Agenda
Public Policy Committee
November 18, 2021 – 12:00 p.m. to 1:30 p.m.
Via Zoom Meetings

Public Policy Committee……James W. Heath, Chairperson

A. Reports

1. Approval of September 15, 2021 minutes
2. Public Policy Report

B. Court Rules

1. ADM File No. 2021-34: Proposed Amendment of MCR 5.125

The proposed amendment of MCR 5.125 would add the community mental health program as an interested person to be served a copy of the court's order when assisted outpatient treatment is ordered.

Status:	01/01/22 Comment Period Expires.
Referrals:	09/24/21 Referred to Access to Justice Policy Committee; Civil Procedure & Courts Committee; Probate & Estate Planning Section.
Comments:	Access to Justice Policy Committee.
Liaison:	Suzanne C. Larsen

2. ADM File No. 2018-26: Proposed Amendment of MCR 6.502

The proposed amendment of MCR 6.502 would make the rule consistent with the Court's ruling in *People v Washington*, ___Mich___(2021) by allowing a defendant to file a second or subsequent motion for relief from judgment based on a claim of a jurisdictional defect in the trial court when the judgment was entered. Although the Court's analysis in *Washington* related specifically to subject matter jurisdiction, reference to "jurisdictional defect" is consistent with MCR 6.508(D).

Status:	01/01/22 Comment Period Expires.
Referrals:	09/24/21 Referred to Criminal Jurisprudence & Practice Committee; Criminal Law Section.
Comments:	Criminal Jurisprudence & Practice Committee. Comment submitted to the Court included in materials.
Liaison:	Takura N. Nyamfukudza

3. ADM File No. 2021-33: Proposed Amendment of Administrative Order No. 1997-10

The proposed amendment of Administrative Order No. 1997-10 would clarify which information about jobs within the judiciary would be available to the public and the manner in which it will be made available.

Status:	01/01/22 Comment Period Expires.
Referrals:	09/24/21 Civil Procedure & Courts Committee.
Comments:	Comment submitted to the Court included in materials.
Liaison:	Mark A. Wisniewski

C. Legislation

1. HB 5309 (LaFave) Occupations: attorneys; eligibility requirements for attorney licensed in another state to practice law in Michigan; modify.

Status:	09/21/21 Referred to House Committee on Regulatory Reform.
Referrals:	Not referred at this time.
Comments:	None at this time.
Liaison:	Thomas G. Sinas

2. Bail Bonds Legislation

HB 5436 (Fink) Criminal procedure: bail; procedure for pretrial release determinations, criteria a court must consider for pretrial release determination, and reporting of data on pretrial release decisions; provide for. Amends sec. 6 & 6a, ch. V of 1927 PA 175 (MCL 765.6 & 765.6a) & adds sec. 6g, ch. V.

HB 5437 (Yancey) Criminal procedure: bail; criteria a court must consider before imposing certain conditions of release and due process hearing related to pretrial detention; provide for. Amends sec. 6b, ch. V of 1927 PA 175 (MCL 765.6b) & adds sec. 6f, ch. V.

HB 5438 (VanWoerkom) Criminal procedure: other; certain definitions in the code of criminal procedure and time period required for disposition of criminal charges; provide for. Amends sec. 1, ch. I & sec. 1, ch. VIII of 1927 PA 175 (MCL 761.1 & 768.1).

HB 5439 (Young) Criminal procedure: bail; interim bail bonds for misdemeanors; modify. Amends sec. 1 of 1961 PA 44 (MCL 780.581).

HB 5440 (LaGrand) Criminal procedure: bail; requirements for the use of a pretrial risk assessment tool by a court making bail decision; create. Amends 1927 PA 175 (MCL 760.1 - 7677.69) by adding sec. 6f, ch. V.

HB 5441 (Johnson) Criminal procedure: bail; act that provides bail for traffic offenses or misdemeanors; repeal. Repeals 1966 PA 257 (MCL 780.61 - 780.73).

HB 5442 (Meerman) Traffic control: driver license; reference to surrendering license as condition of pretrial release and certain other references; amend to reflect changes in code of criminal procedure. Amends secs. 311 & 727 of 1949 PA 300 (MCL 257.311 & 257.727) & repeals sec. 311a of 1949 PA 300 (MCL 257.311a).

Status: 09/23/21 Referred to House Committee on Judiciary.

Referrals: 10/22/21 Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.

HB 5443 (Brann) Criminal procedure: bail; setting of bond related to spousal or child support arrearage; modify. Amends sec. 165 of 1931 PA 328 (MCL 750.165).

Status: 09/23/21 Referred to House Committee on Judiciary.

Referrals: 10/22/21 Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section; Family Law Section.

Comments: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Family Law Section.

Liaisons: Valerie R. Newman and Takura N. Nyamfukudza

MINUTES
Public Policy Committee
September 15, 2021 – 12:00 p.m. to 1:00 p.m.

Committee Members: Dana M. Warnez, Lori A. Buiteweg, Kim Warren Eddie, E. Thomas McCarthy, Jr., Valerie R. Newman, Takura N. Nyamfukudza, Nicholas M. Ohanesian, Brian D. Shekell, Thomas G. Sinas, Judge Cynthia D. Stephens, Mark A. Wisniewski
SBM Staff: Janet K. Welch, Peter Cunningham, Carrie Sharlow
GCSI Staff: Marcia Hune

A. Reports

1. Approval of July 22, 2021 minutes
The minutes were approved unanimously.

2. Public Policy Report
A verbal report was provided.

B. Court Rules

1. ADM File No. 2020-29: Proposed Amendment of Rule 410 of the Michigan Rules of Evidence
The proposed amendments in this file 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.
The following entities offered recommendations: Criminal Jurisprudence & Practice Committee; Criminal Law Section.
The committee voted (9) in favor to support with one abstention the proposed amendment to Rule 410 of the Michigan Rules of Evidence.

2. ADM File No. 2020-13: Proposed Amendment of MCR 6.005
The proposed amendment of MCR 6.005 would clarify the duties of attorneys in preconviction appeals.
The following entities offered recommendations: Criminal Jurisprudence & Practice Committee; Criminal Law Section.
The committee voted (11) to support the proposed amendment to Rule 6.005 of the Michigan Court Rules.

C. Legislation

1. HB 4620 (Lightner) Criminal procedure: indigent defense; indigent defense department; create. Creates new act.
The following entities offered recommendations: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Children's Law Section.
The committee found the legislation to be *Keller* permissible in affecting the functioning of the courts and the regulation of attorneys.
The committee voted (11) support the bill in principle but oppose as currently drafted.

HB 5098 (Reilly) Criminal procedure: indigent defense; Michigan indigent defense commission; require to post online revenue data paid to attorney and law firms for indigent defense services annually. Amends 2013 PA 93 (MCL 780.981 - 780.1003) by adding sec. 19a.
The following entities offered recommendations: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.
The committee found that this legislation is not *Keller*-permissible.

D. Model Criminal Jury Instructions

1. M Crim JI Chapter 2
The Committee on Model Criminal Jury Instructions proposes a revision of Chapter 2 (Procedural Instructions) of the Model Criminal Jury Instructions. The current instructions have evolved over several decades with a number of

additions, and have become quite repetitious. The Committee offers a slight re-write and re-organization of the procedural instructions that reduces linguistic duplication and flows more logically.

The instructions below are divided into two sets on the site in hopes of making them more convenient to compare and review. They are preceded by a summary of the changes being proposed (pages 2-3). The first set of instructions (pages 4-14) are the current instructions, M Crim JI 2.1 through 2.26. Those are followed (pages 16-27) by the proposed revised procedural instructions, M Crim JI 2.1 through 2.28, including two new instructions: M Crim JI 2.2 (Written Copy of Instructions per MCR 2.513(D)) and M Crim JI 2.13 (Notifying Court of Inability to Hear or See Witness).

The committee supported the Criminal Jurisprudence & Practice Committee and Criminal Law Section positions.

2. M Crim JI 37.12, 37.13, and 37.14

The Committee proposes new instructions, M Crim JI 37.12 [Jury Tampering: MCL 750.120a(1)], M Crim JI 37.13 [Jury Tampering Through Intimidation: MCL 750.120a(2)], and M Crim JI 37.14 [Retaliating Against a Juror: MCL 750.120a(4)] for the crimes found in the Bribery and Corruption chapter of the Penal Code.

The committee supported the Criminal Jurisprudence & Practice Committee and Criminal Law Section positions.

3. M Crim JI 38.2, 38.3, and 38.3a

The Committee proposes new instructions, M Crim JI 38.2 [Hindering Prosecution of Terrorism (MCL 750.543h)], M Crim JI 38.3 [Soliciting Material Support for an Act of Terrorism (MCL 750.543k)], and M Crim JI 38.3a [Providing Material Support for an Act of Terrorism (MCL 750.543k)] for crimes found in the Michigan Anti-Terrorism Act.

The committee supported the Criminal Jurisprudence & Practice Committee and Criminal Law Section positions.

SBM STATE BAR OF MICHIGAN

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Michael Franck Building
306 Townsend Street
Lansing, MI 48933-2012

www.michbar.org

October 1, 2021

Larry S. Royster
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2020-29 – Proposed Amendment to Rule 410 of the Michigan Rules of Evidence

Dear Clerk Royster:

At its September 17, 2021 meeting, the Board of Commissioners of the State Bar of Michigan considered ADM File No. 2020-29. The Board voted unanimously to support the amendment as proposed.

Accepted pleas are rarely withdrawn or vacated. When a court permits withdrawal or vacation, it does so due to a serious defect in the plea proceeding, because the plea was not made knowingly or voluntarily, because the withdrawal serves the interest of justice, or because the court has concluded that it is unable to follow the terms of a sentence agreement. It is fundamentally unfair to subsequently use statements made by defendants under such circumstances against them.

By adding vacated pleas to the list of pleas and statements that are inadmissible against the defendant who made the plea under the Michigan Rules of Evidence and prohibiting the use of a statement made during the withdrawal or vacation of a plea, the amendment would further the intent of MRE 410 and make the Michigan rule more consistent with the existing federal practice under FRE 410. In addition, the amendment would protect the due process interests of defendants participating in plea discussions or who made a plea that is subsequently withdrawn or vacated.

We thank the Court for the opportunity to convey the Board's position.

Sincerely,

Janet K. Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Dana M. Warnez, President

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October 1, 2021

Larry S. Royster
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2020-13 – Proposed Amendment of Rule 6.005 of Michigan Court Rules

Dear Clerk Royster:

At its September 17, 2021 meeting, the Board of Commissioners of the State Bar of Michigan considered ADM File No. 2020-13. In its review, the Board considered recommendations from the Criminal Jurisprudence & Practice Committee and Criminal Law Section. The Board voted unanimously to support the amendment as proposed.

The amendment would improve the efficiency of the court by clarifying the duties of attorneys in preconviction appeals. Additionally, requiring written notification to the Court of Appeals when a defendant elects not to file a response to a preconviction appeal by a prosecutor will ensure that the defendant has made such election knowingly and that the defendant's opportunity to respond is not inadvertently missed by trial counsel.

We thank the Court for the opportunity to comment on the proposed amendment.

Sincerely,

Janet K. Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Dana M. Warnez, President

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October 1, 2021

Samuel R. Smith, III
Committee Reporter
Michigan Supreme Court
Committee on Model Criminal Jury Instructions
Michigan Hall of Justice
P.O. Box 30052
Lansing, MI 48909

RE: M Crim JI Chapter 2
M Crim JI 37.12, 37.13, and 37.14
M Crim JI 38.2, 38.3, and 38.3a

Dear Mr. Smith:

At its recent meeting, the Board of Commissioners of the State Bar of Michigan considered the above-referenced model criminal jury instructions published for comment. In its review, the Board considered recommendations from the Criminal Jurisprudence & Practice Committee and Criminal Law Section.

The Board voted unanimously to support the proposed criminal jury instructions as published.

Thank you for the opportunity to convey the Board's position.

Sincerely,

Janet K. Welch
Executive Director

cc: Dana M. Warnez, President

SBM STATE BAR OF MICHIGAN

To: Members of the Public Policy Committee
Board of Commissioners

From: Governmental Relations Division Staff

Date: November 12, 2021

Re: Governmental Relations Update

This memo includes updates on legislation and court rules on which the State Bar has taken positions.

Legislation

SB 244 - Revised Judicature Act of 1961, Proof of Service

The Board of Commissioners reviewed SB 231 at its July 26, 2019 meeting and voted unanimously to support the bill. SB 244 – the same bill as SB 231 – was introduced on March 16, 2021. The State Bar supported SB 244 when it was discussed by the Senate Committee on Judiciary & Public Safety on September 9, 2021. Substitute S-1 was adopted and reported by the Senate Committee on September 30th; the substitute requires that the written statement is also signed and dated as well as verified. The bill currently awaits action on the Senate floor.

SB 408 - Revised Judicature Act of 1961, Procedure for Granting New Trial

The Board of Commissioners voted to oppose SB 408 for the reasons stated by the Civil Procedure & Courts Committee, the Appellate Practice Section, and the Negligence Law Section.

When the Board reviewed the legislation, it had already passed the Senate, 25 to 11, less than two weeks after introduction. The bill was before the House Judiciary Committee on June 15th. Commissioner Thomas Sinas was prepared to present the Bar's position at the hearing, but he was unable to testify because the committee ran out of time. SBM staff and Commissioner Sinas did speak to several members of the House Judiciary Committee, including the chair, but the SB 408 was discharged out of the Judiciary Committee directly to the House floor, and amended on the House floor.

Key amendments to the H-4 Substitute version of the bill that ultimately passed the House include Sec. 309a(1)(c) from the introductory language "This section is intended to be remedial" to "This section is not intended to create a new right to seek relief from a circuit court judgment" and the addition of Sec. 309a(6) – "This section applies only to an action, case, or proceedings commenced after the date this section takes effect." These amendments took care of most, but not all of the objections raised by the SBM committees and sections. Substitute H-4 passed the House 93 to 15 (July 21, 2021), unanimously passed the Senate (August 31, 2021), and was signed by the Governor September 14, 2021.

Court Rule Amendments

ADM File No. 2021-12: ADM File No. 2021-12: Amendments of MCR 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 – require the local funding unit's appointing authority to appoint counsel for an indigent defendant in a criminal proceeding.

At its July 2021 meeting, the Board of Commissioners voted to support the proposed amendment with one additional amendment proposed by David A. Makled, that when the appointing authority assigns an individual attorney, the attorney should be required to file a notice of appearance indicating they are now the attorney of record. On September 22, 2021, the Court considered the item at its public administrative hearing and adopted the amendment proposed by Mr. Makled and SBM. The amendments will take effect on January 1, 2022.

ADM File No. 2021-09: Retention of the Amendments of MCR 3.903, 3.925, and 3.944 and Additional Revision of MCR 3.944 – require that previously-public juvenile case records be made nonpublic and accessible only to those with a legitimate interest and incorporate new requirements for courts that detain juvenile status offender violators in secure facilities.

At its June 2021 meeting, the Board of Commissioners voted to support the amendments. On September 22, 2021, the Court considered the item at its public administrative hearing and adopted the amendments. The amendments took effect immediately.

ADM File No. 2020-36: Retention of Amendments of MCR 3.903, 3.945, 3.966, 3.975, and 3.976 and Addition of MCR 3.947 – require court approval for placement of foster care children in a qualified residential treatment program as required by state and federal statutory revisions.

At its June 2021 meeting, the Board of Commissioners voted to support the amendments. On September 22, 2021, the Court considered the item at its public administrative hearing and adopted the amendments. The amendments took effect immediately.

ADM File No. 2020-17: Addition of MCR 3.906 – procedure regarding the use of restraints on a juvenile in court proceedings.

At its February 2021 meeting, the Executive Committee voted to support the addition of Rule 3.906 with amendments to protect the rights of juvenile offenders from the significant harms associated with the use of restraint and recommended several revisions to strengthen the presumption against the use of juvenile restraints. On March 24, 2021, the Court considered the item at its public administrative hearing. The amendments were adopted with an amendment requiring the court's "determination that restraints are necessary" before the juvenile is "brought into the courtroom." The amendments were effective September 1, 2021.

ADM File No. 2019-06: Amendments of MCR 6.302 and 6.310 – eliminate the Court's previously-adopted language requiring a trial court to advise defendant whether the law permits or requires the court to sentence defendant consecutively, and instead allow defendant to withdraw a plea if consecutive sentences are ordered but defendant was not advised at the time of plea that the law permits or requires consecutive sentencing.

At its July 2021 meeting, the Board of Commissioners voted to oppose the amendments, as criminal defendants should be advised on the record whenever they are pleading to a crime that

could make them eligible for consecutive sentencing. The Michigan Judges Association also opposed the amendments. On September 22, 2021, the Court considered the item at its public administrative hearing and adopted the amendments as proposed. The amendments will take effect on January 1, 2022.

ADM File No. 2021-15: Retention of Rule 8.128 of the Michigan Court Rules and Amendment of MCR 8.128 (Michigan Judicial Council) – create a strategical plan for Michigan's judiciary.

At its July 2021 meeting, the Board of Commissioners voted unanimously to support the retention of Rule 8.128. On September 22, 2021, the Court considered the item at its public administrative hearing and adopted the proposal with an amendment to Section (A). The amendments took effect immediately.

