



THE DOCKET

The Newsletter of the Michigan Association of District Court Magistrates

Winter, 2021

Michigan Medical Marijuana Act does not supersede MCL 257.625(3)

By: Kinga Canike and Ken Stecker

In a published decision, the Michigan Court of Appeals (COA) held that the Michigan Medical Marihuana Act (MMMA) does not supersede MCL 257.625(3), the operating while visibly impaired (OWVI) statute.

Defendant was charged with one count of operating while intoxicated, MCL 257.625(1). In preparation for trial, defendant moved for special jury instructions that stated that the medical marijuana card holders must be shown to be *under the influence* of marijuana and cannot be convicted of the lesser standard of *operating while visibly impaired*. The trial court disagreed, and defendant entered a conditional no-contest plea to OWVI. The COA granted leave to appeal on the issue. On appeal, defendant argued that the trial court erred when it determined that the MMMA permits a defendant to be convicted of OWVI because the plain language of the MMMA does not allow for such a conviction.

In affirming the trial court's decision, the COA held the following: "Under the influence' as used in MCL 333.26427(b)(4) is not limited in meaning to how that phrase is understood with regard to the OWI statute, MCL 257.625(1). A person may be considered 'under the influence' of marijuana if it can be shown that consumption of marijuana had 'some effect on the person,' *Koon*, 494 Mich at 6, such that it 'weakened or

reduced the defendant's ability to drive such that the defendant drove with less ability than would an ordinary, careful, and prudent driver.' *Mikulen*, 324 Mich App at 22."

[COA 350386 PEOPLE OF MI V MICHAEL DEAN DUPRE Opinion - Authored - Published 12/16/2020](#)

2021 Annual Conference

Due to the pandemic, the 2021 Annual Conference will be virtual. Details to follow.

Dues are Due!

If you have not done it yet (like me) dues for 2021 need to be taken care of quickly. Please mail your check (or your court's check) for \$75.00 to our Association Treasurer, Gerald Ladwig :
75th District Court
301 W. Main
Midland, MI 48640

If you have any questions, contact Gerald at: gladwig@co.midland.mi.us

- Obituary -
J. Kevin McKay
8/181965 – 12/20/2020



It is with heavy heart that we inform you all of the passing of J. Kevin McKay.

Kevin graduated from Owosso High School class of 1983, Graduate of Indiana Wesleyan University 1987, Graduate of Regent University 1990 where he earned his Juris Doctorate.

Kevin was magistrate and court administrator in the 66th District Court (Shiawassee County) from September 1, 2004, through December 10, 2020. He then moved to Grand Rapids and served as magistrate and court administrator in the 63rd District Court (Kent County) from December 13, 2010, through December 8, 2017.

Kevin then moved to the State Court Administrative office where he was a jury management analyst beginning December 11, 2017.

During his time as a Magistrate and with SCAO, Kevin was adjunct faculty member with MJI and helped train new Magistrates each year.

Kevin served as vice president of the Michigan Association of District Court Magistrates in 2009 and 2010, and in 2011 and 2014 he was president. In 2008 and again in 2011, he received MADCM's Distinguished Service Award. Kevin also published the Docket for several years.

Kevin was a life-long member of the Wesleyan Church, a member of the Rotary Club in Owosso and Kentwood.

He will be missed.

From SCAO

Court Rules & Administrative Orders

Proposed

MCR Cite: 2.226 – [New] Change of Venue; Transfer of Jurisdiction; Orders

ADM File No: 2002-37

Comment Expires: September 1, 2020

Staff Comment: The proposed addition of MCR 2.226 would clarify the process for change of venue and transfer orders (e.g. if the change of venue order is not prepared or the receiving court refuses to accept the transfer, etc.).

MCR Cite: 6.302 and 6.610 – Pleas of Guilty and Nolo Contendere; Criminal Procedure Generally

ADM File No: 2018-29

Comment Expires: January 1, 2020

Staff Comment: The proposed amendments of MCR 6.302 and MCR 6.610 would eliminate the requirement 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 on 3/11/20.*

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.*

MCR Cite: 4.201 – Summary Proceedings to Recover Possession of Premises

ADM File No: 2019-41

Comment Expires: September 1, 2020

Staff Comment: The proposed amendment of MCR 4.201 would require disclosure of the right to object to venue in actions brought under the Summary Proceedings Act for landlord/tenant proceedings in district court, consistent with MCL 600.5706.

