

# Michigan Judicial Institute Magistrate Specialty Webinar

July 22, 2021

## ***SCAO Updates***

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# State Court Administrative Office Update

## Michigan Judicial Institute Magistrate Specialty Seminar



July 22, 2021

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**MJI Magistrate Specialty Seminar**  
**July 22, 2021**  
**SCAO Update**

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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](#).
- [Memo](#) from State Court Administrator, Tom Boyd concerning the path forward - how do we keep moving forward and build on our accomplishments?

**General:**

- Memo from State Court Administrator, Tom Boyd explains [extension of orders related to personal identifying information](#).
- [Memo from State Court Administrator, Tom Boyd](#): You will soon begin to see and hear reference to the Field Services Division ([fieldservices@courts.mi.gov](mailto:fieldservices@courts.mi.gov)) here at the SCAO, formerly known as Trial Court Services. Refocusing and renaming Trial Court Services as Field Services is a recognition of the need to include a broad focus on the issues and reform initiatives affecting the courts, as well as the people who interact with courts at the most difficult points in their lives. Field Services will continue as a vital support to judges and court staff as it takes on these additional responsibilities.
- The [Problem-Solving Court Annual Report](#) is now available.
- The [district court fee and assessment table](#) has been updated. Amendments are highlighted in yellow.
- 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](#) regarding the creation of DC 225s (Complaint and Summons – Misdemeanor) and MC 200s (Felony Set – Summons); Revision of MC 256 (Summons – Criminal).
  - [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.
- Memo highlighting [changes to the CJIS Administrative Rules](#) having the most significant impact on courts.
- [FAQs about MIDC Standard 5](#) – public defense should operate independently from the judiciary.
- [Memo](#) regarding the extension of the effective date for PII; along with the creation of the [PII webpage](#), [PII FAQs](#), and a [memo that summarizes forms use](#).

- The report, [Michigan Trial Courts: Lessons Learned from the Pandemic of 2020-2021 Findings, Best Practices, and Recommendations](#), is now available for review and public comment. Feedback is due no later than July 28, 2021.
- [Frequently Asked Questions](#) and updated [Guidance](#) issued in conjunction with AO No. 2020-17 due to amendment of [AO No. 2020-17](#), effective July 2, 2021.
- The National Center for State Courts (NCSC) [Implementation Lab](#) has assembled a series of “Tiny Chats” that may be interesting to court employees and the public. Most of videos in this series are only a few minutes long and include:
  - [Legal Language 101: Terminology](#)
  - [Coming to Court on Your Own](#)
  - [Small Claims](#)
  - [Filing Motions](#)
  - For the Public: [Legal Advice vs. Legal Aid](#)
  - For court employees: [Legal Advice vs. Legal Aid](#)
- [Pretrial data](#) from participating courts is now available in the Name Search Application (NSA) of the Judicial Data Warehouse.

**Forms:**

- [Memo](#) regarding procedural information as it relates to the new and amended set aside forms.
- [Memo](#) regarding new forms for change of venue and transfer of jurisdiction.
- [Memo](#) regarding revisions to Uniform Law Citations (ULC).
- [Memo](#) regarding revisions to multiple probation-related forms.
- [Memo](#) regarding revised and new forms related to the clean slate legislation.

## **Court Rules and Administrative Orders**

### **Proposed**

<b>MCR Cite:</b>	<b>6.302 and 6.610 – Pleas of Guilty and Nolo Contendere; Criminal Procedure Generally (republished for comment)</b>
ADM File No:	<a href="#">2018-29</a>
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.

**ADM Order:** **6.302 and 6.310 – Pleas of Guilty and Nolo Contendere; Withdrawal or Vacation of Plea**

ADM File No: [2019-06](#)

Comment Expires: August 1, 2021

Staff Comment: The proposed amendment of MCR 6.302 would eliminate the Court’s previously-adopted language requiring a trial court to advise defendant whether the law permits or requires the court to sentence defendant consecutively. This language was added following the Court’s opinion in People v Warren. However, in considering the practical application of that language, it may be more appropriate to allow a defendant to withdraw a plea under MCR 6.310 if such advisement is not given rather than require an advisement in all cases. Thus, the proposal would add language providing for such an outcome in MCR 6.310 instead of imposing an advisement in all cases under MCR 6.302.

