

Agenda
Public Policy Committee
June 7, 2023 – 12:00 p.m. to 1:30 p.m.
Via Zoom Meetings

Public Policy Committee.....Daniel D. Quick, Chairperson

A. Reports

1. Approval of April 27, 2023 minutes
2. Public Policy Report

B. Court Rule Amendments

1. ADM File No. 2019-33: Proposed Rescission of Administrative Order No. 2021-7 and Proposed Adoption of the Michigan Continuing Judicial Education Rules

Pursuant to Administrative Order No. 2021-7, the Mandatory Continuing Judicial Education (MCJE) Board proposed a set of rules that would govern the MCJE program, and the Court has published them for comment. Many of the rules directly correlate with a provision in AO 2021-7, though there are some additions and differences between the AO and the proposed rules. The MCJE program is set to take effect on January 1, 2024.

Status: 07/01/23 Comment Period Expires.

Referrals: 03/20/23 Civil Procedure & Courts Committee; Judicial Ethics Committee; Judicial Section.

Comments: Judicial Ethics Committee.

Comment provided to the Court is included in the materials.

Liaison: Judge Cynthia D. Stephens (Ret'd)

2. ADM File No. 2020-31: Proposed Amendment of MRPC 1.8

The proposed amendment of MRPC 1.8 would allow attorneys to provide certain assistance to indigent clients they are serving on a pro bono basis.

Status: 07/01/23 Comment Period Expires.

Referrals: 03/27/23 Access to Justice Policy Committee; Justice Initiatives Committee; Professional Ethics Committee.

Comments: Access to Justice Policy Committee; Justice Initiatives Committee; Professional Ethics Committee.

Comment provided to the Court is included in the materials.

Liaison: Aaron V. Burrell

3. ADM File No. 2021-10: Proposed Amendment of the Michigan Rules of Evidence

The proposed amendments of the Michigan Rules of Evidence (MRE) reflect the work of the Michigan Rules of Evidence Committee established by Administrative Order No. 2021-8. The Committee was tasked with restyling the MREs in an effort to remain as consistent as possible with the 2011 restyling of the Federal Rules of Evidence. Major reorganization of the rules appears in MRE 803 and MRE 804 where the residual exceptions found in both rules are moved into a new MRE 807, and in MRE 804 where the exception regarding deposition testimony is moved up from subrule (b)(5) to proposed subrule (b)(2).

Status: 07/01/23 Comment Period Expires.

Referrals: 03/27/23 Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; All Sections.

Comments: Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Children's Law Section; Criminal Law Section.

Liaison: David C. Anderson

4. ADM File No. 2023-06: Amendments of MCR 6.001 and 8.119 and Addition of MCR 6.451 with concurrent comment period

The amendment of MCR 8.119 requires courts to restrict access to case records involving set aside convictions similar to how MCL 780.623 restricts access to records maintained by the Michigan State Police. The amendment further requires the court to redact information regarding any conviction that has been set aside before that record is made available. The addition of MCR 6.451 requires the court to provide notice and an opportunity to be heard before reinstating a conviction for failure to make a good faith effort to pay restitution under MCL 780.621h(3) and to order the reinstatement on an SCAO-approved form. The amendment of MCR 6.001 clarifies that MCR 6.451 applies to cases cognizable in the district courts.

Status: 07/01/23 Comment Period Expires.

Referrals: 03/31/23 Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.

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

Liaison: Danielle Walton

5. ADM File No. 2023-06: Proposed Amendments of MCR 6.110 and 8.119

The proposed amendment of MCR 8.119 would require all case records maintained by the district court to become nonpublic immediately after bindover to the circuit court. This proposal would also amend MCR 6.110(G) to expand the types of documents that must be transmitted to the circuit court to ensure appropriate public access in the circuit court. The proposal would consolidate public access in the circuit court case file and would also uniformly ensure that information regarding set aside criminal offenses in the circuit court cannot be separately accessed in the district court case file.

Status: 07/01/23 Comment Period Expires.

Referrals: 03/31/23 Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.

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

Comments provided to the Court are included in the materials.

Liaison: Takura N. Nyamfukudza

C. Legislation

1. HB 4421 (Young) Civil procedure: other; certain public video recordings of court proceedings; allow the victims' faces to be blurred. Amends secs. 8, 38 & 68 of 1985 PA 87 (MCL 780.758 et seq.).

Status: 05/23/23 Reported out of House Committee on Criminal Justice without Amendment.

Referrals: 04/18/23 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.

Comments: Access to Justice Policy Committee; Criminal Law Section.

Comment from House Committee on Criminal Justice May 16, 2023 included in materials.

Liaison: Danielle Walton

2. SB 0248 (Lauwers) Courts: other; age requirement for the use of a courtroom support dog; modify. Amends sec. 2163a of 1961 PA 236 (MCL 600.2163a).

Status: 04/11/23 Referred to Senate Committee on Civil Rights, Judiciary & Public Safety.

Referrals: 04/18/23 Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Children's Law Section; Criminal Law Section; Family Law Section.

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

Liaison: Kim W. Eddie

3. SB 0257 (Runestad) Civil procedure: other; video recordings of court proceedings; provide for availability and review. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 1429.

Status: 04/11/23 Referred to Senate Committee on Civil Rights, Judiciary & Public Safety.

Referrals: 04/18/23 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; All Sections.

Comments: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Appellate Practice Section; Children's Law Section; Criminal Law Section; Family Law Section.

Liaison: Suzanne C. Larsen

4. Resentencing Upon Petition

SB 0321 (Chang) Criminal procedure: sentencing; resentencing upon petition of certain prisoners; provide process for. Amends secs. 12 & 25, ch. IX of 1927 PA 175 (MCL 769.12 & 769.25) & adds secs. 27a, 27b, 27c, 27d, 27e, 27f, 27g & 27h to ch. IX.

HB 4556 (Hope) Criminal procedure: sentencing; resentencing upon petition of certain prisoners; provide process for. Amends secs. 12 & 25, ch. IX of 1927 PA 175 (MCL 769.12 & 769.25) & adds secs. 27a, 27b, 27c, 27d, 27e, 27f, 27g & 27h to ch. IX.

SB 0322 (Wojno) Corrections: prisoners; corrections code of 1953; amend to reflect requirement for department of corrections to provide certain notification to prisoners. Amends secs. 33e & 34 of 1953 PA 232 (MCL 791.233e & 791.234) & adds sec. 34e.

HB 4557 (Neeley) Corrections: prisoners; corrections code of 1953; amend to reflect requirement for department of corrections to provide certain notification to prisoners. Amends secs. 33e & 34 of 1953 PA 232 (MCL 791.233e & 791.234) & adds sec. 34e.

SB 0323 (Polehanki) Crime victims: notices; crime victim's rights act; amend to reference rights of crime victims in certain prisoner resentencing. Amends secs. 13 & 41 of 1985 PA 87 (MCL 780.763 & 780.791).

HB 4558 (Wilson) Crime victims: notices; crime victim's rights act; amend to reference rights of crime victims in certain prisoner resentencing. Amends secs. 13 & 41 of 1985 PA 87 (MCL 780.763 & 780.791).

SB 0324 (Bayer) Criminal procedure: sentencing; penalties for certain crimes of imprisonment for life without parole eligibility; amend public health code to reflect potential resentencing. Amends sec. 17764 of 1978 PA 368 (MCL 333.17764).

HB 4559 (McKinney) Criminal procedure: sentencing; penalties for certain crimes of imprisonment for life without parole eligibility; amend public health code to reflect potential resentencing. Amends sec. 17764 of 1978 PA 368 (MCL 333.17764).

SB 0325 (Irwin) Crimes: penalties; penalties for certain crimes of imprisonment for life without parole eligibility; amend Michigan penal code to reflect potential resentencing. Amends secs. 16, 18, 200i, 204, 207, 209, 210, 211a, 227b, 316, 436, 520b & 543f of 1931 PA 328 (MCL 750.16 et seq.).

HB 4560 (Aiyash) Crimes: penalties; penalties for certain crimes of imprisonment for life without parole eligibility; amend Michigan penal code to reflect potential resentencing. Amends secs. 16, 18, 200i, 204, 207, 209, 210, 211a, 227b, 316, 436, 520b & 543f of 1931 PA 328 (MCL 750.16 et seq.).

Referrals: 05/05/23 Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.

Comments: Access to Justice Policy Committee; Criminal Law Section.

Liaison: Valerie R. Newman

D. Consent Agenda

To allow the Criminal Jurisprudence & Practice Committee and Criminal Law Section to submit their positions on each of the following items:

M Crim JI 37.1c

The Committee proposes a new jury instruction, M Crim JI 37.1c (Using False Documents to Deceive Principal or Employer), for the crime found at MCL 750.125(3). The instruction is entirely new.

M Crim JI 40.4

The Committee proposes a new jury instruction, M Crim JI 40.4 (Furnishing Alcohol to a Minor), for the crime found at MCL 436.1701. The instruction is entirely new.

MINUTES
Public Policy Committee
April 27, 2023 – 12:00 p.m. to 1:30 p.m.
Via Zoom Meetings

Committee Members: Daniel D. Quick, David C. Anderson, Lori A. Buiteweg, Aaron V. Burrell, Kim Warren Eddie, Suzanne C. Larsen, Valerie R. Newman, Takura N. Nyamfukudza, Nichola M. Ohanesian, Brian D. Shekell, Judge Cynthia D. Stephens (Ret.)
SBM Staff: Peter Cunningham, Carrie Sharlow, Nathan Triplett
GCSI Staff: Marcia Hune

A. Reports

1. Approval of January 19, 2023 minutes – The minutes were unanimously adopted.
2. Approval of February 8, 2023 minutes – The minutes were unanimously adopted.

B. Legislation

1. **HB 4173** (Aiyash) Criminal procedure: sentencing; criminal justice policy commission; create. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding secs. 34a & 34b to ch. IX.

The following entities offered comments for consideration: Criminal Jurisprudence & Practice Committee. **The committee voted unanimously (11) that the legislation is *Keller*-permissible because the creation of a commission charged with conducting research and analysis related to sentencing in Michigan, and making recommendations regarding sentencing policy writ large, is reasonably related to the functioning of the courts.**

The committee voted 8 to 2ⁱ to support HB 4173, specifically the (H-1) substitute, with the following amendments:

- The membership of the Commission should be altered to ensure that it is balanced, and representative of the interests and stakeholders involved in, and impacted by, sentencing policy. Similar to the Joint Task Force on Jail and Pretrial Incarceration. The (H-1) membership is too heavily weighted toward law enforcement and prosecutors, while leaving out or underrepresenting other valuable perspectives.
- The Chair of the Commission should not be the Commission's "chief of staff," nor should the Chair be a paid position.
- The Legislature should also give consideration to language charging the Commission with making recommendations as to the extent to which sentencing guidelines should or should not apply to habitual offenders and the extent to which sentencing guidelines should apply to probation violations or be modified if applied to probation violations.

2. **SB 73** (Shink) Civil rights: public records; identity of parties proceeding anonymously in civil actions alleging sexual misconduct; exempt from disclosure under freedom of information act. Amends sec. 13 of 1976 PA 442 (MCL 15.243).

The following entities offered comments for consideration: Access to Justice Policy Committee; Civil Procedure & Courts Committee.

The committee voted unanimously (11) that SB 73 is *Keller*-permissible because it is reasonably related to both the functioning of the courts and access to legal services.

The committee voted unanimously (11) to support SB 73 as written.

3. Interlock Devices and Specialty Court Authorization

SB 134 (Johnson) Courts: drug court; specialty court authorization to issue a restricted license requiring an ignition interlock device; modify. Amends secs. 1084 & 1091 of 1961 PA 236 (MCL 600.1084 & 600.1091).

SB 135 (Hertel) Vehicles: registration; issuance of a restricted license requiring the installation of ignition interlock device and specialty court admission; modify. Amends secs. 83 & 304 of 1949 PA 300 (MCL 257.83 & 257.304).

The following entities offered comments for consideration: Access to Justice Policy Committee.

The committee voted unanimously (11) that 134 and 135, taken together, are *Keller*-permissible because they are reasonably related to both improvement in functioning of the courts and availability of legal services.

The committee voted unanimously (11) to support SB 134 and SB 135.

4. SB 150 (Chang) Property tax: tax tribunal; methods for tax tribunal to hold small claims hearings; expand to include telephonically or by videoconferencing. Amends sec. 62 of 1973 PA 186 (MCL 205.762).

The following entities offered comments for consideration: Access to Justice Policy Committee; Civil Procedure & Courts Committee.

The committee voted unanimously (11) that 150 is *Keller*-permissible because how parties are permitted to access Tribunal/Division proceedings (and under what conditions/procedures) is necessarily related to the functioning of the Tribunal.

The committee voted unanimously (11) to support SB 150 as drafted.

5. Bill Package Implementing the Task Force on Juvenile Justice Reform Recommendations

The following entities offered comments for consideration: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee.

The committee voted unanimously (11) to concur with the recommendation made by ATJ Policy and CJAP that #8 and #10 are not *Keller*-permissible and that #1, #2, #3, #4, #5, #6, #7, #9, #11, #12, and #13 are *Keller*-permissible as each is reasonably related to the functioning of the courts, while some are also reasonably related to the availability of legal services.

The committee voted unanimously (10)ⁱⁱ to

(1) concur with the positions agreed upon by ATJ Policy and CJAP to support #1, #2, #3, #4, #6, and #9, as well as to support #5, #7, and #12 with their agreed upon amendments.

(2) oppose #11 (competency evaluations), as the bills only partially accomplish their associated Task Force recommendations and because they are necessarily linked to legislation establishing a minimum age for juvenile court jurisdiction, which is not presently part of this bill package.

(3) oppose #13 (traditional waivers), because the creation of, and recommendations made by, a statewide study committee on juvenile waivers should precede any amendments to the statute, as recommended by the Task Force on Juvenile Justice Reform in recommendation 13.

6. Revised Pretrial Reform Bill Package

The following entities offered comments for consideration: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee.

The committee voted unanimously (10) that the pretrial reform bill package, taken as a whole, is *Keller*-permissible because it significantly affects and is therefore necessarily related to the functioning of the courts.

The committee voted unanimously (10) to support the pretrial reform bill package and having reviewed the proposed revisions to former HB 5436-5438, the Board maintains its current position of support for the legislation, as revised.

7. Executive Budgets: Michigan Indigent Defense Commission for the 2023-2024 Fiscal Year Department of the Judiciary for the 2023-2024 Fiscal Year

The following entities offered comments for consideration: Criminal Jurisprudence & Practice Committee. **The committee voted unanimously (9)ⁱⁱⁱ that the MIDC budget is *Keller*-permissible because adequate funding for MIDC is necessarily related to both the availability of legal services and to the improvement in the functioning of the courts. The committee voted unanimously (11) that the Judiciary budget is budget is *Keller*-permissible because adequate funding for the courts and related judicial agencies is essential to—and therefore necessarily related to—their proper functioning and to the availability of legal services.**

The committee voted unanimously (9) to support the Executive Budget Recommendation for MIDC for FY 2023-2024 and oppose any reduction in funding below the Executive Budget Recommendation, because such reduced funding will leave MIDC unable to implement its mandatory standards and to meet the state’s constitutional obligation to provide counsel to indigent criminal defendants.

The committee voted unanimously (9) to support the Executive Budget Recommendation for the Judiciary for FY 2023-2024.

C. Court Rule Amendments

1. ADM File No. 2022-16: Proposed Amendment of MCR 7.211

The proposed amendment of MCR 7.211(C)(7) would modify the Court of Appeals process for handling confessions of error.

The following entities offered comments for consideration: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee.

The committee voted unanimously (9) to support the proposed amendment to Rule 7.211.

2. ADM File No. 2022-13: Proposed Amendment of MCR 9.123

The proposed amendment of MCR 9.123(D)(3) would clarify that a disbarred attorney who was sentenced to incarceration following a felony conviction and who wants to be reinstated to the bar must wait until six months after completing the sentence.

The following entities offered comments for consideration: Access to Justice Policy Committee; Civil Procedure & Courts Committee.

The committee voted 8 to 1 to support the proposed amendment to Rule 9.123.

3. ADM File No. 2021-30: Proposed Amendments of MCR 9.220, 9.221, 9.223, 9.232, and 9.261

The proposed amendments of MCR 9.220, 9.221, 9.223, 9.232, and 9.261 would help protect the confidentiality of a grievant who submits a request for investigation to the Judicial Tenure Commission.

The following entities offered comments for consideration: Civil Procedure & Courts Committee.

The committee voted 5 to 4 to oppose the proposed amendments of Rules. 9.220, 9.221, 9.223, 9.232, and 9.261.

4. ADM File No. 2022-03: Proposed Amendment of MCR 1.109

The proposed amendment of MCR 1.109(D)(1)(b) would allow attorneys to provide personal pronouns in document captions and require courts to use those personal pronouns when addressing the party or attorney, either verbally or in writing, unless doing so would result in an unclear record. The Court is interested in receiving comments addressing the constitutional implications of this proposal.

The following entities offered comments for consideration: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Diversity & Inclusion Advisory Committee; Justice Initiatives Committee; Appellate Practice Section; Children’s Law Section; Family Law Section; LGBTQA Law Section; Prisons & Corrections Section; Religious Liberty Law Section.

The committee voted 8 in support and 1 abstaining to support ADM File No. 2022-03 and authorizes the Sections to advocate their respective positions, including inconsistent positions.

D. Consent Agenda

To allow the Criminal Jurisprudence & Practice Committee and the Criminal Law Section to submit their respective positions on each of the following items:

M Crim JI 1.9(3) and 3.2(3)

The Committee proposes amending the Reasonable Doubt instructions found in M Crim JI 1.9(3) and 3.2(3) to add the sentence, “Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant’s guilt.” The amendment was prompted by research showing that the clear-and-convincing standard was considered by the general public to be higher than the beyond-a-reasonable-doubt standard. The Model Jury Instruction Committee proposes the additional sentence to impress upon the jurors the level of certainty required for a criminal conviction. A number of Committee members preferred not to make any change to the instruction, but agreed to publication of the proposal for public consideration. Comments suggesting other wording for the reasonable-doubt instructions are welcome, but the Committee is only considering whether to adopt the change proposed, or wording substantially similar to the proposal. The added language is underlined. There is an extended comment period for this proposal.

M Crim JI 4.11a

The Committee proposes amending jury instruction M Crim JI 4.11a, the “Other Acts” jury instruction, to add acts of sexual assault per the language of MCL 768.27b, which includes acts of sexual assault with acts of domestic assault as other acts that a jury can consider. Additionally, a few linguistic changes were made to improve readability and understandability of the instruction. The instruction’s Use Note was also amended. Deletions are in strike-through, and new language is underlined.

M Crim JI 7.26

The Committee proposes a jury instruction, M Crim JI 7.26, for the defense to parental kidnapping (M Crim JI 19.6) found in MCL 750.350a(7) – protecting the child from an immediate and actual threat of physical or mental harm. The instruction is entirely new.

M Crim JI 13.19b

The Committee proposes a jury instruction, M Crim JI 13.19b, for the offense of using a 9-1-1 service for a prohibited purpose, contrary to MCL 484.1605. The instruction is entirely new.

M Crim JI 33.2

The Committee proposes a jury instruction, M Crim JI 33.2, for the offense of cruel and inhumane treatment of an animal, contrary to MCL 750.50. The instruction is entirely new.

M Crim JI 33.4, 33.4a, 33.4b, and 33.4c

The Committee proposes jury instructions, M Crim JI 33.4, 33.4a and 33.4b for the offenses involving killing or torturing animals, contrary to MCL 750.50b(2) to (7), and M Crim JI 33.4c for a “just cause” defense to such charges. These instructions are entirely new.

ⁱ Valerie R. Newman was unable to vote due to technical issues.

ⁱⁱ Nicholas M. Ohanesian left before this vote.

ⁱⁱⁱ Judge Cynthia D. Stephens (ret’d) left before this vote.

May 1, 2023

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

RE: ADM File No. 2022-16 – Proposed Amendment of Rule 7.211 of the Michigan Court Rules

Dear Clerk Royster:

At its April 28, 2023 meeting, the Board of Commissioners of the State Bar of Michigan considered ADM File No. 2022-16. In its review, the Board considered recommendations from the Access to Justice Policy Committee, Criminal Jurisprudence & Practice Committee, and the Criminal Law Section. The Board voted unanimously to support the amendment of MCR 7.211. The Board believes that the proposal will provide greater clarity and transparency surrounding confessions of error by prosecutors by requiring that a record is created both when the court approves and rejects such a confession.

Thank you for the opportunity to comment on the proposed amendment.

Sincerely,



Peter Cunningham
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court
James W. Heath, President

May 1, 2023

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

RE: ADM File No. 2022-13 – Proposed Amendment of Rule 9.123 of the Michigan Court Rules

Dear Clerk Royster:

At its April 28, 2023 meeting, the Board of Commissioners of the State Bar of Michigan considered ADM File No. 2022-13. In its review, the Board considered recommendations from the Access to Justice Policy Committee and Civil Procedure & Courts Committee. The Board voted unanimously to support the amendment of Rule 9.123.

This proposal will resolve an interpretive ambiguity that exists today under a strict and literal reading of Rule 9.123(D)(3), which concerns the treatment of reinstatement petitions filed by attorneys who have been disbarred—as opposed to suspended—as a result of a felony conviction for which a term of incarceration was imposed. The Board believes that the distinction in treatment between suspended and disbarred attorneys that results from this ambiguity is unintended and illogical, and that the rule should be clarified via the proposed amendment to eliminate it.

Thank you for the opportunity to comment on the proposed amendment.

Sincerely,



Peter Cunningham
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court
James W. Heath, President

May 1, 2023

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

RE: ADM File No. 2021-30 – Proposed Amendment of Rules 9.220, 9.221, 9.223, 9.232, and 9.261 of the Michigan Court Rules

Dear Clerk Royster:

At its April 28, 2023 meeting, the Board of Commissioners of the State Bar of Michigan considered ADM File No. 2021-30. In its review, the Board considered a recommendation from the Civil Procedure & Courts Committee. The Board ultimately voted to oppose the proposed amendments to Chapter 9 of the Michigan Court Rules.

The Board held a robust discussion of the important, competing interests implicated by the question of grievant confidentiality in Judicial Tenure Commission (“JTC”) investigations. The Board recognized that the real or perceived risk of retaliation against a grievant—especially an attorney-grievant for whom the professional consequences of such retaliation can be great—has a chilling effect on grievants’ willingness to request investigations into judicial misconduct. That chilling effect undermines the effectiveness of the JTC at fulfilling its constitutional duties and promoting the integrity of the judicial process. At the same time, granting the JTC nearly unbounded authority to determine if and when a grievant’s identity should be kept confidential from a respondent judge raises significant due process concerns; all the more so because of the JTC’s unique role as both investigator and prosecuting authority in disciplinary proceedings. In the end, the Board determined that the proposed amendments lacked sufficient standards to guide the JTC’s use of confidentiality and protect the due process rights of jurists.

Thank you for the opportunity to comment on the proposed amendment.

Sincerely,



Peter Cunningham
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court
 James W. Heath, President

May 1, 2023

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

RE: ADM File No. 2022-03 – Proposed Amendment of Rule 1.109 of the Michigan Court Rules

Dear Clerk Royster:

At its April 28, 2023 meeting, the Board of Commissioners of the State Bar of Michigan (“SBM”) considered ADM File No. 2022-03. The Board voted unanimously to support the amendment of Rule 1.109.

Ensuring that parties and attorneys are treated fairly and with respect—regardless of their gender identity or expression—is an access to justice issue. When a court disrespects the personal pronouns of a party or attorney who appears before it, the public’s confidence in the integrity and impartiality of the judiciary is eroded. When done intentionally or maliciously, such conduct violates a judge’s duty to “treat every person fairly, with courtesy and respect” without regard to any protected personal characteristic.¹ Unfortunately, based on the experience shared by many members of the Bar during SBM’s review of this proposal, that judicial duty, without greater specificity, has been insufficient to ensure fair and respectful treatment of transgender and nonbinary individuals in too many Michigan courts. Requiring judges to use the personal pronouns of parties and attorneys, when identified, will provide that necessary specificity. Experience has shown that anything short of a requirement will be inadequate to the task of ensuring fair and respectful treatment for all.

At the same time, those judges already striving to ensure that their courts operate in a fair and respectful manner encounter difficulty in identifying the appropriate form of address for a party or attorney appearing before them. By permitting parties and attorneys to include their pronouns in the name section of a document caption, the proposed amendment of Rule 1.109 will create a clear, standardized process for informing the court of an individual’s appropriate form of address.

The importance of this matter within the Bar is evident from the uncommonly high number of State Bar committees and sections that have reviewed the amendment to Rule 1.109 and opted to adopt public policy positions on the proposal. The Access to Justice Policy Committee, Civil Procedure & Courts Committee, Criminal Jurisprudence & Practice Committee, Diversity & Inclusion Advisory Committee, and Justice Initiatives Committee, as well as the Appellate Practice, Children’s Law,

¹Code of Judicial Conduct, Canon 2(B) and 3(A)(14). Canon 3(A)(14) also requires a judge, to the extent possible, to “require staff, court officials, and others who are subject to the judge’s direction and control to provide such fair, courteous, and respectful treatment to persons who have contact with the court.”

Criminal Law, Family Law, LGBTQA Law, and Prisons & Corrections Sections all supported ADM File No. 2022-03. The Religious Liberty Law Section opposed.²

In its review of these committee and section positions, and comments submitted to the Court, the Board considered claims that the proposed rule is subject to ambiguity, confusion, and the potential for misuse of pronouns to disrupt court proceedings but believes these concerns to be both exaggerated and easily addressed by the proposed rule's provision permitting a court to use an individual's name "or other respectful means of [address]." Therefore, the Board urges the Court to adopt a clear, sensible rule to ensure that Michigan courts treat every person "fairly, with courtesy and respect" by approving the proposed amendment of Rule 1.109.

Thank you for the opportunity to comment on the proposed amendment.

Sincerely,



Peter Cunningham
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court
James W. Heath, President

² Article VIII, Section 7(2) of the Bylaws of the State Bar of Michigan prohibit a section from advocating a public policy position that is inconsistent with State Bar policy, unless expressly authorized to do so by the State Bar. In this case, the Board voted to authorize all sections to advocate their positions, including inconsistent positions, so that the Court would have the benefit of the full range of views within the Bar.

Order

Michigan Supreme Court
Lansing, Michigan

March 15, 2023

Elizabeth T. Clement,
Chief Justice

ADM File No. 2019-33

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

Proposed Rescission of
Administrative Order No.
2021-7 and Proposed Adoption
of the Michigan Continuing
Judicial Education Rules

On order of the Court, this is to advise that the Court is considering a proposed adoption of the Michigan Continuing Judicial Education Rules, which would replace Administrative Order No. 2021-7. 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 will also be considered at a public hearing. The notices and agendas for each 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.]

~~Administrative Order No. 2021-7—Mandatory Continuing Judicial Education Program~~

1. ~~Requirement.~~

- (A) ~~General Requirement.~~ ~~Beginning 1/1/2024, every judicial officer must complete a program of continuing judicial education as described in this order.~~
- (B) ~~Exceptions and Exemptions.~~ ~~There shall be no exceptions to or exemptions from this requirement (including waivers) except in limited instances only with approval of the Judicial Education Board.~~

2. ~~Definitions.~~ ~~The following words and phrases, when used in this order, shall have the following meanings (unless the context clearly indicates otherwise):~~

- (A) ~~“Accredited Provider” is an individual or organization that offers continuing judicial education activities that are consistent with the requirements established under this order.~~

- (B) ~~“Approved Course” is a learning opportunity offered by a non-accredited provider, but which is consistent with the requirements established under this order.~~
- (C) ~~“Board” is the Judicial Education Board established by this order.~~
- (D) ~~“Judicial Officer” is a Justice, appellate court judge, full-time judge, part-time judge, full-time quasi-judicial officer (including a district court magistrate or circuit court family division referee), part-time quasi-judicial officer (including a district court magistrate or a circuit court family division referee), or a retired judge taking assignment as a visiting judge.~~
- (E) ~~“Judicial Practice” includes legal knowledge and ability, communication, and administrative capacity.~~
- (F) ~~“MCJE” is the mandatory continuing judicial education to be provided under this order.~~

3. ~~Judicial Education Board.~~

- (A) ~~Establishment. The Supreme Court establishes the Judicial Education Board.~~
- (B) ~~Purpose. The primary purpose of the Board is to guide development and delivery of continuing judicial education to all judicial officers.~~
- (C) ~~Composition. The Board shall consist of twelve members appointed by the Supreme Court as follows:~~
 - (i) ~~2 members selected from judges of the Court of Appeals;~~
 - (ii) ~~2 members selected from judges of the Circuit Court;~~
 - (iii) ~~2 members selected from judges of the District Court;~~
 - (iv) ~~2 members selected from judges of the Probate Court;~~
 - (v) ~~3 members selected from quasi-judicial officers; and~~
 - (vi) ~~1 member selected as a retired judge.~~
- (D) ~~Leadership. The Supreme Court shall appoint from the members of the Board a chair and vice chair who shall serve one year terms, which may be~~

~~renewed. The Board may designate other officers and form committees as it deems appropriate.~~

- ~~(E) Term of Board Members. Except as otherwise provided in this subsection, the members serve four year terms. A member may not serve more than two full terms unless a member is appointed to fill a mid term vacancy. In such a situation, the member shall serve the remainder of that term and may be reappointed to serve up to two more full terms. Initial board members may be appointed at any time after this order is entered. Terms of the initial board members shall be staggered to ensure reasonable continuity. An initial board member's initial term shall constitute one full term.~~
- ~~(F) Action by the Board. Seven board members shall constitute a quorum. The Board shall act only with the concurrence of at least seven board members. The Board may adopt rules providing for participation of teleconference meetings or the use of other technology to enable maximum participation.~~
- ~~(G) Responsibilities of the Board.
 - ~~(i) Accreditation and Approval Decisions. The Board shall make decisions regarding accreditation of providers and approval of courses consistent with the purpose and standards set forth in this order.~~
 - ~~(ii) Noncompliance Appeals. The Board shall hear and decide appeals from judicial officers determined to be out of compliance with this order's requirements.~~
 - ~~(iii) Waiver. The Board shall hear and decide requests from judicial officers for waiver from the requirements in this order.~~
 - ~~(iv) Reporting and Budget. The Board shall report at least annually to the Supreme Court on its activities, and annually propose a budget for the Board and submit it to the Supreme Court for approval.~~
 - ~~(v) Incidental Responsibilities. The Board shall undertake all incidental tasks attendant to the above activities, including providing essential notices and recordkeeping activities.~~
 - ~~(vi) Rules for Mandatory Continuing Judicial Education. The Board shall prepare a set of rules governing continuing judicial education for review and approval by the Supreme Court to replace this order. The proposed rules must be submitted to the Court no later than four years after the effective date of this order.~~~~

~~(H) Compensation and Expenses. Board members shall receive no compensation for services provided under these rules, but they shall be reimbursed by the Board for their reasonable and necessary expenses in attendance at meetings and in otherwise fulfilling their responsibilities.~~

~~4. Minimum Continuing Judicial Education Requirements.~~

~~(A) General Requirements. Beginning 1/1/2024, every judicial officer shall complete a minimum of 24 hours of continuing judicial education every two years. January 1 of each even year shall begin a new reporting period. The hours shall be distributed as follows:~~

- ~~(i) 6 hours in the subject area of integrity and demeanor (including ethics); and~~
- ~~(ii) 18 hours in the subject area of judicial practice and related areas as defined by the Board.~~

~~(B) Fulfillment.~~

- ~~(i) Course Attendance and Alternatives. The MCJE requirement shall be fulfilled by attending the required number of MCJE courses delivered by the Michigan Judicial Institute or Accredited Providers, or by completing a MCJE activity approved by the Board as sufficient to meet the MCJE general requirement.~~
- ~~(ii) Courses Offered by MJI. At least 12 of the MCJE required hours for each reporting period shall be earned through courses offered by the Michigan Judicial Institute.~~
- ~~(iii) Teaching. Up to eight of the MCJE required hours for each reporting period may be earned through Board approved teaching activities.~~

~~(C) Newly elected or Appointed Judicial Officers. Attendance at the New Judge/New Magistrate/New Referee Orientation Program administered by the Michigan Judicial Institute does not count toward the MCJE requirements described elsewhere in this order.~~

~~(D) Newly appointed Chief Judges. Attendance at the New Chief Judge Orientation Program administered by the Michigan Judicial Institute does not count toward the MCJE requirements described elsewhere in this order.~~

- (E) ~~Retiring Judges. A retiring judge does not need to complete the MCJE requirements for the reporting period in which they are retiring, unless the retiring judge seeks judicial assignment under the SCAO Guidelines for Assignment.~~

5. ~~Waivers.~~

- (A) ~~Waiver. Except as provided in subsection (B), the Board may waive the MCJE requirements for any part of the remaining portion of the current reporting period upon a finding by the Board of undue hardship or circumstances beyond the control of the judicial officer which prevent him or her from complying in any reasonable manner with the MCJE requirement.~~

(B) ~~Members of the Armed Forces.~~

- (i) ~~Waiver. Upon written request to the Board, the MCJE requirements will be waived in their entirety for any reporting period in which a judicial officer is a member of the Armed Forces serving on full-time active duty.~~
- (ii) ~~Termination of Active Duty. Within thirty days after termination of active duty, the judicial officer must notify the Board and will be required to comply with MCJE requirements for the reporting period.~~

6. ~~Standards for Approval of MCJE Activities. All MCJE activities approved for credit shall meet the following standards:~~

- (A) ~~The activity shall have significant intellectual or practical content, the primary objective of which is to improve a judicial officer's knowledge or professional capacity to fulfill their judicial responsibilities in the subject areas of judicial practice and integrity and demeanor.~~
- (B) ~~The activity shall be an organized program of learning to deal with matters directly related to subjects that satisfy the objectives of these rules.~~
- (C) ~~Each MCJE activity shall be open to all judicial officers interested in the subject matter or with a docket assignment complementary to the subject matter of the MCJE activity and there shall be no attendance restrictions, except as may be permitted by the Board, upon application from a provider, where:~~
- (i) ~~attendance is restricted based on objective criteria for a bona fide~~

~~educational objective to enhance the MCJE activity; or~~

- ~~(ii) membership in the provider organization is open to all interested judicial officers of a particular type (judges or quasi-judicial officers) on a reasonable nondiscriminatory basis and cost.~~
- ~~(D) The program leaders or lecturers shall be qualified with the practical and/or academic experience necessary to conduct the program effectively.~~
- ~~(E) Each attendee shall be provided with thorough, high quality and carefully prepared written course materials before or at the time of the activity. Although written materials may not be appropriate to all courses, they are expected to be utilized whenever possible.~~
- ~~(F) The course or activity must be presented in a suitable setting to create a positive educational environment.~~
- ~~(G) The Board will take into consideration the special needs of disabled and incapacitated judicial officers in gaining access to and participation in MCJE activities. The Board shall require providers to make reasonable accommodations for disabled and incapacitated judicial officers.~~

7. ~~Credit for MCJE Activities.~~

- ~~(A) Accreditation or Approval. Credit will be given only for completion of MCJE activities that are accredited or approved by the Board.~~
- ~~(B) Course Length. No course of instruction less than 60 minutes shall be considered eligible for MCJE credit.~~
- ~~(C) Credit. One hour of credit will be awarded for each 60 minutes of instruction.~~
- ~~(D) Credit Increments. Credit will be awarded in 30 minute increments beyond the first 60 minutes.~~
- ~~(E) Local Education Activities. Local education activities will be subject to approval by the Board for credit upon submission of appropriate documentation. Accreditation will be determined by the Board according to the standards set forth in 6(A).~~
- ~~(F) Approval of MCJE Activities Conducted by Non-Accredited Providers and Teaching Activities.~~

- ~~(i) General Statement. Courses offered by a provider that is not an accredited MCJE provider and teaching activities that are consistent with the purposes of this order may qualify for MCJE credit, subject to the following terms and conditions.~~
 - ~~(ii) Individual Approval Required. All MCJE activities conducted by a non-accredited provider or teaching activity must be individually approved by the Board for credit.~~
 - ~~(iii) Requests for Approval. A judicial officer shall request Board approval for MCJE activities conducted by a non-accredited provider or teaching activities within 30 days after completing the activity.~~
 - ~~(iv) Form of Application. The application shall be in the form and with such documentation required by the Board.~~
 - ~~(v) Additional Information. Upon request by the Board, the applicant shall submit to the Board information concerning the course or activity, including the brochure describing the activity and the qualifications of anticipated speakers, the method or manner of presentation of materials, and, if requested, a set of the materials.~~
 - ~~(vi) Courses Pertaining to Nonjudicial Subjects or Deemed to Fall Below Minimum Standards. If a course does not bear entirely on at least one area of judicial practice or integrity and demeanor, or the manner of presenting the course is deemed to fall below minimum standards, the Board may determine that such course is entitled to no credit or may assign such partial credit as it deems appropriate.~~
- ~~(G) Self Study. Self study will not be approved for credit.~~

8. ~~Accreditation of Mandatory Continuing Judicial Education Providers.~~

- ~~(A) Application. Application may be made for accreditation as an Accredited Provider by submitting the appropriate form to the Board.~~
- ~~(B) Evaluations. The provider shall develop and implement methods to evaluate its course offerings to determine their effectiveness and the extent to which they meet the needs of judicial officers and, upon a request from the Board, provide course evaluations by the attendees on such forms as the Board shall approve.~~
- ~~(C) Period of Accreditation.~~

- (i) ~~General Rule. The grant of accreditation shall be effective for a period of two years from the date of the grant.~~
 - (ii) ~~Continuation of Accreditation. The accreditation may be continued for an additional two year period if the provider files an application for continued accreditation with the Board before the end of the provider's accreditation period, subject to further action by the Board.~~
- (D) ~~Conditional Accreditation. In considering whether to continue an approved provider's accreditation, the Board shall determine if there are pending or past breaches of these rules by the approved provider. The Board, at its discretion, may condition continuation upon the provider meeting additional requirements specified by the Board.~~
- (E) ~~Termination. If an application for continuation is not filed within 30 days before the end of the provider's accreditation period, the provider's accredited status will terminate at the end of the period. Any application received thereafter shall be considered by the Board as an initial application for Accredited Provider status.~~
- (F) ~~Revocation. Accredited Provider status may be revoked by the Board if the requirements specified by the Board are not met or if, upon review of the provider's performance, the Board determines that content of the course material or the quality of the MCJE activities or provider's performance does not meet the standards set forth in this order.~~
9. ~~Standards for Accredited Provider Status. Accredited Provider status may be granted at the discretion of the Board to applicants that satisfy one of the following requirements:~~
- (A) ~~The provider has presented, within the past two years prior to the date of the application, five separate programs of judicial education which meet the standards of quality set forth in these rules;~~
 - (B) ~~The provider has demonstrated to the Board that its judicial education activities have consistently met the standards of quality set forth in this order;~~
~~or~~
 - (C) ~~The provider is an American Bar Association accredited law school.~~
10. ~~Accreditation of a Single Course or MCJE Activity by a Provider. A provider of MCJE activities that has not qualified as an Accredited Provider may apply for~~

accreditation of a single MCJE activity in a form provided by the Board, subject to the following terms and conditions:

- (A) ~~The Board may require submission of a detailed description of the provider, the course, the course materials, and the lectures.~~
- (B) ~~Application by a provider for accreditation of a single MCJE activity should be submitted prior to the date of presentation of the activity. Application for retroactive approval must be made within 30 days after the event or activity.~~
- (C) ~~The MCJE activity must meet the standards set forth in this order.~~

11. ~~Reporting.~~

- (A) ~~Reporting Responsibility.—Reporting shall be the responsibility of the individual judicial officer.~~
- (B) ~~Form of Reporting of MCJE Activities.—A judicial officer shall report accredited MCJE activities to the Board in a manner approved by the Board.~~
- (C) ~~Time for Reporting.—A judicial officer should report accredited MCJE activities within 30 days after successfully completing the activity.~~
- (D) ~~Compliance Status Review.—All judicial officers shall review their MCJE compliance status within seven days of receiving notice of their status under Section 12(C)(i).~~

12. ~~Compliance.~~

- (A) ~~Records.~~
 - (i) ~~Recordkeeping by the Board.—The Board shall maintain a record of MCJE attendance for each judicial officer to whom this order applies. These records shall be made available as the Board shall determine, but shall at least establish whether the judge met the required standard for a particular reporting period.~~
 - (ii) ~~Recordkeeping by Judicial Officers.—Each active judicial officer shall maintain records sufficient to establish compliance with the MCJE requirement in the event of a dispute or inconsistency.~~
- (B) ~~Compliance Status Notification.—The Board will notify each judicial officer of his or her MCJE status three months prior to the end of the reporting period~~

and will provide a final compliance notice within 60 days after the end of the reporting period. The final compliance notice shall include the hours earned during the reporting period which have been reported and carryover hours, if applicable.

- (C) ~~Noncompliance and Compliance Disputes.~~
- (i) ~~Notification. If a judicial officer fails to comply with this order, or is determined by the Board to have failed to fully comply with the MCJE requirements, such judicial officer shall be notified in writing by the Board of the nature of the noncompliance and be given 180 days from the date of the notice to remedy the noncompliance. A “writing” includes digital communications, transmitted through electronic means, which are capable of being stored and printed.~~
 - (ii) ~~Evidence of Compliance or Hearing Request. Within 30 days after the date of the notice of noncompliance, the judicial officer shall either submit evidence of compliance or request a hearing. Unless good cause is shown, a hearing request submitted after 30 days from the date of the notice of noncompliance will be denied.~~
 - (iii) ~~Hearing. If the judicial officer timely files a request for a hearing under this subsection, the Board shall schedule a hearing. The hearing shall be held at least ten days after written notice to the judicial officer. In addition, the State Court Administrator, or his or her designee, is required to attend a hearing held under this provision, and is entitled to notice in the same manner as the judicial officer.~~
 - (iv) ~~Reasonable Cause for Noncompliance. If the Board finds that the judicial officer had reasonable cause for noncompliance, the judicial officer shall have 180 days from the date of notice of the Board’s decision to correct the noncompliance. If compliance is not achieved within the 180 day period, the Board shall proceed as provided.~~
 - (v) ~~Report to Judicial Tenure Commission and State Court Administrator. If a judicial officer fails to remedy noncompliance within 180 days after the later of the date of the notice of noncompliance or the date of a decision from the Board finding reasonable cause for noncompliance, the Board shall report that fact to the Judicial Tenure Commission and the State Court Administrator for their consideration.~~

- ~~(D) Crediting Hours During a Period of Noncompliance. Credit hours earned shall be first applied to satisfy the requirements of the reporting period that was the subject of the notice to the judicial officer before any excess credits earned during the notice period may be applied to subsequent requirements.~~
13. ~~Confidentiality. The files, records, and proceedings of the Board as they relate to or arise out of any alleged failure of a judicial officer to satisfy the requirements of this order shall be deemed confidential and shall not be disclosed except in furtherance of the duties of the Board or upon the request of the affected judicial officer or as they may be introduced in evidence or otherwise produced in proceedings under this order.~~

Michigan Continuing Judicial Education Rules

Rule 1 General

- (A) These rules shall be known as the Michigan Continuing Judicial Education Rules and may be cited as Mich CJE R _____. These rules are subject to amendment as provided in MCR 1.201.
- (B) Every judicial officer must complete a program of continuing judicial education as described in these rules.
- (C) There are no exceptions to or exemptions from the mandatory continuing judicial education requirements except as provided in Mich CJE R 4.1(F) and Mich CJE R 5 to 5.1.
- (D) MCR 1.108 shall govern the computation of a period of time prescribed or allowed by these rules.
- (E) Unless the Board determines otherwise for good cause, all participants at any proceeding conducted under these rules may participate using videoconferencing technology.

Rule 2 Definitions

When used in these rules, the words and phrases listed below shall have the following meanings:

- (A) “Accredited Provider” is the Michigan Judicial Institute, the National Judicial College, and any individual or organization that the Board has determined meets the requirements of Mich CJE R 8.2.

- (B) “Asynchronous Learning Module” means a formal course, available online completed on demand by the judicial officer, for which the provider certifies satisfactory completion by the judicial officer.
- (C) “Board” is the Judicial Education Board established by the Michigan Supreme Court.
- (D) “Judicial Officer” is a Justice, full- or part-time judge, full- or part-time quasi-judicial officer (including a district court magistrate or circuit court family division referee), or a retired judge taking assignment as a visiting judge.
- (E) “Judicial Practice” includes legal knowledge and ability, communication, and administrative capacity.
- (F) “MCJE” is the mandatory continuing judicial education to be provided under these rules.
- (G) “MCJE Activity” is any educational activity approved by the Board as consistent with the standards set forth in Mich CJE R 6. Except as otherwise provided in these rules, and subject to Board approval, MCJE activity may include activities other than attending a formal course of educational study, provided that the activities are consistent with the objectives to be achieved under this program of continuing judicial education.
- (H) “Non-accredited provider” is any individual or organization that provides education to judicial officers and that is not accredited under these rules.
- (I) “Proceeding” includes meetings and hearings at which the Board makes a substantive decision with respect to a judicial officer in connection with any matter arising under these rules. Proceeding does not include informal Board communications addressing scheduling or other administrative matters.
- (J) “Provider” is any individual or organization that provides education to judicial officers, whether accredited or non-accredited.
- (K) “Related areas” means an activity designed to enhance competence and judicial practice.
- (L) “Subject area of integrity and demeanor” means an activity focused on the maintenance of professional ethics and high standards of judicial conduct.
- (M) “Videoconferencing” means the use of an interactive technology that sends video, voice, and data signals over a transmission circuit so that two or more individuals

or groups can communicate with each other simultaneously using video codecs, monitors, cameras, audio microphones, and audio speakers.

- (N) “Webinar” means the real-time presentation of an MCJE activity using telephonic or video technology that is capable of sending video, voice, or data signals over a transmission circuit using video codecs, monitors, cameras, audio microphones, and audio speakers.
- (O) “Writing” includes digital communications, transmitted through electronic means, which are capable of being stored and printed.

Rule 3 Judicial Education Board

- (A) Establishment and Purpose. There shall be a Judicial Education Board that has the primary purpose of guiding development and delivery of continuing judicial education to all judicial officers.
- (B) Composition. The Board shall consist of 12 members appointed by the Michigan Supreme Court as follows:
 - (1) 2 members selected from judges of the Court of Appeals;
 - (2) 2 members selected from judges of the Circuit Court;
 - (3) 2 members selected from judges of the District Court;
 - (4) 2 members selected from judges of the Probate Court;
 - (5) 3 members selected from quasi-judicial officers; and
 - (6) 1 member selected as a retired judge.
- (C) Leadership. The Michigan Supreme Court shall appoint from the members of the Board a chair and vice-chair who shall serve one-year terms, which may be renewed. The Board may designate other officers and form committees as it deems appropriate.
- (D) Term of Board Members. Except as otherwise provided in this subsection, the members serve four-year terms. A member may not serve more than two full terms in addition to any mid-term vacancy to which the member was initially appointed. In such a situation, the member shall serve the remainder of that term and may be reappointed to serve up to two more full terms. Initial board members were appointed on November 3, 2021. Terms of the initial board members were

staggered to ensure reasonable continuity. An initial board member's initial term shall constitute one full term.

Rule 3.1 Board Action

- (A) Action by the Board. Each Board member is entitled to one vote in all proceedings.
 - (1) Except as otherwise provided in these rules, there must be a quorum present for all actions undertaken by the Board at a proceeding. The Board's action following any proceeding shall be by a majority vote.
 - (2) Seven Board members shall constitute a quorum.
- (B) Written consent. The Board may take any action without a proceeding if a majority of members consent to the action in writing. Such written consents must be filed with the records of the meetings of the Board.

Rule 3.2 Board Responsibilities

- (A) Accreditation and Approval Decisions. The Board shall make decisions regarding accreditation of providers and approval of courses consistent with the purpose and standards set forth in these rules.
- (B) Noncompliance Appeals. The Board shall hear and decide appeals from judicial officers determined to be out of compliance with the requirements in these rules.
- (C) Waiver. The Board shall hear and decide requests from judicial officers for waiver from the requirements in these rules.
- (D) Reporting. The Board shall report at least annually to the Michigan Supreme Court on its activities.
- (E) Incidental Responsibilities. The Board shall undertake all incidental tasks attendant to the above activities, including providing essential notices and recordkeeping activities.

Rule 3.3 Compensation and Expenses

- (A) The Board shall annually submit to the Michigan Supreme Court's budget committee for its approval the Board's anticipated expenses for the next fiscal year. The Board's submission is due to the budget committee by July 1. For purposes of this subrule, the fiscal year is October 1-September 30.

- (B) Board members shall receive no compensation for services provided under these rules, but they shall be reimbursed by the Court for their actual, reasonable, and necessary expenses in attendance at meetings and in otherwise fulfilling their responsibilities. Requests for reimbursement shall be submitted to the Court no later than 30 days after incurring the expense, or if incurred in September, no later than October 8.

Rule 3.4 Confidentiality

The files, records, and proceedings of the Board as they relate to or arise out of any alleged failure of a judicial officer to satisfy the requirements of these rules shall be deemed confidential and shall not be disclosed except (1) in furtherance of the duties of the Board, (2) upon the request of the affected judicial officer, (3) as they may be introduced in evidence, or (4) as otherwise produced in proceedings under these rules.

Rule 3.5 Expenses Related to Compliance

The Board will not compensate or reimburse any judicial officer for any cost of compliance or attempted compliance with these rules.

Rule 3.6 Communication

All communication from the Board to the judicial officer will be by e-mail to the judicial officer's e-mail address or by first-class mail to the judicial officer's courthouse address if requested by the judicial officer. If a judicial officer does not have a courthouse or work address, the Board will use another address provided by the judicial officer.

Rule 4 Minimum Continuing Judicial Education Requirements

Beginning January 1, 2024, every judicial officer shall complete a minimum of 24 hours of continuing judicial education every two years.

- (A) January 1 of each even year shall begin a new reporting period.
- (B) A judicial officer's credited hours shall be distributed as follows:
 - (1) 6 hours in the subject area of integrity and demeanor; and
 - (2) 18 hours in the subject area of judicial practice and related areas.
- (C) Credits may not be carried over from one reporting period to the next.

Rule 4.1 Fulfillment

The MCJE requirement shall be fulfilled by completing the required number of MCJE hours delivered by accredited providers, or by completing other MCJE activities.

- (A) **Required Courses.** At least 12 of the MCJE required hours for each reporting period shall be earned through courses offered by the Michigan Judicial Institute. Credits earned during the Michigan Supreme Court Judicial Conference count as MCJE activity offered by the Michigan Judicial Institute.
- (B) **Videoconferencing, Webinars, and Asynchronous Learning Modules.** No more than six credit hours for each reporting period may be earned through videoconferencing technology, webinars, or asynchronous learning modules from providers other than the Michigan Judicial Institute or the National Judicial College.
- (C) **Newly-Elected, Appointed, or Hired Judicial Officers.** Attendance at the New Judge/New Magistrate/New Referee Orientation Program administered by the Michigan Judicial Institute does not count toward the MCJE requirements described elsewhere in these rules.
- (D) **Newly-Appointed Chief Judges.** Attendance at the New Chief Judge Orientation Program administered by the Michigan Judicial Institute does not count toward the MCJE requirements described elsewhere in these rules.
- (E) **Retiring Judges.** A retiring judge does not need to complete the MCJE requirements for the reporting period in which they are retiring, unless the retiring judge seeks judicial assignment under the State Court Administrative Office Guidelines for Assignment.
- (F) **Taking Office or Being Hired During Reporting Period.** Judicial officers initially taking office or hired during a reporting period will be required to complete a prorated number of hours with one hour allocated per month beginning the first full month after becoming a judicial officer. A waiver for undue hardship remains available under Mich CJE R 5(A).

Rule 4.2 MCJE Credit for Teaching Activities

Up to eight of the MCJE required hours for each reporting period may be earned through Board-approved teaching activities under Mich CJE R 7.1.

- (A) **Credit for teaching activities** shall be awarded only for teaching a course or activity otherwise approved for MCJE credit and which is designed primarily for other judicial officers.

- (B) Credit for teaching activities will be given on the basis of two hours credit for each hour of presentation the first-time credit is sought in any reporting period. Repeat presentations during the reporting period will not be entitled to any further credit.

Rule 5 Waiver

Except as provided in Mich CJE R 5.1, the Board may waive the MCJE requirements for any part of the remaining portion of the current reporting period upon a finding by the Board of undue hardship or circumstances beyond the control of the judicial officer which prevent the judicial officer from complying in any reasonable manner with the MCJE requirement.

- (A) **Undue Hardship.** For purposes of this rule, undue hardship is a circumstance that could not have been reasonably anticipated and that causes an unreasonable or disproportionate burden or obstacle to compliance with MCJE requirements, such as severe and/or prolonged illness or incapacitation, or the time in which a judicial officer has to complete the requirements given the date on which the officer took office or was hired.
- (B) **Circumstances Beyond Control.** For purposes of this rule, circumstances beyond the control of the judicial officer are situations that significantly impede the ability to participate in MCJE, for example, the death of a spouse, child, stepchild, or member of the judicial officer's household.
- (C) **Time for Request.** A waiver request must be made within 60 days of the occurrence of the undue hardship or circumstances beyond the control of the judicial officer necessitating the request but no later than the end of the reporting period.
- (D) **Hearing.** An informal hearing will be held as soon as practicable on waiver requests unless the Board and judicial officer agree no hearing is necessary.
 - (1) A waiver hearing must be held before a hearing panel composed of three Board members to be determined by the Board.
 - (2) The hearing panel will make a recommendation to the Board regarding the waiver request and submit it to the Board for final decision. The Board will communicate its decision to the judicial officer within 14 days after the hearing concludes unless extended by the Board for good cause.
- (E) **Form.** Requests for waiver must be made using the method required by the Board, and any documentation supporting the request must be included.

