCR 3.985(B)(2).

c) Immediately after the reading of the allegations, the court shall advise ® on the record, in plain language, of the right to:

- i) contest the allegations at a violation hearing;
 - ii) an attorney at every stage in the proceedings and, if the court determines it might sentence @ to jail or place @ in secure detention, the fact that the court will appoint a lawyer at public expense if @ wants one and is financially unable to retain one;
 - iii) a nonjury trial and that a referee may be assigned to hear the case unless demand for a judge is filed pursuant to MCR 5.912;
 - iv) have witnesses against the @ appear at a violation hearing and to question the witnesses;
 - v) have the court order any witnesses for @'s defense to appear at the hearing; and
 - vi) remain silent and not to have @'s silence used against @, and that any statement by @ may be used against @. MCR 5.985(B)(3).
- d) The court must decide whether to authorize the filing of the supplemental petition and *proceed formally*, or dismiss the supplemental petition. MCR 5.985(B)(4).
- Questions: What standard of proof and other considerations enter into the decision to proceed formally or to dismiss? "Probable cause" standard set forth in MCR 5.985(F)(1)(a)? (See below, "Detention pending violation hearing," III.N.1.)
 - Are options other than proceeding formally or dismissing the petition available (alternate services? consent calendar?) It appears that these options are *not* available. Compare MCR 5.935(B) which specifically provides for these options at the preliminary hearing stage of delinquency proceedings.
- e) @ must be allowed an opportunity to deny or otherwise plead to the allegations. If @ wishes to enter a plea of admission or nolo contendere, the court shall follow MCR 5.986. MCR 5.985(B)(5). (See below, "Pleas of admission or no contest," III.O.)
- f) If the court authorizes the filing of the supplemental petition, the court must:
- i) set a date and time for the violation hearing, or following a plea, enter a dispositional order or set the matter for dispositional hearing; *and*
 - ii) either release @ pursuant to MCR 5.985(E), or order detention of @ as provided in MCR 5.985(F) MCR 5.985(B)(6)

(See below, "Release of ®," III.M.5; and "Detention pending violation hearing," III.N.)

g) Findings

At the preliminary hearing, the court must state the reasons for its decision to release the minor, or to detain the minor, on the record or in a written memorandum. MCR 5.985(G).

h) Questions:

May petitioner attend preliminary hearing? Notification of petitioner? Who presents petitioner's case at preliminary hearing?

Should prosecutor attend preliminary hearing? Notification of prosecutor? Note that prosecutor will be notified by court re: violation hearing. MCR 5.985(C). (See below, "Notification of violation hearing," III.M.3.)

3. Notification of violation hearing

Following the preliminary hearing, if ® denies the allegations in the supplemental petition, the court must:

- a) notify the prosecuting attorney of the scheduled violation hearing;
- b) notify ®,
®'s attorney, if any, and
®'s parent(s), guardian or custodian of the scheduled violation hearing
- c) *and direct the parties to appear* at the violation hearing and give evidence on the charge of contempt;
- d) *cause notice of the violation hearing to be given by personal service or ordinary mail*
 - at least 7 days before the violation hearing,
 - unless ® is *detained*, in which case notice of hearing is to be served at least 24 hours prior to the hearing. MCR 5.985(C).

4. Absence of ® at preliminary hearing

If ® was notified of the preliminary hearing and fails to appear for the preliminary hearing, the court may issue an order in accordance with MCR 5.983(C) authorizing a peace officer or other person designated by the court to apprehend ®.

- a) If ® is *under 17 years of age*, the court may order ® detained pending a *hearing on the apprehension order*.
 - If the court releases ®, it may set bond for ®'s appearance at the violation hearing.

- b) If @ is 17 years of age, the court may order @ confined to jail pending a *hearing on the apprehension order*.
 - If the court releases @ it *must* set bond for @'s appearance at the violation hearing. MCR 5.985(D).
- c) MCR 5.983(C) provides
 - i) that a court order to apprehend @ may include authorization to:
 - enter specified premises as required for the purpose of bringing the minor before the court, and
 - *detain* the minor pending preliminary hearing if *it appears that there is a substantial likelihood of retaliation or continued violation*.
 - ii) MCR 5.983(C) further provides that upon apprehending a minor @ under a court order, the officer shall comply with MCR 5.984(B), (C).
 - iii) See above, "Detention of minor pending preliminary hearing," III. I., for officer's responsibilities under MCR 5.984(B), (C).