**ADM Order:** **6.005 – Right to Assistance of Lawyer; Advice; Appointment for Indigents; Waiver; Joint Representation; Grand Jury Proceedings**

ADM File No: [2020-13](#)

Comment Expires: October 1, 2021

Staff Comment: The proposed amendment of MCR 6.005 would clarify the duties of attorneys in preconviction appeals.

**MRE Cite:** **410 – Inadmissibility of Pleas, Plea Discussions, and Related Statements**

ADM File No: [2020-29](#)

Comment Expires: October 1, 2021

Staff Comment: The proposed amendments would add vacated pleas to the list of guilty pleas that may not be used against defendant. Also, the proposed addition of a reference to MCR 6.310 in subsection (3) would add a prohibition on using a statement made during defendant’s withdrawal of plea to the prohibition on using statements made under MCR 6.302 in entering a plea, which would make the rule more consistent with FRE 410.

**ADM Order:** **2.117, 3.708, 3.951, 6.005, 6.104, 6.445, 6.610, 6.625, 6.905, 6.907, 6.937, and 6.938 – Appointment for Indigent Defense**

ADM File No: [2021-12](#)

Comment Expires: September 1, 2021

Staff Comment: The proposed amendments would generally shift the responsibility for appointment of counsel for an indigent defendant in a criminal proceeding to the local funding unit’s appointing authority. These proposed amendments were submitted by the Michigan Indigent Defense Commission, and are intended to implement recently approved Standard Five of the MIDC Standards.

**ADM Order:** **2021-XX; Proposed AO; Mandatory Submission of Case Data to the Judicial Data Warehouse**

ADM File No: [2021-14](#)

Comment Expires: August 1, 2021

Staff Comment: This administrative order would make it mandatory for all courts to submit case information to the Judicial Data Warehouse in a uniform manner as required by SCAO.

**MCR Cite:** **Proposed New MCR 8.128 - Michigan Judicial Council**

ADM File No: [2021-15](#)

Comment Expires: August 1, 2021

Staff Comment: The addition of MCR 8.128 establishes the Michigan Judicial Council to strategically plan for Michigan's Judiciary. (See also the [Appointments to the Michigan Judicial Council](#) issued June 24, 2021.)

### **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 \(May 22, 2019\) & 2017-28 \(June 30, 2021\)](#)

Effective Date: January 1, 2022

- Staff Comment: The extension of the effective date of this order is intended to allow for additional programming changes and other changes required by trial courts and court users to implement the rule changes. [Amendment of Administrative Order No. 1999-4](#) (extends the effective date of the May 22, 2019 order and June 9, 2021 order that restricts personal identifying information to January 1, 2022).

Issued: 6/30/21

- [Amendment of Administrative Order No. 2019-4](#) (extends the effective date of the portion of the order regarding personal identifying information for electronic filings in the 3<sup>rd</sup>, 6<sup>th</sup>, 13<sup>th</sup>, and 20<sup>th</sup> Circuit courts)

Issued: 6/30/21

**MCR Cite:** **Addition of Rule 1.112 – Filings by Incarcerated Individuals MCR 6.310, 6.429, 6.431, 7.204, 7.205, and 7.305, and – Withdrawal or Vacation of Plea; Correction and Appeal of Sentence; New Trial; Filing Appeal of Right; and Application for Leave to Appeal.**

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:** **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; Administrative Order 1999-4**

ADM File No: [2020-26 \(June 9, 2021\) & 2020-26 \(June 30, 2021\)](#)

Effective Date: January 1, 2022

Staff Comment: The extension of the effective date of this order is intended to allow for additional programming changes and other changes required by trial courts and court users to implement the rule changes.

**ADM Order:** **2020-17 (Amendment) – Continuation of Alternative Procedures for Landlord/Tenant Cases**

ADM File No. [2020-08](#)

Effective Date: Immediately and until further order of the Court

Staff Comment: This amended administrative order continues the alternative procedures for landlord-tenant cases, including a mandatory pretrial hearing and 7-day adjournment.

