

**Local Rules Revision Project
Rule Revisions Tentatively Approved on July 8, 2008**

August 5, 2008 Draft

Rules Applicable to Felony and Misdemeanor Divisions (effective January 1, 2009)

4.1 Case Processing Goals

- A. [Reserved for revised statement of case processing goals]
- B. Attorneys whose schedules prevent the court from meeting these goals in a given case may be disqualified and a party may be ordered to retain substitute counsel.

4.2 Courtroom Operations

- A. Courtroom doors shall be opened at 8:15 a.m. and 1:15 p.m. when the court is in session.
- B. Branches shall not unnecessarily restrict movement of attorneys between branches and, in particular, shall not secure courtroom exits in such a way as to detain attorneys merely for convenience and without regard to the need for attorneys to attend proceedings in other branches.
- C. Proceedings other than jury trials requiring the transportation of defendants from outside Milwaukee County shall not be scheduled to begin on Mondays, Fridays or weekdays immediately following or preceding a holiday, except upon a finding of extraordinary circumstances.

4.3 Assignment of Cases When Defendant Named in More than One Case

- A. Except as provided in paragraph C., when there is more than one felony case pending against the same defendant, all the cases shall be transferred to the felony branch in which the case with lowest case number is pending.
- B. Except as provided in paragraph C., when there is more than one misdemeanor or traffic case pending against the same defendant, all the cases shall be transferred to the misdemeanor branch in which the case with the lowest case number is pending.
- C. Cases involving charges of homicide, sexual assault, drug offenses, gun offenses and/or domestic violence, which may be assigned to a specialty court, may be assigned according to different procedures necessary to the fair and efficient operation of those specialty courts.
- D. The assignment of proceedings relating to reconfinement and sentencing after revocation proceedings are governed by Rule 4.16. The assignment of postconviction motions is governed by Rule 4.17.

4.4 Resolution of Misdemeanor Cases in Felony Branch

If a defendant in a case pending in a felony branch agrees with the State to resolve all cases pending in the felony branch as well as any cases pending against the defendant in any misdemeanor branch other than a domestic violence specialty branch, and if the judge presiding in the felony branch agrees, the misdemeanor case shall be transferred forthwith to the felony branch without further proceedings in the misdemeanor branch.

4.5 Assignment of Cases Upon Remand from the Appellate Courts

Cases remitted from the appellate courts shall be assigned to the judge who presided over the case when the notice of appeal was filed, or to that judge's successor, unless the case is assigned to a specialty court (homicide, sexual assault, drug offenses, etc.) and the judge who presided over the case when the notice of appeal was filed is, at the time of remand, assigned to a specialty court of the same specialty.

4.6 Assignment of Petitions for Return of Property

- A. All petitions under Wis. Stat. § 968.20 for return of firearms, dangerous weapons or ammunition shall be assigned to the Gun Court.
- B. Petitions for return of property other than firearms, dangerous weapons or ammunition shall be assigned as follows:
 - 1. If the property is held in connection with a previously-filed felony case, the petition shall be assigned on the same basis as the previously-filed case, *e.g.*, petitions for return of property relating to homicide cases shall be assigned in the same manner as homicide cases.
 - 2. If the property is held in connection with a previously-filed misdemeanor case or if the property is not held in connection with any previously-filed case, the petition shall be assigned randomly to a general misdemeanor branch.

4.7 Expedited Guilty Plea Hearings

A defendant in custody in Milwaukee County may request a speedy guilty plea hearing. Subject to victim notice requirements, the hearing shall take place within 2 business days after the filing of a written request in the branch to which the case is assigned and service of a written notice upon the District Attorney, whichever occurs later.

4.8 Huber Privileges for Work and Work Release from Confinement Time as a Condition of Probation

- A. Regarding court records, judgments of conviction and forms issued at sentencing, the designations "Huber work" and "Huber work privileges" (regarding jail sentences) and "work release privileges" (regarding condition time) shall be construed by the House of Correction to permit release, without further order, for the following purposes:
 - 1. attendance at work at no more than two (2) places of employment;
 - 2. seeking employment;
 - 3. participating in employment training, new employment orientation or tours and programs open to the public that address employment-related needs and barriers, including programs that assist in the reinstatement of driving privileges;
 - 4. obtaining clothing, tools and equipment appropriate to job-seeking or commencing employment, as well as haircuts;
 - 5. obtaining proof of identity needed for employment, including birth certificate and social security documentation;
 - 6. attending court proceedings, including proceedings necessary to clear warrants and make or revise arrangements for payment of fines and court costs; and
 - 7. laundry.