ADM File No. 2019-34: Amendments of Rule 2, Rule 3, Rule 4, Rule 5, Rule 6, and Rule 7 and Addition of Rule 3a and Rule 4a of the Rules for the Board of Law Examiners – implement a Uniform Bar Examination in Michigan.

At its July 2021 meeting, the Board of Commissioners voted to support the amendments to the Rules of the Board of Law Examiners. On September 22, 2021, the Court considered the item at its public administrative hearing and adopted the amendments as drafted. The amendments will take effect on March 1, 2022.

Order

Michigan Supreme Court
Lansing, Michigan

September 15, 2021

Bridget M. McCormack,
Chief Justice

ADM File No. 2021-34

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

Proposed Amendment of
Rule 5.125 of the Michigan
Court Rules

_____

On order of the Court, this is to advise that the Court is considering an amendment of Rule 5.125 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearing are posted on the Public Administrative Hearings page.

[Additions to the text are indicated in underlining
and deleted text is shown by strikeover.]

Rule 5.125 Interested Persons Defined

(A)-(B) [Unchanged.]

(C) Specific Proceedings. Subject to subrules (A) and (B) and MCR 5.105(E), the following provisions apply. When a single petition requests multiple forms of relief, the petitioner must give notice to all persons interested in each type of relief:

(1)-(17) [Unchanged.]

(18) The persons interested in a proceeding under the Mental Health Code that may result in an individual receiving involuntary mental health treatment or judicial admission of an individual with a developmental disability to a center are the

(a)-(e) [Unchanged.]

(f) ~~the~~ individual's spouse, if the spouse's whereabouts are known,

(g) ~~the~~ individual's guardian, if any,

(h) in a proceeding for judicial admission to a center or in a proceeding in which assisted outpatient treatment is ordered, the community mental health program, and

(i) [Unchanged.]

(19)-(33) [Unchanged.]

(D)-(E) [Unchanged.]

Staff Comment: The proposed amendment of MCR 5.125 would add the community mental health program as an interested person to be served a copy of the court's order when assisted outpatient treatment is ordered.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by January 1, 2022 by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2021-34. Your comments and the comments of others will be posted under the chapter affected by this proposal.

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 15, 2021

Clerk

Public Policy Position
ADM File No. 2021-34

Support

Explanation

The committee voted unanimously to support the proposed amendment to Rule 5.125 of the Michigan Court Rules to add the community mental health program as an interested person to be served a copy of a court's order when assisted outpatient treatment is ordered. The committee noted that many courts are already doing this and found the practice to be beneficial. This amendment would make the policy standard.

Position Vote:

Voted For position: 18
Voted against position: 0
Abstained from vote: 0
Did not vote (absence): 9

Contact Persons:

Katherine L. Marcuz kmarcuz@sado.org
Lore A. Rogers rogersl4@michigan.gov

Order

Michigan Supreme Court
Lansing, Michigan

September 15, 2021

Bridget M. McCormack,
Chief Justice

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

ADM File No. 2018-26

Proposed Amendment of
Rule 6.502 of the Michigan
Court Rules

_____

On order of the Court, this is to advise that the Court is considering an amendment of Rule 6.502 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearing are posted on the Public Administrative Hearings page.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and
deleted text is shown by strikeover]

Rule 6.502 Motion for Relief from Judgment

(A)-(F) [Unchanged.]

(G) Successive Motions.

(1) [Unchanged.]

(2) A defendant may file a second or subsequent motion based on a retroactive change in law that occurred after the first motion for relief from judgment was filed, ~~or~~ a claim of new evidence that was not discovered before the first such motion was filed, or a claim of a jurisdictional defect in the trial court when the judgment was entered. The clerk shall refer a successive motion to the judge to whom the case is assigned for a determination whether the motion is within one of the exceptions.

The court may waive the provisions of this rule if it concludes that there is a significant possibility that the defendant is innocent of the crime. For motions filed under both (G)(1) and (G)(2), the court shall enter an appropriate order disposing of the motion.

(3) [Unchanged.]

Staff Comment: The proposed amendment of MCR 6.502 would make the rule consistent with the Court's ruling in *People v Washington*, ___Mich___(2021) by allowing a defendant to file a second or subsequent motion for relief from judgment based on a claim of a jurisdictional defect in the trial court when the judgment was entered. Although the Court's analysis in *Washington* related specifically to subject matter jurisdiction, reference to "jurisdictional defect" is consistent with MCR 6.508(D).

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by January 1, 2022 by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2018-26. Your comments and the comments of others will be posted under the chapter affected by this proposal.

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 15, 2021

Clerk

Public Policy Position
ADM File No. 2018-26

Support with Amendment

Explanation:
The committee voted 19 to 1 to support ADM File No. 2018-26 with an amendment that it should be limited to "subject matter jurisdiction" rather than simply "jurisdiction," which could be more broadly construed and used in a multitude of ways unintended by *People v Washington*.

Position Vote:
Voted For position: 19
Voted against position: 1
Abstained from vote: 0
Did not vote (absence): 3

Contact Persons:
Mark A. Holsomback mahols@kalcounty.com
Sofia V. Nelson snelson@sado.org

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Immediate Past President:
Hon. Jon A. Van Allsburg
Ottawa County

Court of Appeals:
Hon. Michael F. Gadola

Executive Committee:
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Hon. Michael P. Hatty
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Hon. Muriel D. Hughes
Hon. Tina Yost Johnson
Hon. Brian Kirkham
Hon. Shalina D. Kumar
Hon. Jeff Matis
Hon. Deborah McNabb
Hon. George J. Mertz
Hon. Julie Phillips
Hon. Gerald Prill
Hon. Joseph Rossi
Hon. Annette Smedley
Hon. Susan Sniegowski
Hon. Paul Stutesman
Hon. Joseph Toia

Executive Director:
Tim Ward, MLC

Michigan Judges Association
Founded 1927

October 15, 2021

Larry S. Royster
Clerk, Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

Re: ADM File No. 2018-26
Proposed Amendment of Rule 6.502 of the Michigan Court Rules

Dear Clerk Royster:

At the September 22, 2021 meeting of the Michigan Judges Association, the Executive Committee considered and acted upon the following proposed amendment to the Michigan Court Rules.

ADM File No. 2018-26: This is a proposed amendment of MCR 6.502. The Michigan Judges Association supports the amendment as it complies with the decision in People v Washington.

We thank the Court for considering our input on this matter. If the Michigan Judges Association may provide any further information or assistance, please do not hesitate to contact us.

Sincerely,

Martha Anderson

Hon. Martha Anderson
President
Michigan Judges Association

Order

Michigan Supreme Court
Lansing, Michigan

September 15, 2021

Bridget M. McCormack,
Chief Justice

ADM File No. 2021-33

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

Proposed Amendment of Administrative Order No. 1997-10

_____

On order of the Court, this is to advise that the Court is considering an amendment of Administrative Order No. 1997-10. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearing are posted on the Public Administrative Hearings page.

[Additions to the text are indicated in underlining and deleted text is shown by strikeover.]

Administrative Order No. 1997-10 – Access to Judicial Branch Administrative Information

(A) [Unchanged.]

(B) Access to Information Regarding Supreme Court Administrative, Financial, and Employee Records.

(1)-(9) [Unchanged.]

(10) Employee records are not open to public access, except for a list of employees that includes the position title, salary, and general benefits information. The list must not include a name, initials, electronic mail address, Social Security number, phone number, residential address, or other information that could be used to identify an employee or an employee's beneficiary. This information shall be available on the Court's website at no cost.~~the following information:~~

~~(a) The full name of the employee.~~

~~(b) The date of employment.~~

~~(c) The current and previous job titles and descriptions within the judicial branch, and effective dates of employment for previous employment within the judicial branch.~~

~~(d) The name, location, and telephone number of the court or agency of the employee.~~

~~(e) The name of the employee's current supervisor.~~

~~(f) Any information authorized by the employee to be released to the public or to a named individual, unless otherwise prohibited by law.~~

~~(g) The current salary of the employee. A request for salary information pursuant to this order must be in writing. The individual who provides the information must immediately notify the employee that a request for salary information has been made, and that the information has been provided.~~

(11) [Unchanged.]

Staff Comment: The proposed amendment of Administrative Order No. 1997-10 would clarify which information about jobs within the judiciary would be available to the public and the manner in which it will be made available.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by January 1, 2022 by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2021-33. Your comments and the comments of others will be posted under the chapter affected by this proposal.

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 15, 2021

Clerk

Name: Samantha Hallman

This order should not be adopted. The courts should be aiming for INCREASED transparency, which includes knowing how much individuals make, what their roles are, and to whom they report. For 15 years I worked at the University of Michigan, and my salary, positions and department have been (and are still) all available online for anybody to examine. Government transparency - particularly in the courts - is extremely important to maintaining its integrity.

SBM STATE BAR OF MICHIGAN

To: Members of the Public Policy Committee
Board of Commissioners

From: Governmental Relations Staff

Date: November 12, 2021

Re: HB 5309 – Eligibility Requirements for Attorney Licensed in Another State to Practice in Michigan

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Background
For persons who have already taken successfully taken the bar exam in another state and are licensed to practice and in good standing in another state, this bill would create a rebuttable presumption that the person has sufficient legal education to practice law in Michigan once he or she passes the Michigan Bar Exam. Currently, the Board of Law Examiners has the discretion to deny such persons the privilege of sitting for the Michigan Bar Exam.

Specifically, HB 5309 would allow an attorney who is properly licensed to practice law in the court of last resort of any other state or territory of the United States or the District of Columbia to apply for the Michigan Bar Exam without meeting the current educational requirements once the attorney proves all of the following five requirements to the satisfaction of the Board of Law Examiners:

- Has not been suspended or discharged from the bar of another state or territory of the United States or the District of Columbia or from the bar of any federal court of the United States;
- Is a person of good moral character, defined and determined by the Board of Law Examiners under the Occupational License for Former Offenders;
- Is 18 years of age or older;
- Has sufficient general education and learning in the law to be able to practice law in this state. In determining whether an individual has met this requirement, the Board of Law Examiners must apply a rebuttable presumption that an individual who has successfully passed the bar examination in another state or territory of the United States or the District of Columbia has sufficient general education and learning in the law to be able to practice law in this state; and
- Has the current fitness and ability to be able to practice law in this state.

In the 2015-2016 legislative session, the State Bar of Michigan reviewed SB 742, a similar bill to HB 5309. The Board discussed the legislation at its April 29, 2016 meeting. The Executive Committee referred the bill to the full Board via the Public Policy, Image, and Identity Committee with no recommendation, although the Criminal Law Section submitted a position opposing the bill. The Board voted to support the bill in a position adopted by a Roll Call Vote:

Commissioners voting to support the bill: Anderson, Barnes, Brown, Buchanan, Buiteweg, Burns, Dunnings, Gardella, Haroutunian, Heath, Herrmann, Irons, McCarthy, McGill, Moss, Nolan, Olsman, Pero, Radke, Riordan, Rockwell, Shekell, Ulrich, Warnez, Washington.
Commissioners voting against supporting the bill: Grieco, Jane, Quick.

In the 2017-2018 legislative session, the Board of Commissioners considered HB 4312 and SB 195, two identical bills, at its April 21, 2017 meeting. While the Public Policy, Image, and Identity Committee recommended supporting the legislation, this motion did not pass a Roll Call Vote at the Board meeting:

Commissioners voting to support the bill: Cunningham, Davidson, Dunnings, Gardella, Haroutunian Edward, Haroutunian Krista, Heath, McGinnis, Moss, Olsman, Perkins, Pero, Radke, Rockwell, Shekell, Nolan.
Commissioners voting against supporting the bill: Anderson, Barnes, Buchanan, Canady, Fink, Grieco, Herrmann, Hohauser, Jane, McCarthy, McGill, Siriani, Ulrich, Warnez, Washington.
Absent: Riordan.

Keller Considerations

HB 5309 deals directly with admission to the profession.

Keller Quick Guide

	THE TWO PERMISSIBLE SUBJECT-AREAS UNDER *KELLER*:	
	Regulation of Legal Profession	**Improvement in Quality of Legal Services**
As interpreted by AO 2004-1	✓ Regulation and discipline of attorneys • Ethics • Lawyer competency ✓ Integrity of the Legal Profession • Regulation of attorney trust accounts	• Improvement in functioning of the courts • Availability of legal services to society

Staff Recommendation

The legislation satisfies the requirements of *Keller* and may be considered on its merits.

House Bill 5309 (2021) rss?

Friendly Link: http://legislature.mi.gov/doc.aspx?2021-HB-5309

Sponsors
Beau LaFave (district 108)
Matt Maddock
(click name to see bills sponsored by that person)

Categories
Occupations: attorneys; Occupations: individual licensing and registration; Occupations: licensing fees;

Occupations: attorneys; eligibility requirements for attorney licensed in another state to practice law in Michigan; modify. Amends secs. 937, 940 & 946 of 1961 PA 236 (MCL 600.937 et seq.) & adds sec. 945.

Bill Documents
Bill Document Formatting Information
[x]
The following bill formatting applies to the 2021-2022 session:
- New language in an amendatory bill will be shown in **bold**
- Language to be removed will be ~~stricken~~.
- Amendments made by the House will be blue, such as: House amended text.
- Amendments made by the Senate will be red, such as: Senate amended text.

(gray icons indicate that the action did not occur or that the document is not available)

Documents

House Introduced Bill
Introduced bills appear as they were introduced and reflect no subsequent amendments or changes.

As Passed by the House
As Passed by the House is the bill, as introduced, that includes any adopted House amendments.

As Passed by the Senate
As Passed by the Senate is the bill, as received from the House, that includes any adopted Senate amendments.

House Enrolled Bill
Enrolled bill is the version passed in identical form by both houses of the Legislature.

Bill Analysis

History
(House actions in lowercase, Senate actions in UPPERCASE)
NOTE: a page number of 1 indicates that the page number is soon to come.

Date ▲	Journal	Action
9/21/2021	HJ 73 Pg. 1450	introduced by Representative Beau LaFave
9/21/2021	HJ 73 Pg. 1450	read a first time
9/21/2021	HJ 73 Pg. 1450	referred to Committee on Regulatory Reform
9/22/2021	HJ 74 Pg. 1793	bill electronically reproduced 09/21/2021

HOUSE BILL NO. 5309

September 21, 2021, Introduced by Reps. LaFave and Maddock and referred to the Committee on Regulatory Reform.

A bill to amend 1961 PA 236, entitled

"Revised judicature act of 1961,"

by amending sections 937, 940, and 946 (MCL 600.937, 600.940, and 600.946) and by adding section 945.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 937. ~~Every~~ **Except as provided in section 945, an** applicant for admission to the bar is required to have ~~completed successfully prior to commencement of his~~ **successfully completed, before beginning his or her** legal education, ~~at least~~ **not less than**

2 years of study, consisting of not less than 60 ~~"semester~~ **semester** hours ~~"~~ or 90 ~~"quarter~~ **quarter** hours ~~"~~ of study in courses for which credit towards a collegiate degree is given, either in an accredited college authorized under the laws of the state in which the college is located to grant collegiate degrees, or in a junior college or other school from which students who have successfully completed ~~such~~ **those** 2 years of study are accepted as regular third-year students by any accredited college in this state that is authorized by law to grant collegiate degrees.

Sec. 940. (1) ~~Every~~ **Except as provided in section 945, an** applicant for examination is required to be a graduate from a reputable and qualified law school ~~duly incorporated under the laws of~~ **located in** this state, ~~or~~ another state or territory **of the United States**, or the District of Columbia. ~~, of the United States of America.~~

(2) If an applicant is called into or volunteers for the ~~armed forces~~ **Armed Forces** of the United States, ~~of America,~~ and has completed successfully ~~2 1/2~~ **2-1/2** years of the course of study as a full-time student, or ~~3 1/2~~ **3-1/2** years of the course of study as a part-time student, in ~~any such~~ **a** law school **described in subsection (1)**, the board of law examiners ~~,~~ in its discretion may allow ~~such~~ **the** applicant to be examined for the bar ~~prior to such~~ **before his or her** graduation, but shall withhold certification until after his **or her** graduation.

Sec. 945. An individual who is duly licensed to practice law in the court of last resort of any other state or territory of the United States or the District of Columbia may apply for examination in this state without meeting the education requirements described in section 937 or 940 if he or she proves all of the following to

the satisfaction of the board of law examiners:

(a) He or she has not been suspended or discharged from the bar of another state or territory of the United States or the District of Columbia or from the bar of any federal court of the United States.

(b) He or she is a person of good moral character. As used in this subdivision, "good moral character" means good moral character as defined and determined under 1974 PA 381, MCL 338.41 to 338.47.

(c) He or she is 18 years of age or older.

(d) He or she has sufficient general education and learning in the law to enable him or her to practice law in the courts of record of this state. In determining whether the board of law examiners is satisfied that an individual has proved that he or she meets this subdivision, the board of law examiners shall apply a rebuttable presumption that an individual who has successfully passed the bar examination in another state or territory of the United States or the District of Columbia has sufficient general education and learning in the law to enable him or her to practice law in the courts of record of this state.

(e) He or she has the current fitness and ability to enable him or her to practice law in the courts of record of this state.