### Legislation

**Clean Slate**

<b>Package:</b>	<b>MCL 780.621</b>	Set Aside	<a href="#">2020 PA 191</a>
	<b>MCL 780.621b</b>	One Bad Night	<a href="#">2020 PA 188</a>
	<b>MCL 780.621c</b>	Restrictions/Traffic	<a href="#">2020 PA 187</a>
	<b>MCL 780.621d</b>	Application	<a href="#">2020 PA 190</a>
	<b>MCL 780.621e</b>	Misd. Marihuana	<a href="#">2020 PA 192</a>
	<b>MCL 780.621f</b>	Misd. Marihuana	<a href="#">2020 PA 189</a>
	<b>MCL 780.621g</b>	Automatic Set Aside	<a href="#">2020 PA 193</a>
	<b>MCL 780.621h</b>	Reinstatement	<a href="#">2020 PA 193</a>
	<b>MCL 780.621i</b>	Set Aside Fund	<a href="#">2020 PA 193</a>
	<b>MCL 780.622</b>	Not a conviction	<a href="#">2020 PA 193</a>
	<b>MCL 780.623</b>	Nonpublic Record	<a href="#">2020 PA 193</a>

Effective Date: April 11, 2021

What it Does: See the [Michigan Clean Slate Legislation Overview](#)

**Jail Task Force**

**Package:**

Effective Date:	<b>Appearance Citations</b>	<a href="#">2020 PA 393</a>	4/1/21
	<b>Summons Instead of Bench Warrant</b>	<a href="#">2020 PA 394</a>	4/1/21
	<b>Expedited Arraignments</b>	<a href="#">2020 PA 394</a>	4/1/21
	<b>Failure to Appear on Appearance Ticket</b>	<a href="#">2020 PA 394</a>	4/1/21
	<b>Failure to Appear for Any Court Hearing</b>	<a href="#">2020 PA 394</a>	4/1/21
	<b>Nonjail/Nonprobationary Sentences</b>	<a href="#">2020 PA 395</a>	3/24/21
	<b>Hearing Protocol</b>	<a href="#">2020 PA 394</a>	4/1/21
	<b>HYTA</b>	<a href="#">2020 PA 396</a>	3/24/21
	<b>Early Discharge Probation</b>	<a href="#">2020 PA 397</a>	4/1/21
	<b>Technical Probation Violations</b>	<a href="#">2020 PA 397</a>	4/1/21
	<b>Decriminalization/Civil Infractions</b>	<a href="#">2020 PA 382</a>	10/1/21
	<b>Driver's License Suspensions</b>	<a href="#">2020 PA 376</a>	10/1/21
		<a href="#">2020 PA 377</a>	10/1/21
		<a href="#">2020 PA 378</a>	10/1/21
		<a href="#">2020 PA 379</a>	10/1/21
		<a href="#">2020 PA 380</a>	10/1/21
		<a href="#">2020 PA 381</a>	3/24/21
		<a href="#">2020 PA 387</a>	10/1/21
	<b>Mandatory Jail Minimums</b>	<a href="#">2020 PA 375</a>	3/24/21
		<a href="#">2020 PA 383</a>	3/24/21
		<a href="#">2020 PA 384</a>	3/24/21
		<a href="#">2020 PA 385</a>	3/24/21
		<a href="#">2020 PA 386</a>	3/24/21

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

**Statute Cite:** **MCL 764.9c**

P.A. Number: [2021 PA 39](#)

Effective Date: July 1, 2021

What it Does: Amends the Code of Criminal Procedure to exempt operating while intoxicated (OWI) offenses from the requirement to issue an appearance ticket and release a person from custody for certain misdemeanor offenses. Note: In other words, an officer is not prohibited from issuing an OWI on an appearance ticket but the officer is also not required to issue an OWI on an appearance ticket.

**Statute Cite:** **MCL 28.602**

P.A. Number: [2021 PA 42](#)

Effective Date: July 1, 2021

What it Does: Amends the Michigan Commission on Law Enforcement Standards Act to include in the definition of "law enforcement officer" a transit police office employed by a public body corporate created pursuant to an interlocal agreement under the Urban Cooperation Act between a city and an authority under the Metropolitan Transportation Authorities Act.