Rule 5.1 Members of the Armed Forces

- (A) Waiver. Upon written request to the Board, the MCJE requirements will be waived in their entirety for any reporting period in which a judicial officer is a member of the Armed Forces serving on full-time active duty.
- (B) Termination of Active Duty. Within 30 days after termination of active duty, the judicial officer must notify the Board and will be required to comply with MCJE requirements for the reporting period as adjusted by the Board.

Rule 6 Activity Approval Standards

An MCJE Activity shall:

- (A) Have significant intellectual or practical content, the primary objective of which is to improve a judicial officer's knowledge or professional capacity to fulfill their judicial responsibilities in the subject areas of judicial practice, integrity and demeanor, or related areas.
- (B) Be an organized program of learning to deal with matters directly related to subjects that satisfy the objectives of these rules.
- (C) Be open to all judicial officers interested in the subject matter or with a docket assignment complementary to the subject matter.
- (D) Have no attendance restrictions. However, upon application from a provider, the Board may approve restricted attendance where:
 - (1) attendance is restricted based on objective criteria for a bona fide educational objective to enhance the activity; or
 - (2) membership in the provider organization is open to all interested judicial officers of a particular type (judges or quasi-judicial officers) on a reasonable nondiscriminatory basis and cost.
- (E) Have program leaders or lecturers that are qualified with the practical or academic experience necessary to conduct the program effectively.
- (F) Provide each attendee thorough, high quality, and carefully prepared written course materials before or at the time of the activity whenever possible and appropriate.
- (G) Be presented in a suitable setting to create a positive educational environment.

Rule 6.1 Accessibility

In order to ensure full access to, and participation in an MCJE Activity, reasonable accommodations shall be made for a disabled or incapacitated judicial officer, within the meaning of Title I of the Americans with Disabilities Act (42 USC 12101, *et. seq.*). In the event of a dispute between a judicial officer and a provider over the provider's obligation to make reasonable accommodations for a disabled or incapacitated judicial officer, and at the request of either the judicial officer or the provider, the Board will engage in an interactive process among the interested parties in order to ascertain specific limitations and identify potential effective accommodations.

Rule 7 Credit for MCJE Activities

- (A) Accreditation or Approval. Credit will be given only for completion of MCJE activities that are accredited or approved by the Board.
- (B) Course Length. One hour of credit will be awarded for each 60 minutes of instruction.
- (C) Credit Increments. Credits will be awarded in 15-minute increments.
- (D) Local Education Activities. Local education activities will be subject to approval by the Board for credit upon submission of appropriate documentation. Accreditation will be determined by the Board according to the standards set forth in Mich CJE R 6(A).
- (E) Self-Study. Self-study will not be approved for credit.

Rule 7.1 Approval of Teaching Activities and Education Activities Conducted by Non-Accredited Providers

An educational activity offered by a non-accredited provider and teaching activities that are consistent with the purposes of these rules may qualify for MCJE credit as provided in this rule.

- (A) Individual Request Required. Except as provided in subrule (B), a judicial officer seeking credit for any educational activities conducted by a non-accredited provider or teaching activities that meet the requirements of Mich CJE R 4.2, must request approval from the Board using the Board's required method and form.
- (B) Provider Request Allowed. A non-accredited provider may request accreditation of a single educational activity using the Board's required method. If the activity is approved for credit, individual approval under subrule (A) is not required.

- (C) Requests for Approval. Except as otherwise provided in this subrule, a request for approval under subrules (A) or (B) must:
- (1) be made no earlier than 60 days before completing or holding the activity,
 - (2) be made no later than 42 days after completing or holding the activity,
 - (3) include information required by the Board, such as a detailed description of the activity, the qualifications of anticipated speakers, and information regarding the materials or anticipated lectures.

All requests must be made before the end of the reporting period.

- (D) Board's Decision. In determining whether credit will be awarded for an activity under this rule, the Board shall consider:
- (1) whether the activity is duplicative of an MCJE activity offered by an accredited provider;
 - (2) whether the activity meets the requirements of Mich CJE R 6; and
 - (3) whether the activity is an organized program of learning taught by instructors qualified by practical or academic experience.

Rule 7.2 Courses Pertaining to Nonjudicial Subjects or Deemed to Fall Below Minimum Standards

Educational Activities Pertaining to Nonjudicial Subjects or Deemed to Fall Below Minimum Standards. If an educational activity does not bear entirely on at least one area of judicial practice, integrity and demeanor, or related areas, or the manner of presenting the course is deemed to fall below minimum standards, no credit will be earned unless the Board determines partial credit is appropriate. In order to receive partial credit, the activity must satisfy some criteria found in Mich CJE R 6. In determining whether to grant partial credit, the Board may consider whether:

- (A) The subject matter is relevant to the work of the courts or the judicial branch.
- (B) Anticipated learning outcomes are identified prior to the activity. For purposes of this subrule, "anticipated learning outcomes" means how new knowledge, skills, or abilities will be applied, demonstrated, or used.

- (C) The learning environment is educationally sound, which includes limited distractions and a physical location that is conducive to learning the subject matter.
- (D) The participant receives or has access to all the reference tools and other materials and resources that are required for learning and applying the content.
- (E) The participant has an opportunity to practice using or applying the new information or skill through direct experience, role-play, or case studies/hypothetical situations as part of the learning experience.
- (F) The participant has the opportunity to interact with knowledgeable faculty or other experts in the topical area to pose questions or clarify understanding.
- (G) An assessment tool or activity, such as the development of an action plan to apply the newly gained knowledge or skill, enables the participant to determine whether the skills, abilities, or knowledge gained through the education can be used in the future in his or her work.

Rule 8 Accreditation of Mandatory Continuing Judicial Education Providers

- (A) **Application.** Any entity that institutionally provides education primarily to judicial officers may apply to be recognized as an accredited provider under these rules. When applying for accreditation under this rule, the applicant must submit the information required by the Board, and the Board will consider the application as provided in Mich CJE R 8.2.
- (B) **Evaluations.** The accredited provider shall develop and implement methods to evaluate its course offerings to determine their effectiveness and the extent to which they meet the needs of judicial officers and, upon a request from the Board, provide course evaluations by the attendees on such forms as the Board shall approve.
- (C) **Period of Accreditation.**
 - (1) **General Rule.** The grant of accreditation shall be effective for the period provided by the Board, but no more than three years from the effective date of the grant.
 - (2) **Continuation of Accreditation.** The accreditation may be continued for an additional two-year period if the provider files an application for continued accreditation with the Board at least 30 days before the end of the accredited provider's accreditation period, subject to further action by the Board.

- (3) **Renewal of Accreditation.** In determining if an accredited provider's status should be renewed for an additional two-year period, the Board shall consider the following:
 - (a) the quality and substance of the programs the accredited provider has presented over the prior two years;
 - (b) the accredited provider's compliance with these rules; and
 - (c) any other information relevant to assessing the accredited provider's commitment to providing the highest quality of judicial education.
- (4) **Continuation of Status.** If an application for renewal is timely filed, the accredited provider status shall continue until the Board acts on the application for renewal.

Rule 8.1 Standards for Accredited Provider Status

To become an accredited provider, the provider must satisfy one of the following:

- (A) The provider has presented, within the two years before the date of the application, five separate programs of education for judicial officers which meet the standards of quality set forth in these rules.
- (B) The provider has demonstrated to the Board that its judicial education activities have consistently met the standards of quality set forth in these rules. In determining whether an educational activity meets the standards for accredited provider status, the Board shall consider:
 - (1) the quality and substance of the programs the provider has presented to other judicial education programs over the prior two years;
 - (2) whether the educational activity or teaching activity meets the requirements of Mich CJE R 6; and
 - (3) whether each faculty member who has teaching responsibility for the educational activity is qualified by academic work or practical experience to teach the subject.
- (C) The provider is an American Bar Association-accredited law school.

Rule 8.2 Termination and Revocation of Accreditation

- (A) Termination. If an application for continuation is not filed within 30 days before the end of the provider's accreditation period, the provider's accredited status will terminate at the end of the period. Any application received thereafter shall be considered by the Board as an initial application for accredited provider status.
- (B) Revocation. Accredited provider status may be revoked by the Board if the requirements specified by the Board are not met or if, upon review of the provider's performance, the Board determines that content or quality of the MCJE activities or the provider's performance does not meet the standards set forth in these rules.
- (C) Providers whose accreditation has been revoked by the Board will have the ability to reapply for accredited provider status once the provider meets the standards set forth in these rules.
- (D) All decisions of the Board shall be final under this rule and Mich CJE R 8. The provider shall be notified in writing by the Board of its decision.

Rule 9 Reporting Responsibility

- (A) Reporting Responsibility. Reporting shall be the responsibility of the individual judicial officer.
- (B) Form of Reporting of MCJE Activities. A judicial officer shall report MCJE activities to the Board in a manner approved by the Board.
- (C) Time for Reporting. A judicial officer shall report MCJE activities within 42 days after successfully completing the activity or receiving approval from the Board regarding credit for educational or teaching activities under Rule 7.1.
- (D) Compliance Status Review. All judicial officers shall review their MCJE compliance status within seven days of receiving notice of their status under Mich CJE R 12.

Rule 10 Records of Compliance Reporting

- (A) Recordkeeping by the Board. The Board shall maintain a record of MCJE attendance for each judicial officer to whom these rules apply. These records shall be made available as the Board determines but shall at least establish whether the judicial officer met the required standard for a particular reporting period.
- (B) Recordkeeping by Judicial Officers. Each judicial officer shall maintain records

sufficient to establish compliance with the MCJE requirement in the event of a dispute or inconsistency.

Rule 11 Compliance Status Notification

The Board will notify each judicial officer of his or her MCJE status three months prior to the end of the reporting period and will provide a final compliance notice within 60 days after the end of the reporting period. The final compliance notice shall include instructions to view the hours earned during the reporting period which have been reported.

Rule 12 Noncompliance and Compliance Disputes

- (A) Notification. A judicial officer who fails to comply in whole or in part with these rules will be notified in writing of the nature of the noncompliance and will be given 180 days from the date of the notice to remedy the noncompliance.
- (B) Evidence of Compliance or Hearing Request. Within 30 days after the date of the notice of noncompliance, the judicial officer shall either submit evidence of compliance or request an appeal hearing in writing. Unless good cause is shown, a hearing request submitted after 30 days from the date of the notice of noncompliance will be denied.
- (C) Notice of Appeal Hearing. If the judicial officer timely requests a hearing under this rule, the Board will schedule a hearing no sooner than 10 days after written notice of the hearing to the judicial officer. The notice of hearing must state the date, time, and location of the hearing, and it must be sent to the judicial officer as provided in Mich CJE R 3.6 and the State Court Administrator, or his or her designee.
- (D) Appeal Hearing. The State Court Administrator, or his or her designee, is required to attend this hearing.
- (E) Board's Decision. Upon considering the evidence presented at the appeal hearing, the Board will issue a written decision within 42 days of the hearing unless extended by the Board for good cause. The Board may determine that the judicial officer:
 - (1) had reasonable cause for noncompliance,
 - (2) did not have reasonable cause for noncompliance, or
 - (3) has achieved compliance.

The Board's decision must state the reasons for its decision, and it must be delivered

to the judicial officer in the same manner as the notice under subsection (C).

- (F) Reasonable Cause for Noncompliance. If the Board finds that the judicial officer had reasonable cause for noncompliance, the judicial officer shall have 180 days from the date of notice of the Board's decision to correct the noncompliance. If compliance is not achieved within the 180-day period, the Board will proceed as provided in subsection (G).
- (G) Report to Judicial Tenure Commission and State Court Administrator. If the Board determines that a judicial officer did not have reasonable cause for noncompliance, or a judicial officer who was found to have reasonable cause for noncompliance fails to remedy it within 180 days after the date of the Board's decision, the Board will report that fact to the Judicial Tenure Commission and the State Court Administrator for their consideration.

Rule 13 No Appeal of Board Decisions

Except as provided in Mich CJE R 12, there is no right to appeal any decision of the Board under these rules.

Rule 14 Credit During Period of Noncompliance

Credit hours earned while a judicial officer is noncompliant with these rules shall be first applied to satisfy the requirements of the reporting period that was the subject of the notice provided under Mich CJE R 11. Credits will be applied to the current reporting period once compliance from previous reporting periods has been achieved.

Rule 15 Disqualification

- (A) Applicability. This rule applies to all Board members.
- (B) Who May Raise. A judicial officer who is the subject of a proceeding may raise the issue of a Board member's disqualification or a Board member may raise it.
- (C) Grounds. Disqualification of a Board member to decide or participate in a decision of compliance or noncompliance of a judicial officer, requests from a judicial officer for waiver from the MCJE requirements, or for any other Board approval requests is warranted for reasons that include but not limited to the following:
 - (1) The Board member is the judicial officer who is the subject of the noncompliance or compliance determination or of other Board requests.

- (2) The Board member has personal knowledge of disputed evidentiary facts concerning the proceeding.
 - (3) The Board member is likely to be a material witness in the proceeding.
 - (4) The Board member's spouse, or a person within the third degree of relationship to either of them, or the spouse of such person is the judicial officer who is the subject of the proceeding.
- (D) Process. A majority vote of the Board will resolve any contested disqualification issues.

Staff Comment (ADM File No. 2019-33): Pursuant to Administrative Order No. 2021-7, the Mandatory Continuing Judicial Education (MCJE) Board proposed a set of rules that would govern the MCJE program, and the Court has published them for comment. Many of the rules directly correlate with a provision in AO 2021-7, though there are some additions and differences between the AO and the proposed rules. The MCJE program is set to take effect on January 1, 2024.

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 July 1, 2023 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 submitting a comment, please refer to ADM File No. 2019-33. 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.

March 15, 2023

Clerk

Public Policy Position**ADM File No. 2019-33: Proposed Rescission of Administrative Order No. 2021-7 and Proposed Adoption of the Michigan Continuing Judicial Education Rules****Oppose with Recommended Amendments****Position Vote:**

Voted For position: 7

Voted against position: 0

Abstained from vote: 0

Did not vote: 4

Contact Person:Judge Terry Clark d70-6@saginawcounty.com**Explanation**

While the Judicial Ethics Committee is in support of judicial education requirements, the Committee has several concerns regarding the current language of the revised rules and therefore is unable to support the adoption of the proposed rules as currently written. Those concerns are as follows:

- Resources/Availability:
 - The educational resources provided directly to judges outweigh the resources that are directly offered to referees and magistrates. Currently, the Michigan Judicial Institute (MJI) offers several training options to judicial officers, but very few are available for referees and magistrates due to MJI's limited resources. In addition, the training opportunities provided by MJI and other educational training sites for judges, referees, and magistrates do not encompass all matters quasi-judicial officers and judicial officers face. Expansion of training opportunities will need to be assessed and provided for all judicial and quasi-judicial officers to meet the 24-hour requirement every two years; specifically, the 18 hours in the subject area of judicial practice and related areas.
 - It is unclear what current training offerings/opportunities will satisfy the 6-hours of judicial education in the subject area of integrity and demeanor.
 - The Committee also recommends that ethics is encompassed into this 6-hour requirement. This has been previously discussed with the current MJI Director.
 - Besides training through the MJI, what other resources may judicial and quasi-judicial officers attend since there is a requirement that all hours must be completed through accredited providers?
 - It is further unclear as to what "by completing other MCJE activities" includes.
 - Notice of trainings through various educational providers, including but not limited to MJI, are received when dockets have already been scheduled, which requires the judge or quasi-judicial officer to either reschedule their entire docket, delaying access to justice, or decide not to attend the training. Notice needs to be provided four to six months in advance of the training for sufficient time to schedule accordingly.

- Rule 4.1 provides how the requirements must be fulfilled. The following are concerns regarding these provisions:
 - At least 12 of the required hours must be through MJI: MJI currently does not offer enough courses to allow each judge, referee, magistrate, and retired/visiting judge in the entire state to fulfill the required subject areas of integrity and demeanor as well as the required subject areas of judicial practice and related areas.
 - Receiving educational requirements is further limited by the restriction of 6-hours on videoconferencing, webinars, and asynchronous learning modules. By limiting virtual training, dockets will run behind, costs will increase for the courts and the judicial/quasi-judicial officers, and availability of training opportunities will be limited. Further, it is not convenient to attend certain training courses, especially for judges and quasi-judicial officers in the Northern Michigan and Upper Peninsula areas who must take additional days off from their dockets for travel and attendance at the trainings.
 - The 6-hour virtual limitation as stated in Rule 4.1(B) conflicts with Rule 1(E). Rule 4.1(B) limits virtual learning to 6 hours, but in Rule 1, videoconferencing technology is allowed to be used without limitation unless the Board determines otherwise.
 - Most trainings offered to referees and magistrates outside of MJI and the annual Michigan Association of District Court Magistrates and Referees Association of Michigan meetings are only offered virtually, which would hinder referees and magistrates from completing their educational requirements with the limitation on virtual trainings.
 - Many of the educational opportunities afforded to judges outside of MJI are also still made available by virtual attendance only.
 - Attendance at the newly elected, appointed, or hired judicial officers and the newly appointed chief judges training programs are not counted towards the MCJE requirements: this places an additional burden on newer judges/referees/magistrates as well as newly appointed chief judges that already have additional workloads for the following reasons:
 - New judges/referees/magistrates must concentrate on scheduling dockets, hiring staff, learning to be judges or quasi-judicial officers, and possibly the added burden of closing their private practices. By adding an additional educational requirement, it pushes their dockets and on-the-job training back.
 - Newly appointed chief judges have the additional burden of not only managing their current workload but also new administrative requirements. Many chief judges do not decrease their workload as they are not able to due to a lack of space on other judicial dockets and therefore increase their workload by approximately 20% for their administrative functions. By adding an additional educational requirement on them, it pushes their dockets and administrative functions back.
 - Retired Judges: If retired judges are required to have the same number of education requirements as sitting judges, this will cause a conflict with attending conferences. Retired judges often cover for judges who are

attending conferences or must be away from their dockets if their dockets cannot be altered. By requiring retired judges to have the same number of credits, especially in-person trainings during which they are covering for other judges, those retired judges will not be able to sit for away judges when they are at conferences as they will attempt to attend the same conference.

- Further, there is already a shortage of visiting judges, and this additional requirement will create a disincentive to be a visiting judge that will add to the shortage.
 - It is recommended that the educational requirement for retired judges either be reduced to 3-6 hours, virtually, or have this requirement eliminated.
 - An additional question arose of how visiting judges will be able to meet the subject area requirement as they do not know what subject area they will be overseeing until requested?
 - Since visiting judges cover for judges who are at training, live training will not be available for visiting judges. Unless the restriction on remote training is relaxed, it will be very difficult for visiting judges to obtain the required training.
- Costs:
 - Many courts lack the funding within their budgets to send all judges and quasi-judicial officers to several training courses throughout the year.
 - It is requested that confirmation be provided that all educational opportunities through MJI will be provided without cost.
 - Outside training opportunities will cost an additional fee, which will either come directly from the judge/referee/magistrate or will require the court to incur additional expenditures which the court may not have within its budget.
 - All in-person training opportunities will require paid leave to be used by the judge and quasi-judicial officer, which impedes the time the judge/referee/magistrate must and should take for their own well-being.
 - Costs/Burdens for Northern and Upper Peninsula: Judges, referees, and magistrates in Northern Michigan and the Upper Peninsula will be increasingly affected by the in-person training requirement as it takes approximately two travel days (one day to travel to and one day to travel from) to attend trainings in the Lower Peninsula which are usually held in Southern Michigan. This does not count the days of the training itself. This will affect not only dockets, but also their paid-leave allowances and the costs to the court and/or the judge/referee/magistrate.
 - Rule 12 Concerns/Questions:
 - What additional training would be available if judges/referees/magistrates missed their educational requirements within 180 days?
 - Is this timeline feasible?
 - What if there is no additional live training available to attend within 180 days that falls under the requirements of Rule 4?
 - Rule 12(F) seems to conflict with Rule 5. Rule 5 allows a waiver, but Rule 12 seems to suggest that even with a waiver, reports must still be made to JTC and SCA.
 - If a waiver is granted, should a report to JTC and SCA be completed?

- Who would be required to make reports to the Judicial Tenure Commission (JTC) and State Court Administrator (SCA)?
- Rule 13 Questions/Concerns:
 - Rule 13 does not allow appeals, which is not acceptable especially if the judge/referee/magistrate may face sanctions.
 - By not allowing appeals, it brings about unfairness to the judicial and quasi-judicial officer and there is an unworkability to the reporting process.
 - The Committee recommends that there should be an allowance to appeal to the Michigan Supreme Court as all other JTC complaints.
 - Placement of Rule 13 is concerning as it can be interpreted that a judge/referee/magistrate does not have any right to appeal ANY Board decision. Due to the vague language of Rule 13 and it not being specific as to what cannot be appealed to the Michigan Supreme Court, it can be read much more broadly than intended.
- Other:
 - The current process for exemptions for undue hardship and other circumstances are arduous to request under Rule 5. This process needs to be reviewed and made more efficient.
 - It is unclear whether required federal training would count towards the education requirements, i.e., federal child support regulation training. If not, this is additional time away from the judicial or quasi-judicial officer's dockets.
 - Will teaching a class at a law school or other higher education be counted towards the allowance under Rule 4.2?

The Judicial Ethics Committee has large concerns as to the workability of the current proposed language. The Committee agrees that judicial education is a necessity and must be required, but recommends the Court allow for virtual attendance as the world has shifted from in-person to more virtual opportunities, a fairer reporting process, and consideration of the other questions and concerns relayed in the above.



STATE OF MICHIGAN

THOMAS K. BYERLEY
PROBATE JUDGE

PROBATE COURT
56TH JUDICIAL CIRCUIT COURT FAMILY DIVISION

EATON COUNTY COURTHOUSE
1045 INDEPENDENCE BOULEVARD
CHARLOTTE, MICHIGAN 48813
517-543-4185 • FAX: 517-543-8439

March 21, 2023

Michigan Supreme Court
Lansing, Michigan

Public Comment Re: **ADM File No. 2019-33**

To: Michigan Supreme Court – Administrative Hearings

Thank you for the opportunity to offer input on the proposed administrative order for mandatory continuing education for judicial officers.

First, some disclosures: This rule, if adopted, would not apply to me, since I will be retiring at the end of this year. Second, In the early 2000s, I was ethics counsel for the State Bar of Michigan when the State Bar and the Michigan Supreme Court were considering mandatory continuing education for lawyers. At that time, there was considerable study and debate on the advantages and disadvantages of mandatory continuing legal education. Ultimately, the Supreme Court declined to mandate continuing legal education for lawyers after concluding that there was no proof that Michigan lawyers (with no mandatory continuing legal education) were any less competent than lawyers in other states that required continuing legal education. The Court also concluded that without a testing requirement, there was no way to evaluate whether lawyers who sat in the education session were actually paying attention.

If this Court adopts a rule that requires continuing judicial training, I believe that the current proposed rule presents a good framework to make that happen. I am confident that the Court understands that the implementation of the rule will take considerable planning and effort. In my opinion, however, there are additional issues that should be explored before the rule is adopted. These include:

1. **Costs.** I would assume that all programs presented by MJI would be without cost to the judicial officers. However, under the proposed rules, there could be “outside” providers that will charge a fee for attendance. Setting up a fee schedule is a complex issue, as well as setting up fees to “admit” a provider into the Michigan plan. Further, if judges are required to pay a fee for mandatory education, that could possibly violate the constitutional provision which prohibits a “reduction” in a judge’s salary.
2. **Providers of services.** Proposed Rule 8.1 allows established providers to become accredited with the approval of the Judicial Education Board. This rule, however, does not address “new” providers of educational services, even though a new provider might

come forward to provide excellent educational services if this rule is adopted. The current proposed exclusion of new providers may be viewed as discriminatory.

3. **Timeline.** The proposed rule would be effective January 1, 2024. With all due respect, I submit that the time needed to finalize the court rule, appoint a Judicial Education Board, giving the Board time to come up with detailed procedures and policies, lining up providers, etc. would make a successful January 1, 2024 implementation improbable.
4. **Enforcement.** Proposed Rule 11(G) specifies that if the Judicial Education Board finds “noncompliance”, it will “report that fact to the Judicial Tenure Commission and the State Court Administrator for their consideration”. No other sanctions are identified. In my opinion, this is problematic. Article 6, Sections 4 and 30 of the Michigan Constitution prohibit the Michigan Supreme Court from removing a judge from office, except as specified in Section 30: Conviction of a felony, physical or mental disability, misconduct in office, persistent failure to perform duties, habitual intemperance, and conduct that is clearly prejudicial to the administration of justice. The JTC could find that “failure to participate in ‘mandatory’ continuing judicial education” does not fall into the categories under its purview. If so, that would make the proposed rules toothless.
5. **Morale.** In my opinion, there are clearly members of the Michigan judiciary that could benefit from additional training, even if it is compelled. There are also hundreds of Michigan judges who voluntarily and willingly attend many excellent educational opportunities offered by MJI, ICLE, and the respective Judicial Associations. The adoption of the proposed rules will send a message, intended or not, that our judges are still somehow inferior in judicial knowledge and must be compelled to improve. It would also send the message that judges need additional training, but lawyers do not. That could clearly affect judge morale.

Again, thank you for the opportunity to offer input on these proposed rules.

Sincerely,



Hon. Thomas K. Byerley
Eaton County Probate Court

Order

Michigan Supreme Court
Lansing, Michigan

March 22, 2023

Elizabeth T. Clement,
Chief Justice

ADM File No. 2020-31

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

Proposed Amendment of
Rule 1.8 of the Michigan
Rules of Professional Conduct

On order of the Court, this is to advise that the Court is considering an amendment of Rule 1.8 of the Michigan Rules of Professional Conduct. 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 will also be considered at a public hearing. The notices and agendas for each 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 1.8 Conflict of Interest: Prohibited Transactions.

(a)-(d) [Unchanged.]

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that

(1)-(2) [Unchanged.]

(3) provided that the lawyer represents the indigent client pro bono, pro bono through a nonprofit legal services or public interest organization, or pro bono through a law school clinical or pro bono program, a lawyer representing an indigent client may pay for or provide the following types of assistance to the client to facilitate the client's access to the justice system in the matter: transportation to and from court proceedings; lodging if it is less costly than providing transportation for multiple days; meals during long court proceedings; or clothing for court appearances. The legal services must be delivered at no fee to the indigent client, and the lawyer:

- (i) may not promise, assure or imply the availability of such assistance prior to retention or as an inducement to continue the client-lawyer relationship after retention;
- (ii) may not seek or accept reimbursement from the client, a relative of the client or anyone affiliated with the client; and
- (iii) may not publicize or advertise a willingness to provide such assistance to prospective clients.

Funds raised for any legal services or public interest organization for purposes of providing legal services will not be considered useable for providing assistance to indigent clients, and assistance referenced in this subsection may not include loans or any other form of support that causes the client to be financially beholden to the provider of the assistance.

Assistance provided under (3) may be provided even if the indigent client's representation is eligible for a fee under a fee-shifting statute.

(f)-(j) [Unchanged.]

Comment:

[Unchanged except for the following proposed additional language]

Humanitarian Exception.

Paragraph (e)(3) serves as a humanitarian exception. The lawyer can assist the client with needs that frustrate the client's access to the justice system in the specific matter for which the representation was undertaken, while still preserving the nature of the attorney-client relationship. For purposes of this rule, indigent is defined as people who are unable, without substantial financial hardship to themselves and their dependents, to obtain competent, qualified legal representation on their own.

Staff Comment (ADM File No. 2020-31): The proposed amendment of MRPC 1.8 would allow attorneys to provide certain assistance to indigent clients they are serving on a pro bono basis.

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 July 1, 2023 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 submitting a comment, please refer to ADM File No. 2020-31. 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.

March 22, 2023

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk

Name: Austin Blessing-Nelson

Date: 04/13/2023

ADM File Number: 2020-31

Comment:

In my personal opinion, I agree with the proposed changes in principle, but I don't think it's broad enough. This should not only be applicable in pro bono cases as clients not having adequate funds to fully access the legal system is also an issue in cases where the lawyers are getting paid, but the client still has limited resources. Lawyers should be able to provide that type of assistance (meals, food, dress attire, etc.) to any client that needs it, provided appropriate measures are taken to prevent abuse (such as the proposed restrictions on advertising this assistance). I don't think it is appropriate to draw a hard line where if it is a pro bono case then it is ok to call an Uber to bring your client to court, but if it's a struggling client during a lengthy divorce or criminal proceeding (where the client may be paying the lawyer, but it's a small fee or the lawyer knows the bills won't get paid in full but is continuing representation anyway) then the lawyer cannot pay for transportation to get them to court, even if that client is unable to get to court otherwise.

Furthermore, oftentimes people are unable to find an attorney, or even a legal aid organization, to take the case pro bono for a multitude of reasons, including the case not qualifying under the rules of the organization, the case being too complex, or the client technically having too much money even if they still struggle financially. In these cases, they are forced to find the money to hire an attorney to defend/assert their legal rights, but often still have access to justice issues due to their limited resources.

Consider two criminal cases with identical defendants. In one case, a family friend is taking the case pro bono. In the other, the family retains a lawyer, but has to scrape together money to do so. Both defendants are without the resources to get dress clothing or get to court. This rule would allow the first lawyer to provide a suit to his client and call a taxi for him in order to allow him to be appropriately dressed for and present at his trial. Meanwhile, the second lawyer would be prohibited from providing the needed assistance to his client, which could negatively impact his client and cause him to be disadvantaged.

Ultimately, access to justice is a serious issue that affects many people, including those who are not being represented pro bono. This type of aid is about improving access to justice, and it is appropriate beyond cases where the lawyer is not getting paid at all.

Public Policy Position
ADM File No. 2020-31: Proposed Amendment of MRPC 1.8

Support in concept, but oppose as published for comment
Support SBM's 2022 proposed amendment of MRPC 1.8

Explanation:

The Committee voted unanimously (17) to support the concept of amending MRPC 1.8 to provide a humanitarian exception, but to oppose ADM File No. 2020-31 as published for comment. Instead, the Committee supports the MRPC 1.8 amendment language proposed by SBM in 2022.

The Committee believes that, as published for comment, ADM File No. 2020-31 could inadvertently make things significantly worse for pro bono and public interest attorneys and their clients. The proposed amendment enumerates only four types of permissible assistance: “transportation to and from court proceedings; lodging if it is less costly than providing transportation for multiple days; meals during long court proceedings; or clothing for court appearances.” In doing so, the proposed amendment impliedly prohibits any other type of assistance. For example, attorneys should be able to assist with transportation to and from *their office* for an important client meeting, to and from an appointment for an independent medical examination, or to and from other locations related to the representation. Similarly, attorneys should be able to assist with meals during long client meetings at their offices or an off-site location, depositions, mediation sessions, settlement conferences, and other events related to the representation. Providing assistance with appropriate attire is important for court appearances, but also for other appointments related to the representation. The proposed amendment would appear to prohibit these types of assistance. In doing so, it significantly undermines the purpose and intent of a humanitarian exception.

By comparison, SBM's 2022 proposed amendment of MRPC 1.8 was drafted with language providing that a lawyer representing an indigent client “may provide assistance to the client that facilitates the client's access to the justice system,” with commentary to the rule as follows: “The lawyer can assist the client with needs that frustrate the client's access to the justice system, *such as* providing transportation to and from court sessions (including inexpensive lodging if that is less costly than transportation to and from for multiple days), meals needed during long court sessions, and clothing appropriate to appear in a court proceeding, while still preserving the nature of the attorney-client relationship” (emphasis added). SBM's proposed amendment would allow flexibility in the exact nature of the assistance, while still providing “such as” examples and ensuring that the assistance facilitates the client's access to the justice system.

The Committee also has serious concerns about the following provision in ADM File No. 2020-31 as published: “Funds raised for any legal services or public interest organization for purposes of providing legal services will not be considered useable for providing assistance to indigent clients” This would appear to require a lawyer who works for such an organization to use their personal, out-of-pocket funds for humanitarian assistance to their client and prohibit them from using their employer's funds to do so, even if their employer would be willing to authorize the expense. Such a restriction is unfair to the client, the lawyer, and the organization. It also threatens to render the humanitarian exception largely a nullity. SBM's 2022 alternative does not include such a restriction.

So long as the assistance facilitates the client's access to the justice system, it does not matter whether the assistance is financed by the attorney personally or by a nonprofit organization that employs the attorney and finances the representation.

Finally, the Committee believes that ADM File No. 2020-31 may actually make matters worse that they are today with the existing rule. Under MRPC 1.8(e), there is ambiguity regarding what constitutes prohibited financial assistance. Ethics opinions help shine a light on what is prohibited, but they are not binding and they do not cover every scenario. By enumerating four narrow types of assistance, the proposed amendment could result in a situation where lawyers or their employers are forced to conclude that certain forms of assistance that currently fall into a grey area are actually prohibited. Similarly, the proposed amendment, by placing a restriction on the source of funds that can be used, could result in current sources of funding being cut off. Here again, the proposed amendment undermines the purpose and intent of a humanitarian exception.

Position Vote:

Voted For position: 17

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 10

Contact Persons:

Katherine L. Marcuz kmarcuz@sado.org

Lore A. Rogers rogersl4@michigan.gov

Public Policy Position
ADM File No. 2020-31: Proposed Amendment of MRPC 1.8

Support in Concept

Explanation

On May 23, 2023, the Justice Initiatives (JI) Committee voted to support the concept of amending MRPC 1.8 to provide a humanitarian exception but to oppose ADM File No. 2020-31 as published for comment. Instead, the Committee supports the MRPC 1.8 amendment language proposed by SBM in 2022 for the reasons stated by the Access to Justice Policy Committee.

Position Vote:

Voted For position: 13

Voted against position: 0

Abstained from vote: 1

Did not vote (absence): 4

Contact Person:

Ashley E. Lowe

alowe@lakeshorelegalaid.org

Public Policy Position
ADM File No. 2020-31 – Proposed Amendment of MRPC 1.8

Support with Recommended Amendments

Explanation

The Professional Ethics Committee is in support of the proposed amendment of Rule 1.8 of the Michigan Rules of Professional Conduct as the amendment places proper guard rails when providing assistance to a pro bono client.

However, the Professional Ethics Committee is requesting an amendment be considered within the commentary to Rule 1.8. Specifically, the committee is requesting that the amendment be clarified within the commentary that 1.8(e)(3) does not limit a private practicing attorney who is representing a client in a non-pro bono capacity to provide assistance as allowed by this amendment, i.e., to provide transportation to the courthouse or to take a client to lunch. The current language without commentary clarification seems to suggest that only pro bono clients may receive the outlined types of assistance, which will impede current practices between attorneys and clients.

The Committee recommends the following language or something similar be added to the commentary to clarify:

Paragraph (e)(3) outlines an exception to clarify that a lawyer who represents indigent clients pro bono may pay for or provide various types of assistance. However, (e)(3) does not prohibit a lawyer representing a client in a non-pro bono capacity to provide similar assistance as allowed by this amendment.

Position Vote:

Voted For position: 23

Voted against position: 0

Abstained from vote: 0

Did not vote: 11

Contact Person: Edward Hood ehood@clarkhill.com

October 23, 2020

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

RE: Proposed Amendment Rule 1.8 of the Michigan Rules of Professional Conduct Regarding a Humanitarian Exception

Dear Clerk Royster:

The State Bar of Michigan (SBM) recommends amending Rule 1.8 of the Michigan Rules of Professional Conduct (MRPC) to permit lawyers to provide modest financial living assistance to indigent clients. This narrow humanitarian exception would help indigent clients fully access justice by having money for transportation to court proceedings and necessary food or medicine to fully participate in those proceedings. The Representative Assembly approved this rule amendment and accompanying commentary with overwhelming support (85 in support; 19 in opposition). The proposed amendments and commentary parallel recent amendments adopted by the American Bar Association (ABA) House of Delegates to the Model Rules of Professional Conduct fully set forth in Attachment A.

Currently, MRPC 1.8 prohibits lawyers from providing gifts to pro bono, indigent clients to cover the basic necessities of life – necessities that, if forgone, may adversely affect clients’ ability to participate in the justice system. This same rule, however, permits lawyers, under certain circumstances, to provide financial assistance to any transactional client; to invest in a transactional client, subject to MRPC 1.8(a); to offer social hospitality to any litigation or transactional client as part of business development; and to advance the costs of litigation with repayment contingent on the outcome or no repayment if the client is indigent. A clear gap, therefore, exists between allowable expenditures on behalf of litigation and non-indigent clients, and prohibited expenditures on behalf of the neediest clients.

The proposed amendments and commentary would allow lawyers to give indigent clients modest gifts to alleviate the financial hardship they face in affording basic life necessities – including food, transportation, medicine, other living expenses – allowing the client to more effectively engage in the legal proceedings. While the proposed amendments will strengthen access to justice for some of Michigan’s most vulnerable individuals, the amendments are also tailored to help ensure that the Michigan Rules of Professional Conduct continue to guard against lawyers improperly entangling themselves financially with clients.

Thank you for your consideration. It is our hope that the Court will publish the proposed changes for comment and ultimately approve them as amendments to the Michigan Rules of Professional Conduct.

Sincerely,



Janet K. Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court

ATTACHMENT A

Proposed Amendments to MRPC 1.8(e) and Accompanying Commentary

Rule 1.8(e)

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which shall ultimately be the responsibility of the client; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client; and

(3) a lawyer representing an indigent client may provide modest gifts to the client for food, rent, transportation, medicine and other basic living expenses provided that the lawyer represents the indigent client pro bono, pro bono through a nonprofit legal services or public interest organization, or pro bono through a law school clinical or pro bono program. The legal services must be delivered at no fee to the indigent client and the lawyer:

(i) may not promise, assure or imply the availability of such gifts prior to retention or as an inducement to continue the client-lawyer relationship after retention;

(ii) may not seek or accept reimbursement from the client, a relative of the client or anyone affiliated with the client; and

(iii) may not publicize or advertise a willingness to provide such financial gifts to prospective clients.

Financial assistance provided under (3) may be provided even if the indigent client's representation is eligible for a fee under a fee-shifting statute.

Commentary to MRPC 1.8(e)

A lawyer representing an indigent client, pro bono through a nonprofit legal services or public interest organization, or pro bono through a law school clinical or pro bono program may give the client modest gifts. Gifts permitted under paragraph (e)(3) are limited to modest contributions for food, rent, transportation, medicine and similar basic necessities of life. If the gift may have consequences for the client (including, but not limited to: eligibility for government benefits or social services or tax liability) the lawyer should consult with the client before providing the modest gift. The exception in paragraph (e)(3) is narrow. Modest gifts are allowed in specific circumstances where it is unlikely to create conflicts of interest or invite abuse. Paragraph (e)(3) prohibits the lawyer from (i) promising, assuring or implying the availability of financial assistance prior to retention or as an inducement to continue the client-lawyer relationship after retention; (ii) seeking or accepting reimbursement from the client, a relative of the client or anyone affiliated with the client; and (iii) publicizing or advertising a willingness to provide gifts to prospective clients beyond court costs and expenses of litigation in connection with contemplated or pending litigation or administrative proceedings. Financial assistance, including modest gifts pursuant to paragraph (e)(3), may be provided even if the representation is eligible for fees under a fee shifting statute. Paragraph (e)(3) does not permit lawyers to provide assistance in contemplated or pending litigation in which the lawyer may eventually recover a fee, such as

contingent-fee personal injury cases or cases in which fees may be available under a contractual fee-shifting provision, even if the lawyer does not eventually receive a fee.



Michigan Supreme Court

Michigan Hall of Justice
P.O. Box 30052
Lansing, Michigan 48909
Phone (517) 373-2858
BoomerA@courts.mi.gov

Anne Boomer
Administrative Counsel

July 9, 2021

State Bar of Michigan
Attn: Janet K. Welch
306 Townsend St.
Lansing, MI 48933

Re: ADM File No. 2020-31

Dear Ms. Welch:

Thank you for the Bar's proposed amendment of MRPC 1.8 that would add a humanitarian exception to permit lawyers to provide certain financial gifts to pro bono indigent clients. This matter was discussed at conference and the Court suggests the Bar consider submitting a revised proposal.

During its discussion, several justices remarked on the breadth of assistance that would be available under the proposed amendment, including "modest gifts to the client for food, rent, transportation, medicine and other basic living expenses." Leaving aside the problem of how to define "modest," the justices expressed concern that the items on the list are not related in any way to the type of proceeding that the pro bono client is involved with. While it may make sense to allow such gifts as a way to keep people out of the legal system in some types of cases, broadly allowing gifts for "basic living expenses" could create unreasonable expectations in clients and undue pressure on attorneys who work with those clients. The Court asks that the Bar consider a more nuanced, limited proposal and resubmit it to the Court for its consideration.

Please feel free to contact me with any questions or concerns.

Sincerely,

A handwritten signature in blue ink that reads "Anne Boomer".

Anne Boomer

April 20, 2022

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

RE: Proposed Amendment of Rule 1.8 of the Michigan Rules of Professional Conduct to Provide a Humanitarian Exception

Dear Clerk Royster:

The State Bar of Michigan (“SBM”) recommends amending Rule 1.8 of the Michigan Rules of Professional Conduct (“MRPC”) to provide a focused, humanitarian exception to the Rule’s general prohibition of an attorney providing financial assistance to a client in connection with pending or contemplated litigation. This revised proposal, fully set forth in Attachment A, would permit a lawyer representing an indigent client to provide financial assistance to the client that “facilitates the client’s access to the justice system.” As noted in our proposed commentary for the amended Rule, such a humanitarian exception would preserve the fundamental nature of the attorney-client relationship, while also permitting an attorney to assist a client with transportation, lodging, meals, and clothing—necessary expenses that often pose a significant barrier to indigent individuals accessing the justice system.

In October 2020, SBM proposed a similar amendment to Rule 1.8. At that time, the Court declined to publish the proposal for comment and requested that the Bar consider “a more nuanced, limited proposal.” The Court identified several specific concerns about the initial proposal and invited the Bar to submit a revision to the Court for consideration. The revised proposal presented in Attachment A is provided in response to the Court’s invitation and identified concerns. It is the product of a workgroup convened by the Bar and comprised of stakeholders from the Diversity & Inclusion Advisory Committee, Justice Initiatives Committee, and Professional Ethics Committee. Ultimately, each of these committees voted to support the revised proposal, which was approved overwhelmingly by the Representative Assembly at its April 9, 2022 meeting.

By permitting lawyers to assist their indigent clients in this manner, the proposed amendment and commentary will allow such clients to more effectively engage in legal proceedings and strengthen access to justice in Michigan, while also guarding against improper financial entanglements between lawyers and their clients.

We appreciate your consideration of this revised proposal. It is our hope that it will address the Court’s thoughtful concerns about the previous iteration and that the Court will publish the proposed amendment to the Michigan Rules of Professional Conduct, as revised, for comment and ultimate adoption.

Sincerely,



Peter Cunningham
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court
Nicholas M. Ohanesian, Representative Assembly Chair

Attachment A

Proposed Amendments to MPRC 1.8(e)

- (e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that
 - (1) a lawyer may advance court costs and expenses of litigation, the repayment of which shall ultimately be the responsibility of the client; and
 - (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client and may provide assistance to the client that facilitates the client's access to the justice system.

Comment:

Humanitarian Exception.

Paragraph (e)(2) serves as a humanitarian exception. The lawyer can assist the client with needs that frustrate the client's access to the justice system, such as providing transportation to and from court sessions (including inexpensive lodging if that is less costly than transportation to and from for multiple days), meals needed during long court sessions, and clothing appropriate to appear in a court proceeding, while still preserving the nature of the attorney-client relationship. For purposes of this rule, indigent is defined as people who are unable, without substantial financial hardship to themselves and their dependents, to obtain competent, qualified legal representation on their own.

Order

Michigan Supreme Court
Lansing, Michigan

March 22, 2023

Elizabeth T. Clement,
Chief Justice

ADM File No. 2021-10

Proposed Amendments
of the Michigan Rules
of Evidence

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

On order of the Court, this is to advise that the Court is considering amendments of the Michigan Rules of Evidence. 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 will also be considered at a public hearing. The notices and agendas for each 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 101. Scope; Definitions

- (a) Scope. These rules govern proceedings in Michigan~~the courts of this state to the extent and.~~ The specific courts and proceedings to which the rules apply, along with the exceptions, are set out~~stated~~ in Rule 1101.
- (b) Statutory Rules. A statutory rule of evidence not in conflict with these rules or other rules adopted by the Supreme Court is effective until superseded by a Supreme Court rule or decision~~of the Supreme Court~~.
- (c) Definitions. In these rules:
- (1) “civil case” means a civil action or proceeding;
 - (2) “criminal case” includes a criminal proceeding;
 - (3) “public office” includes a public agency;
 - (4) “record” includes a memorandum, report, or data compilation;

- (5) a “rule prescribed by the Supreme Court” means a rule adopted by the Michigan Supreme Court; and
- (6) a reference to any kind of written material or any other medium includes electronically stored information.

Rule 102. Purpose

These rules ~~should be construed so as are intended to secure fairness in administration every proceeding fairly, eliminate or of unjustifiable expense and delay, and promote or the growth and development of evidence the law of evidence, to the end of ascertaining that the truth may be ascertained and securing a proceedings justly determinationed.~~

Rule 103. Rulings on Evidence

- (a) Preserving a Claim of Error~~Effect of Erroneous Ruling. A party may claim error in~~Error may not be predicated upon a ruling to which admits or excludes evidence only if the error affects unless a substantial right of the party is affected, and:
- (1) if~~Objection. In case the ruling is one admitting~~Objection. In case the ruling is one admitting evidence, a party, on the record:
- (A) timely objection or motion to strike appears of record; and
- (B) stating the specific ground of objection, unless it if the specific ground was not apparent from the context; or
- (2) if~~Offer of proof. In case the ruling is one excluding~~Offer of proof. In case the ruling is one excluding evidence, a party informs the court of its the substance by an offer of proof, unless the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.
- (b) Not Needing to Renew an Objection or Offer of Proof. Once the court rules makes a definitively ruling on the record admitting or excluding evidence, — either before or at or before trial; — a party need not renew an objection or offer of proof to preserve a claim of error for appeal.
- (c) Court’s Statement About the Ruling; Directing an Offer of Proof.~~Record of Offer and Ruling. The court may make add any other or further statement about which shows the character or of the evidence, the form of the evidence in which it was offered, the objection made, and the ruling thereon. The court it may direct that the making of an offer of proof be made in question-and-answer form.~~Record of Offer and Ruling. The court may make add any other or further statement about which shows the character or of the evidence, the form of the evidence in which it was offered, the objection made, and the ruling thereon. The court it may direct that the making of an offer of proof be made in question-and-answer form.

- (de) Preventing the Jury from Hearing Inadmissible Evidence~~Hearing of Jury~~. In jury cases, ~~proceedings shall be conducted, ¶~~To the extent practicable, the court must conduct a jury trial so that~~so as to prevent~~ inadmissible evidence is not~~from being~~ suggested to the jury by any means, ~~such as making statements or offers of proof or asking questions in the hearing of the jury.~~
- (ed) Taking Notice of Plain Error. ~~A court may~~Nothing in this rule precludes taking notice of a plain errors affecting a substantial rights, even if the claim of error was not properly preserved~~although they were not brought to the attention of the court.~~

Rule 104. Preliminary Questions

- (a) ~~In~~Questions of Admissibility Generally. The court must decide any p~~Preliminary~~ questions about whether a witness is qualified~~concerning the qualification of a person to be a witness, the existence of a privilege exists, or the admissibility of evidence is admissible~~shall be determined by the court, subject to the provisions of subdivision (b). In so deciding, the court~~making its determination~~ it is not bound by ~~the Rules of E~~evidence rules, except those on~~with~~ respect to privileges.
- (b) Relevancey That Depends~~Conditioned~~ on a Fact. When the relevancy of evidence depends upon whether a fact exists~~the fulfillment of a condition of fact~~, proof must be~~the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding that the fact does exist~~of the fulfillment of the condition. The court may admit the proposed evidence on the condition that the proof be introduced later.
- (c) Conducting a Hearing So That the~~of~~ Jury Cannot Hear It. The court must conduct any hearing on a preliminary question so that the jury cannot hear it if:~~Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require, or when an accused is a witness, and so requests.~~
- (1) the hearing involves the admissibility of a confession;
 - (2) a defendant in a criminal case is a witness and so requests; or
 - (3) justice so requires.
- (d) Cross-Examining a Defendant in a Criminal Case~~Testimony by Accused~~. The accused does not, b~~By~~ testifying upon a preliminary question~~matter~~, a defendant in a criminal case does not become subject to cross-examination on~~become subject to cross-examination as to~~ other issues in the case.

- (e) Evidence Relevant to Weight and Credibility. This rule does not limit a party's ~~the~~ right of a party to introduce before the jury evidence that is relevant to the weight or credibility of other evidence.

Rule 105. Limited Evidence That Is Not Admissible Against Other Parties or for Other Purposes

~~If the court admits~~ When evidence that ~~which~~ is admissible against as to one party or for a one purpose — but not against admissible as to another party or for another purpose — is admitted, the court, upon timely request, must ~~shall~~ restrict the evidence to its proper scope and instruct the jury accordingly.

Rule 106. Remainder of or Related Writings or Recorded Statements

~~If a party introduces all~~ When a writing or recorded statement or part of a writing or recorded statement, thereof is introduced by a party, an adverse party may require the introduction, at that time, of any other part — or any other writing or recorded statement — that in fairness ~~which ought in fairness~~ to be considered at the same time ~~contemporaneously with it.~~

Rule 201. Judicial Notice of Adjudicative Facts

- (a) ~~Scope of Rule.~~ This rule governs ~~only~~ judicial notice of an adjudicative facts only, ~~and does not preclude judicial notice of legislative facts.~~
- (b) Kinds of Facts That May Be Judicially Noticed. ~~The~~ A court may judicially noticed a fact that is ~~must be one~~ not subject to reasonable dispute because in that it is either:
- (1) is generally known within the trial court's territorial jurisdiction of the trial court; or
 - (2) can be ~~capable of~~ accurately and readily determined ~~ation from~~ by resort to sources whose accuracy cannot reasonably be questioned.
- (c) Taking Notice ~~When Discretionary.~~ The ~~A~~ court may take judicial notice on its own, whether requested or not, and may require a party to supply the necessary information.
- (~~d~~e) Timing of Taking Notice. ~~The court~~ Judicial notice may be taken judicial notice at any stage of the proceeding.

- (e) Opportunity to Be Heard. ~~On timely request, a~~ A party is entitled ~~upon timely request to an opportunity to be heard~~ on as to the propriety of taking judicial notice and the nature of the fact to be ~~tender of the matter noticed.~~ If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard. ~~In the absence of prior notification, the request may be made after judicial notice has been taken.~~
- (f) Instructing the Jury. In a civil ~~case or proceeding,~~ the court ~~must~~ shall instruct the jury to accept the noticed fact as conclusive ~~any fact judicially noticed.~~ In a criminal case, the court ~~must~~ shall instruct the jury that it may or may not, ~~but is not required to,~~ accept the noticed fact as conclusive ~~any fact judicially noticed.~~

Rule 202. Judicial Notice of Law

- (a) When Discretionary. A court may take judicial notice on its own ~~without request by a party of the following:~~
- (1) [Unchanged.]
 - (2) private acts and resolutions of the United States Congress ~~of the United States and of the Michigan Legislature of Michigan, and;~~
 - (3) ordinances and regulations of Michigan governmental subdivisions or agencies ~~of Michigan; and~~
 - (3) [Renumbered (4) but otherwise unchanged.]
- (b) When Conditionally Mandatory. A court ~~must~~ shall take judicial notice of each matter ~~specified in paragraph (a) of this rule if a party so requests it and:~~
- (1) supplies ~~furnishes~~ the court with sufficient information to enable it to properly ~~to~~ comply with the request; and
 - (2) gives ~~has given~~ each adverse party such notice as the court may require to enable the adverse party ~~to prepare~~ to meet the request.

Rule 301. Presumptions in Civil Cases ~~Actions and Proceedings~~

In all civil ~~case actions and proceedings not otherwise provided for by,~~ unless a statute or ~~by these rules provide otherwise,~~ the party against whom a presumption ~~imposes on the party against whom it is directed~~ has the burden of producing ~~going forward with~~ evidence to rebut ~~or meet~~ the presumption.; But this rule ~~does not shift to such party~~ the burden of

~~proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party who had it on whom it was originally cast.~~

Rule 302. Presumptions in Criminal Cases

- (a) ~~Scope. In a criminal cases, this rule governs a presumptions against a defendant that is an accused, recognized at common law or is created by statute, including statutory provisions that certain facts are prima facie evidence of other facts or of guilt, are governed by this rule.~~
- (b) ~~Instructing the Jury. Whenever the existence of a presumed fact against an accused is submitted defendant is submitted to the jury, the court must shall instruct the jury that:~~
- (1) ~~it may or may not conclude from the basic facts that the presumed fact is true; it may, but need not, infer the existence of the presumed fact from the basic facts and~~
 - (2) ~~that the prosecution still bears the burden of proof beyond a reasonable doubt of all the elements of the offense.~~

Rule 401. Test for Definition of "Relevant Evidence"

Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.

~~"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.~~

Rule 402. ~~Relevant Evidence Generally Admissibility; of ~~Ir~~Relevant Evidence Inadmissible~~

~~All ~~r~~Relevant evidence is admissible, ~~except as~~ unless any of the following provides otherwise; provided by the~~

- ~~the United States Constitution of the United States;~~
- ~~the Michigan Constitution of the State of Michigan;~~

- these rules; or
- other rules ~~prescribed~~^{adopted} by the Supreme Court.

~~Evidence which is not Irrelevant evidence~~ is not admissible.

Rule 403. ~~Exclusion of Relevant Evidence for~~ Grounds of Prejudice, Confusion, or Waste of Time, or Other Reasons

~~The court may exclude~~^{Although} relevant, evidence ~~may be excluded~~ if its probative value is substantially outweighed by ~~at~~ the danger of one or more of the following: unfair prejudice, confusing of the issues, or misleading the jury, or by considerations of undue delay, wasting of time, or needlessly presenting of cumulative evidence.