Sec. 946. **(1)** ~~Any person~~ **An individual** who is duly licensed to practice law in the court of last resort of any other state or territory **of the United States** or the District of Columbia, ~~of the United States of America,~~ and who applies for admission to the bar of this state without examination, is required to prove **all of the following** to the satisfaction of the board of law examiners: ~~that:~~

(a) ~~(1)~~ He **or she** is **a member** in good standing ~~at~~ **of** the bar of ~~such~~ **that** other state, territory, or district ~~,~~ and has the

qualifications as to moral character, citizenship, age, general education, fitness, and ability required for admission to the bar of this state. ~~; and~~

(b) ~~(2)~~ He **or she** intends ~~in good faith either to maintain an office in this state for the practice of law, and~~ to practice ~~actively~~ **law** in this state ~~,~~ or to engage in the teaching of law as a full-time instructor in a reputable and qualified law school ~~duly incorporated under the laws of~~ **located in** this state. ~~; and~~

(c) ~~(3) His~~ **Subject to subsections (2) and (3), his or her** principal business or occupation for ~~at least 3~~ **not less than 36 months** of the 5 years immediately preceding his **or her** application ~~has been either the~~ **was any of the following:**

(*i*) The active practice of law in ~~such~~ **that** other state, territory, or district. ~~or the~~

(*ii*) The teaching of law as a full-time instructor in a reputable and qualified law school ~~duly incorporated under the laws of~~ **located in** this ~~or some other~~ **state, another** state or **a** territory **of the United States**, or the District of Columbia. ~~, of the United States of America, or that period of active~~

(*iii*) Active service, full-time as distinguished from active duty for training and reserve duty, in the ~~armed forces~~ **Armed Forces** of the United States, during which the applicant was assigned to and discharged the duties of a judge advocate, legal specialist, or legal officer by any other designation, ~~shall be considered as the practice of law for the purposes of this section, which~~ **if that** assignment and the inclusive dates ~~thereof shall be~~ **of that assignment are** certified to by the judge advocate general or comparable officer of the armed forces concerned or by the principal assistant to whom this certification ~~may be~~ **authority is**

delegated. ~~; or any~~

(*iv*) Any combination of **time** periods ~~of practice thereof.~~ **engaged in more than 1 of the principal businesses or occupations described in subparagraph (*i*), (*ii*), or (*iii*).**

(2) The supreme court may, in its discretion, on special motion and for good cause shown, increase ~~said~~ **the** 5-year period **described in subsection (1)(c).**

(3) Any period of active service in the ~~armed forces~~ **Armed Forces** of the United States ~~not meeting~~ **that does not meet** the requirements of duty in the armed forces ~~as herein stated~~ **described in subsection (1)(c)(*iii*)** may be excluded from the 5-year period ~~above prescribed~~ **described in subsection (1)(c)** and the period extended accordingly.

MEMORANDUM IN SUPPORT OF SENATE BILL 195

Date: March 14, 2017

To: Michigan Senate Judiciary Committee

From: Daryl Waters

Based upon the premise that the role of attorney licensing in Michigan has a primary purpose of protection of public, this memo will show how SB 195 will extend that goal in relation to candidates for the bar, who are licensed in other US jurisdiction, but have not necessarily attended a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association (ABA-Approved).

In Michigan, individuals who wish to become attorneys may, after appropriate general and legal education, be licensed after successfully sitting for the bar exam or upon admission by motion when the candidate is licensed in another jurisdiction. Currently, candidates for the bar are required to graduate from a law school that is "reputable and qualified," MCL 600.940. The Board of Law Examiners states that a law school approved by the ABA is reputable and qualified.

While the role of ABA-approval of a law school and marketability of a degree from such a school may certainly be a factor in a student's decision of which law school to attend, the accrediting standards are significantly focused towards the administration, solvency, quality, facilities, libraries, resources, and organization of the law school, and very few of the standards address specific curricular or educational requirements. It is certainly not the goal of this memo to discuss or discount the role of the ABA approval standards or ABA-approved law schools, but rather, to show that quality candidates can be prepared for legal practice and reasoning by non-ABA approved law schools as well.

The role of law school is to prepare a student through education, clinical training, and other methodologies for the practice of law; this outcome is tested through the administration of a bar exam in US jurisdictions. When a candidate has passed the bar examination, has passed the Multistate Professional Responsibility Exam (MPRE), required in 56 US jurisdictions, has completed a character and fitness evaluation, and has been licensed in an US jurisdiction, certainly the candidate has shown that they possess required learning in law, at least minimally on par with the level of an individual graduating from an ABA-approved law school, who are subject to the same evaluations. Further, candidate's licensure in another jurisdiction maintains, or amplifies their qualifications, as they have past proven knowledge that has been demonstrated objectively on previous exams. Moreover, candidates licensed in other jurisdictions would still be required to pass the Michigan bar showing competence in Michigan law, achieve a score of 85 on the MPRE, and achieve a favorable recommendation from the Michigan Committee on Character and Fitness. This provides for a double screening (or more if candidate is licensed in more than one jurisdiction) for candidates, further ensuring protection of the public.

SB 195 also allows for the general education requirement through the original licensing jurisdiction of the candidate, but also allows the Board of Law Examiners the ability to rebut a presumption of learning if deemed necessary.

While the ABA Standards for Accreditation focus on the law school's capability, the concerns over capabilities of a candidate who has attended a law school in the US that is not ABA-approved can easily be assuaged by the candidate's completion of the rigors of the licensure and admission process in other jurisdictions, and also by the history of the lack of disciplinary history where these candidates are eligible for licensure, most notably in Wisconsin, which has allows non-ABA law school educated attorneys admission since 1998[1]. Also, none of these candidates have been subject to discipline.

Michigan can certainly benefit from allowing candidates who are licensed from this path as traditionally, non-ABA law school cost and debt is significantly less than ABA schools, allowing attorneys to potentially offer lower billing rates and increase access to justice. Medial debt load after law school is reported at $100,000, and average billing rates are on the rise according to a January 2013 Michigan Bar Journal article by Bruce Courtade.[2] Additionally, this path may allow some candidates to practice in underlawyered areas of the state, such as the Upper Peninsula, where there are not currently any law schools.

When the focus is placed on the candidates' abilities, and not the law school attended, the licensing process in other jurisdictions shows that the candidate has the requisite knowledge and capabilities to be allowed the opportunity to sit for the Michigan bar exam and licensure process. There is no evidence showing a greater threat to public safety or welfare from a graduate of a non-ABA approved school already licensed in another jurisdiction, than that of an individual who graduates from an ABA approved school.

Respectfully Submitted,

Daryl Waters
Licensed in California, Wisconsin, and US District Court for the Western District of Michigan
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906-367-0498
daryl@darylwaters.net

[1] https://docs.legis.wisconsin.gov/misc/sco/37. Accessed March 14, 2017
[2] http://www.michbar.org/file/journal/pdf/pdf4article2138.pdf. Accessed March 14, 2017

DeShea D. Morrow
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Menominee, MI 49858
906-864-4602
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Senator Rick Jones, Chairman
Michigan Senate Judiciary Committee
P.O. Box 30036
Lansing, MI 48909

Testimony in support of SB 195

My name is DeShea Morrow, and my family and I have resided in Menominee, Michigan for the past 11 years. I am also an attorney licensed to practice law in both Wisconsin and California by virtue of passing the bar examination in both states. I earned my law degree through Oak Brook College of Law and Government Policy of Fresno, California. Since Oak Brook College of Law is not approved by the American Bar Association, (ABA), I am not allowed to sit for the Michigan Bar Examination. I am asking you to support SB 195.

I have practiced law for 13 years, mostly in the area of criminal law. I worked for two years in a two-lawyer office doing mostly criminal defense work as well as some civil practice. I was then hired by the Wisconsin Office of the State Public Defender as a staff attorney in their Peshtigo, Wisconsin Office. I was in this position for almost 4 years until I was hired as an Assistant District Attorney for Marinette County, Wisconsin, which is a contiguous county to Menominee County, Michigan. I have been with the Marinette County District Attorney's Office for almost 8 years. I handle a variety of cases ranging from traffic offenses to homicides. I also serve as the prosecution representative on the Marinette County Treatment Drug Court multi-disciplinary team.

I believe that my practice experience as well as the fact that I have passed the bar examination in two states (California being widely-known as one of the most difficult in the United States), more than qualifies me to at least sit for the Michigan Bar Examination. I also believe that I should be allowed to be directly admitted to the Michigan Bar without taking the bar exam based upon my 12 years of law practice, nearly half of which has been in the position of Marinette County Assistant District Attorney

I agree that candidates for bar admission should meet certain standards of legal competence; however, I do not think that ABA approval is the only benchmark by which legal competence is judged. I urge you to support SB 195. Thank you for your consideration.

MEMORANDUM

Date: March 10, 2017

To: Senator Rick Jones, Chairman, Michigan Senate Judiciary Committee

From: Luke Bowman

Subject: Senate Bill 195 (2017)

Introduction

The purpose of this memorandum is to support Senate Bill 195 (2017) and to address the issue of reasonable restrictions and qualifications for attorney licensure in the State of Michigan. The purpose of restrictions and minimum qualification standards for admission to the bar are well established, namely the protection of the public, the admission of reputable individuals as officers of the Courts, access to skilled and knowledgeable legal services to the public, and good moral character among other purposes. This bill will increase the public access to justice and allow many of Michigan's native sons and daughters to practice law in their home state both now in and in the future.

Currently, candidates for the bar are required to graduate from a law school that is "reputable and qualified," MCL 600.940. The Board of Law Examiners states that a law school approved by the American Bar Association (ABA) is reputable and qualified. Candidates licensed in other jurisdictions may apply for admission by motion under MCL 600.946 which, among other factors, requires a principal business of occupation to be the practice or teaching of law for 3 out of the previous 5 years. There is not a statutory requirement for graduation from an ABA-approved school for candidates seeking admission by motion. However, the Board of Law Examiners' rules require that the candidates graduate from an ABA-approved law school.

Discussion

Senate Bill 195 (2017) requires consideration of many factors and perspectives from the role of universities and institutions, to public impact.

The current requirement of school accreditation by the ABA places and undue burden on the individual and fails to consider that it is the applicant's skills, character and abilities that are at issue, rather than the credentials of the educational body. After all an individual can be highly skilled, impeccably qualified and of excellent character and be a graduate of little known and/or little respected institution and conversely the opposite is also true. The purpose of any law school or University is to provide preparation through education, clinical training, and other methodologies for the practice of law. The purpose of the bar exam is to test the qualities and skills that an individual has achieved. The bar exam is universally required across 56 US jurisdictions and consists of character and fitness evaluation, Multistate Professional Responsibility Exam (MPRE), written essays, and in some states, a performance test. Recent graduates seeking to practice law in Michigan and (with limited exceptions,) individuals licensed in other jurisdiction must pass this exam to practice law in Michigan. A candidate's licensure in another jurisdiction maintains, or amplifies their qualifications, as they have past proven knowledge that has been demonstrated objectively on previous exams and in some cases, the exam in other states is much more rigorous than the Michigan bar. Candidates licensed in other jurisdictions are still be required to pass the Michigan bar showing competence in Michigan law, achieve a score of 85 on the

MPRE, and achieve a favorable recommendation from the Michigan Committee on Character and Fitness.

Comparison with Other State Requirements

While the ABA Standards for Accreditation focus on the law school's capability, the concerns over capabilities of a candidate who has attended a law school in the US that is not ABA-approved can easily be assuaged by the candidate's completion of the rigors of the licensure and admission process in other jurisdictions, and also by the history of the lack of disciplinary history where these candidates are eligible for licensure, most notably in Wisconsin. Neighboring jurisdictions have allowed non-ABA law school educated candidates licensed in other jurisdictions to sit for the bar or to be admitted by motion since 1998[1]. Since that time, there have not been any attorneys who attended non-ABA approved law schools subject to discipline in Wisconsin.

If passed, Senate Bill 195 (2017) would allow non-ABA approved law schools to be eligible for admission to the bar. It is not very likely to result in a major influx of graduates from non-ABA accredited institutions. For example, Wisconsin has allowed non-ABA accredited graduates to take the bar exam since 1998. In that time 45 non-ABA US law school candidates have taken the exam with an 89% pass rate, [2] compared to 4,725 ABA-approved law school candidates with an 81% pass rate on the same exam. Minnesota has also recently began allowing non-ABA law school graduates, who are also licensed in other jurisdictions, to be eligible to sit for its bar exam. Graduates of non-ABA accredited institutions are not seeking special treatment, simply the opportunity to sit for the bar exam and prove their skill and ability.

While the 45 candidates from Wisconsin, may not seem like a significant number, they have likely served several hundreds or thousands of clients over the years, and have been able to increase the access to justice in Wisconsin for those clients. Additionally, they have raised the standard and provided a challenge that graduates of ABA accredited institutions have yet to meet. Michigan, like Wisconsin, could also certainly benefit from individuals who have the legal knowledge, skills, training, and capacity to make a difference in the lives of Michigan citizens, especially as more areas are becoming legal deserts across the state.

Statutorily, Michigan does not require graduation from an ABA-approved law school, however the path to licensure has extensive waiver submission requirements and inexact guidelines in which waivers are granted. Resulting a quasi-official requirement that an individual has little hope of overcoming.

The Michigan bar exam recently underwent revisions that increase difficulty of passing and thus a higher level of knowledge and skill for attorneys being admitted to the bar.[3] This is a healthy revision and placed the emphasis not on the school or university attended, but on the capabilities of the individual. After all, institutions are not admitted to practice law, but individuals with competent legal skill and ability. Individuals need to demonstrate their qualifications and abilities to practice law and a more difficult exam assists with providing a forum to demonstrate legal ability and skill, which has little if anything to do with whether or not the education institution chosen by the individual is ABA accredited or not.

Protectionism, or the idea that the public is protected by the ABA accreditation requirements is not a stated goal of the ABA, but this argument is frequently used to perpetrate

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[1] https://docs.legis.wisconsin.gov/misc/sco/37. Accessed October 29, 2015.

[2] http://www.ncbex.org/publications/statistics. Accessed October 29, 2015.

[3] http://abovethelaw.com/2013/12/harder-michigan-bar-is-here-to-stay/?rf=1

the idea that graduates of non-ABA accredited schools result in incompetent representation. Nothing can be further from the truth. As mention earlier, the ABA requirement places the burden of qualification on the institution, rather than the individual. The result is that many highly qualified individuals cannot practice law and serve the general public; We may have many ABA accredited institutions, but the individuals are not of the highest quality because of they cannot be tested and a tried by a competitor.

Personal Background

Personally, I am admitted to practice law before two Federal courts and all courts in two states: Wisconsin and California, but I cannot take the bar in my native state because I chose a cost effective law school that is not accredited by the ABA. My family history in Michigan runs more than 5 generations deep. I was born and raised in Boyne City, Michigan, one of our State's more rural and beautiful areas. My Great- Great Grandfather, Frank Kaden was president of the Boyne City Bank and my Great-Great-Great Grandmother was one of the founders of Boyne City. With such a rich history in Michigan, I have chosen to practice law here, rather than in some other state, despite the fact that I cannot practice State law due to the current restrictions and ABA accreditation requirement. Instead, I must limit my practice to Federal law. I currently provide legal services to the underserved residents of Michigan through Michigan Immigrant Rights Center, and to two independent nonprofit organizations.

Historical Precedent

Thomas M. Cooley Law School is a respected Michigan institution[4], which received ABA accreditation in 1978, six years after its founding in 1972, Cooley's inaugural class took the Michigan bar at least two years before Cooley received accreditation from the American Bar Association. This historical precedent demonstrates that in the past, the Michigan Judiciary placed higher emphasis on individual qualifications and individual quality of education for eligibility to take the bar exam than on school membership in the ABA.

Conclusion

This bill will benefit the public at large as it will increase the access to justice, increase the quality of legal service available to the public and allow candidates for the bar to stand on their own merits rather than on the membership, or lack thereof, to a group or institution.
I thank the Judiciary Committee for their careful review of this issue. Please let me know if I can provide any additional information that would be helpful to your consideration of this matter.

Respectfully Submitted,

Luke Bowman
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[4] https://en.wikipedia.org/wiki/Western_Michigan_University_Cooley_Law_School

Material Considered by Board for 2016 Similar Legislation

Report on Public Policy Position

Name of section:
Criminal Law Section

Contact person:
Stephanie Farkas

E-Mail:
attorneyfarkas@gmail.com

Bill Number:
SB 0742 (Casperson) Occupations; attorneys; eligibility requirements for attorney licensed in another state to practice law in Michigan; modify. Amends secs. 931, 937, 940 & 946 of 1961 PA 236 (MCL 600.931 et seq.) & adds 945.

Date position was adopted:
March 15, 2016

Process used to take the ideological position:
Position adopted after discussion and vote at a scheduled meeting.

Number of members in the decision-making body:
24

Number who voted in favor and opposed to the position:
17 Voted for position
0 Voted against position
0 Abstained from vote
7 Did not vote (absent)

Position:
Oppose

Explanation of the position, including any recommended amendments:
The Criminal Law Council voted to oppose SB 742 and strenuously objects to SB 742.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.
http://legislature.mi.gov/doc.aspx?2016-SB-0742

Material Considered by Board for 2016 Similar Legislation

FOR LEGISLATIVE ISSUES ONLY:

This position falls within the following Keller-permissible category:

- ✓ **The regulation and discipline of attorneys**
  The improvement of the functioning of the courts
  The availability of legal services to society
  The regulation of attorney trust accounts
- ✓ **The regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession.**

Frequently Asked Questions

Official Guide to ABA-Approved Law Schools

The online *Official Guide* allows you to download Standard 509 Information and Employment Summary data charts for each ABA-approved law school. The *Guide* also contains links to other legal education statistics and resources.