## Case Law

[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 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 phone's 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 Robe\*](#), \_\_\_ Mich App \_\_\_ (2021)(Unpublished). Defendant was involved in a two-car crash after the driver of the other vehicle ran a red light. The record reveals that the other driver was at fault. When the officers arrived on the scene they focused on assisting the driver of the other vehicle who had sustained serious injuries. Afterwards, an officer spoke with defendant for about three minutes before asking him to take a PBT. Defendant consented to the test, which indicated a 0.114 blood alcohol content (BAC). Field sobriety tests were not performed, and on the basis of the PBT results the officer arrested defendant and obtained a search warrant for a blood draw. The blood draw revealed a 0.134 BAC. The defendant later filed a motion in the circuit court to suppress the PBT on the grounds that it was not administered according to the rules. Specifically, defendant contended that the officer administering the PBT failed to observe him for 15 minutes before administering the PBT. The trial court later denied defendant’s motion. **The Court of Appeals reasoned that “[c]onsidering the amount of time defendant went unobserved, along with the fact that a significant portion of the 15-minute period remained, the violation of the administrative rule was significant and calls into question the accuracy of the PBT”; “[a]ccordingly, the trial court erred by denying defendant’s motion to suppress.” *Id.* at \_\_\_\_.** Reversed and remanded. **On remand, defendant may file a motion to determine whether there was probable cause to arrest him for operating a motor vehicle while intoxicated.**

[\*People v Castillo\*](#), \_\_\_ Mich App \_\_\_, (2021). Defendant plead no contest to a moving violation causing death after she turned left at an intersection and struck a motorcycle. The court sentenced her to pay a \$400 fine and \$350 in costs. The prosecution sought restitution on behalf of the victim’s estate. The district court found that the victim’s operation of a motorcycle without an endorsement barred a restitution award. The circuit court ruled that the prosecution had waived its restitution claim. The prosecutor appealed, seeking restitution. The defendant indicates that waiver bars the appeal stating that the misdemeanor restitution statute authorizes restitution only for “serious misdemeanors,” a term that does not include

her offense. She takes the argument one step further when she argues that the relevant section of the misdemeanor restitution statute, MCL 780.826 irreconcilably conflicts with and supersedes the general restitution statute, MCL 769.1a, precluding *any* restitution award. The Court of Appeals held that **“the prosecution did not waive its restitution claim, but that only the general restitution statute applies.”** Reversed and remanded back to the district court for proceedings consistent with this opinion.

[\*Lange v California\*](#), 594 US \_\_\_, (2021). Defendant drove by a California highway patrol officer while playing loud music and honking his horn. The officer followed the defendant and initiated a stop. Rather than stopping, the defendant drove a short distance into his driveway and pulled into his attached garage. The officer followed the defendant into the garage and after observing signs of intoxication, completed a field sobriety test. A later blood test showed that the defendant’s BAC was three times the legal limit. Defendant was charged with misdemeanor driving under the influence. He moved to suppress the evidence obtained after the officer entered his garage. The trial court denied his motion; the California Court of Appeals affirmed. It concluded that defendant’s failure to pull over when the officer flashed his lights created probable cause to arrest for the misdemeanor of failing to comply with a police signal and it stated that the defendant could not defeat an arrest begun in a public place by retreating into his home. The pursuit of a suspected misdemeanant, the court held, is always permissible under the exigent-circumstances exception to the warrant requirement. The California Supreme Court denied review. The United States Supreme Court vacated and remanded. It held that **the pursuit of a fleeing misdemeanor suspect does not categorically qualify as an exigent circumstance allowing a police officer to enter a home without a warrant. While “many misdemeanor pursuits involve exigencies allowing warrantless entry,” whether a pursuit qualifies as an exigent circumstance “turns on the particular facts of the case.”** “An officer must consider all the circumstances in a pursuit case to determine whether there is a law enforcement emergency,” such as “to prevent imminent harms of violence, destruction of evidence, or escape from the home.” **The fact that “the misdemeanant fled” alone does not justify warrantless entry.**