

1 or district court magistrate releases a defendant ~~under this~~
2 ~~subsection subject to protective conditions,~~ **subject to conditions**
3 **in excess of the standard conditions listed in section 6 of this**
4 **chapter, including, but not limited to, conditions reasonably**
5 **necessary for the protection of 1 or more persons,** the judge or
6 district court magistrate shall make a finding of the need for
7 ~~protective~~ **the** conditions and inform the defendant on the record,
8 either orally or by a writing that is personally delivered to the
9 defendant, of the specific conditions imposed and that if the
10 defendant violates a condition of release, he or she will be
11 subject to arrest without a warrant and may have his or her bail
12 forfeited or revoked and new conditions of release imposed, in
13 addition to the penalty provided under section 3f of chapter XI and
14 any other penalties that may be imposed if the defendant is found
15 in contempt of court. **Before imposing a condition under this**
16 **section, the court shall do both of the following:**

17 (a) Conduct an inquiry into the defendant's ability to pay for
18 the condition, considering all of the following circumstances:

19 (i) All financial resources available to the defendant within
20 24 hours from any lawful personal sources.

21 (ii) Any debts, financial obligations, or dependents.

22 (iii) The defendant's basic living expenses, including, but not
23 limited to, food, shelter, clothing, necessary medical expenses, or
24 child support.

25 (iv) Any other special circumstances that may have bearing on
26 the defendant's ability to pay.

27 (b) Consider whether practical assistance or voluntary
28 supportive services, including, but not limited to, court
29 reminders, service referrals, transportation assistance, and

1 voluntary remote check-ins would be sufficient to address any
2 pretrial risks posed by the defendant.

3 (2) If the court imposes a condition that constitutes a
4 significant liberty restraint, the defendant may request a hearing
5 to reevaluate the condition after being in compliance with the
6 condition for not less than 60 days.

7 (3) Except in cases in which the defendant is charged with an
8 offense related to domestic violence, an assaultive crime, or a
9 listed offense, the court must conduct a hearing to reevaluate the
10 condition that constitutes a significant liberty restraint upon
11 request by the defendant if he or she has complied with the
12 significant liberty restraint for not less than 60 days. Unless the
13 defendant is charged with an offense related to domestic violence,
14 an assaultive crime, or a listed offense, there is a rebuttable
15 presumption that a significant liberty restraint must be
16 discontinued if the defendant has demonstrated compliance with the
17 significant liberty restraint for not less than 60 days.

18 (4) The prosecutor of the case may overcome the presumption
19 under subsection (3) if he or she shows the significant liberty
20 restraint remains necessary, notwithstanding the defendant's
21 compliance with it, to prevent the defendant from absconding or
22 because there is an articulable risk of personal harm to another
23 person or the defendant.

24 (5) Nothing in subsection (2), (3), or (4) prevents the court
25 from reevaluating, amending, or discontinuing conditions at the
26 court's discretion.

27 (6) ~~(2)~~—An order or amended order issued under subsection (1)
28 ~~shall~~**must** contain all of the following:

29 (a) A statement of the defendant's full name.

1 (b) A statement of the defendant's height, weight, race, sex,
2 date of birth, hair color, eye color, and any other identifying
3 information the judge or district court magistrate considers
4 appropriate.

5 (c) A statement of the date the conditions become effective.

6 (d) A statement of the date on which the order will expire.

7 (e) A statement of the conditions imposed.

8 **(7)** ~~(3)~~—An order or amended order issued under this subsection
9 and subsection (1) may impose a condition that the defendant not
10 purchase or possess a firearm. However, if the court orders the
11 defendant to carry or wear an electronic monitoring device as a
12 condition of release as described in subsection ~~(6)~~, **(8)**, the court
13 shall also impose a condition that the defendant not purchase or
14 possess a firearm.

