

**MADCM Board Meeting
January 20, 2023
SCAO Update**

Directives, Resources, and Information

- [SCAO Memo: Security Awareness Training & CHRIS](#) - This memo covers two updates from the Michigan State Police (MSP) regarding security awareness training and an optional new process for expediting delivery of criminal history for name change cases.
- [Justice Clement](#) is the new Chief Justice and [Kyra Harris Bolden](#) is the newest Justice for the Michigan Supreme Court.
- [SCAO Memo: MiFILE E-Filing Plans and Communications](#) – This memo reviews mandatory e-filing and MiFILE Policies, Standards, and Rules.
- [The Michigan Jail Reform Advisory Council \(JRAC\) has released its 2022 Report](#) – The report incorporates feedback from the public that help guide the JRAC in implementing policy and practice changes, developing education materials supporting justice system practitioners, and monitoring performance measures.
- [SCAO Memo: Set Aside Reimbursement Process for Non-JIS CMS Providers](#) – Beginning in April 2023 the automatic set aside for convictions pursuant to MCL 780.621g will start. For the Non-JIS courts this memo provides information on reimbursement for system upgrades.
- [SCAO Memo: Reporting 2022 Trial Court Caseload Data to SCAO](#) – Each trial court must submit and verify 2022 caseload data through the Caseload Reporting System by January 31, 2023.
- [SCAO Memo: Mandatory Jail Minimums for OWI 2nd and OWI 3rd](#) – The Office of Highway Safety Planning and SCAO annually submit data to the National Highway Traffic Safety Administration on the number of OWI 2nd and OWI 3rd sentences that comply with the minimum penalties for repeat OWI offenders. This memo outlines the numbers for Michigan and how it effects federal funding.
- [SCAO Memo: Backlog Reduction Simulator](#) – The Nation Center for State Courts launched the Backlog Reduction Simulator in September of 2022. This online tool can be used to forecast your courts active pending caseload.

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.

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.*

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: **2.002 – Waiver of Fees for Indigent Persons**
ADM File No: [2021-49](#)
Comment Expires: January 1, 2023
Staff Comment: The proposed amendment of MCR 2.002 would provide procedural direction to courts regarding prisoner requests for fee waivers in civil actions.

Adopted:

MCR Cite: **1.109 and 8.119**
ADM File No: [2002-37](#)
Effective Date: May 11, 2022 (order of 11/16/22 retained amendments)
Comment Expires: September 1, 2022
Staff Comment: The amendments of MCR 1.109 and MCR 8.119 allow protecting personal identifying information to be included in a Uniform Law Citation (ULC) and on proposed orders filed with or submitted to the court. The proposed order must be protected by the court as required by MCR 8.119(H), as if the document was prepared or issued by the court.

MCR Cite: **6.005 – Right to Assistance of Lawyer; Advice; Appointment for Indigents; Waiver; Joint Representation; Grand Jury Proceedings**
ADM File No: [2020-13](#)
Effective Date: January 1, 2023
Staff Comment: The amendment of MCR 6.005 clarifies the duties of attorneys in pre-conviction appeals.

MCR Cite: **8.119 – Court Records and Reports; Duties of Clerks**
ADM File No: [2021-13](#)
Effective Date: January 1, 2023
Staff Comment: The amendment of MCR 8.119 clarifies that a request for a fee waiver must be filed in accordance with MCR 2.002(B), which requires the request to be made on a form approved by the State Court Administrative Office.

MCR Cite: **3.101 – Garnishment After Judgment**
ADM File No: [2022-06](#)
Effective Date: January 1, 2023
Staff Comment: The amendment of MCR 3.101 allows writs of garnishment to be served electronically on the Department of Treasury, subject to current e-filing requirements and guidelines established by the Department of Treasury.

Legislation

Statute Cite: **MCL 769.1k**
P.A. Number: [2022 PA 199](#)
Effective Date: September 27, 2022
What it Does: Amends the Code of Criminal Procedure to extend the ability of trial courts to impose certain costs on criminal defendants.

Statute Cite: **MCL 600.8512**
P.A. Number: [2022 PA 242](#)
Effective Date: Sine Die
What it Does: Amends Chapter 85 (Magistrates) the Revised Judicature Act to authorize a district court magistrate to hear, preside over, and conduct admission, admissions with explanation, motions to set aside default or withdraw admissions, and information hearings in civil infraction actions under the Michigan Regulation and Taxation of Marihuana Act and civil fine actions under the Michigan Medical Marihuana Act, as applicable.

