STATE COURT ADMINISTRATIVE OFFICE UPDATE
MADCM Annual Conference

September 25, 2024
The Highlands at Harbor Springs, MI

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Resources and Information

- An Explanation of Changes and updated forms DC 84 (Affidavit and Claim, Small Claims) and INST DC 84 (How to get a Money Judgment in Small Claims Court) have been posted to the website.

- SCAO memo addressing Competency and Criminal Responsibility Evaluations.

- Ethics opinion details the judicial ethical obligations when invited to attend firm-sponsored events - Judicial officers should decline to attend law firm-sponsored events with limited exceptions, according to a new ethics opinion from the State Bar of Michigan's Standing Committee on Judicial Ethics.

- SCAO memo regarding district court judges' and magistrates' authority to issue ERPOs.

- SCAO memo regarding ERPO resources to assist with the implementation of new and amended court rules.

- Safe & Just Michigan publishes "Clean Slate Year 3: The First Year of Automatic Expungements – Looking Back & Looking Ahead"

- SCAO memo explains the extension of the sunset on MCL 769.1k(b)(iii).

- The Jury Statistics Dashboard and the public version of the Public Satisfaction Survey Dashboard are now publicly available. PIO is available to help your court prepare a press release about your statistics for distribution to local media. Contact Ravynne Gilmore at GilmoreR@courts.mi.gov for assistance.

- MiFILE Expands: 13 New Courts Joining - MiFILE has expanded to include 13 additional district and probate courts. MiFILE enables attorneys to electronically file documents with courts, enhancing access, flexibility, and overall court efficiency.

- The state budget has been signed and supports court efforts to increase efficiency and security.

- SCAO memo containing our periodic reminder on election related litigation in advance of the November 5, 2024, election.

- SCAO has named Tonya Todd as the new Court Analyst Manager, effective September 30th 2024.

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: **6.302 Pleas of Guilty and Nolo Contendre**
ADM File No: 2021-05
Comment Expires: August 1, 2024
Staff Comment: The proposed amendment of MCR 6.302 would require a court that has engaged in a preliminary evaluation of the sentence to inform the defendant that the final sentencing range may differ from the original estimate, and if different, advise the defendant about whether they would be permitted to withdraw their plea, and include in the evaluation a numerically quantifiable sentence term or range.

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: **8.126 – Temporary Admission to the Bar**
ADM File No: 2022-10
Comment Expires: July 1, 2024
Staff Comment: The proposed alternative amendments of MCR 8.126 would clarify and streamline the process for pro hac vice admission to practice in Michigan courts. A summary of the differences between the two alternatives is provided in the staff comment.

MCR Cite: **6.907, 6.909, and 6.933 – Arraignment on Complaint and Warrant; Releasing or Detaining Juveniles Before Trial or Sentencing; Juvenile Probation Revocation**
ADM File No: 2022-24
Comment Expires: January 1, 2024
Staff Comment: As a condition for the State's receipt of federal funds under the Prison Rape Elimination Act, 34 USC 30301 et seq., the conditions of confinement for juveniles must comply with federal regulations promulgated under that act, including the requirement that best efforts be made to avoid placing incarcerated youthful inmates in isolation. See 28 CFR 115.14. The proposed amendments clarify that youthful inmates should not be placed in isolation in order to keep them separate from adults. **** Public hearing scheduled for 3/20/24.***

MRPC Rule: **3.7- Lawyer as Witness**
ADM File No**:** 2022-56
Comment Expires: October 1, 2024
Staff Comment: The proposed amendment of MRPC 3.7 would clarify that in accordance with Const 1963, art 1, § 13, a lawyer can appear in pro per.

MCR Cite: **6.302 – Pleas of Guilty and Nolo Contendre**
ADM File No: 2022-59
Comment Expires: January 1, 2025
Staff Comment: The proposed amendment of MCR 6.302 would require courts, after accepting a plea, to advise defendants of their ability to withdraw their plea and to specifically advise defendants of the consequences of misconduct in between plea acceptance and sentencing.

MCJC Cite: **Canon 4E and Canon 6 of the Michigan Code of Judicial Conduct**
ADM File No: 2023-26
Comment Expires: November 1, 2024
Staff Comment: The proposed amendments of Canon 4E and Canon 6 of the Michigan Code of Judicial Conduct would expand the requirements of annual financial disclosure statements by judicial officers.

Adopted:

MCR Cite: **Proposed Rescission of Administrative Order No. 2020-17 and Proposed Amendment of 4.201**
ADM File No: 2020-08
Effective Date: May 1, 2024
Staff Comment: The rescission of AO 2020-17 reflects the Court's review of the public comments received in this same ADM file regarding prior amendments of MCR 4.201. The amendment of MCR 4.201 derives from AO 2020-17 and ensures that courts with a local court rule under MCL 600.5735(4) implement their local court rule in accordance with the other provisions of MCR 4.201, including the requirement that a defendant be allowed to appear and orally answer the complaint**.**

MCR Cite: **2.421 – Notice of Bankruptcy Proceedings**
ADM File No: 2021-50
Effective Date: May 1, 2024
Staff Comment: The addition of MCR 2.421 provides a process for filing a notice of a bankruptcy proceeding that affects a state court action.

MCR Cite: **Rule 6.425 and 6.610 – Sentencing; Appointment of Appellate Counsel; Criminal Procedure Generally**
ADM File No: 2022-26
Effective Date: May 1, 2024
Staff Comment: The amendments of MCR 6.425(D)(1)(c) and MCR 6.610(G)(1)(c) require a trial court, on the record before sentencing, to personally address the defendant regarding his or her allocution rights and to ensure that, if present at sentencing, the victim or the victim's designee has an opportunity to make an impact statement.

MRE Cite: **Rules 702 and 804**
ADM File No: 2022-30
Effective Date: May 1, 2024
Staff Comment: The amendment of MRE 702 requires the proponent of an expert witness's testimony to demonstrate that it is more likely than not that the factors for admission are satisfied and clarifies that it is the expert's opinion that must reflect a reliable application of principles and methods to the facts of the case. The amendment of MRE 804(b)(4)(B) requires corroborating circumstances of trustworthiness for any statement against interest that exposes a declarant to criminal liability.

MCR Cite: **4.303 - Notice**
ADM File No: 2022-33
Effective Date: May 1, 2024

Staff Comment: The amendment of MCR 4.303 adds a new subrule (D) to allow courts to dismiss, without prejudice, small claims cases for lack of progress 91 days after the last action and after serving notice of the proposed dismissal.

MCR Cite: **2.508 and 4.002 – Jury Trial of Right; Transfer of Actions From District Court to Circuit Court**
ADM File No: 2022-42
Effective Date: September 1, 2024
Staff Comment: The amendments of MCR 2.508(B)(3)(b)-(c) and 4.002(D)(2) make the rules consistent with MCR 2.227 regarding the timing of payment of the jury fee in cases that are removed or transferred.