5. Release of @ pending violation hearing or pending resumption of preliminary hearing

- a) Subject to the conditions set forth in MCR 5.985(F), (see below, "detention pending violation hearing," III.L) @ may be released, with conditions, to a parent, guardian, or custodian pending resumption of the preliminary hearing or pending the violation hearing after the court considers available information on
 - i) @'s family ties and relationships;
 - ii) @'s prior juvenile delinquency or minor PPO record, if any;
 - iii) @'s record of appearance or non-appearance at court proceedings;
 - iv) the violent nature of the alleged violation;
 - v) @'s prior history of committing acts that result in bodily injury to others;
 - vi) @'s character and mental condition;
 - vii) the court's ability to supervise the minor if placed with a parent or relative;
 - viii) the likelihood of retaliation or [continued] violation of the PPO by @;
 - ix) any other factor indicating the @'s ties to the community, risk of non-appearance, and the danger to the @ or the original petitioner if @ is released. MCR 5.985(E)(1).

- b) Bail procedure is pursuant to MCR 5.935(C)(2)-(3), (5)-(7).
MCR 5.985(E)(2).

[MCR 5.935(C)(2): cash or surety bond;
MCR 5.935(C)(2): option to deposit cash or 10%;
MCR 5.935(C)(5): revocation or modification;
MCR 5.935(C)(6): return of bail;
MCR 5.935(C)(7): forfeiture.]

N. Detention pending violation hearing

1. Conditions

A minor *shall not* be removed from the parent, guardian, or custodian pending violation hearing or further court order *unless*:

- (a) *probable cause* exist to believe the minor violated the PPO; *and*
- (b) at the preliminary hearing the court finds one or more of the following circumstances to be present:
 - i) there is *substantial likelihood of retaliation or continued violation* by the minor who allegedly violated the PPO;
 - ii) there is *substantial likelihood* that if the minor is released to the parent, with or without conditions, the minor will *fail to appear* at the next court proceeding; *or*
 - iii) detention pending violation hearing is otherwise specifically authorized by law. MCR 5.985(F)(1).

2. Waiver

A minor ® in custody may waive the probable cause phase of a detention hearing only if the minor is represented by an attorney. MCR 5.985(F)(2)

3. Evidence; findings

At the preliminary hearing the minor ® may contest the sufficiency of evidence to support detention by cross-examination of witnesses, presentation of defense witnesses, or by other evidence.

- a) The court shall permit the use of subpoena power to secure attendance of defense witnesses.
- b) A finding of *probable cause* under MCR 5.985(F)(1)(a) may be based on *hearsay evidence* which possesses adequate guarantees of trustworthiness. MCR 5.985(F)(3).

4. Type of detention

A detained minor must be placed in the *least restrictive* environment that will meet the needs of the *minor and the public*, and that will conform to the requirements of MCL 712A.15, MCL 712A.16. MCR 5.985(F)(4).

- a) MCL 712A.15(1) provides that in the case of a child concerning whom a complaint has been made or a petition has been filed pursuant to the juvenile code, the court may *order* the child pending the hearing detained in a *facility as the court shall designate*. The court may release the child, pending the hearing, in the custody of a parents, guardian, or custodian, to be brought before the court at the time designated.

“Petition” includes all of the following:

- i) petition;
- ii) supplemental petition;
- iii) petition for revocation of probation;
- iv) supplemental petition alleging a violation of a PPO.

- b) MCL 712A.15(2) provides that *custody, pending hearing, is limited* to the following children:

- i) those whose home conditions make immediate removal necessary;
- ii) those who have a record of unexcused failures to appear at juvenile court proceedings;
- iii) those who have run away from home;
- iv) those who have failed to remain in a detention or nonsecure facility or placement in violation of a court order;
- v) those whose offenses are so serious that release would endanger the public;
- vi) those who have *allegedly violated a PPO and for whom it appears there is a substantial likelihood of retaliation or continued violation*.