- B. The total time that an inmate may be released to enjoy Huber privileges and release privileges shall not exceed seventy-two (72) hours over six (6) days per week, including travel time.
- D. The designations “Huber work,” “Huber work privileges” and “work release privileges” do not include release for child care (see Rule 4.9), elder care (see Rule 4.10), medical treatment and counseling (see Rule 4.11), participation in the Community Justice Resource Center (see Rule 4.12), school attendance, community service or any other purpose, unless the court record and judgment of conviction so specify.
- E. In individual cases, a court may expand or limit these privileges, or the time period set forth in subsection B, by written order or by explicitly so stating on the record.
- F. The court may cancel or modify Huber work privileges and work release privileges at any time with or without notice.

4.9 Huber Privileges for Child Care and Child Care Release from Confinement Time as a Condition of Probation

- A. A defendant who requests Huber privileges or release privileges for child care shall submit to the court at the time of sentencing, for each child for whom care is to be provided:
 - 1. the name, age and address of the child and whether the child or the defendant is subject to any current order of the children’s or family division regarding custody or placement, together with a copy of the order(s);
 - 2. if the defendant is a custodial parent, a copy of the child’s birth certificate demonstrating that the defendant is the child’s parent;
 - 3. if the defendant is not a custodial parent, a written, signed request from the custodial parent:
 - a. requesting child care from the defendant;
 - b. stating whether or not the defendant has previously provided child care for the child; and
 - c. stating that the custodial parent is not receiving W-2 child care services and/or a child care stipend; and
 - 4. a copy of the custodial parent’s work schedule from that parent’s employer(s).
- B. Regarding court records, judgments of conviction and forms issued at sentencing, the designations “Huber child care” and “Huber child care privileges” (regarding jail sentences) and “release privileges for child care” (regarding condition time) shall be construed by the House of Correction to permit release, without further order, for the following purposes:
 - 1. child care;
 - 2. shopping for food and other supplies needed for the child;
 - 3. transporting the child to and from and attending medical appointments; and
 - 4. laundry.
- C. The court may cancel or modify Huber child care privileges and child care release privileges at any time with or without notice.

4.10 Huber Privileges for Elder Care and Elder Care Release from Confinement Time as a Condition of Probation

- A. A defendant who requests Huber privileges or release privileges for elder care shall submit to the court at the time of sentencing, for each elder for whom care is to be provided, a written, signed statement of the elder's doctor that the defendant is needed in the home to provide care for the elder.
- B. Regarding court records, judgments of conviction and forms issued at sentencing, the designations "Huber elder care" and "Huber elder care privileges" (regarding jail sentences) and "release privileges for elder care" (regarding condition time) shall be construed by the House of Correction to permit release, without further order, for the following purposes:
 - 1. elder care;
 - 2. shopping for food and other supplies and conducted errands needed by the elder;
 - 3. transporting the elder to and from and attending medical appointments; and
 - 4. laundry.
- C. The court may cancel or modify Huber elder care privileges and elder care release privileges at any time with or without notice.

4.11 Huber Privileges for Medical Treatment and Counseling and Medical Treatment/Counseling Release from Confinement Time as a Condition of Probation

- A. Regarding court records, judgments of conviction and forms issued at sentencing, the designations "Huber medical care," Huber counseling care," "Huber medical care privileges" and "Huber counseling privileges" (regarding jail sentences) and "release privileges for medical care" or "release privileges for counseling" (regarding condition time) shall be construed by the House of Correction to permit release, without further order, for the following purposes:
 - 1. medical care, including a visit to a doctor, dentist, clinic or emergency room;
 - 2. obtaining prescriptions;
 - 3. obtaining health insurance or other assistance for payment of health services; and
 - 4. counseling and treatment provided by an approved public treatment facility, including attendance at a substance abuse assessment or substance abuse treatment.
- B. The court may cancel or modify Huber medical care and counseling privileges and medical care and counseling release privileges at any time with or without notice.