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; Reinstatement of Convictions Set Aside Without Application**
ADM File No: 2023-06
Effective Date: April 3, 2024
Staff Comment: The Court retains the amendment of Rule 6.001 adopted in its order dated March 29, 2023. The amendment of MCR 6.451 clarifies the court's duties for reinstatement of convictions set aside without an application. The amendment of MCR 8.119 establishes a similar level of access to set aside information contained in court records as MCL 780.623 establishes for accessing set aside information contained in Michigan State Police records.

MCR Cite: **6.110 and 8.119 – The Preliminary Examination; Court Records and Reports; Duties of Clerks**
ADM File No: 2023-06
Effective Date: July 2, 2024
Staff Comment: The amendments of MCR 6.110(G) and 8.119(H) require all case and court records maintained by a district or municipal court to become nonpublic immediately after bindover to the circuit court. Similarly, upon remand to the district or municipal court, all case and court records maintained by a circuit court would become nonpublic.

MCR Cite: **Rule 3.701, 3.715, 3.716, 3.717, 3.718, 3.719, 3.720, 3.721, 3.722 – Personal Protection and Extreme Risk Protection Proceedings**
ADM File No: 2023-24
Effective Date: February 13, 2024
Staff Comment: The amendments adopt new rules MCR 3.715-3.722 to implement procedures for handling extreme risk protection order actions. 21 See Extreme Risk Protection Order Act, MCL 691.1801 *et seq.*

Legislation

Statute Cite: **MCL 257.236**
P.A. Number: 2024 PA 2
Effective Date: May 21, 2024
What it Does: Amends the Michigan Vehicle Code to increase (from $60,000 to $100,000), the total value of a vehicle that could be transferred from a decedent to a surviving spouse or heir upon application to SOS and require that total value to be adjusted by a cost-of-living adjustment factor, beginning in 2026, to be determined annually by the Department of Treasury.

Statute Cite: **MCL 324.8905a**
P.A. Number: 2024 PA 6
Effective Date: Sine Die (91 days after final adjournment of the 2024 Regular Session)
What it Does: Amends Part 89 (Littering) of the Natural Resources and Environmental Protection Act to establish misdemeanor penalties for the unlawful dumping of litter/garbage. A first violation, up to $2,500 and for each subsequent violation, an additional $2,500 per violation. If the amount of litter were five cubic yards or more, a first violation is up to $5,000 and, for each subsequent violation, an additional $5,000 per violation.

Statute Cite: **MCL 600.1074**
P.A. Number: 2024 PA 14
Effective Date: June 10, 2024
What it Does: Amends Chapter 10A (Drug Treatment Courts) of the Revised Judicature Act to allow a drug treatment court participant to continue with the treatment program after being convicted of a felony if a judge allowed the continuation upon consultation with the treatment team and with the agreement of the prosecuting attorney.

Statute Cite: **MCL 333.7453**
P.A. Number: 2024 PA 18
Effective Date: March 12, 2024
What it Does: Amends Article 7 (Controlled Substances) of the Public Health Code to prohibit a person from selling or offering for sale an object specifically designed for inhaling nitrous oxide for recreational purposes knowing that the object will be used to inhale nitrous oxide for recreational purposes. Requires the AG or prosecuting attorney to notify the seller in writing, within 2 business days before the person is to be arrested. If a person complies with the notice, the compliance is a complete defense.

Statute Cite: **MCL 333.7455**
P.A. Number: 2024 PA 19
Effective Date: June 10, 2024

What it Does: Amends Section 7544 of the Public Health Code, which provides that a person who violates section 7453 is guilty of a misdemeanor punishable by imprisonment for up to 90 days or a fine of up to $5,000, or both. Additionally, a person 18 years or older who violates section 7453 by selling or offering to sell an object specifically designed for inhaling nitrous oxide for recreational purposes to a person less than 18 years of age is guilty of a misdemeanor punishable by imprisonment for up to one year or a fine of up to $7,500, or both.

Statute Cite: **MCL 257.710d and MCL 257.710e**
P.A. Number: 2024 PA 21
Effective Date: Sine Die (91st day after final adjournment of the 2024 Regular Session)
What it Does: Amends the Michigan Vehicle Code to apply current requirements for child restraint systems for children under 4 years of age to children under 8 years of age. It also applies current requirements for safety belts for children between the ages of 4 and 16 to children between the ages of 13 to 16. And prescribes new requirements for the seating and positioning of children in child restraint systems based on height and weight, as set by the child restraint systems' manufacturers, and age.

Statute Cite: **MCL 257.907**
P.A. Number: 2024 PA 22
Effective Date: Sine Die (91st day after final adjournment of the 2024 Regular Session)
What it Does: Amends the Michigan Vehicle Code to allow a court to waive any civil fine, cost, or assessment against an individual who received a civil infraction for a violation of child restraint system requirements if the individual, in addition to current requirements**, showed evidence that the individual had received education from a certified child passenger safety technician**.

Statute Cite: **MCL 257.628**
P.A. Number: 2024 PA 33
Effective Date: April 2, 2024
What it Does: Amends amend the Michigan Vehicle Code to modify the requirements for establishing modified speed limits on portions of highways. Requires a modified speed limit to be determined by traffic engineering practices that provided an objective analysis of characteristics of the highway and by the 85th percentile speed of free-flowing traffic under ideal conditions on the fastest portion of the highway segment for which the speed limit was being modified. Requires a modified speed limit to be in multiples of 5 mph and rounded to a multiple that was within 5 mph of the 85th percentile speed. However, it also allows a modified speed limit to be set lower than the 85th percentile, if an engineering and safety study demonstrated a situation with hazards to public safety that were not reflected by the 85th percentile speed but not lower than the 50th percentile speed.

Statute Cite: **MCL 769.1k**
P.A. Number: 2024 PA 38
Effective Date: April 3, 2024
What it Does: This bill extends the authority of the courts so they may impose any cost reasonably related to the actual costs incurred by the trial court without separately calculating those costs involved in the particular case, including salaries and benefits for relevant court personnel, goods and services necessary for the operation of the court, and necessary expenses for the operation and maintenance of court buildings and facilities. The extension is in place until December 31, 2026.

Statute Cite: **MCL 257.303 and 257.304**
P.A. Number: 2024 PA 42
Effective Date: Sine Die (91 days after final adjournment of the 2024 Regular Session)
What it Does: Amends the Michigan Vehicle Code to allow the Secretary of State to issue a driver's license to a person even though they have been found responsible for two or more moving violations in the preceding three years by deleting the provision that used to prohibit it.

Statute Cite: **MCL 600.1093**
P.A. Number: 2024 PA 44
Effective Date: August 20, 2024
What it Does: Amends Chapter 10B, Mental Health Court, of the Revised Judicature Act to allow certain violent offenders to be admitted to a mental health court if the judge, prosecutor, and any known victim give consent.