ACCREDITATION PROCESS

How does the accreditation process work?
A law school may not apply for provisional approval until it has been in operation for one year. Schools considering applying for provisional approval are strongly encouraged to contact the ABA Section of Legal Education and Admissions to the Bar as early as possible, and well before the year in which the school applies for provisional approval. Once a school has obtained provisional approval, it remains in provisional status for at least three years. After a school is granted full approval, it undergoes a full site evaluation in the third year after full approval, and then a full sabbatical site evaluation every seven years. Once a school is granted full ABA-approval, it remains on the list of approved law schools until it is removed by a decision of the Council or it closes.

Click here to learn more about the ABA Accreditation Process.

Click here for a list of ABA-approved law schools and the years in which they were approved.

APPROVAL OF LAW SCHOOLS

What is ABA approval of law schools?
Since 1952, the Council of the ABA Section of Legal Education and Admissions to the Bar of the American Bar Association has been recognized by the United States Department of Education as the national agency for the accreditation of programs leading to the J.D. degree in the United States. Law schools that are ABA-approved provide a legal education that meets a minimum set of standards promulgated by the Council and Accreditation Committee of the Section of Legal Education and Admissions to the Bar. Every U.S. jurisdiction has determined that graduates of ABA-approved law schools are eligible to sit for the bar exam in their respective jurisdiction.

What is the difference between attending an ABA-approved law school and a non-ABA approved law school?
The ABA Standards for Approval of Law Schools assure that students who attend ABA-approved law schools will receive a sound program of legal education. Schools not approved by the ABA need not comply with these Standards and the ABA can make no representation about the quality of the program of legal education offered at non-approved law schools.

In many states, a person may not sit for the bar examination unless that person holds a J.D. degree from an ABA-approved law school.

What is the status of students who attend or graduate from a law school that is not ABA approved?

Material Considered by Board for 2016 Similar Legislation

All states recognize graduation from an ABA-approved law school as meeting the legal education requirements for eligibility to sit for the bar examination. Graduates of non-ABA-approved law schools should check the legal education requirements of the jurisdiction(s) in which they intend to seek admission in the Comprehensive Guide to Bar Admission Requirements.

A law school's status during a person's matriculation at the law school is controlling for purposes of determining eligibility to take the bar. For example, if a law school receives provisional approval after a person graduates, the graduate does not then become a graduate of an ABA-approved law school.

A law school seeking provisional approval may not delay conferring a J.D. upon a student in anticipation of obtaining approval. An approved law school may not retroactively grant a J.D. degree as an approved school to a student who graduated from the law school before its approval.

What is the status of students who attend or graduate from a law school that is provisionally approved?
Individuals who graduate from a provisionally approved law school are considered by the ABA to be graduates of an ABA-approved law school. Most states follow this policy. However, students should always check individual state requirements concerning their ability to take the bar exam.

ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS

What are the ABA Standards for Approval of Law Schools?
The Standards contain the requirements that a law school must meet to obtain and retain ABA approval. Interpretations that follow the Standards provide additional guidance concerning the implementation of a particular Standard and have the same force and effect as a Standard.

What are the ABA Rules of Procedure for Approval of Law Schools?
The Rules of Procedure govern the accreditation process through which decisions concerning the status of individual schools are made. The Rules also contain provisions related to the operation of the Office of the Managing Director of Accreditation and Legal Education.

Can the Section on Legal Education and Admissions to the Bar provide advice to students regarding actions taken by a law school?
Law schools that are ABA-approved provide a program of legal education that meets a minimum set of standards promulgated by the Council of the Section of Legal Education and Admissions to the Bar. The standards are found in the ABA *Standard and Rules of Procedure for Approval of Law Schools*. Law schools are responsible for making sure that they comply with the Standards and may establish policies that exceed the requirements of the Standards. Through annual reporting and sabbatical or provisional site evaluations, law schools are monitored for compliance with the Standards.

Neither the Council nor the Managing Director's Office can provide advice on whether a particular decision of a law school on an individual student matter is required by or in compliance with the Standards. Students should work directly with their law school to resolve any issues.

Material Considered by Board for 2016 Similar Legislation

For complaints alleging non-compliance with the Standards, see the FAQ on Complaints.

ABA Standards and Rules of Procedure for Approval of Law Schools

ACADEMIC DISMISSAL

Standard 308 requires that law schools adopt, publish, and adhere to sound academic standards, including those for good standing, academic integrity, graduation and dismissal. The Council does not review law school decisions on academic dismissal. Students should work directly with the law school to resolve any questions.

Admission or readmission after academic dismissal

Standard 501(c) provides that a law school shall not admit or readmit a student who has been disqualified previously for academic reasons without an affirmative showing that the prior disqualification does not indicate a lack of capacity to complete its program of legal education and be admitted to the bar. For every admission or readmission of a previously disqualified individual, a statement of the considerations that led to the decision shall be placed in the admittee's file.

ADMISSION TO THE BAR

The criteria for eligibility to take the bar examination or to otherwise qualify for bar admission are set by each state, not by the ABA or the Council of the Section of Legal Education and Admissions to the Bar.

All states recognize graduation from an ABA-approved law school as meeting the legal education requirements for eligibility to sit for the bar. In addition to legal education requirements, there are also character, fitness, and, other qualifications for admission to the bar in every U.S. jurisdiction.

Students and applicants to law schools should always check with the bar admissions authority in the jurisdictions in which they intend to seek admission concerning the requirements for eligibility to be admitted to the bar. Information on each state's rules and a directory of state bar admission agencies can be found in the *Comprehensive Guide to Bar Admission Requirements.*

ADMISSIONS TO LAW SCHOOL

What can I do if a school does not admit me because of my grades or my LSAT score?

Standards 501-503 address minimum requirements for admission. Law schools set their own admission standards, which may exceed the requirements of the Standards. The Council does not review law school admission decisions. Students should work directly with the law school to resolve admissions matters.

ATTRITION RATES

The numbers and percentages of students who leave a law school before graduation can be found in the JD Attrition category on each law school's Standard 509 Information chart in the *Official Guide to ABA-Approved Law Schools.*

CHARACTER, FITNESS, AND OTHER REQUIREMENTS FOR ADMISSION

In addition to legal education requirements, there are also character, fitness, and other qualifications for admission to the bar in every U.S. jurisdiction. Students should refer to Charts 2 and 5 of the

Comprehensive Guide to Bar Admission Requirements for information about character, fitness, and other requirements in the jurisdiction(s) in which they intend to seek admission.

COMPLAINTS

Rules 42-48 of the ABA Rules of Procedure for Approval of Law Schools governs the filing of complaints against law schools. The Section's Council will not intervene with an approved law school on behalf of an individual with a complaint against or concern regarding action taken by a law school that adversely affects that individual. For more information on the complaint process, visit the Section's page on Complaints Alleging Non-Compliance with the Standards.

COMPLETION OF J.D. PROGRAM

The course of study for the J.D. degree must be completed no earlier than 24 months and, except in extraordinary circumstances, no later than 84 months after a student has commenced law study at the law school or a law school from which the school has accepted transfer credit. See Standard 311(b).

Interpretation 311-2 provides guidance on what might be considered extraordinary circumstances to exceed the 84-month limitation in Standard 311(b).

DISTANCE EDUCATION

The Council does not approve any law schools that provide a J.D. degree completely via distance education. Standard 306 outlines the instances in which distance education courses may be counted for credit toward the J.D. degree at an ABA-approved law school. Chart 3 of the *Comprehensive Guide to Bar Admission Requirements* addresses the means of legal study other than attendance at an ABA-approved law school that are permitted in each jurisdiction to be eligible to sit for the bar examination.

For more information, visit the Section's Distance Education page.

ELIGIBILITY TO TAKE THE BAR EXAMINATION: FOREIGN LAWYERS

Foreign lawyers who wish to sit for the bar examination should refer to Chart 4: Eligibility to Take the Bar Examination in the *Comprehensive Guide to Bar Admission Requirements* and contact the state board of examiners in the state(s) in which they wish to sit for the bar exam. A directory of state bar admission agencies can be found in the *Comprehensive Guide*.

GRANTING CREDIT FOR PRIOR LAW STUDY

Except as provided in Standard 505 (Granting of J.D. Degree Credit for Prior Law Study) no credit can be given for toward a J.D. degree for coursework taken before a student has matriculated as a J.D student in an ABA-approved law school. [See Standard 311(e)]

Under Standard 505, credit may be given toward a J.D. degree for courses taken at another ABA-approved law school, at a state approved law school, or at a law school outside the United States. Credit hours for courses taken at a state approved law school or at a law school outside the United States are limited to one-third of the total credits required for graduation by the admitting law school. A student who is given credit for prior law study must also successfully complete all of the requirements for graduation at the admitting law school.

The Standards act only as a minimum guideline to schools' policies. It is not only possible but probable that the school you wish to receive your degree from may have additional restrictions. ABA Standards and Rules of Procedure for Approval of Law Schools

POST-J.D. PROGRAMS

Standard 308 states that a law school may not establish a degree program other than its J.D. program without obtaining the Council's prior acquiescence. Additionally, a law school may not establish a degree program in addition to its J.D. program unless the school is fully approved.

ABA accreditation does not extend to any program supporting degrees other than the J.D. that may be granted by the law school. Rather, the content and requirements of those degrees, such as an LL.M., are created by the law school itself and do not reflect any judgment by the ABA accrediting bodies regarding the quality of the program. Moreover, admission requirements for such programs, particularly with regard to foreign students, vary from school to school, and are not evaluated through the ABA accreditation process.

The Accreditation Committee and Council review post-J.D. degree programs only to determine whether the offering of such post-J.D. programs would have an adverse impact on the law school's ability to maintain its accreditation for the J.D. program. If no adverse impact in indicated, the Council "acquiesces" in the law school's decision to offer the non-J.D. program and degree.

LLM/NON-JD/POST-JD FAQS FOR LAW SCHOOLS

LIST OF POST-J.D. AND NON-J.D PROGRAMS

A list of post-J.D. and non-J.D. programs that have received Council acquiescence can be found on the Section's Web site.

RANKING OF LAW SCHOOLS

No ranking or rating of law schools beyond the simple statement of their accreditation status is attempted or advocated by the official organizations in legal education. The American Bar Association and its Section of Legal Education and Admissions to the Bar have issued disclaimers of any law school ranking system. Prospective law students should consider a variety of factors in making their choice among schools: Evaluating Law Schools

STUDENT EMPLOYMENT

Standard 304(f), which restricted student employment to 20 hours per week, was eliminated in 2014. ABA-approved law schools may continue to retain a student employment rule even though it is no longer required by the Standards.

SBM STATE BAR OF MICHIGAN

To: Members of the Public Policy Committee
Board of Commissioners

From: Governmental Relations Staff

Date: November 12, 2021

Re: HB 5436 – HB 5443: Pretrial Detention/Release Legislative Package

Background
This eight-bill package of legislation is based on recommendations made by the Michigan Joint Task Force on Jail and Pretrial Incarceration, which was tasked by Executive Order No. 2019-19 to, among other things, "support consistent, objective, and evidence-based pretrial decision-making." The Task Force found wide variation in practices across Michigan related to pretrial detention and conditions of release and noted that current pretrial practices raised due process and equal protection concerns under both the Michigan and U.S. Constitutions.

The bill package proposes sweeping changes to present pretrial procedures and would have a significant impact on the functioning of our court system. The package establishes a tiered statutory framework for pretrial release and detention decision-making with a presumption of release on personal recognizance, with standard conditions outlined in the legislation, unless an individualized determination is made by the court that a defendant poses a significant articulable risk of nonappearance or harm. In addition, the package would limit the use of restrictive pretrial release conditions, provide a due process hearing for detained defendants, and strengthen speedy trial and criminal legal system data collection requirements. The bills detail factors that must be considered, findings that must be made, and procedures that must be employed in pretrial decision-making by courts, while also prohibiting some common practices, such as bail schedules.

The bills are similar in some respects to pretrial detention legislation that was introduced and considered by the Board in 2019, prior to the release of the Task Force recommendations. The Board took no position on the 2019 bill package, deciding to wait until the Task Force recommendations were made.

***Keller* Considerations Bill Package**
The criminal legal system is premised on a presumption that defendants are innocent until proven guilty. Liberty, due process, and equal protection rights limit the use of pretrial detention, except when the defendant poses a threat of harm to others or when there is a significant risk that a defendant will not appear to answer a criminal charge. The bail system was intended to help courts ensure that defendants will return to court while their case is being adjudicated. Legislation proposing significant changes to the bail system could be considered *Keller*-permissible to the extent that one of the rationales of pretrial detention/release decisions is to maintain the integrity of the judicial process by

securing defendants for trial. This is even more true in those cases where, as in this case, the legislation makes extensive alterations to the specific procedures used by courts to make these decisions.

Therefore, this bill package, taken as a whole, is likely *Keller*-permissible because it significantly affects the functioning of the courts.

Keller Considerations of Individual Bills

HB 5436

This bill amends the Code of Criminal Procedure to establish that a person accused of a criminal offense is entitled, in most circumstances, to release on personal recognizance or bail that is not excessive. The bill outlines a tiered framework that judges must use in bail decision-making based on risk of harm or nonappearance/absconding. If the court does not find articulable and substantiated risk, a defendant must be released on a personal recognizance bond with standard conditions. These conditions, in most circumstances, are established by the bill and allow the use of the least restrictive non-monetary condition when necessary to address a risk. Money bail is limited to defendants who pose a risk of harm and are charged with certain crimes (e.g., assaultive crimes, listed offenses). The bill requires an ability to pay assessment based on a financial disclosure form developed by SCAO. It requires that any defendant released be offered voluntary supportive services where available. The bill also requires district and circuit courts to report pretrial release and detention data to SCAO.

This bill would alter how decisions about pretrial detention are determined by the courts. The new procedures required under HB 5436 would have a significant impact on the functioning of the courts. In addition, because this bill would make pretrial release more prevalent, the bill could improve the quality of legal services to society by allowing defendants to more effectively participate in their own defense.

HB 5437

This bill amends the Code of Criminal Procedure to impose limits of pretrial conditions. It requires that a judge conduct an ability to pay assessment before imposing pretrial conditions, considering voluntary supportive services first. The bill allows a defendant to request reevaluation of pretrial conditions after 60 days of compliance in most cases. It limits the use of GPS electronic monitoring to domestic violence, assaultive, or listed offenses, or cases in which the defendant poses a risk of harm or flight. The bill also allows defendants to file a motion for a due process hearing, and sets forth the procedures for such a hearing, if they are still detained 48 hours after arraignment and requires a due process hearing if the defense shows a defect in a bond decision at arraignment.

In the same way that HB 5436 would alter how decisions about pretrial detention are determined by the courts, HB 5437 would alter how decisions about conditions of pretrial release are made and how courts are required to evaluate the impact of pretrial detention and conditions of release on defendants' constitutional rights. The new procedures required under HB 5437 would have a significant impact on the functioning of the courts. In addition, because this bill would make less restrictive release conditions more prevalent and reduce the likelihood that defendants are later detained due to condition violations, the bill could improve the quality of legal services to society by allowing defendants to more effectively participate in their own defense.

HB 5438

This bill amends the Code of Criminal Procedure to require arraignments to be held within 24 hours or within 48 hours if good cause is shown. It also requires that a charge be dismissed without prejudice if a case is not tried within 18 months of arrest, with exceptions for defendant waiver or delay, reasonable victim delay, act of God, or other good cause. The bill also defines "abscond" and "nonappearance" for the act.

By strengthening speedy trial requirements, HB 5438 will impact the functioning of the courts. These new requirements will impact court dockets and judicial economy, as well as helping ensure that courts are functioning in conformity with constitutional commands.

HB 5439

This bill amends 1961 PA 44 (release of misdemeanor prisoners), for individuals charged with non-serious misdemeanors who are eligible to be released on interim bond, to require release on personal recognizance or unsecured bond. Interim money bond up to 50% of the maximum fine is still allowed for eligible people with serious misdemeanors. The bill allows an individual eligible for release to be fingerprinted and processed prior to release but limits this period of detention to no more than three hours. If a defendant is released under these provisions and appears for arraignment as ordered, the court must presume that the defendant is not a risk of nonappearance or absconding when assessing whether to set bond or other conditions at arraignment.

This bill is aimed at making it easier for individuals who have been charged with misdemeanors or local ordinances to either be released or more easily post interim bonds, thus eliminating the need for the individuals to appear before magistrates or judges to consider pretrial release. By expanding the use of the interim bonds, personal recognizance, and appearance tickets, this could improve the functioning of the courts and promote judicial economy.

HB 5440

This bill amends the Code of Criminal Procedure to permit a court to consider information provided by an actuarial risk assessment instrument in pretrial release decision-making. The instrument must be approved by SCAO and must have been validated on the population in which it will be used and "shown to be unbiased on the basis of race, gender, and socioeconomic status."

The bill impacts what information a court has the option to consider when making pretrial decisions. The question of whether or not courts should have the ability to use such risk assessment tools is one of court procedure and will impact the functioning of the courts.

