

1 LOOKING AHEAD TO 2022

2 2020 changes to court rules and statutes

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3 court rules

• COVID RELATED RULES

- 2.002- Waiver of fees by electronic process

- 2.305- Subpoenas allow for witnesses to appear remote

- 2.407- Courts required to allow remote participation and verify that participants can proceed remotely.

- Allow some to proceed remote even if others can not

- Allow video recording access to public if not barred by rule/statute

- Allow confidential communication between a party and a party's counsel

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- 3.904- Videoconferencing in delinquency- even to order a more restrictive placement or treatment.

4 COURT RULES

- Amendments of MCR 3.903 and 3.925

- Makes the rules consistent with MCL 712A.28(d) by requiring that previously-public juvenile case records be made nonpublic and accessible only to those with a legitimate interest.

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5 COURT RULES

- RULE 3.906 USE OF RESTRAINTS ON JUVENILES

- (A) Instruments of restraint, such as handcuffs, chains, irons, or straitjackets, cloth and leather restraints, and other similar items, may not be used on a juvenile during a court proceeding unless the court finds that the use of restraints is necessary due to one of the following factors:
 - (1) Instruments of restraint are necessary to prevent physical harm to the juvenile or another person.
 - (2) The juvenile has a history of disruptive courtroom behavior that has placed others in potentially harmful situations or presents a substantial risk of inflicting physical harm on himself or herself or others as evidenced by recent behavior.
 - (3) There is a founded belief that the juvenile presents a substantial risk of flight from the courtroom.
- (B) The court's determination that restraints are necessary must be made prior to the juvenile being brought into the courtroom and appearing before the court. The court shall provide the juvenile's attorney an opportunity to be heard before the court orders the use of restraints. If restraints are ordered, the court shall state on the record or in writing its findings of fact in support of the order.
- (C) Any restraints used on a juvenile in the courtroom shall allow the juvenile limited movement of the hands to read and handle documents and writings necessary to the hearing. Under no circumstances should a juvenile be restrained using fixed restraints to a wall, floor, or furniture.

6 STATUTES

- RAISE THE AGE: Raise the Age Jurisdiction MCL 712A.2 The Family Division will have circuit jurisdiction over juveniles under the age of 18.
- MCL 712A.11 MCL 330.206a(4)-Juvenile Competency, MCL 712A.16(1) Lockup, MCL 722.822(e) and (3) Diversion Act, MCL 764.27(a) confinement pending trial, MCL 764.1f and MCL 600.606 Specified Juvenile Violations—— all changed to age 18.
- MCL 712A.16(1) - Prohibits juvenile under 18 from being detained with adult criminals- extension of rule in 750.139 to include someone under 18 can't be transported with an adult criminal further extended in 712 A.14 and 712A.15- "sight and sound"
- MCL 764.277 - Transfer case to Family Division if under 18

7 statutes

• CLEAN SLATE LAW/EXPUNGEMENTS

- MCL 780.621- 680.624

- The basics: There will be an automatic expungement but it is not available yet. So people do need to apply for expungements even if it is marijuana convictions.

- MCL 780.621g(5) 2 felony (wait 10 years from "end") and 4 misdemeanor (wait 7 years) may be set aside in a lifetime *end - since end of imprisonment

- No limit on "automatic expungement" of misdemeanors punishable less than 93 days

- Certain offenses cannot be expunged

- Assaultive crimes, serious misdemeanors, crimes of dishonest, related to human trafficking, punishable by more than 10 years, etc.

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8 statutes

- Misdemeanor Marijuana Offenses

- MCL 780.621e

- Law creates a presumption that the offense was based on activity that would not have been a crime if committed after 12/6/2018.

- File SCAO form MC 227a. Prosecutor then has 60 days to reply with a rebuttal of the presumption