Rule 404. ~~Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes, Wrongs, or Acts~~

(a) ~~Character Evidence Generally.~~

(1) Prohibited Uses. Evidence of a person's character or ~~a trait of character~~ trait is not admissible ~~to prove that for the purpose of proving action in conformity therewith~~ on a particular occasion the person acted in accordance with the character or trait, except:

(2) Exceptions for a Defendant or Victim in a Criminal Case ~~Character of accused.~~ The following exceptions apply in a criminal case:

(A) a defendant may offer evidence of the defendant's a pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it; of character offered by an accused, or by the prosecution to rebut the same; or if evidence of a trait of character of the alleged victim of the crime is offered by the accused and admitted under subdivision (a)(2), evidence of a trait of character for aggression of the accused offered by the prosecution;

(B) in a homicide case, Character of alleged victim of homicide. When self-defense is an issue in a charge of homicide, the defendant may offer evidence of the alleged victim's trait a trait of character for aggression, and if the evidence is admitted, the prosecution may: of the alleged victim of the crime offered by an accused, or evidence offered by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the alleged victim offered by the

~~prosecution in a charge of homicide to rebut evidence that the alleged victim was the first aggressor;~~

(i) offer evidence of the defendant's same trait; and

(ii) offer evidence of the alleged victim's trait for peacefulness to rebut evidence that the alleged victim was the first aggressor; and

~~(C3) in a criminal-sexual-conduct case, the defendant may offer evidence of: Character of alleged victim of sexual conduct crime. — In a prosecution for criminal sexual conduct, evidence of~~

(i) the alleged victim's past sexual conduct with the defendant; and

(ii) evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, or disease.;

~~(34) Exceptions for a Character of witness. Evidence of the character of a witness's character may be admitted under, as provided in Rules 607, 608, and 609.~~

(b) Other Crimes, Wrongs, or Acts.

(1) Prohibited Uses. Evidence of any other crimes, wrongs, or acts is not admissible to prove the character of a person's character in order to show that on a particular occasion the person acted in accordance with the characteraction in conformity therewith.

(2) Permitted Uses. If it is material, the evidence mayIt may, however, be admissible for anotherother purposes, such as provingproof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake, or lack of accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

~~(32) Notice in a Criminal Case. The prosecution iIn a criminal case, the prosecutor must:shall~~

(A) provide written notice in writing at least 14 days beforein advance of trial; — or in any form during trialorally on the record later if the

court, for good cause, excuses lack of pretrial notice — on good cause shown, of the general nature of any such evidence that the prosecutor intends to offer introduce at trial, so that the defendant has a fair opportunity to meet it; and

- (B) articulate in the notice the permitted purpose for which the prosecutor intends to offer the evidence and the reasoning that supports the purpose; and the rationale, whether or not mentioned in subparagraph (b)(1), for admitting the evidence.

If necessary to a determination of the admissibility of the evidence under this rule, the defendant shall be required to state the theory or theories of defense, limited only by the defendant's privilege against self-incrimination.

Rule 405. Methods of Proving Character

- (a) By Reputation or Opinion. When in all cases in which evidence of a person's character or a trait of character trait of a person is admissible, its proof may be proved made by testimony about the person's as to reputation or by testimony in the form of an opinion. On cross-examination of the character witness, the court may allow an inquiry is allowable into reports of relevant specific instances of the person's conduct.
- (b) By Specific Instances of Conduct. When a person's In cases in which character or a trait of character trait of a person is an essential element of a charge, claim, or defense, the character or trait proof may also be proved by relevant made of specific instances of the at person's conduct.

Rule 406. Habit; Routine Practice

Evidence of a person's the habit of a person or an organization's of the routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.

Rule 407. Subsequent Remedial Measures

When, after an event, measures are taken that which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. But the court may

~~admit this evidence. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as impeachment or – if disputed – proving ownership, control, or the feasibility of precautionary measures, if controverted, or impeachment.~~

Rule 408. ~~Compromise and Offers and Negotiations~~ Compromise

(a) Prohibited Uses. Evidence of the following is not admissible to either prove or disprove the liability, validity, or amount of a disputed claim:

- (1) ~~furnishing, or offering or promising to furnish, or offering – or (2) accepting, or offering or promising to accept, or offering to accept – a valuable consideration in compromising or attempting to compromise the claim; and which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount.~~
- (2) ~~Evidence of conduct or a statements made during~~ in compromise negotiations is likewise not admissible.

(b) Exceptions. ~~If this~~ This rule does not require the exclusion of any evidence is otherwise discoverable, it need not be excluded merely because it is presented during ~~the course of~~ in compromise negotiations. And it need not be excluded if admitted ~~This rule also does not require exclusion when the evidence is offered for another purpose, such as proving a witness's bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.~~

Rule 409. Offers to Payment ~~of~~ Medical and Similar Expenses

Evidence of furnishing, ~~or offering or promising to pay, or offering to pay~~ medical, hospital, or similar expenses resulting from ~~occasioned by~~ an injury is not admissible to prove liability for the injury.

Rule 410. ~~Inadmissibility of~~ Pleas, Plea Discussions, and Related Statements

(a) Prohibited Uses. ~~In a civil or criminal case~~ Except as otherwise provided in this rule, evidence of the following is not, ~~in any civil or criminal proceeding,~~ admissible against the defendant who made the plea or participated ~~was a participant~~ in the plea discussions:

- (1) a ~~plea of guilty plea that~~ which was later withdrawn;

- (2) ~~a~~A plea of nolo contendere plea, — except that, to the extent that evidence of a guilty plea would be admissible, evidence of a ~~plea of nolo contendere plea~~ to a criminal charge may be admitted in a civil proceeding to ~~support a~~ defendse against a claim asserted by the person who entered the plea;
- (3) ~~a~~Any statement made during ~~in the course of any~~ proceedings on either of those pleas under MCR 6.302, ~~a~~ or comparable state ~~or federal~~ procedure or Fed R Crim P 11 regarding either of the foregoing pleas; or
- (4) ~~a~~Any statement made during ~~in the course of~~ plea discussions with an attorney for the prosecuting authority if the discussions did ~~which do~~ not result in a ~~plea of guilty plea~~ or they ~~which~~ resulted in a later-withdrawn ~~plea of guilty plea~~ later withdrawn.
- (b) Exceptions. The court may admit a statement described in (a)(3) or (4): ~~However, such a statement is admissible~~
- (1*i*) in any proceeding wherein which another statement made during ~~in the course~~ of the same plea or plea discussions has been introduced, if and the statement ought in fairness the statements ought to be considered together ~~contemporaneously with it;~~ or
- (2*ii*) in a criminal proceeding for perjury or false statement, if the defendant made the statement was made by the defendant under oath, on the record, and in the presence of with counsel present.

Rule 411. Liability Insurance

Evidence that a person was or was not insured against liability is not admissible to prove ~~upon the issue~~ whether the person acted negligently or otherwise wrongfully. But the court may admit this evidence ~~This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proving of a witness's bias or prejudice or — if controverted — proving of agency, ownership, or control, if controverted, or bias or prejudice of a witness.~~

Rule 501. Privilege; in General Rule

~~Privilege is governed by~~ The common law governs a claim of privilege, unless a ~~except as modified by statute or court rule provides otherwise.~~

Rule 601. ~~Witnesses; General Rule of Competency to Testify in General~~

Every person is competent to be a witness u ~~Unless:~~

- (a) ~~the court finds, after questioning, a person that the person does not have sufficient physical or mental capacity or sense of obligation to testify truthfully and understandably; or, every person is competent to be a witness except as otherwise provided in these rules.~~
- (b) these rules provide otherwise.

Rule 602. Need for Lack of Personal Knowledge

A witness may ~~not~~ testify to a matter only if ~~unless~~ evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, ~~but need not,~~ consist of the witness's own testimony. This rule ~~does not apply to a witness's expert testimony under is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.~~

Rule 603. Oath or Affirmation to Testify Truthfully

Before testifying, ~~a every witness~~ must give an ~~shall be required to declare that the witness will testify truthfully, by oath or affirmation to testify truthfully. It must be administered in a form designed~~ ~~to awaken the witness' conscience and impress that the witness' mind with the duty~~ on the witness's conscience to do so.

Rule 604. Interpreters

An interpreter must be qualified ~~is subject to the provisions of these rules relating to qualification as an expert and must give the administration of an oath or affirmation to make a true translation.~~

Rule 605. Judge's Competency of Judge as a Witness

The presiding judge ~~presiding at the trial~~ may not testify ~~in that trial~~ as a witness at the trial. A party need not ~~No objection need be made in order to preserve the issue~~ point.

Rule 606. Juror's Competency of Juror as a Witness

- (a) At the Trial. A ~~member of the jury~~ may not testify as a witness before the other jurors at the trial ~~that jury in the trial of the case in which the juror is sitting.~~ A party need not ~~No objection need be made in order to preserve the issue~~ point.
- (b) During an Inquiry into the Validity of a Verdict or Indictment.

- (1) Prohibited Testimony or Other Evidence. ~~During~~Upon an inquiry into the validity of a verdict or indictment, a juror may not testify ~~about any~~as to any matter or statement made or incident that occurred during the course of the jury's deliberations; ~~or to the effect of anything upon that juror's or another~~any other juror's vote; or any mind or emotions as influencing the juror's to assent to or dissent from the verdict or indictment or concerning the juror's mental processes concerning the verdict or indictment in connection therewith. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters.
- (2) Exceptions. ~~A~~But a juror may testify about whether:
- (A) ~~whether~~ extraneous prejudicial information was improperly brought to the jury's attention;;
- (B) ~~whether any~~ an outside influence was improperly brought to bear upon any juror; or
- (C) ~~whether there was a mistake was made~~ in entering the verdict onto the verdict form. ~~A juror's affidavit or evidence of any statement by the juror may not be received on a matter about which the juror would be precluded from testifying.~~

Rule 607. Who May Impeach a Witness

~~The credibility of a witness may be attacked by a~~Any party, including the party that calling the witness, may attack the witness's credibility.

Rule 608. A Witness's Character for Truthfulness or Untruthfulness~~Evidence of Character and Conduct of Witness~~

- (a) Reputation or Opinion~~and Reputation~~ Evidence of Character. A witness's~~The~~ credibility ~~of a witness~~ may be attacked or supported by testimony about the witness's~~evidence in the form of opinion or reputation for having a,~~ but subject to these limitations: (1) ~~the evidence may refer only to~~ character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. ~~and~~ (2) But evidence of truthful character is admissible only after the witness's character ~~of the witness~~ for truthfulness has been attacked ~~by opinion or reputation evidence or otherwise.~~
- (b) Specific Instances of Conduct. Except for a criminal conviction under~~Specific~~ instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, ~~other than conviction of crime as provided in Rule 609,~~ may

~~not be proved by extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court~~ They may, however, in the discretion of the court, if ~~probative of truthfulness or untruthfulness, be inquired into on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:~~ of the witness

- (1) ~~concerning the witness's~~ character for truthfulness or untruthfulness, or
- (2) ~~concerning the character for truthfulness or untruthfulness of another witness whose~~ as to which character the witness being cross-examined has testified about.

~~By testifying on another matter, a~~ The giving of testimony whether by an accused or by any other witness, does not operate as a waiver any of the accused's or the witness' privilege against self-incrimination for testimony that ~~when examined with respect to matters which relates only to the witness's character for truthfulness~~ credibility.

Rule 609. Impeachment by Evidence of a Criminal Conviction of Crime

- (a) In General Rule. This rule applies to attacking a witness's character for truthfulness by evidence of a criminal conviction. The evidence is admissible if it has, during cross-examination, been elicited from the witness or established by public record and the following conditions are also met: ~~For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall not be admitted unless the evidence has been elicited from the witness or established by public record during cross-examination, and~~
 - (1) the crime contained an element of dishonesty or false statement;⁵ or
 - (2) the crime contained an element of theft;⁵ and
 - (A) in the convicting jurisdiction, the crime was punishable by imprisonment for more than ~~in excess of~~ one year or by death; ~~under the law under which the witness was convicted,~~ and
 - (B) the court determines that the evidence has significant probative value on character for truthfulness and ~~the issue of credibility and,~~ if the witness is the defendant in a criminal trial , ~~the court further determines that the probative value of the evidence outweighs any~~ its prejudicial effect.

- (b) Determining Probative Value and Prejudicial Effect. ~~In determining~~ For purposes of the probative value, ~~determination required by subrule (a)(2)(B),~~ the court ~~must~~ shall consider only the age of the conviction and the degree to which it indicates character for truthfulness ~~a conviction of the crime is indicative of veracity~~. If a determination of prejudicial effect is required, the court ~~must~~ shall consider only the conviction's similarity to the charged offense and the possible effects on the decisional process if admitting the evidence causes the defendant to elect not to testify. The court must articulate, on the record, the analysis of each factor.
- (c) Time Limit. Evidence of a conviction under this rule is not admissible if ~~a period of more than ten years have passed~~ has elapsed since the date of the conviction or of the witness's release of the witness from the confinement for it, whichever is later ~~imposed for that conviction, whichever is the later date~~.
- (d) Effect of a Pardon, Annulment, or Certificate of Rehabilitation. Evidence of a conviction is not admissible ~~under this rule if:~~
- (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person of the rehabilitation of the person convicted, and that person has not been convicted of a later subsequent crime which was punishable by death or imprisonment for more than ~~an~~ excess of one year;; or
 - (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.
- (e) Juvenile Adjudications. Evidence of a juvenile adjudication is admissible under this rule if it is offered in a later case against that same child in the family division of circuit court. Otherwise, the evidence is admissible only if: ~~generally not admissible under this rule, except in subsequent cases against the same child in the juvenile division of a probate court. The court may, however,~~
- (1) it is offered in a criminal case or in a juvenile proceeding against the child;
 - (2) the ~~allow~~ evidence of a juvenile adjudication was of a witness other than the child; ~~accused if~~
 - (3) an adult's conviction for that of the offense would be admissible to attack the adult's credibility; ~~of an adult and~~
 - (4) admitting the evidence ~~the court is satisfied that admission is necessary to fairly determine~~ for a fair determination of the case or proceeding.

- (f) Pendency of an Appeal. A conviction that satisfies this rule is admissible even if an appeal is pending. ~~The pendency of an appeal therefrom does not render evidence of a conviction inadmissible.~~ Evidence of the pendency of an appeal is also admissible.

Rule 610. Religious Beliefs or Opinions

Evidence of a witness's religious ~~the beliefs or opinions of a witness on matters of religion~~ is not admissible to attack or support ~~for the purpose of showing that by reason of their nature the witness's credibility is impaired or enhanced.~~

Rule 611. Mode and Order of Examining Witnesses and Presenting Evidence ~~Interrogation and Presentation~~

- (a) Control by the Court; Purposes. The court ~~must~~ shall exercise reasonable control over the mode and order of examining ~~interrogating~~ witnesses and presenting evidence so as to:
- (1) make those procedures ~~the interrogation and presentation~~ effective for determining ~~the ascertainment of the truth;~~
 - (2) avoid wasting ~~needless consumption of time;~~ and
 - (3) protect witnesses from harassment or undue embarrassment.
- (b) Appearance of Parties and Witnesses. The court ~~must~~ shall exercise reasonable control over the appearance of parties and witnesses so as to:
- (1) ensure that the fact-finder can see and assess their demeanor; ~~of such persons may be observed and assessed by the fact finder and~~
 - (2) ensure their accurate identification of such persons.
- (c) Scope of Cross-Examination. A witness may be cross-examined on any matter relevant to any issue in the case, including credibility. But ~~t~~ The judge may limit cross-examination regarding ~~with respect to~~ matters not testified to on direct examination.
- (d) Leading Questions.
- (1) When Allowed. Leading questions should not be used on the direct examination except as necessary of a witness except as may be necessary to develop the witness's testimony. Ordinarily, the court should allow leading questions:

- (A2) ~~Ordinarily leading questions should be permitted on cross-examination; and-~~
- (B3) ~~w~~When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, ~~interrogation may be by leading questions.~~
- (2) Intent to Ask Not Required. It is not necessary to declare the intent to ask leading questions before the questioning begins or before the questioning moves beyond preliminary inquiries.

Rule 612. Writing or Object Used to Refresh a ~~Witness~~Memory

- (a) Scope. This rule gives an adverse party certain options when a witness uses a writing or object to refresh memory:
- (1) ~~w~~While ~~t~~estifying; or-
- (2) before testifying, if practicable and the court decides that justice requires the party to have those options~~If, while testifying, a witness uses a writing or object to refresh memory, an adverse party is entitled to have the writing or object produced at the trial, hearing, or deposition in which the witness is testifying.~~
- (b) Adverse Party's Options; Deleting Unrelated Matter~~Before Testifying.~~ ~~If, before testifying, a witness uses a writing or object to refresh memory for the purpose of testifying and the court in its discretion determines that the interests of justice so require,~~ An adverse party is entitled to have the writing or object produced, to inspect it, to cross-examine the witness about it, and to introduce in evidence – for their bearing on credibility only unless otherwise admissible under these rules – any portion that relates to the witness's testimony~~if practicable, at the trial, hearing, or deposition in which the witness is testifying. If the producing party claims that the writing or object includes unrelated matter, the court must examine it in camera, remove any unrelated portion, and order that the rest be delivered to the adverse party. Any portion removed over objection must be preserved for the record.~~
- (c) Failure to Produce or Deliver the Writing or Object~~Terms and Conditions of Production and Use.~~ ~~A party entitled to have a writing or object produced under this rule is entitled to inspect it, to cross examine the witness thereon, and to introduce in evidence, for their bearing on credibility only unless otherwise admissible under these rules for another purpose, those portions which relate to the testimony of the witness. If production of the writing or object at the trial, hearing,~~

~~or deposition is impracticable, the court may order it made available for inspection. If it is claimed that the writing or object contains matters not related to the subject matter of the testimony the court shall examine the writing or object in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing or object is not produced made available for inspection, or is not delivered pursuant to as ordered under this rule, the court may issueshall make any appropriate order. But if justice requires, except that in criminal cases when the prosecution doesselects not to comply in a criminal case, the court must strikeorder shall be one striking the witness's testimony or, – if justice so requires – if the court in its discretion determines that the interests of justice so require, declaring a mistrial.~~

Rule 613. Witness's Prior Statements of Witnesses

- (a) ~~Showing or Disclosing the Statement During Examination~~Examining Witness Concerning Prior Statement. ~~When~~In examining a witness about the ~~witness's~~witness's ~~concerning~~concerning a prior statement made by the witness, whether written or not, ~~a party~~the statement need not be shown it or disclosed or its contents ~~disclosed~~disclosed to the witness, ~~at that time,~~ But the party must, on request, ~~it shall be shown it or disclosed its contents~~to an adverse party's attorney or opposing counsel and the witness.
- (b) ~~Extrinsic Evidence of a Prior Inconsistent Statement of Witness.~~ Extrinsic evidence of a witness's prior inconsistent statement ~~by a witness~~ is ~~not~~not admissible only if ~~unless~~ the witness is given~~afforded~~ an opportunity to explain or deny the ~~statements~~same and an adverse~~the opposite~~ party is given~~afforded~~ an opportunity to examine~~interrogate~~ the witness about it~~thereon~~, or if~~the interests of justice so~~otherwise requires. This ~~subdivision (b)~~provision does not apply to an opposing~~admissions of a party's statement under opponent as defined in Rule 801(d)(2).~~

Rule 614. Court's Calling or Examining and Interrogation of Witnesses by Court

- (a) ~~Calling by Court.~~ The court may, call a witness on its own ~~motion~~ or at the ~~suggestion of a party's request.~~ Each party is, call witnesses, and all parties are entitled to cross-examine the witnesses thus called.
- (b) ~~Examining~~Interrogation by Court. The court may examine~~interrogate~~ a witness, regardless of who calls the witness~~whether called by itself or by a party.~~

- (c) Objections. ~~A party may o~~Objections to the court's calling or examining of a witnesses ~~either by the court or to interrogation by it may be made at that~~the time or at the next ~~available~~ opportunity when the jury is not present.

Rule 615. ~~Excluding~~Exclusion of Witnesses

At ~~a party's~~the request, ~~of a party~~the court may order witnesses excluded so that they cannot hear ~~other witnesses'~~the testimony. ~~Or the court may do so on its own~~of other witnesses, and it may make the order of its own motion. ~~But t~~This rule does not authorize excluding:~~exclusion of~~

- (~~a~~1) a party who is a natural person;~~;~~ or
- (~~b~~2) an officer or employee of a party ~~that~~which is not a natural person, after being designated as the party's representative by its attorney;~~;~~ or
- (~~c~~3) a person whose presence ~~a party~~is shown ~~by a party~~to be essential to the presentation of the party's claim or defense~~cause~~.

Rule 701. Opinion Testimony by Lay Witnesses

If ~~the~~ witness is not testifying as an expert, ~~the witness'~~testimony in the form of an opinions or inferences is limited to one that is:~~those opinions or inferences which are~~

- (a) rationally based on the witness's perception;~~of the witness~~ and
- (b) helpful to a clearly understanding of the witness's testimony or tothe determination of a fact in issue.

Rule 702. Testimony by Experts Witnesses

~~If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue,~~ A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify ~~thereto~~in the form of an opinion or otherwise if:

- (~~a~~) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (~~b~~1) the testimony is based on sufficient facts or data;~~;~~
- (~~c~~2) the testimony is the product of reliable principles and methods;~~;~~ and

- (d3) the expert witness has reliably applied the principles and methods reliably to the facts of the case.

Rule 703. Bases of an Opinion Testimony by Experts

An expert may base an opinion on the facts or data in the particular case that the expert has been made aware of or personally observed upon which an expert bases an opinion or inference shall be in evidence. The facts or data must be in evidence – or, in the court’s This rule does not restrict the discretion, of the court to receive expert opinion testimony subject to the condition that the factual bases of the opinion be admitted in evidence later hereafter.

Rule 704. Opinion on an Ultimate Issue

Testimony in the form of An opinion or inference otherwise admissible is not objectionable just because it embraces an ultimate issue to be decided by the trier of fact.

Rule 705. Disclosing the Facts or Data Underlying an Expert’s Opinion

Unless the court orders otherwise, an The expert may state an testify in terms of opinion – or inference and give the reasons for it – therefor without first testifying to prior disclosure of the underlying facts or data, unless the court requires otherwise. But t The expert may in any event be required to disclose those the underlying facts or data on cross-examination.

Rule 706. Court-Appointed Experts Witnesses

- (a) Appointment Process. On a party’s The court may on its own motion or on its own, the court may motion of any party enter an order the parties to show cause why expert witnesses should not be appointed; and may ask request the parties to submit nominations. The court may appoint any expert that witnesses agreed upon by the parties agree on and any of its own choosing, and may appoint expert witnesses of its own selection. But An expert witness shall not be appointed by the court may only appoint someone whounless the witness consents to act. A witness so appointed shall be informed of the witness’ duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of the witness’ findings, if any; the witness’ deposition may be taken by any party; and the witness may be called to testify by the court or any party. The witness shall be subject to cross-examination by each party, including a party calling the witness.
- (b) Expert’s Role. The court must inform the expert of the expert’s duties. The court may do so in writing and have a copy filed with the clerk or may do so orally at a conference in which the parties have an opportunity to participate. The expert:

- (1) must advise the parties of any findings the expert makes;
 - (2) may be deposed by any party;
 - (3) may be called to testify by the court or any party; and
 - (4) may be cross-examined by any party, including the party that called the expert.
- (c**6**) Compensation. ~~The expert witnesses so appointed are~~ The expert witnesses so appointed are entitled to a reasonable compensation, as set ~~by in whatever sum the court may allow.~~ by in whatever sum the court may allow. The compensation is payable as follows:
- (1) ~~in a criminal case or in a civil case thus fixed is payable from funds which may be provided by law in criminal cases and civil actions and proceedings involving just compensation under the Fifth Amendment, from any funds that are provided by law; and-~~
 - (2) ~~in any other civil case, actions and proceedings by the parties in the proportion and at the time that the court directs – and the compensation is then charged shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.~~
- (d**e**) ~~Disclosure of Appointment to the Jury. In the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court appointed the expert witness.~~
- (e**d**) ~~Parties' Choice of Their Own Experts of Own Selection. Nothing in this rule does not limits the parties in calling its own experts witnesses of their own selection.~~

Rule 707. Use of Learned Treatises for Impeachment

To the extent called to an expert witness's ~~the attention of an expert witness upon~~ cross-examination, a statements is admissible for impeachment purposes only if:

- the statement is contained in a published treatises, periodicals, or pamphlets;
- the publication is on a subject of history, medicine, or other science or art; and
- the publication is established as a reliable authority by the testimony or admission of the witness, or by other expert testimony, or by judicial notice are admissible for impeachment purposes only.

If admitted, the statements may be read into evidence but ~~must~~ may not be received as exhibits.

Rule 801. ~~Hearsay;~~ Definitions That Apply to Rules 801–807; Exclusions from Hearsay;

The following definitions apply under Rules 801–807~~this article~~:

- (a) Statement. A ~~“Statement”~~ means ~~(1) a person’s oral assertion, or written assertion, or (2) nonverbal conduct if the of a person, if it is intended by the person it as an assertion.~~
 - (1) the declarant does not make while testifying at the current trial or hearing; and
 - (2) a party offered in evidence to prove the truth of the matter asserted in the statement.
- (b) Declarant. A ~~“Declarant”~~ means thea person who made~~makes~~ thea statement.
- (c) Hearsay. ~~“Hearsay”~~ means a statement that; ~~other than the one made by~~
 - (1) the declarant does not make while testifying at the current trial or hearing; and
 - (2) a party offered in evidence to prove the truth of the matter asserted in the statement.
- (d) Statements ~~That Which~~ Are Not Hearsay. A statement that meets the following conditions is not hearsay: ~~if~~
 - (1) A Declarant-Witness’s Prior Statement of witness. The declarant testifies ~~at the trial or hearing and is subject to cross-examination about a prior~~ concerning the statement, and the statement; ~~is~~
 - (A) is inconsistent with the declarant’s testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition; ~~or~~
 - (B) is consistent with the declarant’s testimony and is offered to rebut an express or implied charge that against the declarant of recently fabricated or acted from a recent improper influence or motive, in so testifying; or
 - (C) one of identification of a person as someone the declarant made after perceiving earlier the person; ~~or~~
 - (2) An Opposing Party’s Statement Admission by party opponent. The statement is offered against an opposing party and; ~~is~~

- (A) ~~was made by the party's own statement~~, in either an individual or a representative capacity, except a statements made in connection with:
- (i) a guilty plea to a misdemeanor motor-vehicle violation; or
 - (ii) an admission of responsibility for a civil infraction under alaws pertaining to motor-vehicles law; or
- (B) ~~is onea statement of which the party has manifested that itan adopted~~ or believedf to be truein its truth, or
- (C) ~~was madea statement~~ by a person whomauthorized by the party authorized to make a statement oneconcerning the subject; or
- (D) ~~was madea statement~~ by the party's agent or employee onservant concerning a matter within the scope of thatthe agency or employment, made during the existence of the relationship and while it existed; or
- (E) ~~was made by the party'sa statement by a~~ coconspirator of a party during ~~the course and~~ in furtherance of the conspiracy, if there ison independent proof of the conspiracy.

Rule 802. The Rule Against Hearsay Rule.

Hearsay is not admissible unlessexcept as provided by these rules provide otherwise.

Rule 803. Hearsay Exceptions to the Rule Against Hearsay; Availability of Declarant Immaterial.

The following are not excluded by the rule against hearsay rule, regardless of whether even though the declarant is available as a witness:

- (1) Present Sense Impression. A statement describing or explaining an event or condition made while or immediately after the declarant was perceiveding itthe event or condition, or immediately thereafter.
- (2) Excited Utterance. A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused by the event or condition.

- (3) ~~Then—Existing Mental, Emotional, or Physical Condition.~~ A statement of the declarant’s ~~then—existing~~ state of mind, or emotional, ~~sensory~~ ation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, ~~or~~ and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity~~execution, revocation, identification~~, or terms of declarant’s will.
- (4) ~~Statements Made for Purposes of Medical Treatment or—Medical Diagnosis in Connection with Treatment.~~ A sStatements that:made for purposes of medical treatment or medical diagnosis in connection with treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably necessary to such diagnosis and treatment.
- (A) is made for – and is reasonably necessary to – medical treatment or diagnosis in connection treatment; and
- (B) describes medical history; past or present symptoms or sensations; their inception; or their general cause.
- (5) ~~Recorded Recollection.~~ A ~~memorandum or record that:concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness’ memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.~~
- (A) is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;
- (B) was made or adopted by the witness when the matter was fresh in the witness’s memory; and
- (C) accurately reflects the witness’s knowledge.
- If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.
- (6) ~~Records of a Regularly Conducted Activity.~~ A ~~memorandum, report, record, or data compilation, in any form, of an~~ acts, transactions, occurrences, events, conditions, opinions, or diagnoses if:, ~~made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly~~

~~conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with a rule promulgated by the supreme court or a statute permitting certification, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.~~

- (A) the record was made at or near the time by – or from information transmitted by – someone with knowledge;
 - (B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;
 - (C) making the record was a regular practice of that activity;
 - (D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with a rule prescribed by the Supreme Court or with a statute permitting certification; and
 - (E) the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.
- (7) ~~Absence of a~~Entry in Records of a Regularly Conducted Activity~~Kept in Accordance With the Provisions of Paragraph (6).~~ Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of described in paragraph (6) if; to prove the ~~nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.~~
- (A) the evidence is admitted to prove that the matter did not occur or exist;
 - (B) a record was regularly kept for a matter of that kind; and
 - (C) the opponent does not show that the possible source of the information or other circumstances indicate a lack of trustworthiness.
- (8) ~~Public Records and Reports.~~ A rRecords, reports, or statements, or data compilations, in any form, of a public offices if it sets out; or agencies, setting forth

- (A) the office's activities of the office or agency; or
- (B) a matters observed while under a legal pursuant to duty to report, but not including; imposed by law as to which matters there was a duty to report, excluding, however,
- (i) in a criminal cases, a matters observed by police officers and other law-enforcement personnel; and
- (ii) information to which subject to the limitations in of MCL 257.624 apply.
- (9) Public Records of Vital Statistics. A rRecords or data compilations, in any form, of a births, fetal deaths, deaths, or marriages, if the reported thereof was made to a public office in accordance with a legal duty pursuant to requirements of law.
- (10) Absence of a Public Record or Entry. Testimony – or a certification under To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose a the public record, or report, statement if the testimony or certification is admitted to prove that; or data compilation, or entry.
- (A) the record or statement does not exist; or
- (B) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind.
- (11) Records of Religious Organizations Concerning Personal or Family History. A sStatements of births, legitimacy, ancestry, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.
- (12) Certificates of Marriage, Baptism, and Similar CeremoniesCertificates. A sStatements of fact contained in a certificate; that the maker performed a marriage or other ceremony or administered a sacrament, made by a member of the clergy, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

- (A) made by a person who is authorized by a religious organization or by law to perform the act certified;
- (B) attesting that the person performed a marriage or similar ceremony or administered a sacrament; and
- (C) purporting to have been issued at the time of the act or within a reasonable time after it.
- (13) Family Records. A s~~Statements of fact about ~~concerning~~~~ personal or family history contained in a family record, such as a Bibles, genealogies, charts, engravings on rings, inscriptions on a family portraits, or engravings on an urns, or burial marker crypts, or tombstones, or the like.
- (14) Records of Documents That Affecting an Interest in Property. The record of a document that purportsing to establish or affect an interest in property if;
- (A) the record is admitted to prove as proof of the content of the original recorded document, along with and its signing execution and its delivery by each person who by whom it purports to have signed it; been executed,
- (B) if the record is a record of a public office; and
- (C) aan applicable statute authorizes the recording of documents of that kind in that office.
- (15) Statements in Documents That Affecting an Interest in Property. A statement contained in a document that purportsing to establish or affect an interest in property if the matter stated was relevant to the document's purpose of the document, _ unless later dealings with the property are since the document was made have been inconsistent with the truth of the statement or the purport of the document.
- (16) Statements in Ancient Documents. A s~~Statements in a document that is at least 20in~~ ~~existence~~ twenty years older more the and whose authenticity of which is established.
- (17) Market Reports; and Similar Commercial Publications. Market quotations, ~~tabulations,~~ lists, directories, or other ~~published~~ compilations; that are generally used and relied upon by the public or by persons in particular occupations.
- (18) Deposition Testimony of an Expert. A~~Testimony given as a witness's testimony given in a lawful deposition during taken in compliance with law in the course of the~~

same proceeding if the court finds that the deponent is an expert witness and if the deponent is not a party to the proceeding.

- (19) Reputation Concerning Personal or Family History. ~~A r~~Reputation among ~~members~~ of a person's family by blood, adoption, or marriage; ~~_~~ or among a person's associates; or in the community; ~~_~~ concerning ~~the~~ a person's birth, adoption, legitimacy, ancestry, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ~~ancestry,~~ or ~~other~~ similar facts of personal or family history.
- (20) Reputation Concerning Boundaries or General History. ~~A r~~Reputation in a community; ~~_~~ arising before the controversy; ~~_~~ ~~concerning~~as to boundaries of ~~or~~ ~~eustoms~~ affecting lands in the community or customs that affect the land, or concerning and reputation as to events of general historicaly events important to ~~that~~the community, ~~or~~ state, or nation ~~in which located~~.
- (21) Reputation ~~Concerning~~as to Character. ~~A r~~Reputation ~~among~~of a person's ~~character~~ among associates or in the community concerning the person's character.
- (22) Judgment of a Previous Conviction. Evidence of a final judgment of conviction if;
- (A) the judgment was entered after a trial or guilty upon a plea of guilty, but not (or upon a plea of nolo contendere plea unless allowed if evidence of the plea is not excluded by MRE 410);
 - (B) the conviction was for adjudging a person guilty of a crime punishable by death or by imprisonment for more than in excess of a one year;
 - (C) the evidence is admitted to prove any fact essential to sustain the judgment; and
 - (D) but not including, when offered by the prosecutorstate in a criminal case prosedution for a purposes other than impeachment, the judgments was against the defendantpersons other than the accused.

The pendency of an appeal may be shown but does not affect admissibility.

- (23) Judgments ~~Involving~~as to Personal, Family, or General History, or a Boundaryies. ~~A j~~Judgments that is admitted to prove aas proof of matters of personal, family, or general history, or boundaries, if the matter:
- (A) was essential to the judgment; and,
 - (B) could be proved if the same would be provable by evidence of the reputation.

- (24) ~~Other Exceptions.—A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that~~
- ~~(A) the statement is offered as evidence of a material fact,~~
 - ~~(B) the statement is more probative on the point for which it is offered than any other evidence that the proponent can procure through reasonable efforts, and~~
 - ~~(C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of the statement makes known to the adverse party, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent’s intention to offer the statement and the particulars of it, including the name and address of the declarant.~~

Rule 803A. Hearsay Exception; Child’s Statement About a Sexual Act.

- (1) Scope. This rule applies in criminal and delinquency proceedings only.
- (2) Conditions. A statement describing an incident that included a sexual act performed with or on the declarant by the defendant or an accomplice is admissible to the extent that it corroborates testimony given by the declarant during the same proceeding if, provided:
 - (A) the declarant was under the age of ten when the statement was made;
 - (B) the statement is shown to have been spontaneous and without indication of manufacture;
 - (C) either the declarant made the statement immediately after the incident or any delay is excusable as having been caused by fear or other equally effective circumstance; ~~and~~
 - (D) the statement is introduced through the testimony of someone other than the declarant; and;
 - (E) the proponent of the statement makes known to the adverse party the intent to offer it and its particulars sufficiently before the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it.

If the declarant made more than one corroborative statement about the incident, only the first is admissible under this rule.

~~A statement may not be admitted under this rule unless the proponent of the statement makes known to the adverse party the intent to offer the statement, and the particulars of the statement, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet the statement.~~

~~This rule applies in criminal and delinquency proceedings only.~~

Rule 804. Exceptions to the Rule Against Hearsay – When the Declarant is Unavailable as a Witness.

- (a) Criteria for Being Unavailable~~Definition of Unavailability.~~ A declarant is considered to be unavailable as a witness if “Unavailability as a witness” includes situations in which the declarant:–
- (1) is exempted by ruling of the court on the ground of privilege from testifying about~~concerning~~ the subject matter of the declarant’s statement because the court rules that a privilege applies; or
 - (2) refuses~~persists in refusing~~ to testify about~~concerning~~ the subject matter of the declarant’s statement despite an court order of the court to do so; ~~or~~
 - (3) testifies to not remembering~~has a lack of memory~~ of the subject matter of the declarant’s statement; ~~or~~
 - (4) cannot~~is unable to~~ be present or ~~to~~ testify at the trial or hearing because of death or a then–existing infirmity, physical illness, or mental illness~~or infirmity~~; or
 - (5) is absent from the trial or hearing and
 - (A) the statement’s proponent of a statement has not been unable, by process or other reasonable means, to procure:
 - (i) the declarant’s attendance, ~~(or in the case of a hearsay exception under (b)(1) or (6); or~~
 - (ii) subdivision (b)(2), (3), or (4), the declarant’s attendance or testimony, ~~in the case of a hearsay exception under (b)(2), (3), or (4); and~~ by process or other reasonable means, and in a criminal case, due diligence is shown.

(B) in a criminal case, the proponent shows due diligence.

~~But this subdivision (a) does not apply. A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the statement's proponent procured or wrongfully caused the declarant's unavailability as of a statement for the purpose of preventing the witness in order to prevent the declarant from attending or testifying.~~

(b) The Hearsay Exceptions. The following are not excluded by the rule against hearsay ~~rule~~ if the declarant is unavailable as a witness:

(1) Former testimony. Testimony that:

(A) was given as a witness at a trial or hearing whether given during another hearing of the same or a different proceeding, if the current party against whom the testimony is now offered, or, in a civil action or proceeding, or a different one; and predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(B) is now offered against a party who had – or, in a civil case, whose predecessor in interest had – an opportunity and similar motive to develop it by direct, or cross, or redirect examination.

(2) Deposition Testimony. A witness's testimony given in a lawful deposition during the same or another proceeding, if the party against whom the testimony is now offered had – or in a civil case, a predecessor in interest had – an opportunity and similar motive to develop the testimony by direct, or cross-, or redirect examination. For this paragraph (2) only, “unavailability of a witness” also includes situations in which:

(A) the witness is more than 100 miles from the place of trial or hearing, or is out of the United States, unless it appears that the witness's absence was procured by the party offering the deposition; or

(B) on motion and notice, exceptional circumstances make it desirable – in the interests of justice and with due regard to the importance of presenting witnesses' testimony orally in open court – to allow the deposition to be used.

- (32) Statement Under the Belief of Imminent impending Death. In a prosecution for homicide or in a civil ~~caseaction or proceeding~~, a statement ~~that themade by a declarant, while believing that the declarant's death to bewas imminent, made about itseoneering the cause or circumstances of what the declarant believed to be impending death.~~
- (43) Statement Against Interest. A statement ~~that:which~~
- (A) ~~a reasonable person inwas at the time of its making so far contrary to the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant'specuniary or proprietary or pecuniary interest, or had so great a tendencyfar tended to subject the declarant to civil or criminal liability, or to render invalidate the declarant'sa claim against someone else orby the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to civil or criminal liability; and~~
- (B) ~~is offered to exculpate the accused, but only if supported byis not admissible unless corroborating circumstances that clearly indicate its the trustworthiness of the statement.~~
- (54) Statement of Personal or Family History. A statement ~~about:oneering~~
- (A) ~~the declarant's own birth, adoption, marriage, divorce, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption, or marriage, ancestry, or other similar facts of personal or family history, even though the declarant had no waymeans of acquiring personal knowledge about that factof the matter stated; or~~
- (B) ~~another persona statement concerning any of these factsthe foregoing matters, as well asand death also, of another person, if the declarant was related to the personother by blood, adoption, or marriage or was so intimately associated with the person'sother's family that the declarant'sas to be likely to have accurate information is likely to be accurateoneering the matter declared.~~
- (5) Deposition Testimony. ~~Testimony given as a witness in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination. For~~

purposes of this subsection only, “unavailability of a witness” also includes situations in which:

- (A) ~~The witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or~~
 - (B) ~~On motion and notice, such exceptional circumstances exist as to make it desirable, in the interests of justice, and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.~~
- (6) Statement Offered Against a Party That Wrongfully Caused or Encouraged theby Declarant’s Unavailabilitymade unavailable by opponent. A statement offered against a party that wrongfully caused – or encouragedhas engaged in the declarant’sor encouraged wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness, and did so intending that result.
- (7) Other Exceptions.—A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that
- (A) ~~the statement is offered as evidence of a material fact,~~
 - (B) ~~the statement is more probative on the point for which it is offered than any other evidence that the proponent can procure through reasonable efforts, and~~
 - (C) ~~the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of the statement makes known to the adverse party, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent’s intention to offer the statement and the particulars of it, including the name and address of the declarant.~~

Rule 805. Hearsay Within Hearsay:

Hearsay ~~included~~ within hearsay is not excluded ~~by~~ under the hearsay rule against hearsay if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules.

Rule 806. Attacking and Supporting the Credibility of Declarant.

When a hearsay statement, ~~—~~ or a statement ~~described~~ defined in Rule 801(d)(2)(C), (D), or (E), ~~—~~ has been admitted in evidence, the declarant's credibility ~~of the declarant~~ may be attacked, and ~~then if attacked may be~~ supported, by any evidence ~~that~~ which would be admissible for those purposes if declarant had testified as a witness. The court may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether by the declarant had at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to explain or deny it or explain. If the party against whom ~~thea~~ hearsay statement ~~washas been~~ admitted calls the declarant as a witness, the party ~~mayis~~ entitled to examine the declarant on the statement as if ~~on~~ under cross-examination.

Rule 807. Residual Exception

- (a) In General. Under the following conditions, a hearsay statement is not excluded by the rule against hearsay even if the statement is not admissible under a hearsay exception in Rule 803 or 804:
- (1) the statement has equivalent circumstantial guarantees of trustworthiness;
 - (2) it is offered as evidence of a material fact;
 - (3) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts; and
 - (4) admitting it will serve the purposes of these rules and the interests of justice.
- (b) Notice. The statement is admissible only if the proponent gives an adverse party reasonable notice of the intent to offer the statement – including its substance and the declarant's name and address – so that the party has a fair opportunity to meet it.

Rule 901. Authenticating or Identifying Evidence ~~Requirement of Authentication or Identification.~~

- (a) In General Provision. To satisfy t ~~The~~ requirement of authenticating ~~ion~~ or identifying ~~ication~~ an item ~~of~~ as a condition precedent to admissibility is satisfied by

evidence, the proponent must produce evidence sufficient to support a finding that the item/matter in question is what its proponent claims it is.

- (b) Examples/illustrations. ~~By way of illustration only, and not by way of limitation,~~
The following are examples only – not a complete list – of evidence that
~~satisfies authentication or identification conforming with the requirements of this~~
~~rule:~~
- (1) Testimony of a Witness with Knowledge. Testimony that an item/matter is what it is claimed to be.
 - (2) Nonexpert Opinion About Handwriting. ~~A~~ Nonexpert's opinion that as to the genuineness of handwriting is genuine, based upon a familiarity with it that was not acquired for purposes of the current litigation.
 - (3) Comparison by an Expert Witness or the Trier of Fact ~~expert witness~~. A comparison with an authenticated by the trier of fact or by expert witnesses with specimens by an expert witness or the trier of fact which have been authenticated.
 - (4) Distinctive Characteristics and the Like. The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together in conjunction with all the circumstances.
 - (5) Opinion About a Voice Identification. An opinion identifying a person's voice, – whether heard firsthand or through mechanical or electronic transmission or recording, – by opinion based upon hearing the voice at any time under circumstances that connecting it with the alleged speaker.
 - (6) Evidence About a Telephone Conversation. For a telephone conversation, by evidence that a call was made to the number assigned at the time to: by the telephone company to a particular person or business, if
 - (A) ~~in the case of a particular person, if circumstances, including self-identification, show that the person was answering to be the one called;~~ or
 - (B) ~~in the case of a particular business, if the call was made to a place of business and the called conversation related to business reasonably transacted over the telephone.~~
 - (7) Evidence About Public Records or Reports. Evidence that:

- (A) ~~a document was writing authorized by law to be recorded or filed and in fact recorded or filed in a public office as authorized by law;~~ or
- (B) ~~a purported public record, report, or statement, or data compilation, in any form, is from the public office where items of this kind nature are kept.~~
- (8) Evidence About Ancient Documents or Data Compilation. ~~For Evidence that a document or data compilation, evidence that it: in any form,~~
- (A) ~~is in asuch condition thata to creates no suspicion about concerning its authenticity;~~
- (B) ~~was in a place where it, if authentic, it would likely be; and~~
- (C) ~~is at least has been in existence 20 years old when or more at the time it is offered.~~
- (9) Evidence About a Process or System. Evidence describing a process or system ~~used to produce a result and showing that it the process or system produces an accurate result.~~
- (10) Methods Provided by a Statute or Rule. Any method of authentication or identification ~~allowed provided by the Supreme Court of Michigan or by a Michigan statute or a rule prescribed by the Supreme Court.~~

Rule 902. Evidence That Is Self-Authenticating ~~on.~~

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted as a condition precedent to admissibility is not required with respect to the following:

- (1) Domestic Public Documents That Are Under Sealed and Signed. A document that bears ~~ing;~~
- (A) ~~a seal purporting to be that of the United States; or of any state, district, commonwealth, territory, or insular possession of the United States; thereof, or the former Panama Canal Zone; or the Trust Territory of the Pacific Islands; or of a political subdivision of any of these entities; or a department, officer, or agency thereof, or officer of any entity named above; and~~
- (B) ~~a signature purporting to be an execution or attestation or execution.~~

- (2) Domestic Public Documents That Are Not Under Sealed but Are Signed and Certified. A document ~~that purporting to~~ bears no seal if:
- (A) it bears the signature in the official capacity of an officer or employee of any entity ~~named~~ included in Rule paragraph 902(1)(A); and ~~hereof;~~
 - (B) another having no seal, if a public officer who has ~~having~~ a seal and having official duties within that same entity ~~the district or political subdivision of the officer or employee~~ certifies under seal – or its equivalent – that the signer has the official capacity and that the signature is genuine.
- (3) Foreign Public Documents. A document ~~that purports~~ ing to be signed ~~executed or attested in an official capacity~~ by a person who is authorized by the laws of a foreign country's laws to do so ~~make the execution or attestation, and~~ The document must be accompanied by a final certification that certifies as to the genuineness of the signature and official position ~~(A) of the signer executing or attesting person, – or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the signature execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the signature execution or attestation.~~ The ~~A~~ final certification may be made by a secretary of a United States embassy or legation; ~~;~~ by a consul general, consul, vice consul, or consular agent of the United States; ~~;~~ or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a reasonable opportunity ~~has been given to all parties to~~ investigate the document's authenticity and accuracy ~~of official documents,~~ the court may, for good cause, either: ~~shown;~~
- (A) order that it ~~they~~ be treated as presumptively authentic without final certification; or
 - (B) allow it ~~permit them~~ to be evidenced by an attested summary with or without final certification.
- (4) Certified Copies of Public Records. A copy of an official record – or a copy ~~report or entry therein,~~ or of a document that was authorized by law to be recorded or filed and actually recorded or filed in a public office; ~~as authorized by law – including data compilations in any form,~~ if the copy is certified as correct by:
- (A) the custodian or another person authorized to make the certification; ~~;~~ or
 - (B) aby certificate that complies ~~ing~~ with Rule 902 paragraph ~~(1), (2), or (3) or a Michigan or federal statute~~ complying with any law of the United States or of this state.

- (5) Official Publications. ~~A b~~Books, pamphlets, or other publications purporting to be issued by a public authority.
- (6) Newspapers and Periodicals. Printed materials purporting to be a newspapers or periodicals.
- (7) Trade Inscriptions and the Like. ~~An i~~Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating origin, ownership, or control,~~or origin.~~
- (8) Acknowledged Documents. ~~A d~~Documents accompanied by a certificate of acknowledgment that is lawfully executed in the manner provided by law by a notary public or another officer who is authorized by law to take acknowledgments.
- (9) Commercial Paper and Related Documents. Commercial paper, a signatures on it~~thereon~~, and related documents, relating thereto to the extent allowed~~provided~~ by general commercial law.
- (10) Presumptions Under Created By Law. Any signature, document, or anything else that a Michigan or federal statute~~other matter declared~~ by any law of the United States or of this state to be presumptively or prima facie genuine or authentic.
- (11) Certified Domestic or Foreign Records of a Regularly Conducted Activity. The original or a copy~~duplicate~~ of a domestic or foreign record, ~~whether domestic or foreign, of regularly conducted business activity that meets the requirements of would be admissible under~~ Rule 803(6)(A)-(C), as shown by a certification of their accompanied by a written declaration under oath by its custodian or another qualified person certifying that complies with a Michigan statute or a rule prescribed by the Supreme Court. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record – and must make the record and certification available for inspection – so that the party has a fair opportunity to challenge them.
 - (A) ~~The record was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;~~
 - (B) ~~The record was kept in the course of the regularly conducted business activity; and~~
 - (C) ~~It was the regular practice of the business activity to make the record~~

~~A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.~~

Rule 903. ~~Subscribing Witness' Testimony Unnecessary.~~

~~The testimony of a subscribing witness's testimony is not necessary to authenticate a writing only if unless required by the laws of the jurisdiction that whose laws governs its the validity of the writing.~~

Rule 1001. ~~Contents of Writings, Recordings, and Photographs; Definitions That Apply to Rules 1001–1008.~~

~~In Rules 1001–1008 For purposes of this article the following definitions are applicable:~~

- (a1) ~~A Writings and Recordings. “w Writings” and “recordings” consists of letters, words, or numbers, or their equivalent, set down in any by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.~~
- (b) ~~A “recording” consists of letters, words, numbers, or their equivalent recorded in any manner.~~
- (c2) ~~A Photographs. “p Photographs” means a photographic image or its equivalent stored in any form include still photographs, x ray films, video tapes, and motion pictures.~~
- (d3) ~~Original. An “original” of a writing or recording means is the writing or recording itself or any counterpart intended to have the same effect by the person who executed ing or issued ing it. For electronically stored information, “original” means any printout – or other output readable by sight – if it accurately reflects the information. An “original” of a photograph includes the negative or any print from it therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an “original.”~~
- (e4) ~~Duplicate. A “duplicate” means is a counterpart produced by a mechanical, photographic, chemical, the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic, re-recording, or by chemical reproduction, or by other equivalent process or techniques, that which accurately reproduces the original.~~

Rule 1002. Requirement of the Original.

~~An original~~To prove the content of a writing, recording, or photograph, ~~the original writing, recording, or photograph~~ is required in order to prove its content unless, except as otherwise provided in these rules or by statute provides otherwise.

Rule 1003. Admissibility of Duplicates.

A duplicate is admissible to the same extent as ~~the~~an original unless (1) a genuine question is raised aboutas to the original's authenticity of ~~the original~~ or (2) ~~in the circumstances make it would be unfair to admit the duplicate in lieu of the original.~~

Rule 1004. Admissibility of Other Evidence of Contents.

~~An~~The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if:–

- (~~a~~1) ~~Originals Lost or Destroyed.~~ aAll the originals are lost or ~~have been~~ destroyed, and not byunless the proponent actinglost or destroyed them in bad faith; ~~or~~
- (~~b~~2) ~~Original Not Obtainable.~~ anNo original cannot be obtained by any available judicial process ~~or procedure~~; ~~or~~
- (~~c~~3) ~~Original in Possession of Opponent.~~ the party against whom theAt a time when an original would be offered hadwas under the control of the original;party against whom offered, that party was at that time put on notice, by ~~the~~ pleadings or otherwise, that the originalcontents would be a subject of proof at the trial or hearing; and fails tothat party does not produce itthe original at the trial or hearing; or
- (~~d~~4) ~~Collateral Matters.~~ tThe writing, recording, or photograph is not closely related to a controlling issue.

Rule 1005. Copies of Public Records to Prove Content.

The proponent may use a copy to prove the contents of an official record, – or of a document that wasauthorized to be recorded or filed and actually recorded or filed, in a public office as authorized by law – if these conditions are met: the record or document isincluding data compilations in any form, if otherwise admissible; and they may be proved by copy, is certified as correct in accordance with Rule 902(4) or is testified to be correct by a witness who has compared it with the original. If no sucha copy which complies with

~~the foregoing cannot be obtained by the exercise of reasonable diligence, then the proponent may use other evidence to prove of the contents may be given.~~

Rule 1006. Summaries to Prove Content:

~~The proponent may use contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a summary, chart, summary, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. And tThe court may order the proponent to that they be produced them in court.~~

Rule 1007. Testimony or Statement~~Written Admission~~ of a Party to Prove Content:

~~The proponent may prove the cContents of a writings, recordings, or photographs may be proved by the testimony, or deposition, or written statement of the party against whom the evidence is offered. The proponent need not by that party's written admission, without accounting for the nonproduction of the original.~~

Rule 1008. Functions of the Court and Jury:

~~Ordinarily, the court determines whetherWhen the proponent hasadmissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfilledment theof a condition of factual, the question whether the conditions for admitting other evidence of the content of a writing, recording, or photograph underhas been fulfilled is ordinarily for the court to determine in accordance with the provisions of Rule 1004 or 1005. But in a jury trial, the jury determines – in accordance with Rule 104(b) – any issue about whether:However, when an issue is raised~~

- (a) ~~anwhether the~~ asserted writing, recording, or photograph ever existed; ~~or~~
- (b) ~~whether another onewriting, recording, or photograph produced at the trial or hearing is the original;~~ or
- (c) ~~whether other evidence of contents accuratelycorrectly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact.~~

Rule 1101. Applicability of the Rules:

- (a) Rules Applicable. Except as otherwise provided in ~~subdivision (b) or in a rule prescribed by the Supreme Court~~, these rules apply to all Michigan court actions and proceedings in the courts of this state.
- (b) Rules Inapplicable. The rules ~~– except for~~ – except for other than those onwith respect to privileges ~~– do not apply to~~ – do not apply to in the following situations and proceedings:
- (1) Preliminary Questions of Fact. The court's determination ~~of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104(a), on a preliminary question of fact governing admissibility~~.
 - (2) Grand Jury. Proceedings before grand juries.
 - (3) Miscellaneous Criminal Proceedings. Proceedings for extradition or rendition; sentencing; ~~or~~ granting or revoking probation; ~~issuing~~ an ~~of~~ warrants for arrest, criminal summonses, arrest warrants, and search warrants; and proceedings ~~for~~ with respect to release on bail or otherwise.
 - (4) Contempt Proceedings. Contempt proceedings in which the court may act summarily.
 - (5) Small Claims. Proceedings in the sSmall claims division of the district court.
 - (6) In Camera Custody Hearings. In camera proceedings in child-custody matters to determine a child's custodial preference.
 - (7) Proceedings Involving Juveniles. Proceedings in the family division of the circuit court ~~when~~ ever MCR subchapter 3.900 states that the Michigan Rules of Evidence do not apply.
 - (8) Preliminary Examinations – Property Matters. At a preliminary examinations in a criminal cases, during which hearsay is admissible to prove, ~~with regard to property, the ownership, authority to use, value, or possession of~~ and entry – or right to use or enter – property.
 - (9) Domestic Relations Matters. The court's consideration of a report or recommendation submitted by the friend of the court ~~under~~ pursuant to MCL 552.505(1)(g) or (h).
 - (10) Mental-Health Hearings – Opinion Testimony. In hearings under Chapters 4, 4A, 5, and 6 of the Mental Health Code, MCL 330.1400 *et seq.*, during

which the court may consider hearsay data that are part of the basis for the opinion presented by a testifying mental health expert.