HB 5441

This bill repeals 1966 PA 257, the bail for traffic offenses or misdemeanors statute.

This is a technical trailer bill that is tie-barred to HB 5436. The repeal of PA 257 is necessary to eliminate statutory provisions that would otherwise conflict with the new tiered framework for pretrial decisions established by HB 5436. As such, it is *Keller*-permissible based upon the same rationale provided above for HB 5436: improving the functioning of the courts.

HB 5442

This bill repeals MCL 257.311a, a provision of the Michigan Vehicle Code related to issuing a receipt for a driver's license surrendered as a pretrial condition, as such surrender would no longer be permitted under the amendments to the Code of Criminal Procedure proposed by HB 5436. The bill also strikes other references to the receipt from the Michigan Vehicle Code.

Like HB 5441, this is a technical trailer bill that is tie-barred to HB 5436. The repeal of MCL 257.311a is necessary to eliminate a statutory provision that would otherwise conflict with the provisions of the principal bills in this package. As such, it is *Keller*-permissible based upon the same rationale provided above for HB 5436: improving the functioning of the courts.

HB 5443

This bill amends the Michigan Penal Code to require the court to follow the bail determination process outlined in HB 5436 in cases involving child and spousal support arrearages.

Like HB 5441 and HB 5442, this is a technical trailer bill that is tie-barred to HB 5436. The bill is designed to bring bond decisions made in support arrearage under the Michigan Penal Code into conformity with the general framework outlined in the principal bills in this package. As such, it is *Keller*-permissible based upon the same rationale provided above for HB 5436: improving the functioning of the courts.

***Keller* Quick Guide**

	THE TWO PERMISSIBLE SUBJECT-AREAS UNDER *KELLER*:	
	Regulation of Legal Profession	**Improvement in Quality of Legal Services**
As interpreted by AO 2004-1	• Regulation and discipline of attorneys • Ethics • Lawyer competency • Integrity of the Legal Profession • Regulation of attorney trust accounts	✓ Improvement in functioning of the courts • Availability of legal services to society

Staff Recommendation

Whether considered as a package, or taken individually, the bills in this legislative package would have a significant impact on pretrial court procedures and implicate issues that are central to the functioning of the courts. They are therefore *Keller*-permissible.

House Bill 5436 (2021) rss?

Friendly Link: http://legislature.mi.gov/doc.aspx?2021-HB-5436

Sponsors

Andrew Fink (district 58)
David LaGrand, Steven Johnson, Tommy Brann, Stephanie Young, Rachel Hood, William Sowerby, Julie Rogers, Abraham Aiyash, Padma Kuppa, Lori Stone, Karen Whitsett, Tenisha Yancey
(click name to see bills sponsored by that person)

Categories

Criminal procedure: bail;

Criminal procedure: bail; procedure for pretrial release determinations, criteria a court must consider for pretrial release determination, and reporting of data on pretrial release decisions; provide for. Amends sec. 6 & 6a, ch. V of 1927 PA 175 (MCL 765.6 & 765.6a) & adds sec. 6g, ch. V.

Bill Documents

Bill Document Formatting Information
[x]
The following bill formatting applies to the 2021-2022 session:
- New language in an amendatory bill will be shown in **bold**
- Language to be removed will be ~~stricken~~.
- Amendments made by the House will be blue, such as: House amended text.
- Amendments made by the Senate will be red, such as: Senate amended text.

(gray icons indicate that the action did not occur or that the document is not available)

Documents

House Introduced Bill
Introduced bills appear as they were introduced and reflect no subsequent amendments or changes.

As Passed by the House
As Passed by the House is the bill, as introduced, that includes any adopted House amendments.

As Passed by the Senate
As Passed by the Senate is the bill, as received from the House, that includes any adopted Senate amendments.

House Enrolled Bill
Enrolled bill is the version passed in identical form by both houses of the Legislature.

Bill Analysis

History

(House actions in lowercase, Senate actions in UPPERCASE)
NOTE: a page number of 1 indicates that the page number is soon to come.

Date ▲	Journal	Action
10/20/2021	HJ 86 Pg. 1961	introduced by Representative Andrew Fink
10/20/2021	HJ 86 Pg. 1961	read a first time
10/20/2021	HJ 86 Pg. 1961	referred to Committee on Judiciary
10/21/2021	HJ 87 Pg. 1965	bill electronically reproduced 10/20/2021

HOUSE BILL NO. 5436

October 20, 2021, Introduced by Reps. Fink, LaGrand, Steven Johnson, Brann, Young, Hood, Sowerby, Rogers, Aiyash, Kuppa, Stone, Whitsett and Yancey and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled

"The code of criminal procedure,"

by amending sections 6 and 6a of chapter V (MCL 765.6 and 765.6a), section 6 of chapter V as amended by 2004 PA 167, and by adding section 6g to chapter V.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER V

Sec. 6. (1) ~~Except as otherwise provided by law,~~ **In order to comply with sections 15 and 16 of article I of the state**

constitution of 1963, a person accused of a criminal offense **to whom the circumstances under subsection (2) do not apply** is entitled to **release on personal recognizance or** bail **that is not excessive.** ~~The amount of bail shall not be excessive. The court in fixing the amount of the bail shall consider and make findings on the record as to each of the following:~~

~~(a) The seriousness of the offense charged.~~

~~(b) The protection of the public.~~

~~(c) The previous criminal record and the dangerousness of the person accused.~~

~~(d) The probability or improbability of the person accused appearing at the trial of the cause.~~

~~(2) If the court fixes a bail amount under subsection (1) and allows for the posting of a 10% deposit bond, the person accused may post bail by a surety bond in an amount equal to 1/4 of the full bail amount fixed under subsection (1) and executed by a surety approved by the court.~~

~~(3) If a person is arrested for an ordinance violation or a misdemeanor and if the defendant's operator's or chauffeur's license is not expired, suspended, revoked, or cancelled, the court may require the defendant, in place of other security for the defendant's appearance in court for trial or sentencing or, as a condition for release of the defendant on personal recognizance, to surrender to the court his or her operator's or chauffeur's license. The court shall issue to the defendant a receipt for the license, as provided in section 311a of the Michigan vehicle code, 1949 PA 300, MCL 257.311a. If the trial date is set at the arraignment, the court shall specify on the receipt the date on which the defendant is required to appear for trial. If a trial~~

~~date is not set at the arraignment, the court shall specify on the receipt a date on which the receipt expires. By written notice the court may extend the expiration date of the receipt, as needed, to secure the defendant's appearance for trial and sentencing. The written notice shall instruct the person to whom the receipt was issued to attach the notice to the receipt. Upon its attachment to the receipt, the written notice shall be considered a part of the receipt for purposes of determining the expiration date. At the conclusion of the trial or imposition of sentence, as applicable, the court shall return the license to the defendant unless other disposition of the license is authorized by law.~~

(2) The court may order a defendant to be detained without bond if the court determines on the record that the defendant poses an articulable and substantiated risk of absconding, or an articulable risk of causing personal harm to another reasonably identifiable person, the community at large, or himself or herself; no conditions of release will reasonably address the risk; the proof is evident or the presumption of guilt is great; and 1 or both of the following circumstances apply:

(a) The defendant is charged with murder, treason, first degree criminal sexual conduct, armed robbery, or kidnapping with the intent to extort.

(b) The defendant is charged with a violent felony and 1 or both of the following apply:

(*i*) At the time of the commission of the violent felony, the defendant was on probation, on parole, or released pending trial, for the commission of another violent felony.

(*ii*) During the 15 years preceding the commission of the violent felony, the defendant had been convicted of 2 or more

violent felonies under the laws of this state, or substantially similar laws of the United States or another state, arising out of separate incidents, events, or transactions.

(3) When making a pretrial release decision, the court must determine on the record any articulable and substantiated risk of nonappearance or absconding, or any articulable risk of causing personal harm to another reasonably identifiable person, the community at large, or himself or herself, that is posed by the defendant. The court must base its determination of risk under this section on the specific facts and circumstances applicable to the particular defendant. The court shall consider all of the following factors:

(a) The nature, seriousness, and circumstances of the alleged offense.

(b) The threat to the community, including any victims or witnesses.

(c) The weight of the evidence against the defendant.

(d) The defendant's criminal history, including any history of nonappearance or absconding, and the defendant's adult criminal history and juvenile criminal history as follows:

(*i*) All juvenile adjudications for cases designated under section 2d of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2d, regardless of when the adjudication occurred.

(*ii*) An adjudication for any other juvenile offense that occurred within 5 years prior to the defendant's arraignment for the current offense.

(e) Whether the defendant has another pending criminal charge or is under criminal justice supervision, including probation or parole.

(f) Any other relevant information, including information provided by the defendant, prosecutor, victim, or a pretrial services agency.

(g) The defendant's place and length of residence, community ties, and employment and education commitments, but only as mitigating factors that support release.

(4) If the court does not find an articulable and substantiated risk of nonappearance or absconding, or an articulable risk of causing personal harm to another reasonably identifiable person, the community at large, or himself or herself, the defendant must be released on a personal recognizance bond with standard conditions. Standard conditions under this section are limited to the following:

(a) The defendant shall appear as required.

(b) If the defendant is a resident of this state, the defendant shall not change residence from this state without the permission of the court. This condition may be waived by the court.

(c) The defendant shall not commit a new crime while released.

(d) The defendant shall immediately notify the court, in writing, of any change of address or telephone number.

(5) If the court determines on the record that the defendant poses an articulable and substantiated risk of nonappearance or absconding, or an articulable risk of causing personal harm to another reasonably identifiable person, the community at large, or himself or herself, the court may impose the least restrictive nonmonetary condition or conditions of release that reasonably address the risk, subject to section 6b of this chapter. Before imposing a condition under this subsection, the court shall do both of the following:

(a) Conduct an inquiry into the defendant's ability to pay for such a condition according to the process set forth in section 6a of this chapter.

(b) Consider whether practical assistance or voluntary supportive services, including, but not limited to, court reminders, service referrals, transportation assistance, and voluntary remote check-ins, would be sufficient to address any pretrial risks posed by the defendant.

(6) In cases where the defendant poses only an articulable and substantiated risk of nonappearance, and not a risk of absconding or causing personal harm to another reasonably identifiable person, the community at large, or himself or herself, the court shall not impose a condition of release that results in the defendant's detention.

(7) The court may require cash bail only if it determines on the record that the defendant poses an articulable and substantiated risk of absconding, or an articulable risk of causing personal harm to a reasonably identifiable person, the community at large, or himself or herself, and that no combination of nonmonetary conditions of release will reasonably address the risk, and if the defendant is charged with any of the following:

(a) An assaultive crime.

(b) A listed offense.

(c) A serious misdemeanor.

(d) A violation of section 625 of the Michigan vehicle code, 1949 PA 300, MCL 257.625, or a local ordinance substantially corresponding to section 625 of the Michigan vehicle code, 1949 PA 300, MCL 257.625.

(e) A felony not otherwise included under subdivisions (a) to

(d) that is punishable by imprisonment for 5 or more years.

(8) The court shall not set an amount of cash bail based on a preestablished bail schedule, such as a schedule of bond amounts fixed according to the nature of the charge. If the court requires cash bail it shall do both of the following:

(a) State on the record why no combination of nonmonetary conditions would reasonably address the risk.

(b) Conduct an inquiry into the defendant's ability to pay according to the process under section 6a of this chapter.

(9) Every defendant released under this section must be offered practical assistance or voluntary supportive services where available, including, but not limited to, court reminders, service referrals, transportation assistance, and voluntary remote check-ins.

(10) If the court determines that the defendant poses an articulable risk of causing personal harm only to himself or herself, and that the defendant must be detained to reasonably address the risk, the court must do 1 of the following:

(a) If the risk the defendant poses to himself or herself is related to the defendant's mental illness, the defendant must be brought before the probate court not more than 12 hours after his or her initial court appearance to determine whether he or she is a person requiring treatment pursuant to the process outlined in chapter 4 of the mental health code, 1974 PA 258, MCL 330.1400 to 330.1490. The defendant must be detained until the determination is made. If the defendant is determined to be a person requiring treatment, he or she must be transferred to an appropriate therapeutic environment as soon as possible. Unless subdivision (b) applies, if the defendant is not determined to be a person

requiring treatment, he or she must not be considered to be a risk of causing personal harm to himself or herself and must be released according to this section.

(b) If the risk the defendant poses to himself or herself is related to the defendant's substance use, the court may detain the defendant until the defendant no longer poses a risk to himself or herself or until he or she is transferred to an appropriate therapeutic environment, which must occur as soon as possible.

(11) As used in this section:

(a) "Assaultive crime" includes any of the following:

(*i*) A violation described in section 9a of chapter X.

(*ii*) A violation of chapter XI of the Michigan penal code, 1931 PA 328, MCL 750.81 to 750.90h, not otherwise included in subparagraph (*i*).

(*iii*) A violation of section 110a, 136b, 234a, 234b, 234c, 349b, or 411h of the Michigan penal code, 1931 PA 328, MCL 750.110a, 750.136b, 750.234a, 750.234b, 750.234c, 750.349b, and 750.411h, or any other violent felony.

(b) "Listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

(c) "Person requiring treatment" means that term as defined in section 401 of the mental health code, 1974 PA 258, MCL 330.1401.

(d) "Personal harm" means bodily injury or emotional distress as that term is defined in section 411h of the Michigan penal code, MCL 750.411h, that can be specifically articulated on the record.

(e) "Serious misdemeanor" means that term as defined in section 61 of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.811.

(f) "Substantiated" means supported by evidence, which may

include the following:

(*i*) Established past conduct, including history of nonappearance or absconding in previous cases.

(*ii*) Testimony, including hearsay testimony, from a reliable witness that the defendant has a willful intent to abscond.

(*iii*) Other facts found on the record that support an articulated risk of nonappearance or absconding.

(g) "Violent felony" means a felony, an element of which involves a violent act or threat of a violent act against any other person.

Sec. 6a. **(1)** ~~Before granting an application for bail, a court shall require a cash bond or a surety other than the applicant if the applicant~~

~~(1) Is charged with a crime alleged to have occurred while on bail pursuant to a bond personally executed by him; or~~

~~(2) Has been twice convicted of a felony within the preceding 5 years.~~**The court must provide a financial disclosure form, developed by the state court administrative office, to each defendant prior to arraignment for use by the court at the defendant's arraignment. At or prior to arraignment, the court shall provide a copy of the completed form to the prosecuting attorney and defense counsel in the case. The form must contain the following language or substantially similar language displayed in a prominent position:**

"Warning: You may be required to affirm the accuracy of this form under oath at your arraignment. Filing an intentionally inaccurate statement of finances may result in perjury charges or action for contempt of court. By signing this form, you authorize anyone possessing any information or records pertaining to your personal finances or income to provide such information to the courts.".

(2) Before setting a monetary or nonmonetary condition of bond under section 6 of this chapter, the court must determine ability to pay using the financial information provided by the defendant on the financial disclosure form. If the court determines that the information provided by the defendant on the form is not reliable, it shall do both of the following:

(a) By inquiry, allow the defendant to correct the information immediately on the record without penalty.

(b) State on the record if it is not using the information provided, and its basis to reject the reliability of the information.

(3) The inquiry required under this section must allow the prosecutor of the case, defense counsel, and defendant an opportunity to provide the court information pertinent to the defendant's ability to pay bail.

(4) The information that is admissible under this section may be provided to the court by proffer and may include statements by individuals other than the defendant.

(5) The court, in determining ability to pay, may consider all of the following:

(a) All financial resources available to the defendant within 24 hours from any lawful personal sources.

(b) Any debts, financial obligations, or dependents.

(c) The defendant's basic living expenses, including, but not limited to, food, shelter, clothing, necessary medical expenses, or child support.

(d) Any other special circumstances that may have bearing on the defendant's ability to pay.

(6) All information offered to the court under this section is admissible for the purposes of a hearing conducted under this section if it is relevant and reliable, without regard to whether it would be otherwise admissible under the rules of evidence of this state.

(7) Any statements made by a defendant under this section are admissible at a future proceeding for the purposes of impeachment but are not admissible for the purposes of proving the defendant's guilt.

(8) An individual who knowingly misrepresents his or her financial status on the financial disclosure form may be found in contempt of court and may be punished as provided in section 1715 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1715.

Sec. 6g. (1) Each district and circuit court of this state shall submit a quarterly report to the state court administrative office that provides data on every bond decision issued by the court for the previous quarter. The report required under this section must include the following information for each bond decision:

(a) Type of bond, including personal recognizance with standard conditions, nonmonetary conditions beyond the standard conditions, money bail with a 10% deposit bond or a cash bond for the full bail amount set by the court, or denial of bond.

(b) Whether the defendant was detained or released.

(c) For bonds that included money bail, amount of money bail requested.

(d) Judge or magistrate issuing the bond.

(e) Charge on which the defendant was released or detained.

(f) Demographic characteristics of the defendant released or detained.

(g) The results of any actuarial risk assessment instrument used in the bond decision.

(h) Any failures to appear in court after release on bond.

(i) Any rearrests during the pretrial period, including any rearrests for an assaultive crime.

(2) The supreme court may promulgate court rules regarding additional requirements for the type and format of data that are required to be submitted to the state court administrative office under this section.

(3) As used in this section, "assaultive crime" includes any of the following:

(a) A violation described in section 9a of chapter X.

