

Michigan Association of District Court Probation Officers 50th Annual Conference

May 14, 2021

SCAO Update

Materials presented by:

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STATE COURT ADMINISTRATIVE OFFICE UPDATE

MADCPO Annual Conference



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Directives, Resources, and Information

Covid-19 Information:

- Comprehensive information concerning the Judicial Branch’s response to Covid-19 can be found [here](#).

General:

- The [Problem-Solving Court Annual Report](#) is now available.
- FY 2022 Problem-Solving Courts and Swift and Sure Sanctions Probation Program grant applications are now OPEN in WebGrants. All applications are due by June 30, 2021. Planning and operational courts will complete the same application. Certification applications will not be required at this time. ([See attached](#) memorandum from Andrew Smith, Problem-Solving Courts Manager.)
- Information regarding the [Attorney General's address confidentiality program](#), the associated jury exemption, and the handling of Personal Identifying Information.
- A bipartisan package of 20 criminal justice reform bills, based on recommendations from the Michigan Joint Task Force on Jail and Pretrial Incarceration, was signed into law late last year. See the following information provided:
 - [Memo](#) to courts regarding the criminal justice reform legislation and impacts on the case management systems.
 - [Overview of criminal justice reform bills](#) and their impact on various court procedures.
 - [Frequently Asked Questions](#) regarding the Michigan Joint Task Force on Jail and Pretrial Incarceration - Legislative Analysis.
- A [memo](#) was issued regarding revisions to the Uniform Law Citations (ULC). More specifically, the citations were amended to provide space to enter a defendant’s email address and telephone (as provided by [2020 PA 393](#)) and the VIN (since SOS will be requiring VIN during the abstract process, especially with regard to No Proof of Insurance citations). NOTE: On 4/16/21, law enforcement agencies were notified that if they have not been unable to implement the new version of the citation, they may continue using the approved version that was in use on March 31, 2021 with the following modifications:
 - Must have the ability to record a defendant’s cell phone number, the defendant’s email address, and the Vehicle Identification Number (VIN) in the “Remarks” section or other available space on the citation.
 - Must manually change the word “will” to “may” in the Misdemeanor Warning language pertaining to the issuance of warrants for failing to appear or answer a citation.
- [Memo](#) regarding revisions to multiple probation-related forms (including Order of Probation ([MC 243](#)); Motion for Discharge from Probation ([MC 245m](#)); Order for Discharge from Probation ([MC 245o](#)); Order Following Probation Violation Hearing ([MC 433](#)); and Notice Regarding Eligibility for Early Discharge from Probation ([MC 512](#))).

- The legislature enacted a group of bills collectively known as the "Clean Slate" package. These bills impact the rules and procedures an individual may use to have a prior conviction set aside. The Clean Slate package makes changes to existing processes, as well as creating a new automatic process. This resource provides an [overview of the legislation](#). See also the [memo](#) regarding revised and new forms related to the clean slate legislation.
- Memo highlighting [changes to the CJIS Administrative Rules](#) having the most significant impact on courts.

Court Rules & Administrative Orders

Proposed

MCR Cite:	6.302 and 6.610 – Pleas of Guilty and Nolo Contendere; Criminal Procedure Generally
ADM File No:	2018-29
Comment Expires:	July 1, 2021
Staff Comment:	The proposed amendments of MCR 6.302 and MCR 6.610 would eliminate the ability for a court to establish support for a finding that defendant is guilty of the offense charged as opposed to an offense to which defendant is pleading guilty or nolo contendere. The sentencing guidelines make clear that offense variables are to be scored on the basis of the “sentencing offense alone,” not the charged offense. Further, an “offense to which defendant is pleading” would include the charged offense (if defendant is pleading to the charged offense) as well as any other offense that may have been offered by the prosecutor, so the “charged offense” clause may well be unnecessary.
MCR Cite:	1.109 and 8.119 – Court Records Defined; Document Defined; Filing Standards; Signatures; Electronic Filing and Service; Access; Court Records and Report; Duties of Clerks
ADM File No:	2020-26
Comment Expires:	February 1, 2021
Staff Comment:	The proposed amendments of MCR 1.109 and 8.119 would allow SCAO flexibility in protecting an individual’s personal identifying information and clarify when a court is and is not required to redact protected personal identifying information. More specifically, MCR 1.109(D)(10) is about filer-created documents (not court-created/court-issued documents), and it says: <ul style="list-style-type: none"> • Court NOT required to redact PII from filer-created document before providing a requested copy of the document • Court NOT required to redact PII from filer-created document before providing access to the document via a publicly accessible

