

# Michigan Association of District Court Magistrates Annual Conference

September 23, 2021

## ***SCAO Updates***

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# STATE COURT ADMINISTRATIVE OFFICE UPDATE

## MADCM Annual Conference



September 23, 2021

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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:**

- Our [website](#) has a new look. All suggestions can be sent through the Site Feedback link located at the bottom of the page, under Quick Links.
- The [Nonpublic Records Chart](#) has been updated to reflect recent changes to statutes and court rules.
- The caseload reporting instructions for all courts were updated to include language regarding the reporting of pilot project cases and to update form names and numbers. The district court instructions were also updated pursuant to 2020 PA 393. See [Explanation of Changes to SCAO 18, SCAO 22, and SCAO 31](#).
- [Memo](#) from State Court Administrator Tom Boyd reminding courts of the following: The CDC order is no longer in effect. Michigan Supreme Court [Administrative Order No. 2020-17](#) remains in effect. As you continue summary proceedings, please keep in mind the following:
  - SCAO form DC511 "Verification Regarding CDC Eviction Moratorium Declaration" is no longer an active form.
  - Administrative Order No. 2020-17(I) tolls the statutory period that must pass before issuing an Application and Order of Eviction (DC 107) pursuant to MCL 600.5744 ("the redemption period") until the expiration of the CDC Order. Judges must use their best judgment in restarting this clock. I believe whatever redemption period the court originally set (minimum of 10 days per MCL 600.5744(5)) in any judgment began to run on August 27, 2021.
  - Administrative Order No. 2020-17(I) suspended MCR 4.201(L)(4)(a) for cases subject to the CDC moratorium, which prohibits an order of eviction from being issued later than 56 days after the judgment unless a hearing is held. Judges must use their best judgment in restarting this clock. I believe the 56 days period also began to run on August 27, 2021.
  - All guidance not in conflict with the above bullet points, contained in the August 2, 2021 memo sent to district courts remains effective.
- [Memo on August 2, 2021](#) from State Court Administrator, Tom Boyd concerning the eviction moratorium.
- The definition section of the [District Court Probation Officers Manual](#) was updated to remove an inapplicable definition.
- Did you know that purchasing your own electronic document management system instead of using the MiFILE DMS could delay your implementation on MiFILE? [Read more...](#)
- Your court or IT department may have received an e-mail on June 30, 2021 from the State Bar of Michigan Database Administrator regarding a change in a State Bar of Michigan

membership electronic file that your court has asked be provided for use in your case management system. This is a notice to prepare for this. See details [here](#).

- See [memo](#) regarding the latest changes to the Michigan Uniform Law Citations (ULC) and Commercial Law Citation (CLC).
- See [memo](#) regarding latest changes to forms in accordance with JTF legislation under 2020 PA 380, 2020 PA 396, and 2020 PA 387. Additional changes were made to correct citations and to accommodate use in e-Filing.

## **Court Rules & Administrative Orders**

### **Proposed**

**MCR Cite:** **6.302 and 6.610 – Pleas of Guilty and Nolo Contendere; Criminal Procedure Generally (republished for comment)**

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. ***\*Public hearing scheduled for 9/22/21.***

**ADM Order:** **2020-X – Proposed Adoption of a Mandatory Continuing Judicial Education Program**

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

Comment Expires: July 1, 2020

Staff Comment: This proposed administrative order would establish a mandatory continuing judicial education program for the state’s justices, judges, and quasi-judicial officers. ***\*Pending results of public hearing on 9/23/20.***