(b) A violation of chapter XI of the Michigan penal code, 1931 PA 328, MCL 750.81 to 750.90h, not otherwise included in subparagraph (a).

(c) A violation of section 110a, 136b, 234a, 234b, 234c, 349b, or 411h of the Michigan penal code, 1931 PA 328, MCL 750.110a, 750.136b, 750.234a, 750.234b, 750.234c, 750.349b, and 750.411h, or any other felony that involves a violent act or threat of a violent act against any other person.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 101st Legislature are enacted into law:

(a) Senate Bill No.____ or House Bill No. 5442 (request no. 00900'21 a).

(b) Senate Bill No.____ or House Bill No. 5441 (request no. 04537'21).

(c) Senate Bill No.____ or House Bill No. 5443 (request no. 04538'21).

House Bill 5437 (2021) rss?

Friendly Link: http://legislature.mi.gov/doc.aspx?2021-HB-5437

Sponsors

Tenisha Yancey (district 1)
David LaGrand, Steven Johnson, Tommy Brann, Stephanie Young, Rachel Hood, William Sowerby, Julie Rogers, Abraham Aiyash, Padma Kuppa, Mary Cavanagh, Lori Stone, Karen Whitsett
(click name to see bills sponsored by that person)

Categories

Criminal procedure: bail;

Criminal procedure: bail; criteria a court must consider before imposing certain conditions of release and due process hearing related to pretrial detention; provide for. Amends sec. 6b, ch. V of 1927 PA 175 (MCL 765.6b) & adds sec. 6f, ch. V.

Bill Documents

Bill Document Formatting Information
[x]
The following bill formatting applies to the 2021-2022 session:
- New language in an amendatory bill will be shown in **bold**
- Language to be removed will be ~~stricken~~.
- Amendments made by the House will be blue, such as: House amended text.
- Amendments made by the Senate will be red, such as: Senate amended text.

(gray icons indicate that the action did not occur or that the document is not available)

Documents

House Introduced Bill
Introduced bills appear as they were introduced and reflect no subsequent amendments or changes.

As Passed by the House
As Passed by the House is the bill, as introduced, that includes any adopted House amendments.

As Passed by the Senate
As Passed by the Senate is the bill, as received from the House, that includes any adopted Senate amendments.

House Enrolled Bill
Enrolled bill is the version passed in identical form by both houses of the Legislature.

Bill Analysis

History

(House actions in lowercase, Senate actions in UPPERCASE)
NOTE: a page number of 1 indicates that the page number is soon to come.

Date ▲	Journal	Action
10/20/2021	HJ 86 Pg. 1962	introduced by Representative Tenisha Yancey
10/20/2021	HJ 86 Pg. 1962	read a first time
10/20/2021	HJ 86 Pg. 1962	referred to Committee on Judiciary
10/21/2021	HJ 87 Pg. 1965	bill electronically reproduced 10/20/2021

HOUSE BILL NO. 5437

October 20, 2021, Introduced by Reps. Yancey, LaGrand, Steven Johnson, Brann, Young, Hood, Sowerby, Rogers, Aiyash, Kuppa, Cavanagh, Stone and Whitsett and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled

"The code of criminal procedure,"

by amending section 6b of chapter V (MCL 765.6b), as amended by 2014 PA 316, and by adding section 6f to chapter V.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER V

Sec. 6b. (1) ~~A judge or district court magistrate may release a defendant under this subsection subject to conditions reasonably necessary for the protection of 1 or more named persons.~~ If a judge

or district court magistrate releases a defendant ~~under this subsection subject to protective conditions,~~ **subject to conditions in excess of the standard conditions listed in section 6 of this chapter, including, but not limited to, conditions reasonably necessary for the protection of 1 or more persons,** the judge or district court magistrate shall make a finding of the need for ~~protective~~ **the** conditions and inform the defendant on the record, either orally or by a writing that is personally delivered to the defendant, of the specific conditions imposed and that if the defendant violates a condition of release, he or she will be subject to arrest without a warrant and may have his or her bail forfeited or revoked and new conditions of release imposed, in addition to the penalty provided under section 3f of chapter XI and any other penalties that may be imposed if the defendant is found in contempt of court. **Before imposing a condition under this section, the court shall do both of the following:**

(a) Conduct an inquiry into the defendant's ability to pay for the condition, considering all of the following circumstances:

(*i*) All financial resources available to the defendant within 24 hours from any lawful personal sources.

(*ii*) Any debts, financial obligations, or dependents.

(*iii*) The defendant's basic living expenses, including, but not limited to, food, shelter, clothing, necessary medical expenses, or child support.

(*iv*) Any other special circumstances that may have bearing on the defendant's ability to pay.

(b) Consider whether practical assistance or voluntary supportive services, including, but not limited to, court reminders, service referrals, transportation assistance, and

voluntary remote check-ins would be sufficient to address any pretrial risks posed by the defendant.

(2) If the court imposes a condition that constitutes a significant liberty restraint, the defendant may request a hearing to reevaluate the condition after being in compliance with the condition for not less than 60 days.

(3) Except in cases in which the defendant is charged with an offense related to domestic violence, an assaultive crime, or a listed offense, the court must conduct a hearing to reevaluate the condition that constitutes a significant liberty restraint upon request by the defendant if he or she has complied with the significant liberty restraint for not less than 60 days. Unless the defendant is charged with an offense related to domestic violence, an assaultive crime, or a listed offense, there is a rebuttable presumption that a significant liberty restraint must be discontinued if the defendant has demonstrated compliance with the significant liberty restraint for not less than 60 days.

(4) The prosecutor of the case may overcome the presumption under subsection (3) if he or she shows the significant liberty restraint remains necessary, notwithstanding the defendant's compliance with it, to prevent the defendant from absconding or because there is an articulable risk of personal harm to another person or the defendant.

(5) Nothing in subsection (2), (3), or (4) prevents the court from reevaluating, amending, or discontinuing conditions at the court's discretion.

(6) ~~(2)~~ An order or amended order issued under subsection (1) ~~shall~~ **must** contain all of the following:

(a) A statement of the defendant's full name.

(b) A statement of the defendant's height, weight, race, sex, date of birth, hair color, eye color, and any other identifying information the judge or district court magistrate considers appropriate.

(c) A statement of the date the conditions become effective.

(d) A statement of the date on which the order will expire.

(e) A statement of the conditions imposed.

(7) ~~(3)~~ An order or amended order issued under this subsection and subsection (1) may impose a condition that the defendant not purchase or possess a firearm. However, if the court orders the defendant to carry or wear an electronic monitoring device as a condition of release as described in subsection ~~(6),~~ **(8),** the court shall also impose a condition that the defendant not purchase or possess a firearm.

~~(4) The judge or district court magistrate shall immediately direct the issuing court or a law enforcement agency within the jurisdiction of the court, in writing, to enter an order or amended order issued under subsection (1) or subsections (1) and (3) into LEIN. If the order or amended order is rescinded, the judge or district court magistrate shall immediately order the issuing court or law enforcement agency to remove the order or amended order from LEIN.~~

~~(5) The issuing court or a law enforcement agency within the jurisdiction of the court shall immediately enter an order or amended order into LEIN or shall remove the order or amended order from the law enforcement information network upon expiration of the order or as directed by the court under subsection (4).~~

(8) ~~(6) If a~~ **The court may order a defendant to wear an electronic monitoring device for the purpose of location monitoring**

only if 1 or more of the following circumstances apply:

(a) The defendant ~~who~~ is charged with a crime involving domestic violence, ~~or~~ any other assaultive crime, ~~is released under this subsection and subsection (1), the judge or district court magistrate may order the defendant to wear an electronic monitoring device as a condition of release.~~ **or a listed offense.**

(b) The defendant poses an articulable risk of personal harm to another person.

(c) The defendant poses a significant identifiable flight risk.

(9) With the informed consent of the victim, the court may also order the defendant to provide the victim of the charged crime with an electronic receptor device capable of receiving the global positioning system information from the electronic monitoring device worn by the defendant that notifies the victim if the defendant is located within a proximity to the victim as determined by the judge or district court magistrate in consultation with the victim. The victim ~~shall~~ **must** also be furnished with a telephone contact with the local law enforcement agency to request immediate assistance if the defendant is located within that proximity to the victim. In addition, the victim may provide the court with a list of areas from which he or she would like the defendant excluded. The court shall consider the victim's request and shall determine which areas the defendant ~~shall~~ **must** be prohibited from accessing. The court shall instruct the entity monitoring the defendant's position to notify the proper authorities if the defendant violates the order. In determining whether to order a defendant to wear an electronic monitoring device **for the purpose of location monitoring**, the court shall consider the likelihood that the

defendant's participation in electronic monitoring will deter the defendant from seeking to kill, physically injure, stalk, or otherwise threaten the victim prior to trial. The victim may request the court to terminate the victim's participation in the monitoring of the defendant at any time. The court shall not impose sanctions on the victim for refusing to participate in monitoring under this subsection. ~~A defendant described in this subsection shall only be released if he or she agrees to pay the cost of the device and any monitoring as a condition of release or to perform community service work in lieu of paying that cost.~~ An electronic monitoring device ordered to be worn under this subsection ~~shall~~ **must** provide reliable notification of removal or tampering. As used in this subsection, ~~:~~

~~(a) "Assaultive crime" means that term as defined in section 9a of chapter X.~~

~~(b) "Domestic violence" means that term as defined in section 1 of 1978 PA 389, MCL 400.1501.~~

~~(c) "Electronic monitoring device" includes any electronic device or instrument that is used to track the location of an individual or to monitor an individual's blood alcohol content, but does not include any technology that is implanted or violates the corporeal body of the individual.~~

~~(d) "Informed~~ **"informed** consent" means that the victim was given information concerning all of the following before consenting to participate in electronic monitoring:

(a) ~~*(i)*~~ The victim's right to refuse to participate in that monitoring and the process for requesting the court to terminate the victim's participation after it has been ordered.

(b) ~~*(ii)*~~ The manner in which the monitoring technology

functions and the risks and limitations of that technology, and the extent to which the system will track and record the victim's location and movements.

(c) ~~*(iii)*~~ The boundaries imposed on the defendant during the monitoring program.

(d) ~~*(iv)*~~ Sanctions that the court may impose on the defendant for violating an order issued under this subsection.

(e) ~~*(v)*~~ The procedure that the victim is to follow if the defendant violates an order issued under this subsection or if monitoring equipment fails to operate properly.

(f) ~~*(vi)*~~ Identification of support services available to assist the victim to develop a safety plan to use if the court's order issued under this subsection is violated or if the monitoring equipment fails to operate properly.

(g) ~~*(vii)*~~ Identification of community services available to assist the victim in obtaining shelter, counseling, education, child care, legal representation, and other help in addressing the consequences and effects of domestic violence.

(h) ~~*(viii)*~~ The nonconfidential nature of the victim's communications with the court concerning electronic monitoring and the restrictions to be imposed upon the defendant's movements.

(10) If an order in excess of the standard conditions of release listed in section 6 of this chapter includes a no-contact order, electronic monitoring imposed under subsection (8), or another condition required for the protection of 1 or more named persons, the judge or district court magistrate shall immediately direct the issuing court or a law enforcement agency within the jurisdiction of the court, in writing, to enter such an order or amended order into LEIN. The entry into LEIN required under this

subsection must include the statement of the conditions imposed under the order. If the order or amended order is rescinded, the judge or district court magistrate must immediately order the issuing court or law enforcement agency to remove the order or amended order from LEIN.

(11) The issuing court or a law enforcement agency within the jurisdiction of the court must immediately enter an order or amended order into LEIN or must remove the order or amended order from LEIN upon expiration of the order or as directed by the court under subsection (10).

(12) ~~(7)~~ A judge or district court magistrate may ~~release under this subsection a defendant subject to conditions~~ **impose a significant liberty restraint of electronic monitoring to monitor or detect a defendant's blood alcohol content if the court believes that the condition is** reasonably necessary for the protection of the public. ~~if the defendant has submitted to a preliminary roadside analysis that detects the presence of alcoholic liquor, a controlled substance, or other intoxicating substance, or any combination of them, and that a subsequent chemical test is pending.~~ The judge or district court magistrate shall inform the defendant on the record, either orally or by a writing that is personally delivered to the defendant, of all of the following:

(a) That if the defendant is released under this subsection, he or she shall not operate a motor vehicle under the influence of alcoholic liquor, a controlled substance, or another intoxicating substance, or any combination of them, as a condition of release.

(b) That if the defendant violates the condition of release under subdivision (a), he or she will be subject to arrest without a warrant, shall have his or her bail forfeited or revoked, and

shall not be released from custody prior to arraignment.

(13) ~~(8)~~ The judge or district court magistrate shall immediately direct the issuing court or a law enforcement agency within the jurisdiction of the court, in writing, to enter an order or amended order issued under subsection ~~(7)~~ **(12)** into LEIN. If the order or amended order is rescinded, the judge or district court magistrate shall immediately order the issuing court or law enforcement agency to remove the order or amended order from LEIN.

(14) ~~(9)~~ The issuing court or a law enforcement agency within the jurisdiction of the court shall immediately enter an order or amended order into LEIN. If the order or amended order is rescinded, the court or law enforcement agency shall immediately remove the order or amended order from LEIN upon expiration of the order under subsection ~~(8).~~**(13).**

(15) ~~(10) This~~ **Except for the limitations on the use of significant liberty restraints, this** section does not limit the authority of judges or district court magistrates to impose protective or other release conditions under other applicable statutes or court rules. ~~, including ordering a defendant to wear an electronic monitoring device.~~

(16) ~~(11)~~ As used in this section: ~~,~~

(a) "Assaultive crime" includes any of the following:

(*i*) A violation described in section 9a of chapter X.

(*ii*) A violation of chapter XI of the Michigan penal code, 1931 PA 328, MCL 750.81 to 750.90h, not otherwise included in subparagraph (*i*).

(*iii*) A violation of section 110a, 136b, 234a, 234b, 234c, 349b, or 411h of the Michigan penal code, 1931 PA 328, MCL 750.110a, 750.136b, 750.234a, 750.234b, 750.234c, 750.349b, and 750.411h, or

any other felony which involves a violent act or threat of a violent act against any other person.

(b) "Domestic violence" means that term as defined in section 1 of 1978 PA 389, MCL 400.1501.

(c) "Electronic monitoring device" includes any electronic device or instrument that is used to monitor the location of an individual or to monitor or detect an individual's blood alcohol content. No condition of release shall include any technology that is implanted or violates the corporeal body of the individual.

(d) "LEIN" means the law enforcement information network regulated under the C.J.I.S. policy council act, 1974 PA 163, MCL 28.211 to 28.215, or by the department of state police.

(e) "Listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

(f) "No-contact order" means an order of the court requiring a defendant to stay away from or have no contact with a specific person or location.

(g) "Personal harm" means bodily injury or emotional distress, as defined in section 411h of the Michigan penal code, 1931 PA 328, MCL 750.411h, that can be specifically articulated on the record.

(h) "Significant liberty restraint" means any condition that requires drug or alcohol testing, electronic monitoring, or in-person reporting outside of regularly scheduled court events. Significant liberty restraint does not include a no-contact order.

Sec. 6f. (1) If, as the result of a pretrial release decision, a defendant remains incarcerated 48 hours after the pretrial release decision is made, defense counsel or the prosecuting attorney may petition the court to conduct a due process hearing within 24 hours of the petition as provided in this section.

(2) The court must accept the petition and conduct a due process hearing if the petitioner alleges a specific, articulable shortcoming of the pretrial release decision in 1 or more of the following manners:

(a) The arraigning judicial officer failed to comply with the statutory requirements of this state or the court rules regarding arraignment, pretrial release conditions, or the pretrial release decision.

(b) New evidence is available, or the court failed to consider existing evidence, that indicates that the defendant does not pose an articulable and substantiated risk of absconding, or an articulable risk of causing personal harm to another reasonably identifiable person, the community at large, or himself or herself.

(c) There are less restrictive conditions, not previously considered by the court, that can reasonably address the risk presented by the defendant.

(d) The defendant remains incarcerated due to an inability to pay cash bail or afford a condition of release that the defendant indicated during arraignment he or she could afford.

(3) The court may deny the petition for a due process hearing if it finds that the petition fails to articulate a specific basis for review under subsection (2) or is incomplete.

(4) All of the following apply to a due process hearing under this section:

(a) If available, the judge who is assigned to preside over the case after arraignment shall preside over the due process hearing.

(b) The scope of the hearing must be limited to the pretrial release decision, including any monetary or nonmonetary conditions

of release.

(c) The defendant has a right to be represented by counsel, review evidence the prosecutor may introduce before the hearing, present evidence, and proffer information.

(d) The defendant has a right to present and cross-examine witnesses, except the defendant may not call adversarial witnesses, including, but not limited to, any victim or victims in the case.

(e) The rules of evidence of this state do not apply.

(f) Statements made at the hearing by the defendant are not admissible for the purpose of proving the defendant's guilt in a subsequent proceeding but may be admissible for impeachment purposes.

(5) The court shall not issue an order for pretrial detention or continue a condition of release that results in detention of the defendant before trial at the due process hearing unless the court finds by clear and convincing evidence on the record that the defendant poses an articulable and substantiated risk of absconding, or an articulable risk of causing personal harm to another reasonably identifiable person, the community at large, or himself or herself, and that no less restrictive conditions can reasonably address the risk.