- computer at the courthouse
- Court IS required to redact PII from filer-created document before making that document directly accessible online (such as through the court’s website)

MCR 8.119(H) is about court-prepared/court-issued documents (like an Order), and it says:

- Court IS required to redact PII from court-issued documents before it can be shared with the public (this includes documents requested (in person and online), accessed on a publicly accessible computer at the courthouse, and directly accessed online such as on the court’s website)

***Pending results of 3/24/21 hearing.**

Adopted:

MCR Cite: 1.109 and 8.119 - Court Records Defined; Document Defined; Filing Standards; Signatures; Electronic Filing and Service; Access; Court Records and Report; Duties of Clerks

ADM File No.: [2017-28](#)

Effective Date: January 1, 2021

Staff Comment: The amendments make certain personal identifying information nonpublic and clarify the process regarding redaction. ****The effective date of this order has been delayed to 7/1/21. Information on the extension:***

- ADM File No. 2017-28: [Amendment of Administrative Order No. 1999-4](#) (extends the effective date of the May 22, 2019 order that restricts personal identifying information).
Issued: 11/18/20
Effective: Immediately
- ADM File No. 2017-28: [Amendment of Administrative Order No. 2019-4](#) (extends the effective date of the portion of the order regarding personal identifying information)
Issued: 11/18/20
Effective: Immediately

MCR Cite: 6.425, 6.428, 7.208, and 7.211, and new rule MCR 1.112 – Sentencing; Appointment of Appellate Counsel; Restoration of Appellate Rights; Authority of Court or Tribunal Appealed From; Motions in Court of Appeals

ADM File No: [2018-33, 2019-20, and 2019-38](#)

Effective Date: January 1, 2021

Staff Comment: The amendments, submitted by the State Appellate Defender Office, make several substantive changes. The amendments expand certain

time periods within which to file and dispose of postjudgment motions (MCR 7.208 and 7.211), and reconfigure and expand the Reissuance of Judgment Rule (MCR 6.428) (renaming it Restoration of Judgment Rule). Finally, the amendments of MCR 6.425 require a probation officer to give defendant's attorney notice and a reasonable opportunity to attend the presentence interview, require a probation agent to not only correct a report but certify the correction has been made and provide for additional requirements regarding use of and access to the presentence investigation report.

MCR Cite: **6.310, 6.429, 6.431, 7.204, 7.205, and 7.305, and Addition of Rule 1.112 of the Michigan Court Rules**

ADM File No: [2018-33 & 2019-20](#)

Effective Date: September 1, 2021

Staff Comment: These amendments relate to expansion of the prison mailbox rule. Under the new MCR 1.112, the prison mailbox rule applies to any pleading or other document deposited in a prison or jail's mail system (i.e., not limited only to claims under criminal proceedings). The specific references to situations where that rule now applies (MCR 6.310, 6.429, 6.431, 7.204, 7.205 and 7.305) are eliminated.

MCR Cite: **2.223, 2.305, 2.314, 2.403, 2.506, 3.206, 3.211, 3.229, 3.606, 3.618, 3.903, 3.920, 3.922, 3.936, 3.943, 3.972, 3.973, 6.001, 6.425, 6.430, 6.445, 6.610, 7.118, 7.202, 7.210, 7.303, 8.120, 9.116, and 9.118 of the Michigan Court Rules, Rescission of Administrative Order No. 1999-3, Amendment of Administrative Order No. 2020-20, and Amendment of Rule 1.4 of the Michigan Rules of Professional Conduct**

ADM File No.: [2019-09](#)

Effective Date: March 24, 2021

Staff Comment: These amendments update cross-references and make other nonsubstantive revisions to clarify the rules.