- c) MCL 712A.15(3) provides that a child taken into custody pursuant to MCL 712A.2(a)(2) to (4) [juvenile deserted home; incorrigible, truant], or MCL 712A.15(2)(c) [runaways], *shall not be detained in a secure facility designed to physically restrict the movements and activities of alleged or adjudicated juvenile offenders unless the court finds that the child willfully violated a court order and the court finds, after a hearing and on the record, that there is not a less restrictive alternative more appropriate to the needs of the child. This subsection does not apply to a child who is under the*

jurisdiction of the court pursuant to MCL 712A.2(a)(1) [delinquency] or to a child who is not less than 17 years of age and who is under the jurisdiction of the court pursuant to a supplemental petition under MCL 712A.2(h) [PPOs].

i) Question: Does this mean that 17 year old minor @ who has supplemental petition filed against @ for PPO violation *may* be held in secure facility designed to physically restrict the movements and activities of alleged or adjudicated juvenile offenders? Or, if 17 year old minor @ is detained or incarcerated, *must* the detention be with the adult prisoner population? See below, III. L 4.e.

ii) Question: Does MCL 712A.15(3) have any applicability to minor @ under 17 years?

d) MCL 712A.15(4) provides that a child taken into custody pursuant to MCL 712A.2(b) [neglect] or 712A.15(2)(a) [home conditions make removal immediately necessary] shall not be detained in any *secure facility* designed to physically restrict the movements and activities of alleged or adjudicated *juvenile offenders* or in a cell or other secure area of any secure facility designed to incarcerate *adults*.

i) Question: Does MCL 712A.15(4) have any applicability to minor @ under 17 years?

e) MCL 712A.15(5) provides that a child taken into custody pursuant to MCL 712A.2(b) to (4) [juvenile deserted home; incorrigible, truant], or MCL 712A.15(2)(c) [runaways], shall not be detained in a cell or other secure area of any secure facility designed to incarcerate *adults unless* either of the following applies:

i) a child is under the jurisdiction of the court pursuant to MCL 712A.2(a)(1) [delinquency] for an offense which, is committed by an adult, would be a felony;

ii) a child is not less than 17 years of age and is under the jurisdiction of the court pursuant to a supplemental petition under MCL 712A.2(h) [PPOs].

i.e , Consistent with MCL 600.2950(23),MCL 600.2950a(20), MCL 600.2950(11)(a)(i),(ii); MCL 600.2950a(8)(a)(i),(ii); MCL 764.15b(1)(c)(i),(ii); MCL 712A.14(1); MCR 3.706(A)(3)(a),(b); MCR 5.984(C); and MCR 5.985(D), 17 year old minor @ who violates PPO is subject to incarceration with adult population.

- f) MCL 712A.16(1) provides that if a juvenile *under the age of 17 years* is taken into custody or detained, the juvenile shall not be confined in any police station, prison, jail, lock-up, or reformatory or transported with, or compelled or permitted to associate or mingle with, criminal or dissolute persons. However, except as provided in MCL 712A.15(3), (4), (5), the court may order a juvenile *15 years of age or older whose habits or conduct are considered a menace to other juveniles, or who may not otherwise be safely detained*, placed in a jail or other place of detention for adults, but in a room or ward separate from adults and not for more than 30 days, unless longer detention is necessary for the service of process.
- g) MCL 712A.16(2) provides, in part, that the court or court-approved agency may arrange for the boarding of juveniles in any of the following:
 - i) if the juvenile is within the court's jurisdiction under MCL 712A.2(a) [delinquency], a suitable foster care home, subject to the court's supervision. If a juvenile is within the court's jurisdiction under MCL 712A.2(b) [neglect], the court shall not place a juvenile in a foster care home subject to the court's jurisdiction.
 - ii) a child caring institution or child placing agency licensed by the department of consumer and industry services to receive for care juveniles within the court's jurisdiction.