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

ADM File No: 2019-48

Comment Expires: January 1, 2021

Staff Comment: The proposed amendment of MCR 1.109 would require 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 e-filing rule changes.

MCR Cite: 2.403, 2.404, and 2.405 – Case Evaluation; Selection of Case Evaluation Panels; Offers to Stipulate to Entry of Judgment

ADM File No: 2020-06

Comment Expires: July 1, 2020

Staff Comment: The proposed amendments were in large part produced by a workgroup convened by the State Court Administrative Office to review and offer recommendations about case evaluation. **Pending results of public hearing on 9/23/20.*

MCR Cite: 2.302 – Duty to Disclose; General Rules Governing Discovery

ADM File No: 2020-19

Comment Expires: March 1, 2021

Staff Comment: The proposed amendment of MCR 2.302 would require transcripts of audio and video recordings intended to be introduced as an exhibit at trial to be transcribed.

MCR Cite: 2.105 – Process; Manner of Service

ADM File No: 2020-20

Comment Expires: March 1, 2021

Staff Comment: The proposed amendment of MCR 2.105 would establish the manner of service on limited liability companies.

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:

- 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)

Adopted:

MCR Cite: 1.109, 2.002, 2.302, 2.306, 2.315, 2.603, 3.222, 3.618, 4.201, and 8.119

ADM File No: 2002-37

Effective Date: January 1, 2021

Staff Comment: The amendments of MCR 1.109, 2.002, 2.302, 2.306, 2.315, 2.603, 3.101, 3.222, 3.618, and 8.119 are the latest revisions made as part of the design and implementation of the statewide electronic-filing system. The amendment of MCR 2.603(A), which requires a clerk to enter a default if a party's failure to plead or otherwise defend becomes known to the clerk, is intended to return the rule to its former posture. Under the rule's previous language, which was inadvertently deleted in making structural changes in the rule, the clerk was required to enter a default if a party's failure to plead or defend "is made to appear by affidavit or otherwise." The same policy would apply

under the language adopted by amendment in this order.

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: 6.302 - Pleas of Guilty and Nolo Contendere

ADM File No: 2019-06

Effective Date: September 16, 2020

Comment expires: January 1, 2021

Staff Comment: The amendment of MCR 6.302 makes the rule consistent with the Supreme Court's ruling in *People v Warren*, 505 Mich 196 (2020), and requires a judge to advise a defendant of the maximum possible prison sentence including the possibility of consecutive sentencing.

MCR Cite: 6.310, 6.429, 6.431, 6.509, and 7.205 – Withdrawal or Vacation of Plea; Correction and Appeal of Sentence; New Trial; Appeal; Application for Leave to Appeal

ADM File No: 2019-27

Effective Date: January 1, 2021

Staff Comment: The amendments of MCR 6.310, 6.429, 6.431, 6.509, and 7.205 and addition of MCR 6.126 clarify and simplify the rules regarding procedure in criminal appellate matters.

MCR Cite: 4.202 – Summary Proceedings: Land Contract Forfeiture

ADM File No: 2020-14

Effective Date: June 10, 2020

Comment expires: October 1, 2020

Staff Comment: The amendment of MCR 4.202(H) makes the rule consistent with the requirements of MCR 4.201(F)(4) by requiring the court clerk to mail defendant notice of entry of a default judgment. The rule was amended previously to require plaintiff to mail a default judgment to the defendant, unlike MCR

4.201(F)(4), which was not amended. Having two different procedures for matters that are both summary proceedings has caused confusion for courts. This amendment returns the language to its previous status and makes MCR 4.201 and MCR 4.202 consistent again.

MCR Cite: 6.110 – The Preliminary Examination

ADM File No: 2020-22

Effective Date: November 18, 2020

Comment expires: March 1, 2021

Staff Comment: The amendment of MCR 6.110 requires courts to allow a witness called by the prosecutor or defendant to appear at a preliminary examination as provided for by MCL 766.12. This proposal was submitted by the State Bar of Michigan.