MCR Cite: **MCR 1.109 - Court Records Defined; Document Defined; Filing Standards; Signatures; Electronic Filing and Service; Access**

ADM File No: [2019-48](#)

Effective Date: May 1, 2021

Staff Comment: The amendment of MCR 1.109 requires a signature from an attorney of record on documents filed by represented parties. This language was inadvertently eliminated when MCR 2.114(C) was relocated to MCR 1.109 as part of the eFiling rule changes.

MCR Cite: **8.128 – Michigan Judicial Counsel**
ADM File No: [2021-15](#)
Comment Expires: August 1, 2021
Effective Date: April 14, 2021
Staff Comment: The addition of MCR 8.128 establishes the Michigan Judicial Council to strategically plan for Michigan’s Judiciary.

Legislation

Statute Cite: **MCL 712A.11, 762.11, 722.822, 790.983, 750.139, 400.117i, 764.1f**
P.A. Number: [2019 PA 98 -107](#), also known as the “Raise the Age” package
Effective Date: October 1, 2021
What it Does: Amends the Juvenile Code, Code of Criminal Procedure, and Juvenile Diversion Act to specify that the definition of a “minor” refers to an individual less than 18, instead of 17. Accordingly, several other amendments went into effect involving assignment to youthful trainee status; the definition of “adult” under the Michigan Indigent Defense Commission Act; prohibiting the transportation of a child under 18, rather than 16, years of age from being placed or transported with an adult who has been convicted of a crime; modifying the age for which a prosecuting attorney could authorize the filing of a complaint and warrant on a specified juvenile violation; and requiring SCAO to create the “Raise the Age Fund” to disburse money for costs to adjudicate and for services provided for juveniles who were 17 years old at the time of the offense.

Statute Cite: **MCL 750.465**
P.A. Number: [2020 PA 176](#)
Effective Date: December 30, 2020
What it Does: Amends Chapter 68 of the Michigan Penal Code to do the following:

- Delete various provisions pertaining to the prohibition of the sale of tickets for admission to a theatre, circus, athletic game, or place of public entertainment or amusement at prices greater than what are printed on the tickets.
- Delete the misdemeanor penalty for violating the provisions described above.
- Prohibit a person from knowingly selling, giving, transferring, using, distributing, or possessing with the intent to distribute software that was primarily designed or produced to interfere with certain ticket sale operations.
- Prohibit a person owning, operating, or controlling a ticket website for an event scheduled at a venue in Michigan from using an internet domain name or subdomain thereof in the

ticket website's URL (uniform resource locator) that contained certain information

- Prohibit a ticket seller from contracting for the sale of tickets or accepting consideration for payment in full or for a deposit for the sale of tickets unless the ticket seller met certain requirements.
- Specify that a person that violated the bill would be guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a maximum fine of \$500, or both.

Clean Slate

Package:	MCL 780.621	Set Aside	2020 PA 191
	MCL 780.621b	One Bad Night	2020 PA 188
	MCL 780.621c	Restrictions/Traffic	2020 PA 187
	MCL 780.621d	Application	2020 PA 190
	MCL 780.621e	Misd. Marihuana	2020 PA 192
	MCL 780.621f	Misd. Marihuana	2020 PA 189
	MCL 780.621g	Automatic Set Aside	2020 PA 193
	MCL 780.621h	Reinstatement	2020 PA 193
	MCL 780.621i	Set Aside Fund	2020 PA 193
	MCL 780.622	Not a conviction	2020 PA 193
	MCL 780.623	Nonpublic Record	2020 PA 193
Effective Date:	April 11, 2021		
What it Does:	See the Michigan Clean Slate Legislation Overview		

Statute Cite: **MCL 764.15c, 780.752a, 780.756, 780.763a, 780.811b, 780.816, and 780.828a**

P.A. Number: [2020 PA 275, 276, and 277](#)

Effective Date: December 29, 2020

What it Does: Amends the Sexual Assault Victim's Access to Justice Act, the Code of Criminal Procedure, and the Crime Victim's Rights Act to:

- Requires notice be given to a domestic violence victim that he or she could apply to the Department of the Attorney General for certification as a participant in the Address Confidentiality Program and notice that the victim can request a PPO.
- Allows a sexual assault victim who was a participant in the Address Confidentiality Program to request that information from an investigating law enforcement agency or Crime Victim's notices to be mailed to his or her address designated by the Department of the Attorney General.
- Requires victims to keep certain specified individual informed of his or her address designated by the Department of the Attorney General, if a participant. (Note these PAs are tie-barred to PA 301).