Rule 1102. Title-

These rules are named the Michigan Rules of Evidence and may be cited as MRE.

Staff Comment (ADM File No. 2021-10): The proposed amendments of the Michigan Rules of Evidence (MRE) reflect the work of the Michigan Rules of Evidence Committee established by Administrative Order No. 2021-8. The Committee was tasked with restyling the MREs in an effort to remain as consistent as possible with the 2011 restyling of the Federal Rules of Evidence. Major reorganization of the rules appears in MRE 803 and MRE 804 where the residual exceptions found in both rules are moved into a new MRE 807, and in MRE 804 where the exception regarding deposition testimony is moved up from subrule (b)(5) to proposed subrule (b)(2).

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 July 1, 2023 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 submitting a comment, please refer to ADM File No. 2021-10. 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.

March 22, 2023

Clerk

Public Policy Position
ADM File No. 2021-10: Proposed Amendment of the
Michigan Rules of Evidence

Support

Explanation

The Committee voted to support the proposed amendments of the Michigan Rules of Evidence with a recommendation that the Court add language stating explicitly that the amendments are stylistic, not substantive, changes.

The Committee further recommends that the Court reestablish a Standing Committee on Rules of Evidence.

Position Vote:

Voted For position: 26

Voted against position: 1

Abstained from vote: 0

Did not vote (absence): 6

Contact Person:

Lori J. Frank lori@markofflaw.com

Public Policy Position
ADM File No. 2021-10: Proposed Amendment in the Michigan Rules of Evidence

Support

Explanation:

The Committee voted to support the proposed amendments to the Michigan Rules of Evidence. The Committee agreed that it was desirable for the Michigan Rules of Evidence to remain as consistent as possible with Federal Rules of Evidence, which were amended in 2011.

Position Vote:

Voted For position: 17
Voted against position: 2
Abstained from vote: 0
Did not vote (absent): 7

Contact Persons:

Nimish R. Ganatra ganatran@washtenaw.org
Sofia V. Nelson snelson@sado.org

Public Policy Position
ADM File No. 2021-10: Proposed Amendment of the
Michigan Rules of Evidence

Support

Explanation

Children's Law Section supports ADM File No 2021-10 because we support the move to plain language and amending the Michigan Rules of Evidence to again use language which is substantially similar to that of the Federal Rules of Evidence.

Position Vote:

Voted for position: 10

Voted against position: 0

Abstained from vote: 0

Did not vote: 9

Contact Person: Joshua Pease

Email: jpease@sado.org

Public Policy Position
ADM File No. 2021-10: Proposed Amendment of the Michigan Rules of Evidence

Support

Position Vote:

Voted for position: 12

Voted against position: 2

Abstained from vote: 0

Did not vote: 0

Contact Person: Takura N. Nyamfukudza

Email: takura@cndefenders.com

Order

Michigan Supreme Court
Lansing, Michigan

March 29, 2023

Elizabeth T. Clement,
Chief Justice

ADM File No. 2023-06

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

Amendments of Rules 6.001
and 8.119, and Addition of
Rule 6.451 of the Michigan
Court Rules

On order of the Court, the following amendments of Rules 6.001 and 8.119 and addition of Rule 6.451 of the Michigan Court Rules are adopted, effective April 11, 2023. Concurrently, individuals are invited to comment on the form or the merits of the amendments and addition during the usual comment period. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for each public hearing are posted on the [Public Administrative Hearings](#) page.

Immediate adoption of this proposal does not necessarily mean that the Court will retain the amendments in their present form following the public comment period.

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

Rule 6.001 Scope; Applicability of Civil Rules; Superseded Rules and Statutes

(A) [Unchanged.]

(B) Misdemeanor Cases. MCR 6.001-6.004, 6.005(B) and (C), 6.006(A) and (C)-(E), 6.101-6.103, 6.104(A), 6.105-6.106, 6.125, 6.202, 6.425(D)(3), 6.427, 6.430, 6.435, 6.440, 6.441, 6.445, 6.450, 6.451, and the rules in subchapter 6.600 govern matters of procedure in criminal cases cognizable in the district courts.

(C)-(E) [Unchanged.]

Rule 8.119 Court Records and Reports; Duties of Clerks

(A)-(G) [Unchanged.]

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

(1)-(8) [Unchanged.]

- (9) Set Aside Convictions. Information on set aside convictions is nonpublic and access is limited to a court of competent jurisdiction, an agency of the judicial branch of state government, the department of corrections, a law enforcement agency, a prosecuting attorney, the attorney general, and the governor upon request and only for the purposes identified in MCL 780.623. Access may also be provided to the individual whose conviction was set aside, that individual's attorney, and the victim(s) as defined in MCL 780.623. The court must redact all information related to the set aside conviction or convictions before making the case record available to the public in any format.

(I)-(L) [Unchanged.]

[NEW] Rule 6.451 Reinstatement of Convictions Set Aside Without Application

A conviction that was automatically set aside by operation of law under MCL 780.621g must be reinstated by the court as provided in MCL 780.621h. The court must:

- (A) provide notice and an opportunity to be heard before reinstating a conviction for failure to make a good faith effort to pay restitution under MCL 780.621h(3),
- (B) order the reinstatement on a form approved by the State Court Administrative Office,
- (C) serve any order entered under this rule on the prosecuting authority and the individual whose conviction was automatically set aside.

An order for reinstatement of a conviction that was improperly or erroneously set aside as provided in MCL 780.621h(2) must advise the individual whose conviction is being reinstated that he or she may object to the reinstatement by requesting a hearing. The request must be filed with the court on a form approved by the State Court Administrative Office.

Staff Comment (ADM File No. 2023-06): The amendment of MCR 8.119 requires courts to restrict access to case records involving set aside convictions similar to how MCL 780.623 restricts access to records maintained by the Michigan State Police. The amendment further requires the court to redact information regarding any conviction that has been set aside before that record is made available. The addition of MCR 6.451 requires the court to provide notice and an opportunity to be heard before reinstating a conviction for failure to make a good faith effort to pay restitution under MCL 780.621h(3) and to order the reinstatement on an SCAO-approved form. The amendment of MCR 6.001 clarifies that MCR 6.451 applies to cases cognizable in the district courts.

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 July 1, 2023 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 submitting a comment, please refer to ADM File No. 2023-06. Your comments and the comments of others will be posted under the chapter affected by this proposal.

VIVIANO, J. (*concurring*).

I concur with the adoption of these revisions and giving them effect prior to the close of public comments and consideration at a public hearing. I write to express my concerns about certain aspects of the revisions that this Court must consider when this matter returns to us to decide whether to retain the amendments we have adopted today. First, we must consider what obligations the new expungement statutory amendments impose on courts. MCL 780.623 does not directly address court records at all. Rather, it pertains to records that the Department of State Police must retain.¹ MCL 780.623(5) makes it a crime for a person other than the defendant whose conviction was set aside or the victim to divulge, use, or publish information concerning a set-aside conviction. But

¹ As a matter of practice, courts have treated records relating to set-aside convictions as nonpublic. The State Court Administrative Office has published guidelines for courts addressing nonpublic and limited-access court records, indicating that the existence of records governed by MCL 780.621 and MCL 780.623 cannot be acknowledged. SCAO, *Nonpublic and Limited-Access Court Records* (Revised Jan 2023) <https://www.courts.michigan.gov/siteassets/court-administration/standardsguidelines/casefile/cf_chart.pdf> (accessed March 24, 2023) [<https://perma.cc/G62C-Z4B8>].

it is not clear to me that this provision applies to court clerks.² Second, if MCL 780.623(5) does pertain to court records and court staff, the constitutionality of the statute must be considered. Is the issue of nonpublic court records one of substantive law, such that it is within the province of the Legislature, or one of practice and procedure, such that it falls within our constitutional authority to determine such rules? See generally *McDougall v Schanz*, 461 Mich 15, 26-36 (1999). Third, we should consider what constitutional authority, if any, we have to broadly restrict a class of court records. See *In re Leopold*, 448 US App DC 77, 79 (2020) (“The public’s right of access to judicial records is a fundamental element of the rule of law.”). These are important and difficult questions that should have been fully addressed prior to any changes to the court rules taking effect.³ It is incumbent on this Court to ensure they are adequately addressed when this matter returns to us at the close of the public comment period and after public hearing.

² MCL 780.623(5) broadly prohibits any person, other than the defendant and victim from divulging, using, or publishing information concerning a set-aside conviction and makes it a misdemeanor to do so. I also question whether such a broad prohibition, which appears to criminalize any reference to an expunged conviction unless it is made by the defendant or the victim, runs afoul of the First Amendment. See Volokh, *The Volokh Conspiracy, Mass. Trial Court Rejects Right to Be Forgotten* <<https://reason.com/volokh/2021/04/13/mass-trial-court-rejects-right-to-be-forgotten/>> (posted April 13, 2021) (accessed March 24, 2023) [<https://perma.cc/GF5P-LAG4>].

³ I am once again dismayed by the timing of the proposed amendments. The legislation prompting them, 2020 PA 193, was signed into law in October 2020, over two years ago, but the proposed amendments were not provided to us until a few weeks ago. This is not the first time we have been asked to impose significant changes to how our courts operate with little advance notice to judges and court staff and no opportunity for public comment prior to at least some of the changes becoming effective. The delay in this matter is especially concerning given the estimate that 1,250,000 convictions will be automatically set aside on April 11, 2023. These changes will have a very significant and immediate effect on how our courts manage their files and provide public access. The public, judges, court staff, defense attorneys, prosecutors, and victim advocate groups need guidance but should have been given an opportunity to provide public comment prior to these changes taking effect.



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.

March 29, 2023

Clerk

Public Policy Position
ADM File No. 2023-06:
Amendments of MCR 6.001 and 8.119 and Addition of MCR 6.451

Support in Concept

Explanation:

The Committee voted to support ADM File No. 2023-06 in concept. The Committee identified several areas where further amendments would be beneficial: (1) Language regarding notice of reinstatement should be strengthened to ensure that the manner of notice is reasonably to provide actual notice to the individual; (2) the duty to submit an objection to reinstatement should be triggered only after receipt of actual notice; and (2) the notice of reinstatement should also be provided to the victim(s) in the matter, not only the individual whose conviction is being reinstated.

Position Vote:

Voted For position: 18

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 9

Contact Persons:

Katherine L. Marcuz kmarcuz@sado.org

Lore A. Rogers rogersl4@michigan.gov

Public Policy Position

**ADM File No. 2023-06: Amendments of MCR 6.001 and 8.119 and Addition of
MCR 6.451 with Concurrent Comment Period**

Support

Explanation:

The Committee voted unanimously (17) to support the proposed amendments to Rules 6.001 and 8.119, and the addition of Rule 6.451.

Position Vote:

Voted For position: 17

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 9

Contact Persons:

Nimish R. Ganatra ganatran@washtenaw.org

Sofia V. Nelson snelson@sado.org

Public Policy Position
**ADM File No. 2023-06: Amendments of MCR 6.001 and 8.119 and Addition of
MCR 6.451 with concurrent comment period**

Support

Position Vote:

Voted for position: 12

Voted against position: 2

Abstained from vote: 0

Did not vote: 0

Contact Person: Takura N. Nyamfukudza

Email: takura@cndefenders.com

Order

Michigan Supreme Court
Lansing, Michigan

March 29, 2023

Elizabeth T. Clement,
Chief Justice

ADM File No. 2023-06

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

Proposed Amendments of
Rules 6.110 and 8.119 of
the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rules 6.110 and 8.119 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 will also be considered at a public hearing. The notices and agendas for each 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 6.110 The Preliminary Examination

(A)-(F) [Unchanged.]

(G) Return of Examination. Immediately on concluding the examination, the court must certify and transmit to the court before which the defendant is bound to appear the prosecutor's authorization for a warrant application, the complaint, a copy of the register of actions, the examination return, ~~and any~~ recognizances received, and any motions, responses, or orders entered in the case.

(H)-(I) [Unchanged.]

Rule 8.119 Court Records and Reports; Duties of Clerks

(A)-(G) [Unchanged.]

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

(1)-(9) [Unchanged.]

(10) Circuit Court Bindover. All case records maintained by the district court become nonpublic immediately after the entry of an order binding the defendant over to the circuit court. The circuit court case record remains accessible as provided by this rule.

(I)-(L) [Unchanged.]

Staff Comment (ADM File No. 2023-06): The proposed amendment of MCR 8.119 would require all case records maintained by the district court to become nonpublic immediately after bindover to the circuit court. This proposal would also amend MCR 6.110(G) to expand the types of documents that must be transmitted to the circuit court to ensure appropriate public access in the circuit court. The proposal would consolidate public access in the circuit court case file and would also uniformly ensure that information regarding set aside criminal offenses in the circuit court cannot be separately accessed in the district court case file.

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 July 1, 2023 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 submitting a comment, please refer to ADM File No. 2023-06. 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.

March 29, 2023

Clerk

Public Policy Position
ADM File No. 2023-06: Proposed Amendments of MCR 6.110 and 8.119

Support Proposed Amendment of MCR 6.110
Oppose Proposed Amendment of MCR 8.119

Explanation:

The Committee voted unanimously (18) to support the proposed amendments of Rule 6.110. The Committee believes that it would be beneficial to require that motions, responses, and orders entered by the district court be included among the records transmitted to the circuit court after bindover.

The Committee voted unanimously (18) to oppose the proposed amendments of Rule 8.119 and to recommend that the Court consider a more narrowly tailored approach. The Committee noted that both prosecutors and defense attorneys must regularly access information in district court case records, even following bindover, for a variety of reasons. If the intent of the proposed amendment is to ensure that the public cannot access case records held by district courts of convictions that have been subsequently set aside, then the amendment should be written narrowly for that purpose, not in a manner that encompasses all district court case records.

Position Vote:

Voted For position: 18

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 9

Contact Persons:

Katherine L. Marcuz kmarcuz@sado.org

Lore A. Rogers rogersl4@michigan.gov

Public Policy Position
ADM File No. 2023-06: Proposed Amendments of MCR 6.110 and 8.119

Oppose

Explanation:

The Committee voted to oppose the proposed amendments of Rule 6.110 and 8.119. The Committee noted that both prosecutors and defense attorneys regularly rely on access to district court case records.

Position Vote:

Voted For position: 16
Voted against position: 0
Abstained from vote: 1
Did not vote (absent): 9

Contact Persons:

Nimish R. Ganatra ganatran@washtenaw.org
Sofia V. Nelson snelson@sado.org

Public Policy Position
ADM File No. 2023-06: Proposed Amendments of MCR 6.110 and 8.119

Oppose with Recommended Amendments

Explanation:

Oppose the portion of MCR 8.119 that makes district court records immediately non-public upon bind-over because the rule is not well considered.

Position Vote:

Voted for position: 11

Voted against position: 3

Abstained from vote: 0

Did not vote: 0

Contact Person: Takura N. Nyamfukudza

Email: takura@cndefenders.com

Name: Cheryl Neilsen

Date: 04/03/2023

ADM File Number: 2023-06

Comment:

My comment goes to Rule 8.119 (H) (10) Circuit Court Bind Over. As clerk to Circuit Court and the record keeper of those files being bound over from District Court I see no reason to make the whole District Court record nonpublic. Those items already made nonpublic prior to being bound over are clearly marked and we do not allow them to be public viewed nor do we currently scan in any of the district court documents other than the order binding over and notice for arraignment. This would require an additional step to the bind over process and or having to purchase different file types that can separate out those items.

Name: Matthew Sawicki

Date: 05/12/2023

ADM File Number: 2023-06

Comment:

As a district Court Administrator who works with the Circuit Court regularly, if a case is made non-public after bindover and the Circuit Court must contact the District Court about the issue, the clerk at the District level will be unable to provide any information about the bindover to the Circuit court Clerk. There is no way to determine the validity of a phone call from circuit, so all that the district court clerk can say to the caller or emailer is "No Public Record exists" for a bindover. As a result Circuit Court may not be able to correct errors as easily as they can currently. This proposed Court Rule just makes a clerk's work more difficult.



To: Members of the Public Policy Committee
Board of Commissioners

From: Nathan A. Triplett, Director of Governmental Relations

Date: May 31, 2023

Re: HB 4421 – Blurring Crime Victim Images

Background

House Bill 4421 would amend the William Van Regenmorter Crime Victim’s Rights Act, 1985 PA 87, to allow a crime victim’s “picture, photograph, drawing, or other visual representation” to be blurred in certain court proceedings made available to the public via streaming on the internet or other means. Similar information and visual representations of a crime victim are currently exempt from disclosure under the Freedom of Information Act, 1976 PA 442. As introduced, blurring is permitted (“may”), but not required (“shall/must”).

The legislation is part of a four-bill crime victim’s rights package, which was also introduced in the last legislative session. In addition to HB 4421, the package includes HB 4420, which would allow law enforcement to share a crime victim’s contact information with survivor programs; HB 4422, which would expand the definition of serious misdemeanor in the Crime Victim’s Rights Act, 1985 PA 87, to include additional misdemeanor offenses; and HB 4423, which would permit victim impact statements to be made remotely. A preliminary review of this legislative package determined that neither HB 4420 (formerly 2021 HB 5560) nor HB 4422 (formerly 2022 HB 5679) were *Keller*-permissible. The Board of Commissioners voted in April 2022 to support 2022 HB 5681, which was reintroduced this session as HB 4423. As such, the Board’s prior position was applied to the bill as introduced.

The precursor to HB 4421 was referred to committees and sections last session and considered by the Board. At that the time, the Board declined to take a position on the legislation, preferring to wait until the Michigan Supreme Court acted on a then-pending proposal to incorporate many of the pandemic administrative orders related to virtual proceedings into the court rules permanently. At that time, the Access to Justice Policy, Civil Procedure & Courts, and Criminal Jurisprudence & Practice Committees all determined that the legislation was *Keller*-permissible. The Access to Justice Policy Committee recommended that the Bar support the legislation with amendments. The Civil Procedure & Courts Committee took no position. The Criminal Jurisprudence & Practice Committee recommended that the Bar oppose the legislation. Specifically, the Committee noted that “until there is greater clarity about the scope and parameters of online proceedings in a post-pandemic environment, the Committee does not believe it is appropriate for the legislature to act on this legislation.” With the Court having acted on the aforementioned administrative proposals, the matter is back before the Board for its consideration.

On May 23, 2023, the House Criminal Justice Committee voted to report the full, four-bill package to the full House with a recommendation that the bills be passed. They are presently awaiting action.

***Keller* Considerations**

As Michigan continues to weigh what role virtual proceedings should have in our courts, the parameters within which courts may make their proceedings available on the internet will have a significant impact on court functioning. Additionally, streaming court proceedings, and whether a victim’s image is blurred in such proceedings, will likely impact the victim’s willingness to cooperate with or seek redress from the judicial system. As such, HB 4421 is reasonably related to both the functioning of the courts and availability of legal services and is therefore *Keller*-permissible.

***Keller* Quick Guide**

THE TWO PERMISSIBLE SUBJECT-AREAS UNDER <i>KELLER</i>:	
Regulation of Legal Profession	Improvement in Quality of Legal Services
As interpreted by AO 2004-1 <ul style="list-style-type: none">• Regulation and discipline of attorneys• Ethics• Lawyer competency• Integrity of the Legal Profession• Regulation of attorney trust accounts	<ul style="list-style-type: none">✓ Improvement in functioning of the courts✓ Availability of legal services to society

Staff Recommendation

Whether a crime victim’s image may be blurred when court proceedings are streamed on the internet or otherwise made available to the public is a question that is reasonably related to both the functioning of the courts and availability of legal services. HB 4421 is therefore *Keller*-permissible and may be considered on its merits.

HOUSE BILL NO. 4421

April 13, 2023, Introduced by Reps. Young, Conlin, Brixie, Farhat, Byrnes, Outman, Kunse, Bezotte, Filler, Tisdell, BeGole, Arbit, Wilson, Brenda Carter, VanWoerkom, Hope, Bierlein, Scott, Glanville, Dievendorf, McFall, Hoskins, Morgan, Schuette, Paiz, Mueller, Fitzgerald, Liberati, Weiss, Neeley, Miller, Tyrone Carter, Meerman, Beson, Coffia, Skaggs, Brabec and Aiyash and referred to the Committee on Criminal Justice.

A bill to amend 1985 PA 87, entitled
"William Van Regenmorter crime victim's rights act,"
by amending sections 8, 38, and 68 (MCL 780.758, 780.788, and
780.818), as amended by 2012 PA 457.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 8. (1) Based upon the victim's reasonable apprehension of
2 acts or threats of physical violence or intimidation by the
3 defendant or at defendant's direction against the victim or the
4 victim's immediate family, the prosecuting attorney may move that

1 the victim or any other witness not be compelled to testify at
2 pretrial proceedings or at trial for purposes of identifying the
3 victim as to the victim's address, place of employment, or other
4 personal identification without the victim's consent. A hearing on
5 the motion ~~shall~~**must** be in camera.

6 (2) The work address and address of the victim ~~shall~~**must** not
7 be in the court file or ordinary court documents unless contained
8 in a transcript of the trial or it is used to identify the place of
9 the crime. The work telephone number and telephone number of the
10 victim ~~shall~~**must** not be in the court file or ordinary court
11 documents except as contained in a transcript of the trial.

12 (3) Under section 24 of article I of the state constitution of
13 1963, guaranteeing to crime victims the right to be treated with
14 respect for their dignity and privacy, ~~all of the following~~
15 information and visual representations of a victim are ~~exempt from~~
16 ~~disclosure under the freedom of information act, 1976 PA 442, MCL~~
17 ~~15.231 to 15.246~~**subject to the following:**

18 (a) The home address, home telephone number, work address, and
19 work telephone number of the victim **are exempt from disclosure**
20 **under the freedom of information act, 1976 PA 442, MCL 15.231 to**
21 **15.246**, unless the address is used to identify the place of the
22 crime.

23 (b) A picture, photograph, drawing, or other visual
24 representation, including any film, videotape, or digitally stored
25 image of the victim, **are exempt from disclosure under the freedom**
26 **of information act, 1976 PA 442, MCL 15.231 to 15.246, and, if the**
27 **picture, photograph, drawing, or other visual representation is**
28 **from a court proceeding that is made available to the public**
29 **through streaming on the internet or other means, the picture,**

1 **photograph, drawing, or visual representation may be blurred.**

2 (c) The following information concerning a victim of child
3 abuse, criminal sexual conduct, assault with intent to commit
4 criminal sexual conduct, or a similar crime who was less than 18
5 years of age when the crime was committed **is exempt from disclosure**
6 **under the freedom of information act, 1976 PA 442, MCL 15.231 to**
7 **15.246:**

8 (i) The victim's name and address.

9 (ii) The name and address of an immediate family member or
10 relative of the victim, who has the same surname as the victim,
11 other than the name and address of the accused.

12 (iii) Any other information that would tend to reveal the
13 identity of the victim, including a reference to the victim's
14 familial or other relationship to the accused.

15 (4) Subsection (3) does not preclude the release of
16 information to a victim advocacy organization or agency for the
17 purpose of providing victim services.

18 Sec. 38. (1) Based upon the victim's reasonable apprehension
19 of acts or threats of physical violence or intimidation by the
20 juvenile or at the juvenile's direction against the victim or the
21 victim's immediate family, the prosecuting attorney may move or, in
22 the absence of a prosecuting attorney, the victim may request that
23 the victim or any other witness not be compelled to testify at any
24 court hearing for purposes of identifying the victim as to the
25 victim's address, place of employment, or other personal
26 identification without the victim's consent. A hearing on the
27 motion ~~shall~~**must** be in camera.

28 (2) Under section 24 of article I of the state constitution of
29 1963, guaranteeing to crime victims the right to be treated with

1 respect for their dignity and privacy, ~~all of the following~~
2 information and visual representations of a victim are ~~exempt from~~
3 ~~disclosure under the freedom of information act, 1976 PA 442, MCL~~
4 ~~15.231 to 15.246~~: **subject to the following:**

5 (a) The home address, home telephone number, work address, and
6 work telephone number of the victim **are exempt from disclosure**
7 **under the freedom of information act, 1976 PA 442, MCL 15.231 to**
8 **15.246.**

9 (b) A picture, photograph, drawing, or other visual
10 representation, including any film, videotape, or digitally stored
11 image of the victim, **are exempt from disclosure under the freedom**
12 **of information act, 1976 PA 442, MCL 15.231 to 15.246, and, if the**
13 **picture, photograph, drawing, or other visual representation is**
14 **from a court proceeding that is made available to the public**
15 **through streaming on the internet or other means, the picture,**
16 **photograph, drawing, or visual representation may be blurred.**

17 (c) The following information concerning a victim of child
18 abuse, criminal sexual conduct, assault with intent to commit
19 criminal sexual conduct, or a similar crime who was less than 18
20 years of age when the crime was committed **is exempt from disclosure**
21 **under the freedom of information act, 1976 PA 442, MCL 15.231 to**
22 **15.246:**

23 (i) The victim's name and address.

24 (ii) The name and address of an immediate family member or
25 relative of the victim, who has the same surname as the victim,
26 other than the name and address of the accused.

27 (iii) Any other information that would tend to reveal the
28 identity of the victim, including a reference to the victim's
29 familial or other relationship to the accused.

1 (3) Subsection (2) does not preclude the release of
2 information to a victim advocacy organization or agency for the
3 purpose of providing victim services.

4 Sec. 68. (1) Based upon the victim's reasonable apprehension
5 of acts or threats of physical violence or intimidation by the
6 defendant or at defendant's direction against the victim or the
7 victim's immediate family, the prosecuting attorney may move that
8 the victim or any other witness not be compelled to testify at
9 pretrial proceedings or at trial for purposes of identifying the
10 victim as to the victim's address, place of employment, or other
11 personal identification without the victim's consent. A hearing on
12 the motion ~~shall~~**must** be in camera.

13 (2) Under section 24 of article I of the state constitution of
14 1963, guaranteeing to crime victims the right to be treated with
15 respect for their dignity and privacy, ~~all of the following~~
16 information and visual representations of a victim are ~~exempt from~~
17 ~~disclosure under the freedom of information act, 1976 PA 442, MCL~~
18 ~~15.231 to 15.246:~~**subject to the following:**

19 (a) The home address, home telephone number, work address, and
20 work telephone number of the victim **are exempt from disclosure**
21 **under the freedom of information act, 1976 PA 442, MCL 15.231 to**
22 **15.246.**

23 (b) A picture, photograph, drawing, or other visual
24 representation, including any film, videotape, or digitally stored
25 image of the victim, **are exempt from disclosure under the freedom**
26 **of information act, 1976 PA 442, MCL 15.231 to 15.246, and, if the**
27 **picture, photograph, drawing, or other visual representation is**
28 **from a court proceeding that is made available to the public**
29 **through streaming on the internet or other means, the picture,**

1 **photograph, drawing, or visual representation may be blurred.**

2 (c) The following information concerning a victim of child
3 abuse, criminal sexual conduct, assault with intent to commit
4 criminal sexual conduct, or a similar crime who was less than 18
5 years of age when the crime was committed **is exempt from disclosure**
6 **under the freedom of information act, 1976 PA 442, MCL 15.231 to**
7 **15.246:**

8 (i) The victim's name and address.

9 (ii) The name and address of an immediate family member or
10 relative of the victim, who has the same surname as the victim,
11 other than the name and address of the accused.

12 (iii) Any other information that would tend to reveal the
13 identity of the victim, including a reference to the victim's
14 familial or other relationship to the accused.

15 (3) Subsection (2) does not preclude the release of
16 information to a victim advocacy organization or agency for the
17 purpose of providing victim services.

Legislative Analysis



ALLOW VISUAL REPRESENTATIONS OF CRIME VICTIMS TO BE BLURRED IN STREAMED COURT PROCEEDINGS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4421 as introduced
Sponsor: Rep. Stephanie A. Young
Committee: Criminal Justice
Revised 5-24-23

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4421 would amend the William Van Regenmorter Crime Victim's Rights Act to allow a crime victim's image to be blurred in certain court proceedings made available to the public. The act currently exempts certain information and visual representations of a crime victim from disclosure under the Freedom of Information Act (FOIA), including a picture, photograph, drawing, or other visual representation of the victim, such as a film, videotape, or digitally stored image. The bill would additionally allow such a picture, photograph, drawing, or other visual representation to be blurred if it is from a court proceeding that is made available to the public through streaming on the internet or other means.

MCL 780.758 et seq.

BACKGROUND:

House Bill 4421 is a reintroduction of House Bill 5680 of the 2021-22 legislative session. That bill was passed by the House of Representatives.

FISCAL IMPACT:

House Bill 4421 would have an indeterminate fiscal impact on local units of government. The State Court Administrative Office has indicated that local courts would have to purchase and deploy software that would enable courts to blur victims' faces while on Zoom. This would also require a designated staff person to actively manage the filter. The costs for the software are not known at this time.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

**Public Policy Position
HB 4421**

Support with Amendment

Explanation:

The Committee voted unanimously (16) to support HB 4421 with an amendment to provide that while the court *may* blur the image of a victim that is made available to the public through streaming on the internet or other means, it *must* do so if requested by the victim or prosecutor.

Blurring a picture, photograph, drawing, or other visual representation of a victim will help ensure that crime victims' right "to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process"¹ is maintained as more court proceedings are streamed online or otherwise made available to the general public on the internet. The Committee believes that courts have already invested in online platforms in an effort to increase access to the courts to litigants and the general public and that additional protection for crime victims is a necessary part of continued use of remote hearings, streaming, or online access to recorded court proceedings.

The Committee also believes that the Legislature should introduce legislation to specify that cellular telephone numbers are among the type of personal identifying information that are not disclosed under the Crime Victim's Rights Act, 1985 PA 87.

Position Vote:

Voted For position: 16

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 11

Keller-Permissibility Explanation:

The Committee agreed that this legislation is *Keller*-permissible because it is reasonably-related to the functioning of the courts, particularly remote court hearings and streaming of court proceedings.

Contact Persons:

Katherine L. Marcuz kmarcuz@sado.org

Lore A. Rogers rogersl4@michigan.gov

¹ Cost 1963, art 1, § 24(1).

**Public Policy Position
HB 4421**

Support with Recommended Amendments

Explanation:

The Criminal Law Section voted to support HB 4421 but recommend that blurring of faces is mandatory upon request.

Position Vote:

Voted for position: 12

Voted against position: 0

Abstained from vote: 4

Did not vote: 0

Keller Permissibility Explanation:

The improvement of the functioning of the courts.

With this change, victims are more likely to offer impact statements.

Contact Person: Takura N. Nyamfukudza

Email: takura@cndefenders.com

MICHIGAN DOMESTIC & SEXUAL VIOLENCE PREVENTION & TREATMENT BOARD

Board Members

- ◆ Hon. Elizabeth Pollard Hines (Ret.) -Chair
 - ◆ Hon. Melissa Pope ◆ Matt Wiese ◆ Dr. NiCole Buchanan
 - ◆ Rebecca Shiemke ◆ Kristen Howard ◆ Sgt. Kyla Williams
-

Chairperson Hope, House Criminal Justice Committee
Anderson House Office Building
N-1093
Lansing, MI 48933

May 15, 2023

Dear Chairperson Hope and Criminal Justice members,

As HBs 4420-4423 is before the House Criminal Justice Committee, I am writing to inform you that the Michigan Domestic and Sexual Violence Prevention and Treatment Board discussed these pieces of legislation at its February and March 2022 meetings and again at our May 2023 meeting. On behalf of the Board, I would like to explain the rationale of our positions on these bills.

As you know, the Michigan Domestic and Sexual Violence Prevention and Treatment Board (the Board) is a seven-member Governor-appointed Board with legislative responsibilities including funding sexual assault and domestic violence services for victims and providing policy recommendations on the issues of domestic violence, sexual assault, stalking, and intimate partner violence. *Please note that the Board's position and rationale are solely that of the Board and does not necessarily represent the view of any individual member of the Board, or the views of the Michigan Department of Health and Human Services or any other body.* Although the Board is administratively housed within MDHHS in the Division of Victim Services, it is an independent, legislatively-created body.

HB 4420 (Rep. Rogers): Board Supports

The Board thanks Representative Rogers for developing a substitute bill last term that addressed the Board's concerns. This bill could result in greater access to domestic violence and sexual assault services for victims of domestic and sexual violence. Police and prosecutors have regular contact with domestic and sexual violence victims and by sharing the contact information they possess with service providers (and informing victims that they did), victims may be better supported, and their needs better met.

HB 4421 (Rep. Young): Board Opposes

The Board voted to oppose HB 4421 based on the presumption of live streaming court proceedings. This is the same position that the Board took on HB 5680'22. The Board recognizes and supports the intent of attempting to protect a victim's identity during a virtual court hearing, however, the Board has previously engaged in reviewing and providing comments on several proposed court rules related to the expanded use of virtual court proceedings and their impact on victim privacy, confidentiality, and participation in the criminal justice system.

At its meeting on October 1, 2021, the Board voted to oppose the proposed Michigan Supreme Court changes to MCR 2.407 and MCR 6.006 (summary of opposition below), and suggested alternatives to those two rules which encourage, but do not require, remote proceedings and which provide necessary protections for victim privacy and meaningful access to courts. The Board and Division staff have been monitoring this issue and submitted comments to the two workgroups (the Task Force on Open Courts, Media and Privacy, and the Lessons Learned Committee) that were created to provide recommendations on whether and how to continue with remote court proceedings.

Summary of opposition to MCR 2.407 and MCR 6.006:

- Making virtual proceedings presumptively preferred will compromise privacy and safety for some victims.
- Use of videoconferencing with livestream access via YouTube for public viewing can be unjustifiably humiliating and oppressive to survivors and adversely impact their willingness to participate in court, possibly depriving them of needed access to courts for protection order enforcement, resolution of custody disputes, and criminal prosecution.
- Virtual proceedings can adversely impact how factfinders perceive victim/survivor testimony and thus adversely impact the outcome of cases.
- Current online platforms do not appear to have functions that can make online proceedings safe and private for victims/survivors.
- The amendments create an ambiguity about whether courts can or must still apply the factors recited in MCR 2.407(C) - The amendments address only a party's Constitutional rights, and not a crime victim's rights under Michigan's Constitution as victims are not legally "parties" in criminal prosecutions.

While HB 4421 is well-intended, its effect on victims may be harmful. The blurring of a victim's face on a live stream or archived recording available online for later viewing, does not provide the best option for victim privacy and safety. The best policy and practice to maximize victim safety and protect privacy would be to not live-stream at all nor make testimony of victims available for later public viewing outside the courtroom.

In addition, the Board noted several challenges to implementing this bill. The current language does not *require* the blurring of a victim, only allowing for that if the court so chooses, and it does not address or provide additional protection to a victim's identity, such as their voice or other identifying information they may provide during their remote testimony. Under this bill, if a victim asks or requests that their face be blurred, the court may choose to deny that request, as the bill allows the court to make that decision. It is also unclear whether the victim's face must

not be blurred for those parties engaged in the court proceeding, including the defendant, and the judge and the jury sitting as fact-finders. Would enactment of this bill would require two separate live-streams, one blurred for the public and one not blurred for the court, jury and defendant? Defendants have the right to confront their accuser in open court, whether it is in a courtroom or virtually. It is also important for a judge and/or jury to see a victim's face while the victim is testifying.

The Board also notes the challenges this bill would bring to the courts, including acquiring software and additional court staff. Courts would need a dedicated staff member to manage the software and blurring filter while the court proceeding is being streamed and/or recorded. Also, there is no uniform guidance surrounding the use of live-streaming technology, retention of the video of those proceedings, or access by the public to those proceedings, leaving each court to decide whether to live-stream and retain video court proceedings, and how to disseminate that information and for how long to make it available to the public through computer programs such as Zoom and YouTube. There are currently vastly different practices from court to court and even case to case within courts. These inconsistencies not only harm individual victims but could have long-lasting and damaging effects if recordings are easily accessible for public viewing and dissemination. The Board has concerns that the ease of viewing and obtaining court hearing videos from the comfort of one's home could potentially increase the likelihood of improper dissemination of the online court hearing, compared to the current process of requiring an interested observer to physically go to a courthouse to watch the proceeding, or request a copy of the videotaped proceeding (where available) or to order a transcript.

The Board acknowledges and appreciates the intent of HB 4421 in seeking to provide some measure of victim privacy and confidentiality in criminal proceedings. However, as currently written, for the reasons stated above, we are concerned that the bill would have a damaging impact on victim privacy, confidentiality, and participation in the criminal justice system.

HB 4422 (Rep. Filler): Board Neutral

At its May 12, 2023, meeting, the Board voted to be neutral on HB 4422. Last term, the Board supported HB 5679'22; however, the substitute bill that was adopted in committee in June 2022, and is the same language now in HB 4422, removed many of the offenses that the Board feels necessary and should be added to the expanded definition of "serious misdemeanor".

There are many circumstances in which these removed offenses are seen in cases of domestic violence, sexual assault, stalking, and intimate partner violence. By adding these crimes back into the bill, the victims of these crimes would be afforded the rights found in the Crime Victims' Rights Act, MCL 780.811b through MCL 780.834. Those rights include the opportunity to: be notified of court hearings; be provided an opportunity to participate as fully as they wish in the criminal justice system and their cases; attend court proceedings; and provide a victim impact statement and input. Moreover, by including the crimes as "serious misdemeanors" within the Crime Victims' Rights Act, victims would have the *right* to have restitution ordered and enforced. It is also important to note that recent criminal justice reform legislation, including probation and jail reform bills passed in 2020, all point to the serious misdemeanor definition to

exempt certain crimes from mandatory probationary sentences and provide for different treatment when deciding bail or sentencing. Put another way, by excluding crimes the Board respectfully suggests be included in the definition of “serious misdemeanor” for the safety and well-being of victims of domestic and sexual violence and stalking, no such “rights” would be required. Conviction of a crime with dynamics of intimate partner violence, for example, could result in imposition of fines and costs only, with no judicial protective conditions or oversight.

The Board urges adding the following offenses to HB 4422: MCL 750.135a, leaving a child in a vehicle resulting in physical harm; MCL 750.145n, vulnerable adult abuse in the fourth degree; MCL 750.145p, retaliation or discrimination against an employee; MCL 750.377a, malicious destruction of personal property; MCL 750.380, malicious destruction of a building; MCL 750.410, buying or selling patient records; MCL 750.411t, hazing resulting in physical injury; MCL 750.483a, interfering with a crime report; malicious use of telecommunications services, or destruction or interference of a telecommunication device; and MCL 780.762 (felony victim), 780.790 (juvenile victim), & 780.822 (misdemeanor victim), discharge/discipline of victim by employer because the victim is subpoenaed or requested to attend court to give testimony.

Also, in 2022, the Board requested that several additional offenses be added to then HB 5679’22 and would request that those be included in HB 4422 as well. Those offenses are MCL 750.390 (Malicious annoyance by writing) and MCL 750.5391 (tracking device on a motor vehicle without consent). Both offenses may be a form of stalking behavior.

HB 4423 (Rep. VanWoerkom): Board Support

HB 4423 would have a positive impact on domestic and sexual violence survivors by allowing them to participate in the sentencing hearing remotely by providing a victim impact statement remotely if they choose to do so. This would prevent victims from being forced to be in the same room as their offender, yet still allow for their impact statement to be given by themselves, instead of having to designate another adult to deliver it.

Thank you for your time and your interest in protections for crime victims. Please contact Angie Povilaitis, Staff Attorney for the Board at povilaitis1@michigan.gov, Jess Averill, Board Policy Analyst at Averillj@michigan.gov, or me if you have any questions or would like to further discuss these Board positions.

Sincerely,



Hon. Elizabeth PollardHines (Ret.)
Chair, Michigan Domestic and Sexual Violence
Prevention and Treatment Board



To: Members of the Public Policy Committee
Board of Commissioners

From: Nathan A. Triplett, Director of Governmental Relations

Date: May 31, 2023

Re: SB 248 – Courtroom Support Dog Eligibility

Background

Senate Bill 248 would amend Section 2163a of the Revised Judicature Act, 1961 PA 236, to increase the age at which a witness is no longer eligible to use a support dog during testimony in a court proceeding from 16 to 18 years old.

On May 23, the Senate Civil Rights, Judiciary & Public Safety Committee adopted a (S-1) substitute for the bill that would expand the definition of “courtroom support dog” in Sec. 2163a to include an animal-assisted therapy or facility dog as approved by either the chief judge or presiding judge of the court. This change is intended to permit the use of courtroom support dogs that are not certified by Assistance Dogs International. Under current law, dogs that lack this certification could only be used if they were already in use as courtroom support dogs prior to September 27, 2018.

The Michigan Coalition to End Domestic & Sexual Violence supports SB 248. The Criminal Defense Attorneys of Michigan opposes.

***Keller* Considerations**

Legislation setting forth if, and under what circumstances, a court must permit the use of a courtroom support dog by a witness is a matter of court procedure and operations that is a quintessential example of a bill that is necessarily related to the functioning of the courts. As such, Senate Bill 248 is *Keller*-permissible.

***Keller* Quick Guide**

THE TWO PERMISSIBLE SUBJECT-AREAS UNDER <i>KELLER</i>:	
Regulation of Legal Profession	Improvement in Quality of Legal Services
<p>As interpreted by AO 2004-1</p> <ul style="list-style-type: none"> • Regulation and discipline of attorneys • Ethics • Lawyer competency • Integrity of the Legal Profession • Regulation of attorney trust accounts 	<ul style="list-style-type: none"> ✓ Improvement in functioning of the courts • Availability of legal services to society

Staff Recommendation

Senate Bill 248 is necessarily related to the functioning of the courts and therefore *Keller*-permissible. The legislation may be considered on its merits.

SUBSTITUTE FOR
SENATE BILL NO. 248

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending section 2163a (MCL 600.2163a), as amended by 2018 PA
343.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2163a. (1) As used in this section:
2 (a) "Courtroom support dog" means a dog that has been trained
3 and evaluated as a support dog pursuant to the Assistance Dogs
4 International Standards for guide or service work and that is
5 repurposed and appropriate for providing emotional support to
6 children and adults within the court or legal system, **an animal-**
7 **assisted therapy or facility dog approved by the chief judge or**
8 **presiding judge of the court, or a dog that has performed the**



1 duties of a courtroom support dog ~~prior to~~ **before** September 27,
2 2018.

3 (b) "Custodian of the videorecorded statement" means the
4 department of health and human services, investigating law
5 enforcement agency, prosecuting attorney, or department of attorney
6 general or another person designated under the county protocols
7 established as required by section 8 of the child protection law,
8 1975 PA 238, MCL 722.628.

9 (c) "Developmental disability" means that term as defined in
10 section 100a of the mental health code, 1974 PA 258, MCL 330.1100a,
11 except that, for the purposes of implementing this section,
12 developmental disability includes only a condition that is
13 attributable to a mental impairment or to a combination of mental
14 and physical impairments and does not include a condition
15 attributable to a physical impairment unaccompanied by a mental
16 impairment.

17 (d) "Nonoffending parent or legal guardian" means a natural
18 parent, stepparent, adoptive parent, or legally appointed or
19 designated guardian of a witness who is not alleged to have
20 committed a violation of the laws of this state, another state, the
21 United States, or a court order that is connected in any manner to
22 a witness's videorecorded statement.

23 (e) "Videorecorded statement" means a witness's statement
24 taken by a custodian of the videorecorded statement as provided in
25 subsection (7). Videorecorded statement does not include a
26 videorecorded deposition taken as provided in subsections (20) and
27 (21).

28 (f) "Vulnerable adult" means that term as defined in section
29 145m of the Michigan penal code, 1931 PA 328, MCL 750.145m.



1 (g) "Witness" means an alleged victim of an offense listed
2 under subsection (2) who is any of the following:

3 (i) ~~A~~ For the purpose of being eligible for a support person or
4 other considerations under this section, an individual under 16
5 years of age or 16 years of age or older with a developmental
6 disability.

7 (ii) ~~A person 16~~ For the purpose of being eligible for a
8 support dog under this section, an individual under 18 years of age
9 or 18 years of age or older with a developmental disability.

10 (iii) A vulnerable adult.

11 (2) This section only applies to the following:

12 (a) For purposes of subsection (1)(g)(i) and (ii), prosecutions
13 and proceedings under section 136b, 145c, 520b to 520e, or 520g of
14 the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c,
15 750.520b to 750.520e, and 750.520g.

16 (b) For purposes of subsection (1)(g)(iii), 1 or more of the
17 following matters:

18 (i) Prosecutions and proceedings under section 110a, 145n,
19 145o, 145p, 174, or 174a of the Michigan penal code, 1931 PA 328,
20 MCL 750.110a, 750.145n, 750.145o, 750.145p, 750.174, and 750.174a.

21 (ii) Prosecutions and proceedings for an assaultive crime as
22 that term is defined in section 9a of chapter X of the code of
23 criminal procedure, 1927 PA 175, MCL 770.9a.

24 (3) If pertinent, the court ~~must~~ shall permit the witness to
25 use dolls or mannequins, including, but not limited to,
26 anatomically correct dolls or mannequins, to assist the witness in
27 testifying on direct and cross-examination.

28 (4) The court ~~must~~ shall permit a witness who is called upon
29 to testify to have a support person sit with, accompany, or be in



1 close proximity to the witness during ~~his or her~~ **the witness's**
2 testimony. The court ~~must~~ **shall** also permit a witness who is called
3 upon to testify to have a courtroom support dog and **its** handler sit
4 with, or be in close proximity to, the witness during ~~his or her~~
5 **the witness's** testimony.

6 (5) A notice of intent to use a support person or courtroom
7 support dog is only required if the support person or courtroom
8 support dog is to be utilized during trial and is not required for
9 the use of a support person or courtroom support dog during any
10 other courtroom proceeding. A notice of intent under this
11 subsection must be filed with the court and must be served upon all
12 parties to the proceeding. The notice must name the support person
13 or courtroom support dog, identify the relationship the support
14 person has with the witness, if applicable, and give notice to all
15 parties that the witness may request that the named support person
16 or courtroom support dog sit with the witness when the witness is
17 called upon to testify during trial. A court ~~must~~ **shall** rule on a
18 motion objecting to the use of a named support person or courtroom
19 support dog before the date when the witness desires to use the
20 support person or courtroom support dog.

21 (6) An agency that supplies a courtroom support dog under this
22 section conveys all responsibility for the courtroom support dog to
23 the participating prosecutor's office or government entity in
24 charge of the local courtroom support dog program during the period
25 of time the participating prosecutor's office or government entity
26 in charge of the local program is utilizing the courtroom support
27 dog.

28 (7) A custodian of the videorecorded statement may take a
29 witness's videorecorded statement before the normally scheduled



1 date for the defendant's preliminary examination. The videorecorded
2 statement must state the date and time that the statement was
3 taken; must identify the persons present in the room and state
4 whether ~~they~~ **the persons** were present for the entire videorecording
5 or only a portion of the videorecording; and must show a time clock
6 that is running during the taking of the videorecorded statement.

7 (8) A videorecorded statement may be considered in court
8 proceedings only for 1 or more of the following purposes:

9 (a) ~~It may be admitted~~ **Admission** as evidence at all pretrial
10 proceedings, except that it cannot be introduced at the preliminary
11 examination instead of the live testimony of the witness.

12 (b) ~~It may be admitted~~ **Admission** for impeachment purposes.

13 (c) ~~It may be considered~~ **Consideration** by the court in
14 determining the sentence.

15 (d) ~~It may be used~~ **Use** as a factual basis for a no contest
16 plea or to supplement a guilty plea.

17 (9) A videorecorded deposition may be considered in court
18 proceedings only as provided by law.

19 (10) In a videorecorded statement, the questioning of the
20 witness should be full and complete; must be in accordance with the
21 forensic interview protocol implemented as required by section 8 of
22 the child protection law, 1975 PA 238, MCL 722.628, or as otherwise
23 provided by law; and, if appropriate for the witness's
24 developmental level or mental acuity, must include, but is not
25 limited to, all of the following areas:

26 (a) The time and date of the alleged offense or offenses.

27 (b) The location and area of the alleged offense or offenses.

28 (c) The relationship, if any, between the witness and the
29 accused.



1 (d) The details of the offense or offenses.

2 (e) The names of any other persons known to the witness who
3 may have personal knowledge of the alleged offense or offenses.

4 (11) A custodian of the videorecorded statement may release or
5 consent to the release or use of a videorecorded statement or
6 copies of a videorecorded statement to a law enforcement agency, an
7 agency authorized to prosecute the criminal case to which the
8 videorecorded statement relates, or an entity that is part of
9 county protocols established under section 8 of the child
10 protection law, 1975 PA 238, MCL 722.628, or as otherwise provided
11 by law. The defendant, and ~~if represented, his or her~~ **the**
12 **defendant's** attorney, has the right to view and hear a
13 videorecorded statement before the defendant's preliminary
14 examination. Upon request, the prosecuting attorney shall provide
15 the defendant, and ~~if represented, his or her~~ **the defendant's**
16 attorney, with reasonable access and means to view and hear the
17 videorecorded statement at a reasonable time before the defendant's
18 pretrial or trial of the case. In preparation for a court
19 proceeding and under protective conditions, including, but not
20 limited to, a prohibition on the copying, release, display, or
21 circulation of the videorecorded statement, the court may order
22 that a copy of the videorecorded statement be given to the defense.

23 (12) If authorized by the prosecuting attorney in the county
24 in which the videorecorded statement was taken, and with the
25 consent of a minor witness's nonoffending parent or legal guardian,
26 a videorecorded statement may be used for purposes of training the
27 custodians of the videorecorded statement in that county, or for
28 purposes of training persons in another county who would meet the
29 definition of custodian of the videorecorded statement had the



1 videorecorded statement been taken in that other county, on the
2 forensic interview protocol implemented as required by section 8 of
3 the child protection law, 1975 PA 238, MCL 722.628, or as otherwise
4 provided by law. The consent required under this subsection must be
5 obtained through the execution of a written, fully informed, time-
6 limited, and revocable release of information. An individual
7 participating in training under this subsection is also required to
8 execute a nondisclosure agreement to protect witness
9 confidentiality.

10 (13) Except as provided in this section, an individual,
11 including, but not limited to, a custodian of the videorecorded
12 statement, the witness, or the witness's parent, guardian, guardian
13 ad litem, or attorney, shall not release or consent to **the** release
14 **of** a videorecorded statement or a copy of a videorecorded
15 statement.

16 (14) A videorecorded statement that becomes part of the court
17 record is subject to a protective order of the court for the
18 purpose of protecting the privacy of the witness.

19 (15) A videorecorded statement must not be copied or
20 reproduced in any manner except as provided in this section. A
21 videorecorded statement is exempt from disclosure under the freedom
22 of information act, 1976 PA 442, MCL 15.231 to 15.246, is not
23 subject to release under another statute, and is not subject to
24 disclosure under the Michigan court rules governing discovery. This
25 section does not prohibit the production or release of a transcript
26 of a videorecorded statement.

27 (16) If, upon the motion of a party made before the
28 preliminary examination, the court finds on the record that the
29 special arrangements specified in subsection (17) are necessary to



1 protect the welfare of the witness, the court ~~must~~**shall** order
2 those special arrangements. In determining whether it is necessary
3 to protect the welfare of the witness, the court ~~must~~**shall**
4 consider all of the following factors:

5 (a) The age of the witness.

6 (b) The nature of the offense or offenses.

7 (c) The desire of the witness or the witness's family or
8 guardian to have the testimony taken in a room closed to the
9 public.

10 (d) The physical condition of the witness.

11 (17) If the court determines on the record that it is
12 necessary to protect the welfare of the witness and grants the
13 motion made under subsection (16), the court ~~must~~**shall** order both
14 of the following:

15 (a) That all persons not necessary to the proceeding must be
16 excluded during the witness's testimony from the courtroom where
17 the preliminary examination is held. Upon request by any person and
18 the payment of the appropriate fees, a transcript of the witness's
19 testimony must be made available.

20 (b) That the courtroom be arranged so that the defendant is
21 seated as far from the witness stand as is reasonable and not
22 directly in front of the witness stand in order to protect the
23 witness from directly viewing the defendant. The defendant's
24 position must be located so as to allow the defendant to hear and
25 see the witness and be able to communicate with ~~his or her~~**the**
26 **defendant's** attorney.

27 (18) If upon the motion of a party made before trial the court
28 finds on the record that the special arrangements specified in
29 subsection (19) are necessary to protect the welfare of the



1 witness, the court ~~must~~**shall** order those special arrangements. In
2 determining whether it is necessary to protect the welfare of the
3 witness, the court ~~must~~**shall** consider all of the following
4 factors:

5 (a) The age of the witness.

6 (b) The nature of the offense or offenses.

7 (c) The desire of the witness or the witness's family or
8 guardian to have the testimony taken in a room closed to the
9 public.

10 (d) The physical condition of the witness.