ADM Order: 2020-23 – Administrative Order Regarding Professionalism Principles for Lawyers and Judges

ADM File No: 2019-32

Effective Date: December 16, 2020

Staff Comment: The State Bar of Michigan, acting in accord with the Michigan Supreme Court, has established twelve principles of professionalism ("Principles") as guidance to attorneys and judges concerning appropriate standards of personal conduct in the practice of law.

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.

Statute Cite: MCL 780.621c

P.A. Number: 2020 PA 187

Effective Date: April 11, 2021

What it Does: This amendment adds Section 1c which prohibits a person from applying to have a set aside and prohibits a judge from setting aside certain convictions, including:

- A felony where the maximum punishment is life imprisonment or an attempt to commit a felony where the maximum punishment is life imprisonment.
- A violation or attempted violation of MCL 750.136b, MCL 750.136d, MCL 750.145c, MCL 750.145d, MCL 750.520c, MCL 750.520d, MCL 750.520g.
- A violation or attempt violation of MCL 750.520e, if the conviction occurred on or after January 12, 2015.
- The following traffic violations:
 - o Operating while intoxicated by any person.
 - o Any traffic offense committed by a person with an endorsement on the operator's or chauffeur's license to operate a commercial motor vehicle that was committed while the person was operating a commercial motor vehicle or was in another manner a commercial motor vehicle violation.
 - o Any traffic offense that causes injury or death.
- A felony conviction for domestic violence, if the person has a previous misdemeanor conviction for domestic violence.
- A violation of MCL 750.462a, MCL 750.462h, and MCL 750.543a to 750.543z.

The act also states that the order setting aside a traffic offense must not require that the conviction be removed or expunged from the driving record maintained by the Secretary of State.

Statute Cite: MCL 780.621b

P.A. Number: 2020 PA 188

Effective Date: April 11, 2021

What it Does: Creates MCL 780.621b. For purposes of setting aside a conviction under Section 1 or 1e, more than 1 felony offense or

more than 1 misdemeanor offense must be treated as a single felony or misdemeanor conviction if the felony or misdemeanor convictions were contemporaneous in that they all occurred within 24 hours and arose from the same transaction, provided that none of the felony or misdemeanor offenses involve the following:

- An assaultive crime.
- A crime involving the use or possession of a dangerous weapon.
- A crime with a maximum penalty of 10 or more years' imprisonment.
- A conviction for a crime that if it had been obtained in this state would be for an assaultive crime.

The act also defines what a “dangerous weapon” is.

Statute Cite: MCL 780.621f

P.A. Number: 2020 PA 189

Effective Date: April 11, 2021

What it Does: Creates MCL 780.621f. Specifies that if an application to set aside a conviction or convictions under Section 1e (marihuana related offenses) is granted, the arresting agency and the department of the state police shall maintain a nonpublic record (see Section 3). The statute also states that an applicant may not seek resentencing on another criminal case for which the set aside offense was used to determine an appropriate sentence, whether or not that set aside offense would have changed the scoring of a prior record variable for purposes of sentencing guidelines. The statute further describes appeals by aggrieved parties. Lastly, the statute states that a setting aside of a conviction under Section 1e does not entitle the applicant to the return of any fines, costs, or fees imposed as part of the sentence nor does it entitle the applicant a return of forfeited property.

Statute Cite: MCL 780.621d

P.A. Number: 2020 PA 190

Effective Date: April 11, 2021

What it Does: Creates MCL 780.621d. The statute states that an application to set aside (under Section 1) more than 1 felony conviction shall only be filed 7 or more years after whichever of the following events occurs last:

- Imposition of the sentence for the convictions that the applicant seeks to set aside.
- Completion of any term of felony probation imposed for the convictions that the applicant seeks to set aside.
- Discharge from parole imposed for the convictions that the applicant seeks to set aside.
- Completion of any term of imprisonment imposed for the convictions that the applicant seeks to set aside.

An application to set aside 1 or more serious misdemeanor convictions or 1 felony conviction shall only be filed 5 or more years after whichever of the following events occurs last:

- Imposition of the sentence for the convictions that the applicant seeks to set aside.
- Completion of probation imposed for the convictions that the applicant seeks to set aside.
- Discharge from parole imposed for the convictions that the applicant seeks to set aside.
- Completion of any term of imprisonment imposed for the convictions that the applicant seeks to set aside.