Statute Cite: **MCL 600.1064 and 600.1066**
P.A. Number: 2024 PA 45
Effective Date: August 20, 2024
What it Does: Amends Chapter 10A, Drug Treatment Courts, of the Revised Judicature Act to allow a drug treatment court participant to continue with the treatment program after being convicted of a felony if the judge allowed the continuation up consultation with the treatment team and with the agreement of the prosecuting attorney.

Statute Cite: **Creates New Act**
P.A. Number: 2024 PA 47
Effective Date: Sine Die (91 days after final adjournment of the 2024 Regular Session)
What it Does: Creates a new act, the Trial Court Funding Act of 2024 to require the State Court Administrative Office (SCAO) to analyze trial court costs and revenue resources by May 1, 2026, and use the information to develop a new statewide court debt collection and new system to funds courts.

Statute Cite: **MCL 28.722**
P.A. Number: 2024 PA 66
Effective Date: October 6, 2024
What it Does: The bill amends the Sex Offenders Registration Act (SORA) to add sexual contact with a deceased human body as Tier 1 offense and sexual penetration with a deceased human body to be a Tier III offense.

Statute Cite: **MCL 257.643b**
P.A. Number: 2024 PA 72
Effective Date: July 8, 2024
What it Does: The bill amends the Michigan Vehicle Code to require the operator of a vehicle to maintain a distance of 200 feet from a snowplow when moving. This requirement would not apply when the operator of a vehicle was legally overtaking or passing a snowplow. Additionally, if a snowplow stopped at or in an intersection and the operator of a vehicle that was not a snowplow approached it from the rear, the operator of the vehicle would have to stop at least 20 feet from the snowplow. Violation is a civil infraction.

Statute Cite: **MCL 257.628b**
P.A. Number: 2024 PA 76
Effective Date: July 8, 2024
What it Does: Amends the Michigan Vehicle Code to prohibit an individual operating a vehicle a bicycle, or any other device on a highway within a political subdivision that prohibited the operation of nonemergency motor vehicles by ordinance, regulation, or resolution from exceeding 15 mph. Within a business district an individual must not exceed 10 mph. Violation is a civil infraction.

Statute Cite: **MCL 750.160d**
P.A. Number: 2024 PA 79
Effective Date: October 6, 2024
What it Does: The bill creates "Melody's Law" which prohibits sexual contact with a deceased human body. Violations are a high court misdemeanor, also known as a felony, punishable by 2 years imprisonment or a fine up to $500, or both. It also prohibits sexual penetration with a deceased human body, which is a felony punishable by 15 years of imprisonment.

Statute Cite: **MCL 777.16i**
P.A. Number: 2024 PA 80
Effective Date: October 6, 2024
What it Does: The bill amends the Code of Criminal Procedure to add the offenses under Melody's Law to the sentencing guidelines for the felony offense. Sexual contact with a deceased human body is a class G crime against a person with a two-year statutory maximum term of imprisonment. Sexual penetration

with a deceased human body is a class C crime against a person with a 15-year statutory maximum term of imprisonment.

Statute Cite: **MCL 117.4q**
P.A. Number: 2024 PA 83
Effective Date: Sine Die (91st day after final adjournment of the 2024 Regular Session)
What it Does: Amends the Home Rule City Act to increase the penalties that local officials may impose on property owners when blighted property violations are ignored. First violation is a state civil infraction with a civil fine up to $500. Second violation is a 93-day misdemeanor or a max fine up to $500 or both. Third violation is one year misdemeanor and a mandatory fine of $500.

Statute Cite: **MCL 768.21d**
P.A. Number: 2024 PA 87
Effective Date: Sine Die (91st day after final adjournment of the 2024 Regular Session)
What it Does: Amends the Code of Criminal Procedure to specify that evidence regarding the discovery of a victim's actual or perceived gender identity, gender expression, or sexual orientation could not be considered a justification in the commission of a crime. Additionally, an individual would not be justified in using force against another individual based on the discovery of, knowledge about, or potential disclosure of such information.

Statute Cite: **MCL 257.722**
P.A. Number: 2024 PA 106
Effective Date: Sine Die (91st day after final adjournment of the 2024 Regular Session)
What it Does: Amends the Michigan Vehicle Code to allow a vehicle or combination of vehicles with a gross weight of up to 82,000 pounds that is powered in whole or part by electric batteries to exceed certain axle loading maximums and weight load maximums by a total of up to 2,000 pounds for all axles of the truck, truck tractor, or power unit. However, it does not increase axle weight or load maximums for any semi-trailer or trailer pulled by a truck, truck tractor, or power unit.

Statute Cite: **MCL 257.204a**
P.A. Number: 2024 PA 113
Effective Date: Sine Die (91st day after final adjournment of the 2024 Regular Session)
What it Does: Amends the Michigan Vehicle Code to remove the requirement that the SOS include on a driving record the failure to pay a driver responsibility fee and removes the requirement to include on the driving record an individual's conviction for an offense described in former section 319e of the code. It also allows the SOS to reinstate the driver's license of an individual whose privileges were suspended for failure to pay driver responsibility fee without requiring them to pay the license reinstatement fee. All references to driver responsibility fees will be removed from the Michigan Vehicle Code.

Statute Cite:	**MCL 23.304**
P.A. Number:	2024 PA 114
Effective Date:	Sine Die (91st day after final adjournment of the 2024 Regular Session)
What it Does:	Amends the Enhanced Driver License and Enhanced Official State Personal Identification Card Act to remove the assessment of driver responsibility fees from a list of licensing sanctions.

Case Law

People v Otto, ___ *Mich App* ___, ___ *(2023).* The reckless driving statute, MCL 257.626, prohibits operating a vehicle in willful or wanton disregard for the safety of persons or property. "The traditional, narrow understanding and application of this statute is that it criminalizes driving in a reckless manner"; "[t]he prosecution's novel, expansive reading of this statute would also criminalize the decision to drive a vehicle that is not appropriately maintained due to the risk of potential mechanical failure." Id. at ___. "Under this novel prosecution theory, a jury convicted defendant . . . for reckless driving causing death, MCL 257.626(4)"; specifically, the prosecution argued that defendant "failed to maintain the truck he was driving and that failure made him criminally liable under MCL 257.626(4) when the truck's brakes failed while he was driving it, causing a wreck that resulted in a child's death." Id. at ___. "The prosecution's reading of MCL 257.626(4) is untenable for three reasons": (1) "the second element— reckless driving—requires the manner of operation to be reckless rather than the decision to operate a vehicle that is negligently or carelessly maintained"; (2) "the third element—operation causing death— requires operation to be the factual and proximate cause of the victim's death," but here "an intervening event, a sudden mechanical failure, superseded [defendant's] conduct, such that the causal link between [defendant's] driving and the victim's death was broken"; and (3) "courts have traditionally exercised restraint in assessing the reach of criminal statutes." Otto, ___ Mich App at ___. "The text and context of MCL 257.626(4), and more broadly the Motor Vehicle Act . . . do not support the boundless interpretation underpinning the prosecution's theory and [defendant's] conviction." Otto, ___ Mich App at ___. "[T]o hold otherwise would be to allow the prosecution—not the Legislature—to criminalize a wide array of commonplace conduct (such as failing to check your brakes, driving on old tires, and driving on empty) that the Legislature did not intend to outlaw." Id. at ___ (holding that defendant "was denied effective assistance of counsel because his trial counsel failed to move to dismiss the reckless-driving charge when the facts of this case—failing to maintain a vehicle and then operating the poorly maintained vehicle—cannot support a conviction under MCL 257.626(4)").