11 (19) If the court determines on the record that it is
12 necessary to protect the welfare of the witness and grants the
13 motion made under subsection (18), the court ~~must~~**shall** order 1 or
14 more of the following:

15 (a) That all persons not necessary to the proceeding be
16 excluded during the witness's testimony from the courtroom where
17 the trial is held. The witness's testimony must be broadcast by
18 closed-circuit television to the public in another location out of
19 sight of the witness.

20 (b) That the courtroom be arranged so that the defendant is
21 seated as far from the witness stand as is reasonable and not
22 directly in front of the witness stand in order to protect the
23 witness from directly viewing the defendant. The defendant's
24 position must be the same for all witnesses and must be located so
25 as to allow the defendant to hear and see all witnesses and be able
26 to communicate with ~~his or her~~**the defendant's** attorney.

27 (c) That a questioner's stand or podium be used for all
28 questioning of all witnesses by all parties and must be located in
29 front of the witness stand.



1 (20) If, upon the motion of a party or in the court's
2 discretion, the court finds on the record that the witness is or
3 will be psychologically or emotionally unable to testify at a court
4 proceeding even with the benefit of the protections afforded the
5 witness in subsections (3), (4), (17), and (19), the court ~~must~~
6 **shall** order that the witness may testify outside the physical
7 presence of the defendant by closed circuit television or other
8 electronic means that allows the witness to be observed by the
9 trier of fact and the defendant when questioned by the parties.

10 (21) For purposes of the videorecorded deposition under
11 subsection (20), the witness's examination and cross-examination
12 must proceed in the same manner as if the witness testified at the
13 court proceeding for which the videorecorded deposition is to be
14 used. The court ~~must~~**shall** permit the defendant to hear the
15 testimony of the witness and to consult with ~~his or her~~**the**
16 **defendant's** attorney.

17 (22) This section is in addition to other protections or
18 procedures afforded to a witness by law or court rule.

19 (23) A person who intentionally releases a videorecorded
20 statement in violation of this section is guilty of a misdemeanor
21 punishable by imprisonment for not more than 93 days or a fine of
22 not more than \$500.00, or both.

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





Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 248 (Substitute S-1)
Sponsor: Senator Dan Lauwers
Committee: Civil Rights, Judiciary, and Public Safety

Date Completed: 5-25-23

CONTENT

The bill would amend Section 2163a of the Revised Judicature Act to increase, from 16 years old to 18 years old, the age at which a witness is no longer eligible for a courtroom support dog during testimony in a court proceeding. The bill also would expand the definition of "courtroom support dog" to include an animal-assisted therapy or facility dog approved by the judge of the court.

The bill would take effect 90 days after its enactment.

Generally, Section 2163a of the Act provides a witness as described below with special considerations in a court proceeding. These considerations include the use of dolls or mannequins during testimony, the accompaniment of a support person or support dog during testimony, and the clearing out and physical rearrangement of the court room.

The Act specifies that Section 2163a applies to a person who is a witness for prosecutions and proceedings of specified crimes. These crimes generally involve the following: 1) child abuse; 2) child sexually abusive activity; 3) criminal sexual conduct (CSC); 4) assault with intent to commit CSC; and 5) home invasion; among other crimes concerning vulnerable adults and unrelated to the bill.

Under the Act, "witness" means an alleged victim of an offense listed above who is any of the following:

- A person under 16 years old.
- A person 16 years old or older with a developmental disability.
- A vulnerable adult.

Instead, under the bill, "witness" would mean an alleged victim of an offense listed above who is any of the following:

- To be eligible for a support person or other considerations, an individual under 16 years old or 16 years old or older with a developmental disability.
- To be eligible for a support dog, an individual under 18 years old or 18 years old or older with a developmental disability.
- A vulnerable adult.

In addition, the Act defines "courtroom support dog" as a dog that has been trained and evaluated as a support dog pursuant to the Assistance Dogs International Standards for guide or service work and that is repurposed and appropriate for providing emotional support to children and adults within the court or legal system or a dog that performed the duties of a courtroom support dog before September 27, 2018. Under the bill, the definition also would include an animal-assisted therapy or facility dog approved by the judge of the court.

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Michael Siracuse

**Public Policy Position
SB 248****Support****Explanation:**

The Committee voted to support SB 248. The Committee believes that courtroom support dogs can serve an important purpose in assisting vulnerable witnesses in certain prosecutions and court proceedings, and that it is sensible to expand access to these dogs to children under 18 years old, as opposed to 16 years old.

Position Vote:

Voted For position: 12

Voted against position: 0

Abstained from vote: 2

Did not vote (absent): 13

Keller-Permissibility Explanation:

Whether and under what circumstances courtroom support dogs are permitted in certain prosecutions and court proceedings is a question necessarily related to the functioning of the courts. As such, SB 248 is *Keller*-permissible.

Contact Persons:

Katherine L. Marcuz kmarcuz@sado.org

Lore A. Rogers rogersl4@michigan.gov

**Public Policy Position
SB 0248**

Oppose

Explanation:

The Committee voted to oppose Senate Bill 248. A majority of the Committee believed that expansion of access to support dogs was unnecessary and noted that the presence of the animals in court has a tendency to engender undue sympathy for the testifying witness and prejudice against the defendant.

Position Vote:

Voted For position: 10

Voted against position: 7

Abstained from vote: 0

Did not vote (absent): 9

Keller Permissibility Explanation

Legislation prescribing the conditions under which a court is required to permit the presence of a courtroom support dog, as with other legislation governing procedures within a court, is reasonably related to the functioning of the courts and therefore *Keller*-permissible.

Contact Persons:

Nimish R. Ganatra ganatran@washtenaw.org

Sofia V. Nelson snelson@sado.org

**Public Policy Position
SB 248**

Oppose

Position Vote:

Voted for position: 10

Voted against position: 5

Abstained from vote: 1

Did not vote: 0

Keller Permissibility Explanation:

The improvement of the functioning of the courts

The availability of legal services to society

Without the support animals, some believe that complainants and other witnesses would not be able to testify.

Contact Person: Takura N. Nyamfukudza

Email: takura@cndefenders.com



To: Members of the Public Policy Committee
Board of Commissioners

From: Nathan A. Triplett, Director of Governmental Relations

Date: May 31, 2023

Re: SB 257 – Public Access to Court Video Recordings

Background

Senate Bill 257 would amend the Revised Judicature Act, 1961 PA 236, to require that when a court makes a video recording of a public court proceeding, the recording must be made accessible to the public upon request. The public access requirement would not apply to any court proceeding or portion of a court proceeding if the court has ordered the record sealed or restricted access to the proceeding.

At present, Michigan lacks a consistent rule regarding access to recordings—video or otherwise—that courts make of their courtroom proceedings. This inconsistency, and the dramatic expansion of video recording and streaming of proceedings in recent years, has spurred a great deal of discussion in the Legislature, among courts and judicial agencies, and within the Bar about the issue of public access. The Board may recall that the Representative Assembly approved a proposed amendment to MCR 8.119(H) at its September 2021 meeting that sought to mandate that any person having a special interest, including a party or representative of a party, be provided with access to court records, specifically court recordings. Additionally, as was noted by the Representative Assembly and during several committee discussions of Senate Bill 257, the right of public access to judicial records is recognized at common law and under the First Amendment. The Sixth Circuit has opined in dicta that Michigan courts’ failure to make existing recordings of open proceedings presumptively available for public access may be unconstitutional. *Stevens v Michigan State Court Administrative Office*, No. 21-1727, 2022 WL 3500193, *6 (CA 6, 2022).

***Keller* Considerations**

By mandating the courts make video recordings of public court proceedings available for public access and establishing detailed requirements for how courts are to accomplish this mandate, SB 257 necessarily will impact the functioning of courts. In addition to this direct impact, requiring public access to recordings of proceedings will likely have ancillary, but significant, impacts on whether courts make recordings in the first place and how the public perceives the transparency and legitimacy of the courts.

Keller Quick Guide

THE TWO PERMISSIBLE SUBJECT-AREAS UNDER <i>KELLER</i>:	
Regulation of Legal Profession	Improvement in Quality of Legal Services
<p>As interpreted by AO 2004-1</p> <ul style="list-style-type: none">• Regulation and discipline of attorneys• Ethics• Lawyer competency• Integrity of the Legal Profession• Regulation of attorney trust accounts	<ul style="list-style-type: none">✓ Improvement in functioning of the courts• Availability of legal services to society

Staff Recommendation

Senate Bill 257 is necessarily related to the functioning of the courts and is therefore *Keller*-permissible. It may be considered on its merits.

SENATE BILL NO. 257

April 11, 2023, Introduced by Senators RUNESTAD, IRWIN, POLEHANKI, CHANG, CAVANAGH and BAYER and referred to the Committee on Civil Rights, Judiciary, and Public Safety.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
(MCL 600.101 to 600.9947) by adding section 1429.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **Sec. 1429. (1) If a court makes a video recording of a public**
2 **court proceeding, the court shall make the recording available for**
3 **public access as required by this section.**

4 **(2) A video recording that is made available for public access**
5 **under subsection (1) must be a complete recording of all public**
6 **portions of the court proceeding and not be edited to remove any**

1 portion of the recording that was viewable to any individual who
2 was physically present at the proceeding.

3 (3) A video recording to which this section applies must be
4 made available for access within 10 days after the date the
5 recording was made and continue to be available until not less than
6 60 days after the date the recording was made.

7 (4) A video recording to which this section applies may be
8 made available in any manner, including, but not limited to, any of
9 the following:

10 (a) Making the recording accessible from a public website.

11 (b) Making the recording accessible from a link provided by
12 electronic mail on request.

13 (c) Providing a physical copy of the recording.

14 (d) Making the recording available for viewing at the
15 courthouse.

16 (5) A court may require a person that requests a video
17 recording to which this section applies to complete a form approved
18 by the state court administrative office that includes all of the
19 following:

20 (a) The case name and number.

21 (b) The date, time, and location of and the name of the judge
22 who presided over the court proceeding.

23 (c) If less than the entire proceeding is requested, the
24 portion requested.

25 (d) An acknowledgment that the recording is not the official
26 record of the proceeding.

27 (e) The requesting person's agreement that it will comply with
28 all laws regarding privacy of the information contained in the
29 recording and will not publish or disseminate any content that may

1 be protected from disclosure.

2 (6) If a video recording to which this section applies is
3 provided in physical form, the court may require a person to pay a
4 fee of not more than \$10.00 for each copy of each court proceeding
5 requested.

6 (7) A video recording made available under this section is not
7 the official record of the court proceeding.

8 (8) This section does not require a court to make a video
9 recording of a court proceeding.

10 (9) This section does not apply to a court proceeding or
11 portion of a court proceeding if the court has ordered the record
12 sealed or access to the proceeding restricted as allowed by court
13 rule or statute.

14 (10) A video recording of a public proceeding made available
15 under this section is a public document for purposes of section 248
16 of the Michigan penal code, 1931 PA 328, MCL 750.248. This
17 subsection does not limit the ability to prosecute under any other
18 applicable law the false making or alteration of a video recording
19 of a public proceeding made available under this section.

Public Policy Position SB 257

Support with Amendments

Explanation:

The Committee voted to support SB 257 with the following amendments:

1. Some courts have audio recordings but not video. Therefore, to be comprehensive, instead of referring to “video recordings,” the bill should refer to recordings in general throughout.
2. Historically, juvenile court proceedings have not been subject to the common-law or First Amendment right of public access, and there are privacy concerns with allowing recordings of juvenile court proceedings to be public even if the courtroom happened to be open for the proceeding itself. Under MCL 712a.28, juvenile case records are not open to the general public. To align this restriction with SB 257, subsection (1) of SB 257 should be amended as follows: “If a court makes a ~~video~~ recording of a public court proceeding in a case in which records are open to the general public, the court shall make the recording available for public access as required by this section.”
3. In subsection (3), the 60-day limit should be eliminated. As long as the video remains in the court’s custody and control, it should be presumptively available to the public. There are many situations in which the public’s interest in a recording would not surface within 60 days of the proceeding.
4. In subsection (4), the form of public access should not deny the ability of the public to obtain an actual copy of the recording. If they are allowed to view it but not actually have a copy that they can show others, that restriction would violate the First Amendment. See *Soderberg v Carrion*, 999 F3d 962, 964 (CA 4, 2021).
5. Consistent with the Committee’s position on HB 4421, the bill should permit the blurring of crime victim’s faces in a video recording.

The Committee believes that, with these amendments, the legislation strikes the right balance between the common law and constitutional right of public access to judicial records and concerns regarding privacy and potential misuse. The legislation would promote transparency, accountability, and public confidence in the judiciary.

Position Vote:

Voted For position: 14

Voted against position: 2

Abstained from vote: 2

Did not vote (absent): 9

Keller-Permissibility Explanation:

The committee agreed that the legislation is *Keller*-permissible in affecting the functioning of the courts.

Contact Persons:

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

**Public Policy Position
SB 0257**

Support

Explanation

The Committee voted to support Senate Bill 257.

Position Vote:

Voted For position: 19

Voted against position: 3

Abstained from vote: 5

Did not vote (absence): 6

Keller Permissibility Explanation:

The question of whether courts should be mandated to make video recordings of proceedings available to the public and prescribing the conditions under which the public may access such recordings is necessarily related to the functioning of the courts and therefore *Keller*-permissible.

Contact Person:

Lori J. Frank lori@markofflaw.com

Public Policy Position
SB 0257**Oppose****Explanation:**

The Committee voted to oppose Senate Bill 257. The Committee believed that requiring courts to make recordings of public court proceedings available for public access would be prohibitively expensive and that it would discourage courts from livestreaming proceedings in the first place.

Position Vote:

Voted For position: 11

Voted against position: 5

Abstained from vote: 0

Did not vote (absent): 10

Keller Permissibility Explanation

Legislation mandating that courts make video recordings of proceedings available to the public and prescribing the conditions under which the public may access such recordings is necessarily related to the functioning of the courts and therefore *Keller*-permissible.

Contact Persons:

Nimish R. Ganatra ganatran@washtenaw.org

Sofia V. Nelson snelson@sado.org

Public Policy Position SB 257

Support with Recommended Amendments

Explanation

While the Council is generally in support of the bill, there are two areas of concern which we believe need to be addressed, and the proposed bill amended accordingly.

First, subsection (3) provides that a recording must continue to be available until not less than 60 days after the date the recording was made. This is far too short of a period. The reference date should not be when the recording was made, but the date the final appealable order is entered in the case.

In the usual scenario, a litigant consults with an attorney regarding a possible appeal. The litigant, unschooled in the law, is often unclear as to what occurred in the lower court, exactly what the court decided or the basis for the rulings, and it is rare that the litigant actually has a transcript of what transpired. It is critical for the attorney who is consulted to know exactly what the trial court did and the basis for the trial court's rulings in order to properly advise the potential client and decide whether or not to take the appeal.

A video of the proceedings can also sometimes provide the appellate attorney with information which does not appear in a written transcript, such as the tone, actions or gestures by an attorney or judge or witness, or a break or conference off the record which is not even referenced in the transcript.

Being able to easily view the video of the proceeding is a major benefit to the attorney, and the video should continue to remain available until the expiration of the time to take an appeal, either an appeal of right or a delayed appeal, either from a final order or an order, such as a post-judgment order, appealable only by application for leave to appeal.

Therefore, we believe that the proposed bill should provide that the recording must continue to be available until not less than 6 months after a final order is entered, or, in post-judgment matters, 6 months after the order is entered; the six month period corresponds to the period in which a delayed application for leave to appeal must be filed.

Position Vote:

Voted for position: 14

Voted against position: 0

Abstained from vote: 1

Did not vote: 9

Keller Permissibility Explanation:

The improvement of the functioning of the courts



APPELLATE PRACTICE SECTION

The availability of legal services to society

The Section wishes to offer comments on SB 257 to enhance access to video recordings of judicial proceedings.

Contact Person: Joseph Richotte

Email: richotte@butzel.com

Public Policy Position
SB 257

Oppose

Explanation

Children's Law Section opposes SB 257 due to concerns that recordings of hearings involving children, particularly circumstances when children testify, could be posted to social media and cause harm to children in those cases.

Position Vote:

Voted for position: 9

Voted against position: 0

Abstained from vote: 1

Did not vote: 9

Keller Permissibility Explanation

This bill is Keller permissible because it impacts access to the court, court hearings, and the ability to observe hearings, as well as the duties and responsibilities of court staff in preparing those recordings for public viewing.

List Any Arguments Against the Position

A committee member noted concerns about access to recordings of hearings for attorneys and inconsistency between counties and courts in how they allow access to recordings.

Contact Person: Joshua Pease

Email: jpease@sado.org

**Public Policy Position
SB 257**

Explanation:

The Criminal Law Section opposes the bill, but generally supports courts live streaming proceedings on Zoom and other platforms. We are concerned that this mandate would reduce that practice.

Position Vote:

Voted for position: 11

Voted against position: 2

Abstained from vote: 2

Did not vote: 0

Keller Permissibility Explanation:

The improvement of the functioning of the courts.

Video recording improves transparency which is of paramount importance.

Contact Person: Takura N. Nyamfukudza

Email: takura@cndefenders.com

Public Policy Position
SB 257

Oppose

Explanation

Although this bill would promote public access and public review of court proceedings, it would also enable disgruntled litigants to edit the videos to misrepresent proceedings and spread sensitive information to public, which may have a chilling effect on valid claims or defenses. Select parts of videos could be posted on social media to embarrass parties, witnesses, or their families. The potential for abuse outweighs the potential benefits.

Position Vote:

Voted for position: 16

Voted against position: 0

Abstained from vote: 1

Did not vote: 4

Keller Permissibility Explanation:

Access to videos of court proceedings is directly tied to the improvement of the functioning of the courts.

Contact Person: James Chryssikos

Email: jwc@chryssikoslaw.com



To: Members of the Public Policy Committee
Board of Commissioners

From: Nathan A. Triplett, Director of Governmental Relations

Date: May 31, 2023

Re: Second Look Legislative Package (SB 321 – SB 325 & HB 4556 – HB 4560)

Background

Senate Bills 321-325 and House Bills 4556-4560 are identical, five-bill packages to permit resentencing upon petition under specified circumstances, also known as “Second Look.” The principal bills (SB 321/HB 4556) would amend the Code of Criminal Procedure, 1927 PA 175, to add Sec. 27a to 27h to permit an incarcerated individual who has served not less than 10 years of their sentence(s) to petition the sentencing court for a reduction of any or all of the individual’s sentences. The principal bills spell out in considerable detail, among other things, the notice of eligibility to be provided to an incarcerated individual; the notice required to the prosecutor, victim, sentencing court, and attorneys upon the filing of a resentencing petition; timeframes for resentencing hearings; the process and content of a resentencing hearing; process and timeframes for appeals and successive petitions; and a rebuttable presumption, if the court finds that the individual is no longer a meaningful risk to the community, of sentence reduction by not less than 20% or to no longer than 5 years of further incarceration from the date of filing a resentencing petition.

The remaining bills (SB 322-325 and HB 4557-4560) are trailer bills that each make corresponding amendments to other statutes that are necessary to effectuate the new resentencing upon petition process established in the main bill. Specifically:

- SB 322/HB 4557 would amend the Corrections Code, 1953 PA 232
- SB 323/HB 4558 would amend the Crime Victim’s Rights Act, 1985 PA 87
- SB 324/HB 4559 would amend the Public Health Code, 1978 PA 368
- SB 325/HB 4560 would amend the Michigan Penal Code, 1931 PA 328

Each of these trailer bills are tie-barred to the principal bill.

***Keller* Considerations**

Legislation concerning the type of resentencing upon petition process proposed in the “Second Look” legislative packages is reasonably related to the functioning of the courts in Michigan. The principal bills delve deeply into the procedures used by courts and establish filing requirements, notice requirements, hearing requirements, and specific standards and considerations to be used by a sentencing judge when conducting a resentencing hearing. Rather than establish a right to petition generally and leave the procedural details to the Supreme Court, the Legislature has chosen to

prescribe how courts will operate in this arena in minute detail. Although neither *Keller* itself nor Administrative Order 2004-1 impose (or even reference) a crude substance vs. procedure distinction to be used by the Bar when assessing permissibility, it can be a useful analytical shorthand. With that in mind, while there are undoubtedly substantive components of this legislation, the principal bills are predominately procedural in nature, and it is those procedural components that will impact the functioning of the courts.

As is often the case in more complex bills, there are individual provisions in this package that when taken separately or structured differently might not meet the exacting requirements of *Keller*. In such cases, staff confines the Bar’s advocacy to the *Keller*-permissible components, as determined by the Board of Commissioners. In a similar vein, these bills are being presented as they were introduced (as packages) as opposed to individually, as it would make little sense to try and understand and evaluate any of the trailer bills apart from the principal bill or the rest of the package.

Taken together, the “Second Look” legislative package satisfies the *Keller* standard of being at least reasonably related to the functioning of the courts and may therefore be considered on its merits.

***Keller* Quick Guide**

THE TWO PERMISSIBLE SUBJECT-AREAS UNDER <i>KELLER</i>:	
Regulation of Legal Profession	Improvement in Quality of Legal Services
<p>As interpreted by AO 2004-1</p> <ul style="list-style-type: none"> • Regulation and discipline of attorneys • Ethics • Lawyer competency • Integrity of the Legal Profession • Regulation of attorney trust accounts 	<ul style="list-style-type: none"> ✓ Improvement in functioning of the courts • Availability of legal services to society

Staff Recommendation

Senate Bills 321-325 and House Bills 4556-4560 are, taken together as legislative packages, reasonably—perhaps even necessarily—related to the functioning of the courts and are therefore *Keller*-permissible. They may be considered on their merits.

SENATE BILL NO. 321

May 03, 2023, Introduced by Senators CHANG, WOJNO, POLEHANKI, BAYER, CAVANAGH and GEISS and referred to the Committee on Civil Rights, Judiciary, and Public Safety.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending sections 12 and 25 of chapter IX (MCL 769.12 and 769.25), section 12 as amended by 2012 PA 319 and section 25 as added by 2014 PA 22, and by adding sections 27a, 27b, 27c, 27d, 27e, 27f, 27g, and 27h to chapter IX.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER IX
2 Sec. 12. (1) ~~If~~ **Subject to subsection (6), if** a person has
3 been convicted of any combination of 3 or more felonies or attempts

1 to commit felonies, whether the convictions occurred in this state
2 or would have been for felonies or attempts to commit felonies in
3 this state if obtained in this state, and that person commits a
4 subsequent felony within this state, the person shall be punished
5 upon conviction of the subsequent felony and ~~sentencing~~**sentenced**
6 under section 13 of this chapter as follows:

7 (a) If the subsequent felony is a serious crime or a
8 conspiracy to commit a serious crime, and 1 or more of the prior
9 felony convictions are listed prior felonies, the court shall
10 sentence the person to imprisonment for not less than 25 years. Not
11 more than 1 conviction arising out of the same transaction ~~shall~~
12 **may** be considered a prior felony conviction for the purposes of
13 this subsection only.

14 (b) If the subsequent felony is punishable upon a first
15 conviction by imprisonment for a maximum term of 5 years or more or
16 for life, the court, except as otherwise provided in this section
17 or section 1 of chapter XI, may sentence the person to imprisonment
18 for life or for a lesser term.

19 (c) If the subsequent felony is punishable upon a first
20 conviction by imprisonment for a maximum term that is less than 5
21 years, the court, except as otherwise provided in this section or
22 section 1 of chapter XI, may sentence the person to imprisonment
23 for a maximum term of not more than 15 years.

24 (d) If the subsequent felony is a major controlled substance
25 offense, the person shall be punished as provided by part 74 of the
26 public health code, 1978 PA 368, MCL 333.7401 to 333.7461.

27 (2) If the court imposes a sentence of imprisonment for any
28 term of years under this section, the court shall fix the length of
29 both the minimum and maximum sentence within any specified limits

1 in terms of years or a fraction of a year, and the sentence so
2 imposed ~~shall~~**must** be considered an indeterminate sentence. The
3 court shall not fix a maximum sentence that is less than the
4 maximum term for a first conviction.

5 (3) A conviction ~~shall~~**must** not be used to enhance a sentence
6 under this section if that conviction is used to enhance a sentence
7 under a statute that prohibits use of the conviction for further
8 enhancement under this section.

9 (4) ~~An~~**Subject to subsection (6), an** offender sentenced under
10 this section or section 10 or 11 of this chapter for an offense
11 other than a major controlled substance offense is not eligible for
12 parole until expiration of the following:

13 (a) For a prisoner other than a prisoner subject to
14 disciplinary time, the minimum term fixed by the sentencing judge
15 at the time of sentence unless the sentencing judge or a successor
16 gives written approval for parole at an earlier date authorized by
17 law.

18 (b) For a prisoner subject to disciplinary time, the minimum
19 term fixed by the sentencing judge.

20 (5) This section and sections 10 and 11 of this chapter are
21 not in derogation of other provisions of law that permit or direct
22 the imposition of a consecutive sentence for a subsequent felony.

23 **(6) This section does not apply to the resentencing of an**
24 **individual under sections 27a to 27h of this chapter.**

25 (7) ~~(6)~~As used in this section:

26 (a) "Listed prior felony" means a violation or attempted
27 violation of any of the following:

28 (i) Section 602a(4) or (5) or 625(4) of the Michigan vehicle
29 code, 1949 PA 300, MCL 257.602a and 257.625.

1 (ii) Article 7 of the public health code, 1978 PA 368, MCL
2 333.7101 to 333.7545, that is punishable by imprisonment for more
3 than 4 years.

4 (iii) Section 72, 82, 83, 84, 85, 86, 87, 88, 89, 91, 110a(2) or
5 (3), 136b(2) or (3), 145n(1) or (2), 157b, 197c, 226, 227, 234a,
6 234b, 234c, 317, 321, 329, 349, 349a, 350, 397, 411h(2)(b), 411i,
7 479a(4) or (5), 520b, 520c, 520d, 520g, 529, 529a, or 530 of the
8 Michigan penal code, 1931 PA 328, MCL 750.72, 750.82, 750.83,
9 750.84, 750.85, 750.86, 750.87, 750.88, 750.89, 750.91, 750.110a,
10 750.136b, 750.145n, 750.157b, 750.197c, 750.226, 750.227, 750.234a,
11 750.234b, 750.234c, 750.317, 750.321, 750.329, 750.349, 750.349a,
12 750.350, 750.397, 750.411h, 750.411i, 750.479a, 750.520b, 750.520c,
13 750.520d, 750.520g, 750.529, 750.529a, and 750.530.

14 (iv) A second or subsequent violation or attempted violation of
15 section 227b of the Michigan penal code, 1931 PA 328, MCL 750.227b.

16 (v) Section 2a of 1968 PA 302, MCL 752.542a.

17 (b) "Prisoner subject to disciplinary time" means that term as
18 defined in section 34 of 1893 PA 118, MCL 800.34.

19 (c) "Serious crime" means an offense against a person in
20 violation of section 83, 84, 86, 88, 89, 317, 321, 349, 349a, 350,
21 397, 520b, 520c, 520d, 520g(1), 529, or 529a of the Michigan penal
22 code, 1931 PA 328, MCL 750.83, 750.84, 750.86, 750.88, 750.89,
23 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b,
24 750.520c, 750.520d, 750.520g, 750.529, and 750.529a.

25 Sec. 25. (1) ~~This~~ **Subject to subsection (11), this** section
26 applies to a criminal defendant who was less than 18 years of age
27 at the time he or she committed an offense described in subsection
28 (2) if either of the following circumstances exists:

29 (a) The defendant is convicted of the offense on or after ~~the~~

1 ~~effective date of the amendatory act that added this section.~~**March**
2 **14, 2014.**

3 (b) The defendant was convicted of the offense before ~~the~~
4 ~~effective date of the amendatory act that added this section~~**March**
5 **14, 2014** and either of the following applies:

6 (i) The case is still pending in the trial court or the
7 applicable time periods for direct appellate review by state or
8 federal courts have not expired.

9 (ii) On June 25, 2012 the case was pending in the trial court
10 or the applicable time periods for direct appellate review by state
11 or federal courts had not expired.

12 (2) The prosecuting attorney may file a motion under this
13 section to sentence a defendant described in subsection (1) to
14 imprisonment for life without the possibility of parole if the
15 individual is or was convicted of any of the following violations:

16 (a) A violation of section 17764(7) of the public health code,
17 1978 PA 368, MCL 333.17764.

18 (b) A violation of section 16(5), 18(7), 316, 436(2)(e), or
19 543f of the Michigan penal code, 1931 PA 328, MCL 750.16, 750.18,
20 750.316, 750.436, and 750.543f.

21 (c) A violation of chapter XXXIII of the Michigan penal code,
22 1931 PA 328, MCL 750.200 to 750.212a.

23 (d) Any violation of law involving the death of another person
24 for which parole eligibility is expressly denied under state law.

25 (3) If the prosecuting attorney intends to seek a sentence of
26 imprisonment for life without the possibility of parole for a case
27 described in subsection (1)(a), the prosecuting attorney shall file
28 the motion within 21 days after the defendant is convicted of that
29 violation. If the prosecuting attorney intends to seek a sentence

1 of imprisonment for life without the possibility of parole for a
2 case described under subsection (1)(b), the prosecuting attorney
3 shall file the motion within 90 days after ~~the effective date of~~
4 ~~the amendatory act that added this section.~~ **March 14, 2014.** The
5 motion ~~shall~~**must** specify the grounds on which the prosecuting
6 attorney is requesting the court to impose a sentence of
7 imprisonment for life without the possibility of parole.

8 (4) If the prosecuting attorney does not file a motion under
9 subsection (3) within the time periods provided for in that
10 subsection, the court shall sentence the defendant to a term of
11 years as provided in subsection (9).

12 (5) If the prosecuting attorney files a motion under
13 subsection (2) requesting that the individual be sentenced to
14 imprisonment for life without parole eligibility, the individual
15 shall file a response to the prosecution's motion within 14 days
16 after receiving notice of the motion.

17 (6) If the prosecuting attorney files a motion under
18 subsection (2), the court shall conduct a hearing on the motion as
19 part of the sentencing process. At the hearing, the trial court
20 shall consider the factors listed in ~~Miller v Alabama, 576 US _____;~~
21 **Miller v Alabama, 576 US 460**; 183 L Ed 2d 407; 132 S Ct 2455
22 (2012), and may consider any other criteria relevant to its
23 decision, including the individual's record while incarcerated.

24 (7) At the hearing under subsection (6), the court shall
25 specify on the record the aggravating and mitigating circumstances
26 considered by the court and the court's reasons supporting the
27 sentence imposed. The court may consider evidence presented at
28 trial together with any evidence presented at the sentencing
29 hearing.

1 (8) Each victim ~~shall~~**must** be afforded the right under section
2 15 of the William Van Regenmorter crime victim's rights act, 1985
3 PA 87, MCL 780.765, to appear before the court and make an oral
4 impact statement at any sentencing or resentencing of the defendant
5 under this section.

6 (9) If the court decides not to sentence the individual to
7 imprisonment for life without parole eligibility, the court shall
8 sentence the individual to a term of imprisonment for which the
9 maximum term shall be not less than 60 years and the minimum term
10 shall be not less than 25 years or more than 40 years.

11 (10) A defendant who is sentenced under this section ~~shall~~
12 **must** be given credit for time already served but ~~shall~~**must** not
13 receive any good time credits, special good time credits,
14 disciplinary credits, or any other credits that reduce the
15 defendant's minimum or maximum sentence.

16 (11) **This section does not apply to the resentencing of an**
17 **individual under sections 27a to 27h of this chapter.**

18 **Sec. 27a. (1) Notwithstanding any other provision of law, an**
19 **incarcerated individual who has served not less than 10 years of**
20 **the incarcerated individual's sentence or sentences for any**
21 **conviction or for a combination of convictions may petition the**
22 **sentencing court for a reduction of any or all of the incarcerated**
23 **individual's sentences as provided under this section.**

24 (2) A petition for a sentence reduction under this section may
25 be filed after the date on which the tenth year of imprisonment
26 begins for an incarcerated individual sentenced to more than 10
27 years of imprisonment.

28 (3) **Except as otherwise provided in this subsection, if a**
29 **petition for a reduction in sentence under this section has been**

1 denied, the incarcerated individual shall not file a successive
2 petition until not less than 2 years have elapsed after the date
3 the petition was denied. The court may require a waiting period
4 longer than 2 years, but in no case may require a waiting period
5 longer than 5 years after the date the most recent petition was
6 denied.

7 (4) If a petition for a reduction in sentence under this
8 section has been granted and the total sentence to be served was
9 reduced by not less than 25%, the incarcerated individual shall not
10 file a petition for a second sentencing reduction until not less
11 than 5 years have elapsed after the date the petition was granted.

12 (5) Notwithstanding any other provision of law to the
13 contrary, an incarcerated individual who has not yet served 10
14 years of imprisonment is eligible to petition for a reduction in
15 sentence if the prosecuting attorney in the applicable jurisdiction
16 consents to filing of the petition.

17 (6) Except as otherwise provided in this subsection, no
18 offense disqualifies an incarcerated individual from relief under
19 this chapter. An incarcerated individual who was convicted of a
20 mass shooting offense is not entitled to relief under this chapter.
21 For a petition under this section, an offense is considered a mass
22 shooting offense if the sentencing judge or the judge's successor
23 determines, by clear and convincing evidence, that the murders
24 resulted in physical, emotional, or psychological injury to a large
25 number of people who were present at the time of the offense, the
26 murders significantly increased the burden of victim assistance and
27 compensation for the applicable jurisdiction, and the murders arose
28 out of an incident in which the incarcerated individual brought a
29 firearm and ammunition to a location with the intent to commit

1 murder. As used in this subsection, "mass shooting offense" means
2 an offense that resulted in convictions for 3 or more counts of
3 first degree premeditated murder arising out of a single incident.

4 (7) A sentencing court that receives a petition for
5 resentencing under this chapter may reduce a sentence or deny the
6 petition. Notwithstanding any other law or provision, the court
7 shall not increase a sentence as a result of a petition under this
8 section. The court may reduce a mandatory sentence or a sentence
9 imposed as the result of a binding plea or sentencing agreement.

10 Sec. 27b. (1) After an individual has served 9 years of
11 imprisonment, the department of corrections shall, within 30 days
12 of the date beginning the incarcerated individual's ninth year of
13 incarceration, give written notice of the individual's eligibility
14 to file a petition for a reduction of sentence under section 27a of
15 this chapter to all of the following:

16 (a) The incarcerated individual.

17 (b) The sentencing court.

18 (c) The applicable prosecuting attorney.

19 (d) Any public defense authority in the judicial circuit in
20 which the sentence was imposed.

21 (2) The petition must be filed by the incarcerated individual,
22 counsel for the incarcerated individual, the prosecuting attorney,
23 or the next friend of the incarcerated individual, if the
24 incarcerated individual cannot bring the petition and the next
25 friend is acting in the best interests of the incarcerated
26 individual. As used in this subsection, "next friend" includes, but
27 is not limited to, the incarcerated individual's next of kin or a
28 qualified medical professional.

29 (3) The petition must be filed in writing in the judicial

1 circuit in which the sentence was imposed and may include
2 affidavits, declarations, letters, prison records, or other written
3 and electronic material.

4 (4) The petition must include, at a minimum, all of the
5 following:

6 (a) The name of the petitioner.

7 (b) The name of the incarcerated individual.

8 (c) The applicable case number or case numbers.

9 (d) The offense or offenses of conviction.

10 (e) The current sentence or sentences being served for each
11 case number.

12 (f) The date of the offense and sentence.

13 (g) The name of the trial and sentencing judge.

14 (h) The specific offenses for which the petitioner is
15 requesting resentencing.

16 (i) A factual statement explaining how the incarcerated
17 individual meets the eligibility requirements described in section
18 27a of this chapter.

19 (j) If the petition is filed by the next friend of the
20 incarcerated individual, a factual statement explaining the
21 petitioner's relationship to the incarcerated individual, why the
22 incarcerated individual cannot bring the petition on the
23 incarcerated individual's own behalf, and how the next friend is
24 acting in the best interests of the incarcerated individual.

25 (5) Within 30 days of receipt of a petition, the court shall
26 provide the applicable prosecuting attorney and the incarcerated
27 individual with a copy of the petition, including any attached
28 written or electronic material.

29 (6) A petition must be assigned to the judge who imposed the

1 original sentence on the incarcerated individual for a
2 determination. If, at the time of the petition, the original
3 sentencing judge is no longer available, the petition must be
4 assigned to that judge's successor.

5 (7) After the filing of a petition for a sentencing reduction,
6 the court may direct the parties to expand the record by submitting
7 additional materials relating to the petition. A petition may be
8 freely amended at any time before a hearing.

9 (8) The court shall not honor or permit a waiver of the right
10 to petition for a resentencing under section 27a of this chapter.

11 Sec. 27c. (1) On receiving a petition made under section 27a
12 of this chapter, the sentencing court shall determine whether the
13 incarcerated individual qualifies for a sentence reduction by
14 confirming all of the following:

15 (a) The incarcerated individual has served not less than 10
16 years in prison.

17 (b) The incarcerated individual is not time-barred by a prior
18 petition for a sentence reduction.

19 (c) The incarcerated individual is not excluded from
20 petitioning for a sentence reduction under 27a(6) of this chapter.

21 (2) Subject to subsection (3), if the court determines that
22 the incarcerated individual qualifies for a sentence reduction,
23 that court shall set a date for a resentencing hearing.

24 (3) If the incarcerated individual otherwise qualifies for a
25 sentence reduction under the requirements under subsection (1) and
26 is seeking a reduced sentence in connection with a conviction for
27 any of the following offenses, the court may or may not grant a
28 sentence reduction hearing at the court's discretion:

29 (a) A violation of section 520b or 520c of the Michigan penal

1 code, 1931 PA 328, MCL 750.520b and 750.520c, committed against a
2 victim less than 13 years of age.

3 (b) A violation section 81(4) or (5) of the Michigan penal
4 code, 1931 PA 328, MCL 750.81.

5 (c) A violation of section 81a(3) of the Michigan penal code,
6 1931 PA 328, MCL 750.81a.

7 (d) A violation of section 145c(2)(b) of the Michigan penal
8 code, 1931 Pa 328, MCL 750.145c.

9 (e) A violation of section 462c, 462d, or 462e of the Michigan
10 penal code, 1931 PA 328, MCL 750.462c, 750.462d, and 750.462e.

11 (4) If the court determines that the incarcerated individual
12 does not qualify for a sentence reduction under the requirements of
13 subsection (1), the court shall enter an order denying the petition
14 and cause a copy of the order to be provided to the petitioner and,
15 if the incarcerated individual is not the petitioner, the
16 incarcerated individual.

17 (5) Unless the court finds good cause to hold the hearing at a
18 later date or the petitioner requests a delay of the hearing, if
19 the court determines that the facts stated in the petition meet the
20 requirements under subsection (1), the court shall set a
21 resentencing hearing not more than 45 days after the date the
22 petition is filed with the court if 1 or more of the following
23 circumstances apply to the petition:

24 (a) The incarcerated individual has 1 or more medical
25 conditions leading to major limitations in activities of daily
26 living, including, but not limited to, a serious mental illness or
27 an intellectual or developmental disability.

28 (b) The incarcerated individual has 1 or more medical
29 conditions that make the incarcerated individual more likely to

1 contract an illness or disease while incarcerated that could lead
2 to death or cause the incarcerated individual to develop a medical
3 condition that prevents the performance of 1 or more activities of
4 daily living without assistance. Such conditions include, but are
5 not limited to, any condition related to a weakened immune system,
6 including human immunodeficiency virus or acquired immune
7 deficiency syndrome; debilitating health conditions that occur as a
8 result of dementia, Alzheimer's disease, or similar degenerative
9 brain disorders; cardiovascular disease; chronic lung disease or
10 asthma; diabetes; hepatitis C; seizure disorders; the need for
11 life-sustaining care such as feeding tubes or colostomy bags;
12 disabling neurological disorders such as multiple sclerosis or
13 amyotrophic lateral sclerosis; or any condition that requires or is
14 expected to require specialty care or recurrent hospitalizations.

15 (c) The petition is filed by the prosecuting attorney.

16 (6) Unless the court finds good cause to hold the hearing at a
17 later date or the petitioner requests a delay of the hearing, if
18 the court determines that the facts stated in the petition meet the
19 requirements under subsection (1), and if subsection (5) does not
20 apply to a petition but 1 or more of the following circumstances do
21 apply to the petition, the court shall set a resentencing hearing
22 not more than 90 days after the date the petition is filed with the
23 court:

24 (a) The incarcerated individual has served over 20 years of
25 the incarcerated individual's sentence.

26 (b) The incarcerated individual is over 55 years of age.

27 (7) Unless the court finds good cause to hold the hearing at a
28 later date or the petitioner requests a delay of the hearing, if
29 the court determines that the facts stated in the petition meet the

1 requirements under subsection (1) and neither subsection (5) nor
2 (6) apply to a petition, the court shall set a resentencing hearing
3 not more than 180 days after the date the petition is filed with
4 the court.

5 (8) If the court determines that the facts stated in the
6 petition meet the requirements under subsection (1) and the matter
7 is subsequently reassigned to a successor judge, the court shall
8 not reconsider the sufficiency of the petition or decline to set a
9 hearing.

10 (9) When the court sets a resentencing hearing under this
11 section, the court shall provide notice of the hearing to the
12 incarcerated individual, counsel for the incarcerated individual,
13 the department of corrections, the prosecuting attorney, and the
14 next friend of the incarcerated individual, if applicable.

15 (10) In a hearing under this section, the court may allow
16 parties to present any evidence that the court deems relevant to
17 the issue of the propriety of a reduction in sentence. The evidence
18 may include documents, live testimony, tangible objects, or any
19 other class of evidence or information pertinent to sentencing. The
20 court has exclusive discretion to determine the relevance of any
21 proposed evidence. The incarcerated individual must be permitted to
22 testify or to remain silent at the hearing.

23 (11) Unless the incarcerated individual waives the right to be
24 present, the incarcerated individual must be present during a
25 hearing under this section. The requirement under this subsection
26 may be satisfied by the incarcerated individual appearing by video
27 teleconference if the incarcerated individual consents to video
28 appearance.

29 (12) A hearing under this section must be conducted on the

1 record.

2 Sec. 27d. (1) In a hearing conducted under section 27c of this
3 chapter, the sentencing court shall consider all relevant evidence,
4 which includes, but is not limited to, all of the following:

5 (a) The age of the incarcerated individual at the time of the
6 offense and relevant research regarding child, adolescent, and
7 young adult brain development.

8 (b) The age of the incarcerated individual at the time of the
9 sentence modification petition and relevant research regarding the
10 decline in criminal behavior as individuals age.

11 (c) The nature of the offense, including changing societal
12 attitudes regarding the propriety of criminalizing the offense and
13 the appropriate sentence for the offense.

14 (d) The history and characteristics of the incarcerated
15 individual at the time of the petition for a reduction in sentence,
16 including rehabilitation demonstrated by the incarcerated
17 individual, the incarcerated individual's disciplinary record while
18 incarcerated, and the incarcerated individual's efforts to
19 participate in educational, therapeutic, and vocational
20 opportunities while incarcerated.

21 (e) Any oral or written statements provided by the victim's
22 representative.

23 (f) The circumstances of the offense, including the
24 incarcerated individual's role in its commission, whether the
25 incarcerated individual was under the influence of another, and the
26 proportionality of the incarcerated individual's sentence compared
27 to that received by other parties to the offense.

28 (g) The circumstances of the incarcerated individual's
29 incarceration, including the incarcerated individual's conditions

1 of confinement, the impact of the incarcerated individual's
2 incarceration on the community, and any evidence that the
3 incarcerated individual has been subjected to physical, sexual, or
4 psychological abuse while incarcerated.

5 (h) Any evidence concerning the incarcerated individual's
6 current physical or mental health and the incarcerated individual's
7 health at the time of the offense.

8 (i) Any evidence concerning plea offers by the prosecuting
9 attorney.

10 (j) Any evidence that the incarcerated individual was denied
11 effective assistance of counsel at any stage in the case resulting
12 in the original sentence, including ineffective assistance of
13 counsel during plea bargaining.

14 (k) Any evidence that the incarcerated individual was
15 wrongfully convicted.

16 (l) Any evidence that the incarcerated individual was subjected
17 to human trafficking and that the victimization was a contributing
18 factor to the incarcerated individual's criminal behavior.

19 (m) Any evidence that the incarcerated individual was
20 subjected to physical, sexual, or psychological abuse by an
21 intimate partner or a family or household member and that the
22 victimization was a contributing factor to the incarcerated
23 individual's criminal behavior.

24 (n) The incarcerated individual's parole guidelines score.

25 (o) The incarcerated individual's family and home environment
26 at the time of the offense, including any evidence of childhood
27 abuse or neglect, lack of adequate parenting or education, prior
28 exposure to violence, and susceptibility to psychological damage or
29 emotional disturbance.

1 (p) Any evidence about whether the individual might have been
2 charged and convicted of a lesser offense if not for an
3 incompetency associated with youth, intellectual disability, or
4 mental illness. This includes any evidence of the incarcerated
5 individual's inability to engage with police officers or
6 prosecutors or incapacity to assist defense counsel.

7 (q) Any other information the court determines relevant to the
8 decision of the court.

9 (2) At the conclusion of the hearing, if the sentencing court
10 finds that the petitioner has shown by a preponderance of the
11 evidence that it is in the interest of justice to reduce the
12 incarcerated individual's sentence, the court shall resentence the
13 incarcerated individual to an appropriate reduced sentence.

14 (3) The court shall set forth, either on the record or in
15 writing within 30 days of the hearing, the reasons for granting or
16 denying a petition for resentencing.

17 Sec. 27e. (1) In imposing the new term to be served by the
18 incarcerated individual, the court shall credit the incarcerated
19 individual for any jail time credited toward the subject conviction
20 and for any period of incarceration served under the sentence
21 originally imposed.

22 (2) If section 27c(5) of this chapter applies to the petition,
23 there is a rebuttable presumption that the incarcerated
24 individual's sentence must be reduced to time served.

25 (3) If the court finds that the incarcerated individual no
26 longer poses a meaningful risk to the community, there is a
27 rebuttable presumption that the incarcerated individual's sentence
28 must be reduced by not less than 20% or to no longer than 5 years
29 of incarceration from the date of the filing of the petition,

1 whichever results in a shorter period of incarceration.

2 (4) If the prosecuting attorney is the petitioner, the new
3 term of incarceration to be served by the incarcerated individual
4 must not exceed the recommendation of the petitioner. The court may
5 impose a shorter term of incarceration than the term recommended by
6 the petitioner, including by ordering immediate release.

7 (5) In imposing the new term to be served by the incarcerated
8 individual, the court shall impose a sentence of time served,
9 immediate parole, or a term of years. The court shall not impose
10 life with parole.

11 Sec. 27f. (1) Once a hearing date has been set for
12 resentencing under this chapter, the prosecuting attorney shall
13 promptly notify the victim of the offense for which the application
14 was filed and the hearing date. The notice must be by first-class
15 mail to the victim's last known address. The victim or the victim's
16 designee has the right to appear and the right, as otherwise
17 provided by law, to make a statement at the resentencing hearing of
18 the incarcerated individual regarding the impact of the offense
19 conduct on the victim. The prosecuting attorney shall promptly
20 notify the victim of any new sentence imposed under this chapter.

21 (2) If the incarcerated individual's underlying conviction is
22 homicide, the prosecuting attorney shall consult with the victim's
23 family before making any filing in relation to a petition for
24 resentencing.

25 (3) If the incarcerated individual would be otherwise
26 ineligible for relief but for the prosecuting attorney's consent
27 under section 27a(5) of this chapter, the prosecuting attorney
28 shall make reasonable efforts to consult with the victim before
29 consenting to the petition.

1 (4) Resentencing under section 27e of this chapter does not
2 disturb any restitution awarded at the original sentencing.

3 (5) As used in this section, "victim" means that term as
4 defined in sections 2 and 61 of the William Van Regenmorter crime
5 victim's rights act, 1985 PA 87, MCL 780.752 and 780.811.

6 Sec. 27g. (1) An appeal from a resentencing under section 27e
7 of this chapter may be taken by the incarcerated individual,
8 petitioner, or prosecuting authority. An appeal from resentencing
9 under this chapter is in the same manner, either by right or by
10 leave, as a first appeal from an initial sentence at the time of
11 conviction.

12 (2) An appeal from a denial of resentencing under this chapter
13 may be taken by the incarcerated individual or petitioner, if the
14 petitioner is not the incarcerated individual. An appeal from a
15 denial of resentencing under this chapter is in the same manner,
16 either by right or by leave, as a first appeal from an initial
17 sentence at the time of conviction.

18 Sec. 27h. (1) Resentencing under section 27e of this chapter
19 does not abridge or modify any existing remedy an incarcerated
20 individual may have for habeas corpus or other postconviction
21 relief as provided by court rule or law, or any other legal
22 framework.

23 (2) A petition filed under section 27a of this chapter does
24 not impact and is not impacted by any pending petitions for habeas
25 corpus or other postconviction proceedings provided for by court
26 rule or law, nor shall the denial of a petition under section 27a
27 of this chapter preclude such remedies from being granted.

1 to commit felonies, whether the convictions occurred in this state
2 or would have been for felonies or attempts to commit felonies in
3 this state if obtained in this state, and that person commits a
4 subsequent felony within this state, the person shall be punished
5 upon conviction of the subsequent felony and ~~sentencing~~**sentenced**
6 under section 13 of this chapter as follows:

7 (a) If the subsequent felony is a serious crime or a
8 conspiracy to commit a serious crime, and 1 or more of the prior
9 felony convictions are listed prior felonies, the court shall
10 sentence the person to imprisonment for not less than 25 years. Not
11 more than 1 conviction arising out of the same transaction ~~shall~~
12 **may** be considered a prior felony conviction for the purposes of
13 this subsection only.

14 (b) If the subsequent felony is punishable upon a first
15 conviction by imprisonment for a maximum term of 5 years or more or
16 for life, the court, except as otherwise provided in this section
17 or section 1 of chapter XI, may sentence the person to imprisonment
18 for life or for a lesser term.

19 (c) If the subsequent felony is punishable upon a first
20 conviction by imprisonment for a maximum term that is less than 5
21 years, the court, except as otherwise provided in this section or
22 section 1 of chapter XI, may sentence the person to imprisonment
23 for a maximum term of not more than 15 years.

24 (d) If the subsequent felony is a major controlled substance
25 offense, the person shall be punished as provided by part 74 of the
26 public health code, 1978 PA 368, MCL 333.7401 to 333.7461.

27 (2) If the court imposes a sentence of imprisonment for any
28 term of years under this section, the court shall fix the length of
29 both the minimum and maximum sentence within any specified limits

1 in terms of years or a fraction of a year, and the sentence so
2 imposed ~~shall~~**must** be considered an indeterminate sentence. The
3 court shall not fix a maximum sentence that is less than the
4 maximum term for a first conviction.

5 (3) A conviction ~~shall~~**must** not be used to enhance a sentence
6 under this section if that conviction is used to enhance a sentence
7 under a statute that prohibits use of the conviction for further
8 enhancement under this section.

9 (4) ~~An~~**Subject to subsection (6), an** offender sentenced under
10 this section or section 10 or 11 of this chapter for an offense
11 other than a major controlled substance offense is not eligible for
12 parole until expiration of the following:

13 (a) For a prisoner other than a prisoner subject to
14 disciplinary time, the minimum term fixed by the sentencing judge
15 at the time of sentence unless the sentencing judge or a successor
16 gives written approval for parole at an earlier date authorized by
17 law.

18 (b) For a prisoner subject to disciplinary time, the minimum
19 term fixed by the sentencing judge.

20 (5) This section and sections 10 and 11 of this chapter are
21 not in derogation of other provisions of law that permit or direct
22 the imposition of a consecutive sentence for a subsequent felony.

23 **(6) This section does not apply to the resentencing of an**
24 **individual under sections 27a to 27h of this chapter.**

25 (7) ~~(6)~~As used in this section:

26 (a) "Listed prior felony" means a violation or attempted
27 violation of any of the following:

28 (i) Section 602a(4) or (5) or 625(4) of the Michigan vehicle
29 code, 1949 PA 300, MCL 257.602a and 257.625.

1 (ii) Article 7 of the public health code, 1978 PA 368, MCL
2 333.7101 to 333.7545, that is punishable by imprisonment for more
3 than 4 years.

4 (iii) Section 72, 82, 83, 84, 85, 86, 87, 88, 89, 91, 110a(2) or
5 (3), 136b(2) or (3), 145n(1) or (2), 157b, 197c, 226, 227, 234a,
6 234b, 234c, 317, 321, 329, 349, 349a, 350, 397, 411h(2)(b), 411i,
7 479a(4) or (5), 520b, 520c, 520d, 520g, 529, 529a, or 530 of the
8 Michigan penal code, 1931 PA 328, MCL 750.72, 750.82, 750.83,
9 750.84, 750.85, 750.86, 750.87, 750.88, 750.89, 750.91, 750.110a,
10 750.136b, 750.145n, 750.157b, 750.197c, 750.226, 750.227, 750.234a,
11 750.234b, 750.234c, 750.317, 750.321, 750.329, 750.349, 750.349a,
12 750.350, 750.397, 750.411h, 750.411i, 750.479a, 750.520b, 750.520c,
13 750.520d, 750.520g, 750.529, 750.529a, and 750.530.

14 (iv) A second or subsequent violation or attempted violation of
15 section 227b of the Michigan penal code, 1931 PA 328, MCL 750.227b.

16 (v) Section 2a of 1968 PA 302, MCL 752.542a.

17 (b) "Prisoner subject to disciplinary time" means that term as
18 defined in section 34 of 1893 PA 118, MCL 800.34.

19 (c) "Serious crime" means an offense against a person in
20 violation of section 83, 84, 86, 88, 89, 317, 321, 349, 349a, 350,
21 397, 520b, 520c, 520d, 520g(1), 529, or 529a of the Michigan penal
22 code, 1931 PA 328, MCL 750.83, 750.84, 750.86, 750.88, 750.89,
23 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b,
24 750.520c, 750.520d, 750.520g, 750.529, and 750.529a.