15 ~~(4) The judge or district court magistrate shall immediately~~
16 ~~direct the issuing court or a law enforcement agency within the~~
17 ~~jurisdiction of the court, in writing, to enter an order or amended~~
18 ~~order issued under subsection (1) or subsections (1) and (3) into~~
19 ~~LEIN. If the order or amended order is rescinded, the judge or~~
20 ~~district court magistrate shall immediately order the issuing court~~
21 ~~or law enforcement agency to remove the order or amended order from~~
22 ~~LEIN.~~

23 ~~(5) The issuing court or a law enforcement agency within the~~
24 ~~jurisdiction of the court shall immediately enter an order or~~
25 ~~amended order into LEIN or shall remove the order or amended order~~
26 ~~from the law enforcement information network upon expiration of the~~
27 ~~order or as directed by the court under subsection (4).~~

28 **(8)** ~~(6) If a~~ **The court may order a defendant to wear an**
29 **electronic monitoring device for the purpose of location monitoring**

1 **only if 1 or more of the following circumstances apply:**

2 (a) **The defendant** ~~who is charged with a crime involving~~
3 ~~domestic violence, or any other assaultive crime, is released under~~
4 ~~this subsection and subsection (1), the judge or district court~~
5 ~~magistrate may order the defendant to wear an electronic monitoring~~
6 ~~device as a condition of release.~~ **or a listed offense.**

7 (b) **The defendant poses an articulable risk of personal harm**
8 **to another person.**

9 (c) **The defendant poses a significant identifiable flight**
10 **risk.**

11 (9) With the informed consent of the victim, the court may
12 also order the defendant to provide the victim of the charged crime
13 with an electronic receptor device capable of receiving the global
14 positioning system information from the electronic monitoring
15 device worn by the defendant that notifies the victim if the
16 defendant is located within a proximity to the victim as determined
17 by the judge or district court magistrate in consultation with the
18 victim. The victim ~~shall~~**must** also be furnished with a telephone
19 contact with the local law enforcement agency to request immediate
20 assistance if the defendant is located within that proximity to the
21 victim. In addition, the victim may provide the court with a list
22 of areas from which he or she would like the defendant excluded.
23 The court shall consider the victim's request and shall determine
24 which areas the defendant ~~shall~~**must** be prohibited from accessing.
25 The court shall instruct the entity monitoring the defendant's
26 position to notify the proper authorities if the defendant violates
27 the order. In determining whether to order a defendant to wear an
28 electronic monitoring device **for the purpose of location**
29 **monitoring**, the court shall consider the likelihood that the

1 defendant's participation in electronic monitoring will deter the
2 defendant from seeking to kill, physically injure, stalk, or
3 otherwise threaten the victim prior to trial. The victim may
4 request the court to terminate the victim's participation in the
5 monitoring of the defendant at any time. The court shall not impose
6 sanctions on the victim for refusing to participate in monitoring
7 under this subsection. ~~A defendant described in this subsection~~
8 ~~shall only be released if he or she agrees to pay the cost of the~~
9 ~~device and any monitoring as a condition of release or to perform~~
10 ~~community service work in lieu of paying that cost.~~ An electronic
11 monitoring device ordered to be worn under this subsection shall
12 **must** provide reliable notification of removal or tampering. As used
13 in this subsection, ÷

14 ~~(a) "Assaultive crime" means that term as defined in section~~
15 ~~9a of chapter X.~~

16 ~~(b) "Domestic violence" means that term as defined in section~~
17 ~~1 of 1978 PA 389, MCL 400.1501.~~

18 ~~(c) "Electronic monitoring device" includes any electronic~~
19 ~~device or instrument that is used to track the location of an~~
20 ~~individual or to monitor an individual's blood alcohol content, but~~
21 ~~does not include any technology that is implanted or violates the~~
22 ~~corporeal body of the individual.~~

23 ~~(d) "Informed"~~ **informed** consent" means that the victim was
24 given information concerning all of the following before consenting
25 to participate in electronic monitoring:

26 **(a)** ~~(i)~~—The victim's right to refuse to participate in that
27 monitoring and the process for requesting the court to terminate
28 the victim's participation after it has been ordered.

29 **(b)** ~~(ii)~~—The manner in which the monitoring technology

1 functions and the risks and limitations of that technology, and the
2 extent to which the system will track and record the victim's
3 location and movements.

4 (c) ~~(iii)~~—The boundaries imposed on the defendant during the
5 monitoring program.

6 (d) ~~(iv)~~—Sanctions that the court may impose on the defendant
7 for violating an order issued under this subsection.

8 (e) ~~(v)~~—The procedure that the victim is to follow if the
9 defendant violates an order issued under this subsection or if
10 monitoring equipment fails to operate properly.

11 (f) ~~(vi)~~—Identification of support services available to assist
12 the victim to develop a safety plan to use if the court's order
13 issued under this subsection is violated or if the monitoring
14 equipment fails to operate properly.

15 (g) ~~(vii)~~—Identification of community services available to
16 assist the victim in obtaining shelter, counseling, education,
17 child care, legal representation, and other help in addressing the
18 consequences and effects of domestic violence.

