

**MADCM Board Meeting**  
**April 21<sup>st</sup>, 2023**  
**SCAO Update**

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**Directives, Resources, and Information**

- Tom Boyd presented to the House of Representative's [Criminal Justice Committee](#) and [Judiciary Committee](#).
- Michigan Supreme Court announced that [Alicia Moon](#) has been selected as General Counsel.
- SCAO [memo](#) for Public Terminal Access Compliance with Automatic Clean Slate.
- SCAO [memo](#) regarding implementation of Automatic Clean Slate for JIS courts, which also includes a [Q&A](#) document prepared in response to questions received at the informational sessions held previously.
- SCAO [memo](#) regarding implementation of Automatic Clean Slate for **Non-JIS courts**, which also includes a [Q&A](#) document prepared in response to questions received at the informational sessions held previously.
- SCAO [memo](#) regarding MiCOURT Case Search & Automatically Set Aside Convictions.
- Revised Set Aside Forms [memo](#) is available with an explanation of the changes. And creation of the new Reinstatement of Conviction Set Aside [memo](#) with an explanation of the changes.
- Revised forms and an explanation of changes [memo](#) regarding revision made to various proof of services forms.
- Also, [memo](#) regarding new form for Affidavit of Probable Cause (MC 522).
- The [2022 Problem-Solving Courts Annual Report](#) is available.
- The [2022 National Center for State Courts Annual Report](#) is available.

**Court Rules & Administrative Orders**

**Proposed**

**MCR Cite:** 2.002 and 7.109 – Waiver of Fees for Indigent Persons; Record on Appeal  
**ADM File No:** [2016-10](#)  
**Comment Expires:** January 1, 2023  
**Staff Comment:** The proposed amendments of MCR 2.002 and 7.109 would allow for waiver of appellate transcript fees for indigent individuals. ***\*Pending results of public hearing held 3/22/23.***

**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. *\*Pending results of public hearing held 9/22/21.*

**MCR Cite:** **Amendment to AO No. 2020-17 and 4.201 - Summary Proceedings to Recover Possession of Premises**

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

Comment Expires: November 1, 2022

Staff Comment: The proposed amendments would permanently incorporate certain provisions from Administrative Order No. 2020-17 into court rule format under MCR 4.201 and would make a number of minor changes due to a relettering of the rule. The proposed amendments would also incorporate public comment received at the public hearing on March 16, 2022 and via email, as well as additional recommendations and input received from other stakeholders including the JFAC and the MDJA. Finally, the proposed amendments in this order reference MCR 2.407, which is amended effective September 9, 2022. *\*Pending results from public hearing held 11/16/22.*

**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. *\*Pending results of public hearing held 3/16/22.*

**MRE Cite:** **Proposed Amendment of the Michigan Rules of Evidence**

ADM File No: [2021-10](#)

Comment Expires: July 1, 2023

Staff Comment: The proposed amendments of the Michigan Rules of Evidence (MRE) reflect the work of the Michigan Rules of Evidence Committee established by Administrative Order No. 2021-8. The Committee was tasked with restyling the MREs in an effort to remain as consistent as possible with the 2011 restyling of the Federal Rules of Evidence. Major reorganization of the rules appears in MRE 803 and MRE 804 where the residual exceptions found in both rules are moved into a new MRE 807, and in MRE 804 where the exception regarding deposition testimony is moved up from subrule (b)(5) to proposed subrule (b)(2).

**MCR Cite: 6.001 and 6.009 – Use of Restraints on a Defendant**

ADM File No: [2021-20](#)

Comment Expires: October 1, 2022

Staff Comment: The proposed addition of MCR 6.009 would establish a procedure regarding the use of restraints on a criminal defendant in court proceedings that are or could be before a jury, and the proposed amendment of MCR 6.001 would make the new rule applicable to felony, misdemeanor, and automatic waiver cases. *\*Pending results of public hearing held 11/16/22.*

**MCR Cite: 6.201 - Discovery**

ADM File No: [2021-29](#)

Comment Expires: October 1, 2022

Staff Comment: The proposed amendment would require redaction of certain information contained in a police report or interrogation record before providing it to the defendant. *\*Pending results of public hearing held 11/16/22.*

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

ADM File No: [2022-03](#)

Comment Expires: May 1, 2023

Staff Comment: The proposed amendment of MCR 1.109(D)(1)(b) would allow attorneys to provide personal pronouns in document captions and require courts to use those personal pronouns when addressing the party or attorney, either verbally or in writing, unless doing so would result in an unclear record. The Court is interested in receiving comments addressing the constitutional implications of this proposal.

**MCR Cite: 6.110 and 8.119 – The Preliminary Examination; Court Records and Reports; Duties of Clerks**

ADM File No: [2023-06](#)

Comment Expires: July 1, 2023

Staff Comment: The proposed amendment of MCR 8.119 would require all case records maintained by the district court to become nonpublic immediately after bindover to the circuit court. This proposal would also amend MCR 6.110(G) to expand the types of documents that must be transmitted to the circuit

court to ensure appropriate public access in the circuit court. The proposal would consolidate public access in the circuit court case file and would also uniformly ensure that information regarding set aside criminal offenses in the circuit court cannot be separately accessed in the district court case file.