25 Sec. 25. (1) ~~This~~ **Subject to subsection (11), this** section
26 applies to a criminal defendant who was less than 18 years of age
27 at the time he or she committed an offense described in subsection
28 (2) if either of the following circumstances exists:

29 (a) The defendant is convicted of the offense on or after ~~the~~

1 ~~effective date of the amendatory act that added this section.~~**March**
2 **14, 2014.**

3 (b) The defendant was convicted of the offense before ~~the~~
4 ~~effective date of the amendatory act that added this section~~**March**
5 **14, 2014** and either of the following applies:

6 (i) The case is still pending in the trial court or the
7 applicable time periods for direct appellate review by state or
8 federal courts have not expired.

9 (ii) On June 25, 2012 the case was pending in the trial court
10 or the applicable time periods for direct appellate review by state
11 or federal courts had not expired.

12 (2) The prosecuting attorney may file a motion under this
13 section to sentence a defendant described in subsection (1) to
14 imprisonment for life without the possibility of parole if the
15 individual is or was convicted of any of the following violations:

16 (a) A violation of section 17764(7) of the public health code,
17 1978 PA 368, MCL 333.17764.

18 (b) A violation of section 16(5), 18(7), 316, 436(2)(e), or
19 543f of the Michigan penal code, 1931 PA 328, MCL 750.16, 750.18,
20 750.316, 750.436, and 750.543f.

21 (c) A violation of chapter XXXIII of the Michigan penal code,
22 1931 PA 328, MCL 750.200 to 750.212a.

23 (d) Any violation of law involving the death of another person
24 for which parole eligibility is expressly denied under state law.

25 (3) If the prosecuting attorney intends to seek a sentence of
26 imprisonment for life without the possibility of parole for a case
27 described in subsection (1)(a), the prosecuting attorney shall file
28 the motion within 21 days after the defendant is convicted of that
29 violation. If the prosecuting attorney intends to seek a sentence

1 of imprisonment for life without the possibility of parole for a
2 case described under subsection (1)(b), the prosecuting attorney
3 shall file the motion within 90 days after ~~the effective date of~~
4 ~~the amendatory act that added this section.~~ **March 14, 2014.** The
5 motion ~~shall~~**must** specify the grounds on which the prosecuting
6 attorney is requesting the court to impose a sentence of
7 imprisonment for life without the possibility of parole.

8 (4) If the prosecuting attorney does not file a motion under
9 subsection (3) within the time periods provided for in that
10 subsection, the court shall sentence the defendant to a term of
11 years as provided in subsection (9).

12 (5) If the prosecuting attorney files a motion under
13 subsection (2) requesting that the individual be sentenced to
14 imprisonment for life without parole eligibility, the individual
15 shall file a response to the prosecution's motion within 14 days
16 after receiving notice of the motion.

17 (6) If the prosecuting attorney files a motion under
18 subsection (2), the court shall conduct a hearing on the motion as
19 part of the sentencing process. At the hearing, the trial court
20 shall consider the factors listed in ~~Miller v Alabama, 576 US _____;~~
21 **Miller v Alabama, 576 US 460**; 183 L Ed 2d 407; 132 S Ct 2455
22 (2012), and may consider any other criteria relevant to its
23 decision, including the individual's record while incarcerated.

24 (7) At the hearing under subsection (6), the court shall
25 specify on the record the aggravating and mitigating circumstances
26 considered by the court and the court's reasons supporting the
27 sentence imposed. The court may consider evidence presented at
28 trial together with any evidence presented at the sentencing
29 hearing.

1 (8) Each victim ~~shall~~**must** be afforded the right under section
2 15 of the William Van Regenmorter crime victim's rights act, 1985
3 PA 87, MCL 780.765, to appear before the court and make an oral
4 impact statement at any sentencing or resentencing of the defendant
5 under this section.

6 (9) If the court decides not to sentence the individual to
7 imprisonment for life without parole eligibility, the court shall
8 sentence the individual to a term of imprisonment for which the
9 maximum term shall be not less than 60 years and the minimum term
10 shall be not less than 25 years or more than 40 years.

11 (10) A defendant who is sentenced under this section ~~shall~~
12 **must** be given credit for time already served but ~~shall~~**must** not
13 receive any good time credits, special good time credits,
14 disciplinary credits, or any other credits that reduce the
15 defendant's minimum or maximum sentence.

16 (11) **This section does not apply to the resentencing of an**
17 **individual under sections 27a to 27h of this chapter.**

18 **Sec. 27a. (1) Notwithstanding any other provision of law, an**
19 **incarcerated individual who has served not less than 10 years of**
20 **the incarcerated individual's sentence or sentences for any**
21 **conviction or for a combination of convictions may petition the**
22 **sentencing court for a reduction of any or all of the incarcerated**
23 **individual's sentences as provided under this section.**

24 (2) A petition for a sentence reduction under this section may
25 be filed after the date on which the tenth year of imprisonment
26 begins for an incarcerated individual sentenced to more than 10
27 years of imprisonment.

28 (3) **Except as otherwise provided in this subsection, if a**
29 **petition for a reduction in sentence under this section has been**

1 denied, the incarcerated individual shall not file a successive
2 petition until not less than 2 years have elapsed after the date
3 the petition was denied. The court may require a waiting period
4 longer than 2 years, but in no case may require a waiting period
5 longer than 5 years after the date the most recent petition was
6 denied.

7 (4) If a petition for a reduction in sentence under this
8 section has been granted and the total sentence to be served was
9 reduced by not less than 25%, the incarcerated individual shall not
10 file a petition for a second sentencing reduction until not less
11 than 5 years have elapsed after the date the petition was granted.

12 (5) Notwithstanding any other provision of law to the
13 contrary, an incarcerated individual who has not yet served 10
14 years of imprisonment is eligible to petition for a reduction in
15 sentence if the prosecuting attorney in the applicable jurisdiction
16 consents to filing of the petition.

17 (6) Except as otherwise provided in this subsection, no
18 offense disqualifies an incarcerated individual from relief under
19 this chapter. An incarcerated individual who was convicted of a
20 mass shooting offense is not entitled to relief under this chapter.
21 For a petition under this section, an offense is considered a mass
22 shooting offense if the sentencing judge or the judge's successor
23 determines, by clear and convincing evidence, that the murders
24 resulted in physical, emotional, or psychological injury to a large
25 number of people who were present at the time of the offense, the
26 murders significantly increased the burden of victim assistance and
27 compensation for the applicable jurisdiction, and the murders arose
28 out of an incident in which the incarcerated individual brought a
29 firearm and ammunition to a location with the intent to commit

1 murder. As used in this subsection, "mass shooting offense" means
2 an offense that resulted in convictions for 3 or more counts of
3 first degree premeditated murder arising out of a single incident.

4 (7) A sentencing court that receives a petition for
5 resentencing under this chapter may reduce a sentence or deny the
6 petition. Notwithstanding any other law or provision, the court
7 shall not increase a sentence as a result of a petition under this
8 section. The court may reduce a mandatory sentence or a sentence
9 imposed as the result of a binding plea or sentencing agreement.

10 Sec. 27b. (1) After an individual has served 9 years of
11 imprisonment, the department of corrections shall, within 30 days
12 of the date beginning the incarcerated individual's ninth year of
13 incarceration, give written notice of the individual's eligibility
14 to file a petition for a reduction of sentence under section 27a of
15 this chapter to all of the following:

16 (a) The incarcerated individual.

17 (b) The sentencing court.

18 (c) The applicable prosecuting attorney.

19 (d) Any public defense authority in the judicial circuit in
20 which the sentence was imposed.

21 (2) The petition must be filed by the incarcerated individual,
22 counsel for the incarcerated individual, the prosecuting attorney,
23 or the next friend of the incarcerated individual, if the
24 incarcerated individual cannot bring the petition and the next
25 friend is acting in the best interests of the incarcerated
26 individual. As used in this subsection, "next friend" includes, but
27 is not limited to, the incarcerated individual's next of kin or a
28 qualified medical professional.

29 (3) The petition must be filed in writing in the judicial

1 circuit in which the sentence was imposed and may include
2 affidavits, declarations, letters, prison records, or other written
3 and electronic material.

4 (4) The petition must include, at a minimum, all of the
5 following:

6 (a) The name of the petitioner.

7 (b) The name of the incarcerated individual.

8 (c) The applicable case number or case numbers.

9 (d) The offense or offenses of conviction.

10 (e) The current sentence or sentences being served for each
11 case number.

12 (f) The date of the offense and sentence.

13 (g) The name of the trial and sentencing judge.

14 (h) The specific offenses for which the petitioner is
15 requesting resentencing.

16 (i) A factual statement explaining how the incarcerated
17 individual meets the eligibility requirements described in section
18 27a of this chapter.

19 (j) If the petition is filed by the next friend of the
20 incarcerated individual, a factual statement explaining the
21 petitioner's relationship to the incarcerated individual, why the
22 incarcerated individual cannot bring the petition on the
23 incarcerated individual's own behalf, and how the next friend is
24 acting in the best interests of the incarcerated individual.

25 (5) Within 30 days of receipt of a petition, the court shall
26 provide the applicable prosecuting attorney and the incarcerated
27 individual with a copy of the petition, including any attached
28 written or electronic material.

29 (6) A petition must be assigned to the judge who imposed the

1 original sentence on the incarcerated individual for a
2 determination. If, at the time of the petition, the original
3 sentencing judge is no longer available, the petition must be
4 assigned to that judge's successor.

5 (7) After the filing of a petition for a sentencing reduction,
6 the court may direct the parties to expand the record by submitting
7 additional materials relating to the petition. A petition may be
8 freely amended at any time before a hearing.

9 (8) The court shall not honor or permit a waiver of the right
10 to petition for a resentencing under section 27a of this chapter.

11 Sec. 27c. (1) On receiving a petition made under section 27a
12 of this chapter, the sentencing court shall determine whether the
13 incarcerated individual qualifies for a sentence reduction by
14 confirming all of the following:

15 (a) The incarcerated individual has served not less than 10
16 years in prison.

17 (b) The incarcerated individual is not time-barred by a prior
18 petition for a sentence reduction.

19 (c) The incarcerated individual is not excluded from
20 petitioning for a sentence reduction under 27a(6) of this chapter.

21 (2) Subject to subsection (3), if the court determines that
22 the incarcerated individual qualifies for a sentence reduction,
23 that court shall set a date for a resentencing hearing.

24 (3) If the incarcerated individual otherwise qualifies for a
25 sentence reduction under the requirements under subsection (1) and
26 is seeking a reduced sentence in connection with a conviction for
27 any of the following offenses, the court may or may not grant a
28 sentence reduction hearing at the court's discretion:

29 (a) A violation of section 520b or 520c of the Michigan penal

1 code, 1931 PA 328, MCL 750.520b and 750.520c, committed against a
2 victim less than 13 years of age.

3 (b) A violation section 81(4) or (5) of the Michigan penal
4 code, 1931 PA 328, MCL 750.81.

5 (c) A violation of section 81a(3) of the Michigan penal code,
6 1931 PA 328, MCL 750.81a.

7 (d) A violation of section 145c(2)(b) of the Michigan penal
8 code, 1931 Pa 328, MCL 750.145c.

9 (e) A violation of section 462c, 462d, or 462e of the Michigan
10 penal code, 1931 PA 328, MCL 750.462c, 750.462d, and 750.462e.

11 (4) If the court determines that the incarcerated individual
12 does not qualify for a sentence reduction under the requirements of
13 subsection (1), the court shall enter an order denying the petition
14 and cause a copy of the order to be provided to the petitioner and,
15 if the incarcerated individual is not the petitioner, the
16 incarcerated individual.

17 (5) Unless the court finds good cause to hold the hearing at a
18 later date or the petitioner requests a delay of the hearing, if
19 the court determines that the facts stated in the petition meet the
20 requirements under subsection (1), the court shall set a
21 resentencing hearing not more than 45 days after the date the
22 petition is filed with the court if 1 or more of the following
23 circumstances apply to the petition:

24 (a) The incarcerated individual has 1 or more medical
25 conditions leading to major limitations in activities of daily
26 living, including, but not limited to, a serious mental illness or
27 an intellectual or developmental disability.

28 (b) The incarcerated individual has 1 or more medical
29 conditions that make the incarcerated individual more likely to

1 contract an illness or disease while incarcerated that could lead
2 to death or cause the incarcerated individual to develop a medical
3 condition that prevents the performance of 1 or more activities of
4 daily living without assistance. Such conditions include, but are
5 not limited to, any condition related to a weakened immune system,
6 including human immunodeficiency virus or acquired immune
7 deficiency syndrome; debilitating health conditions that occur as a
8 result of dementia, Alzheimer's disease, or similar degenerative
9 brain disorders; cardiovascular disease; chronic lung disease or
10 asthma; diabetes; hepatitis C; seizure disorders; the need for
11 life-sustaining care such as feeding tubes or colostomy bags;
12 disabling neurological disorders such as multiple sclerosis or
13 amyotrophic lateral sclerosis; or any condition that requires or is
14 expected to require specialty care or recurrent hospitalizations.

15 (c) The petition is filed by the prosecuting attorney.

16 (6) Unless the court finds good cause to hold the hearing at a
17 later date or the petitioner requests a delay of the hearing, if
18 the court determines that the facts stated in the petition meet the
19 requirements under subsection (1), and if subsection (5) does not
20 apply to a petition but 1 or more of the following circumstances do
21 apply to the petition, the court shall set a resentencing hearing
22 not more than 90 days after the date the petition is filed with the
23 court:

24 (a) The incarcerated individual has served over 20 years of
25 the incarcerated individual's sentence.

26 (b) The incarcerated individual is over 55 years of age.

27 (7) Unless the court finds good cause to hold the hearing at a
28 later date or the petitioner requests a delay of the hearing, if
29 the court determines that the facts stated in the petition meet the

1 requirements under subsection (1) and neither subsection (5) nor
2 (6) apply to a petition, the court shall set a resentencing hearing
3 not more than 180 days after the date the petition is filed with
4 the court.

5 (8) If the court determines that the facts stated in the
6 petition meet the requirements under subsection (1) and the matter
7 is subsequently reassigned to a successor judge, the court shall
8 not reconsider the sufficiency of the petition or decline to set a
9 hearing.

10 (9) When the court sets a resentencing hearing under this
11 section, the court shall provide notice of the hearing to the
12 incarcerated individual, counsel for the incarcerated individual,
13 the department of corrections, the prosecuting attorney, and the
14 next friend of the incarcerated individual, if applicable.

15 (10) In a hearing under this section, the court may allow
16 parties to present any evidence that the court deems relevant to
17 the issue of the propriety of a reduction in sentence. The evidence
18 may include documents, live testimony, tangible objects, or any
19 other class of evidence or information pertinent to sentencing. The
20 court has exclusive discretion to determine the relevance of any
21 proposed evidence. The incarcerated individual must be permitted to
22 testify or to remain silent at the hearing.

23 (11) Unless the incarcerated individual waives the right to be
24 present, the incarcerated individual must be present during a
25 hearing under this section. The requirement under this subsection
26 may be satisfied by the incarcerated individual appearing by video
27 teleconference if the incarcerated individual consents to video
28 appearance.

29 (12) A hearing under this section must be conducted on the

1 record.

2 Sec. 27d. (1) In a hearing conducted under section 27c of this
3 chapter, the sentencing court shall consider all relevant evidence,
4 which includes, but is not limited to, all of the following:

5 (a) The age of the incarcerated individual at the time of the
6 offense and relevant research regarding child, adolescent, and
7 young adult brain development.

8 (b) The age of the incarcerated individual at the time of the
9 sentence modification petition and relevant research regarding the
10 decline in criminal behavior as individuals age.

11 (c) The nature of the offense, including changing societal
12 attitudes regarding the propriety of criminalizing the offense and
13 the appropriate sentence for the offense.

14 (d) The history and characteristics of the incarcerated
15 individual at the time of the petition for a reduction in sentence,
16 including rehabilitation demonstrated by the incarcerated
17 individual, the incarcerated individual's disciplinary record while
18 incarcerated, and the incarcerated individual's efforts to
19 participate in educational, therapeutic, and vocational
20 opportunities while incarcerated.

21 (e) Any oral or written statements provided by the victim's
22 representative.

23 (f) The circumstances of the offense, including the
24 incarcerated individual's role in its commission, whether the
25 incarcerated individual was under the influence of another, and the
26 proportionality of the incarcerated individual's sentence compared
27 to that received by other parties to the offense.

28 (g) The circumstances of the incarcerated individual's
29 incarceration, including the incarcerated individual's conditions

1 of confinement, the impact of the incarcerated individual's
2 incarceration on the community, and any evidence that the
3 incarcerated individual has been subjected to physical, sexual, or
4 psychological abuse while incarcerated.

5 (h) Any evidence concerning the incarcerated individual's
6 current physical or mental health and the incarcerated individual's
7 health at the time of the offense.

8 (i) Any evidence concerning plea offers by the prosecuting
9 attorney.

10 (j) Any evidence that the incarcerated individual was denied
11 effective assistance of counsel at any stage in the case resulting
12 in the original sentence, including ineffective assistance of
13 counsel during plea bargaining.

14 (k) Any evidence that the incarcerated individual was
15 wrongfully convicted.

16 (l) Any evidence that the incarcerated individual was subjected
17 to human trafficking and that the victimization was a contributing
18 factor to the incarcerated individual's criminal behavior.

19 (m) Any evidence that the incarcerated individual was
20 subjected to physical, sexual, or psychological abuse by an
21 intimate partner or a family or household member and that the
22 victimization was a contributing factor to the incarcerated
23 individual's criminal behavior.

24 (n) The incarcerated individual's parole guidelines score.

25 (o) The incarcerated individual's family and home environment
26 at the time of the offense, including any evidence of childhood
27 abuse or neglect, lack of adequate parenting or education, prior
28 exposure to violence, and susceptibility to psychological damage or
29 emotional disturbance.

1 (p) Any evidence about whether the individual might have been
2 charged and convicted of a lesser offense if not for an
3 incompetency associated with youth, intellectual disability, or
4 mental illness. This includes any evidence of the incarcerated
5 individual's inability to engage with police officers or
6 prosecutors or incapacity to assist defense counsel.

7 (q) Any other information the court determines relevant to the
8 decision of the court.

9 (2) At the conclusion of the hearing, if the sentencing court
10 finds that the petitioner has shown by a preponderance of the
11 evidence that it is in the interest of justice to reduce the
12 incarcerated individual's sentence, the court shall resentence the
13 incarcerated individual to an appropriate reduced sentence.

14 (3) The court shall set forth, either on the record or in
15 writing within 30 days of the hearing, the reasons for granting or
16 denying a petition for resentencing.

17 Sec. 27e. (1) In imposing the new term to be served by the
18 incarcerated individual, the court shall credit the incarcerated
19 individual for any jail time credited toward the subject conviction
20 and for any period of incarceration served under the sentence
21 originally imposed.

22 (2) If section 27c(5) of this chapter applies to the petition,
23 there is a rebuttable presumption that the incarcerated
24 individual's sentence must be reduced to time served.

25 (3) If the court finds that the incarcerated individual no
26 longer poses a meaningful risk to the community, there is a
27 rebuttable presumption that the incarcerated individual's sentence
28 must be reduced by not less than 20% or to no longer than 5 years
29 of incarceration from the date of the filing of the petition,

1 whichever results in a shorter period of incarceration.

2 (4) If the prosecuting attorney is the petitioner, the new
3 term of incarceration to be served by the incarcerated individual
4 must not exceed the recommendation of the petitioner. The court may
5 impose a shorter term of incarceration than the term recommended by
6 the petitioner, including by ordering immediate release.

7 (5) In imposing the new term to be served by the incarcerated
8 individual, the court shall impose a sentence of time served,
9 immediate parole, or a term of years. The court shall not impose
10 life with parole.

11 Sec. 27f. (1) Once a hearing date has been set for
12 resentencing under this chapter, the prosecuting attorney shall
13 promptly notify the victim of the offense for which the application
14 was filed and the hearing date. The notice must be by first-class
15 mail to the victim's last known address. The victim or the victim's
16 designee has the right to appear and the right, as otherwise
17 provided by law, to make a statement at the resentencing hearing of
18 the incarcerated individual regarding the impact of the offense
19 conduct on the victim. The prosecuting attorney shall promptly
20 notify the victim of any new sentence imposed under this chapter.

21 (2) If the incarcerated individual's underlying conviction is
22 homicide, the prosecuting attorney shall consult with the victim's
23 family before making any filing in relation to a petition for
24 resentencing.

25 (3) If the incarcerated individual would be otherwise
26 ineligible for relief but for the prosecuting attorney's consent
27 under section 27a(5) of this chapter, the prosecuting attorney
28 shall make reasonable efforts to consult with the victim before
29 consenting to the petition.

1 (4) Resentencing under section 27e of this chapter does not
2 disturb any restitution awarded at the original sentencing.

3 (5) As used in this section, "victim" means that term as
4 defined in sections 2 and 61 of the William Van Regenmorter crime
5 victim's rights act, 1985 PA 87, MCL 780.752 and 780.811.

6 Sec. 27g. (1) An appeal from a resentencing under section 27e
7 of this chapter may be taken by the incarcerated individual,
8 petitioner, or prosecuting authority. An appeal from resentencing
9 under this chapter is in the same manner, either by right or by
10 leave, as a first appeal from an initial sentence at the time of
11 conviction.

12 (2) An appeal from a denial of resentencing under this chapter
13 may be taken by the incarcerated individual or petitioner, if the
14 petitioner is not the incarcerated individual. An appeal from a
15 denial of resentencing under this chapter is in the same manner,
16 either by right or by leave, as a first appeal from an initial
17 sentence at the time of conviction.

18 Sec. 27h. (1) Resentencing under section 27e of this chapter
19 does not abridge or modify any existing remedy an incarcerated
20 individual may have for habeas corpus or other postconviction
21 relief as provided by court rule or law, or any other legal
22 framework.

23 (2) A petition filed under section 27a of this chapter does
24 not impact and is not impacted by any pending petitions for habeas
25 corpus or other postconviction proceedings provided for by court
26 rule or law, nor shall the denial of a petition under section 27a
27 of this chapter preclude such remedies from being granted.

SENATE BILL NO. 322

May 03, 2023, Introduced by Senators WOJNO, IRWIN, BAYER, CHANG, POLEHANKI, GEISS and CAVANAGH and referred to the Committee on Civil Rights, Judiciary, and Public Safety.

A bill to amend 1953 PA 232, entitled "Corrections code of 1953," by amending sections 33e and 34 (MCL 791.233e and 791.234), section 33e as amended by 2022 PA 28 and section 34 as amended by 2019 PA 14, and by adding section 34e.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 33e. (1) The department shall develop parole guidelines
2 that are consistent with section 33(1) (a) ~~to~~**for both of the**
3 following:

1 **(a) To** govern the exercise of the parole board's discretion
2 under sections 34 and 35 as to the release of prisoners on parole
3 under this act. The ~~purpose of the parole guidelines is to~~ **must**
4 assist the parole board in making objective, evidence-based release
5 decisions that enhance the public safety.

6 **(b) For use in a hearing under section 27c of chapter IX of**
7 **the code of criminal procedure, 1927 PA 175, MCL 769.27c.**

8 (2) In developing the parole guidelines, the department shall
9 consider factors including, but not limited to, the following:

10 (a) The offense for which the prisoner is incarcerated at the
11 time of parole consideration.

12 (b) The prisoner's institutional program performance.

13 (c) The prisoner's institutional conduct.

14 (d) The prisoner's prior criminal record. As used in this
15 subdivision, "prior criminal record" means the recorded criminal
16 history of a prisoner, including all misdemeanor and felony
17 convictions, probation violations, juvenile adjudications for acts
18 that would have been crimes if committed by an adult, parole
19 failures, and delayed sentences.

20 (e) Other relevant factors as determined by the department, if
21 not otherwise prohibited by law.

22 (3) In developing the parole guidelines, the department may
23 consider both of the following factors:

24 (a) The prisoner's statistical risk screening.

25 (b) The prisoner's age.

26 (4) The department shall ensure that the parole guidelines do
27 not create disparities in release decisions based on race, color,
28 national origin, gender, religion, or disability.

29 (5) The department shall promulgate rules under the

1 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
2 24.328, that prescribe the parole guidelines.

3 (6) The parole board may depart from the parole guidelines by
4 denying parole to a prisoner who has a high probability of parole
5 as determined under the parole guidelines or by granting parole to
6 a prisoner who has a low probability of parole as determined under
7 the parole guidelines. A departure under this subsection must be
8 for substantial and compelling objective reasons stated in writing.
9 The parole board shall not use a prisoner's gender, race,
10 ethnicity, alienage, national origin, or religion to depart from
11 the recommended parole guidelines.

12 (7) Substantial and compelling objective reasons for a
13 departure from the parole guidelines for a prisoner with high
14 probability of parole are limited to the following circumstances:

15 (a) The prisoner exhibits a pattern of ongoing behavior while
16 incarcerated indicating that ~~he or she~~ **the prisoner** would be a
17 substantial risk to public safety, including major misconducts or
18 additional criminal convictions.

19 (b) The prisoner refuses to participate in programming ordered
20 by the department to reduce the prisoner's risk. A prisoner may not
21 be considered to have refused programming if unable to complete
22 programming due to factors beyond ~~his or her~~ **the prisoner's**
23 control.

24 (c) There is verified objective evidence of substantial harm
25 to a victim that could not have been available for consideration at
26 the time of sentencing.

27 (d) The prisoner has threatened harm to another person if
28 released.

29 (e) There is objective evidence of post-sentencing conduct,

1 not already scored under the parole guidelines, that the prisoner
2 would present a high risk to public safety if paroled.

3 (f) The prisoner is a suspect in an unsolved criminal case
4 that is being actively investigated.

5 (g) The prisoner has a pending felony charge or is subject to
6 a detainer request from another jurisdiction.

7 (h) The prisoner has not yet completed programming ordered by
8 the department to reduce the prisoner's risk, and the programming
9 is not available in the community and the risk cannot be adequately
10 managed in the community before completion.

11 (i) The release of the prisoner is otherwise barred by law.

12 (j) The prisoner fails to present a sufficient parole plan
13 adequately addressing ~~his or her~~ **the prisoner's** identified risks
14 and needs to ensure that ~~he or she~~ **the prisoner** will not present a
15 risk to public safety if released on parole. If a prisoner is
16 denied parole under this subdivision, the parole board must provide
17 the prisoner a detailed explanation of the deficiencies in the
18 parole plan so that the prisoner may address the deficiencies
19 before ~~his or her~~ **the prisoner's** next review.

20 (k) The prisoner has received a psychological evaluation in
21 the past 3 years indicating the prisoner would present a high risk
22 to public safety if paroled.

23 (8) The parole board may deny parole for up to 1 year to a
24 prisoner who was denied parole under subsection (7)(h) to allow for
25 the completion of programming ordered by the department. A prisoner
26 denied parole under subsection (7)(h) must receive parole
27 consideration within 30 days after the completion of the
28 programming.

29 (9) Unless a waiver is issued under subsection (10), the

1 parole board shall conduct a review of a prisoner, except for a
2 prisoner serving a life sentence, who has been denied parole as
3 follows:

4 (a) If the prisoner scored high or average probability of
5 parole, not less than annually.

6 (b) If the prisoner scored low probability of parole, not less
7 than every 2 years until a score of high or average probability of
8 parole is attained.

9 (10) The parole board may conduct a subsequent review of a
10 prisoner, except for a prisoner serving a life sentence, not more
11 than 5 years after the review denying the prisoner parole, if a
12 majority of the parole board agrees to and signs a written
13 recommendation to waive the requirements under subsection (9). A
14 waiver under this subsection may be issued only if a majority of
15 the parole board finds and includes a statement in the waiver that
16 all of the following apply:

17 (a) The parole board had no interest in granting the prisoner
18 parole in the review denying the prisoner parole.

19 (b) The parole review requirements under subsection (9) would
20 cause additional harm to a victim of a crime for which the prisoner
21 was committed, or to the victim's surviving family members.

22 (c) The harm described under subdivision (b) can be mitigated
23 only by waiving the parole review process under subsection (9).

24 (d) Unique circumstances and factors contributed to the
25 decision to deny the prisoner parole and to waive the parole review
26 process under subsection (9).

27 (11) Not less than once every 2 years, the department shall
28 review the correlation between the implementation of the parole
29 guidelines and the recidivism rate of paroled prisoners, and shall

1 submit to the joint committee on administrative rules any proposed
2 revisions to the administrative rules that the department considers
3 appropriate after conducting the review.

4 (12) By March 1 of each year, the department shall report to
5 the standing committees of the senate and the house of
6 representatives having jurisdiction of corrections issues all of
7 the following information:

8 (a) The number of prisoners who scored high probability of
9 parole and were granted parole during the preceding calendar year.

10 (b) The number of prisoners who scored high probability of
11 parole and for whom parole was deferred to complete necessary
12 programming during the preceding calendar year.

13 (c) The number of prisoners who scored high probability of
14 parole and were incarcerated at least 6 months past their first
15 parole eligibility date as of December 31 of the preceding calendar
16 year.

17 (d) The number of prisoners who scored high probability of
18 parole and were denied parole for a substantial and compelling
19 objective reason, or substantial and compelling objective reasons,
20 under subsection (7) during the preceding calendar year. This
21 information must be provided with a breakdown of parole denials for
22 each of the substantial and compelling objective reasons under
23 subsection (7).

24 (e) The number of prisoners who scored high probability of
25 parole and were denied parole whose controlling offense is in each
26 of the following groups:

27 (i) Homicide.

28 (ii) Sexual offense.

29 (iii) An assaultive offense other than a homicide or sexual

1 offense.

2 (iv) A nonassaultive offense.

3 (v) A controlled substance offense.

4 (f) Of the total number of prisoners subject to subsection (7)
5 who scored high probability of parole and were denied parole, the
6 number who have served the following amount of time after
7 completing their minimum sentence:

8 (i) Less than 1 year.

9 (ii) One year or more but less than 2 years.

10 (iii) Two years or more but less than 3 years.

11 (iv) Three years or more but less than 4 years.

12 (v) Four or more years.

13 (g) The number of prisoners issued a waiver under subsection
14 (10).

15 (13) The department shall immediately advise the standing
16 committees of the senate and house of representatives having
17 jurisdiction of corrections issues of any changes made to the
18 scoring of the parole guidelines after December 12, 2018, including
19 a change in the number of points that define "high probability of
20 parole".

21 (14) Subsections (6), (7), and (8), as amended or added by
22 2018 PA 339, apply only to prisoners whose controlling offense was
23 committed on or after December 12, 2018. Subsections (7) and (8) do
24 not apply to a prisoner serving a life sentence, regardless of the
25 date of ~~his or her~~ **the prisoner's** controlling offense.

26 Sec. 34. (1) Except for a prisoner granted parole under
27 section 35(10) or as provided in section 34a, a prisoner sentenced
28 to an indeterminate sentence and confined in a state correctional
29 facility with a minimum in terms of years other than a prisoner

1 subject to disciplinary time is subject to the jurisdiction of the
2 parole board when the prisoner has served a period of time equal to
3 the minimum sentence imposed by the court for the crime of which ~~he~~
4 ~~or she~~ **the prisoner** was convicted, less good time and disciplinary
5 credits, if applicable.

6 (2) Except for a prisoner granted parole under section 35(10)
7 or as provided in section 34a, a prisoner subject to disciplinary
8 time sentenced to an indeterminate sentence and confined in a state
9 correctional facility with a minimum in terms of years is subject
10 to the jurisdiction of the parole board when the prisoner has
11 served a period of time equal to the minimum sentence imposed by
12 the court for the crime of which ~~he or she~~ **the prisoner** was
13 convicted.

14 (3) Except for a prisoner granted parole under section 35(10),
15 if a prisoner other than a prisoner subject to disciplinary time is
16 sentenced for consecutive terms, whether received at the same time
17 or at any time during the life of the original sentence, the parole
18 board has jurisdiction over the prisoner for purposes of parole
19 when the prisoner has served the total time of the added minimum
20 terms, less the good time and disciplinary credits allowed by
21 statute. The maximum terms of the sentences must be added to
22 compute the new maximum term under this subsection, and discharge
23 must be issued only after the total of the maximum sentences has
24 been served less good time and disciplinary credits, unless the
25 prisoner is paroled and discharged upon satisfactory completion of
26 the parole.

27 (4) Except for a prisoner granted parole under section 35(10),
28 if a prisoner subject to disciplinary time is sentenced for
29 consecutive terms, whether received at the same time or at any time

1 during the life of the original sentence, the parole board has
2 jurisdiction over the prisoner for purposes of parole when the
3 prisoner has served the total time of the added minimum terms. The
4 maximum terms of the sentences must be added to compute the new
5 maximum term under this subsection, and discharge must be issued
6 only after the total of the maximum sentences has been served,
7 unless the prisoner is paroled and discharged upon satisfactory
8 completion of the parole.

9 (5) If a prisoner other than a prisoner subject to
10 disciplinary time has 1 or more consecutive terms remaining to
11 serve in addition to the term ~~he or she~~ **the prisoner** is serving,
12 the parole board may terminate the sentence the prisoner is
13 presently serving at any time after the minimum term of the
14 sentence has been served.

15 (6) ~~A~~ **Except as provided under sections 27a to 27h of chapter**
16 **IX of the code of criminal procedure, 1927 PA 175, MCL 769.27c, a**
17 prisoner sentenced to imprisonment for life for any of the
18 following is not eligible for parole and is instead subject to the
19 provisions of section 44 or 44a:

20 (a) First degree murder in violation of section 316 of the
21 Michigan penal code, 1931 PA 328, MCL 750.316.

22 (b) A violation of section 16(5) or 18(7) of the Michigan
23 penal code, 1931 PA 328, MCL 750.16 and 750.18.

24 (c) A violation of chapter XXXIII of the Michigan penal code,
25 1931 PA 328, MCL 750.200 to 750.212a.

26 (d) A violation of section 17764(7) of the public health code,
27 1978 PA 368, MCL 333.17764.

28 (e) First degree criminal sexual conduct in violation of
29 section 520b(2)(c) of the Michigan penal code, 1931 PA 328, MCL

1 750.520b.

2 (f) Any other violation for which parole eligibility is
3 expressly denied under state law.

4 (7) Except for a prisoner granted parole under section 35(10),
5 a prisoner sentenced to imprisonment for life, other than a
6 prisoner described in subsection (6), is subject to the
7 jurisdiction of the parole board and may be placed on parole
8 according to the conditions prescribed in subsection (8) if ~~he or~~
9 ~~she~~ **the prisoner** meets any of the following criteria:

10 (a) Except as provided in subdivision (b) or (c), the prisoner
11 has served 10 calendar years of the sentence for a crime committed
12 before October 1, 1992 or 15 calendar years of the sentence for a
13 crime committed on or after October 1, 1992.

14 (b) Except as provided in subsection (12), the prisoner has
15 served 20 calendar years of a sentence for violating, or attempting
16 or conspiring to violate, section 7401(2)(a)(i) of the public health
17 code, 1978 PA 368, MCL 333.7401, and has another conviction for a
18 serious crime.

19 (c) Except as provided in subsection (12), the prisoner has
20 served 17-1/2 calendar years of the sentence for violating, or
21 attempting or conspiring to violate, section 7401(2)(a)(i) of the
22 public health code, 1978 PA 368, MCL 333.7401, and does not have
23 another conviction for a serious crime.

24 (8) A parole granted to a prisoner under subsection (7) is
25 subject to the following conditions:

26 (a) At the conclusion of 10 calendar years of the prisoner's
27 sentence and thereafter as determined by the parole board until the
28 prisoner is paroled, discharged, or deceased, and in accordance
29 with the procedures described in subsection (9), 1 member of the

1 parole board shall interview the prisoner. The interview schedule
2 prescribed in this subdivision applies to all prisoners to whom
3 subsection (7) applies, regardless of the date on which they were
4 sentenced.

5 (b) In addition to the interview schedule prescribed in
6 subdivision (a), the parole board shall review the prisoner's file
7 at the conclusion of 15 calendar years of the prisoner's sentence
8 and every 5 years thereafter until the prisoner is paroled,
9 discharged, or deceased. A prisoner whose file is to be reviewed
10 under this subdivision must be notified of the upcoming file review
11 at least 30 days before the file review takes place and must be
12 allowed to submit written statements or documentary evidence for
13 the parole board's consideration in conducting the file review.

14 (c) A decision to grant or deny parole to the prisoner must
15 not be made until after a public hearing held in the manner
16 prescribed for pardons and commutations in sections 44 and 45.
17 Notice of the public hearing must be given to the sentencing judge,
18 or the judge's successor in office. Parole must not be granted if
19 the sentencing judge files written objections to the granting of
20 the parole within 30 days of receipt of the notice of hearing, but
21 the sentencing judge's written objections bar the granting of
22 parole only if the sentencing judge is still in office in the court
23 before which the prisoner was convicted and sentenced. A sentencing
24 judge's successor in office may file written objections to the
25 granting of parole, but a successor judge's objections must not bar
26 the granting of parole under subsection (7). If written objections
27 are filed by either the sentencing judge or the judge's successor
28 in office, the objections must be made part of the prisoner's file.

29 (d) A parole granted under subsection (7) must be for a period

1 of not less than 4 years and subject to the usual rules pertaining
2 to paroles granted by the parole board. A parole granted under
3 subsection (7) is not valid until the transcript of the record is
4 filed with the attorney general whose certification of receipt of
5 the transcript must be returned to the office of the parole board
6 within 5 days. Except for medical records protected under section
7 2157 of the revised judicature act of 1961, 1961 PA 236, MCL
8 600.2157, the file of a prisoner granted a parole under subsection
9 (7) is a public record.

10 (9) An interview conducted under subsection (8)(a) is subject
11 to both of the following requirements:

12 (a) The prisoner must be given written notice, not less than
13 30 days before the interview date, stating that the interview will
14 be conducted.

15 (b) The prisoner may be represented at the interview by an
16 individual of ~~his or her~~ **the prisoner's** choice. The representative
17 must not be another prisoner. A prisoner is not entitled to
18 appointed counsel at public expense. The prisoner or representative
19 may present relevant evidence in favor of holding a public hearing
20 as allowed in subsection (8)(c).

21 (10) In determining whether a prisoner convicted of violating,
22 or attempting or conspiring to violate, section 7401(2)(a)(i) of the
23 public health code, 1978 PA 368, MCL 333.7401, and sentenced to
24 imprisonment for life before October 1, 1998 is to be released on
25 parole, the parole board shall consider all of the following:

26 (a) Whether the violation was part of a continuing series of
27 violations of section 7401 or 7403 of the public health code, 1978
28 PA 368, MCL 333.7401 and 333.7403, by that individual.

29 (b) Whether the violation was committed by the individual in

1 concert with 5 or more other individuals.

2 (c) Any of the following:

3 (i) Whether the individual was a principal administrator,
4 organizer, or leader of an entity that the individual knew or had
5 reason to know was organized, in whole or in part, to commit
6 violations of section 7401 or 7403 of the public health code, 1978
7 PA 368, MCL 333.7401 and 333.7403, and whether the violation for
8 which the individual was convicted was committed to further the
9 interests of that entity.

10 (ii) Whether the individual was a principal administrator,
11 organizer, or leader of an entity that the individual knew or had
12 reason to know committed violations of section 7401 or 7403 of the
13 public health code, 1978 PA 368, MCL 333.7401 and 333.7403, and
14 whether the violation for which the individual was convicted was
15 committed to further the interests of that entity.

16 (iii) Whether the violation was committed in a drug-free school
17 zone.

18 (iv) Whether the violation involved the delivery of a
19 controlled substance to an individual less than 17 years of age or
20 possession with intent to deliver a controlled substance to an
21 individual less than 17 years of age.

22 (11) Except as provided in subsection (19) and section 34a, a
23 prisoner's release on parole is discretionary with the parole
24 board. The action of the parole board in granting a parole is
25 appealable by the prosecutor of the county from which the prisoner
26 was committed or the victim of the crime for which the prisoner was
27 convicted. The appeal must be to the circuit court in the county
28 from which the prisoner was committed, by leave of the court.

29 (12) If the sentencing judge, or ~~his or her~~ **the judge's**

1 successor in office, determines on the record that a prisoner
2 described in subsection (7) (b) or (c) sentenced to imprisonment for
3 life for violating, or attempting or conspiring to violate, section
4 7401(2) (a) (i) of the public health code, 1978 PA 368, MCL 333.7401,
5 has cooperated with law enforcement, the prisoner is subject to the
6 jurisdiction of the parole board and may be released on parole as
7 provided in subsection (7) (b) or (c) 2-1/2 years earlier than the
8 time otherwise indicated in subsection (7) (b) or (c). The prisoner
9 is considered to have cooperated with law enforcement if the court
10 determines on the record that the prisoner had no relevant or
11 useful information to provide. The court shall not make a
12 determination that the prisoner failed or refused to cooperate with
13 law enforcement on grounds that the defendant exercised ~~his or her~~
14 **the defendant's** constitutional right to trial by jury. If the court
15 determines at sentencing that the defendant cooperated with law
16 enforcement, the court shall include its determination in the
17 judgment of sentence.

18 (13) Except for a prisoner granted parole under section 35(10)
19 and notwithstanding subsections (1) and (2), a prisoner convicted
20 of violating, or attempting or conspiring to violate, section
21 7401(2) (a) (i) or 7403(2) (a) (i) of the public health code, 1978 PA
22 368, MCL 333.7401 and 333.7403, whose offense occurred before March
23 1, 2003, and who was sentenced to a term of years, is eligible for
24 parole after serving 20 years of the sentence imposed for the
25 violation if the individual has another serious crime or 17-1/2
26 years of the sentence if the individual does not have another
27 conviction for a serious crime, or after serving the minimum
28 sentence imposed for that violation, whichever is less.

29 (14) Except for a prisoner granted parole under section 35(10)

1 and notwithstanding subsections (1) and (2), a prisoner who was
2 convicted of violating, or attempting or conspiring to violate,
3 section 7401(2) (a) (ii) or 7403(2) (a) (ii) of the public health code,
4 1978 PA 368, MCL 333.7401 and 333.7403, whose offense occurred
5 before March 1, 2003, and who was sentenced according to those
6 sections as they existed before March 1, 2003, is eligible for
7 parole after serving the minimum of each sentence imposed for that
8 violation or 10 years of each sentence imposed for that violation,
9 whichever is less.

10 (15) Except for a prisoner granted parole under section 35(10)
11 and notwithstanding subsections (1) and (2), a prisoner who was
12 convicted of violating, or attempting or conspiring to violate,
13 section 7401(2) (a) (iii) or 7403(2) (a) (iii) of the public health code,
14 1978 PA 368, MCL 333.7401 and 333.7403, whose offense occurred
15 before March 1, 2003, and who was sentenced according to those
16 sections as they existed before March 1, 2003, is eligible for
17 parole after serving the minimum of each sentence imposed for that
18 violation or 5 years of each sentence imposed for that violation,
19 whichever is less.

20 (16) Except for a prisoner granted parole under section 35(10)
21 and notwithstanding subsections (1) and (2), a prisoner who was
22 convicted of violating, or attempting or conspiring to violate,
23 section 7401(2) (a) (iv) or 7403(2) (a) (iv) of the public health code,
24 1978 PA 368, MCL 333.7401 and 333.7403, whose offense occurred
25 before March 1, 2003, who was sentenced according to those sections
26 of law as they existed before March 1, 2003 to consecutive terms of
27 imprisonment for 2 or more violations of section 7401(2) (a) or
28 7403(2) (a) of the public health code, 1978 PA 368, MCL 333.7401 and
29 333.7403, is eligible for parole after serving 1/2 of the minimum

1 sentence imposed for each violation of section 7401(2) (a) (iv) or
2 7403(2) (a) (iv) of the public health code, 1978 PA 368, MCL 333.7401
3 and 333.7403. This subsection applies only to sentences imposed for
4 violations of section 7401(2) (a) (iv) or 7403(2) (a) (iv) of the public
5 health code, 1978 PA 368, MCL 333.7401 and 333.7403, and does not
6 apply if the sentence was imposed for a conviction for a new
7 offense committed while the individual was on probation or parole.

8 (17) Except for a prisoner granted parole under section 35(10)
9 and notwithstanding subsections (1) and (2), a prisoner who was
10 convicted of violating, or attempting or conspiring to violate,
11 section 7401(2) (a) (ii) or (iii) or 7403(2) (a) (ii) or (iii) of the public
12 health code, 1978 PA 368, MCL 333.7401 and 333.7403, who had a
13 prior conviction for a violation of section 7401(2) (a) (ii) or (iii) or
14 7403(2) (a) (ii) or (iii) of the public health code, 1978 PA 368, MCL
15 333.7401 and 333.7403, and who was sentenced to life without parole
16 under section 7413(1) of the public health code, 1978 PA 368, MCL
17 333.7413, according to that section as it existed before March 28,
18 2018 is eligible for parole after serving 5 years of each sentence
19 imposed for that violation.

20 (18) The parole board shall provide notice to the prosecuting
21 attorney of the county in which the prisoner was convicted before
22 granting parole to the prisoner under subsection (13), (14), (15),
23 (16), or (17) or under section 35(10). The parole board shall
24 provide the relevant medical records to the prosecuting attorney of
25 the county in which the prisoner was convicted for a prisoner being
26 considered for parole under section 35(10) at the same time the
27 parole board provides the notice required under this subsection.
28 The parole board shall also provide notice to any known victim or,
29 in the case of a homicide, the victim's immediate family, that it

1 is considering a prisoner for parole under section 35(10) at the
2 same time it provides notice to the prosecuting attorney under this
3 subsection.

4 (19) The prosecuting attorney or victim or, in the case of a
5 homicide, the victim's immediate family, may object to the parole
6 board's decision to recommend parole by filing a motion in the
7 circuit court in the county in which the prisoner was convicted
8 within 30 days of receiving notice under subsection (18). Upon
9 notification under subsection (18) and request by the victim, or,
10 in the case of a homicide, the victim's immediate family, the
11 prosecuting attorney must confer with the victim, or in the case of
12 a homicide, the victim's immediate family, before making a decision
13 regarding whether or not to object to the parole board's
14 determination. A motion filed under this subsection must be heard
15 by the sentencing judge or the judge's successor in office. The
16 prosecuting attorney shall inform the parole board if a motion was
17 filed under this subsection. A prosecutor who files a motion under
18 this subsection may seek an independent medical examination of the
19 prisoner being considered for parole under section 35(10). If an
20 appeal is initiated under this subsection, a subsequent appeal
21 under subsection (11) may not be initiated upon the granting of
22 parole.

23 (20) Both of the following apply to a hearing conducted on a
24 motion filed under subsection (19):

25 (a) The prosecutor and the parole board may present evidence
26 in support of or in opposition to the determination that a prisoner
27 is medically frail, including the results of any independent
28 medical examination.

29 (b) The sentencing judge or the judge's successor shall

1 determine whether the prisoner is eligible for parole as a result
2 of being medically frail.

3 (21) The decision of the sentencing judge or the judge's
4 successor on a motion filed under subsection (19) is binding on the
5 parole board with respect to whether a prisoner must be considered
6 medically frail or not. However, the decision of the sentencing
7 judge or the judge's successor is subject to appeal by leave to the
8 court of appeals granted to the department, the prosecuting
9 attorney, or the victim or victim's immediate family in the case of
10 a homicide.

11 (22) As used in this section:

12 (a) "Medically frail" means that term as defined in section
13 35(22).

14 (b) "Serious crime" means violating or conspiring to violate
15 article 7 of the public health code, 1978 PA 368, MCL 333.7101 to
16 333.7545, that is punishable by imprisonment for more than 4 years,
17 or an offense against a person in violation of section 83, 84, 86,
18 87, 88, 89, 316, 317, 321, 349, 349a, 350, 397, 520b, 520c, 520d,
19 520g, 529, 529a, or 530 of the Michigan penal code, 1931 PA 328,
20 MCL 750.83, 750.84, 750.86, 750.87, 750.88, 750.89, 750.316,
21 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b,
22 750.520c, 750.520d, 750.520g, 750.529, 750.529a, and 750.530.

23 (c) "State correctional facility" means a facility that houses
24 prisoners committed to the jurisdiction of the department.

25 **Sec. 34e. The department shall provide notice to a prisoner**
26 **whose minimum term of imprisonment is 10 or more years as provided**
27 **under section 27b of chapter IX of the code of criminal procedure,**
28 **1927 PA 175, 769.27b.**

29 Enacting section 1. This amendatory act does not take effect

1 unless Senate Bill No. 321 of the 102nd Legislature is enacted into
2 law.

HOUSE BILL NO. 4557

May 16, 2023, Introduced by Reps. Neeley, Wilson, Hope, McKinney, Aiyash, O'Neal, Wegela, Brixie, Rheingans, Price, Steckloff, McFall, Dievendorf, Martus, MacDonell, Arbit, Hoskins, Brenda Carter, Young, Grant and Whitsett and referred to the Committee on Criminal Justice.

A bill to amend 1953 PA 232, entitled "Corrections code of 1953," by amending sections 33e and 34 (MCL 791.233e and 791.234), section 33e as amended by 2022 PA 28 and section 34 as amended by 2019 PA 14, and by adding section 34e.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 33e. (1) The department shall develop parole guidelines
2 that are consistent with section 33(1) (a) ~~to~~**for both of the**
3 following:

1 **(a) To** govern the exercise of the parole board's discretion
2 under sections 34 and 35 as to the release of prisoners on parole
3 under this act. The ~~purpose of the parole guidelines is to~~ **must**
4 assist the parole board in making objective, evidence-based release
5 decisions that enhance the public safety.

6 **(b) For use in a hearing under section 27c of chapter IX of**
7 **the code of criminal procedure, 1927 PA 175, MCL 769.27c.**

8 (2) In developing the parole guidelines, the department shall
9 consider factors including, but not limited to, the following:

10 (a) The offense for which the prisoner is incarcerated at the
11 time of parole consideration.

12 (b) The prisoner's institutional program performance.

13 (c) The prisoner's institutional conduct.

14 (d) The prisoner's prior criminal record. As used in this
15 subdivision, "prior criminal record" means the recorded criminal
16 history of a prisoner, including all misdemeanor and felony
17 convictions, probation violations, juvenile adjudications for acts
18 that would have been crimes if committed by an adult, parole
19 failures, and delayed sentences.

20 (e) Other relevant factors as determined by the department, if
21 not otherwise prohibited by law.

22 (3) In developing the parole guidelines, the department may
23 consider both of the following factors:

24 (a) The prisoner's statistical risk screening.

25 (b) The prisoner's age.

26 (4) The department shall ensure that the parole guidelines do
27 not create disparities in release decisions based on race, color,
28 national origin, gender, religion, or disability.

29 (5) The department shall promulgate rules under the

1 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
2 24.328, that prescribe the parole guidelines.

3 (6) The parole board may depart from the parole guidelines by
4 denying parole to a prisoner who has a high probability of parole
5 as determined under the parole guidelines or by granting parole to
6 a prisoner who has a low probability of parole as determined under
7 the parole guidelines. A departure under this subsection must be
8 for substantial and compelling objective reasons stated in writing.
9 The parole board shall not use a prisoner's gender, race,
10 ethnicity, alienage, national origin, or religion to depart from
11 the recommended parole guidelines.

12 (7) Substantial and compelling objective reasons for a
13 departure from the parole guidelines for a prisoner with high
14 probability of parole are limited to the following circumstances:

15 (a) The prisoner exhibits a pattern of ongoing behavior while
16 incarcerated indicating that ~~he or she~~ **the prisoner** would be a
17 substantial risk to public safety, including major misconducts or
18 additional criminal convictions.

19 (b) The prisoner refuses to participate in programming ordered
20 by the department to reduce the prisoner's risk. A prisoner may not
21 be considered to have refused programming if unable to complete
22 programming due to factors beyond ~~his or her~~ **the prisoner's**
23 control.

24 (c) There is verified objective evidence of substantial harm
25 to a victim that could not have been available for consideration at
26 the time of sentencing.

27 (d) The prisoner has threatened harm to another person if
28 released.

29 (e) There is objective evidence of post-sentencing conduct,

1 not already scored under the parole guidelines, that the prisoner
2 would present a high risk to public safety if paroled.

3 (f) The prisoner is a suspect in an unsolved criminal case
4 that is being actively investigated.

5 (g) The prisoner has a pending felony charge or is subject to
6 a detainer request from another jurisdiction.

7 (h) The prisoner has not yet completed programming ordered by
8 the department to reduce the prisoner's risk, and the programming
9 is not available in the community and the risk cannot be adequately
10 managed in the community before completion.

11 (i) The release of the prisoner is otherwise barred by law.

12 (j) The prisoner fails to present a sufficient parole plan
13 adequately addressing ~~his or her~~ **the prisoner's** identified risks
14 and needs to ensure that ~~he or she~~ **the prisoner** will not present a
15 risk to public safety if released on parole. If a prisoner is
16 denied parole under this subdivision, the parole board must provide
17 the prisoner a detailed explanation of the deficiencies in the
18 parole plan so that the prisoner may address the deficiencies
19 before ~~his or her~~ **the prisoner's** next review.

20 (k) The prisoner has received a psychological evaluation in
21 the past 3 years indicating the prisoner would present a high risk
22 to public safety if paroled.

23 (8) The parole board may deny parole for up to 1 year to a
24 prisoner who was denied parole under subsection (7)(h) to allow for
25 the completion of programming ordered by the department. A prisoner
26 denied parole under subsection (7)(h) must receive parole
27 consideration within 30 days after the completion of the
28 programming.

29 (9) Unless a waiver is issued under subsection (10), the

1 parole board shall conduct a review of a prisoner, except for a
2 prisoner serving a life sentence, who has been denied parole as
3 follows:

4 (a) If the prisoner scored high or average probability of
5 parole, not less than annually.

6 (b) If the prisoner scored low probability of parole, not less
7 than every 2 years until a score of high or average probability of
8 parole is attained.

9 (10) The parole board may conduct a subsequent review of a
10 prisoner, except for a prisoner serving a life sentence, not more
11 than 5 years after the review denying the prisoner parole, if a
12 majority of the parole board agrees to and signs a written
13 recommendation to waive the requirements under subsection (9). A
14 waiver under this subsection may be issued only if a majority of
15 the parole board finds and includes a statement in the waiver that
16 all of the following apply:

17 (a) The parole board had no interest in granting the prisoner
18 parole in the review denying the prisoner parole.