4.12 Huber Privileges for Attendance at the Community Justice Resource Center and Community Justice Resource Center Release from Confinement Time as a Condition of Probation

- A. A defendant who requests Huber privileges or release privileges for attendance in programming at the Community Justice Resource Center ("CJRC") shall submit to a risk assessment, an addiction severity index assessment and an academic assessment.
- B. The court may permit the defendant to participate in programming recommended by the CJRC without specifying the particular programming. Regarding court records,

judgments of conviction and forms issued at sentencing, the designations “Huber CRJC” (regarding jail sentences) and “release privileges for attendance at CJRC” (regarding condition time) shall be construed by the House of Correction to permit release, without further order, for the following purposes:

1. programming conducted at the CJRC;
 2. counseling and treatment not provided by the CJRC but provided at an approved public treatment facility, including domestic violence, grief and sexual abuse counseling;
 3. medical care, including a visit to a doctor, dentist, clinic or emergency room;
 4. mental health care, including evaluation and counseling;
 5. obtaining prescriptions;
 6. obtaining health insurance or other assistance for payment of health services;
 7. seeking employment;
 8. participating in employment training, new employment orientation or tours and programs open to the public that address employment-related needs and barriers, including programs that assist in the reinstatement of driving privileges;
 9. obtaining clothing, tools and equipment appropriate to job-seeking or commencing employment, as well as haircuts;
 10. obtaining proof of identity needed for employment, including birth certificate and social security documentation;
 11. attending school, if the defendant is 17 years old and is registered at Milwaukee Area Technical College;
 12. GED testing;
 13. attending court proceedings, including proceedings necessary to clear warrants and make or revise arrangements for payment of fines and court costs; and
 14. visiting government offices for purposes of securing W-2 benefits, obtaining transitional housing assistance before the completion of the sentence or the confinement, meeting with agents of the Department of Corrections.
- C. The court may cancel or modify Huber privileges and release privileges for attendance in programming at the CJRC at any time with or without notice.

4.13 Failure to Report to Serve Huber Sentence

Upon notice that a defendant has failed to report at the time designated by the House of Correction to begin serving a sentence in the Community Correctional Center, the court shall issue a commitment for the defendant’s arrest and shall cancel all Huber privileges and electronic monitoring privileges.

4.14 Good-Time Credit Against Condition Time

If the court determines that the defendant shall be eligible for good time credit against a jail term being served as a condition of probation, the judgment of conviction shall so state, or the defendant shall not be entitled to such credit.

4.15 Juvenile Traffic Offenses

If a juvenile is convicted of a traffic offense and is treated by the court as an adult for sentencing purposes pursuant to Wis. Stat. § 938.17, and if the court imposes a jail sentence of 6 months or more, the court shall submit the required petition to the administrator of the Clerk of Circuit Court-Children's Division, whereupon the case will be transferred to a branch of the Children's Division for disposition. If the defendant is out of custody and if the court remands the defendant, the defendant shall be transported to the juvenile detention facility.

4.16 Reconfinement and Sentencing After Revocation

All proceedings relating to reconfinement hearings and sentencing after revocation shall be assigned to the judge who presided at sentencing, or to that judge's successor, except that when such proceedings are commenced against a defendant against whom another case is pending in the same division, such proceedings shall be assigned to the branch in which the pending case is assigned.

4.17 Postconviction Motions

- A. The following rules apply to all postconviction motions, including without limitation those brought pursuant to Wis. Stat. §§ 809.30, 973.19, 974.02 and 974.06, as well as motions to modify or adjust sentence, to withdraw a guilty plea, for sentence credit and for new trial, as well as petitions for writs of certiorari, for conditional release or re-examination or to administer medication involuntarily.
- B. The motion, including any accompanying brief, shall not exceed 20 double-spaced pages in length and shall comply with Rule 1.9 regarding format. Responsive briefs shall not exceed 20 pages in length. Reply briefs shall not exceed 10 pages. Motions and briefs exceeding these page limits may be disregarded. Upon a showing of good cause made before filing a motion or brief, the court may permit the filing of a motion or brief exceeding these page limits, except that in no event may a motion brought pursuant to Wis. Stat. § 974.06 exceed 20 pages in length.
- C. All motions, except petitions for writs of certiorari, shall be filed with the appellate section of the criminal division of the Clerk of Court (Room 117, Safety Building). Before filing, a copy of the motion shall be served upon the State. A petition for a writ of certiorari shall be filed in the civil division.

4.18 Search Warrants Outside Milwaukee County

[Reserved for revised procedure regarding warrants for searches of property or persons located outside Milwaukee County]

4.19 Attendance of Inmates at Funerals and Wakes

The court will not consider a request to attend a funeral or wake by an inmate of the Criminal Justice Facility or at the House of Correction unless the inmate completes the form required by the Clerk of Court, files the form and serves a copy upon the Sheriff. The Sheriff may require the inmate to pay for the cost of an escort to the funeral home and the Sheriff may limit the attendance to a brief visit before the public is allowed to attend the funeral or wake. If granting the request would require the assignment of bailiffs to the escort and would prevent a branch from being in session in compliance with Rule 4.2.A, the request shall be denied.