People v Jackson, ___ Mich App ___, ___ (2023) (quotation marks and citation omitted). "A defendant pleading guilty must enter an understanding, voluntary, and accurate plea." In this case, defendant pleaded guilty to larceny from the person, as a second-offense habitual offender, and was initially sentenced to 12 months in jail followed by 3 years' probation; thereafter, defendant pleaded guilty to a technical probation violation and was sentenced to continue probation, and one year later, pleaded guilty to a second technical probation violation, had his probation revoked, and was sentenced to 30 months to 15 years in prison. Id. at ___. However, the parties and the trial

court were unaware of amendments made to the probation statute— "[n]either party disputes that the amended statute applies to this case and that, because defendant pleaded to his second technical probation violation, the penalty of probation revocation and 30 months to 15 years' imprisonment violated MCL 771.4b(1) and (4)." Jackson, ___ Mich App at ___. "The parties disagree about whether the proper remedy was for defendant to be resentenced to continued probation with incarceration for no more than 30 days, or for the plea to be vacated." Id. at ___. "[S]ince the discovery of the amendments to MCL 771.4b(1) and (4), defendant has repeatedly stated that he does not wish to withdraw his plea"; however, "the prosecutor has taken the position that the plea should be withdrawn, if not by defendant, then on behalf of plaintiff." Jackson, ___ Mich App at ___. "[R]ather than agreeing that the plea should be vacated, or withdrawing the plea himself, defendant is, in essence, asking for reformation of the plea agreement." Id. at ___. "Defendant wants to preserve the agreement to the extent that it allows him to plead guilty to one count of possession of alcohol in exchange for dismissal of the other counts in the warrant, but he wants to alter the penalty to which he agreed." Id. at ___. "When a court rejects a sentence while keeping the rest of the agreement, the trial court essentially imposes a different plea bargain on the prosecutor than he or she agreed to." Id. at ___ (quotation marks and citation omitted). "In these circumstances, the trial court must give the prosecutor the opportunity to withdraw the plea"; accordingly, "the trial court correctly ordered that the plea agreement is vacated on the basis of plaintiff's request for withdrawal." Id. at ___.

People v Kejbou, ___ Mich App ___, ___ (2023). "The MRTMA broadly decriminalizes the use, possession, and cultivation of marijuana, while the Public Health Code expressly criminalizes the same activities." "At issue here is whether the MRTMA or Article 7 of the Public Health Code should provide the framework for prosecuting a manufacturing-marijuana charge in cases involving unlicensed commercial grow operations." Id. at ___. "The conduct underlying defendant's manufacturing-marijuana charge—cultivating more than 1,000 marijuana plants—obviously implicates both the prohibition of cultivating 200 or more such plants for purposes of a felony prosecution under Article 7 of the Public Health Code, and the prohibition of cultivating more than twice the allowed 12 plants for purposes of a misdemeanor prosecution under the MRTMA[.]" Id. at ___ (citations omitted). The MRTMA "acknowledges that its provisions do create conflicts with other criminal statutes, and emphatically decrees that, when they do, the MRTMA prevails"; accordingly, "when it comes to commercial grow operations like the one at issue in this case, Article 7 has been effectively repealed, moderated, or otherwise supplanted by the MRTMA." Id. at ___. Consequently, "the circuit court correctly held that defendant's manufacturing-marijuana charge is now covered by the MRTMA, and thus defendant was not subject to prosecution under [Article 7 of the Public Health Code]." Id. at ___.

People v Parkinson, ___ Mich App ___, ___ (2023). MCL 750.50(2) provides in part that an owner, possessor, or person having the charge or custody of an animal shall not fail to provide an animal with "adequate care," which MCL 750.50(1)(a) defines as "the provision of sufficient food, water, shelter, sanitary conditions, exercise, and veterinary medical attention in order to maintain an animal in a state of good health." This case "stems from [defendant's] failure to provide adequate care to 26 chihuahuas that she owned or possessed in her single-wide trailer home." Id. at ___. Defendant challenged the sufficiency of the evidence, and relevantly, argued "that the definition of

'adequate care' found in MCL 750.50(1)(a)" requires the prosecution to prove "that a defendant failed to provide each of the criteria contained in the definition to satisfy the charge." Id. at ___. However, the Court disagreed with defendant and held that "the failure to provide at least one of the criteria is sufficient," and "[w]hen viewed in the light most favorable to the prosecution, there was sufficient evidence to demonstrate that [defendant] failed to provide adequate care to 26 dogs based on the unsanitary conditions, lack of veterinary care, and lack of exercise." Id. at ___ (upholding defendant's conviction despite the fact that there was "no dispute that the animals were fed, watered, and provided shelter").

People v Godfrey, ___ Mich App ___, ___ (2023). "Because it is a device that can be used to compel a defendant's appearance, requiring a defendant to bear the cost of a GPS tether is statutorily permissible under MCL 769.1k(2)"; however, "there must also be evidence demonstrating that the GPS tether was imposed for the purpose of securing a defendant's appearance." In this case, "there were sufficient facts demonstrating the GPS tether was to secure defendant's appearance at later court hearings," so "there is nothing patently erroneous with the trial court's imposition of tether-related fees in defendant's sentence." Id. at ___. However, "the trial court plainly erred when it did not state on the record that it was imposing $615 related to defendant's tether fees." Id. at ___. But "[b]ecause defendant acknowledged—and satisfied—her obligation to pay these fees, the trial court's failure to state on the record its imposition of tether fees is not a reversible error." Id. __.

