

PROPOSED AMENDMENTS TO RULE 8.119(H) OF THE MICHIGAN COURT RULES

Issue

Should the Representative Assembly adopt the proposal to amend MCR 8.119(H) to add a subrule (11) to make a court record nonpublic when a case is adjudicated by dismissal, acquittal, or nolle prosequi?

Proponent

Nicole Evans, Representative Assembly Vice-Chair
54B District Court Administrator
101 Linden St.
East Lansing, MI 48823-4311
Phone: (517) 336-8636
Email: nevans@54BDistrictCourt.com

Synopsis

Eligible individuals enjoy the benefit of having their case made nonpublic when pleading guilty under certain statutes. Whereas individuals whose charges were dismissed, who were acquitted of their charges, or where the prosecutor decided not to pursue charges are subject to unnecessary public scrutiny. This public exposure is especially prevalent with courts that maintain online publicly accessible databases.

Rule 8.119 Court Records and Reports; Duties of Clerks

(H) Access to Records. Except as otherwise provided in subrule (F), only case records as defined in subrule (D) are public records, subject to access in accordance with these rules.

(1) – (10) [Unchanged}

11) Dismissals, Acquittals, and Nolle Prosequi

a. If an individual has been charged with any crime and the case is dismissed, the court shall make the record nonpublic.

b. If an individual has been charged with any crime and found not guilty of all charges at a trial by bench or jury, the court shall make the record nonpublic.

Background

This proposal addresses the impact of public access to court records and seeks to protect the privacy of individuals who were acquitted and/or their charges were dismissed and/or the prosecutor filed a nolle prosequi.

Currently, individuals who plead guilty under certain statutes have the protection of a nonpublic record as provided under MCL 333.7411, MCL 600.1076(4), MCL 762.11-MCL 762.15, MCL 769.4a, MCL 750.350a, or MCL 750.430.

Additionally, MCL 780.621 was introduced as part of the “Clean Slate” initiative in 2020. This statute allows for the setting aside of convictions when meeting certain criteria. Setting aside the conviction removes the conviction from an individual’s criminal history. Upon submission of a court order to the arresting agency, a nonpublic record is maintained by Michigan State Police (MCL 780.623). MCL 780.622(1) provides that upon entry of an order setting aside a conviction 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. See also MCR 8.119(H)(9).

Thus, under the current law, eligible individuals may have their pleas and convictions records made nonpublic. But, under the current law, there is no mechanism for individuals who are acquitted, or whose charge was dismissed, to make their court records nonpublic.

Relevant Court Rules

MCR 1.109(H)(1) and (H)(2) define confidential and nonpublic records. Confidential means that a case record is nonpublic and accessible only to those individuals or entities specified in statute or court rule. A confidential record is accessible to parties only in the manner specified in statute or court rule. Nonpublic means that a case record is not accessible to the public. A nonpublic case record is accessible to parties and only those other individuals or entities specified in statute or court rule. A record may be made nonpublic only pursuant to statute or court rule. **A court may NOT make a record nonpublic by court order.**

MCR 6.007 addresses confidential records and states, “Records are public except as otherwise indicated in court rule or statute.” MCR 8.119(H) addresses access to court records and provides that, “except as other provided in subrule (F), only case records as defined in subrule (D) are public records, subject to access in accordance with these rules.” Additionally, subsection (H)(7) provides that unless access to a case record or information contained in a record as defined in subrule (D) is restricted by statute, court rule, or an order entered pursuant to subrule (I), any person may inspect that record and may obtain copies as provided in subrule (J). In subrule (J), the court may collect a fee for the cost of providing copies.

MCR 8.119(I)(1) states except as otherwise provided by statute or court rule, a court may not enter an order that seals courts records, in whole or in part, in any action or proceeding, unless

- (a) A party has filed a written motion that identifies the specific interest to be protected,
- (b) The court has made a finding of good cause, in writing or on the record, which specifies the grounds for the order, and
- (c) There is no less restrictive means to adequately and effectively protect the specific interest asserted.

Several “clean slate” initiatives were enacted to help individuals clear their records of eligible convictions. It is cumbersome to require an individual who has not been convicted to file written motions to benefit from the privilege of not having their court record accessible to the public after a dismissal.

Legislative History

In 2020, Senator Peter Lucido introduced Senate Bill 1093 instructing courts to make documents or records generated in connection with a case nonpublic when a charge or charges are dismissed before trial. Senate Bill 1093 died in committee and has not been reintroduced.

SCAO Forms

Two SCAO forms are relevant to this issue. Form MC262 is an Order of Acquittal/Dismissal or Remand. Item 10 reads “The Michigan State Police and arresting agency shall destroy the arrest record, biometric data, and, as applicable, DNA profile for the dismissed charge(s). The Michigan State Police shall also remove any LEIN entry concerning any dismissed charge(s).”

The second form, MC 235 Motion for the Destruction of Biometric Data and Arrest Record, removes the fingerprint and arrest record in the database maintained by Michigan State Police.

Neither form includes a provision for making a court record nonpublic when there is a dismissal, acquittal, or nolle prosequi.