Case Law

[People v DeRousse](#), ___ Mich App ___, (2022). An animal control officer responded to a call that there was a cow running loose in the roadway. The officer found the cow and followed it back to its property. While making sure the cow was secured, the officer observed an alarming number of dead animals on the defendant’s property, some in carcass form and others that were skeletal. The officer learned from a neighbor that there had been multiple complaints of “animals at large” on the defendant’s property. The officer eventually got a search warrant and seized approximately 35 animals from the property. Some of the animals were seized from the pole barns located on the property. The officer testified that were dogs that did not have access to food or drinking water,

had internal and external parasites, and were covered with urine and feces. There were also cows that did not have access to food or water. The property also contained several carcasses of dead chickens, a lamb, and a snapping turtle. The defendant was charged with abandonment/cruelty to 25 or more animals. However, after the probable cause hearing, the defendant moved to suppress evidence regarding the seizure of the animals because the search warrant only permitted the officers to search “a single-family dwelling” which did not include the outbuildings on the property. After an evidentiary hearing, the trial court suppressed the evidence seized from the two pole barns and this appeal followed. **The Court of Appeals reasoned that “[w]hen evaluating whether a defendant has a reasonable expectation of privacy in a building sufficient to challenge a search under the Fourth Amendment, [the court] must inquire whether [the] defendant took normal precautions to maintain his privacy[.]”** (quotation marks and citation omitted; second alteration in original). Additionally the court found that “the secured nature of the west barn reflects that [she] took normal precautions to maintain her privacy”[.] **“Because [defendant] had a reasonable expectation of privacy in the interior of both barns, a warrant was required before [the police] could search either barn.”** *Id.* at _____. Further, **“the warrant described with particularity only the residence located on the property,”** and **“[i]t did not authorize—even indirectly—the search of other structures located on the property.”** *Id.* at _____. **“As a result, the search of those structures was a warrantless search,”** and **“suppression of the evidence seized during the warrantless search of the barns was not barred by the good-faith exception to the exclusionary rule.”** *Id.* at _____.

[People v Majeed](#), ___ Mich ___, ___ (2022). The Kent County Circuit court originally set defendant’s bond at a \$5000 personal recognizance bond. However, the court later modified the bond to a \$25,000 cash bond with a weekly drug testing condition. Defendant appealed to the Court of Appeals, who affirmed, and an application for leave to appeal was filed with the MSC. In lieu of granting leave, the MSC vacated the Kent Circuit Court’s modification of the defendant’s bond, reinstated the original \$5000 PR bond and remanded the case for further proceedings. **The MSC held that the “trial court abused its discretion when it modified the defendant’s bond without explaining its reasoning. When a court orders money bail, it must state ‘reasons . . . on the record’ as to why ‘the defendant’s appearance or the protection of the public cannot otherwise be assured’ MCR 6.106(E) (emphasis added).”** **“Further, a court may only impose pretrial conditions if the court finds that personal recognizance ‘will not reasonably ensure the appearance of the defendant as required, or will not reasonably ensure the safety of the public’ MCR 6.106(D).** In this case, the circuit court modified defendant’s bond without any explanation on the record for why the modification was reasonably necessary to ensure the defendant’s appearance or to protect the public.

[People v Armstrong](#), ___ Mich App ___, ___ (2022). Officers were driving down the street and smelled the scent of burnt marijuana coming from a Jeep parked on the side of the street. Body camera footage shows the officers approaching the vehicle, speaking with both people in the vehicle, later instructing the defendant to get out of the vehicle, and ultimately finding a gun under the front passenger’s seat. Defendant was charged with carrying a concealed weapon and felon in possession, and possession of a firearm during the commission of a felony. Defendant filed a motion to suppress the gun as fruit of an illegal search. The prosecutor argued that the smell alone of marijuana, standing alone, provided probable cause to approach the Jeep and that the gun was found in plain view. The trial court disagreed and determined that the smell of marijuana alone neither constituted probable cause nor justified defendant’s removal from the Jeep or the officers’ search of the vehicle and suppressed the gun. The prosecutor appealed. The COA analyzed that when marijuana was illegal for all purposes under Michigan law, our Supreme Court ruled that the “‘very strong smell of marijuana emanating from [a] vehicle’ ” furnished “probable cause to search for marijuana[.]” *People v Kazmierczak*, 461 Mich 411, 421-422 (2000). The Michigan Regulation and Taxation of Marijuana Act (MRTMA), MCL 333.27951 et seq., that was approved by voters in 2018 (prior to Armstrong’s encounter with the officers) generally decriminalized use and possession of marijuana by adults aged 21 years or older. Therefore, in light of the MRTMA, we conclude that *Kazmierczak* no longer governs our analysis of whether the smell of marijuana, standing alone, constitutes probable cause to search for that substance. **“The odor of marijuana is relevant to the totality of the circumstances test and can contribute to a probable cause determination, but the smell of marijuana, by itself, does not give rise to probable cause unless it is combined with other factors that bolster the concern about illegal activity that may flow from the smell of marijuana.”** *Id.* at ___ (cleaned up). Because **“no other factor may be permissibly considered in this case to decide whether law-enforcement officers had probable cause to seize defendant and search the Jeep,”** **“the trial court properly determined that defendant was unconstitutionally seized, so all of the evidence obtained after that unconstitutional seizure must be suppressed.”** *Id.*