O. Pleas of admission or no contest

1. Capacity

A minor may offer a plea of admission or of no contest to the violation of a minor PPO with the consent of the court. The court shall not accept a plea to a violation unless the court is satisfied that the plea is accurate, voluntary, and understanding. MCR 5.986(A).

2. Qualified pleas

The court may accept a pleas of admission or of no contest conditioned on preservation of an issue for appellate review. MCR 5.986(B).

3. Support of plea by parent, guardian, custodian

The court shall inquire of the parent(s), guardian, or custodian, or *guardian ad litem* whether he or she knows of any reason why the court should not accept the plea tendered by the minor. Agreement or objection by the parent, guardian, custodian, or guardian ad litem to a plea of admission or of no contest by a minor must be placed on the record if he or she is present. MCR 5.986(C).

4. Plea withdrawal

The court may take a plea of admission or no contest *under advisement*.

- a) *Before* the court accepts the plea, the minor may withdraw the plea offer by *right*.
- b) *After* the court accepts the plea, the court has *discretion* to allow the minor to withdraw the plea.

MCR 5.986(D).

P. Violation hearing

1. Time

- a) Upon completion of the preliminary hearing the court shall set a date and time for the violation hearing if @ denies the allegations in the supplemental petition.
 - i) If @ is *detained*, the violation hearing must be held within *72 hours of apprehension*, excluding Sundays and holidays.
 - ii) If @ is *not detained*, the hearing must be held within *21 days*.

MCR 5.987(A).

- b) MCL 714.15b(8) provides that the court shall not rescind a PPO, dismiss a contempt proceeding based on a PPO, or impose any other sanction for a failure to comply with a time limit prescribed in MCL 764.15b.
 - i) MCL 764.15b contains time limits for adult PPO proceedings initiated by arrest. MCL 764.15b does not contain the time limits for minor PPO proceedings.

2. Role of prosecuting attorney at violation hearing

- a) *Criminal contempt after apprehension*

MCR 5.987 provides that if a *criminal contempt* proceeding is commenced under *MCL 764.15b* [*warrantless arrest for PPO violation*; See above, "*Apprehension of minor @ without a court order*," III.G.1.b], the prosecuting attorney *shall* prosecute the proceeding unless the petitioner retains an attorney to prosecute the *criminal contempt* proceeding.

- b) Questions: "Criminal contempt" proceedings are an option only for adult @s and minor @s at least 17 years of age.
 - i) With regard to minor @s, is the prosecutor only involved in "criminal contempt" proceedings for 17 year old minor @s initiated by apprehension of minor @?
 - ii) Is the prosecutor not involved in criminal contempt proceedings for 17 year old minor @s initiated by filing of supplemental petition? Even if court orders apprehension of 17 year old minor @ in response to filing of supplemental petition?
 - iii) Is the prosecutor not involved in civil contempt proceedings for minor @s? If so, the prosecutor is never involved in PFO violation hearings for minor @s under 17 years of age?
 - iv) Compare adult PPO court rule concerning prosecutor's role in PPO proceedings, also limited to "criminal" contempt proceedings "commenced under MCL 764.15b" [warrantless arrest]. MCR 3.708(G). But see statutory provisions concerning prosecutor's role in PPO proceedings, limited to "criminal" contempt proceedings, whether initiated by arrest *or by show cause*. MCL 764.15b(2), (4), (7).

3. Preliminary matters at violation hearing

The court shall

- a) determine whether all parties have been notified and are present.
 - i) @ has the right to be present at the violation hearing along with parents, guardian, or custodian, and guardian ad litem and attorney. MCR 5.987(C)(1)(a).
 - ii) The court may proceed in the absence of a parent properly noticed to appear, provided @ is represented by an attorney. MCR 5.987(C)(1)(b).
 - iii) The original petitioner has the right to be present at the violation hearing. MCR 5.987(C)(1)(c).
- b) read the allegations contained in the supplemental petition, unless waived. MCR 5.987(C)(2).
- c) inform the minor of the right to the assistance of an attorney unless legal counsel appears with the minor, and inform the minor that if the court determines it might sentence @ to jail or place @ in secure detention, then the court will appoint a lawyer at public expense if @ wants one and is financially unable to retain one. If the juvenile requests to proceed without the assistance of counsel, the court must advise the minor of the dangers and disadvantages of self-representation and make sure the minor is competent to conduct the defense and is literate MCR 5.987(C)(3).