People v Murawski, ___ Mich App ___, ___ (2023). The lawfulness of an arrest is considered an element of the crime of resisting and obstructing a police officer that must be established by the prosecution in order to bind defendant over for trial, and "[w]hether an arrest is lawful necessarily implicates a defendant's Fourth Amendment right to be free from unreasonable searches and seizures." "This case specifically concerns a situation where a defendant was 'seized' and arrested after failing to produce identification upon request from a police officer," and "[w]hether the prosecution can establish probable cause to bind a defendant over on a charge of resisting and obstructing under such circumstances is a highly fact-driven consideration." Id. at ___. "The evidence adduced at the preliminary examination clearly establishes that [the trooper] arrested defendant solely for failing to hand over some form of identification," but "[w]ithout proof that defendant had either engaged in a crime, or was imminently going to commit a crime, his failure to provide identification to police was not a lawful justification for his arrest." Id. at ___ (agreeing with the district court's decision to dismiss Count 1). However, "the district court abused its discretion by binding defendant over for trial on Counts 2 and 3, which concerned his attempts to resist arrest in relation to [a sergeant] and [an officer]" because "the arrest was unlawful" and "did not become lawful merely because defendant resisted arrest by biting and kicking." Id. at ___. Likewise, "[b]ecause the arrest underlying Counts 2 and 3 was unlawful, the circuit court abused its discretion in failing to grant the motion to quash." Id. at ___.

People v Schurr, ___ Mich App ___, ___ (2024). "[T]he inquiry at the preliminary examination is not limited to whether the prosecution has presented evidence on each element of the offense," and "if the defendant presents evidence that he or she has a complete defense to the charge on the undisputed evidence, it would be improper for the district court to bind over the defendant." (quotation marks and citation omitted). In this case, "[i]t is uncontested that . . . defendant, then a

[police officer] on patrol, shot and killed [an individual] during a struggle while defendant was attempting to arrest" the individual—"[t]he parties only dispute whether the prosecution presented evidence that defendant acted without justification[.]" Id. at ___. At the preliminary examination, defendant advanced justification defenses "under three different doctrines: (1) self-defense, (2) use of force in making an arrest, and (3) the fleeing-felon doctrine." Id. at ___. As to a police officer acting in self-defense, "defendant had the same right to defend himself using deadly force that any citizen would have; as such, he would be justified in killing . . . only if he honestly and reasonably believed that his life was in imminent danger or that there was a threat of serious bodily harm." Id. at ___. As to the use of force in making an arrest, it is "more nuanced" than defendant's "suggest[ion] that whenever a police officer is met with force in making an arrest, the officer is always justified in using force, including deadly force, in order [to] effectuate an arrest." Id. at ___. And as to the fleeing-felon doctrine, "a police officer would be privileged to use deadly force to apprehend a fleeing felon if—and only if—the use of deadly force was necessary to prevent the felon's escape." Id. at ___. Further, the use of deadly force must be reasonably necessary. Id. at ___. "[T]he district court had the authority to consider defendant's defenses when determining whether to bind him over to the circuit court," and because there was sufficient evidence presented at the preliminary examination to establish probable cause that defendant acted without justification, the district court did not err in binding defendant over on the charge of second-degree murder. Id. at ___. Whether deadly force was justified under any of the defenses raised by defendant is a matter for the jury to decide. Id. at ___. For example, "[g]iven the totality of the circumstances, a reasonable jury could find that defendant was justified in using deadly force to end [an individual's] resistance to arrest." Id. at ___. "[H]owever, a reasonable jury could also find that defendant either fired his weapon for reasons other than to effect an arrest or that it was not yet reasonably necessary to use deadly force when defendant did." Id. at ___. "Because the evidence allowed for diverging inferences, the dispute has to be resolved by a jury at trial and not by the district court at the preliminary examination." Id. at ___ (fleeing-felon doctrine). See also id. at ___ ("[t]he district court did not err when it determined that there was evidence presented at the preliminary examination that both supported and refuted defendant's claim that he shot [the individual] in self-defense," and "it was for the jury to resolve any conflicts in the evidence").

People v Carson, ___ Mich App ___, ___ (2024). "This case arises from a jury's conclusion that defendant and his romantic partner . . . stole nearly $70,000 from their neighbor's safe." Id. at ___. Defendant was found guilty of, among other things, larceny of property valued at $20,000 or more, MCL 750.356(2)(a), and receiving or concealing stolen property valued at $20,000 or more, MCL 750.535(2)(a). Carson, ___ Mich App at ___. However, "a person cannot be convicted of both larceny and receiving or concealing stolen property as a result of the same criminal act." Id. at ___. "The Legislature did not intend to provide for multiple punishment under both these statutes because the punishment provided by each statute is exactly the same and because each statute prohibits conduct which violates the same social norm: theft of property." Id. at ___ (cleaned up). Further, the "alignment of statutory provisions . . . guarantees that any theft pursuant to MCL 750.356 will constitute possession of stolen property pursuant to MCL 750.535." Carson, ___ Mich App at ___. Because "it is not possible for a person to be guilty of larceny without also being guilty of receiving or concealing stolen property," "the same act cannot give rise to convictions for both crimes." Id. at ___.

"The general rule is that officers must obtain a warrant for a search to be reasonable under the Fourth Amendment," and "the warrant requirement applies to searches of cell phone data." People v Carson, ___ Mich App ___, ___ (2024) (cleaned up). "[W]arrants for searching and seizing the contents of a modern cell phone must be carefully limited in scope," and "it is inappropriate for a warrant to authorize an unfettered search of a phone's entire contents." Id. at ___. "Allowing a search of an entire device for evidence of a crime based upon the possibility that evidence of the crime could be found anywhere on the phone and that the incriminating data could be hidden or manipulated would render the warrant a general warrant." Id. at ___ (cleaned up). "This case arises from a jury's conclusion that defendant and his romantic partner . . . stole nearly $70,000 from their neighbor's safe"—"[a]t defendant's trial, particularly damning was a series of text messages exchanged between defendant and [his romantic partner] in which the couple made numerous references to the crimes for which defendant was convicted." Id. at ___. "Police obtained these messages following a search of defendant's phone which was executed pursuant to a warrant"; "[h]owever, the warrant was not obtained until after the phone was seized because the phone was seized incident to defendant's arrest." Id. at ___. The warrant was "a general warrant that gave the police license to search everything on defendant's cell phone in the hopes of finding anything, but nothing in particular, that could help with the investigation"—"[t]his warrant did not place any limitations on the permissible scope of the search of defendant's phone." Id. at ___. Because "it is well established that a search made pursuant to a general warrant cannot stand," "the warrant authorizing the search of defendant's cell phone violated the particularity requirement because it authorized a general search of the entirety of the phone's contents." Id. at ___. The Court "[did] not hold that searches executed pursuant to a warrant that is defective by virtue of allowing an overly broad search of a person's cell phone can never be saved by the good-faith exception." Id. at ___. "However, given the particularly egregious facts of this case, . . . the good faith exception does not apply, and the contents of defendant's cell phone should not have been admitted at his trial." Id.