An application to set aside 1 or more misdemeanor convictions, other than an application to set aside a serious misdemeanor or any other misdemeanor conviction or an assaultive crime, shall only be filed 3 or more years after whichever of the following events occurs last:

- Imposition of the sentence for the convictions that the applicant seeks to set aside.
- Completion of any term of imprisonment imposed for the convictions that the applicant seeks to set aside.
- Completion of probation imposed for the convictions that the applicant seeks to set aside.

A court shall not order setting aside of a conviction (under Section 1) unless all of the following apply:

- The applicable time period has elapsed.
- There are no criminal charges pending against the applicant.
- The applicant has not been convicted of any criminal offense during the applicable time period required.

The statute clearly defines how an applicant who has been denied a set aside must proceed to “re-apply” to have those convictions set aside in the future. The application (under Section 1) is invalid unless it contains certain information as provided in the statute. Lastly, the statute describes what the application process entails (fingerprinting requirements, fee requirements, service to the attorney general and any prosecuting attorneys), victim notification requirements (by the prosecutor), and that the court shall not act on any application until the department of state police reports back to the court on the application.

Statute Cite: MCL 780.621

P.A. Number: 2020 PA 191

Effective Date: April 11, 2021

What it Does: Amends MCL 780.621 by adding the following language to allow for a person to apply to set aside 1 or more criminal offenses.

- A person convicted of 1 or more criminal offenses, but not more than a total of 3 felony offenses, in this state, may apply to have all of his or her convictions from this state set aside.
- An applicant may not, however, have more than a total of 2 convictions for an assaultive crime set aside during his or her lifetime.
- An applicant also may not have more than 1 felony conviction for the same offense set aside if the offense is punishable by more than 10 years imprisonment.

The amendment also redefines “assaultive crime” and defines a “violent felony.”

Statute Cite: MCL 780.621e

P.A. Number: 2020 PA 192

Effective Date: April 11, 2021

What it Does: Creates MCL 780.621e. Allows for a person who was convicted of 1 or more misdemeanor marijuana offenses to apply to set aside the conviction(s). It addresses what the application must contain and who is must be served upon. Specifies that there would be a rebuttable presumption that a conviction for a misdemeanor marijuana offense sought to be set aside by the applicant was based on activity that would not have been a crime if committed on or after December 6, 2018, and specifies how the presumption could be rebutted. “Misdemeanor marijuana offense” means a violation of MCL 333.7403(2)(possession); MCL 333.7404(2)(D)(use); and MCL 333.7453 (sale of drug paraphernalia).

Statute Cite: MCL 780.622, 780.623, and 780.624; adds MCL 780.621g, 1h, and 1i

P.A. Number: 2020 PA 193

Effective Date: April 11, 2021

What it Does: Amends and creates new statutes as follows:

- Describes circumstances for which certain convictions would have to be set aside without filing an application.
- Automatic set asides will not begin for two years after the effective date of the amendatory act.
- For all nonprintable offenses (those offenses carrying less than 92 days imprisonment) the court shall notify law enforcement on the 10th day of each month regarding all convictions that were set aside the previous month.
- Not more than 2 felony and 4 misdemeanor convictions can be automatically set aside.
- Requires the DTMB to develop and maintain a computer-based program for the setting aside of conviction(s) under Section 1g.
- Adds Section 1h to require a court to reinstate a conviction that was set aside if the conviction(s) were set aside improperly or erroneously or upon a motion if the court determined that the

individual had not made a good-faith effort to pay ordered restitution.

- Adds Section 1i to create the “Michigan Set Aside Fund” within the Department of Treasury. It requires the state treasurer to administer the fund for auditing purposes and requires them to deposit money or assets into the fund, direct the investment of the fund, and to credit the fund any interest and earnings from fund investments. Section 1i also describes how MSP and DTMB would have to spend money from the fund.
- The act also specifies that after an order to set aside a conviction under Sections 1e and 1g, or after the automatic setting aside of a conviction under Section 1g, the applicant would be considered not to have been previously convicted (with exceptions). It also indicates that if the applicant has convictions set aside that are listed in Section 2 of the Sex Offenders Registration Act, they would be considered to have been convicted of that offense for the purposes of the Act.
- This amendment prohibits a conviction that had been set aside under the Act from being used as evidence in an action for negligent hiring, admission, or licensure against any person.
- It also specifies that a conviction that was set aside under Section 1 or Sections 1e or 1g could be considered a prior conviction for purposes of charging certain crimes as a second or subsequent offense or for sentencing.
- The existing statute provided a misdemeanor penalty for a person who divulges, uses or published information concerning a conviction when they knew or should have known that the conviction was set aside. The amendment provides an exception if the record was available as a public record on the date of the report.