4. Jury

There is no right to a jury trial. MCR 5.987(D).

5. Conduct of the hearing

® has the right to be present at the hearing, to present evidence, and to examine and cross-examine witnesses. MCR 5.987(E).

6. Evidence; burden of proof

- a) The rules of evidence apply both to criminal and civil contempt proceedings.
- b) Petitioner or the prosecuting attorney has the burden of proving
 - i) ®'s guilt of *criminal contempt beyond a reasonable doubt* and
 - ii) ®'s guilt of *civil contempt* by a *preponderance* of the evidence.

MCR 5.987(F).

Compare burden of proof in adult PPO *civil* contempt proceedings: clear and convincing evidence. MCR 3.708(H)(3). 9-1-01

7. Judicial findings

At the conclusion of the hearing, the court must make specific findings of fact, state separately its conclusions of law, and direct entry of the appropriate judgment. The court must state its *findings and conclusions on the record or in a written opinion* made part of the record. MCR 5.987(G).

Q. Dispositional phase

1. Time

a) *Minor not detained*

The time interval between the entry of judgment finding a violation of a minor PPO and disposition, if any, is within the court's discretion, but may *not be more than 35 days*.

b) *Minor detained*

When the minor is detained, the interval may *not be more than 14 days*, except for good cause shown.

MCR 5.988(A).

2. Presence of ® and petitioner

- a) ® may be excused from part of the dispositional hearing for good cause, but ® must be present when the disposition is announced.
- b) Petitioner has a right to be present at the dispositional hearing.

MCR 5.988(B)(1),(2).

3. Evidence

- a) At the dispositional hearing all relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value, even though such evidence may not be admissible at the violation hearing. MCR 5.988(C).
- b) ®, or ®'s attorney, and petitioner shall be afforded an opportunity to examine and controvert written reports so received and, in the court's discretion, may be allowed to cross-examine individuals making reports when such individuals are reasonably available. MCR 5.988(C)(2).
- c) No assertion of an evidentiary privilege, other than the privilege between attorney and client, shall prevent the receipt and use, at the dispositional phase, of materials prepared pursuant to court-ordered examination, interview, or course of treatment. MCR 5.988(C)(3).

R. Dispositions

1. Criminal contempt for minor ® at least 17 years

If a minor ® at least 17 years of age pleads or is found guilty of *criminal* contempt, the court *may* impose a sentence of incarceration of up to 93 days and *may* impose a fine of not more than \$500. MCR 5.988(D).

- a) Compare statutory language: An individual who is 17 years of age or more and who refuses or fails to comply with a PPO is subject to the criminal contempt powers of the court and, if found guilty, *shall* be imprisoned for not more than 93 days and *may* be fined not more than \$500. MCL 600.2950(23); MCL 600.2950a(20).
- b) Neither court rules nor statutes mention probation as a sentencing option for *criminal contempt* for a PPO violation. But note that probation is a dispositional alternative in MCL 712A.18 for *civil* contempt for a minor ® under 17 years. See MCL 712A.18(1)(b). See MCR 5.988(D)(2)(b), below, III.R.3.

- c) Criminal contempt : past violation;
to vindicate court's authority;
punitive.
- d) Because a PPO is "also enforceable" under MCL 600.1701 to 600.1745 (see MCL 600.2950(27); MCL 600.2950a(25)), arguable petitioner can be awarded damages for actual loss or injury caused by @'s violation, even if @ is found guilty of criminal contempt.
- e) The *criminal penalty* provided for a violation of a PPO may be imposed *in addition to* any penalty imposed for any *criminal offense* arising from the same conduct. MCL 600.2950(23); MCL 600.2950a(20).
 - i) Double jeopardy. See *State v. Johnson*, 676 So 2d 408 (Fla. S.Ct., 1998) in which defendant was prosecuted for contempt for violating a protection order and for aggravated stalking on the basis of the same conduct. The Florida Supreme Court, applying the test of *Blockburger v. U.S.*, 284 U.S. 299, 52 S.Ct. 180(1932), noted that aggravated stalking and criminal contempt for the protection order violation each require proof of an element that the other does not, and therefore prosecution for both offenses does not violate double jeopardy. See also *People v. Coones*, 216 Mich. App. 721 (1996) in which the Michigan Court of Appeals held that defendant's convictions for both aggravated stalking and criminal contempt for violation of a restraining order did not violate the double jeopardy clauses of the federal and state constitutions because the legislature intended cumulative punishment fore the same conduct.