Statute Cite: **MCL 28.722, 28.723a, 28.724, 28.724a, 28.725, 28.725a, 28.727, and 28.729**

P.A. Number: [2020 PA 295](#)

Effective Date: December 29, 2020

What it Does: Amends the Sex Offender Registration Act to do the following:

- Modify, from "immediately" (within three business days) to seven days, the time period by which a probation or parole agent must register an individual if the individual's probation or parole is transferred to the State.
- Prohibit an individual who had not been convicted of or adjudicated for an offense requiring registration under the Act from being required to register under the Act.
- Modify the information required to be obtained or otherwise provided for registration purposes and that must be contained in the law enforcement database.
- Specify that a requirement to report all electronic mail addresses would apply only to an individual required to be registered under the Act after July 1, 2011.
- Delete a provision prohibiting an electronic mail address and instant message addresses assigned to an individual required to be registered under the Act from being made available on the public internet website.
- Prohibit an individual's tier classification from being made available on the public internet website.
- Require the Michigan State Police (MSP) to remove an individual from the law enforcement database and public internet website if the individual presented a court order that the conviction or adjudication requiring the individual to be registered under the Act had been set aside or expunged.
- Modify the definition of "convicted."
- Repeals Sections 33 to 36 of the Act, which pertain to student safety zones.

Statute Cite: **MCL 780.851 et seq.**

P.A. Number: [2020 PA 301](#)

Effective Date: December 29, 2020

What it Does: Create the Address Confidentiality Program Act, to be administered by the Department of the Attorney General, which would allow certain victims to apply for and receive a "designated address" to be used generally in place of their actual address for their own protection. The other Public Acts are complementary legislation that would implement the proposed Address Confidentiality Program:

- PA 302: Michigan Election Law

- PA 303: Revised School Code
- PA 304: Michigan Vehicle Code
- PA 305: Enhanced Driver License and Enhanced Official State Personal Identification Card Act
- PA 306: State Personal Identification Card Act
- PA 307: Revised Judicature Act (Certain crime victims exempt from jury duty)
- Note: These are also related to PA 275, 276, and 277 (Sexual Assault Victim’s Access to Justice Act, Code of Criminal Procedure, and Crime Victim’s Rights Act)

Statute Cite: **MCL 712A.18e, 712A.18t, and 712A.28**
P.A. Number: [2020 PA 361](#) and [362](#)
Effective Date: (361) July 3, 2021 & (362) March 24, 2021
What it Does: Amends provisions of the regarding the setting aside of juvenile adjudications as follows:

- Includes the ability to set aside a traffic offense.
- Requires, beginning two years after its enactment, automatic set-asides (without filing an application) for certain offenses. The bill would take effect 180 days after enactment.
- Amends a provision in the juvenile code pertaining to the records of juvenile dispositions. Beginning January 1, 2021, except as otherwise provided, records of a case brought before the court would not be open to the general public and would be open only to *persons having a legitimate interest*.