**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. ***Public hearing scheduled for 9/22/21.***

**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. ***Public hearing scheduled for 9/22/21.***

**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.
- 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.
- MCR Cite:** **Rescission of AO Nos. 2020-1, 2020-6, 2020-9, 2020-13, 2020-14, 2020-19, and 2020-21; Amendment of Rules 2.002, 2.107, 2.305, 2.407, 2.506, 2.621, 3.904, 6.006, 6.106, 6.425, 8.110, 9.112, 9.115, and 9.221 of the Michigan Court Rules and Administrative Order No. 2020-17**
- ADM File No: [2020-08](#)
- Effective Date: July 26, 2021
- Staff Comment: These amendments largely reflect the substantive provisions of the remaining administrative orders adopted by the Court during the COVID-19 pandemic. Many of the orders have been rescinded or expired by their own terms. In this order, the Court rescinds all remaining active administrative orders entered during the pandemic except for the order regarding procedures specific to landlord/tenant actions (AO No. 2020-17, which is slightly modified as shown above to reflect the rescissions) and the order establishing a wholly online procedure for those taking the Michigan Bar Examination in July 2021 (AO No. 2021-2). Moving the substance of these provisions into a court rule amendment format returns the Court’s procedure to the typical court rule revision procedure

**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.

**MCR Cite:** **New MCR 8.128 - Michigan Judicial Council**  
**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. (See also the [Appointments to the Michigan Judicial Council](#) issued June 24, 2021). *\*Public hearing scheduled for 9/22/21.*

### Legislation

**Statute Cite:** **MCL 257.1a, MCL 28.304 & 28.306, and MCL 28.292**  
**P.A. Number:** [2021 PA 71, 72, 73](#)  
**Effective Date:** July 30, 2021  
**What it Does:** Extends the validity of driver’s licenses, state personal ID cards, enhanced licenses and cards, driver instruction permits, and certain vehicle registrations and certifications expiring on or after March 31, 2021, and before August 1, 2021. (That is, in April, May, June, or July of this year.) In most cases, the extension would be for 120 days after the expiration. The secretary of state (SOS) could not charge a renewal late fee for a document that expired and was renewed within these time frames and, upon request, would have to reimburse such a fee that was assessed and collected. These provisions would apply retroactively.

**Statute Cite:** **MCL 780.621**  
**P.A. Number:** [2021 PA 78](#)  
**Effective Date:** February 19, 2022  
**What it Does:** Amends the statute to include the definition of “first violation operating while intoxicated offense” and modifies the definition of “operating while intoxicated.”

**Statute Cite:** **MCL 780.621c**  
**P.A. Number:** [2021 PA 79](#)  
**Effective Date:** February 19, 2022  
**What it Does:** Allows the setting aside of a conviction for a first violation operating while

intoxicated (OWI) under certain circumstances. A first violation OWI is not eligible for automatic set aside under MCL 780.621g. Permits the court to consider whether the applicant had benefited from rehabilitative or educational programs, (if any were ordered by the sentencing court) or whether such steps were taken before sentencing on the first offense OWI conviction. Allows the court to deny the application if it is not convinced that the applicant has either availed him or herself or benefited from educational or rehabilitative programming.

**Statute Cite:** **MCL 257.625, 257.625a, 257.625g, and 257.625m**  
**P.A. Number:** [2021 PA 80](#)  
**Effective Date:** November 21, 2021  
**What it Does:** Amends the Michigan Vehicle Code to delete the sunset of October 1, 2021 on which the bodily alcohol content (BAC) would increase from .08 to .10. Under the new law, the BAC would only increase to .10 if the state no longer receives annual Federal highway construction funding conditioned on compliance with a national blood alcohol limited and the State Treasurer certifies that fact within 30 days after the State stops receiving funds.

**Statute Cite:** **MCL 777.33 and 777.48**  
**P.A. Number:** [2021 PA 81](#)  
**Effective Date:** November 21, 2021  
**What it Does:** Amends the sentencing guidelines within the Code of Criminal Procedure to reflect extending the sunset provision raising the BAC that constitutes OWI.