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: Creates new Act

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*.

Statute Cite: MCL 28.306

P.A. Number: 2020 PA 374

Effective Date: January 4, 2021

What it Does: Amend the Enhanced Driver License and Enhanced Official State Personal Identification Card Act to do the following:

- Specify that an enhanced driver license or enhanced official State personal ID card that expired on or after March 1, 2020, would be considered valid until March 31, 2021.
- Require the SOS to process an application to renew an enhanced driver license or official State personal ID card that expired on or after March 1, 2020, as a renewal if the SOS received an application before March 31, 2021.
- Prohibit the SOS from assessing a late renewal fee for an enhanced driver license or enhanced official State personal ID card that expired on or after March 1, 2020, and was renewed before March 31, 2021.

Statute Cite: MCL 257.204a, 257.208, 257.303, 257.306a, 257.307, 257.317, 257.319, 257.320e, 257.321a, 257.328, and 257.319e

P.A. Number: 2020 PA 376

Effective Date: October 1, 2021

What it Does: Amends the Michigan Vehicle Code to delete certain provisions that require or allow the Secretary of State (SOS) to suspend, revoke, restrict, deny, or refuse to renew a

person's driver license for various violations of the Code or other acts. It also repeals Section 319e of the Code, which generally requires the SOS to suspend an individual's license after receiving an abstract of conviction for certain drug-related offenses under the Public Health Code, and Section 321c of the Vehicle Code, which requires license suspension for failing to pay child support or comply with a parenting time order under the Support and Parenting Time Enforcement Act.

Statute Cite: MCL 436.1701 and 436.1703

P.A. Number: 2020 PA 377

Effective Date: October 1, 2021

What it Does: Amends the Michigan Liquor Control Code to delete certain provisions allowing license suspensions for selling or furnishing alcohol to a minor or for a minor purchasing or possessing alcohol.

Statute Cite: MCL 600.151d

P.A. Number: 2020 PA 378

Effective Date: October 1, 2021

What it Does: Amends amend the Revised Judicature Act (RJA) to delete citations to the Michigan Compiled Laws sections that 2020 PA 376 would delete.

Statute Cite: MCL 333.7408a

P.A. Number: 2020 PA 380

Effective Date: October 1, 2021

What it Does: Amends Article 7 (Controlled Substances) the Public Health Code to delete certain provisions imposing license suspensions for certain drug-related convictions under that the Code.

Statute Cite: MCL 257.208b, 257.215, 257.217, 257.217c, 257.226a, 257.233, 257.233a, 257.234, 257.239, 257.244, 257.248, 257.258f, 257.251, 257.252a, 257.255, 257.256, 257.301, 257.306, 257.310, 257.311, 257.312, 257.12a, 257.315, 257.317, 257.324, 257.325, 257.326, 257.328, 257.503, 257.624b, 257.675, 257.677a, 257.682c, 257.698, 257.707c, 257.722, 257.724,

257.728d, 257.904, 257.904a, 257.904e, 257.905, and 257.907

P.A. Number: 2020 PA 382

Effective Date: October 1, 2021

What it Does: Amends the Michigan Vehicle Code to modify the penalties and sanctions for various offenses under the Code.

Statute Cite: MCL 257.625, 257.904, 257.904a and 257.905

P.A. Number: 2020 PA 383

Effective Date: March 24, 2021

What it Does: Amends the Michigan Vehicle Code to do the following:

- Delete mandatory minimum sentences for certain offenses related to operating a motor vehicle while impaired and for offenses related to operating a motor vehicle by an unlicensed person.
- Delete provisions requiring certain terms of imprisonment to be served consecutively.
- Allow certain terms imprisonment to be suspended if the defendant agreed to participate in a specialty court program and successfully completed the program.
- Repeal Section 905 of the Code, which pertains to proof of financial responsibility and certain violations of Chapter 5 (Financial Responsibility Act) of the Code.