2. Civil contempt for minor @ at least 17 years

If a minor @ pleads or is found guilty of *civil* contempt, the court *shall* impose a fine or imprisonment as specified in MCL 600.1715 and 600.1721, *if @ is at least 17 years of age*. MCR 5.988(D)(2)(a).

- a) MCL 600.1721 provides for punishment by imprisonment until compliance with court order or inability to do so, a maximum \$250 fine, plus damages to injured party for actual losses.
- b) Civil contempt: @ in violation at time of proceeding;
to bring @ into compliance (e.g. relinquish firearms);
coercive/compensatory.

3. Civil contempt for minor @ under 17 years

If a minor @ pleads or is found guilty of *civil* contempt, the court *shall* subject @ to the dispositional alternatives listed in MCL 712A.18, *if @ is under 17 years of age*. MCR 5.988(D)(2)(b).

MCL 712A.18(1) provides that the court may enter any of the following orders of disposition that are appropriate for the *welfare of the juvenile and society* in view of the facts proven and ascertained.

- a) *Warn* the juvenile, or the juvenile's parents, guardian or custodian and, except as provided in MCL 712A.30 [see below, "Restitution," III.R.3.q.], dismiss the petition.
- b) Place the juvenile on *probation*, or under supervision in the juvenile's own home or in the home of an adult who is related to the juvenile. The court shall order the terms and *conditions of probation or supervision*, including reasonable rules for the conduct of the parents, guardian, or custodian, if any, as the court determines *necessary for the physical, mental, or moral well-being and behavior of the juvenile*.
- c) If a juvenile is within the court's jurisdiction under MCL 712A.2(a) [delinquency] or MCL 712A.2(h) for a supplemental petition [*PPO violation*], place the juvenile in a suitable *foster care* home subject to the court's supervision.
- d) Place the juvenile in or commit the juvenile to a *private institution or agency* approved of licensed by the department of consumer and industry services for the care of juveniles of similar age, sex, and characteristics.
- e) Commit the juvenile to a *public institution, county facility, institution* operated as an agency of the court or county, or agency authorized to receive juveniles of similar age, sex, and characteristics. *If a child is not less than 17 years of age and is in violation of a PPO, the court may commit the child to a county jail within the adult prisoner population.*

In a placement under (d) or a commitment under (e), except to a state institution, the religious affiliation of the juvenile shall be protected by placement or commitment to a private child-placing or child-caring agency or institution, if available.

In every order of commitment under (e) to a state agency or institution described in the youth rehabilitation services act, MCL 803.301 to 803.309, the court shall name the superintendent of the institution to which the juvenile is committed as a special guardian to receive benefits due the juvenile from the government of the U.S., and the benefits shall be used to the extent necessary to pay for the portions of the cost of care in the institution that the parent(s) are found unable to pay.

- f) Provide the juvenile with medical, dental, surgical, or other *health care*, in a local hospital if available, or elsewhere, maintaining as much as possible a local physician-patient relationship, and with clothing and other incidental items as the court considers necessary.