Rules Applicable Only to the Felony Division

4.20 Assignment of Cases to Specialty Courts

Cases shall be assigned as follows:

- A. To homicide/sexual assault courts, all cases charging homicide, sexual assault, or offenses arising under Chapter 948, except those charging failure to support or weapons possession or receiving stolen property from a child, and cases arising under Chapter 980;
- B. To drug courts, all cases charging felony drug offenses;
- C. To the gun court, only cases charging possession of a firearm by a felon, possession of a short-barreled shotgun, reckless injury involving the use of a firearm, recklessly endangering safety involving the use of a firearm, other felony possession of firearm, or explosives offenses, except that cases charging carrying a concealed weapon may be assigned if another charge described in this paragraph also is charged; and
- D. To general felony branches, all other felony cases, and all failure to support and extradition cases.
- E. [Reserved for rules regarding assignment of domestic violence and Section 980 cases.]

4.21 Probable Cause Determinations

- A. No detainee held in custody as a result of a probable cause determination ("PCD"), including those detained by felony summary warrantless arrest or by probation/parole/extended supervision holds, warrants and commitments, and including those who are hospitalized, may be held for more than 72 hours without being charged or without a further PCD, which, if approved, shall extend the period by which the detainee must be charged or released for no more than 72 hours.
- B. The Sheriff's Department shall notify the District Attorney's Office no later than 48 hours after the PCD if a detainee has not been charged. The Sheriff's Department shall notify the District Attorney's office prior to the release of any uncharged detainee.
- C. A detainee may be held in custody beyond 72 hours only if:
 1. the Sheriff's Department shall present arrest and detention reports (ADR) to a court commissioner; and
 2. a Court Commissioner in Intake Court after a full bail hearing on the record with the detainee present, together with the usual bail investigation services, determines that there is probable cause for continued detention for up to an additional 72 hours. If no action is taken to extend detention beyond 72 hours, or if the court determines that there is no probable cause for doing so, the detainee shall be released. If a signed complaint is filed before the 72-hour period elapses and the detainee is merely awaiting an initial appearance in intake court, the detainee shall not be released.
- D. A detainee who is hospitalized need not be produced for a hearing under paragraph C.2.

4.22 Intake Court Rules

- A. All bail hearings before the preliminary hearing shall be conducted in intake court. The presiding judicial officer shall determine whether the defendant is produced to attend the hearing.
- B. If a misdemeanor case relating to a felony case is assigned to a felony court, the defendant shall make his or her initial appearance in intake court and the case shall be scheduled for a status hearing on the same date in preliminary hearing court as the felony case to which it relates.

- C. The defendant may waive preliminary hearing in intake court; if so, the defendant shall be arraigned without delay, or the case may be transferred to the assigned judge for arraignment and scheduling.

4.23 Preliminary Hearing Court Rules

- A. Preliminary hearings shall be scheduled during the week following the initial appearance, except for good cause shown or upon the consent of the parties.
- B. Preliminary hearings in cases charging escape, failure to support and domestic violence offenses shall be conducted in the branch to which the case is assigned.
- C. A preliminary hearing may not be waived unless the defendant completes a preliminary hearing questionnaire and waiver form.
- D. If the preliminary hearing is waived, the defendant shall be arraigned without delay, except that, upon a showing of good cause, arraignment may be scheduled in the branch to which the case is assigned.
- E. If the defendant is arraigned in preliminary hearing court, a scheduling conference shall take place in the branch to which the case is assigned no later than the second Friday following the preliminary hearing or waiver.
- F. Immediately following the preliminary hearing or waiver, the State shall provide all available discovery materials to the defendant.
- G. Bail motions shall be served and filed in writing at least 48 hours in advance of the scheduled hearing, unless the parties agree to shorten this notice period. If either party objects to the lack of reasonable notice pursuant to Wis. Stat. § 968.08, the motion shall be scheduled and heard within a reasonable period of time in the branch to which the case is assigned.
- H. The judicial officer presiding in the preliminary hearing court shall have the primary responsibility for handling search warrant applications between 8:00 a.m. and 5:00 p.m. on the days that the court is in session.

4.24 Arraignment

- A. Upon arraignment, the State forthwith shall make a plea offer to the defendant.
- B. If the arraignment occurs before the judge presiding in the branch to which the case is assigned, a scheduling conference shall be conducted immediately upon arraignment, except if good cause is shown that it should occur on another date.