Statute Cite: MCL 324.40118 et seq.

P.A. Number: 2020 PA 385

Effective Date: March 24, 2021

What it Does: Amends the Natural Resources and Environmental Protection Act to do the following:

- Deletes mandatory minimum jail sentences for certain offenses related to the possession or taking of game; the taking or killing of fish, game, and birds; commercial and sport fishing; and impaired operation of a motorboat, off-road recreation vehicle, and snowmobile.
- Deletes language regarding consecutive jail sentences.
- Allows certain jail sentences to be suspended if the defendant agrees to participate in and successfully completes a specialty court program.

Statute Cite: MCL 600.8827

P.A. Number: 2020 PA 387

Effective Date: October 1, 2021

What it Does: Amends the Revised Judicature Act to delete certain provisions which prohibit the Secretary of State from issuing or renewing a driver's license to a defendant who failed to appear in response to a citation for a state civil infraction.

Statute Cite: MCL 764.9c & 764.9f

P.A. Number: 2020 PA 393

Effective Date: April 1, 2021

What it Does: Allows, in certain circumstances, issuance of an appearance ticket for certain misdemeanor or ordinance violations instead of arrest.

Statute Cite: MCL 764.1 et seq.

P.A. Number: 2020 PA 394

Effective Date: April 1, 2021

What it Does: Amends the Code of Criminal Procedure (Chapter II, IV, and V) to the following:

- Requires expedited arraignments on bench warrants when the person voluntarily reports (turns themselves in) within one year of the warrant issuance; except in cases where an alleged assaultive crime or domestic violence occurred.
- Requires issuance of a summons instead of a warrant in all case except when:
 - o The complaint is for an assaultive crime or an offense involving domestic violence.
 - o The clerk or magistrate has reason to believe from the presentation of the complaint that the person listed in the complaint will not appear upon a summons.
 - o The issuance of a summons possesses a risk to public safety.
 - o The prosecutor has requested a warrant.
- Creates a rebuttable presumption for failure to appear at a court hearing and gives the person 48 hours to voluntarily appear before issuance of a bench warrant.
- Requires each district court to establish a hearing protocol for individuals detained on a

warrant of arrest that originated in another county. The protocol must include the use of two-way technology, when appropriate.

- Requires a person detained on an arrest warrant in a county other than the one originating in the warrant to be released if the originating county does not make arrangements within 48 hours to pick up the person, or fails to pick them up within 72 hours. The releasing facility must contact the originating court and obtain a court date for the defendant to appear. (Does not apply to cases alleging assaultive crime or involving domestic violence).

Statute Cite: MCL 769.5 & 760.34

P.A. Number: 2020 PA 395

Effective Date: March 24, 2021

What it Does: Amends the Code of Criminal Procedure by:

- Adds a rebuttable presumption that, if an individual is convicted of a misdemeanor other than a serious misdemeanor, the court must sentence the individual with a fine, community service, or other non-jail or non-probation sentence. The court could depart from the presumption if it finds reasonable grounds for the departure and states them on the record.
- Allows for the court to issue an order to show case for failure to comply with a non-jail or non-probation sentence. If found in contempt, the court may impose additional sentence including jail or probation, if appropriate. If the finding of contempt of for nonpayment of fines, costs, or other legal financial obligations, the court must make a finding of ability to pay without manifest hardship and that the person has not made a good-faith effort before imposing an additional sentence.
- Amends certain provisions of an intermediate sanction (sentencing guidelines set forth in chapter XVII) and addresses reasonable departures from the guidelines.

Statute Cite: MCL 762.11

P.A. Number: 2020 PA 396

Effective Date: March 24, 2021

What it Does: Extends eligibility for assignment of youthful trainee status under the Homes Youthful Trainee Act (HYTA) to an individual for offenses committed when he or she is 18 to 25 years of age. This amendment also requires the prosecutor to consult with the victim regarding the appropriateness of youthful trainee status under certain circumstances.

Statute Cite: MCL 771.2 et seq.