**Adopted:**

**MRE Cite:** **410 – Inadmissibility of Pleas, Plea Discussions, and Related Statements**  
**ADM File No:** [2020-29](#)  
**Effective Date:** May 1, 2023  
**Staff Comment:** The amendment in this file adds vacated pleas to the list of guilty pleas that may not be used against defendant. In addition, the amendment adds a reference to MCR 6.310 in subsection (3), which makes inadmissible statements made during a proceeding on defendant’s motion to withdraw his or her plea and statements made during the prosecution’s motion to vacate a plea for failure to comply with the terms of a plea agreement.

**MCR Cite:** **2.002 – Waiver of Fees for Indigent Persons**  
**ADM File No:** [2021-49](#)  
**Effective Date:** May 1, 2023  
**Staff Comment:** The amendments of MCR 2.002(B) and (G) provide procedural direction to courts regarding prisoner requests for fee waivers in civil actions.

**MCR Cite:** **6.001, 8.119 and 6.451 – Scope; Applicability of Civil Rules; Superseded Rules and Statutes; Court Records and Reports; Duties of Clerks; [New] Reinstatement of Convictions Set Aside Without Application**  
**ADM File No:** [2023-06](#)  
**Effective Date:** April 11, 2023  
**Comment Expires:** July 1, 2023  
**Staff Comment:** The amendment of MCR 8.119 requires courts to restrict access to case records involving set aside convictions similar to how MCL 780.623 restricts access to records maintained by the Michigan State Police. The amendment further requires the court to redact information regarding any conviction that has been set aside before that record is made available. The addition of MCR 6.451 requires the court to provide notice and an opportunity to be heard before reinstating a conviction for failure to make a good faith effort to pay restitution under MCL 780.621h(3) and to order the reinstatement on an SCAO-approved form. The amendment of MCR 6.001 clarifies that MCR 6.451 applies to cases cognizable in the district courts.

## Legislation

**Statute Cite:** **MCL 28.725a**  
**P.A. Number:** [2022 PA 272](#)  
**Effective Date:** Immediate  
**What it Does:** Amends the Sex Offenders Registration Act by extending the period of applicability for the fee assessed for annual registration to the sex offender registry. The bill would maintain the current fee amount by extending the date by which initial registration would have to occur for a registrant to be responsible for the annual registration fee to January 1, 2027.

**Statute Cite:** **MCL 750.14 and MCL 750.15**  
**P.A. Number:** [2023 PA 11](#)  
**Effective Date:** Sine Die  
**What it Does:** Amends the Section 14 of the Michigan Penal Code, which prescribes a felony for administering to a pregnant woman any medicine, drug, or substance, or employing any instrument or other means, with intent to procure a miscarriage, unless it is necessary to protect the life of the mother, and Section 15, which prescribes a misdemeanor penalty for a person who advertises, publishes, or sells any pills, powder, drugs or combination of drugs, designed expressly for the use of females for the purpose of procuring an abortion.

**Statute Cite:** **MCL 750.40**  
**P.A. Number:** [2023 PA 12](#)  
**Effective Date:** Sine Die  
**What it Does:** Amends Section 40 of the Michigan Penal Code, which prescribes a misdemeanor offense to publish or sell in Michigan a circular, pamphlet, or book that contains recipes or prescriptions in indecent or obscene language for the cure of chronic female complaints or private diseases or recipes or prescriptions for drops, pills, tinctures, or other compounds designed to prevent conception or that tend to produce miscarriage or abortion.

**Statute Cite:** **MCL 28.435**  
**P.A. Number:** [2023 PA 16](#) and [2023 PA 17](#)  
**Effective Date:** Sine Die (91<sup>st</sup> day after final adjournment of the 2023 Regular Session)  
**What it Does:** Amends the Firearm act by adding Section 9 to MCL 28.435, which would require an individual who stored or left a firearm unattended in a place where the individual knew or reasonably should have known that a minor was present to follow specified safe storage requirements. For example, the firearm would need to be stored in a locked box or container or kept unloaded with a locking device which is properly engaged to render the firearm inoperable by any individual other than the owner or authorized user. It would be a 93 misdemeanor and/or \$500 fine if the firearm is not properly stored and the minor obtains the firearm. If the firearm is not properly stored, the minor

obtains the firearm, discharges it and inflicts injury on themselves or another individual (5 years/\$5000), inflict serious impairment of body function (\$10 years/\$7500, or inflicts death (15 years/\$10,000). As a side note, [2023 PA 19](#) also replaces *pistol* with *firearm* in several provisions of the Michigan Penal Code.

### **Case Law**

None.