

**MADCM Board Meeting**  
**January 21, 2022**  
**SCAO Update**

---

**Directives, Resources, and Information**

**Covid-19 Information**

- Comprehensive information concerning the Judicial Branch’s response to Covid-19 can be found [here](#).
- [Final Report](#) – Lessons Learned: Findings, Best Practices, and Recommendations. Also see, [Lessons Learned Comment Compilation](#).

**General:**

- A [reminder](#) to send or fax your abstract certification to the Secretary of State every January and July of each year. The certification must be filed with the Secretary of State no later than 28 days after the end of the period covered by the certification.
- A memo from State Court Administrator, Tom Boyd regarding submission and verification of the [2021 Trial Court Caseload Data to SCAO](#), due by January 31, 2022.
- [Memo](#) explaining changes to several forms, as required by court rule modifications ordered in AO 2021-12, updates to citations, repayment language modifications, and updating forms to current standards.
- Reminder for District Court Caseload: Use MCAP “Get Synced” Data Feature. Review the [MCAP Caseload Reporting Enhancements \(DCS Courts\)](#) document for further information.
- A [memo](#) from State Court Administrator, Tom Boyd, regarding Submission of Case Data to the Judicial Data Warehouse as in Administrative Order No. 2021-06.
- [Memo](#) from the Department of State (SOS) regarding non-binary drivers' license and identification cards. See also the [LEIN Bulletin](#) on the same topic containing instructions on how to run LEIN queries based on the new “X” sex-indicator.
- [Memo](#) from Department of State (SOS) identifying offenses that are not eligible for an FAC/FCJ suspension under the new laws, but were not included in the October 1<sup>st</sup> update. This memo from MDOS identifies these additional offenses, which effective October 22, 2021, will also be rejected as "invalid" if submitted for an FAC/FCJ suspension, and explains these changes in greater detail.
- [Memo](#) from Tom Boyd regarding complaints received by SCAO regarding access to records that are being denied or delayed in anticipation of the upcoming PII amendments to MCR 1.109 and 8.119.
- Check out the [NSCS's Tiny Chat presentation on Postal Service Updates](#) and also

the [USPS Fact Sheet](#) regarding upcoming changes and possible delays to mail deliveries for first-class mail. Other Tiny Chats include:

- [Tiny Chat 70](#): Text Messaging
- [Tiny Chat 71](#): Staying Off the Sidelines: Judges as Agents for Justice System Reform (with our very own Chief Justice McCormack)
- [Tiny Chat 75](#): Eviction Diversion Initiative
  - [Eviction Diversion Resources - NCSC](#)
- [Tiny Chat 76](#): What's Next? Court Appointed Masters
- [Memo](#) regarding recent change to Judgment, Landlord-Tenant (form DC 105) to correct a citation reference.

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

**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. ***\*Public hearing scheduled for 1/26/22.***

**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. ***\*Public hearing scheduled for 1/26/22.***

**MCR Cite:** **8.110 – Chief Judge Rule; Court Hours; Court Holidays**  
**ADM File No:** [2021-31](#)  
**Comment Expires:** February 1, 2022  
**Staff Comment:** In light of the federal Act making Juneteenth a federal holiday ([PL 117-17](#)), this proposed amendment would similarly require that courts observe Juneteenth as a holiday. This proposed amendment is being considered in conjunction with other proposed amendments that would eliminate an existing holiday so as to retain the same number of holidays that are currently provided under the rule. The options the Court would like commenters to consider eliminating, if the commenters believe the number of holidays should remain the same, include the day after Thanksgiving, Christmas Eve, or New Year’s Eve, similar to Federal legal holiday designations. For purposes of comment, commenters are invited to indicate their support or opposition to any of the proposed amendments individually or combined.

**MCR Cite:** **MCR 6.001, 6.003, 6.006, 6.102, 6.103, 6.106, 6.445, 6.615, and 6.933; proposed additions of MCR 6.105, 6.441, and 6.450**  
**ADM File No:** [2021-41](#)  
**Comment Expires:** March 1, 2022  
**Staff Comment:** The proposed amendments would make the rules consistent with recent statutory revisions that resulted from recommendations of the Michigan Joint Task Force on Jail and Pretrial Incarceration.