- g) *Order the parents, guardian, custodian, or any other person to refrain from continuing conduct* that the court determines has caused or tended to cause the juvenile to come within or to remain under the juvenile code, or that obstructs placement or commitment of the juvenile pursuant to an order under MCL 712A.18.
- h) *Appoint a guardian* under the probate code, MCL 700.424, pursuant to a petition filed with the court by a person interested in the welfare of the juvenile. If the court appoints a guardian pursuant to MCL 712A.18(1)(h), it may enter an order dismissing the petition under the juvenile code.
- i) Order the juvenile to engage in *community service*.
- j) If the juvenile has violated a municipal ordinance or a state or federal law, order the juvenile to pay a *civil fine* in the amount of the civil or penal fine provided by the ordinance or law. Money collected from fines levied under MCL 712A.18(1)(j) shall be distributed as provided in MCL 712A.29 [allocation and application of money collected].
- k) Order the juvenile to pay *court costs*. Money collected from costs order under MCL 712A.18(1)(k) shall be distributed as provided in MCL 712A.29.
- l) Not applicable to PPO violators: If the juvenile is within the court's jurisdiction under MCL712A.2(a)(1) [delinquency], order the juvenile's parent or guardian to personally participate in treatment reasonably available in the parent's or guardian's location.
- m) Not applicable to PPO violators: If the juvenile is within the court's jurisdiction under MCL712A.2(a)(1) [delinquency], place the juvenile in bootcamp.
- n) Not applicable to PPO violators: If the court entered a judgment of conviction under MCL 712A.2d [juvenile tried as an adult], enter any disposition under MCL 712A.18 or, if the court determines that the best interests of the public would be served, impose any sentence upon the juvenile that could be imposed upon an adult convicted of the offense for which the juvenile was convicted...delay of sentence...factors.
- o) Reimbursement
 - i) MCL 712A.18(2) provides that an order of disposition placing a juvenile in or committing a juvenile to care outside of the juvenile's own home and under state or court supervision *shall* contain provision for reimbursement by the juvenile, parent, guardian, or custodian to the court for the cost of care or service.
 - ii) MCL 712A.18(3) provides that an order of disposition placing a juvenile in the juveniles' own home under MCL 712A.18(1)(b) *may* contain a provision for reimbursement by the juvenile parent, guardian, or custodian to the court for the cost of service.

p) Order of disposition directed to parent or person other than juvenile
MCL 712A.18(4) provides that an order directed to a parent or a person other than the juvenile is not effective and binding on the parent or other person unless opportunity for hearing is given pursuant to issuance of summons or notice as provided in MCL 712A.12 and 712A.13, and until a copy of the order, bearing the seal of the court, is served on the parent or other person as provided in MCL 712A.13.

q) Restitution

- i) MCL 712A.18(7) provides that if the court finds that a juvenile comes under MCL 712A.30 [restitution], the court *shall* order the juvenile or the juvenile's parents to pay restitution as provided in MCL 712A.30 and 712A.31, and the crime victim's rights act, MCL 780.794 and 780.795.
- ii) MCL 712A.30(2) provides that at the dispositional hearing "*for a juvenile offense*" the court *shall* order that the juvenile make full restitution to any victim of the juvenile's course of conduct that gives rise to the disposition.

MCL 712A.30(1) defines "juvenile offense" as a "*violation by a juvenile of a penal law of this state or a violation of an ordinance of a local unit of government of this state punishable by imprisonment or by a fine that is not a civil fine.*"

- iii) Question: If the conduct that constitutes the PPO violation also constitutes a violation of state or local law, is restitution *required* for the PPO violation? Note that MCL 712A.30 does *not* limit restitution to cases in which the juvenile is "under the jurisdiction of the court pursuant to MCL 712A.2(a)(1) [delinquency], " but uses the language "*dispositional hearing for a juvenile offense.*" (Compare MCL 780.901(f) [crime victims rights act] that defines "juvenile offense" as an "offense committed by a juvenile *under the jurisdiction of the juvenile division of the probate court or the family division of the circuit court under MCL 712A.2(a)(1), that if committed by an adult would be a felony, serious misdemeanor, or a specified misdemeanor if the juvenile's case is not designated as a case in which the juvenile is to be tried in the same manner as an adult.*")
- iv) Question: Regardless of whether or not the conduct that constitutes the PPO violation also constitutes a violation of state or local law, *may* the court order restitution for the PPO violation?
- v) MCL 712A.30(3), (4), and (8) provide that restitution includes reimbursement for property damage, physical or psychological injury (for victim and victim's family), homemaking and child care expenses, lost income, and costs of other services provided to the victim such as shelter, food, clothing, and transportation.