(6) As used in this section:

(a) "Personal harm" means bodily injury or emotional distress as defined in section 411h of the Michigan penal code, 1931 PA 328, MCL 750.411h, that can be specifically articulated on the record.

(b) "Substantiated" means supported by evidence, which may include any of the following:

(*i*) Established past conduct, including history of nonappearance or absconding in previous cases.

(*ii*) Testimony, including hearsay testimony, from a reliable witness that the defendant has a willful intent to abscond.

(*iii*) Other facts found on the record that support an articulated risk of nonappearance or absconding.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

House Bill 5438 (2021) rss?

Friendly Link: http://legislature.mi.gov/doc.aspx?2021-HB-5438

Sponsors

Greg VanWoerkom (district 91)
David LaGrand, Steven Johnson, Tommy Brann, Stephanie Young, Rachel Hood, William Sowerby, Abraham Aiyash, Padma Kuppa, Lori Stone, Karen Whitsett, Tenisha Yancey
(click name to see bills sponsored by that person)

Categories

Criminal procedure: other;

Criminal procedure: other; certain definitions in the code of criminal procedure and time period required for disposition of criminal charges; provide for. Amends sec. 1, ch. I & sec. 1, ch. VIII of 1927 PA 175 (MCL 761.1 & 768.1).

Bill Documents

Bill Document Formatting Information
[x]
The following bill formatting applies to the 2021-2022 session:
- New language in an amendatory bill will be shown in **bold**
- Language to be removed will be ~~stricken~~.
- Amendments made by the House will be blue, such as: House amended text.
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(gray icons indicate that the action did not occur or that the document is not available)

Documents

House Introduced Bill
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As Passed by the House
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As Passed by the Senate is the bill, as received from the House, that includes any adopted Senate amendments.

House Enrolled Bill
Enrolled bill is the version passed in identical form by both houses of the Legislature.

Bill Analysis

History

(House actions in lowercase, Senate actions in UPPERCASE)
NOTE: a page number of 1 indicates that the page number is soon to come.

Date ▲	Journal	Action
10/20/2021	HJ 86 Pg. 1962	introduced by Representative Greg VanWoerkom
10/20/2021	HJ 86 Pg. 1962	read a first time
10/20/2021	HJ 86 Pg. 1962	referred to Committee on Judiciary
10/21/2021	HJ 87 Pg. 1965	bill electronically reproduced 10/20/2021

HOUSE BILL NO. 5438

October 20, 2021, Introduced by Reps. VanWoerkom, LaGrand, Steven Johnson, Brann, Young, Hood, Sowerby, Aiyash, Kuppa, Stone, Whitsett and Yancey and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled

"The code of criminal procedure,"

by amending section 1 of chapter I and section 1 of chapter VIII (MCL 761.1 and 768.1), section 1 of chapter I as amended by 2017 PA 2.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER I

Sec. 1. As used in this act:

(a) "Abscond" means failure to appear with the willful intent

to avoid or delay adjudication.

(b) ~~(a)~~ "Act" or "doing of an act" includes an omission to act.

(c) ~~(b)~~ "Clerk" means the clerk or a deputy clerk of the court.

(d) ~~(c)~~ "Complaint" means a written accusation, under oath or upon affirmation, that a felony, misdemeanor, or ordinance violation has been committed and that the person named or described in the accusation is guilty of the offense.

(e) ~~(d)~~ "County juvenile agency" means that term as defined in section 2 of the county juvenile agency act, 1998 PA 518, MCL 45.622.

(f) ~~(e)~~ "Federal law enforcement officer" means an officer or agent employed by a law enforcement agency of the United States government whose primary responsibility is enforcing laws of the United States.

(g) ~~(f)~~ "Felony" means a violation of a penal law of this state for which the offender, upon conviction, may be punished by imprisonment for more than 1 year or an offense expressly designated by law to be a felony.

(h) ~~(g)~~ "Indictment" means 1 or more of the following:

(*i*) An indictment.

(*ii*) An information.

(*iii*) A presentment.

(*iv*) A complaint.

(*v*) A warrant.

(*vi*) A formal written accusation.

(*vii*) Unless a contrary intention appears, a count contained in any document described in subparagraphs (*i*) through (*vi*).

(i) ~~(h)~~ "Jail", "prison", or a similar word includes a juvenile facility in which a juvenile has been placed pending trial under section 27a of chapter IV.

(j) ~~(i)~~ "Judicial district" means the following:

(*i*) With regard to the circuit court, the county.

(*ii*) With regard to municipal courts, the city in which the municipal court functions or the village served by a municipal court under section 9928 of the revised judicature act of 1961, 1961 PA 236, MCL 600.9928.

(*iii*) With regard to the district court, the county, district, or political subdivision in which venue is proper for criminal actions.

(k) ~~(j)~~ "Juvenile" means a person within the jurisdiction of the circuit court under section 606 of the revised judicature act of 1961, 1961 PA 236, MCL 600.606.

(*l*) ~~(k)~~ "Juvenile facility" means a county facility, an institution operated as an agency of the county or family division of the circuit court, or an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, to which a juvenile has been committed under section 27a of chapter IV.

(m) ~~(*l*)~~ "Magistrate" means a judge of the district court or a judge of a municipal court. Magistrate does not include a district court magistrate, except that a district court magistrate may exercise the powers, jurisdiction, and duties of a magistrate if specifically provided in this act, the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947, or any other statute. This definition does not limit the power of a justice of the supreme court, a circuit judge, or a judge of a court of record

having jurisdiction of criminal cases under this act, or deprive him or her of the power to exercise the authority of a magistrate.

(n) ~~(m)~~ "Minor offense" means a misdemeanor or ordinance violation for which the maximum permissible imprisonment does not exceed 92 days and the maximum permissible fine does not exceed $1,000.00.

(o) ~~(n)~~ "Misdemeanor" means a violation of a penal law of this state that is not a felony or a violation of an order, rule, or regulation of a state agency that is punishable by imprisonment or a fine that is not a civil fine.

(p) "Nonappearance" means a failure to appear without the intent to avoid or delay adjudication.

(q) ~~(o)~~ "Ordinance violation" means either of the following:

(*i*) A violation of an ordinance or charter of a city, village, township, or county that is punishable by imprisonment or a fine that is not a civil fine.

(*ii*) A violation of an ordinance, rule, or regulation of any other governmental entity authorized by law to enact ordinances, rules, or regulations that is punishable by imprisonment or a fine that is not a civil fine.

(r) ~~(p)~~ "Person", "accused", or a similar word means an individual or, unless a contrary intention appears, a public or private corporation, partnership, or unincorporated or voluntary association.

(s) ~~(q)~~ "Property" includes any matter or thing upon or in respect to which an offense may be committed.

(t) ~~(r)~~ "Prosecuting attorney" means the prosecuting attorney for a county, an assistant prosecuting attorney for a county, the attorney general, the deputy attorney general, an assistant

attorney general, a special prosecuting attorney, or, in connection with the prosecution of an ordinance violation, an attorney for the political subdivision or governmental entity that enacted the ordinance, charter, rule, or regulation upon which the ordinance violation is based.

(u) ~~(s)~~ "Recidivism" means any rearrest, **recharge**, reconviction, or reincarceration in prison or jail for a felony or misdemeanor offense, **a misdemeanor ordinance violation**, or a probation or parole violation of an individual as measured first after 3 years and again after 5 years from the date of his or her release from incarceration, placement on probation, or conviction, whichever is later.

(v) ~~(t)~~ "Taken", "brought", or "before" a magistrate or judge for purposes of criminal arraignment or the setting of bail means either of the following:

(*i*) Physical presence before a judge or district court magistrate.

(*ii*) Presence before a judge or district court magistrate by use of 2-way interactive video technology.

(w) ~~(u)~~ "Technical parole violation" means a violation of the terms of a parolee's parole order that is not a violation of a law of this state, a political subdivision of this state, another state, or the United States or of tribal law.

(x) ~~(v)~~ "Technical probation violation" means a violation of the terms of a probationer's probation order that is not a violation of a law of this state, a political subdivision of this state, another state, or the United States or of tribal law.

(y) "Without unnecessary delay" means not more than 24 hours after a person is arrested or, upon a showing of good cause, not

more than 48 hours after a person is arrested.

(z) ~~(w)~~ "Writing", "written", or a similar term refers to words printed, painted, engraved, lithographed, photographed, copied, traced, or otherwise made visible to the eye.

CHAPTER VIII

Sec. 1. **(1)** The people of this state and persons charged with crime are entitled to and shall have a speedy trial and determination of all prosecutions. ~~and it is hereby made~~ **It is** the duty of all public officers having duties to perform in any criminal case, to bring such case to a final determination without delay except as may be necessary to secure to the accused a fair and impartial trial. **Except as provided in subsection (2), a defendant must be tried, and a final determination of the charge must be made, not more than 18 months after arrest or the issuance of an appearance ticket.**

(2) The time period in subsection (1) may be tolled if any of the following apply:

(a) The defendant explicitly waives the time period on the record or implicitly waives the time period by his or her conduct.

(b) The delay is attributable to the defendant.

(c) The delay is necessary to accommodate the request of any victim or victims in the case, if the court finds on the record that the request is reasonable.

(d) The delay is attributable to an act of God, including, but not limited to, a fire, earthquake, hurricane, storm, pandemic, or similar natural disaster or phenomenon.

(e) The delay is otherwise justified by good cause found on the record, but not including delays caused by docket congestion.

(3) If a defendant is not tried or a final determination on

the charge or charges is not made within the time period under subsection (1) and none of the circumstances under subsection (2) apply, then the charge against the defendant must be dismissed without prejudice.

(4) It is the responsibility of the court to ensure that judicial or docket delays do not result in case dismissal under this section.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

House Bill 5439 (2021) rss?

Friendly Link: http://legislature.mi.gov/doc.aspx?2021-HB-5439

Sponsors
Stephanie Young (district 8)
David LaGrand, Steven Johnson, Tommy Brann, Rachel Hood, William Sowerby, Julie Rogers, Abraham Aiyash, Padma Kuppa, Lori Stone, Karen Whitsett, Mary Cavanagh, Tenisha Yancey
(click name to see bills sponsored by that person)

Categories
Criminal procedure: bail;

Criminal procedure: bail; interim bail bonds for misdemeanors; modify. Amends sec. 1 of 1961 PA 44 (MCL 780.581).

Bill Documents
Bill Document Formatting Information
[x]
The following bill formatting applies to the 2021-2022 session:
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House Enrolled Bill
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Bill Analysis

History
(House actions in lowercase, Senate actions in UPPERCASE)
NOTE: a page number of 1 indicates that the page number is soon to come.

Date ▲	Journal	Action
10/20/2021	HJ 86 Pg. 1962	introduced by Representative Stephanie Young
10/20/2021	HJ 86 Pg. 1962	read a first time
10/20/2021	HJ 86 Pg. 1962	referred to Committee on Judiciary
10/21/2021	HJ 87 Pg. 1965	bill electronically reproduced 10/20/2021

HOUSE BILL NO. 5439

October 20, 2021, Introduced by Reps. Young, LaGrand, Steven Johnson, Brann, Hood, Sowerby, Rogers, Aiyash, Kuppa, Stone, Whitsett, Cavanagh and Yancey and referred to the Committee on Judiciary.

A bill to amend 1961 PA 44, entitled

"An act to provide for the release of misdemeanor prisoners by giving bond to the arresting officer in certain circumstances not inconsistent with public safety; and to repeal certain acts and parts of acts,"

by amending section 1 (MCL 780.581), as amended by 1990 PA 308.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. (1) ~~If~~ **Except in a case in which an appearance ticket is issued under section 9c of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.9c, if** a person is arrested without

a warrant for a misdemeanor or a violation of a city, village, or township ordinance, and the misdemeanor or violation is punishable by imprisonment for not more than 1 year, or by a fine, or both, the officer making the arrest shall take, without unnecessary delay, the person arrested before the most convenient magistrate of the county in which the offense was committed ~~to answer to the complaint.~~**for an arraignment.**

(2) Except as otherwise provided in **this section or** section 2a, if a magistrate is not available or immediate trial cannot be had, the person arrested **must be released on his or her own recognizance. The recognizance bond may be executed with the arresting officer or the direct supervisor of the arresting officer or department, or with the sheriff or a deputy in charge of the county jail if the person arrested is lodged in the county jail.**

(3) A person eligible for release as provided under subsection (2) may be fingerprinted and processed at the jail before being released on his or her own recognizance. However, the period of detention allowed under this subsection must not be for any period longer than the time necessary to complete fingerprinting and processing, and may in no case exceed 3 hours.

(4) If the person is released on his or her own recognizance under subsection (2), he or she must be given a written notice that provides the time and place at which he or she must appear for an arraignment.

(5) If the person arrested is charged with a serious misdemeanor, except as otherwise provided in section 2a, he or she may deposit with the arresting officer or the direct supervisor of the arresting officer or department, or with the sheriff or a deputy in charge of the county jail if the person arrested is

lodged in the county jail, an interim bond to guarantee his or her appearance. The bond ~~shall~~ **must** be a sum of money, as determined by the officer who accepts the bond, not to exceed **50% of** the amount of the maximum possible fine ~~but not less than 20% of the amount of the minimum possible fine~~ that may be imposed for the offense for which the person was arrested. The person ~~shall~~ **must** be given a receipt as provided in section 3.

(6) ~~(3)~~ If, in the opinion of the arresting officer or department, the arrested person is under the influence of intoxicating liquor or a controlled substance, or a combination of intoxicating liquor and a controlled substance, is wanted by police authorities to answer to another charge, is unable to establish or demonstrate his or her identity, or it is otherwise unsafe to release him or her, the arrested person ~~shall~~ **must** be held at the place specified in subsection ~~(4)~~ **(7)** until he or she is in a proper condition to be released, or until the next session of court.

(7) ~~(4)~~ For purposes of subsection ~~(3),~~ **(6)**, if the person is arrested in a political subdivision that has a holding cell, holding center, or lockup, the person ~~shall~~ **must** be held in that holding cell, holding center, or lockup. However, if that holding facility is at capacity then the person may be held in a holding cell, holding center, or lockup willing to accept the ~~prisoner.~~ **person**. If the person is arrested in a political subdivision that does not have a holding cell, holding center, or lockup, the person ~~shall~~ **must** be held in a holding cell, holding center, or lockup willing to accept the ~~prisoner~~ **person** or in the county jail. As used in this subsection, "political subdivision" means a city, village, or township.

(8) If a person is released under this section and appears in court on the date and time of his or her arraignment, the court shall presume the person is not at risk of nonappearance or absconding when it sets bond or other conditions of release at arraignment.

(9) As used in this section, "serious misdemeanor" means that term as defined in section 61 of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.811.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

House Bill 5440 (2021) rss?

Friendly Link: http://legislature.mi.gov/doc.aspx?2021-HB-5440

Sponsors

David LaGrand (district 75)
Steven Johnson, Tommy Brann, Stephanie Young, Rachel Hood, William Sowerby, Julie Rogers, Abraham Aiyash, Padma Kuppa, Lori Stone, Karen Whitsett, Tenisha Yancey
(click name to see bills sponsored by that person)

Categories

Criminal procedure: bail; Criminal procedure: pretrial procedure; Criminal procedure: sentencing;

Criminal procedure: bail; requirements for the use of a pretrial risk assessment tool by a court making bail decision; create. Amends 1927 PA 175 (MCL 760.1 - 7677.69) by adding sec. 6f, ch. V.

Bill Documents

Bill Document Formatting Information
[x]
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House Enrolled Bill
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Bill Analysis

History

(House actions in lowercase, Senate actions in UPPERCASE)
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Date ▲	Journal	Action
10/20/2021	HJ 86 Pg. 1962	introduced by Representative David LaGrand
10/20/2021	HJ 86 Pg. 1962	read a first time
10/20/2021	HJ 86 Pg. 1962	referred to Committee on Judiciary
10/21/2021	HJ 87 Pg. 1965	bill electronically reproduced 10/20/2021

HOUSE BILL NO. 5440

October 20, 2021, Introduced by Reps. LaGrand, Steven Johnson, Brann, Young, Hood, Sowerby, Rogers, Aiyash, Kuppa, Stone, Whitsett and Yancey and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled

"The code of criminal procedure,"

(MCL 760.1 to 777.69) by adding section 6f to chapter V.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER V

Sec. 6f. (1) In making its determination of risk when setting bond under section 6 of this chapter, the court may consider information provided by an actuarial risk assessment instrument that has been approved for use in pretrial release decision making

by the state court administrative office under this section for use in that court.

(2) A county or court may request approval of an actuarial risk assessment instrument used for pretrial release decision making from the state court administrative office. The state court administrative office shall make a determination on a request under this subsection within 90 days and approve or deny the request as follows:

(a) If the state court administrative office determines that the instrument is validated and appropriate for pretrial release decision making, it shall approve the request, and the county or court may use the actuarial risk assessment instrument for the 5 years immediately following the approval. After 5 years have elapsed from the date of approval, the county or court shall not use the instrument unless the instrument is revalidated and resubmitted by the county or court to the state court administrative office and it is approved under this section.

(b) If the state court administrative office determines the instrument has not been validated or is not appropriate for pretrial release decision making, it shall deny the request, and the county or court may not use the actuarial risk assessment instrument. If the county or court subsequently validates the assessment, the county or court may resubmit a request for approval.