4.25 Scheduling Conference

- A. In any case scheduled for trial, whether to a jury or to the court, a Pretrial Scheduling Order, in a form prescribed by the felony division, shall be completed and filed.
- B. At the scheduling conference, the parties shall notify the court of any issues concerning the availability of lay or expert witnesses or need for interpreters, of joinder or severance, or of a need for scientific tests which might prevent the court from trying the case on the scheduled date.

4.26 Trial Scheduling

- A. In order to attain the case processing goals stated in Rule 4.1, trials shall be scheduled no more than 90 days after the date of the initial appearance.
- B. The court may schedule trials outside these time limits whenever the interests of justice require.

- C. In computing the time within which the trial shall be scheduled, the court may exclude any period of time:
 - 1. during which proceedings are suspended for competency evaluation or for evaluations following the entry of an NGI plea;
 - 2. during which a bench warrant for a defendant who fails to appear has been issued but not served;
 - 3. during an interlocutory appeal that has been accepted for review.

4.27 Motions

- A. All motions other than postconviction motions (see Rule 4.17) shall be filed in the courtroom of the branch to which the case is assigned.
- B. All motions shall comply with the format requirements of Rule 1.9.
- C. The party filing the motion shall obtain a hearing date from the court before or at the time of filing the motion. The court may ignore motions filed without a hearing date.
- D. Discovery demands, including without limitation demands made pursuant to Wis. Stat. § 971.23(1), and motions relating to them, shall not be filed unless the demand is contested and the defendant requests that the demand or motion be heard by the court.

4.28 Special Rules Applicable to Drug Courts

- A. The preliminary hearing shall be scheduled no later than 10 days from the date of initial appearance, regardless of whether the defendant is in custody.
- B. The scheduling conference shall be conducted no later than the second Friday after the date of the preliminary hearing.
- C. Motions for severance or consolidation shall be filed at or before the scheduling conference. Such motions shall be made in writing and shall be filed no later than at the scheduling conference. Such motions are exempt from briefing requirements of standing pretrial orders.

4.29 Restraining Defendants

- A. During all sentencing hearings, in-custody defendants shall be restrained by handcuffs and belly-chains, or by such other means as the bailiff shall prescribe.
- B. When the verdict is received, in-custody defendants shall be restrained by ankle cuffs secured to the floor, or by such other means as the bailiff shall prescribe, unless the judge presiding determines that a greater or lesser level of security is appropriate. In making such determination, the judge shall take into consideration the safety of all participants, as well as potential prejudice to the defendant's presumption of innocence.
- C. The judge presiding, after consultation with the bailiff, may order the defendant restrained during any other proceeding if the defendant is in custody and the circumstances warrant restraints.
- D. If a deputy sheriff assigned to the courtroom as a bailiff or additional security determines that, in his or her opinion, the proceedings are not secure, the deputy sheriff shall inform the judge and recommend steps to assure security. If the judge decides to proceed in a way that does not meet the concerns of the deputy sheriff, the deputy sheriff shall immediately inform his or her supervisor who shall notify the Chief

Judge's Office. At that point, the proceedings shall be halted until the Sheriff's Department, the Chief Judge's Office and the trial judge agree on appropriate measures to ensure security in the courtroom.

Rules Applicable Only to the Misdemeanor-Traffic Division

4.33 Procedure Upon Failure to Appear

- A. If a defendant fails to appear for a scheduled court proceeding, and if the court issues a bench warrant, the court shall stay the bench warrant for at least 7 calendar days but no more than 14 calendar days, shall schedule a proceeding on the day that the stay elapses, and shall contact the court's pretrial service agency to attempt to locate the defendant and encourage the defendant to return to court.
- B. If the pretrial service agency cannot locate the defendant, the agency shall so report to the court and the court may lift the stay.
- C. If the defendant fails to appear on or before the date on which the stay elapses, the court may lift the stay.
- D. If the defendant appears on or before the date on which the stay elapses, the warrant shall be cancelled and further proceedings may be scheduled.

4.34 Procedure Upon Report of a Violation of Bail Conditions

- A. If the pretrial agency detects a violation of the defendant's bail conditions while the defendant is in the courthouse complex, the agency shall escort the defendant to the branch to which the defendant's case is assigned for immediate review of the conditions of bail. If the judge to whom the case is assigned is not available, the defendant and the case file shall be escorted to a pair judge, or to the presiding judge if no pair judge is available, or to the intake commissioner if the presiding judge is not available.
- B. If the defendant is not in the courthouse complex at the time the pretrial agency reports a violation of the defendant's bail conditions to the court, the court promptly shall decide whether and when to modify the conditions of bail and shall inform the agency.