Jail Task Force Package:

Effective Date:	Appearance Citations	2020 PA 393	4/1/21
	Summons Instead of Bench Warrant	2020 PA 394	4/1/21
	Expedited Arraignments	2020 PA 394	4/1/21
	Failure to Appear on Appearance Ticket	2020 PA 394	4/1/21
	Failure to Appear for Any Court Hearing	2020 PA 394	4/1/21
	Nonjail/Nonprobationary Sentences	2020 PA 395	3/24/21
	Hearing Protocol	2020 PA 394	4/1/21
	HYTA	2020 PA 396	3/24/21
	Early Discharge Probation	2020 PA 397	4/1/21
	Technical Probation Violations	2020 PA 397	4/1/21
	Decriminalization/Civil Infractions	2020 PA 382	10/1/21
	Driver’s License Suspensions	2020 PA 376	10/1/21
		2020 PA 377	10/1/21
		2020 PA 378	10/1/21
		2020 PA 379	10/1/21
		2020 PA 380	10/1/21

Mandatory Jail Minimums

2020 PA 381	3/24/21
2020 PA 387	10/1/21
2020 PA 375	3/24/21
2020 PA 383	3/24/21
2020 PA 384	3/24/21
2020 PA 385	3/24/21
2020 PA 386	3/24/21

What it Does: See SCAO's [Legislative Analysis](#)

Case Law

[People v Hughes](#), ___ Mich ___ (2020) – Lisa met Ronald and agreed to perform sexual acts in exchange for money. At some point during the evening, Lisa called her drug dealer and he came over and sold the couple some crack cocaine. Later that night, the drug dealer returned and stole a safe from a bedroom. Lisa identified the defendant as the drug dealer and robber. A detective submitted a warrant affidavit to search defendant's property for evidence related to *drug trafficking*. During the search, a cell phone was found and the detective performed a forensic examination of the phone extracting all of the phones data. About a month after the data was extracted, the prosecutor on the armed robbery case, asked the detective to conduct a second search of the defendant's cellphone for information related to the *robbery*. Defendant was later convicted of armed robbery and on appeal argued that the search warrant permitted officers to search for evidence of *drug trafficking* not *armed robbery*. The Court of Appeals rejected the arguments. **The Michigan Supreme Court held that “[A] warrant to search a suspect’s digital cell-phone data for evidence of one crime does not enable a search of that same data for evidence of another crime without obtaining a second warrant.”** Where **“the officer’s review of defendant’s cell-phone data for incriminating evidence relating to an armed robbery was not reasonably directed at obtaining evidence regarding drug trafficking—the criminal activity alleged in the warrant— . . . the search for that evidence was outside the purview of the warrant and thus violative of the Fourth Amendment.”** *Id.* at ___. Reversed and remanded.

[People v Thue](#), ___ Mich App ___ (2021) – Defendant was convicted of assault and battery after a road rage incident. He was sentenced to one-year probation. As a condition of probation, defendant was not permitted to use marihuana, including medical marihuana. Defendant filed a motion to modify the terms of his probation to allow him to use medical marihuana. The district court held a hearing, heard arguments from defendant and prosecutor, and denied defendant's motion. Defendant appealed to the circuit court. After an in depth review of the Michigan Medical Marihuana Act (MMMA), the Court of Appeals concluded that the provisions of the Michigan Probation Act that allow a court to prohibit a probationer's MMMA-compliant use of marihuana impermissibly conflict with the MMMA and constitute a “penalty” in violation of MCL 333.26424(a). **The Court of Appeals held “a court cannot revoke probation upon the use of medical marijuana that otherwise complies with the terms of the MMMA.”** **“Accordingly, the district court erred in prohibiting defendant from MMMA-compliant**

marijuana use as a term of his probation and defendant's motion to modify the terms of his probation to allow him to use medical marijuana should have been granted."

People v Posey, ___ Mich App ___, (2020). This case arises from a shooting outside the Super X Market, which is located in Detroit. Two men, one described as dark-skinned (Posey) and the other as being lighter-skinned (Quinn), approached and entered the store. After a short period, the two men exited the store and flanked two men waiting outside the store. They all pulled out firearms and gunfire rang out. Posey and Quinn were both treated for gunshot wounds at area hospitals after the shooting. Defendants Posey and Quinn were charged with several offenses including assault with intent to do great bodily harm, CCW, felon in possession, among others. Defendants were both convicted and appeal the convictions and sentencing. Of particular interest, Quinn argued that remand is necessary because the trial court did not explain the factual basis for its imposition of \$1,300 in court costs as required under MCL 769.1k(1)(b)(iii) (court can impose "any cost reasonably related to the actual costs incurred by the trial court without separately calculating those costs involved in the particular case"). In response, the prosecutor supplied a document from the State Court Administrative Office (SCAO) reflecting that the average cost per criminal case in the Wayne Circuit Court is \$1,302. **The Court of Appeals held that the trial court plainly erred by failing to articulate the factual basis for the court costs imposed against Quinn. But because the trial court relied on a document from the State Court Administrative Office "reflecting that the average cost per criminal case in the Wayne Circuit Court is \$1,302" to explain its imposition of \$1,300 in court costs, remand was unnecessary because defendant "has not demonstrated any of the requisite prejudice, i.e., that the error affected the outcome of the lower court proceedings."**