(3) If the state court administrative office determines that an actuarial risk assessment instrument is appropriate for pretrial release decision making and is validated for use on a statewide population, it may approve the instrument for statewide use.

(4) Before approving an instrument for use under subsection

(2) or (3), the state court administrative office shall consult with relevant stakeholders, which may include all of the following:

(*i*) District court judges.

(*ii*) Circuit court judges.

(*iii*) Prosecutors.

(*iv*) Defense attorneys.

(*v*) Law enforcement agencies.

(*vi*) The Michigan domestic and sexual violence prevention and treatment board.

(*vii*) The Michigan coalition to end domestic and sexual violence.

(*viii*) Other relevant advocacy organizations.

(5) If the state court administrative office denies the request under subsection (2), a county or court has the right to make an immediate appeal to the state court administrator. Based on the available evidence, the state court administrator may affirm or overrule the state court administrative office's denial of the request.

(6) As used in this section:

(a) "Appropriate for pretrial release decision making" means that an actuarial risk assessment instrument has been shown to be unbiased on the basis of race, gender, and socioeconomic status.

(b) "Validated" means that an actuarial risk assessment instrument has been determined to accurately predict risk of nonappearance, to public safety, or both in the pretrial context in the population in which the instrument will be used.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

House Bill 5441 (2021) rss?

Friendly Link: http://legislature.mi.gov/doc.aspx?2021-HB-5441

Sponsors

Steven Johnson (district 72)
David LaGrand, Tommy Brann, Stephanie Young, Rachel Hood, William Sowerby, Julie Rogers, Abraham Aiyash, Padma Kuppa, Lori Stone, Karen Whitsett, Tenisha Yancey
(click name to see bills sponsored by that person)

Categories

Criminal procedure: bail; Traffic control: violations;

Criminal procedure: bail; act that provides bail for traffic offenses or misdemeanors; repeal. Repeals 1966 PA 257 (MCL 780.61 - 780.73).

Bill Documents

Bill Document Formatting Information
[x]
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Bill Analysis

History

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NOTE: a page number of 1 indicates that the page number is soon to come.

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10/20/2021	HJ 86 Pg. 1962	introduced by Representative Steven Johnson
10/20/2021	HJ 86 Pg. 1962	read a first time
10/20/2021	HJ 86 Pg. 1962	referred to Committee on Judiciary
10/21/2021	HJ 87 Pg. 1965	bill electronically reproduced 10/20/2021

HOUSE BILL NO. 5441

October 20, 2021, Introduced by Reps. Steven Johnson, LaGrand, Brann, Young, Hood, Sowerby, Rogers, Aiyash, Kuppa, Stone, Whitsett and Yancey and referred to the Committee on Judiciary.

A bill to repeal 1966 PA 257, entitled

"An act to provide for bail of persons arrested for or accused of criminal offenses involving traffic offenses or misdemeanors; by prescribing the conditions under which security is required; by prescribing the kind and amount of security required; by prescribing the conditions under which security may be forfeited and the manner of forfeiture; by prescribing penalties for violations; and to repeal certain acts and parts of acts,"

(MCL 780.61 to 780.73).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Enacting section 1. 1966 PA 257, MCL 780.61 to 780.73, is

repealed.

Enacting section 2. This amendatory act takes effect 90 days after the date it is enacted into law.

Enacting section 3. This amendatory act does not take effect unless all of the following bills of the 101st Legislature are enacted into law:

(a) Senate Bill No.____ or House Bill No. 5436 (request no. 00900'21).

(b) Senate Bill No.____ or House Bill No. 5442 (request no. 00900'21 a).

House Bill 5442 (2021) rss?

Friendly Link: http://legislature.mi.gov/doc.aspx?2021-HB-5442

Sponsors

Luke Meerman (district 88)
David LaGrand, Steven Johnson, Tommy Brann, Stephanie Young, Rachel Hood, William Sowerby, Abraham Aiyash, Padma Kuppa, Lori Stone, Karen Whitsett, Mary Cavanagh, Tenisha Yancey
(click name to see bills sponsored by that person)

Categories

Traffic control: driver license; Criminal procedure: bail;

Traffic control: driver license; reference to surrendering license as condition of pretrial release and certain other references; amend to reflect changes in code of criminal procedure. Amends secs. 311 & 727 of 1949 PA 300 (MCL 257.311 & 257.727) & repeals sec. 311a of 1949 PA 300 (MCL 257.311a).

Bill Documents

Bill Document Formatting Information
[x]
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Bill Analysis

History

(House actions in lowercase, Senate actions in UPPERCASE)
NOTE: a page number of 1 indicates that the page number is soon to come.

Date ▲	Journal	Action
10/20/2021	HJ 86 Pg. 1962	introduced by Representative Luke Meerman
10/20/2021	HJ 86 Pg. 1962	read a first time
10/20/2021	HJ 86 Pg. 1962	referred to Committee on Judiciary
10/21/2021	HJ 87 Pg. 1965	bill electronically reproduced 10/20/2021

concerns to the appropriate agency using the online Comment Form in the bar above this text.

HOUSE BILL NO. 5442

October 20, 2021, Introduced by Reps. Meerman, LaGrand, Steven Johnson, Brann, Young, Hood, Sowerby, Aiyash, Kuppa, Stone, Whitsett, Cavanagh and Yancey and referred to the Committee on Judiciary.

A bill to amend 1949 PA 300, entitled

"Michigan vehicle code,"

by amending sections 311 and 727 (MCL 257.311 and 257.727), section 311 as amended by 1983 PA 63 and section 727 as amended by 2008 PA 463; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 311. ~~The~~ **A** licensee shall have his or her operator's or chauffeur's license ~~, or the receipt described in section 311a,~~ in his or her immediate possession at all times when operating a motor

vehicle, and shall display ~~the same~~ **his or her operator's or chauffeur's license** upon demand of any police officer, who ~~shall identify~~ **identifies** himself or herself as ~~such.~~**a police officer.**

Sec. 727. If a person is arrested without a warrant in any of the following cases, the arrested person ~~shall,~~ **must**, without unreasonable delay, be arraigned by the magistrate who is nearest or most accessible within the judicial district as provided in section 13 of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.13, or, if a minor, taken before the family division of circuit court within the county in which the offense charged is alleged to have been committed:

(a) The person is arrested under section 601d.

(b) The person is arrested under section 625(1), (3), (4), (5), (6), (7), or (8), or an ordinance substantially corresponding to section 625(1), (3), (6), or (8).

(c) A person is arrested under section 626 or an ordinance substantially corresponding to that section. If under the existing circumstances it does not appear that releasing the person pending the issuance of a warrant will constitute a public menace, the arresting officer may proceed as provided by section 728.

(d) A person arrested does not have in his or her immediate possession a valid operator's or chauffeur's license. ~~or the receipt described in section 311a.~~ If the arresting officer otherwise satisfactorily determines the identity of the person and the practicability of subsequent apprehension if the person fails to voluntarily appear before a designated magistrate or the family division of circuit court as directed, the officer may release the person from custody with instructions to appear in court, given in the form of a citation as prescribed by section 728.

Enacting section 1. Section 311a of Michigan vehicle code, 1949 PA 300, MCL 257.311a, is repealed.

Enacting section 2. This amendatory act takes effect 90 days after the date it is enacted into law.

Enacting section 3. This amendatory act does not take effect unless all of the following bills of the 101st Legislature are enacted into law:

(a) Senate Bill No.____ or House Bill No. 5436 (request no. 00900'21).

(b) Senate Bill No.____ or House Bill No. 5441 (request no. 04537'21).

House Bill 5443 (2021) rss?

Friendly Link: http://legislature.mi.gov/doc.aspx?2021-HB-5443

Sponsors

Tommy Brann (district 77)
David LaGrand, Steven Johnson, Stephanie Young, Rachel Hood, William Sowerby, Abraham Aiyash, Padma Kuppa, Lori Stone, Karen Whitsett, Tenisha Yancey
(click name to see bills sponsored by that person)

Categories

Criminal procedure: bail; Family law: child support;

Criminal procedure: bail; setting of bond related to spousal or child support arrearage; modify.
Amends sec. 165 of 1931 PA 328 (MCL 750.165).

Bill Documents

Bill Document Formatting Information
[x]
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Bill Analysis

History

(House actions in lowercase, Senate actions in UPPERCASE)
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Date ▲	Journal	Action
10/20/2021	HJ 86 Pg. 1962	introduced by Representative Tommy Brann
10/20/2021	HJ 86 Pg. 1962	read a first time
10/20/2021	HJ 86 Pg. 1962	referred to Committee on Judiciary
10/21/2021	HJ 87 Pg. 1965	bill electronically reproduced 10/20/2021

HOUSE BILL NO. 5443

October 20, 2021, Introduced by Reps. Brann, LaGrand, Steven Johnson, Young, Hood, Sowerby, Aiyash, Kuppa, Stone, Whitsett and Yancey and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled

"The Michigan penal code,"

by amending section 165 (MCL 750.165), as amended by 2014 PA 377.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 165. (1) If the court orders an individual to pay support for the individual's former or current spouse, or for a child of the individual, and the individual does not pay the support in the amount or at the time stated in the order, the individual is guilty of a felony punishable by imprisonment for not more than 4 years or

by a fine of not more than $2,000.00, or both.

(2) This section does not apply unless the court in which the support order was issued had personal jurisdiction over the individual ordered to pay support.

(3) Unless the individual deposits a cash bond of not less than $500.00 or 25% of the arrearage, whichever is greater, upon arrest for a violation of this section, the individual ~~shall~~ **must** remain in custody until the arraignment. If the individual remains in custody, the court shall address the amount of the cash bond at the arraignment ~~and at the preliminary examination and, except for good cause shown on the record, shall order the bond to be continued at not less than $500.00 or 25% of the arrearage, whichever is greater. At the court's discretion, the court may set the cash bond at an amount not more than 100% of the arrearage and add to that amount the amount of the costs that the court may require under section 31(3) of the support and parenting time enforcement act, 1982 PA 295, MCL 552.631. The court shall specify that the cash bond amount be entered into the law enforcement information network.~~ **under the process described in section 6 of chapter V of the code of criminal procedure, 1927 PA 175, MCL 765.6.** If a bench warrant under section 31 of the support and parenting time enforcement act, 1982 PA 295, MCL 552.631, is outstanding for an individual when the individual is arrested for a violation of this section, the court shall notify the court handling the civil support case under the support and parenting time enforcement act, 1982 PA 295, MCL 552.601 to 552.650, that the bench warrant may be recalled.

(4) The court may suspend the sentence of an individual convicted under this section if the individual files with the court

a bond in the amount and with the sureties the court requires. At a minimum, the bond must be conditioned on the individual's compliance with the support order. If the court suspends a sentence under this subsection and the individual does not comply with the support order or another condition on the bond, the court may order the individual to appear and show cause why the court should not impose the sentence and enforce the bond. After the hearing, the court may enforce the bond or impose the sentence, or both, or may permit the filing of a new bond and again suspend the sentence. The court shall order a support amount enforced under this section to be paid to the clerk or friend of the court or to the state disbursement unit.

(5) An order for restitution for a violation of this section ~~shall~~ **must** not include a separate award for the unpaid amount in arrearage under the support order. The restitution order ~~shall~~ **must** reference the support order and direct the individual to pay the unpaid amount in arrearage under the support order pursuant to the support order. The court may impose such terms and conditions in the restitution order as are appropriate to ensure compliance with payment of the arrearage due under the support order. The court may order additional restitution as provided under the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834.

(6) As used in this section, "state disbursement unit" or "SDU" means the entity established in section 6 of the office of child support act, 1971 PA 174, MCL 400.236.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

Enacting section 2. This amendatory act does not take effect

unless Senate Bill No.____ or House Bill No. 5436 (request no. 00900'21) of the 101st Legislature is enacted into law.

Public Policy Position
HB 5436 – HB 5443

Support

Explanation:
The committee voted to support HB 5436 – HB 5443. Collectively, these bills would provide for a more uniform and fair system of pretrial release that will better serve defendants, the courts, and the public.

The State Bar should support this package of bills as they preserve a judge's discretion in setting bond and the State Bar has consistently supported bills that uphold judicial discretion. The bills also provide a mechanism for data collection to assess the fairness and consistency of the functioning of the courts in bond proceedings across the state and improve the functioning of the courts by allowing a charged individual improved access to counsel.

Position Vote:
Voted For position: 18
Voted against position: 0
Abstained from vote: 5
Did not vote (absence): 4

***Keller* Permissibility Explanation:**
The committee agreed that this legislation is *Keller* permissible in that it will affect the functioning of the courts by securing the presence of defendants at court proceedings and promoting the responsible use of limited judicial resources.

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Public Policy Position
HB 5436 – HB 5443

Position Vote on HB 5436: Support Reform in Principle
Voted For position: 17
Voted against position: 0
Abstained from vote: 4
Did not vote (absence): 2

Explanation:
The committee supports bail reform in principle, but opposes the specific reform proposed by HB 5436. Instead, the committee recommends the adoption of a bail system that eliminates cash bail but provides tools similar to those presently available in federal court.

Position Vote on HB 5437: Oppose
Voted For position: 13
Voted against position: 5
Abstained from vote: 2
Did not vote (absence): 3

Explanation:
The committee opposes HB 5437. The legislation reduces judicial discretion by placing overly restrictive limitations on a judge's ability to fashion conditions that are appropriate for the facts and circumstances of a particular defendant's case. The committee believes that court rules and/or judicial education are more appropriate than legislation as a means of addressing overly burdensome conditions.

Position Vote on HB 5438: Support
Voted For position: 10
Voted against position: 8
Abstained from vote: 1
Did not vote (absence): 4

Explanation:
The committee supports HB 5438. Requiring that a defendant be tried, and a final determination of a charge be made not more than eighteen months after an arrest/issuance of an appearance ticket, with tolling permitted in specified circumstances, will both promote the efficient functioning of the courts and help protect defendants' right to due process and a speedy trial.

Position Vote on HB 5439: Support
Voted For position: 14
Voted against position: 4
Abstained from vote: 2
Did not vote (absence): 3

Explanation:
The committee supports HB 5439. Clarifying the procedure for the use of recognizance bonds issued by arresting officers for misdemeanor or ordinance violations will reduce unnecessary detentions, while preserving the ability of law enforcement to take action necessary to secure the appearance of individuals and protect both the individual and the community from harm.

Position Vote on HB 5440: Oppose
Voted For position: 19
Voted against position: 0
Abstained from vote: 0
Did not vote (absence): 4

Explanation:
The committee opposes HB 5440. Algorithms used in any actuarial risk assessment instrument are unreliable and research has not demonstrated either that bias can be eliminated from these instruments or that they accurately predict risk. While the legislation does not require the use of risk assessment instruments, the committee feels that the inherent shortcomings of these tools make even the option to use them in Michigan courts for this purpose problematic. Finally, a predictive algorithm cannot be held to account by the people in the same manner that an elected official (e.g., prosecutor or judge) may be when its predictions prove incorrect or biased.

Position Vote on HB 5441-HB 5442: Support
Voted For position: 17
Voted against position: 2
Abstained from vote: 0
Did not vote (absence): 4

Explanation:
The committee supports HB 5441 and HB 5442. Eliminating bail for traffic offenses and the use of receipts in place of a surrendered license strikes a proportionate balance between the severity of the alleged offense and the means courts are using to ensure appearance by defendant. It also promotes judicial economy and thereby reduces unnecessary strain on courts.

Position Vote on HB 5443: Support
Voted For position: 17
Voted against position: 1
Abstained from vote: 1
Did not vote (absence): 4

Explanation:
The committee supports HB 5443. The legislation brings the use of bond in cases of child or spousal support arrearages into greater conformity with the use of bond in other contexts, while preserving judicial discretion to consider the facts and circumstances of a particular defendant's case.

***Keller* Permissibility Explanation:** The committee believes that the bail reform package taken as a whole is *Keller*-permissible, because securing the presence of defendants for trail is essential to the

functioning of the courts. In addition, limiting the use of bail/bond to only those circumstances where it is necessary and appropriate will conserve scarce judicial resources, which also has a demonstrably, significant impact on the functioning of the courts.

Contact Persons:

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Public Policy Position
HB 5443

OPPOSE

Explanation
The bill would amend section 165 of the penal code as it relates to setting bond related to spousal support and child support arrearage. It changes the manner of determining bonds for a person arrested for non-appearance on a child support enforcement proceeding by deleting language referencing the support and parenting time enforcement act, MCL 552.631, as a framework for setting bond, and replaces it with the framework in MCL 765.6 under the Code of Criminal Procedure, which are:

(a) The seriousness of the offense charged.

(b) The protection of the public.

(c) The previous criminal record and the dangerousness of the person accused.

(d) The probability or improbability of the person accused appearing at the trial of the cause

This appears to strip judges of some discretion afforded under 552.631 and replaces it with a rigid criminal code framework that is largely inapplicable.

A bench warrant on a child support matter is only supposed to be issued if the respondent did not appear when ordered to show cause, and no other enforcement methods are effective. If the respondent is arrested on a bench warrant the bond is set based on the arrearage, because 1) it is akin to a performance bond, and can be applied to the arrearage if the respondent fails to appear after being released and 2) the respondent has already demonstrated that they don't show up for child support enforcement hearings and they don't follow the court's order to pay child support.

Position Vote:
Voted for position: 18
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 3

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