**Statute Cite:** **MCL 780.621d**  
**P.A. Number:** [2021 PA 82](#)  
**Effective Date:** March 9, 2022  
**What it Does:** Amends the statute to prescribe the time period in which an application to set aside a conviction for a first violation operating while intoxicated (OWI) offense would have to be filed. Under the statute, the applicant would have to wait 5 or more years to file an application for a first violation OWI offense.

### **Case Law**

*People v Stock*, \_\_\_ Mich \_\_\_, \_\_\_ (2021). This case arises out of a fatal motor vehicle accident in Detroit. At the time of the accident, defendant was allegedly driving the wrong way on a one-way street at excessive speeds, ran a red light and struck a pickup truck. The accident resulted in the death of Sims, who was the driver of the pickup truck, and serious injuries to Butler, who was a passenger in the vehicle operated by the defendant. Defendant was taken to the hospital after the accident and pursuant to a search warrant, the police obtained a toxicology report showing that the defendant had cocaine metabolites in her urine. Defendant was convicted and appealed. The Court of Appeals held that the defendant's convictions for operating while intoxicated causing a serious impairment of a body function and operating a motor vehicle while intoxicated causing a



serious impairment of a body function were supported by sufficient evidence on the record. The Michigan Supreme Court heard oral arguments and in lieu of granting leave to appeal, reversed the COA holding. “[T]he prosecution bears the burden of proof with regard to each element of an offense, including whether a controlled substance was in a defendant’s body.” **In this case, “[t]he prosecution failed to present evidence that the presence of cocaine metabolites in the defendant’s urine supports a reasonable inference that the defendant had cocaine in her body.”** *Id.* at \_\_\_\_\_. Specifically, “the prosecution presented evidence—the results of a toxicology screen—indicating the presence of an unidentified metabolite of cocaine in the defendant’s urine,” but “failed to identify the metabolite or demonstrate that the metabolite *itself* was a ‘controlled substance’ for purposes of MCL 257.625(8).” **“Further, the prosecution’s evidence showing the mere presence of an unidentified metabolite, but nothing more, was not sufficient to prove that the defendant had any amount of cocaine in her body at the time of the motor vehicle collision.”** *Id.* at \_\_\_\_\_.

*People v Perry*, \_\_\_ Mich App \_\_\_, (2021). The defendant was involved in an accident. Responding officers detected the odor of burnt marijuana emanating from the car. The defendant admitted that she had smoked marijuana. Suspecting that she may have been operating her car under the influence of drugs, the officers asked the defendant to participate in a blood test and she agreed. The test result was positive for THC, reflecting 4 nanograms of TCH per milliliter of blood. The defendant was charged with operating a motor vehicle with a schedule 1 controlled substance – marijuana – in her system. Defendant filed a motion to dismiss the charge arguing that MRTMA barred any criminal prosecution, although she would be responsible for a civil infraction. The district court denied the motion. The circuit court also denied the motion concluding that MRTMA did not prohibit charging defendant with a criminal offense under MCL 257.625(8). The circuit court observed that MCL 257.625(8) criminalized the “use” of marijuana, while MCL 333.27965(3) decriminalized the “possession” and “cultivation” of marijuana for individuals under the age of 21. Michigan law recognizes a distinction between possessing marijuana, MCL 333.7403, and using marijuana, MCL 333.7404. The defendant appealed. The Court of Appeals affirmed and explained that “when a person is under the influence of marijuana or is consuming marijuana while operating a vehicle, **the person is not afforded the same limitation on punishment** as one who is under 21 and simply possesses less than 2.5 ounces of marijuana or cultivates 12 or fewer marijuana plants.” **“In sum, the MRTMA did not remove all criminal penalties for persons under the age of 21 who operate a motor vehicle with marijuana in their system, is under the influence of marijuana while driving, or consumes marijuana while operating a vehicle. Defendant operated her vehicle on the road while she had in her body any amount of a controlled substance, in contravention of MCL 257.625(8). The trial court thus properly affirmed the district court’s denial of defendant’s motion for dismissal.**