19 (h) ~~(viii)~~—The nonconfidential nature of the victim's
20 communications with the court concerning electronic monitoring and
21 the restrictions to be imposed upon the defendant's movements.

22 **(10) If an order in excess of the standard conditions of**
23 **release listed in section 6 of this chapter includes a no-contact**
24 **order, electronic monitoring imposed under subsection (8), or**
25 **another condition required for the protection of 1 or more named**
26 **persons, the judge or district court magistrate shall immediately**
27 **direct the issuing court or a law enforcement agency within the**
28 **jurisdiction of the court, in writing, to enter such an order or**
29 **amended order into LEIN. The entry into LEIN required under this**

1 subsection must include the statement of the conditions imposed
2 under the order. If the order or amended order is rescinded, the
3 judge or district court magistrate must immediately order the
4 issuing court or law enforcement agency to remove the order or
5 amended order from LEIN.

6 (11) The issuing court or a law enforcement agency within the
7 jurisdiction of the court must immediately enter an order or
8 amended order into LEIN or must remove the order or amended order
9 from LEIN upon expiration of the order or as directed by the court
10 under subsection (10).

11 (12) ~~(7)~~A judge or district court magistrate may ~~release~~
12 ~~under this subsection a defendant subject to conditions~~ **impose a**
13 **significant liberty restraint of electronic monitoring to monitor**
14 **or detect a defendant's blood alcohol content if the court believes**
15 **that the condition is** reasonably necessary for the protection of
16 the public. ~~if the defendant has submitted to a preliminary~~
17 ~~roadside analysis that detects the presence of alcoholic liquor, a~~
18 ~~controlled substance, or other intoxicating substance, or any~~
19 ~~combination of them, and that a subsequent chemical test is~~
20 ~~pending.~~The judge or district court magistrate shall inform the
21 defendant on the record, either orally or by a writing that is
22 personally delivered to the defendant, of all of the following:

23 (a) That if the defendant is released under this subsection,
24 he or she shall not operate a motor vehicle under the influence of
25 alcoholic liquor, a controlled substance, or another intoxicating
26 substance, or any combination of them, as a condition of release.

27 (b) That if the defendant violates the condition of release
28 under subdivision (a), he or she will be subject to arrest without
29 a warrant, shall have his or her bail forfeited or revoked, and

1 shall not be released from custody prior to arraignment.

2 **(13)** ~~(8)~~—The judge or district court magistrate shall
 3 immediately direct the issuing court or a law enforcement agency
 4 within the jurisdiction of the court, in writing, to enter an order
 5 or amended order issued under subsection ~~(7)~~ **(12)** into LEIN. If the
 6 order or amended order is rescinded, the judge or district court
 7 magistrate shall immediately order the issuing court or law
 8 enforcement agency to remove the order or amended order from LEIN.

9 **(14)** ~~(9)~~—The issuing court or a law enforcement agency within
 10 the jurisdiction of the court shall immediately enter an order or
 11 amended order into LEIN. If the order or amended order is
 12 rescinded, the court or law enforcement agency shall immediately
 13 remove the order or amended order from LEIN upon expiration of the
 14 order under subsection ~~(8)~~ **(13)**.

15 **(15)** ~~(10)~~ ~~This~~ **Except for the limitations on the use of**
 16 **significant liberty restraints, this** section does not limit the
 17 authority of judges or district court magistrates to impose
 18 protective or other release conditions under other applicable
 19 statutes or court rules. ~~, including ordering a defendant to wear~~
 20 ~~an electronic monitoring device.~~

21 **(16)** ~~(11)~~—As used in this section: ~~τ~~

22 **(a)** "Assaultive crime" includes any of the following:

23 **(i)** A violation described in section 9a of chapter X.

24 **(ii)** A violation of chapter XI of the Michigan penal code, 1931
 25 PA 328, MCL 750.81 to 750.90h, not otherwise included in
 26 subparagraph *(i)*.

27 **(iii)** A violation of section 110a, 136b, 234a, 234b, 234c, 349b,
 28 or 411h of the Michigan penal code, 1931 PA 328, MCL 750.110a,
 29 750.136b, 750.234a, 750.234b, 750.234c, 750.349b, and 750.411h, or

1 any other felony which involves a violent act or threat of a
2 violent act against any other person.

3 (b) "Domestic violence" means that term as defined in section
4 1 of 1978 PA 389, MCL 400.1501.