P.A. Number: 2020 PA 397

Effective Date: April 1, 2021

What it Does: Amends the Code of Criminal Procedure by:

- Shortening the maximum probation period from five years to three years (for a felony), with exceptions.
- Revises provision regarding early discharge from probation by including misdemeanors. Early discharge is allowable after the defendant has completed half of the original probation period.
- For probationers serving a term of probation for a felony that involves a victim who has requested to receive notice under the Crime Victim's Rights Act, requires the court to notify the defendant, at sentencing, of his or her eligibility and the requirements of early discharge from probation and the procedure to do so.
- Allows for the probation department, after the defendant has completed all required programming, to notify the sentencing court that the probationer may be eligible for early discharge. If the probation officer does not notify the court, the defendant may do so on a form provided by the SCAO (as long as there have been no violations in the previous three months).
- Allows the defendant to be discharged from probation early despite having outstanding court-ordered fines, fees, or costs, so long as they have made a good-faith effort to make payments. Early discharge does not relieve the defendant of their financial obligations after being discharged.
- Allows for the court to grant an early discharge without holding a hearing. If there is a finding of ineligibility for early discharge, the court must

conduct a hearing to allow for the presentation of facts.

- Requires notification of the hearing to be made by the prosecutor to the victim.
- Disqualifies certain convictions from early discharge.
- Amends the ways a person can report to probation to include "virtual."
- Requires probation conditions to be tailored to the probationer, specifically addressing the assessed risks and needs, be designed to reduce recidivism, and must be adjusted if the court determines appropriate.
- Specifies that probation is a matter of grace requiring the agreement of the probationer to its granting and continuance.
- Revises sanctions for technical probation violations which include maximum terms of incarceration for each technical violation from the 1st to the 4th or subsequent (distinct sentences for misdemeanors and felonies). This provision does not apply to domestic violence offenses.
- Prevents probation from being revoked on the basis of a technical violation unless the probationer has already been sanctioned for three or more technical violations and commits a new technical violation.
- Removes the ability for the court to issue an arrest warrant for a technical probation violation and instead the court must summons the probationer. The court may overcome the presumption by meeting certain criteria.
- Defines "absconding" and "technical probation violation."

Statute Cite: MCL 333.26426

P.A. Number: 2020 PA 400

Effective Date: January 4, 2021

What it Does: Amends the Michigan Medical Marihuana Act to require the transfer of \$24 million, for fiscal year ending September 30, 2021, from the Marihuana Registry Fund created under the act to the Michigan Set Aside Fund.

Case Law

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 CSC. Defendant agreed to come to the police station for an interview and voluntarily spoke to the police for about three hours. The entirety of defendant’s interview with the 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 claimed confession, being “somewhere in the middle,” 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.

Speeding

Speeding endangers everyone on the road: In 2018, speeding killed 9,378 people. We all know the frustrations of modern life and juggling a busy schedule, but speed limits are put in place to protect all road users. Learn about the dangers of speeding and why faster doesn't mean safer.

Dangers of Speeding

For more than two decades, speeding has been involved in approximately one third of all motor vehicle fatalities. In 2017, speeding was a contributing factor in 26% of all traffic fatalities. Speed also affects your safety even when you are driving at the speed limit but too fast for road conditions, such as during bad weather, when a road is under repair, or in an area at night that isn't well lit.

Speeding endangers not only the life of the speeder, but all of the people on the road around them, including law enforcement officers. It is a problem we all need to help solve. NHTSA provides [guides and toolkits](#) to help spread the message about safe driving, including tips on what you can do if you encounter an aggressive driver on the road.

Consequences

Speeding is more than just breaking the law. The consequences are far-ranging:

- Greater potential for loss of vehicle control;
- Reduced effectiveness of occupant protection equipment;
- Increased stopping distance after the driver perceives a danger;
- Increased degree of crash severity leading to more severe injuries;
- Economic implications of a speed-related crash; and

- Increased fuel consumption/cost.

What Drives Speeding?

Speeding is a type of aggressive driving behavior. Several factors have contributed to an overall rise in aggressive driving:

Traffic: Traffic congestion is one of the most frequently mentioned contributing factors to aggressive driving, such as speeding. Drivers may respond by using aggressive driving behaviors, including speeding, changing lanes frequently, or becoming angry at anyone who they believe impedes their progress.