19 (b) The parole review requirements under subsection (9) would
20 cause additional harm to a victim of a crime for which the prisoner
21 was committed, or to the victim's surviving family members.

22 (c) The harm described under subdivision (b) can be mitigated
23 only by waiving the parole review process under subsection (9).

24 (d) Unique circumstances and factors contributed to the
25 decision to deny the prisoner parole and to waive the parole review
26 process under subsection (9).

27 (11) Not less than once every 2 years, the department shall
28 review the correlation between the implementation of the parole
29 guidelines and the recidivism rate of paroled prisoners, and shall

1 submit to the joint committee on administrative rules any proposed
2 revisions to the administrative rules that the department considers
3 appropriate after conducting the review.

4 (12) By March 1 of each year, the department shall report to
5 the standing committees of the senate and the house of
6 representatives having jurisdiction of corrections issues all of
7 the following information:

8 (a) The number of prisoners who scored high probability of
9 parole and were granted parole during the preceding calendar year.

10 (b) The number of prisoners who scored high probability of
11 parole and for whom parole was deferred to complete necessary
12 programming during the preceding calendar year.

13 (c) The number of prisoners who scored high probability of
14 parole and were incarcerated at least 6 months past their first
15 parole eligibility date as of December 31 of the preceding calendar
16 year.

17 (d) The number of prisoners who scored high probability of
18 parole and were denied parole for a substantial and compelling
19 objective reason, or substantial and compelling objective reasons,
20 under subsection (7) during the preceding calendar year. This
21 information must be provided with a breakdown of parole denials for
22 each of the substantial and compelling objective reasons under
23 subsection (7).

24 (e) The number of prisoners who scored high probability of
25 parole and were denied parole whose controlling offense is in each
26 of the following groups:

27 (i) Homicide.

28 (ii) Sexual offense.

29 (iii) An assaultive offense other than a homicide or sexual

1 offense.

2 (iv) A nonassaultive offense.

3 (v) A controlled substance offense.

4 (f) Of the total number of prisoners subject to subsection (7)
5 who scored high probability of parole and were denied parole, the
6 number who have served the following amount of time after
7 completing their minimum sentence:

8 (i) Less than 1 year.

9 (ii) One year or more but less than 2 years.

10 (iii) Two years or more but less than 3 years.

11 (iv) Three years or more but less than 4 years.

12 (v) Four or more years.

13 (g) The number of prisoners issued a waiver under subsection
14 (10).

15 (13) The department shall immediately advise the standing
16 committees of the senate and house of representatives having
17 jurisdiction of corrections issues of any changes made to the
18 scoring of the parole guidelines after December 12, 2018, including
19 a change in the number of points that define "high probability of
20 parole".

21 (14) Subsections (6), (7), and (8), as amended or added by
22 2018 PA 339, apply only to prisoners whose controlling offense was
23 committed on or after December 12, 2018. Subsections (7) and (8) do
24 not apply to a prisoner serving a life sentence, regardless of the
25 date of ~~his or her~~ **the prisoner's** controlling offense.

26 Sec. 34. (1) Except for a prisoner granted parole under
27 section 35(10) or as provided in section 34a, a prisoner sentenced
28 to an indeterminate sentence and confined in a state correctional
29 facility with a minimum in terms of years other than a prisoner

1 subject to disciplinary time is subject to the jurisdiction of the
2 parole board when the prisoner has served a period of time equal to
3 the minimum sentence imposed by the court for the crime of which ~~he~~
4 ~~or she~~ **the prisoner** was convicted, less good time and disciplinary
5 credits, if applicable.

6 (2) Except for a prisoner granted parole under section 35(10)
7 or as provided in section 34a, a prisoner subject to disciplinary
8 time sentenced to an indeterminate sentence and confined in a state
9 correctional facility with a minimum in terms of years is subject
10 to the jurisdiction of the parole board when the prisoner has
11 served a period of time equal to the minimum sentence imposed by
12 the court for the crime of which ~~he or she~~ **the prisoner** was
13 convicted.

14 (3) Except for a prisoner granted parole under section 35(10),
15 if a prisoner other than a prisoner subject to disciplinary time is
16 sentenced for consecutive terms, whether received at the same time
17 or at any time during the life of the original sentence, the parole
18 board has jurisdiction over the prisoner for purposes of parole
19 when the prisoner has served the total time of the added minimum
20 terms, less the good time and disciplinary credits allowed by
21 statute. The maximum terms of the sentences must be added to
22 compute the new maximum term under this subsection, and discharge
23 must be issued only after the total of the maximum sentences has
24 been served less good time and disciplinary credits, unless the
25 prisoner is paroled and discharged upon satisfactory completion of
26 the parole.

27 (4) Except for a prisoner granted parole under section 35(10),
28 if a prisoner subject to disciplinary time is sentenced for
29 consecutive terms, whether received at the same time or at any time

1 during the life of the original sentence, the parole board has
2 jurisdiction over the prisoner for purposes of parole when the
3 prisoner has served the total time of the added minimum terms. The
4 maximum terms of the sentences must be added to compute the new
5 maximum term under this subsection, and discharge must be issued
6 only after the total of the maximum sentences has been served,
7 unless the prisoner is paroled and discharged upon satisfactory
8 completion of the parole.

9 (5) If a prisoner other than a prisoner subject to
10 disciplinary time has 1 or more consecutive terms remaining to
11 serve in addition to the term ~~he or she~~ **the prisoner** is serving,
12 the parole board may terminate the sentence the prisoner is
13 presently serving at any time after the minimum term of the
14 sentence has been served.

15 (6) ~~A~~ **Except as provided under sections 27a to 27h of chapter**
16 **IX of the code of criminal procedure, 1927 PA 175, MCL 769.27c, a**
17 prisoner sentenced to imprisonment for life for any of the
18 following is not eligible for parole and is instead subject to the
19 provisions of section 44 or 44a:

20 (a) First degree murder in violation of section 316 of the
21 Michigan penal code, 1931 PA 328, MCL 750.316.

22 (b) A violation of section 16(5) or 18(7) of the Michigan
23 penal code, 1931 PA 328, MCL 750.16 and 750.18.

24 (c) A violation of chapter XXXIII of the Michigan penal code,
25 1931 PA 328, MCL 750.200 to 750.212a.

26 (d) A violation of section 17764(7) of the public health code,
27 1978 PA 368, MCL 333.17764.

28 (e) First degree criminal sexual conduct in violation of
29 section 520b(2)(c) of the Michigan penal code, 1931 PA 328, MCL

1 750.520b.

2 (f) Any other violation for which parole eligibility is
3 expressly denied under state law.

4 (7) Except for a prisoner granted parole under section 35(10),
5 a prisoner sentenced to imprisonment for life, other than a
6 prisoner described in subsection (6), is subject to the
7 jurisdiction of the parole board and may be placed on parole
8 according to the conditions prescribed in subsection (8) if ~~he or~~
9 ~~she~~ **the prisoner** meets any of the following criteria:

10 (a) Except as provided in subdivision (b) or (c), the prisoner
11 has served 10 calendar years of the sentence for a crime committed
12 before October 1, 1992 or 15 calendar years of the sentence for a
13 crime committed on or after October 1, 1992.

14 (b) Except as provided in subsection (12), the prisoner has
15 served 20 calendar years of a sentence for violating, or attempting
16 or conspiring to violate, section 7401(2)(a)(i) of the public health
17 code, 1978 PA 368, MCL 333.7401, and has another conviction for a
18 serious crime.

19 (c) Except as provided in subsection (12), the prisoner has
20 served 17-1/2 calendar years of the sentence for violating, or
21 attempting or conspiring to violate, section 7401(2)(a)(i) of the
22 public health code, 1978 PA 368, MCL 333.7401, and does not have
23 another conviction for a serious crime.

24 (8) A parole granted to a prisoner under subsection (7) is
25 subject to the following conditions:

26 (a) At the conclusion of 10 calendar years of the prisoner's
27 sentence and thereafter as determined by the parole board until the
28 prisoner is paroled, discharged, or deceased, and in accordance
29 with the procedures described in subsection (9), 1 member of the

1 parole board shall interview the prisoner. The interview schedule
2 prescribed in this subdivision applies to all prisoners to whom
3 subsection (7) applies, regardless of the date on which they were
4 sentenced.

5 (b) In addition to the interview schedule prescribed in
6 subdivision (a), the parole board shall review the prisoner's file
7 at the conclusion of 15 calendar years of the prisoner's sentence
8 and every 5 years thereafter until the prisoner is paroled,
9 discharged, or deceased. A prisoner whose file is to be reviewed
10 under this subdivision must be notified of the upcoming file review
11 at least 30 days before the file review takes place and must be
12 allowed to submit written statements or documentary evidence for
13 the parole board's consideration in conducting the file review.

14 (c) A decision to grant or deny parole to the prisoner must
15 not be made until after a public hearing held in the manner
16 prescribed for pardons and commutations in sections 44 and 45.
17 Notice of the public hearing must be given to the sentencing judge,
18 or the judge's successor in office. Parole must not be granted if
19 the sentencing judge files written objections to the granting of
20 the parole within 30 days of receipt of the notice of hearing, but
21 the sentencing judge's written objections bar the granting of
22 parole only if the sentencing judge is still in office in the court
23 before which the prisoner was convicted and sentenced. A sentencing
24 judge's successor in office may file written objections to the
25 granting of parole, but a successor judge's objections must not bar
26 the granting of parole under subsection (7). If written objections
27 are filed by either the sentencing judge or the judge's successor
28 in office, the objections must be made part of the prisoner's file.

29 (d) A parole granted under subsection (7) must be for a period

1 of not less than 4 years and subject to the usual rules pertaining
2 to paroles granted by the parole board. A parole granted under
3 subsection (7) is not valid until the transcript of the record is
4 filed with the attorney general whose certification of receipt of
5 the transcript must be returned to the office of the parole board
6 within 5 days. Except for medical records protected under section
7 2157 of the revised judicature act of 1961, 1961 PA 236, MCL
8 600.2157, the file of a prisoner granted a parole under subsection
9 (7) is a public record.

10 (9) An interview conducted under subsection (8)(a) is subject
11 to both of the following requirements:

12 (a) The prisoner must be given written notice, not less than
13 30 days before the interview date, stating that the interview will
14 be conducted.

15 (b) The prisoner may be represented at the interview by an
16 individual of ~~his or her~~ **the prisoner's** choice. The representative
17 must not be another prisoner. A prisoner is not entitled to
18 appointed counsel at public expense. The prisoner or representative
19 may present relevant evidence in favor of holding a public hearing
20 as allowed in subsection (8)(c).

21 (10) In determining whether a prisoner convicted of violating,
22 or attempting or conspiring to violate, section 7401(2)(a)(i) of the
23 public health code, 1978 PA 368, MCL 333.7401, and sentenced to
24 imprisonment for life before October 1, 1998 is to be released on
25 parole, the parole board shall consider all of the following:

26 (a) Whether the violation was part of a continuing series of
27 violations of section 7401 or 7403 of the public health code, 1978
28 PA 368, MCL 333.7401 and 333.7403, by that individual.

29 (b) Whether the violation was committed by the individual in

1 concert with 5 or more other individuals.

2 (c) Any of the following:

3 (i) Whether the individual was a principal administrator,
4 organizer, or leader of an entity that the individual knew or had
5 reason to know was organized, in whole or in part, to commit
6 violations of section 7401 or 7403 of the public health code, 1978
7 PA 368, MCL 333.7401 and 333.7403, and whether the violation for
8 which the individual was convicted was committed to further the
9 interests of that entity.

10 (ii) Whether the individual was a principal administrator,
11 organizer, or leader of an entity that the individual knew or had
12 reason to know committed violations of section 7401 or 7403 of the
13 public health code, 1978 PA 368, MCL 333.7401 and 333.7403, and
14 whether the violation for which the individual was convicted was
15 committed to further the interests of that entity.

16 (iii) Whether the violation was committed in a drug-free school
17 zone.

18 (iv) Whether the violation involved the delivery of a
19 controlled substance to an individual less than 17 years of age or
20 possession with intent to deliver a controlled substance to an
21 individual less than 17 years of age.

22 (11) Except as provided in subsection (19) and section 34a, a
23 prisoner's release on parole is discretionary with the parole
24 board. The action of the parole board in granting a parole is
25 appealable by the prosecutor of the county from which the prisoner
26 was committed or the victim of the crime for which the prisoner was
27 convicted. The appeal must be to the circuit court in the county
28 from which the prisoner was committed, by leave of the court.

29 (12) If the sentencing judge, or ~~his or her~~ **the judge's**

1 successor in office, determines on the record that a prisoner
2 described in subsection (7) (b) or (c) sentenced to imprisonment for
3 life for violating, or attempting or conspiring to violate, section
4 7401(2) (a) (i) of the public health code, 1978 PA 368, MCL 333.7401,
5 has cooperated with law enforcement, the prisoner is subject to the
6 jurisdiction of the parole board and may be released on parole as
7 provided in subsection (7) (b) or (c) 2-1/2 years earlier than the
8 time otherwise indicated in subsection (7) (b) or (c). The prisoner
9 is considered to have cooperated with law enforcement if the court
10 determines on the record that the prisoner had no relevant or
11 useful information to provide. The court shall not make a
12 determination that the prisoner failed or refused to cooperate with
13 law enforcement on grounds that the defendant exercised ~~his or her~~
14 **the defendant's** constitutional right to trial by jury. If the court
15 determines at sentencing that the defendant cooperated with law
16 enforcement, the court shall include its determination in the
17 judgment of sentence.

18 (13) Except for a prisoner granted parole under section 35(10)
19 and notwithstanding subsections (1) and (2), a prisoner convicted
20 of violating, or attempting or conspiring to violate, section
21 7401(2) (a) (i) or 7403(2) (a) (i) of the public health code, 1978 PA
22 368, MCL 333.7401 and 333.7403, whose offense occurred before March
23 1, 2003, and who was sentenced to a term of years, is eligible for
24 parole after serving 20 years of the sentence imposed for the
25 violation if the individual has another serious crime or 17-1/2
26 years of the sentence if the individual does not have another
27 conviction for a serious crime, or after serving the minimum
28 sentence imposed for that violation, whichever is less.

29 (14) Except for a prisoner granted parole under section 35(10)

1 and notwithstanding subsections (1) and (2), a prisoner who was
2 convicted of violating, or attempting or conspiring to violate,
3 section 7401(2) (a) (ii) or 7403(2) (a) (ii) of the public health code,
4 1978 PA 368, MCL 333.7401 and 333.7403, whose offense occurred
5 before March 1, 2003, and who was sentenced according to those
6 sections as they existed before March 1, 2003, is eligible for
7 parole after serving the minimum of each sentence imposed for that
8 violation or 10 years of each sentence imposed for that violation,
9 whichever is less.

10 (15) Except for a prisoner granted parole under section 35(10)
11 and notwithstanding subsections (1) and (2), a prisoner who was
12 convicted of violating, or attempting or conspiring to violate,
13 section 7401(2) (a) (iii) or 7403(2) (a) (iii) of the public health code,
14 1978 PA 368, MCL 333.7401 and 333.7403, whose offense occurred
15 before March 1, 2003, and who was sentenced according to those
16 sections as they existed before March 1, 2003, is eligible for
17 parole after serving the minimum of each sentence imposed for that
18 violation or 5 years of each sentence imposed for that violation,
19 whichever is less.

20 (16) Except for a prisoner granted parole under section 35(10)
21 and notwithstanding subsections (1) and (2), a prisoner who was
22 convicted of violating, or attempting or conspiring to violate,
23 section 7401(2) (a) (iv) or 7403(2) (a) (iv) of the public health code,
24 1978 PA 368, MCL 333.7401 and 333.7403, whose offense occurred
25 before March 1, 2003, who was sentenced according to those sections
26 of law as they existed before March 1, 2003 to consecutive terms of
27 imprisonment for 2 or more violations of section 7401(2) (a) or
28 7403(2) (a) of the public health code, 1978 PA 368, MCL 333.7401 and
29 333.7403, is eligible for parole after serving 1/2 of the minimum

1 sentence imposed for each violation of section 7401(2)(a)(iv) or
2 7403(2)(a)(iv) of the public health code, 1978 PA 368, MCL 333.7401
3 and 333.7403. This subsection applies only to sentences imposed for
4 violations of section 7401(2)(a)(iv) or 7403(2)(a)(iv) of the public
5 health code, 1978 PA 368, MCL 333.7401 and 333.7403, and does not
6 apply if the sentence was imposed for a conviction for a new
7 offense committed while the individual was on probation or parole.

8 (17) Except for a prisoner granted parole under section 35(10)
9 and notwithstanding subsections (1) and (2), a prisoner who was
10 convicted of violating, or attempting or conspiring to violate,
11 section 7401(2)(a)(ii) or (iii) or 7403(2)(a)(ii) or (iii) of the public
12 health code, 1978 PA 368, MCL 333.7401 and 333.7403, who had a
13 prior conviction for a violation of section 7401(2)(a)(ii) or (iii) or
14 7403(2)(a)(ii) or (iii) of the public health code, 1978 PA 368, MCL
15 333.7401 and 333.7403, and who was sentenced to life without parole
16 under section 7413(1) of the public health code, 1978 PA 368, MCL
17 333.7413, according to that section as it existed before March 28,
18 2018 is eligible for parole after serving 5 years of each sentence
19 imposed for that violation.

20 (18) The parole board shall provide notice to the prosecuting
21 attorney of the county in which the prisoner was convicted before
22 granting parole to the prisoner under subsection (13), (14), (15),
23 (16), or (17) or under section 35(10). The parole board shall
24 provide the relevant medical records to the prosecuting attorney of
25 the county in which the prisoner was convicted for a prisoner being
26 considered for parole under section 35(10) at the same time the
27 parole board provides the notice required under this subsection.
28 The parole board shall also provide notice to any known victim or,
29 in the case of a homicide, the victim's immediate family, that it

1 is considering a prisoner for parole under section 35(10) at the
2 same time it provides notice to the prosecuting attorney under this
3 subsection.

4 (19) The prosecuting attorney or victim or, in the case of a
5 homicide, the victim's immediate family, may object to the parole
6 board's decision to recommend parole by filing a motion in the
7 circuit court in the county in which the prisoner was convicted
8 within 30 days of receiving notice under subsection (18). Upon
9 notification under subsection (18) and request by the victim, or,
10 in the case of a homicide, the victim's immediate family, the
11 prosecuting attorney must confer with the victim, or in the case of
12 a homicide, the victim's immediate family, before making a decision
13 regarding whether or not to object to the parole board's
14 determination. A motion filed under this subsection must be heard
15 by the sentencing judge or the judge's successor in office. The
16 prosecuting attorney shall inform the parole board if a motion was
17 filed under this subsection. A prosecutor who files a motion under
18 this subsection may seek an independent medical examination of the
19 prisoner being considered for parole under section 35(10). If an
20 appeal is initiated under this subsection, a subsequent appeal
21 under subsection (11) may not be initiated upon the granting of
22 parole.

23 (20) Both of the following apply to a hearing conducted on a
24 motion filed under subsection (19):

25 (a) The prosecutor and the parole board may present evidence
26 in support of or in opposition to the determination that a prisoner
27 is medically frail, including the results of any independent
28 medical examination.

29 (b) The sentencing judge or the judge's successor shall

1 determine whether the prisoner is eligible for parole as a result
2 of being medically frail.

3 (21) The decision of the sentencing judge or the judge's
4 successor on a motion filed under subsection (19) is binding on the
5 parole board with respect to whether a prisoner must be considered
6 medically frail or not. However, the decision of the sentencing
7 judge or the judge's successor is subject to appeal by leave to the
8 court of appeals granted to the department, the prosecuting
9 attorney, or the victim or victim's immediate family in the case of
10 a homicide.

11 (22) As used in this section:

12 (a) "Medically frail" means that term as defined in section
13 35(22).

14 (b) "Serious crime" means violating or conspiring to violate
15 article 7 of the public health code, 1978 PA 368, MCL 333.7101 to
16 333.7545, that is punishable by imprisonment for more than 4 years,
17 or an offense against a person in violation of section 83, 84, 86,
18 87, 88, 89, 316, 317, 321, 349, 349a, 350, 397, 520b, 520c, 520d,
19 520g, 529, 529a, or 530 of the Michigan penal code, 1931 PA 328,
20 MCL 750.83, 750.84, 750.86, 750.87, 750.88, 750.89, 750.316,
21 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b,
22 750.520c, 750.520d, 750.520g, 750.529, 750.529a, and 750.530.

23 (c) "State correctional facility" means a facility that houses
24 prisoners committed to the jurisdiction of the department.

25 **Sec. 34e. The department shall provide notice to a prisoner**
26 **whose minimum term of imprisonment is 10 or more years as provided**
27 **under section 27b of chapter IX of the code of criminal procedure,**
28 **1927 PA 175, 769.27b.**

29 Enacting section 1. This amendatory act does not take effect

- 1 unless Senate Bill No. _____ or House Bill No. 4556 (request no.
- 2 00553'23) of the 102nd Legislature is enacted into law.

SENATE BILL NO. 323

May 03, 2023, Introduced by Senators POLEHANKI, BAYER, CAVANAGH, GEISS, CHANG and WOJNO and referred to the Committee on Civil Rights, Judiciary, and Public Safety.

A bill to amend 1985 PA 87, entitled "William Van Regenmorter crime victim's rights act," by amending sections 13 and 41 (MCL 780.763 and 780.791), section 41 as amended by 2000 PA 503.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 13. (1) The prosecuting attorney, upon and in accordance
2 with the request of the victim, shall give to the victim notice of
3 the following:

4 (a) The defendant's conviction.

5 (b) The crimes for which the defendant was convicted.

1 (c) The victim's right to make a written or oral impact
2 statement for use in the preparation of a presentence investigation
3 report concerning the defendant.

4 (d) The address and telephone number of the probation office
5 which is to prepare the presentence investigation report.

6 (e) That a presentence investigation report and any statement
7 of the victim included in the report will be made available to the
8 defendant unless exempted from disclosure by the court.

9 (f) The victim's right to make an impact statement at
10 sentencing, **including, but not limited to, a hearing under section**
11 **27c of chapter IX of the code of criminal procedure, 1927 PA 175,**
12 **MCL 769.27c.**

13 (g) The time and place of the sentencing proceeding,
14 **including, but not limited to, a hearing under section 27c of**
15 **chapter IX of the code of criminal procedure, 1927 PA 175, MCL**
16 **769.27c.**

17 (2) The notice given by the prosecuting attorney to the victim
18 must be given by any means reasonably calculated to give prompt
19 actual notice.

20 (3) A notice given under subsection (1) ~~shall~~**must** inform the
21 victim that ~~his or her~~**the victim's** impact statement may include,
22 but ~~shall~~**is** not ~~be~~ limited to, the following:

23 (a) An explanation of the nature and extent of any physical,
24 psychological, or emotional harm or trauma suffered by the victim.

25 (b) An explanation of the extent of any economic loss or
26 property damage suffered by the victim.

27 (c) An opinion of the need for and extent of restitution and
28 whether the victim has applied for or received compensation for
29 loss or damage.

1 (d) The victim's recommendation for an appropriate sentence.

2 Sec. 41. (1) The prosecuting attorney, or, pursuant to an
3 agreement under section 48a, the court, upon and in accordance with
4 the request of the victim, shall give the victim notice of all of
5 the following:

6 (a) The offenses for which the juvenile was adjudicated or
7 convicted.

8 (b) The victim's right to make an impact statement at the
9 disposition hearing or sentencing, **including, but not limited to, a**
10 **hearing under section 27c of chapter IX of the code of criminal**
11 **procedure, 1927 PA 175, MCL 769.27c.**

12 (c) The time and place of the disposition or sentencing
13 proceeding, **including, but not limited to, a hearing under section**
14 **27c of chapter IX of the code of criminal procedure, 1927 PA 175,**
15 **MCL 769.27c.**

16 (2) If a report is to be prepared for the juvenile's
17 disposition or for a sentencing in a proceeding that is a
18 designated case, the person preparing the report shall give notice
19 to the victim of all of the following:

20 (a) The victim's right to make an impact statement for use in
21 preparing the report.

22 (b) The address and telephone number of the person who is to
23 prepare the report.

24 (c) The fact that the report and any statement of the victim
25 included in the report will be made available to the juvenile
26 unless exempted from disclosure by the court.

27 (3) A notice under subsection (1) or (2) ~~shall~~**must** inform the
28 victim that ~~his or her~~**the victim's** impact statement may be oral or
29 written and may include, but ~~shall~~**is** not ~~be~~ limited to, any of the

1 following:

2 (a) An explanation of the nature and extent of any physical,
3 psychological, or emotional harm or trauma suffered by the victim.

4 (b) An explanation of the extent of any economic loss or
5 property damage suffered by the victim.

6 (c) An opinion of the need for and extent of restitution and
7 whether the victim has applied for or received compensation for
8 loss or damage.

9 (d) The victim's recommendation for an appropriate disposition
10 or sentence.

11 Enacting section 1. This amendatory act does not take effect
12 unless Senate Bill No. 321 of the 102nd Legislature is enacted into
13 law.

HOUSE BILL NO. 4558

May 16, 2023, Introduced by Reps. Wilson, Hope, McKinney, Neeley, Aiyash, O'Neal, Wegela, Brixie, Rheingans, Price, Tsernoglou, McFall, Dievendorf, Martus, MacDonell, Arbit, Hoskins, Brenda Carter, Young, Grant and Whitsett and referred to the Committee on Criminal Justice.

A bill to amend 1985 PA 87, entitled
"William Van Regenmorter crime victim's rights act,"
by amending sections 13 and 41 (MCL 780.763 and 780.791), section
41 as amended by 2000 PA 503.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 13. (1) The prosecuting attorney, upon and in accordance
2 with the request of the victim, shall give to the victim notice of
3 the following:

4 (a) The defendant's conviction.

5 (b) The crimes for which the defendant was convicted.

1 (c) The victim's right to make a written or oral impact
2 statement for use in the preparation of a presentence investigation
3 report concerning the defendant.

4 (d) The address and telephone number of the probation office
5 which is to prepare the presentence investigation report.

6 (e) That a presentence investigation report and any statement
7 of the victim included in the report will be made available to the
8 defendant unless exempted from disclosure by the court.

9 (f) The victim's right to make an impact statement at
10 sentencing, **including, but not limited to, a hearing under section**
11 **27c of chapter IX of the code of criminal procedure, 1927 PA 175,**
12 **MCL 769.27c.**

13 (g) The time and place of the sentencing proceeding,
14 **including, but not limited to, a hearing under section 27c of**
15 **chapter IX of the code of criminal procedure, 1927 PA 175, MCL**
16 **769.27c.**

17 (2) The notice given by the prosecuting attorney to the victim
18 must be given by any means reasonably calculated to give prompt
19 actual notice.

20 (3) A notice given under subsection (1) ~~shall~~**must** inform the
21 victim that ~~his or her~~**the victim's** impact statement may include,
22 but ~~shall~~**is** not ~~be~~ limited to, the following:

23 (a) An explanation of the nature and extent of any physical,
24 psychological, or emotional harm or trauma suffered by the victim.

25 (b) An explanation of the extent of any economic loss or
26 property damage suffered by the victim.

27 (c) An opinion of the need for and extent of restitution and
28 whether the victim has applied for or received compensation for
29 loss or damage.

1 (d) The victim's recommendation for an appropriate sentence.

2 Sec. 41. (1) The prosecuting attorney, or, pursuant to an
3 agreement under section 48a, the court, upon and in accordance with
4 the request of the victim, shall give the victim notice of all of
5 the following:

6 (a) The offenses for which the juvenile was adjudicated or
7 convicted.

8 (b) The victim's right to make an impact statement at the
9 disposition hearing or sentencing, **including, but not limited to, a**
10 **hearing under section 27c of chapter IX of the code of criminal**
11 **procedure, 1927 PA 175, MCL 769.27c.**

12 (c) The time and place of the disposition or sentencing
13 proceeding, **including, but not limited to, a hearing under section**
14 **27c of chapter IX of the code of criminal procedure, 1927 PA 175,**
15 **MCL 769.27c.**

16 (2) If a report is to be prepared for the juvenile's
17 disposition or for a sentencing in a proceeding that is a
18 designated case, the person preparing the report shall give notice
19 to the victim of all of the following:

20 (a) The victim's right to make an impact statement for use in
21 preparing the report.

22 (b) The address and telephone number of the person who is to
23 prepare the report.

24 (c) The fact that the report and any statement of the victim
25 included in the report will be made available to the juvenile
26 unless exempted from disclosure by the court.

27 (3) A notice under subsection (1) or (2) ~~shall~~**must** inform the
28 victim that ~~his or her~~**the victim's** impact statement may be oral or
29 written and may include, but ~~shall~~**is** not ~~be~~ limited to, any of the

1 following:

2 (a) An explanation of the nature and extent of any physical,
3 psychological, or emotional harm or trauma suffered by the victim.

4 (b) An explanation of the extent of any economic loss or
5 property damage suffered by the victim.

6 (c) An opinion of the need for and extent of restitution and
7 whether the victim has applied for or received compensation for
8 loss or damage.

9 (d) The victim's recommendation for an appropriate disposition
10 or sentence.

11 Enacting section 1. This amendatory act does not take effect
12 unless Senate Bill No.____ or House Bill No. 4556 (request no.
13 00553'23) of the 102nd Legislature is enacted into law.

SENATE BILL NO. 324

May 03, 2023, Introduced by Senators BAYER, POLEHANKI, CAVANAGH, GEISS, CHANG and WOJNO and referred to the Committee on Civil Rights, Judiciary, and Public Safety.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 17764 (MCL 333.17764), as amended by 2004 PA
214.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 17764. (1) A person shall not sell, offer for sale,
2 possess for sale, or manufacture for sale a drug or device bearing
3 or accompanied by a label that is misleading as to the contents,
4 uses, or purposes of the drug or device. A person who violates this

1 subsection is guilty of a misdemeanor. In determining whether a
2 label is misleading, consideration ~~shall~~**must** be given to the
3 representations made or suggested by the statement, word, design,
4 device, sound, or any combination thereof, and the extent to which
5 the label fails to reveal facts material in view of the
6 representations made or material as to consequences that may result
7 from use of the drug or device to which the label relates under
8 conditions of use prescribed in the label or under customary or
9 usual conditions of use.

10 (2) A person shall not knowingly or recklessly do either of
11 the following:

12 (a) Adulterate, misbrand, remove, or substitute a drug or
13 device knowing or intending that the drug or device ~~shall~~**will** be
14 used.

15 (b) Sell, offer for sale, possess for sale, cause to be sold,
16 or manufacture for sale an adulterated or misbranded drug.

17 (3) Except as otherwise provided in this section, a person who
18 violates subsection (2) is guilty of a felony punishable by
19 imprisonment for not more than 2 years or a fine of not more than
20 \$1,000.00, or both.

21 (4) ~~A~~**If a person who** violates subsection (2), ~~which violation~~
22 ~~results~~**resulting** in personal injury, **the person** is guilty of a
23 felony punishable by imprisonment for not more than 4 years or a
24 fine of not more than \$4,000.00, or both.

25 (5) ~~A~~**If a person who** violates subsection (2), ~~which violation~~
26 ~~results~~**resulting** in serious impairment of a body function, **the**
27 **person** is guilty of a felony punishable by imprisonment for not
28 more than 5 years or a fine of not more than \$5,000.00, or both. As
29 used in this subsection, "serious impairment of a body function"

1 means that term as defined in section 58c of the Michigan vehicle
2 code, 1949 PA 300, MCL 257.58c.

3 (6) ~~A~~**If a person who** violates subsection (2), ~~which violation~~
4 ~~results~~**resulting** in death, **the person** is guilty of a felony
5 punishable by imprisonment for not more than 15 years or a fine of
6 not more than \$20,000.00, or both.

7 (7) ~~A~~**Except as provided in sections 25 and 25a of chapter IX**
8 **of the code of criminal procedure, 1927 PA 175, MCL 769.25 and**
9 **769.25a, and subject to subsection (9), if a person who** violates
10 subsection (2) with the intent to kill or to cause serious
11 impairment of a body function of 2 or more individuals, ~~which~~**and**
12 **the** violation results in death, **the person** is guilty of a felony
13 punishable by imprisonment for life without the possibility of
14 parole or life without the possibility of parole and a fine of not
15 more than \$40,000.00. It is not a defense to a charge under this
16 subsection that the person did not intend to kill a specific
17 individual, or did not intend to cause serious impairment of a body
18 function of 2 or more specific individuals.

19 (8) This section does not prohibit an individual from being
20 charged with, convicted of, or punished for any other violation of
21 law that is committed by that individual while violating this
22 section.

23 (9) **The mandatory sentences provided for under subsection (7)**
24 **do not apply to a resentencing conducted under sections 27a to 27h**
25 **of chapter IX of the code of criminal procedure, 1927 PA 175, MCL**
26 **769.27a to 769.27h.**

27 Enacting section 1. This amendatory act does not take effect
28 unless Senate Bill No. 321 of the 102nd Legislature is enacted into
29 law.

HOUSE BILL NO. 4559

May 16, 2023, Introduced by Reps. McKinney, Wilson, Hope, Neeley, Aiyash, O'Neal, Wegela, Brixie, Rheingans, Price, McFall, Dievendorf, Martus, MacDonell, Arbit, Hoskins, Brenda Carter, Young, Grant and Whitsett and referred to the Committee on Criminal Justice.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 17764 (MCL 333.17764), as amended by 2004 PA
214.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 17764. (1) A person shall not sell, offer for sale,
2 possess for sale, or manufacture for sale a drug or device bearing
3 or accompanied by a label that is misleading as to the contents,
4 uses, or purposes of the drug or device. A person who violates this

1 subsection is guilty of a misdemeanor. In determining whether a
2 label is misleading, consideration ~~shall~~**must** be given to the
3 representations made or suggested by the statement, word, design,
4 device, sound, or any combination thereof, and the extent to which
5 the label fails to reveal facts material in view of the
6 representations made or material as to consequences that may result
7 from use of the drug or device to which the label relates under
8 conditions of use prescribed in the label or under customary or
9 usual conditions of use.

10 (2) A person shall not knowingly or recklessly do either of
11 the following:

12 (a) Adulterate, misbrand, remove, or substitute a drug or
13 device knowing or intending that the drug or device ~~shall~~**will** be
14 used.

15 (b) Sell, offer for sale, possess for sale, cause to be sold,
16 or manufacture for sale an adulterated or misbranded drug.

17 (3) Except as otherwise provided in this section, a person who
18 violates subsection (2) is guilty of a felony punishable by
19 imprisonment for not more than 2 years or a fine of not more than
20 \$1,000.00, or both.

21 (4) ~~A~~**If a person who** violates subsection (2), ~~which violation~~
22 ~~results~~**resulting** in personal injury, **the person** is guilty of a
23 felony punishable by imprisonment for not more than 4 years or a
24 fine of not more than \$4,000.00, or both.

25 (5) ~~A~~**If a person who** violates subsection (2), ~~which violation~~
26 ~~results~~**resulting** in serious impairment of a body function, **the**
27 **person** is guilty of a felony punishable by imprisonment for not
28 more than 5 years or a fine of not more than \$5,000.00, or both. As
29 used in this subsection, "serious impairment of a body function"

1 means that term as defined in section 58c of the Michigan vehicle
2 code, 1949 PA 300, MCL 257.58c.

3 (6) ~~A~~**If a person who** violates subsection (2), ~~which violation~~
4 ~~results~~**resulting** in death, **the person** is guilty of a felony
5 punishable by imprisonment for not more than 15 years or a fine of
6 not more than \$20,000.00, or both.

7 (7) ~~A~~**Except as provided in sections 25 and 25a of chapter IX**
8 **of the code of criminal procedure, 1927 PA 175, MCL 769.25 and**
9 **769.25a, and subject to subsection (9), if a person who** violates
10 subsection (2) with the intent to kill or to cause serious
11 impairment of a body function of 2 or more individuals, ~~which~~**and**
12 **the** violation results in death, **the person** is guilty of a felony
13 punishable by imprisonment for life without the possibility of
14 parole or life without the possibility of parole and a fine of not
15 more than \$40,000.00. It is not a defense to a charge under this
16 subsection that the person did not intend to kill a specific
17 individual, or did not intend to cause serious impairment of a body
18 function of 2 or more specific individuals.

19 (8) This section does not prohibit an individual from being
20 charged with, convicted of, or punished for any other violation of
21 law that is committed by that individual while violating this
22 section.

23 (9) **The mandatory sentences provided for under subsection (7)**
24 **do not apply to a resentencing conducted under sections 27a to 27h**
25 **of chapter IX of the code of criminal procedure, 1927 PA 175, MCL**
26 **769.27a to 769.27h.**

27 Enacting section 1. This amendatory act does not take effect
28 unless Senate Bill No. ____ or House Bill No. 4556 (request no.
29 00553'23) of the 102nd Legislature is enacted into law.

SENATE BILL NO. 325

May 03, 2023, Introduced by Senators IRWIN, CHANG, POLEHANKI, WOJNO, BAYER, GEISS and CAVANAGH and referred to the Committee on Civil Rights, Judiciary, and Public Safety.

A bill to amend 1931 PA 328, entitled "The Michigan penal code," by amending sections 16, 18, 200i, 204, 207, 209, 210, 211a, 227b, 316, 436, 520b, and 543f (MCL 750.16, 750.18, 750.200i, 750.204, 750.207, 750.209, 750.210, 750.211a, 750.227b, 750.316, 750.436, 750.520b, and 750.543f), sections 16, 18, 200i, 204, 207, 209, 210, 211a, 436, 520b, and 543f as amended by 2014 PA 23, section 227b as amended by 2015 PA 26, and section 316 as amended by 2022 PA 149.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 16. (1) Except as otherwise provided in this section, a
2 person who knowingly or recklessly commits any of the following
3 actions is guilty of a felony punishable by imprisonment for not
4 more than 2 years or a fine of not more than \$1,000.00, or both:

5 (a) Adulterates, misbrands, removes, or substitutes a drug or
6 medicine so as to render that drug or medicine injurious to health.

7 (b) Sells, offers for sale, possesses for sale, causes to be
8 sold, or manufactures for sale a drug or medicine that has been
9 adulterated, misbranded, removed, or substituted so as to render it
10 injurious to health.

11 (2) A person who commits a violation of subsection (1) that
12 results in personal injury is guilty of a felony punishable by
13 imprisonment for not more than 4 years or a fine of not more than
14 \$4,000.00, or both.

15 (3) A person who commits a violation of subsection (1) that
16 results in serious impairment of a body function is guilty of a
17 felony punishable by imprisonment for not more than 5 years or a
18 fine of not more than \$5,000.00, or both.

19 (4) A person who commits a violation of subsection (1) that
20 results in death is guilty of a felony punishable by imprisonment
21 for not more than 15 years or a fine of not more than \$20,000.00,
22 or both.

23 (5) Except as provided in sections 25 and 25a of chapter IX of
24 the code of criminal procedure, 1927 PA 175, MCL 769.25 and
25 769.25a, **and subject to subsection (6)**, a person who commits a
26 violation of subsection (1) with the intent to kill or to cause
27 serious impairment of a body function of 2 or more individuals that
28 results in death is guilty of a felony punishable by imprisonment
29 for life without possibility of parole or life without possibility

1 of parole and a fine of not more than \$40,000.00. It is not a
2 defense to a charge under this subsection that the person did not
3 intend to kill a specific individual or did not intend to cause
4 serious impairment of a body function of 2 or more specific
5 individuals.

6 **(6) The mandatory sentence provided for under subsection (5)**
7 **does not apply to a resentencing conducted under sections 27a to**
8 **27h of chapter IX of the code of criminal procedure, 1927 PA 175,**
9 **MCL 769.27a to 769.27h.**

10 (7) ~~(6)~~—As used in this section, "serious impairment of a body
11 function" means that phrase as defined in section 58c of the
12 Michigan vehicle code, 1949 PA 300, MCL 257.58c.

13 (8) ~~(7)~~—This section does not prohibit an individual from
14 being charged with, convicted of, or punished for any other
15 violation of law that is committed by that individual while
16 violating this section.

17 Sec. 18. (1) Except for the purpose of compounding in the
18 necessary preparation of medicine, a person shall not knowingly or
19 recklessly mix, color, stain, or powder, or order or permit another
20 person to mix, color, stain, or powder, a drug or medicine with an
21 ingredient or material so as to injuriously affect the quality or
22 potency of the drug or medicine.

23 (2) A person shall not sell, offer for sale, possess for sale,
24 cause to be sold, or manufacture for sale a drug or medicine mixed,
25 colored, stained, or powdered in the manner proscribed in
26 subsection (1).

27 (3) Except as otherwise provided in this section, a person who
28 violates subsection (1) or (2) is guilty of a felony punishable by
29 imprisonment for not more than 2 years or a fine of not more than

1 \$1,000.00, or both.

2 (4) A person who commits a violation of subsection (1) or (2)
3 that results in personal injury is guilty of a felony punishable by
4 imprisonment for not more than 4 years or a fine of not more than
5 \$4,000.00, or both.

6 (5) A person who commits a violation of subsection (1) or (2)
7 that results in serious impairment of a body function is guilty of
8 a felony punishable by imprisonment for not more than 5 years or a
9 fine of not more than \$5,000.00, or both.

10 (6) A person who commits a violation of subsection (1) or (2)
11 that results in death is guilty of a felony punishable by
12 imprisonment for not more than 15 years or a fine of not more than
13 \$20,000.00, or both.

14 (7) Except as provided in sections 25 and 25a of chapter IX of
15 the code of criminal procedure, 1927 PA 175, MCL 769.25 and
16 769.25a, **and subject to subsection (8)**, a person who commits a
17 violation of subsection (1) or (2) with the intent to kill or to
18 cause serious impairment of a body function of 2 or more
19 individuals that results in death is guilty of a felony punishable
20 by imprisonment for life without possibility of parole or life
21 without possibility of parole and a fine of not more than
22 \$40,000.00. It is not a defense to a charge under this subsection
23 that the person did not intend to kill a specific individual or did
24 not intend to cause serious impairment of a body function of 2 or
25 more specific individuals.

26 **(8) The mandatory sentence provided for under subsection (7)**
27 **does not apply to a resentencing conducted under sections 27a to**
28 **27h of chapter IX of the code of criminal procedure, 1927 PA 175,**
29 **MCL 769.27a to 769.27h.**

1 (9) ~~(8)~~—As used in this section, "serious impairment of a body
2 function" means that phrase as defined in section 58c of the
3 Michigan vehicle code, 1949 PA 300, MCL 257.58c.

4 (10) ~~(9)~~—This section does not prohibit an individual from
5 being charged with, convicted of, or punished for any other
6 violation of law that is committed by that individual while
7 violating this section.

8 Sec. 200i. (1) A person shall not manufacture, deliver,
9 possess, transport, place, use, or release any of the following for
10 an unlawful purpose:

11 (a) A harmful biological substance or a harmful biological
12 device.

13 (b) A harmful chemical substance or a harmful chemical device.

14 (c) A harmful radioactive material or a harmful radioactive
15 device.

16 (d) A harmful electronic or electromagnetic device.

17 (2) A person who violates subsection (1) is guilty of a crime
18 as follows:

19 (a) Except as provided in subdivisions (b) to (e), the person
20 is guilty of a felony punishable by imprisonment for not more than
21 15 years or a fine of not more than \$10,000.00, or both.

22 (b) If the violation directly or indirectly results in
23 property damage, the person is guilty of a felony punishable by
24 imprisonment for not more than 20 years or a fine of not more than
25 \$15,000.00, or both.

26 (c) If the violation directly or indirectly results in
27 personal injury to another individual other than serious impairment
28 of a body function or death, the person is guilty of a felony
29 punishable by imprisonment for not more than 25 years or a fine of

1 not more than \$20,000.00, or both.

2 (d) If the violation directly or indirectly results in serious
3 impairment of a body function to another individual, the person is
4 guilty of a felony punishable by imprisonment for life or any term
5 of years or a fine of not more than \$25,000.00, or both.

6 (e) Except as provided in sections 25 and 25a of chapter IX of
7 the code of criminal procedure, 1927 PA 175, MCL 769.25 and
8 769.25a, **and subject to subsection (3)**, if the violation directly
9 or indirectly results in the death of another individual, the
10 person is guilty of a felony and shall be punished by imprisonment
11 for life without eligibility for parole and may be fined not more
12 than \$40,000.00, or both.

13 **(3) The mandatory sentence provided for under subsection**
14 **(2) (e) does not apply to a resentencing conducted under sections**
15 **27a to 27h of chapter IX of the code of criminal procedure, 1927 PA**
16 **175, MCL 769.27a to 769.27h.**

17 Sec. 204. (1) A person shall not send or deliver to another
18 person or cause to be taken or received by any person any kind of
19 explosive substance or any other dangerous thing with the intent to
20 frighten, terrorize, intimidate, threaten, harass, injure, or kill
21 any person, or with the intent to damage or destroy any real or
22 personal property without the permission of the property owner or,
23 if the property is public property, without the permission of the
24 governmental agency having authority over that property.

25 (2) A person who violates this section is guilty of a crime as
26 follows:

27 (a) Except as otherwise provided in subdivisions (b) to (e),
28 the person is guilty of a felony punishable by imprisonment for not
29 more than 15 years or a fine of not more than \$10,000.00, or both.

1 (b) If the violation damages the property of another person,
2 the person is guilty of a felony punishable by imprisonment for not
3 more than 20 years or a fine of not more than \$15,000.00, or both.

4 (c) If the violation causes physical injury to another
5 individual, other than serious impairment of a body function, the
6 person is guilty of a felony punishable by imprisonment for not
7 more than 25 years or a fine of not more than \$20,000.00, or both.

8 (d) If the violation causes serious impairment of a body
9 function to another individual, the person is guilty of a felony
10 punishable by imprisonment for life or any term of years or a fine
11 of not more than \$25,000.00, or both.

12 (e) Except as provided in sections 25 and 25a of chapter IX of
13 the code of criminal procedure, 1927 PA 175, MCL 769.25 and
14 769.25a, **and subject to subsection (3)**, if the violation causes the
15 death of another individual, the person is guilty of a felony and
16 shall be imprisoned for life without eligibility for parole and may
17 be fined not more than \$40,000.00, or both.

18 **(3) The mandatory sentence provided for under subsection**
19 **(2)(e) does not apply to a resentencing conducted under sections**
20 **27a to 27h of chapter IX of the code of criminal procedure, 1927 PA**
21 **175, MCL 769.27a to 769.27h.**

22 Sec. 207. (1) A person shall not place an explosive substance
23 in or near any real or personal property with the intent to
24 frighten, terrorize, intimidate, threaten, harass, injure, or kill
25 any person, or with the intent to damage or destroy any real or
26 personal property without the permission of the property owner or,
27 if the property is public property, without the permission of the
28 governmental agency having authority over that property.

29 (2) A person who violates this section is guilty of a crime as

1 follows:

2 (a) Except as otherwise provided in subdivisions (b) to (e),
3 the person is guilty of a felony punishable by imprisonment for not
4 more than 15 years or a fine of not more than \$10,000.00, or both.

5 (b) If the violation damages the property of another person,
6 the person is guilty of a felony punishable by imprisonment for not
7 more than 20 years or a fine of not more than \$15,000.00, or both.

8 (c) If the violation causes physical injury to another
9 individual, other than serious impairment of a body function, the
10 person is guilty of a felony punishable by imprisonment for not
11 more than 25 years or a fine of not more than \$20,000.00, or both.

12 (d) If the violation causes serious impairment of a body
13 function to another individual, the person is guilty of a felony
14 punishable by imprisonment for life or for any term of years or a
15 fine of not more than \$25,000.00, or both.

16 (e) Except as provided in sections 25 and 25a of chapter IX of
17 the code of criminal procedure, 1927 PA 175, MCL 769.25 and
18 769.25a, **and subject to subsection (3)**, if the violation causes the
19 death of another individual, the person is guilty of a felony and
20 shall be imprisoned for life without eligibility for parole and may
21 be fined not more than \$40,000.00, or both.

22 **(3) The mandatory sentence provided for under subsection**
23 **(2)(e) does not apply to a resentencing conducted under sections**
24 **27a to 27h of chapter IX of the code of criminal procedure, 1927 PA**
25 **175, MCL 769.27a to 769.27h.**

26 Sec. 209. (1) A person who places an offensive or injurious
27 substance or compound in or near to any real or personal property
28 with intent to wrongfully injure or coerce another person or to
29 injure the property or business of another person, or to interfere

1 with another person's use, management, conduct, or control of ~~his~~
2 ~~or her~~ **the person's** business or property is guilty of a crime as
3 follows:

4 (a) Except as otherwise provided in subdivisions (b) to (e),
5 the person is guilty of a felony punishable by imprisonment for not
6 more than 15 years or a fine of not more than \$10,000.00, or both.

7 (b) If the violation damages the property of another person,
8 the person is guilty of a felony punishable by imprisonment for not
9 more than 20 years or a fine of not more than \$15,000.00, or both.

10 (c) If the violation causes physical injury to another
11 individual, other than serious impairment of a body function, the
12 person is guilty of a felony punishable by imprisonment for not
13 more than 25 years or a fine of not more than \$20,000.00, or both.

14 (d) If the violation causes serious impairment of a body
15 function to another individual, the person is guilty of a felony
16 punishable by imprisonment for life or for any term of years or a
17 fine of not more than \$25,000.00, or both.

18 (e) Except as provided in sections 25 and 25a of chapter IX of
19 the code of criminal procedure, 1927 PA 175, MCL 769.25 and
20 769.25a, **and subject to subsection (3)**, if the violation causes the
21 death of another individual, the person is guilty of a felony and
22 shall be imprisoned for life without eligibility for parole and may
23 be fined not more than \$40,000.00, or both.

24 (2) A person who places an offensive or injurious substance or
25 compound in or near to any real or personal property with the
26 intent to annoy or alarm any person is guilty of a felony
27 punishable by imprisonment for not more than 5 years or a fine of
28 not more than \$3,000.00, or both.

29 **(3) The mandatory sentence provided for under subsection**

1 (1) (e) does not apply to a resentencing conducted under sections
2 27a to 27h of chapter IX of the code of criminal procedure, 1927 PA
3 175, MCL 769.27a to 769.27h.

4 Sec. 210. (1) A person shall not carry or possess an explosive
5 or combustible substance or a substance or compound that when
6 combined with another substance or compound will become explosive
7 or combustible or an article containing an explosive or combustible
8 substance or a substance or compound that when combined with
9 another substance or compound will become explosive or combustible,
10 with the intent to frighten, terrorize, intimidate, threaten,
11 harass, injure, or kill any person, or with the intent to damage or
12 destroy any real or personal property without the permission of the
13 property owner or, if the property is public property, without the
14 permission of the governmental agency having authority over that
15 property.

16 (2) A person who violates subsection (1) is guilty of a crime
17 as follows:

18 (a) Except as provided in subdivisions (b) to (e), the person
19 is guilty of a felony punishable by imprisonment for not more than
20 15 years or a fine of not more than \$10,000.00, or both.

21 (b) If the violation damages the property of another person,
22 the person is guilty of a felony punishable by imprisonment for not
23 more than 20 years or a fine of not more than \$15,000.00, or both.

24 (c) If the violation causes physical injury to another
25 individual, other than serious impairment of a body function, the
26 person is guilty of a felony punishable by imprisonment for not
27 more than 25 years or a fine of not more than \$20,000.00, or both.

28 (d) If the violation causes serious impairment of a body
29 function to another individual, the person is guilty of a felony

1 punishable by imprisonment for life or for any term of years or a
2 fine of not more than \$25,000.00, or both.

3 (e) Except as provided in sections 25 and 25a of chapter IX of
4 the code of criminal procedure, 1927 PA 175, MCL 769.25 and
5 769.25a, **and subject to subsection (3)**, if the violation causes the
6 death of another individual, the person is guilty of a felony and
7 shall be imprisoned for life without eligibility for parole and may
8 be fined not more than \$40,000.00, or both.

9 **(3) The mandatory sentence provided for under subsection**
10 **(2) (e) does not apply to a resentencing conducted under sections**
11 **27a to 27h of chapter IX of the code of criminal procedure, 1927 PA**
12 **175, MCL 769.27a to 769.27h.**

13 Sec. 211a. (1) A person shall not do either of the following:

14 (a) Except as provided in subdivision (b), manufacture, buy,
15 sell, furnish, or possess a Molotov cocktail or any similar device.

16 (b) Manufacture, buy, sell, furnish, or possess any device
17 that is designed to explode or that will explode upon impact or
18 with the application of heat or a flame or that is highly
19 incendiary, with the intent to frighten, terrorize, intimidate,
20 threaten, harass, injure, or kill any person, or with the intent to
21 damage or destroy any real or personal property without the
22 permission of the property owner or, if the property is public
23 property, without the permission of the governmental agency having
24 authority over that property.

25 (2) A person who violates subsection (1) is guilty of a crime
26 as follows:

27 (a) For a violation of subsection (1) (a) **and except as**
28 **provided in subdivisions (c) to (f)**, the person is guilty of a
29 felony punishable by imprisonment for not more than 4 years or a

1 fine of not more than \$2,000.00, or both.

2 (b) For a violation of subsection (1)(b) and except as
3 provided in subdivisions (c) to (f), the person is guilty of a
4 felony punishable by imprisonment for not more than 15 years or a
5 fine of not more than \$10,000.00, or both.

6 (c) If the violation damages the property of another person,
7 the person is guilty of a felony punishable by imprisonment for not
8 more than 20 years or a fine of not more than \$15,000.00, or both.

9 (d) If the violation causes physical injury to another
10 individual, other than serious impairment of a body function, the
11 person is guilty of a felony punishable by imprisonment for not
12 more than 25 years or a fine of not more than \$20,000.00, or both.

13 (e) If the violation causes serious impairment of a body
14 function to another individual, the person is guilty of a felony
15 punishable by imprisonment for life or any term of years or a fine
16 of not more than \$25,000.00, or both.