People v Bahnke, ___ Mich App ___, ___ (2024) (cleaned up). "Conflict preemption occurs when a local regulation directly conflicts with state law"—"a direct conflict occurs when the ordinance permits what the statute prohibits or the ordinance prohibits what the statute permits." "This case arises out of a citation issued by plaintiff to defendant for violating a city ordinance" requiring "fireworks vendors to hand out a flyer to purchasers and display signs that provide notice to customers of city and state laws regarding fireworks usage"—defendant "did not hand out the required flyers and was issued a citation for failing to comply with the ordinance." Id. at ___. "Defendant argues that the ordinance regulates the sale of fireworks by prohibiting the sale of fireworks if the vendor does not provide the required flyer," and "contends that this is in direct conflict with the MFSA, which does not allow local governments to regulate the sale of fireworks." Id. at ___. Specifically, the MFSA provides that "a local unit of government shall not enact or enforce an ordinance . . . pertaining to or in any manner regulating the sale . . . of fireworks[.]" Id. at ___. "It simply cannot be said that an ordinance requiring that sellers of fireworks supply their customers with detailed notices when selling fireworks, and imposing a fine upon them if they fail to comply, somehow does not 'regulate' the sale of fireworks." Id. at ___. "The ordinance certainly, at the very least, 'pertains to' the sale of fireworks, which in itself places it beyond the reach of the local authorities." Id. at ___. The MFSA "clearly and unambiguously prohibits an ordinance of the type at issue here, being as it is a regulation 'pertaining to' or 'regulating' the sale . . . of fireworks"—

because "the ordinance directly conflicts with the statute [it] is therefore preempted by state law." Id. at ___.

People v Koert, ___ Mich App ___, ___ (2024). "When SACA is viewed as a whole, it is clear that the Legislature's intent was to create a path through which offenders can have their records cleaned of less serious convictions if doing so serves the public welfare." MCL 780.621(1)(d) provides that "a person who is convicted of CSC-IV before January 12, 2015 may petition the convicting court to set aside the conviction if the individual has not been convicted of another offense other than not more than 2 minor offenses," and MCL 780.622(1) provides that upon the entry of an order under MCL 780.621, the applicant is considered not to have been previously convicted, except as provided in MCL 780.622 and MCL 780.623. Koert, ___ Mich App at ___ (cleaned up). In this case, defendant was convicted of CSC-IV in 1998, and was convicted of two counts of delivery of less than five kilograms of marijuana nearly 20 years before his instant SACA application; when he filed his SACA application to set aside each of these convictions, "the trial court concluded that defendant's subsequent felony convictions precluded it from setting aside his CSC-IV conviction" and "granted defendant's application with respect to the marijuana convictions but denied it with respect to the CSC-IV charge." Id. at ___. However, MCL 780.622(1) "mean[s] that once a conviction is set aside pursuant to MCL 780.621(1)(a), that conviction shall not bar a court from setting aside a CSC-IV conviction pursuant to MCL 780.621(1)(d) in a subsequent ruling." Koert, ___ Mich App at ___. Moreover, "the Legislature did not intend that defendant be barred from having all three of his convictions set aside in concurrent proceedings"—"the trial court was permitted to set aside defendant's marijuana convictions and his CSC-IV conviction in the same proceeding after the court ruled on the record effective immediately that the marijuana convictions were expunged." Id. at __.

People v Chandler, ___ Mich App ___, (2024**). "A warrantless search of a probationer's property, without reasonable suspicion or a signed waiver of Fourth Amendment protections pursuant to an order of probation, is unconstitutional."** In this case, a probation officer and three police officers went to the house listed on defendant's paperwork for a routine compliance check. Id. at ___. After defendant's cousin—the homeowner—allowed the officers entry, they found a loaded handgun in defendant's bedroom. Id. at ___. When defendant was subsequently charged with various firearms offenses, he moved to suppress the weapon, arguing that "the warrantless search was done without reasonable suspicion, and thus violated the conditions of [his] probation" because "the agent had neither met [him] nor received any reports that [he] had violated probation." Id. at ___. Although defendant was orally told at sentencing "that he would be subject to searches if reasonable cause or suspicion existed that he had violated the terms of probation or committed a crime," the trial court's written "probation order simply stated he was to submit to a search of his person and property," and "did not include the requirement of reasonable cause as was stated at sentencing." Id. at ___. Nevertheless, "[t]he trial court found the search was performed within the limits of the court's written order, . . . so reasonable suspicion was not required." Id. at ___. But defendant "did not sign or date the probation order, and there is no indication that he was aware of its contents or consented to the same." Id. at ___. Accordingly, "the warrantless search of [defendant's] bedroom violated [his] constitutional rights under the Fourth Amendment," and "[b]arring any other Fourth Amendment exception to the warrant requirement, the fruits of this search should have been suppressed." Id. at ___ (further finding that "[g]iven that the record is undeveloped as to whether

[defendant's] cousin had 'common authority' to consent to the search of [defendant's] room and whether that consent was voluntary, . . . the best approach is to remand this matter to the trial court").

People v Prude, _ Mich _, (2024). **"Even the most cursory warrantless seizure must be justified by an objectively reasonable particularized suspicion of criminal activity."** In this case, defendant "was parked in an apartment-complex parking lot known for frequent criminal activity, and when police officers attempted to detain him to investigate whether he was trespassing, he sped away from the officers in his vehicle"; "[h]e was charged and eventually convicted by a jury of second-degree fleeing and eluding, and assaulting, resisting, or obstructing a police officer." Id. at _ (citations omitted). "Both offenses required the prosecution to prove beyond a reasonable doubt that the police acted lawfully"; however, "the prosecution presented insufficient evidence that officers lawfully detained him on the basis of a reasonable suspicion that he was trespassing." Id. at __. "Without more, there is nothing suspicious about a citizen sitting in a parked car in an apartment-complex parking lot while visiting a resident of that complex." Id. at_. "Moreover, a citizen's mere presence in an area of frequent criminal activity does not provide particularized suspicion that they were engaged in any criminal activity, and an officer may not detain a citizen simply because they decline a request to identify themselves." Id. at _. "Even viewed together, these facts did not provide the officers in this case an objectively reasonable particularized basis for suspecting that defendant was trespassing." Id. at _. **"Because there was insufficient evidence that the officers acted lawfully on the basis of reasonable suspicion of criminal activity, defendant's convictions cannot stand."** Id. at __.