MCL 712A.30(13) further provides that an order of restitution remains effective until satisfied; is a judgment and lien against all property of the individual ordered to pay restitution; and may be enforced by the prosecutor, a victim, or any other person named in the order to receive restitution in the same manner as a judgment in a civil action or a lien.

MCL 712A.30(15) provides for payment of restitution by the parent if the court determines that the juvenile is or will be unable to pay all of the restitution ordered.

- vi) MCL 712A.18(8) provides that if the court imposes restitution as a condition of probation, the court *shall* require the juvenile to do either of the following as an additional condition of probation:
 - engage in community service, or with the victim's consent, perform services for the victim;
 - seek and maintain paid employment and pay restitution to the victim from the earnings of that employment.
- r) MCL 712A.18(16) provides that in a proceeding under MCL 712A.2(h) [PPO], the dispositional alternatives in MCL 712A.18 shall apply only to a *disposition for a violation of a PPO and subsequent proceedings*.
- s) MCL 712A.26 provides that the court shall have the power to punish for contempt of court under MCL 600.1701 to 600.1745 any person who willfully violates, neglects or refuses to obey and perform any order or process the court has made or issued to enforce the juvenile code.

4. **Other PPO conditions in addition to sentence for criminal or civil contempt**
In addition to the sentence [for criminal or civil contempt for the minor @], the court may impose other conditions to the minor PPO. MCR 5.988(D)(3).

S. Supplemental dispositions

When it is alleged that a minor placed on probation for the violation of a minor PPO has violated a condition of probation, the court shall follow the procedures for supplemental disposition outlined in MCR 5.944. MCR 5.989.

T. Considerations when the conduct constituting the violation of the PPO also constitutes a violation of state or local law

1. PPO contempt proceedings are not a substitute for criminal law enforcement. When the minor ®'s conduct in violating the PPO also constitutes a violation of state or local criminal law, particularly if the conduct constitutes a serious, violent, or dangerous criminal offense, PPO contempt proceedings should not take the place of delinquency proceedings or criminal prosecution for crimes committed. Delinquency proceedings (and, where applicable to and appropriate for a minor, adult criminal prosecution) provide stronger measures for offender accountability and victim safety, such as additional sentencing and tracking options (e.g. boot camp, MCL 712A.18(m); e.g. fingerprints and juvenile record keeping, MCL 712A.18(10), (11), (13), longer adult criminal sentences, adult criminal record keeping).
2. Proceeding with prosecutions for both *criminal contempt* for the PPO violation and criminal prosecution for crimes committed by the *adult* ®, and the *17 year old* ® is anticipated in the PPO statutes. See MCL 600.2950(23); MCL 600.2950a(20), above, III.R.1.e.
3. It appears that nothing in the PPO statutes, juvenile code or court rules prohibits proceeding against a minor ® with both the *civil* contempt proceeding for the PPO violation and *delinquency proceedings* for any violation of state or local criminal law committed by the minor ® in the course of violating the PPO. As a practical matter, the court may wish to proceed with only the delinquency matter rather than with PPO enforcement proceeding. Questions: How would that election / dismissal of the PPO enforcement proceeding happen?

U. Appeals from finding after violation hearing

1. Except as provided by MCR 3.709, appeals concerning adult ® must comply with MCR 7.200. Appeals involving minor PPO actions under the juvenile code must additionally comply with MCR 5.993.
2. a) MCR 3.709 provides that ® has an appeal of right from a sentence for criminal contempt entered after a contested hearing. MCR 3.709(C)(1).
b) MCR 3.709 further provides that all other appeals concerning violation proceedings are by application for leave. MCR 3.709(C)(2).

3. a) Compare MCR 5.993. The following orders are appealable to the Court of Appeals by *right*:
 - i) an order of disposition placing a minor under the supervision of the court or removing the minor from the home;
 - ii) an order terminating parental rights;
 - iii) any order required by law to be appealed to the Court of Appeals;
and
 - iv) any final order. MCR 5.993(A)(1-4).
- b) MCR 5.993 further provides that all orders not listed in MCR 5.993(A) are appealable to the Court of Appeals by *leave*.