17 (f) Except as provided in sections 25 and 25a of chapter IX of
18 the code of criminal procedure, 1927 PA 175, MCL 769.25 and
19 769.25a, **and subject to subsection (3)**, if the violation causes the
20 death of another individual, the person is guilty of a felony and
21 shall be imprisoned for life without eligibility for parole and may
22 be fined not more than \$40,000.00, or both.

23 **(3) The mandatory sentence provided for under subsection**
24 **(2)(f) does not apply to a resentencing conducted under sections**
25 **27a to 27h of chapter IX of the code of criminal procedure, 1927 PA**
26 **175, MCL 769.27a to 769.27h.**

27 **(4) ~~(3)~~**—As used in this section, "Molotov cocktail" means an
28 improvised incendiary device that is constructed from a bottle or
29 other container filled with a flammable or combustible material or

1 substance and that has a wick, fuse, or other device designed or
2 intended to ignite the contents of the device when it is thrown or
3 placed near a target.

4 Sec. 227b. (1) ~~A—Subject to subsection (5),~~ a person who
5 carries or has in his or her possession a firearm when he or she
6 commits or attempts to commit a felony, except a violation of
7 section 223, 227, 227a, or 230, is guilty of a felony and shall be
8 punished by imprisonment for 2 years. Upon a second conviction
9 under this subsection, the person shall be punished by imprisonment
10 for 5 years. Upon a third or subsequent conviction under this
11 subsection, the person shall be punished by imprisonment for 10
12 years.

13 (2) ~~A—Subject to subsection (5),~~ a person who carries or has
14 in his or her possession a pneumatic gun and uses that pneumatic
15 gun in furtherance of committing or attempting to commit a felony,
16 except a violation of section 223, 227, 227a, or 230, is guilty of
17 a felony and shall be punished by imprisonment for 2 years. Upon a
18 second conviction under this subsection, the person shall be
19 punished by imprisonment for 5 years. Upon a third or subsequent
20 conviction under this subsection, the person shall be punished by
21 imprisonment for 10 years.

22 (3) A term of imprisonment prescribed by this section is in
23 addition to the sentence imposed for the conviction of the felony
24 or the attempt to commit the felony and shall be served
25 consecutively with and preceding any term of imprisonment imposed
26 for the conviction of the felony or attempt to commit the felony.

27 (4) A term of imprisonment imposed under this section shall
28 not be suspended. The person subject to the sentence mandated by
29 this section is not eligible for parole or probation during the

1 mandatory term imposed under subsection (1) or (2).

2 **(5) The mandatory sentences provided for under subsections (1)**
3 **and (2) do not apply to a resentencing conducted under sections 27a**
4 **to 27h of chapter IX of the code of criminal procedure, 1927 PA**
5 **175, MCL 769.27a to 769.27h.**

6 **(6) ~~(5)~~**—This section does not apply to a law enforcement
7 officer who is authorized to carry a firearm while in the official
8 performance of his or her duties and who is in the performance of
9 those duties. As used in this subsection, "law enforcement officer"
10 means a person who is regularly employed as a member of a duly
11 authorized police agency or other organization of the United
12 States, this state, or a city, county, township, or village of this
13 state and who is responsible for the prevention and detection of
14 crime and the enforcement of the general criminal laws of this
15 state.

16 Sec. 316. (1) Except as provided in sections 25 and 25a of
17 chapter IX of the code of criminal procedure, 1927 PA 175, MCL
18 769.25 and 769.25a, **and subject to subsection (4)**, a person who
19 commits any of the following is guilty of first degree murder and
20 shall be punished by imprisonment for life without eligibility for
21 parole:

22 (a) Murder perpetrated by means of poison, lying in wait, or
23 any other willful, deliberate, and premeditated killing.

24 (b) Murder committed in the perpetration of, or attempt to
25 perpetrate, arson, criminal sexual conduct in the first, second, or
26 third degree, child abuse in the first degree, a major controlled
27 substance offense, robbery, carjacking, breaking and entering of a
28 dwelling, home invasion in the first or second degree, larceny of
29 any kind, extortion, kidnapping, vulnerable adult abuse in the

1 first or second degree under section 145n, torture under section
2 85, aggravated stalking under section 411i, or unlawful
3 imprisonment under section 349b.

4 (c) A murder of a peace officer or a corrections officer
5 committed while the peace officer or corrections officer is
6 lawfully engaged in the performance of any of his or her duties as
7 a peace officer or corrections officer, knowing that the peace
8 officer or corrections officer is a peace officer or corrections
9 officer engaged in the performance of his or her duty as a peace
10 officer or corrections officer.

11 (2) Immediately following a conviction under this section, a
12 court shall enter an order committing the convicted person to the
13 jurisdiction of the department of corrections for incarceration in
14 a state correctional facility pending sentencing using a form
15 created by the state court administrative office for this purpose.
16 This order becomes effective if both of the following apply:

17 (a) The sheriff agrees to transport for final sentencing the
18 person from the state correctional facility to the county and from
19 the county back to the state correctional facility.

20 (b) The convicted person was not less than 18 years of age at
21 the time ~~he or she~~ **the person** committed the offense for which ~~he or~~
22 ~~she~~ **the person** was convicted under this section.

23 (3) A court shall hold the sentencing hearing not more than 45
24 days after a person is committed to the department of corrections
25 under subsection (2).

26 (4) **The mandatory sentence provided for under subsection (1)**
27 **does not apply to a resentencing conducted under sections 27a to**
28 **27h of chapter IX of the code of criminal procedure, 1927 PA 175,**
29 **MCL 769.27a to 769.27h.**

1 (5) ~~(4)~~—As used in this section:

2 (a) "Arson" means a felony violation under chapter X.

3 (b) "Corrections officer" means any of the following:

4 (i) A prison or jail guard or other prison or jail personnel.

5 (ii) Any of the personnel of a boot camp, special alternative
6 incarceration unit, or other minimum security correctional
7 facility.

8 (iii) A parole or probation officer.

9 (c) "Major controlled substance offense" means any of the
10 following:

11 (i) A violation of section 7401(2) (a) (i) to (iii) of the public
12 health code, 1978 PA 368, MCL 333.7401.

13 (ii) A violation of section 7403(2) (a) (i) to (iii) of the public
14 health code, 1978 PA 368, MCL 333.7403.

15 (iii) A conspiracy to commit an offense listed in subparagraph
16 (i) or (ii).

17 (d) "Peace officer" means any of the following:

18 (i) A police or conservation officer of this state or a
19 political subdivision of this state.

20 (ii) A police or conservation officer of the United States.

21 (iii) A police or conservation officer of another state or a
22 political subdivision of another state.

23 Sec. 436. (1) A person shall not do either of the following:

24 (a) Willfully mingle a poison or harmful substance with a
25 food, drink, nonprescription medicine, or pharmaceutical product,
26 or willfully place a poison or harmful substance in a spring, well,
27 reservoir, or public water supply, knowing or having reason to know
28 that the food, drink, nonprescription medicine, pharmaceutical
29 product, or water may be ingested or used by a person ~~to his or her~~

1 **and cause injury to the person.**

2 (b) Maliciously inform another person that a poison or harmful
3 substance has been or will be placed in a food, drink,
4 nonprescription medicine, pharmaceutical product, spring, well,
5 reservoir, or public water supply, knowing that the information is
6 false and that it is likely that the information will be
7 disseminated to the public.

8 (2) A person who violates subsection (1)(a) is guilty of a
9 crime as follows:

10 (a) Except as provided in subdivisions (b) to (e), the person
11 is guilty of a felony punishable by imprisonment for not more than
12 15 years or a fine of not more than \$10,000.00, or both.

13 (b) If the violation damages the property of another person,
14 the person is guilty of a felony punishable by imprisonment for not
15 more than 20 years or a fine of not more than \$15,000.00, or both.

16 (c) If the violation causes physical injury to another
17 individual, other than serious impairment of a body function, the
18 person is guilty of a felony punishable by imprisonment for not
19 more than 25 years or a fine of not more than \$20,000.00, or both.

20 (d) If the violation causes serious impairment of a body
21 function to another individual, the person is guilty of a felony
22 punishable by imprisonment for life or any term of years or a fine
23 of not more than \$25,000.00, or both. As used in this subdivision,
24 "serious impairment of a body function" means that term as defined
25 in section 58c of the Michigan vehicle code, 1949 PA 300, MCL
26 257.58c.

27 (e) Except as provided in sections 25 and 25a of chapter IX of
28 the code of criminal procedure, 1927 PA 175, MCL 769.25 and
29 769.25a, **and subject to subsection (6)**, if the violation causes the

1 death of another individual, the person is guilty of a felony and
2 shall be imprisoned for life without eligibility for parole and may
3 be fined not more than \$40,000.00, or both.

4 (3) A person who violates subsection (1)(b) is guilty of a
5 crime as follows:

6 (a) Except as provided in subdivision (b), the person is
7 guilty of a felony punishable by imprisonment for not more than 4
8 years or a fine of not more than \$2,000.00, or both.

9 (b) If the person has previously been convicted of violating
10 subsection (1)(b), the person is guilty of a felony punishable by
11 imprisonment for not more than 10 years or a fine of not more than
12 \$5,000.00, or both.

13 (4) The court may order a term of imprisonment imposed for a
14 violation of this section to be served consecutively to a term of
15 imprisonment imposed for any other violation of law arising out of
16 the same transaction as the violation of this section.

17 (5) This section does not prohibit an individual from being
18 charged with, convicted of, or punished for any other violation of
19 law that is committed by that individual while violating this
20 section.

21 **(6) The mandatory sentence provided for under subsection**
22 **(2)(e) does not apply to a resentencing conducted under sections**
23 **27a to 27h of chapter IX of the code of criminal procedure, 1927 PA**
24 **175, MCL 769.27a to 769.27h.**

25 Sec. 520b. (1) A person is guilty of criminal sexual conduct
26 in the first degree if he or she engages in sexual penetration with
27 another person and if any of the following circumstances exists:

28 (a) That other person is under 13 years of age.

29 (b) That other person is at least 13 but less than 16 years of

1 age and any of the following:

2 (i) The actor is a member of the same household as the victim.

3 (ii) The actor is related to the victim by blood or affinity to
4 the fourth degree.

5 (iii) The actor is in a position of authority over the victim
6 and used this authority to coerce the victim to submit.

7 (iv) The actor is a teacher, substitute teacher, or
8 administrator of the public school, nonpublic school, school
9 district, or intermediate school district in which that other
10 person is enrolled.

11 (v) The actor is an employee or a contractual service provider
12 of the public school, nonpublic school, school district, or
13 intermediate school district in which that other person is
14 enrolled, or is a volunteer who is not a student in any public
15 school or nonpublic school, or is an employee of this state or of a
16 local unit of government of this state or of the United States
17 assigned to provide any service to that public school, nonpublic
18 school, school district, or intermediate school district, and the
19 actor uses his or her employee, contractual, or volunteer status to
20 gain access to, or to establish a relationship with, that other
21 person.

22 (vi) The actor is an employee, contractual service provider, or
23 volunteer of a child care organization, or a person licensed to
24 operate a foster family home or a foster family group home in which
25 that other person is a resident, and the sexual penetration occurs
26 during the period of that other person's residency. As used in this
27 subparagraph, "child care organization", "foster family home", and
28 "foster family group home" mean those terms as defined in section 1
29 of 1973 PA 116, MCL 722.111.

1 (c) Sexual penetration occurs under circumstances involving
2 the commission of any other felony.

3 (d) The actor is aided or abetted by 1 or more other persons
4 and either of the following circumstances exists:

5 (i) The actor knows or has reason to know that the victim is
6 mentally incapable, mentally incapacitated, or physically helpless.

7 (ii) The actor uses force or coercion to accomplish the sexual
8 penetration. Force or coercion includes, but is not limited to, any
9 of the circumstances listed in subdivision (f).

10 (e) The actor is armed with a weapon or any article used or
11 fashioned in a manner to lead the victim to reasonably believe it
12 to be a weapon.

13 (f) The actor causes personal injury to the victim and force
14 or coercion is used to accomplish sexual penetration. Force or
15 coercion includes, but is not limited to, any of the following
16 circumstances:

17 (i) When the actor overcomes the victim through the actual
18 application of physical force or physical violence.

19 (ii) When the actor coerces the victim to submit by threatening
20 to use force or violence on the victim, and the victim believes
21 that the actor has the present ability to execute these threats.

22 (iii) When the actor coerces the victim to submit by threatening
23 to retaliate in the future against the victim, or any other person,
24 and the victim believes that the actor has the ability to execute
25 this threat. As used in this subdivision, "to retaliate" includes
26 threats of physical punishment, kidnapping, or extortion.

27 (iv) When the actor engages in the medical treatment or
28 examination of the victim in a manner or for purposes that are
29 medically recognized as unethical or unacceptable.

1 (v) When the actor, through concealment or by the element of
2 surprise, is able to overcome the victim.

3 (g) The actor causes personal injury to the victim, and the
4 actor knows or has reason to know that the victim is mentally
5 incapable, mentally incapacitated, or physically helpless.

6 (h) That other person is mentally incapable, mentally
7 disabled, mentally incapacitated, or physically helpless, and any
8 of the following:

9 (i) The actor is related to the victim by blood or affinity to
10 the fourth degree.

11 (ii) The actor is in a position of authority over the victim
12 and used this authority to coerce the victim to submit.

13 (2) Criminal sexual conduct in the first degree is a felony
14 punishable as follows:

15 (a) Except as provided in subdivisions (b) and (c), by
16 imprisonment for life or for any term of years.

17 (b) ~~For~~ **Subject to subsection (4), for** a violation that is
18 committed by an individual 17 years of age or older against an
19 individual less than 13 years of age by imprisonment for life or
20 any term of years, but not less than 25 years.

21 (c) ~~For~~ **Subject to subsection (4), for** a violation that is
22 committed by an individual 18 years of age or older against an
23 individual less than 13 years of age, by imprisonment for life
24 without the possibility of parole if the person was previously
25 convicted of a violation of this section or section 520c, 520d,
26 520e, or 520g committed against an individual less than 13 years of
27 age or a violation of law of the United States, another state or
28 political subdivision substantially corresponding to a violation of
29 this section or section 520c, 520d, 520e, or 520g committed against

1 an individual less than 13 years of age.

2 (d) In addition to any other penalty imposed under subdivision
3 (a) or (b), the court shall sentence the defendant to lifetime
4 electronic monitoring under section 520n.

5 (3) The court may order a term of imprisonment imposed under
6 this section to be served consecutively to any term of imprisonment
7 imposed for any other criminal offense arising from the same
8 transaction.

9 **(4) The mandatory sentences provided for under subsection**
10 **(2) (b) and (c) do not apply to a resentencing conducted under**
11 **sections 27a to 27h of chapter IX of the code of criminal**
12 **procedure, 1927 PA 175, MCL 769.27a to 769.27h.**

13 Sec. 543f. (1) A person is guilty of terrorism when that
14 person knowingly and with premeditation commits an act of
15 terrorism.

16 (2) Terrorism is a felony punishable by imprisonment for life
17 or any term of years or a fine of not more than \$100,000.00, or
18 both. However, except as provided in sections 25 and 25a of chapter
19 IX of the code of criminal procedure, 1927 PA 175, MCL 769.25 and
20 769.25a, **and subject to subsection (3)**, if death was caused by the
21 terrorist act, the person shall be punished by imprisonment for
22 life without eligibility for parole.

23 **(3) The mandatory sentence provided for under subsection (2)**
24 **does not apply to a resentencing conducted under sections 27a to**
25 **27h of chapter IX of the code of criminal procedure, 1927 PA 175,**
26 **MCL 769.27a to 769.27h.**

27 Enacting section 1. This amendatory act does not take effect
28 unless Senate Bill No. 321 of the 102nd Legislature is enacted into
29 law.

HOUSE BILL NO. 4560

May 16, 2023, Introduced by Reps. Aiyash, Wilson, Hope, McKinney, Neeley, O'Neal, Wegela, Brixie, Rheingans, Price, Steckloff, McFall, Dievendorf, Martus, MacDonell, Arbit, Hoskins, Brenda Carter, Young, Grant and Whitsett and referred to the Committee on Criminal Justice.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending sections 16, 18, 200i, 204, 207, 209, 210, 211a, 227b, 316, 436, 520b, and 543f (MCL 750.16, 750.18, 750.200i, 750.204, 750.207, 750.209, 750.210, 750.211a, 750.227b, 750.316, 750.436, 750.520b, and 750.543f), sections 16, 18, 200i, 204, 207, 209, 210, 211a, 436, 520b, and 543f as amended by 2014 PA 23, section 227b as amended by 2015 PA 26, and section 316 as amended by 2022 PA 149.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 16. (1) Except as otherwise provided in this section, a
2 person who knowingly or recklessly commits any of the following
3 actions is guilty of a felony punishable by imprisonment for not
4 more than 2 years or a fine of not more than \$1,000.00, or both:

5 (a) Adulterates, misbrands, removes, or substitutes a drug or
6 medicine so as to render that drug or medicine injurious to health.

7 (b) Sells, offers for sale, possesses for sale, causes to be
8 sold, or manufactures for sale a drug or medicine that has been
9 adulterated, misbranded, removed, or substituted so as to render it
10 injurious to health.

11 (2) A person who commits a violation of subsection (1) that
12 results in personal injury is guilty of a felony punishable by
13 imprisonment for not more than 4 years or a fine of not more than
14 \$4,000.00, or both.

15 (3) A person who commits a violation of subsection (1) that
16 results in serious impairment of a body function is guilty of a
17 felony punishable by imprisonment for not more than 5 years or a
18 fine of not more than \$5,000.00, or both.

19 (4) A person who commits a violation of subsection (1) that
20 results in death is guilty of a felony punishable by imprisonment
21 for not more than 15 years or a fine of not more than \$20,000.00,
22 or both.

23 (5) Except as provided in sections 25 and 25a of chapter IX of
24 the code of criminal procedure, 1927 PA 175, MCL 769.25 and
25 769.25a, **and subject to subsection (6)**, a person who commits a
26 violation of subsection (1) with the intent to kill or to cause
27 serious impairment of a body function of 2 or more individuals that
28 results in death is guilty of a felony punishable by imprisonment
29 for life without possibility of parole or life without possibility

1 of parole and a fine of not more than \$40,000.00. It is not a
2 defense to a charge under this subsection that the person did not
3 intend to kill a specific individual or did not intend to cause
4 serious impairment of a body function of 2 or more specific
5 individuals.

6 **(6) The mandatory sentence provided for under subsection (5)**
7 **does not apply to a resentencing conducted under sections 27a to**
8 **27h of chapter IX of the code of criminal procedure, 1927 PA 175,**
9 **MCL 769.27a to 769.27h.**

10 (7) ~~(6)~~—As used in this section, "serious impairment of a body
11 function" means that phrase as defined in section 58c of the
12 Michigan vehicle code, 1949 PA 300, MCL 257.58c.

13 (8) ~~(7)~~—This section does not prohibit an individual from
14 being charged with, convicted of, or punished for any other
15 violation of law that is committed by that individual while
16 violating this section.

17 Sec. 18. (1) Except for the purpose of compounding in the
18 necessary preparation of medicine, a person shall not knowingly or
19 recklessly mix, color, stain, or powder, or order or permit another
20 person to mix, color, stain, or powder, a drug or medicine with an
21 ingredient or material so as to injuriously affect the quality or
22 potency of the drug or medicine.

23 (2) A person shall not sell, offer for sale, possess for sale,
24 cause to be sold, or manufacture for sale a drug or medicine mixed,
25 colored, stained, or powdered in the manner proscribed in
26 subsection (1).

27 (3) Except as otherwise provided in this section, a person who
28 violates subsection (1) or (2) is guilty of a felony punishable by
29 imprisonment for not more than 2 years or a fine of not more than

1 \$1,000.00, or both.

2 (4) A person who commits a violation of subsection (1) or (2)
3 that results in personal injury is guilty of a felony punishable by
4 imprisonment for not more than 4 years or a fine of not more than
5 \$4,000.00, or both.

6 (5) A person who commits a violation of subsection (1) or (2)
7 that results in serious impairment of a body function is guilty of
8 a felony punishable by imprisonment for not more than 5 years or a
9 fine of not more than \$5,000.00, or both.

10 (6) A person who commits a violation of subsection (1) or (2)
11 that results in death is guilty of a felony punishable by
12 imprisonment for not more than 15 years or a fine of not more than
13 \$20,000.00, or both.

14 (7) Except as provided in sections 25 and 25a of chapter IX of
15 the code of criminal procedure, 1927 PA 175, MCL 769.25 and
16 769.25a, **and subject to subsection (8)**, a person who commits a
17 violation of subsection (1) or (2) with the intent to kill or to
18 cause serious impairment of a body function of 2 or more
19 individuals that results in death is guilty of a felony punishable
20 by imprisonment for life without possibility of parole or life
21 without possibility of parole and a fine of not more than
22 \$40,000.00. It is not a defense to a charge under this subsection
23 that the person did not intend to kill a specific individual or did
24 not intend to cause serious impairment of a body function of 2 or
25 more specific individuals.

26 (8) **The mandatory sentence provided for under subsection (7)**
27 **does not apply to a resentencing conducted under sections 27a to**
28 **27h of chapter IX of the code of criminal procedure, 1927 PA 175,**
29 **MCL 769.27a to 769.27h.**

1 (9) ~~(8)~~—As used in this section, "serious impairment of a body
2 function" means that phrase as defined in section 58c of the
3 Michigan vehicle code, 1949 PA 300, MCL 257.58c.

4 (10) ~~(9)~~—This section does not prohibit an individual from
5 being charged with, convicted of, or punished for any other
6 violation of law that is committed by that individual while
7 violating this section.

8 Sec. 200i. (1) A person shall not manufacture, deliver,
9 possess, transport, place, use, or release any of the following for
10 an unlawful purpose:

11 (a) A harmful biological substance or a harmful biological
12 device.

13 (b) A harmful chemical substance or a harmful chemical device.

14 (c) A harmful radioactive material or a harmful radioactive
15 device.

16 (d) A harmful electronic or electromagnetic device.

17 (2) A person who violates subsection (1) is guilty of a crime
18 as follows:

19 (a) Except as provided in subdivisions (b) to (e), the person
20 is guilty of a felony punishable by imprisonment for not more than
21 15 years or a fine of not more than \$10,000.00, or both.

22 (b) If the violation directly or indirectly results in
23 property damage, the person is guilty of a felony punishable by
24 imprisonment for not more than 20 years or a fine of not more than
25 \$15,000.00, or both.

26 (c) If the violation directly or indirectly results in
27 personal injury to another individual other than serious impairment
28 of a body function or death, the person is guilty of a felony
29 punishable by imprisonment for not more than 25 years or a fine of

1 not more than \$20,000.00, or both.

2 (d) If the violation directly or indirectly results in serious
3 impairment of a body function to another individual, the person is
4 guilty of a felony punishable by imprisonment for life or any term
5 of years or a fine of not more than \$25,000.00, or both.

6 (e) Except as provided in sections 25 and 25a of chapter IX of
7 the code of criminal procedure, 1927 PA 175, MCL 769.25 and
8 769.25a, **and subject to subsection (3)**, if the violation directly
9 or indirectly results in the death of another individual, the
10 person is guilty of a felony and shall be punished by imprisonment
11 for life without eligibility for parole and may be fined not more
12 than \$40,000.00, or both.

13 **(3) The mandatory sentence provided for under subsection**
14 **(2) (e) does not apply to a resentencing conducted under sections**
15 **27a to 27h of chapter IX of the code of criminal procedure, 1927 PA**
16 **175, MCL 769.27a to 769.27h.**

17 Sec. 204. (1) A person shall not send or deliver to another
18 person or cause to be taken or received by any person any kind of
19 explosive substance or any other dangerous thing with the intent to
20 frighten, terrorize, intimidate, threaten, harass, injure, or kill
21 any person, or with the intent to damage or destroy any real or
22 personal property without the permission of the property owner or,
23 if the property is public property, without the permission of the
24 governmental agency having authority over that property.

25 (2) A person who violates this section is guilty of a crime as
26 follows:

27 (a) Except as otherwise provided in subdivisions (b) to (e),
28 the person is guilty of a felony punishable by imprisonment for not
29 more than 15 years or a fine of not more than \$10,000.00, or both.

1 (b) If the violation damages the property of another person,
2 the person is guilty of a felony punishable by imprisonment for not
3 more than 20 years or a fine of not more than \$15,000.00, or both.

4 (c) If the violation causes physical injury to another
5 individual, other than serious impairment of a body function, the
6 person is guilty of a felony punishable by imprisonment for not
7 more than 25 years or a fine of not more than \$20,000.00, or both.

8 (d) If the violation causes serious impairment of a body
9 function to another individual, the person is guilty of a felony
10 punishable by imprisonment for life or any term of years or a fine
11 of not more than \$25,000.00, or both.

12 (e) Except as provided in sections 25 and 25a of chapter IX of
13 the code of criminal procedure, 1927 PA 175, MCL 769.25 and
14 769.25a, **and subject to subsection (3)**, if the violation causes the
15 death of another individual, the person is guilty of a felony and
16 shall be imprisoned for life without eligibility for parole and may
17 be fined not more than \$40,000.00, or both.

18 **(3) The mandatory sentence provided for under subsection**
19 **(2)(e) does not apply to a resentencing conducted under sections**
20 **27a to 27h of chapter IX of the code of criminal procedure, 1927 PA**
21 **175, MCL 769.27a to 769.27h.**

22 Sec. 207. (1) A person shall not place an explosive substance
23 in or near any real or personal property with the intent to
24 frighten, terrorize, intimidate, threaten, harass, injure, or kill
25 any person, or with the intent to damage or destroy any real or
26 personal property without the permission of the property owner or,
27 if the property is public property, without the permission of the
28 governmental agency having authority over that property.

29 (2) A person who violates this section is guilty of a crime as

1 follows:

2 (a) Except as otherwise provided in subdivisions (b) to (e),
3 the person is guilty of a felony punishable by imprisonment for not
4 more than 15 years or a fine of not more than \$10,000.00, or both.

5 (b) If the violation damages the property of another person,
6 the person is guilty of a felony punishable by imprisonment for not
7 more than 20 years or a fine of not more than \$15,000.00, or both.

8 (c) If the violation causes physical injury to another
9 individual, other than serious impairment of a body function, the
10 person is guilty of a felony punishable by imprisonment for not
11 more than 25 years or a fine of not more than \$20,000.00, or both.

12 (d) If the violation causes serious impairment of a body
13 function to another individual, the person is guilty of a felony
14 punishable by imprisonment for life or for any term of years or a
15 fine of not more than \$25,000.00, or both.

16 (e) Except as provided in sections 25 and 25a of chapter IX of
17 the code of criminal procedure, 1927 PA 175, MCL 769.25 and
18 769.25a, **and subject to subsection (3)**, if the violation causes the
19 death of another individual, the person is guilty of a felony and
20 shall be imprisoned for life without eligibility for parole and may
21 be fined not more than \$40,000.00, or both.

22 **(3) The mandatory sentence provided for under subsection**
23 **(2)(e) does not apply to a resentencing conducted under sections**
24 **27a to 27h of chapter IX of the code of criminal procedure, 1927 PA**
25 **175, MCL 769.27a to 769.27h.**

26 Sec. 209. (1) A person who places an offensive or injurious
27 substance or compound in or near to any real or personal property
28 with intent to wrongfully injure or coerce another person or to
29 injure the property or business of another person, or to interfere

1 with another person's use, management, conduct, or control of ~~his~~
2 ~~or her~~ **the person's** business or property is guilty of a crime as
3 follows:

4 (a) Except as otherwise provided in subdivisions (b) to (e),
5 the person is guilty of a felony punishable by imprisonment for not
6 more than 15 years or a fine of not more than \$10,000.00, or both.

7 (b) If the violation damages the property of another person,
8 the person is guilty of a felony punishable by imprisonment for not
9 more than 20 years or a fine of not more than \$15,000.00, or both.

10 (c) If the violation causes physical injury to another
11 individual, other than serious impairment of a body function, the
12 person is guilty of a felony punishable by imprisonment for not
13 more than 25 years or a fine of not more than \$20,000.00, or both.

14 (d) If the violation causes serious impairment of a body
15 function to another individual, the person is guilty of a felony
16 punishable by imprisonment for life or for any term of years or a
17 fine of not more than \$25,000.00, or both.

18 (e) Except as provided in sections 25 and 25a of chapter IX of
19 the code of criminal procedure, 1927 PA 175, MCL 769.25 and
20 769.25a, **and subject to subsection (3)**, if the violation causes the
21 death of another individual, the person is guilty of a felony and
22 shall be imprisoned for life without eligibility for parole and may
23 be fined not more than \$40,000.00, or both.

24 (2) A person who places an offensive or injurious substance or
25 compound in or near to any real or personal property with the
26 intent to annoy or alarm any person is guilty of a felony
27 punishable by imprisonment for not more than 5 years or a fine of
28 not more than \$3,000.00, or both.

29 **(3) The mandatory sentence provided for under subsection**

1 (1) (e) does not apply to a resentencing conducted under sections
2 27a to 27h of chapter IX of the code of criminal procedure, 1927 PA
3 175, MCL 769.27a to 769.27h.

4 Sec. 210. (1) A person shall not carry or possess an explosive
5 or combustible substance or a substance or compound that when
6 combined with another substance or compound will become explosive
7 or combustible or an article containing an explosive or combustible
8 substance or a substance or compound that when combined with
9 another substance or compound will become explosive or combustible,
10 with the intent to frighten, terrorize, intimidate, threaten,
11 harass, injure, or kill any person, or with the intent to damage or
12 destroy any real or personal property without the permission of the
13 property owner or, if the property is public property, without the
14 permission of the governmental agency having authority over that
15 property.

16 (2) A person who violates subsection (1) is guilty of a crime
17 as follows:

18 (a) Except as provided in subdivisions (b) to (e), the person
19 is guilty of a felony punishable by imprisonment for not more than
20 15 years or a fine of not more than \$10,000.00, or both.

21 (b) If the violation damages the property of another person,
22 the person is guilty of a felony punishable by imprisonment for not
23 more than 20 years or a fine of not more than \$15,000.00, or both.

24 (c) If the violation causes physical injury to another
25 individual, other than serious impairment of a body function, the
26 person is guilty of a felony punishable by imprisonment for not
27 more than 25 years or a fine of not more than \$20,000.00, or both.

28 (d) If the violation causes serious impairment of a body
29 function to another individual, the person is guilty of a felony

1 punishable by imprisonment for life or for any term of years or a
2 fine of not more than \$25,000.00, or both.

3 (e) Except as provided in sections 25 and 25a of chapter IX of
4 the code of criminal procedure, 1927 PA 175, MCL 769.25 and
5 769.25a, **and subject to subsection (3)**, if the violation causes the
6 death of another individual, the person is guilty of a felony and
7 shall be imprisoned for life without eligibility for parole and may
8 be fined not more than \$40,000.00, or both.

9 **(3) The mandatory sentence provided for under subsection**
10 **(2) (e) does not apply to a resentencing conducted under sections**
11 **27a to 27h of chapter IX of the code of criminal procedure, 1927 PA**
12 **175, MCL 769.27a to 769.27h.**

13 Sec. 211a. (1) A person shall not do either of the following:

14 (a) Except as provided in subdivision (b), manufacture, buy,
15 sell, furnish, or possess a Molotov cocktail or any similar device.

16 (b) Manufacture, buy, sell, furnish, or possess any device
17 that is designed to explode or that will explode upon impact or
18 with the application of heat or a flame or that is highly
19 incendiary, with the intent to frighten, terrorize, intimidate,
20 threaten, harass, injure, or kill any person, or with the intent to
21 damage or destroy any real or personal property without the
22 permission of the property owner or, if the property is public
23 property, without the permission of the governmental agency having
24 authority over that property.

25 (2) A person who violates subsection (1) is guilty of a crime
26 as follows:

27 (a) For a violation of subsection (1) (a) **and except as**
28 **provided in subdivisions (c) to (f)**, the person is guilty of a
29 felony punishable by imprisonment for not more than 4 years or a

1 fine of not more than \$2,000.00, or both.

2 (b) For a violation of subsection (1)(b) and except as
3 provided in subdivisions (c) to (f), the person is guilty of a
4 felony punishable by imprisonment for not more than 15 years or a
5 fine of not more than \$10,000.00, or both.

6 (c) If the violation damages the property of another person,
7 the person is guilty of a felony punishable by imprisonment for not
8 more than 20 years or a fine of not more than \$15,000.00, or both.

9 (d) If the violation causes physical injury to another
10 individual, other than serious impairment of a body function, the
11 person is guilty of a felony punishable by imprisonment for not
12 more than 25 years or a fine of not more than \$20,000.00, or both.

13 (e) If the violation causes serious impairment of a body
14 function to another individual, the person is guilty of a felony
15 punishable by imprisonment for life or any term of years or a fine
16 of not more than \$25,000.00, or both.

17 (f) Except as provided in sections 25 and 25a of chapter IX of
18 the code of criminal procedure, 1927 PA 175, MCL 769.25 and
19 769.25a, **and subject to subsection (3)**, if the violation causes the
20 death of another individual, the person is guilty of a felony and
21 shall be imprisoned for life without eligibility for parole and may
22 be fined not more than \$40,000.00, or both.

23 **(3) The mandatory sentence provided for under subsection**
24 **(2)(f) does not apply to a resentencing conducted under sections**
25 **27a to 27h of chapter IX of the code of criminal procedure, 1927 PA**
26 **175, MCL 769.27a to 769.27h.**

27 **(4) ~~(3)~~**—As used in this section, "Molotov cocktail" means an
28 improvised incendiary device that is constructed from a bottle or
29 other container filled with a flammable or combustible material or

1 substance and that has a wick, fuse, or other device designed or
2 intended to ignite the contents of the device when it is thrown or
3 placed near a target.

4 Sec. 227b. (1) ~~A—Subject to subsection (5),~~ a person who
5 carries or has in his or her possession a firearm when he or she
6 commits or attempts to commit a felony, except a violation of
7 section 223, 227, 227a, or 230, is guilty of a felony and shall be
8 punished by imprisonment for 2 years. Upon a second conviction
9 under this subsection, the person shall be punished by imprisonment
10 for 5 years. Upon a third or subsequent conviction under this
11 subsection, the person shall be punished by imprisonment for 10
12 years.

13 (2) ~~A—Subject to subsection (5),~~ a person who carries or has
14 in his or her possession a pneumatic gun and uses that pneumatic
15 gun in furtherance of committing or attempting to commit a felony,
16 except a violation of section 223, 227, 227a, or 230, is guilty of
17 a felony and shall be punished by imprisonment for 2 years. Upon a
18 second conviction under this subsection, the person shall be
19 punished by imprisonment for 5 years. Upon a third or subsequent
20 conviction under this subsection, the person shall be punished by
21 imprisonment for 10 years.

22 (3) A term of imprisonment prescribed by this section is in
23 addition to the sentence imposed for the conviction of the felony
24 or the attempt to commit the felony and shall be served
25 consecutively with and preceding any term of imprisonment imposed
26 for the conviction of the felony or attempt to commit the felony.

27 (4) A term of imprisonment imposed under this section shall
28 not be suspended. The person subject to the sentence mandated by
29 this section is not eligible for parole or probation during the

1 mandatory term imposed under subsection (1) or (2).

2 **(5) The mandatory sentences provided for under subsections (1)**
3 **and (2) do not apply to a resentencing conducted under sections 27a**
4 **to 27h of chapter IX of the code of criminal procedure, 1927 PA**
5 **175, MCL 769.27a to 769.27h.**

6 **(6) ~~(5)~~**—This section does not apply to a law enforcement
7 officer who is authorized to carry a firearm while in the official
8 performance of his or her duties and who is in the performance of
9 those duties. As used in this subsection, "law enforcement officer"
10 means a person who is regularly employed as a member of a duly
11 authorized police agency or other organization of the United
12 States, this state, or a city, county, township, or village of this
13 state and who is responsible for the prevention and detection of
14 crime and the enforcement of the general criminal laws of this
15 state.

16 Sec. 316. (1) Except as provided in sections 25 and 25a of
17 chapter IX of the code of criminal procedure, 1927 PA 175, MCL
18 769.25 and 769.25a, **and subject to subsection (4)**, a person who
19 commits any of the following is guilty of first degree murder and
20 shall be punished by imprisonment for life without eligibility for
21 parole:

22 (a) Murder perpetrated by means of poison, lying in wait, or
23 any other willful, deliberate, and premeditated killing.

24 (b) Murder committed in the perpetration of, or attempt to
25 perpetrate, arson, criminal sexual conduct in the first, second, or
26 third degree, child abuse in the first degree, a major controlled
27 substance offense, robbery, carjacking, breaking and entering of a
28 dwelling, home invasion in the first or second degree, larceny of
29 any kind, extortion, kidnapping, vulnerable adult abuse in the

1 first or second degree under section 145n, torture under section
2 85, aggravated stalking under section 411i, or unlawful
3 imprisonment under section 349b.

4 (c) A murder of a peace officer or a corrections officer
5 committed while the peace officer or corrections officer is
6 lawfully engaged in the performance of any of his or her duties as
7 a peace officer or corrections officer, knowing that the peace
8 officer or corrections officer is a peace officer or corrections
9 officer engaged in the performance of his or her duty as a peace
10 officer or corrections officer.

11 (2) Immediately following a conviction under this section, a
12 court shall enter an order committing the convicted person to the
13 jurisdiction of the department of corrections for incarceration in
14 a state correctional facility pending sentencing using a form
15 created by the state court administrative office for this purpose.
16 This order becomes effective if both of the following apply:

17 (a) The sheriff agrees to transport for final sentencing the
18 person from the state correctional facility to the county and from
19 the county back to the state correctional facility.

20 (b) The convicted person was not less than 18 years of age at
21 the time ~~he or she~~ **the person** committed the offense for which ~~he or~~
22 ~~she~~ **the person** was convicted under this section.

23 (3) A court shall hold the sentencing hearing not more than 45
24 days after a person is committed to the department of corrections
25 under subsection (2).

26 (4) **The mandatory sentence provided for under subsection (1)**
27 **does not apply to a resentencing conducted under sections 27a to**
28 **27h of chapter IX of the code of criminal procedure, 1927 PA 175,**
29 **MCL 769.27a to 769.27h.**

1 (5) ~~(4)~~—As used in this section:

2 (a) "Arson" means a felony violation under chapter X.

3 (b) "Corrections officer" means any of the following:

4 (i) A prison or jail guard or other prison or jail personnel.

5 (ii) Any of the personnel of a boot camp, special alternative
6 incarceration unit, or other minimum security correctional
7 facility.

8 (iii) A parole or probation officer.

9 (c) "Major controlled substance offense" means any of the
10 following:

11 (i) A violation of section 7401(2) (a) (i) to (iii) of the public
12 health code, 1978 PA 368, MCL 333.7401.

13 (ii) A violation of section 7403(2) (a) (i) to (iii) of the public
14 health code, 1978 PA 368, MCL 333.7403.

15 (iii) A conspiracy to commit an offense listed in subparagraph
16 (i) or (ii).

17 (d) "Peace officer" means any of the following:

18 (i) A police or conservation officer of this state or a
19 political subdivision of this state.

20 (ii) A police or conservation officer of the United States.

21 (iii) A police or conservation officer of another state or a
22 political subdivision of another state.

23 Sec. 436. (1) A person shall not do either of the following:

24 (a) Willfully mingle a poison or harmful substance with a
25 food, drink, nonprescription medicine, or pharmaceutical product,
26 or willfully place a poison or harmful substance in a spring, well,
27 reservoir, or public water supply, knowing or having reason to know
28 that the food, drink, nonprescription medicine, pharmaceutical
29 product, or water may be ingested or used by a person ~~to his or her~~

1 **and cause injury to the person.**

2 (b) Maliciously inform another person that a poison or harmful
3 substance has been or will be placed in a food, drink,
4 nonprescription medicine, pharmaceutical product, spring, well,
5 reservoir, or public water supply, knowing that the information is
6 false and that it is likely that the information will be
7 disseminated to the public.

8 (2) A person who violates subsection (1)(a) is guilty of a
9 crime as follows:

10 (a) Except as provided in subdivisions (b) to (e), the person
11 is guilty of a felony punishable by imprisonment for not more than
12 15 years or a fine of not more than \$10,000.00, or both.

13 (b) If the violation damages the property of another person,
14 the person is guilty of a felony punishable by imprisonment for not
15 more than 20 years or a fine of not more than \$15,000.00, or both.

16 (c) If the violation causes physical injury to another
17 individual, other than serious impairment of a body function, the
18 person is guilty of a felony punishable by imprisonment for not
19 more than 25 years or a fine of not more than \$20,000.00, or both.

20 (d) If the violation causes serious impairment of a body
21 function to another individual, the person is guilty of a felony
22 punishable by imprisonment for life or any term of years or a fine
23 of not more than \$25,000.00, or both. As used in this subdivision,
24 "serious impairment of a body function" means that term as defined
25 in section 58c of the Michigan vehicle code, 1949 PA 300, MCL
26 257.58c.

27 (e) Except as provided in sections 25 and 25a of chapter IX of
28 the code of criminal procedure, 1927 PA 175, MCL 769.25 and
29 769.25a, **and subject to subsection (6)**, if the violation causes the

1 death of another individual, the person is guilty of a felony and
2 shall be imprisoned for life without eligibility for parole and may
3 be fined not more than \$40,000.00, or both.

4 (3) A person who violates subsection (1)(b) is guilty of a
5 crime as follows:

6 (a) Except as provided in subdivision (b), the person is
7 guilty of a felony punishable by imprisonment for not more than 4
8 years or a fine of not more than \$2,000.00, or both.

9 (b) If the person has previously been convicted of violating
10 subsection (1)(b), the person is guilty of a felony punishable by
11 imprisonment for not more than 10 years or a fine of not more than
12 \$5,000.00, or both.

13 (4) The court may order a term of imprisonment imposed for a
14 violation of this section to be served consecutively to a term of
15 imprisonment imposed for any other violation of law arising out of
16 the same transaction as the violation of this section.

17 (5) This section does not prohibit an individual from being
18 charged with, convicted of, or punished for any other violation of
19 law that is committed by that individual while violating this
20 section.

21 **(6) The mandatory sentence provided for under subsection**
22 **(2)(e) does not apply to a resentencing conducted under sections**
23 **27a to 27h of chapter IX of the code of criminal procedure, 1927 PA**
24 **175, MCL 769.27a to 769.27h.**

25 Sec. 520b. (1) A person is guilty of criminal sexual conduct
26 in the first degree if he or she engages in sexual penetration with
27 another person and if any of the following circumstances exists:

28 (a) That other person is under 13 years of age.

29 (b) That other person is at least 13 but less than 16 years of

1 age and any of the following:

2 (i) The actor is a member of the same household as the victim.

3 (ii) The actor is related to the victim by blood or affinity to
4 the fourth degree.

5 (iii) The actor is in a position of authority over the victim
6 and used this authority to coerce the victim to submit.

7 (iv) The actor is a teacher, substitute teacher, or
8 administrator of the public school, nonpublic school, school
9 district, or intermediate school district in which that other
10 person is enrolled.

11 (v) The actor is an employee or a contractual service provider
12 of the public school, nonpublic school, school district, or
13 intermediate school district in which that other person is
14 enrolled, or is a volunteer who is not a student in any public
15 school or nonpublic school, or is an employee of this state or of a
16 local unit of government of this state or of the United States
17 assigned to provide any service to that public school, nonpublic
18 school, school district, or intermediate school district, and the
19 actor uses his or her employee, contractual, or volunteer status to
20 gain access to, or to establish a relationship with, that other
21 person.

22 (vi) The actor is an employee, contractual service provider, or
23 volunteer of a child care organization, or a person licensed to
24 operate a foster family home or a foster family group home in which
25 that other person is a resident, and the sexual penetration occurs
26 during the period of that other person's residency. As used in this
27 subparagraph, "child care organization", "foster family home", and
28 "foster family group home" mean those terms as defined in section 1
29 of 1973 PA 116, MCL 722.111.

1 (c) Sexual penetration occurs under circumstances involving
2 the commission of any other felony.

3 (d) The actor is aided or abetted by 1 or more other persons
4 and either of the following circumstances exists:

5 (i) The actor knows or has reason to know that the victim is
6 mentally incapable, mentally incapacitated, or physically helpless.

7 (ii) The actor uses force or coercion to accomplish the sexual
8 penetration. Force or coercion includes, but is not limited to, any
9 of the circumstances listed in subdivision (f).

10 (e) The actor is armed with a weapon or any article used or
11 fashioned in a manner to lead the victim to reasonably believe it
12 to be a weapon.

13 (f) The actor causes personal injury to the victim and force
14 or coercion is used to accomplish sexual penetration. Force or
15 coercion includes, but is not limited to, any of the following
16 circumstances:

17 (i) When the actor overcomes the victim through the actual
18 application of physical force or physical violence.

19 (ii) When the actor coerces the victim to submit by threatening
20 to use force or violence on the victim, and the victim believes
21 that the actor has the present ability to execute these threats.

22 (iii) When the actor coerces the victim to submit by threatening
23 to retaliate in the future against the victim, or any other person,
24 and the victim believes that the actor has the ability to execute
25 this threat. As used in this subdivision, "to retaliate" includes
26 threats of physical punishment, kidnapping, or extortion.

27 (iv) When the actor engages in the medical treatment or
28 examination of the victim in a manner or for purposes that are
29 medically recognized as unethical or unacceptable.

1 (v) When the actor, through concealment or by the element of
2 surprise, is able to overcome the victim.

3 (g) The actor causes personal injury to the victim, and the
4 actor knows or has reason to know that the victim is mentally
5 incapable, mentally incapacitated, or physically helpless.

6 (h) That other person is mentally incapable, mentally
7 disabled, mentally incapacitated, or physically helpless, and any
8 of the following:

9 (i) The actor is related to the victim by blood or affinity to
10 the fourth degree.

11 (ii) The actor is in a position of authority over the victim
12 and used this authority to coerce the victim to submit.

13 (2) Criminal sexual conduct in the first degree is a felony
14 punishable as follows:

15 (a) Except as provided in subdivisions (b) and (c), by
16 imprisonment for life or for any term of years.

17 (b) ~~For~~ **Subject to subsection (4), for** a violation that is
18 committed by an individual 17 years of age or older against an
19 individual less than 13 years of age by imprisonment for life or
20 any term of years, but not less than 25 years.

21 (c) ~~For~~ **Subject to subsection (4), for** a violation that is
22 committed by an individual 18 years of age or older against an
23 individual less than 13 years of age, by imprisonment for life
24 without the possibility of parole if the person was previously
25 convicted of a violation of this section or section 520c, 520d,
26 520e, or 520g committed against an individual less than 13 years of
27 age or a violation of law of the United States, another state or
28 political subdivision substantially corresponding to a violation of
29 this section or section 520c, 520d, 520e, or 520g committed against

1 an individual less than 13 years of age.

2 (d) In addition to any other penalty imposed under subdivision
3 (a) or (b), the court shall sentence the defendant to lifetime
4 electronic monitoring under section 520n.

5 (3) The court may order a term of imprisonment imposed under
6 this section to be served consecutively to any term of imprisonment
7 imposed for any other criminal offense arising from the same
8 transaction.

9 **(4) The mandatory sentences provided for under subsection**
10 **(2) (b) and (c) do not apply to a resentencing conducted under**
11 **sections 27a to 27h of chapter IX of the code of criminal**
12 **procedure, 1927 PA 175, MCL 769.27a to 769.27h.**

13 Sec. 543f. (1) A person is guilty of terrorism when that
14 person knowingly and with premeditation commits an act of
15 terrorism.

16 (2) Terrorism is a felony punishable by imprisonment for life
17 or any term of years or a fine of not more than \$100,000.00, or
18 both. However, except as provided in sections 25 and 25a of chapter
19 IX of the code of criminal procedure, 1927 PA 175, MCL 769.25 and
20 769.25a, **and subject to subsection (3)**, if death was caused by the
21 terrorist act, the person shall be punished by imprisonment for
22 life without eligibility for parole.

23 **(3) The mandatory sentence provided for under subsection (2)**
24 **does not apply to a resentencing conducted under sections 27a to**
25 **27h of chapter IX of the code of criminal procedure, 1927 PA 175,**
26 **MCL 769.27a to 769.27h.**

27 Enacting section 1. This amendatory act does not take effect
28 unless Senate Bill No.____ or House Bill No. 4556 (request no.
29 00553'23) of the 102nd Legislature is enacted into law.

Public Policy Position
SB 0321 – SB 0325
HB 4556 – HB 4560

Support

Explanation:

The Committee voted to support the “Second Look” legislative packages. The Committee believes that the procedures set forth in the legislation, principally in SB 321/HB 4556, outline a thorough and appropriate process for courts to manage petitions for resentencing and the hearings associated with such petitions. The Committee also noted that the legislation is likely to result in significant, positive outcomes for both access to, and the administration of, justice and the reduction of racial disparities in Michigan's criminal legal system.

Position Vote SB 0321/HB 4556:

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

Position Vote SB 0322/HB 45576:

Voted For position: 16
Voted against position: 0
Abstained from vote: 1
Did not vote (absent): 10

Position Vote SB 0323/HB 4558:

Voted For position: 16
Voted against position: 0
Abstained from vote: 1
Did not vote (absent): 10

Position Vote SB 0324/HB 4559:

Voted For position: 16
Voted against position: 0
Abstained from vote: 1
Did not vote (absent): 10

Position Vote SB 0325/HB 4560:

Voted For position: 16
Voted against position: 0
Abstained from vote: 1
Did not vote (absent): 10

Keller-Permissibility Explanation:

Taken together, the bills in the “Second Look” legislative package would have a significant impact on the functioning of the courts. The principal bills outline in minute detail the procedures to be used by parties when filing resentencing petitions and by the sentencing courts that will receive such petitions, hold resentencing hearings, and dispose of the petitions. As such, the legislation clearly satisfies the reasonable related requirement of *Keller*, and likely also satisfies the necessarily related threshold. Those bills which do not directly address court procedures are tie-barred technical trailers that are necessary to effectuate the principal

Contact Persons:

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

**Public Policy Position
SB 321 – SB 325**

Support

Position Vote:

Voted for position: 9

Voted against position: 5

Abstained from vote: 2

Did not vote: 0

Keller Permissibility Explanation:

The improvement of the functioning of the courts.

Contact Person: Takura N. Nyamfukudza

Email: takura@cndefenders.com



**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by August 1, 2023. Comments may be sent in writing to Andrea Crumback, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

PROPOSED

The Committee proposes a new jury instruction, M Crim JI 37.1c (Using False Documents to Deceive Principal or Employer), for the crime found at MCL 750.125(3). The instruction is entirely new.

**[NEW] M Crim JI 37.1c Using False Documents to Deceive
Principal or Employer**

- (1) The defendant is charged with the crime of using a false document(s) to deceive a principal or employer. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:
- (2) First, that [(*identify agent or employee*) / the defendant] was the agent or employee of [*name principal or employer*].
- (3) Second, that the defendant [*Select (a) or (b)*]¹
 - (a) [gave / used] a [receipt / account / invoice / (*describe other document*)] concerning the business of [*name principal or employer*] to [*identify agent or employee*].
 - (b) [used / approved / certified] [a receipt / an account / an invoice / a (*describe other document*)] concerning the business of [*name principal or employer*].
- (4) Third, that the [receipt / account / invoice / (*describe other document*)] contained a statement that [was materially false, erroneous, or defective / failed to fully state any commission, money, property, or other

valuable item² given to (*identify agent or employee*) / the defendant) or agreed to be given to (him / her)].

- (5) Fourth, that when the defendant [gave / used / approved / certified] the [receipt / account / invoice / (*describe other document*)], [he / she] intended to deceive [*name principal or employer*].

Use Note

1. Use “(a)” where it is alleged that the defendant gave a document to the agent/employee of the principal in order to deceive or cheat the principal. Use “(b)” where the defendant is an agent/employee of the principal and was the person who is alleged to have approved or used a document to deceive or cheat the employer/principal.
2. The court may identify the specific money or property in lieu of reading this entire phrase.

Public Policy Position
Model Criminal Jury Instructions 37.1c

Support

Explanation:

The Committee voted unanimously to support Model Criminal Jury Instructions 37.1c.

Position Vote:

Voted For position: 17

Voted against position: 0

Abstained from vote: 0

Did not vote (absent):9

Contact Persons:

Nimish R. Ganatra ganatran@washtenaw.org

Sofia V. Nelson snelson@sado.org



**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

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PROPOSED

The Committee proposes a new jury instruction, M Crim JI 40.4 (Furnishing Alcohol to a Minor), for the crime found at MCL 436.1701. The instruction is entirely new.

[NEW] M Crim JI 40.4 Furnishing Alcohol to a Minor

(1) Defendant is charged with the crime of selling or furnishing alcohol to a minor. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant knowingly sold or furnished¹ alcohol to [*name minor complainant*].

(3) Second, that [*name minor complainant*] was under 21 years of age.

(4) Third, that when defendant sold or furnished the alcohol, the defendant knew or should have known that [*name minor complainant*] was under 21 years of age or failed to make a diligent effort² to determine whether [*name minor complainant*] was under 21 years of age by inspecting [*name minor complainant*]'s pictured identification.

[*Where the aggravating element has been charged under MCL 436.1701(2):*]

(5) Fourth, that the consumption of the alcohol obtained by [*name minor complainant*] was a direct and substantial cause of [(*name minor complainant*)'s death / an accidental injury that caused (*name minor complainant*)'s death].

Use Note

1. *People v Neumann*, 85 Mich 98, 102; 48 NW 290 (1891), provided a definition of *furnishing*: “letting a minor have liquor.”
2. *Diligent inquiry* is further defined in MCL 436.1701(11)(b).

Public Policy Position
Model Criminal Jury Instructions 40.4

Support with Amendment

Explanation:

The committee voted unanimously (17) to support the proposed model criminal jury instructions with an amendment to change the language to “knew or didn’t make diligent inquiry” to be consistent with the statute.

Position Vote:

Voted For position: 17

Voted against position: 0

Abstained from vote: 0

Did not vote (absent):9

Contact Persons:

Nimish R. Ganatra ganatran@washtenaw.org

Sofia V. Nelson snelson@sado.org