People v Loew, __ Mich _, (2024), affirming 340 Mich App 100 (2022) (opinion by CLEMENT, C.J.) (quotation marks omitted). **"Under MCR 6.431(B), a trial court may order a new trial on any ground that would support appellate reversal of the conviction or because it believes that the verdict has resulted in a miscarriage of justice."** In this case, "[d]uring defendant's jury trial, the trial judge exchanged several emails with the [prosecutor] regarding testimony of a Michigan State Police trooper and a Michigan State Police detective," "express[ing] concern about mistakes law enforcement had made in its investigation and ask[ing] questions related to why those mistakes had occurred"—"[t]he trial judge never notified defendant or defense counsel of these e-mails or their contents." Id. at _. Although "the trial judge's conduct in this case violated the Michigan Code of Judicial Conduct," **the issue here "is not whether the trial judge should be sanctioned for her misconduct," but "whether the trial judge's violation of a judicial canon provided the trial court a legal basis on which to grant defendant a new trial**." Id. at _. **"And because the trial judge's failure to recuse herself did not result in a miscarriage of justice at defendant's trial or deprive defendant of any constitutional right, . . . the trial court had no such legal basis" and therefore "abused its discretion by granting defendant a new trial under MCR 6.431(B).**"

People v Lopez-Hernandez, _ Mich App _, (2024) (quotation marks and citations omitted). **"A trial court may impose . . . lawful conditions of probation as the circumstances of the case require or warrant or as in its judgment are proper," and "[t]he court's exercise of this discretion must be guided by what is lawfully and logically related to the defendant's rehabilitation."** In this case, defendant pleaded guilty to operating a vehicle while visibly impaired, and "does not dispute that

the conviction was related to his use of marijuana, and that he was under the influence of marijuana while driving." Id. at _. "As a condition of defendant's probation, he was prohibited from using or possessing marijuana," but when he tested positive for marijuana resulting in two technical probation violations, he argued that under the MRTMA, "the probation condition prohibiting his use of marijuana that is MRTMA-compliant is unlawful and unenforceable." Id. at _. However, "a trial court may . . . impose probation conditions related to the recreational use of marijuana and revoke probation for such recreational use." Id. at __ (quotation marks and citation omitted) (distinguishing *People v Thue*, 336 Mich App 45 (2021), which concerned a probation condition prohibiting the use of medical marijuana under the Michigan Medical Marihuana Act). Because defendant was "violating the law prohibiting the operation of a vehicle while visibly impaired," "[h]e is thus not entitled to protection from penalty under the MRTMA for violating the terms of his probation, and . . . the condition of his probation prohibiting him from using marijuana is lawful." Id. at _. Further, **"the probation condition prohibiting defendant's use of marijuana was rationally related to his rehabilitation in this case, as it addresses the underlying substance use issue that led to his violation." Id. at _. Accordingly, "[t]he trial court did not abuse its discretion by denying defendant's motion to dismiss his probation violation on the basis that his probation conditions were unlawful."** Id. at __.

People v Samuels, _ Mich _, (2024), reversing 339 Mich App 664 (2021). **When "consider[ing] how voluntariness should be addressed in the context of a package-deal plea offer where the prosecutor requires that multiple defendants all agree to the plea offer in order for any single defendant to receive the benefit of the plea," "where the record raises a question of fact about the voluntariness of such a plea, a trial court must hold an evidentiary hearing to consider the totality of the circumstances in determining whether a defendant's plea was involuntary."** "At such an evidentiary hearing, the trial court must conduct a totality-of-the-circumstances inquiry, applying the [following] non-exhaustive . . . factors where relevant"—(1) "the court must determine whether the inducement for the plea is proper"; (2) "the factual basis for the guilty plea must be considered"; (3) "the nature and degree of coerciveness should be carefully examined"; and (4) "a plea is not coerced if the promise of leniency to a third party was an insignificant consideration by a defendant in his choice to plead guilty." Id. "A defendant's plea is involuntary if, under the totality of the circumstances, their will was overborne such that the decision to plead was not the product of free will." In this case, defendant and his twin brother were similarly charged with various assault and firearms offenses, and "[t]he prosecutor offered a package-deal plea offer under which both defendant and his twin brother would plead guilty to assault with intent to commit murder and to one count of felony-firearm, in exchange for dismissal of the remaining charges; however, the offer was contingent upon both defendants accepting the plea offer." Id. At the plea hearing, defendant initially objected to the package-deal plea offer, but he and his twin brother ultimately pleaded guilty in accordance with the offer. Id. "At sentencing, defendant and his twin brother moved to withdraw their guilty pleas," arguing "that the pleas were involuntary" and "that the conditional format of the package-deal plea offer was coercive and had left them with no choice but to plead guilty." Id. Because "[t]he record raises a question of fact as to whether defendant voluntarily waived his due-process rights," "defendant is entitled to an evidentiary hearing on the question of voluntariness" where "the trial court will apply the non-exhaustive factors in conducting a totality-of-the-circumstances analysis to determine whether defendant voluntarily entered a guilty plea." Id.

People v Washington, _ Mich _, _ (2024), affirming in part and reversing in part 344 Mich App 318 (2022). **"[A] defendant's constitutional right of confrontation may be violated when a trial witness's testimony introduces the substance of an out-of-court, testimonial statement by an unavailable witness"; specifically, "the Confrontation Clause is violated when a witness's testimony at trial introduces an out-of-court statement of an unavailable witness if the witness's testimony leads to a clear and logical inference that the out-of-court declarant made a testimonial statement," because "[i]n such a situation, the defendant is not able to cross-examine the veracity of the out-of-court statement, and the defendant is thereby denied his constitutional right to confront the witness."** In this case, "[d]efendant drove across the border from Michigan into Canada without paying the toll," and a Canadian customs agent "arrested defendant and brought him back to the American side of the bridge" where an American customs agent "took custody of defendant and a bulletproof vest"—"[d]efendant was [then] charged with being a violent felon in possession of body armor." Id. at __. "At trial, [the American officer] testified that he met [the Canadian officer] on the American side of the bridge," and that based on communications between the two officers, the American officer took custody of defendant and took possession of the body armor at the same time. Id. at _. The American officer "acknowledged that defendant was not wearing the vest when he took defendant into custody and that he had no direct knowledge as to whether defendant ever possessed the vest." Id. at _. "Defendant moved to vacate his conviction, arguing that [the American officer's] testimony implied the substance of a testimonial statement made by [the Canadian officer], namely that defendant had possessed the bulletproof vest," "[a]nd because [the Canadian officer] did not testify, defendant argued that his constitutional right of confrontation was violated." Id. at __. "In this case, . . . **such a violation occurred because [the American officer's] testimony clearly implied that [the Canadian officer] made a testimonial statement asserting that defendant possessed a bulletproof vest"—"[t]hat testimony, therefore, was erroneously admitted."** Id. at _ (further finding that "the corpus delicti rule [does not apply] so as to exclude defendant's admissions from the evidence that could be used to support introduction of the bulletproof vest into evidence").