54-B District Court Data

To provide some context, 54-B District Court in East Lansing, Michigan is a small two-judge court. From 2019 through 2024, there were 4,693 dismissals on misdemeanor cases. In the five-year period (2014-2018) prior to “Clean Slate” legislation there were 12,338 dismissals on misdemeanor cases for a total of 17,031 dismissals in a ten-year period.

SCAO provides an interactive court data dashboard that allows one to drill down into cases dismissed by the party and dismissed by the court. In a nine-year period (2014 – 2023), there were 801,069 cases dismissed by party. There were 292,754 cases dismissed by the court for a total of 1,093,823 dismissed cases that remain accessible to the public.

Opposition

None known.

Prior Action by Representative Assembly

This issue has not been brought before the Representative Assembly.

Fiscal and Staffing Impact on State Bar of Michigan

None known.

STATE BAR OF MICHIGAN POSITION

By vote of the Representative Assembly on April 26, 2025

Should the Representative Assembly adopt the above resolution to amend MCR 8.119(H) to add subrule (11) to make a court record nonpublic when a case is adjudicated by dismissal, acquittal, or nolle prosequi?

(a) Yes

or

(b) No

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY	MOTION FOR DESTRUCTION OF BIOMETRIC DATA AND ARREST RECORD	CASE NO. and JUDGE
--	---	--------------------

ORI MI- Court address Court telephone no.

Police Report No.

THE PEOPLE OF The State of Michigan _____	v	Defendant's/Juvenile's name, address, and telephone no. CTN/TCN SID
In the matter of _____		

Count	CRIME	CHARGE CODE(S) MCI citation/PACC Code

USE NOTE: This form is for use when the arresting agency or the Michigan State Police has failed to destroy the biometric data and arrest record as required by law or when the Michigan State Police has not destroyed the biometric data and arrest record because the defendant has had a prior conviction as stated in MCL 28.243(14)(h). This form is not for use in conjunction with setting aside an adjudication pursuant to MCL 712A.18e or setting aside a conviction pursuant to MCL 780.621.

MOTION

1. I, _____, state that on _____
Name (type of print) Date

I was found not guilty of all offense(s) charged in this case, and the arresting agency and/or Michigan State Police has not destroyed the biometric data and arrest record as required by law.

I was found not to be within the provisions of MCL 712A.2.

The charges in this case were dismissed by nolle prosequi before trial, and the arresting agency and/or Michigan State Police has not destroyed the biometric data and arrest record as required by law.

2. This motion does not pertain to any sentence imposed under MCL 333.7411, MCL 600.1076(4), MCL 762.11- MCL 762.15, MCL 769.4a, MCL 750.350a, MCL 750.430, or to one of the crimes listed in MCL 28.243(14).

3. **I REQUEST** that my biometric data and arrest record be destroyed by the arresting agency and/or Michigan State Police.

Date

Signature

NOTICE OF HEARING

A hearing will be held on this motion on _____
Date and time

at _____ before Hon. _____
Location

CERTIFICATE OF MAILING

I served a copy of this motion and notice of hearing on the parties on their attorneys by first-class mail addressed to their last-known addresses as defined by MCR 2. 107(C)(3). I declare under the penalties of perjury that this certificate of mailing has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Date

Signature

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT	ORDER OF ACQUITTAL/DISMISSAL OR REMAND	CASE NO.
---	---	-----------------

ORI _____ Court address _____ Court telephone no. _____

MI-
Police Report No.

<input type="checkbox"/> The State of Michigan THE PEOPLE OF <input type="checkbox"/> _____ _____	v
---	----------

Defendant's/Juvenile's name, address, and telephone no.		
CTN/TCN	SID	DOB

☐ Juvenile In the matter of _____

Count	CRIME	CHARGE CODE(S) MCL citation/PACC Code

IT IS ORDERED:

- ☐ 1. The case is dismissed on the motion of the court ☐ with ☐ without prejudice.
- ☐ 2. Defendant's/Juvenile/s motion for dismissal is granted ☐ with ☐ without prejudice and the case is dismissed.
- ☐ 3. Defendant's/Juvenile's motion for dismissal is granted in part ☐ with ☐ without prejudice and the following charge(s) is/are dismissed: _____
- ☐ 4. Defendant/Juvenile is acquitted on all charge(s) in this case after trial by ☐ judge. ☐ jury.
- ☐ 5. Defendant/Juvenile is acquitted after trial by ☐ judge ☐ jury only on the following charge(s): _____
- ☐ 6. Defendant/Juvenile shall be immediately discharged from confinement in this case.
- ☐ 7. Bond is canceled and shall be returned after costs are deducted.
- ☐ 8. Bond/bail is continued on the remaining charge(s).
- ☐ 9. The case is remanded to the _____ district court for further proceedings for the following reasons:
- ☐ 10. The Michigan State Police and arresting agency shall destroy the arrest record, biometric data, and, as applicable, DNA profile for the dismissed charge(s). The Michigan State Police shall also remove any LEIN entry concerning any dismissed charge(s).

Date

Judge

Bar no.

If item 10 is checked, the clerk of the court shall provide a copy of this order to the Michigan State Police upon entry.