5 (c) "Electronic monitoring device" includes any electronic
6 device or instrument that is used to monitor the location of an
7 individual or to monitor or detect an individual's blood alcohol
8 content. No condition of release shall include any technology that
9 is implanted or violates the corporeal body of the individual.

10 (d) "LEIN" means the law enforcement information network
11 regulated under the C.J.I.S. policy council act, 1974 PA 163, MCL
12 28.211 to 28.215, or by the department of state police.

13 (e) "Listed offense" means that term as defined in section 2
14 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

15 (f) "No-contact order" means an order of the court requiring a
16 defendant to stay away from or have no contact with a specific
17 person or location.

18 (g) "Personal harm" means bodily injury or emotional distress,
19 as defined in section 411h of the Michigan penal code, 1931 PA 328,
20 MCL 750.411h, that can be specifically articulated on the record.

21 (h) "Significant liberty restraint" means any condition that
22 requires drug or alcohol testing, electronic monitoring, or in-
23 person reporting outside of regularly scheduled court events.
24 Significant liberty restraint does not include a no-contact order.

25 Sec. 6f. (1) If, as the result of a pretrial release decision,
26 a defendant remains incarcerated 48 hours after the pretrial
27 release decision is made, defense counsel or the prosecuting
28 attorney may petition the court to conduct a due process hearing
29 within 24 hours of the petition as provided in this section.

1 (2) The court must accept the petition and conduct a due
2 process hearing if the petitioner alleges a specific, articulable
3 shortcoming of the pretrial release decision in 1 or more of the
4 following manners:

5 (a) The arraigning judicial officer failed to comply with the
6 statutory requirements of this state or the court rules regarding
7 arraignment, pretrial release conditions, or the pretrial release
8 decision.

9 (b) New evidence is available, or the court failed to consider
10 existing evidence, that indicates that the defendant does not pose
11 an articulable and substantiated risk of absconding, or an
12 articulable risk of causing personal harm to another reasonably
13 identifiable person, the community at large, or himself or herself.

14 (c) There are less restrictive conditions, not previously
15 considered by the court, that can reasonably address the risk
16 presented by the defendant.

17 (d) The defendant remains incarcerated due to an inability to
18 pay cash bail or afford a condition of release that the defendant
19 indicated during arraignment he or she could afford.

20 (3) The court may deny the petition for a due process hearing
21 if it finds that the petition fails to articulate a specific basis
22 for review under subsection (2) or is incomplete.

23 (4) All of the following apply to a due process hearing under
24 this section:

25 (a) If available, the judge who is assigned to preside over
26 the case after arraignment shall preside over the due process
27 hearing.

28 (b) The scope of the hearing must be limited to the pretrial
29 release decision, including any monetary or nonmonetary conditions

1 of release.

2 (c) The defendant has a right to be represented by counsel,
3 review evidence the prosecutor may introduce before the hearing,
4 present evidence, and proffer information.

5 (d) The defendant has a right to present and cross-examine
6 witnesses, except the defendant may not call adversarial witnesses,
7 including, but not limited to, any victim or victims in the case.

8 (e) The rules of evidence of this state do not apply.

9 (f) Statements made at the hearing by the defendant are not
10 admissible for the purpose of proving the defendant's guilt in a
11 subsequent proceeding but may be admissible for impeachment
12 purposes.

13 (5) The court shall not issue an order for pretrial detention
14 or continue a condition of release that results in detention of the
15 defendant before trial at the due process hearing unless the court
16 finds by clear and convincing evidence on the record that the
17 defendant poses an articulable and substantiated risk of
18 absconding, or an articulable risk of causing personal harm to
19 another reasonably identifiable person, the community at large, or
20 himself or herself, and that no less restrictive conditions can
21 reasonably address the risk.

22 (6) As used in this section:

23 (a) "Personal harm" means bodily injury or emotional distress
24 as defined in section 411h of the Michigan penal code, 1931 PA 328,
25 MCL 750.411h, that can be specifically articulated on the record.

26 (b) "Substantiated" means supported by evidence, which may
27 include any of the following:

28 (i) Established past conduct, including history of
29 nonappearance or absconding in previous cases.

1 (ii) Testimony, including hearsay testimony, from a reliable
2 witness that the defendant has a willful intent to abscond.

3 (iii) Other facts found on the record that support an
4 articulated risk of nonappearance or absconding.

5 Enacting section 1. This amendatory act takes effect 90 days
6 after the date it is enacted into law.