People v Lucynski, _ Mich _, (2024). **"[E]vidence gathered in clear violation of unambiguous law will not be admissible on the basis of explanations justified entirely by a subjective and erroneous misreading of the applicable law."** In this case, "(1) defendant was seized by [a deputy] when [the deputy] parked behind defendant and blocked defendant's egress; (2) defendant did not violate MCL 257.676b(1) because defendant did not interrupt the natural flow of traffic; (3) [the deputy's] interpretation of MCL 257.676b(1) was an unreasonable mistake of law, and therefore; (4) because [the deputy] lacked reasonable suspicion, defendant was seized in violation of the Fourth Amendment." Lucynski, __ Mich at_ (citations omitted). The deputy "provided two reasons for the traffic stop: (1) the factually unsupported suspicion that a drug deal took place, which he communicated to defendant during the traffic stop; and (2) a suspected violation of MCL 257.676b(1), which he did not mention until the preliminary examination." Lucynski, _ Mich at _. "The former reason unquestionably weighs in favor of application of the exclusionary rule"—"[a]n officer who seizes a person based only on an unsupported, inchoate hunch has acted in clear violation of a defendant's Fourth Amendment rights and, thus, has committed misconduct"—"[e]xclusion is warranted in such a circumstance." Id. at _. "Similarly, [the deputy's] objectively unreasonable belief that defendant violated MCL 257.676b(1) also weighs in favor of exclusion,"

because "a seizure based on an officer's unreasonable interpretation of the law warrants application of the exclusionary rule" and "the Fourth Amendment cannot excuse an unreasonable mistake of law." Lucynski, _ Mich at _. **The deputy's "unreasonably expansive interpretation of MCL 257.676b(1) conflicted with its unambiguous meaning," and "[u]sing an unreasonable reading of the law to justify a traffic stop is the sort of misconduct that the exclusionary rule is designed to deter." Lucynski,_ Mich at _.**

People v Duff, _ Mich _, _ (2024) (cleaned up). **"A person has been seized within the meaning of the Fourth Amendment if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave"—"what constitutes a restraint on liberty prompting a person to conclude that he is not free to leave will vary, not only with the particular police conduct at issue, but also with the setting in which the conduct occurs."** In this case, "the police partially blocked in defendant's vehicle [at a 45-degree angle] in an empty parking lot at night, pointed their spotlight and headlights at his car, and then approached defendant's vehicle with at least one officer shining his flashlight into the vehicle"—"because a reasonable person would not have felt free to leave or discontinue the encounter, defendant was seized at that point, which triggers Fourth Amendment scrutiny." Id. at _ (further holding that "the extent to which a defendant is physically blocked in by the police is but one factor to consider" and reversing *People v Anthony*, 327 Mich App 24 (2019), "to the extent that the opinion held that a defendant is only seized when the police have completely blocked in a parked vehicle"). See also *People v Hicks*, _ Mich , _ (2024) (concluding that defendant was seized when "three police officers ran from the police vehicle, immediately surrounded the [lawfully parked] minivan and the rear passenger door where defendant was seated, and blocked the defendant's only reasonable means of egress from the parked vehicle he occupied" because "a reasonable person would not believe that they were free to leave or terminate the encounter once three officers in tactical body armor exited a raid van and quickly surrounded them while they sat in a parked vehicle").

People v Butka, _ Mich _, _ (2024). **A court may enter an order setting aside a defendant's conviction if it determines that their circumstances and behavior warrant setting aside the conviction and that setting aside the conviction is consistent with the public welfare—"public" within the term "public welfare," as used in former MCL 780.621(4) and current MCL 780.621d(13), "refers to a community at large, as distinguished from an individual or a limited class of people**." In this case, at a hearing on defendant's third application to set aside his conviction for third-degree child abuse stemming from the "accus[ation] of groping his two stepdaughters' breasts and masturbating in their presence when both girls were between 13 and 16 years old," each victim "averred that defendant should live with the consequences of his actions, just as they are forced to live with the consequences of his actions." Id. at _. "[C]iting the victims' statements that they were still deeply impacted by defendant's actions, the trial court found that granting defendant's application would not be consistent with the public welfare," and denied defendant's application to set aside his conviction. Id. at _. "However, to set aside a conviction, courts must look beyond the crime itself to circumstances that occur after a defendant's conviction, both in terms of the defendant's individual circumstances and the forward-looking impact of setting aside a conviction on the public as a whole." Id. at _. "While the victims' statements here were relevant to the trial court's consideration of defendant's application to set aside his conviction, [the statute] requires a broader view of the

impact of setting aside a conviction." Id. at _. **"[T]he 'circumstances and behavior' of this defendant warranted granting defendant's application to set aside his conviction" where "no record evidence supported an inference that defendant would pose a risk of reoffending"; "defendant had no criminal history prior to the instant plea, and he has not been charged with any other criminal activity since completing his probationary period"; and "defendant did not pose a high risk of recidivism or a danger to the community."** Id. at _. And "[a]lthough the two victims were understandably unsupportive of defendant's request to set aside his conviction, . . . the public welfare must consist of more than the subjective opinions of the two victims." Id. at _. "Accordingly, the trial court abused its discretion when it denied defendant's application to set aside his conviction because no record evidence supported a finding that either the 'circumstances and behavior' of defendant or the 'public welfare' weighed in favor of denying defendant's application." Id. at _.

People v Lymon, _ Mich _, _ (2024), affirming in part and vacating in part 342 Mich App 46 (2022), "insofar as its conclusions went beyond the consideration of non-sexual offenders." **"[A]pplication of SORA to non-sexual offenders . . . is cruel or unusual punishment in violation of the Michigan Constitution."**" In this case, "[d]efendant's sentence requiring his placement on the sex-offender registry arises from his violent confrontation of his then wife . . . regarding an alleged affair"—"[b]oth of their minor children . . . were present during the confrontation." Id. at _. "Defendant was charged and convicted of three counts of torture, three counts of unlawful imprisonment, one count of felonious assault, and one count of [felony firearm]." Id. at _. "Because two of the three unlawful-imprisonment convictions involved minors, the trial court . . . required defendant to register as a Tier I sex offender under SORA." Id. at _. However, **"imposition of the 2021 SORA on non-sexual offenders like defendant constitutes cruel or unusual punishment under the Michigan Constitution"; accordingly, "defendant and other offenders whose crimes lacked a sexual component are entitled to removal from the sex-offender registry." Id. at ___.**

People v Mason, ___ Mich App ___, ___ (2024) (cleaned up). In this case, "[d]efendant is appealing his sentence, arguing that the district court unfairly sentenced him to jail for the nonserious misdemeanor of driving with a license suspended (DWLS) without sufficient reason." Id. at ___. **While "[t]he district court appropriately took the defendant's criminal history into consideration, . . . it should also have weighed the seriousness of the offense," and "was obligated to explain why a departure sentence of 93 days in jail was more suitable than a non-jail or non-probation sentence."** Id. at ___. "In making such a determination, relevant factors would include those that demonstrate circumstances taking this particular case outside the realm of the ordinary DWLS case." Id. at ___. Because "[t]he district court did not consider the circumstances of the offense and did not explain how its departure sentence was more proportionate than a different sentence would have been," "the court did not adequately justify the imposed sentence, which hinders . . . appellate review of whether the sentence was reasonable." Id. at ___ (vacating defendant's sentence and remanding to the district court for resentencing).