[Note: The *Posey* case also covers other topics such as: in-court identification, felony sentencing proportionality, and determining voluntariness of a statement by defendant that were not discussed in this summary.]

People v Brown, ___ Mich ___, (2020). Defendant was convicted by a jury of first-degree criminal sexual conduct. Defendant agreed to come to the police station for an interview and voluntarily spoke to the police for approximately three hours. The entirety of defendant's interview with the two detectives was video recorded; however, the video was not admitted at trial. Instead, the detectives testified as to what transpired during the interview. At trial, one detective testified that defendant said that the truth was "probably somewhere in the middle" of the victim's story and defendant's story. Defense counsel asked whether the video should be shown, but the prosecutor objected, and the trial court sustained the objection. When defense counsel continued to question the detective, the prosecutor reinforced his position on redirect examination instead of conceding that the detective's earlier testimony was incorrect. Following a five-day jury trial, defendant was convicted and sentenced to the statutory mandatory minimum of 25 years in prison. Defendant filed a motion to remand for an evidentiary hearing. The trial court denied defendant's request for a new trial and COA affirmed the conviction. In a unanimous opinion, the MSC found that the detective testified that defendant said that the truth between the victim's allegations and defendant's claims of innocence was actually "somewhere in the middle." This claimed confession, however, was

false, as evidenced by the video recording of the interview. The MSC held that “[a] prosecutor may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, and a prosecutor has an affirmative duty to correct patently false testimony, especially when that testimony conveys to the jury an asserted confession from the defendant.” “Accordingly, the prosecutor’s conduct failed to comport with due process. Defendant was entitled to a new trial because there was a reasonable probability that the prosecution’s exploitation of the false testimony affected the verdict.” The Court of Appeals judgment was reversed and the defendant’s conviction was vacated and remanded for a new trial.

[*People v Johnson*](#), ___ Mich App ___, (2021). Defendant pleaded guilty to resisting or obstructing a police officer, was placed on a term of probation, ended up violating probation, and was later sentenced to jail with \$600 court costs for the R&O case and \$600 for interference with electronic communications (for a total of \$1200). Defendant appealed his conviction arguing that MCL 769.1k(1)(b)(iii) operates in the state of Michigan to deprive all criminal defendants of their due process right to appear before an impartial decision maker because the statute incentivizes all judges to convict criminal defendants and impose court costs to raise revenue for the courts. The Court of Appeals held that “**while we agree that use of the funds generated pursuant to MCL 769.1k(1)(b)(iii) to finance the operations of the sentencing judge’s court, coupled with intense pressure placed on that court by its local funding unit, could create at a minimum an appearance of impropriety, anecdotal evidence from a few judges fails to establish that ‘no set of circumstances exists under which [MCL 769.1k(1)(b)(iii)] would be valid. The fact that the ... [statute] might operate unconstitutionally under some conceivable set of circumstances is insufficient.’**” *Council of Orgs*, 455 Mich at 568 (quotation marks and citation omitted). Additionally, defendant’s separation-of-powers challenge to MCL 769.1k(1)(b)(iii) “does not establish that the Legislature has made it impossible for trial courts to fulfill their constitutional mandates[.]” *Johnson*, ___ Mich App at (“disagree[ing] that the statute is facially unconstitutional,” but “leav[ing] open the question whether a successful as-applied challenge could be made under certain presenting circumstances”). Affirmed.