**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 \(June 30, 2021\)](#), & [2017-28 \(December 6, 2021\)](#)  
**Effective Date:** April 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 30, 2021 order that restricts personal identifying information to April 1, 2022).  
Issued: 12/6/21

- [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: 12/6/21

**MCR Cite:** **1.109 Court Records Defined; Document Defined; Filing Standards; Signatures; Electronic Filing and Service; Access**  
**ADM File No:** [2017-28](#)  
**Effective Date:** April 1, 2022  
**Comment Expires:** April 1, 2022  
**Staff Comment:** The amendment of MCR 1.109 establishes a process for individuals to be authorized to have access to a party’s date of birth for purposes of verification of identity with that party’s consent.

**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 \(June 30, 2021\)](#), & [2020-26 \(December 6, 2021\)](#)  
**Effective Date:** April 1, 2022  
**Staff Comment:** The extension of the effective date of this order is intended to allow for additional programming changes and other changes required by trial courts and court users to implement the rule changes.

**ADM Order:** **2021-8 – Establishes the Michigan Rules of Evidence Review Committee**  
**ADM File No:** [2021-10](#)  
**Effective Date:** December 22, 2021  
**Staff Comment:** In an effort to remain as consistent as possible with the federal rules, the Michigan Supreme Court is forming a committee to review the Michigan Rules of Evidence for potential amendments similar to those adopted for the Federal Rules of Evidence. The committee shall provide a recommendation to the Court within one year. A list of appointed members is included in the order.

**MCR Cite:** **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](#)  
**Effective Date:** January 1, 2022  
**Staff Comment:** The amendments shift the responsibility for appointment of counsel for an indigent defendant in a criminal proceeding to the local funding unit’s appointing authority.

**ADM Order:** **2021-6 – Mandatory Submission of Case Data to the Judicial Data Warehouse**  
**ADM File No:** [2021-14](#)  
**Effective Date:** January 1, 2022  
**Staff Comment:** This administrative order makes it mandatory for all courts to submit case information to the Judicial Data Warehouse in a uniform manner as required by SCAO.

**MCR Cite:** **New MCR 8.128 - Michigan Judicial Council**  
**ADM File No:** [2021-15](#)  
**Effective Date:** April 14, 2021 (with amendment from public hearing effective 10/6/21)  
**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).

**ADM Order:** **2022-1 – Commission on Diversity, Equity, and Inclusion in the Michigan Judiciary**  
**ADM File No:** [2021-38](#)  
**Effective Date:** January 5, 2022  
**Staff Comment:** Establishes the Commission on Diversity, Equity, and Inclusion in the Michigan Judiciary.

**MCR Cite:** **3.950 – Waiver of Jurisdiction**  
**ADM File No:** [2021-47](#)  
**Effective Date:** December 29, 2021  
**Comment Expires:** April 1, 2022  
**Staff Comment:** In response to a request from the ACLU, MCR 3.950 is amended to make the rule consistent with MCL 764.27a by requiring juvenile offenders who are waived into the adult criminal justice system under MCL 712A.4 to be kept separate and apart from adult prisoners.

### Legislation

**Statute Cite:** **MCL 777.33, MCL 777.48, and MCL 257.625**  
**P.A. Number:** [2021 PA 84](#) and [2021 PA 85](#)  
**Effective Date:** September 24, 2021  
**What it Does:** Amends the Michigan Vehicle Code and the Code of Criminal Procedure to accelerate the effectiveness of changes made to 2021 PAs 80 and 81 but do not take effect until November 21, 2021 and make those changes instead effective immediately. Those changes involve a driver’s blood alcohol content as discussed above.