Running Late: Some people drive aggressively because they have too much to do and are "running late" for work, school, their next meeting, lesson, soccer game, or other appointment.

Anonymity: A motor vehicle insulates the driver from the world. Shielded from the outside environment, a driver can develop a sense of detachment, as if an observer of their surroundings, rather than a participant. This can lead to some people feeling less constrained in their behavior when they cannot be seen by others and/or when it is unlikely that they will ever again see those who witness their behavior.

Disregard for Others and For the Law: Most motorists rarely drive aggressively, and some never do. For others, episodes of aggressive driving are frequent, and for a small proportion of motorists it is their usual driving behavior. Occasional episodes of aggressive driving— such as speeding and changing lanes abruptly - might occur in response to specific situations, like when the driver is late for an important appointment, but is not the driver's normal behavior.

If it seems that there are more cases of rude and outrageous behavior on the road now than in the past, the observation is correct - if for no other

reason than there are more drivers driving more miles on the same roads than ever before. (Article reprinted from the Green Light News – originally published at <https://www.nhtsa.gov/risky-driving/speeding>)

From Secretary of State

COVID-19 Information:

Priority appointments have ended – The branch offices are no longer offering priority appointments. Branch office operations are providing appointments and service for the following:

MDOS now have appointments to reserve next day appointments every morning at 8 am for the next day (9-11am) and noon for next day (3-5pm). Certain transactions will have to be completed online or using the kiosk. The following five transactions can be scheduled and completed by appointment:

- Driver license and state identification card transactions that must be done in person.
- Title transfers
- Testing
- Seasonal commercial vehicle renewals
- Watercraft transfers of ownership.

GENERAL:

Court Manual and the Abstract Training Manual are now online. If you need access, please email Melissa Noll (nollm1@michigan.gov).

Once a participant has completed Sobriety Court, the Court MUST send in a MC-393 letting us know that they have successfully completed or have been removed. This has been a big problem, especially during the pandemic.

From MJI

- New magistrate training continues to be remote and online.
- MJI needs more **magistrate instructors**. These are experienced magistrates who provide the 1 day in-person or virtual visitation with new magistrates demonstrating the informal hearing process. Due to retirements and other transitions, we could use some new people. If you are (or know) an experienced magistrate and not already an instructor, and interested in being an instructor, please email Pete at MJI.
- All MJI benchbooks will be reposted by the end of next week. They will all be current through 1/20/21.

From Michigan Department of State Police

Out of an abundance of caution, we immediately moved to increase our visible uniform presence in and around our Capitol. This increase in staffing, which will be in place for some weeks to come, is in addition to the dedicated and experienced state properties security officers who expertly handle security at our Capitol each and every day.

The department is currently waiting to receive our vaccine allotment, which was determined by the number of department members who opted in to the voluntary vaccination through the State vaccination program.

Planning is underway for the 139th Trooper Recruit School that will begin on March 7, 2021.

The Attorney General's Office has issued a consumer alert warning about scams involving

the COVID-19 vaccine, treatments, test kits, and clinical trial offers.

Office of State Employer (OSE) announced that due to the continued spread of COVID-19, employees who are detailed to work from home will not be returning to traditional work locations until at least March 1, 2021. OSE indicated the next update regarding return to work will be made in late January.



E-Scooter-related injuries are on the rise

A new report by the United States Consumer Product Safety Commission (CPSC) found that injuries and deaths associated with the use of micro-mobility products (e.g., e-scooters, hoverboards, and e-bikes) have increased.

According to the report, there were about 133,000 emergency room visits associated with micro-mobility products from 2017-2019. Much of the increase over the years is attributable to e-scooters, with emergency room visits going from 7,700 in 2017, to 14,500 in 2018, and 27,700 in 2019. The CPSC recommends the following safety tips when using a micro-mobility device:

- Wear a helmet.
 - Check the device for damage before use.
 - Always test the brakes.
 - See and be seen, don't make unpredictable movements.
 - Beware of obstacles.
 - Don't listen to music while riding, it's distracting.
 - Don't perform stunts.
 - Follow all manufacturer instructions.
- (originally published in Green Light News)