**Statute Cite:** **MCL 712A.3 and MCL 712A.5**  
**P.A. Number:** [2021 PA 118](#)

Effective Date: November 30, 2021  
What it Does: Amends the juvenile code and distinguishes between crimes committed ***before*** October 1, 2021 (when the Raise the Age amendments took effect) and those crimes committed ***after*** October 1, 2021. This act clarifies that if the crime was committed before 10/1, then the court would only need to transfer a case to the family division of the circuit court if the individual was under 17. If the crime occurred after 10/1, then the court would need to transfer the case to the family division of the circuit court if the individual was under 18.

**Statute Cite:** **MCL 333.1207c**  
P.A. Number: [2021 PA 163](#)  
Effective Date: December 27, 2021  
What it Does: Would create the *behavioral health jail diversion grant program*, whereby DHHS would distribute grants to local units to establish or expand behavioral health jail diversion programs in coordination between community agencies and law enforcement agencies, giving priority to local units in counties without an urbanized area of at least 50,000 people and to programs that adhere to best practices as identified by the council. ***Behavioral health jail diversion grant program*** would mean a program under which an individual with a behavioral health disorder who otherwise would have been arrested or processed through the traditional criminal justice system is instead rerouted away from it, pre-arrest or post-arrest and before jail incarceration or conviction.

### Case Law

[People v Samuels](#), \_\_\_ Mich App \_\_\_, \_\_\_ (2021). Defendant and his twin brother, Duane, were involved in a fight at a Coney Island with another patron. The incident was recorded on video. Both Defendant and Duane were charged with multiple felonies (7) including Assault With Intent to Murder (AWIM). The prosecution offered both brothers a joint plea agreement, under which each of them would plead guilty to AWIM and felony firearm but it was conditioned upon both brothers agreeing to plead guilty. At the plea hearing, defendant indicated that the conditional nature of the joint plea agreement was “not right” and that he wanted to go to trial. However, once defendant learned that his brother wished to enter a guilty plea, the defendant also decided to plead guilty. As part of the plea agreement, defendant agreed to serve 13-30 years on the AWIM charge plus 5 years for felony firearm. His brother agreed to serve 11-30 years on the AWIM charge plus 2 years for felony firearm. At sentencing, both brothers moved to withdraw their guilty pleas and proceed to trial. The prosecution objected. Without holding an evidentiary hearing, the trial court denied defendant’s motion to withdraw his plea and sentenced him according to the joint plea agreement. Defendant appealed on leave granted from the Michigan Supreme Court. On the questions that MSC wanted the Court of Appeals to address, the COA determined that “[w]here the record contains some substantiated allegation that raises a question of fact as to the defendant’s claim that his or her guilty plea was involuntary because it was entered on the

basis of a promise of leniency to a relative, and where the defendant's testimony at the plea hearing does not directly contradict that allegation, the trial court must hold an evidentiary hearing to determine whether the plea was involuntary." Additionally, the COA determined that "a trial court determines the voluntariness of a guilty plea induced by a promise of leniency to a relative, or any other third party, by assessing whether the prosecution had probable cause to prosecute the third party at the time the defendant pleaded guilty"—"if probable cause to prosecute the third party did exist at the time the defendant pleaded guilty, then the defendant cannot show that his or her guilty plea was involuntary because it was induced by the promise of leniency to a third party." *Id.* at \_\_\_\_.

Despite recognizing that "some state courts have identified the risks inherent in package familial , the COA held that **"there is no factual dispute whatsoever that the prosecution did have such probable cause" where "[t]he video of the incident clearly shows both [defendant and his identical twin brother] seriously assaulting the defenseless victim with deadly weapons until he lay nearly dying on the floor."** *Id.* at \_\_\_\_.

"This evidence, by itself, is more than sufficient to establish probable cause to charge [defendant's identical twin brother] with a variety of felony offenses, including the charges that the prosecution actually filed against him"; accordingly, "defendant is not entitled to an evidentiary hearing on the question of involuntariness, and the trial court did not abuse its discretion by denying his motion to withdraw his plea." *Id.* at \_\_\_\_.