Agenda
Public Policy Committee
January 20, 2022 – 12:00 p.m. to 1:30 p.m.
Via Zoom Meetings

Public Policy Committee……James W. Heath, Chairperson

A. Reports

1. Approval of November 18, 2021 minutes
2. Public Policy Report

B. Unfinished Business

1. HB 5309 (LaFave) Occupations: attorneys; eligibility requirements for attorney licensed in another state to practice law in Michigan; modify. Amends secs. 937, 940 & 946 of 1961 PA 236 (MCL 600.937 et seq.) & adds sec. 945.

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

2. Bail Bonds Legislation

HB 5436 (Fink) Criminal procedure: bail; procedure for pretrial release determinations, criteria a court must consider for pretrial release determination, and reporting of data on pretrial release decisions; provide for. Amends sec. 6 & 6a, ch. V of 1927 PA 175 (MCL 765.6 & 765.6a) & adds sec. 6g, ch. V.
HB 5437 (Yancey) Criminal procedure: bail; criteria a court must consider before imposing certain conditions of release and due process hearing related to pretrial detention; provide for. Amends sec. 6b, ch. V of 1927 PA 175 (MCL 765.6b) & adds sec. 6f, ch. V.
HB 5438 (VanWoerkom) Criminal procedure: other; certain definitions in the code of criminal procedure and time period required for disposition of criminal charges; provide for. Amends sec. 1, ch. I & sec. 1, ch. VIII of 1927 PA 175 (MCL 761.1 & 768.1).
HB 5439 (Young) Criminal procedure: bail; interim bail bonds for misdemeanors; modify. Amends sec. 1 of 1961 PA 44 (MCL 780.581).
HB 5440 (LaGrand) Criminal procedure: bail; requirements for the use of a pretrial risk assessment tool by a court making bail decision; create. Amends 1927 PA 175 (MCL 760.1 - 7677.69) by adding sec. 6f, ch. V.
HB 5441 (Johnson) Criminal procedure: bail; act that provides bail for traffic offenses or misdemeanors; repeal. Repeals 1966 PA 257 (MCL 780.61 - 780.73).
HB 5442 (Meerman) Traffic control: driver license; reference to surrendering license as condition of pretrial release and certain other references; amend to reflect changes in code of criminal procedure. Amends secs. 311 & 727 of 1949 PA 300 (MCL 257.311 & 257.727) & repeals sec. 311a of 1949 PA 300 (MCL 257.311a).

Status:	10/20/21 Referred to House Committee on Judiciary.
Referrals:	10/22/21 Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.

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

Status:	10/20/21 Referred to House Committee on Judiciary.
Referrals:	10/22/21 Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section; Family Law Section.
Comments:	Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section; Family Law Section.
Liaisons:	Valerie R. Newman and Takura N. Nyamfukudza

C. Court Rules

1. ADM File No. 2021-41 – Proposed Amendments of MCR 6.001, 6.003, 6.006, 6.102, 6.103, 6.106, 6.445, 6.615, and 6.933 and Proposed Additions of MCR 6.105, 6.441, and 6.450

The proposed amendments would make the rules consistent with recent statutory revisions that resulted from recommendations of the Michigan Joint Task Force on Jail and Pretrial Incarceration.

Status: 03/01/22 Comment Period Expires.
Referrals: 11/22/21 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: Valerie R. Newman

2. ADM File No. 2021-05 – Proposed Amendments of MCR 6.302 and 6.310

The proposed amendments of MCR 6.302 and 6.310 would require a court to specify the estimated sentencing guideline range as part of a preliminary evaluation of the sentence and to clarify that a defendant may withdraw a plea when the actual guidelines range is different than initially estimated.

Status: 03/01/22 Comment Period Expires.
Referrals: 11/22/21 Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.
Comments: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee.
Liaison: Valerie R. Newman

3. ADM File No. 2019-16 – Proposed Amendment of MCR 7.212

The proposed amendment of MCR 7.212 would require appellate briefs to be formatted for optimized reading on electronic displays.

Status: 03/01/22 Comment Period Expires.
Referrals: 11/22/21 Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; All Sections.
Comments: Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Appellate Practice Section; Criminal Law Section; Two Member Comments.
Comment provide to the Court is included in the materials.
Liaison: Mark A. Wisniewski

4. ADM File No. 2021-45 – Amendment of MCR 7.306

The amendment of MCR 7.306 creates procedure specific to original actions relating to cases filed involving the Independent Citizens Redistricting Commission.

Status: 02/01/22 Comment Period Expires.
Referrals: 11/01/21 Civil Procedure & Courts Committee.
Comments: Civil Procedure & Courts Committee.
Liaison: Brian D. Shekell

5. ADM File No. 2021-31 – Proposed Amendment of MCR 8.110

In light of the federal Act making Juneteenth a federal holiday (PL117-17), this proposed amendment would similarly require that courts observe Juneteenth as a holiday. This proposed amendment is being considered in conjunction with other proposed amendments that would eliminate an existing holiday so as to retain the same number of holidays that are currently provided under the rule. The options the Court would like commenters to consider eliminating, if the commenters believe the number of holidays should remain the same, include the day after Thanksgiving, Christmas Eve, or New Year's Eve, similar to Federal legal holiday designations. For purposes of comment, commenters are invited to indicate their support or opposition to any of the proposed amendments individually or combined.

Status: 02/01/22 Comment Period Expires.
Referrals: 10/25/21 Civil Procedure & Courts Committee.
Comments: Civil Procedure & Courts Committee.
Comments provided to the Michigan Supreme Court are included in the materials.
Liaison: Judge Cynthia D. Stephens

D. Legislation

1. HB 5340 (Whiteford) Courts: other; family treatment court; create. Amends sec. 1082 of 1961 PA 236 (MCL 600.1082) & adds ch. 10D.

Status: 09/23/21 Referred to House Committee on Judiciary.
Referrals: 10/05/21 Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Children's Law Section; Criminal Law Section; Family Law Section; Judicial Section.
Comments: Access to Justice Policy Committee; Criminal Law Section; Family Law Section.
Liaison: Lori A. Buiteweg

2. Eligibility for Specialty Courts

HB 5482 (Howell) Courts: drug court; eligibility to drug treatment courts; modify. Amends sec. 1066 of 1961 PA 236 (MCL 600.1066).

HB 5483 (LaGrand) Courts: other; eligibility for mental health court participants; modify. Amends sec. 1093 of 1961 PA 236 (MCL 600.1093).

HB 5484 (Yancey) Courts: drug court; termination procedure for drug treatment courts; modify. Amends sec. 1074 of 1961 PA 236 (MCL 600.1074).

Status: 10/27/21 Referred to House Committee on Judiciary.
Referrals: 10/29/21 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: Kim Warren Eddie

3. HB 5541 (Fink) Occupations: attorneys; requirements for admission to state bar; modify. Amends secs. 931, 934 & 946 of 1961 PA 236 (MCL 600.931 et seq.) & adds sec. 935.

Status: 01/12/22 House adopted Substitute H-1; Bill Advance to Third Reading.
Referrals: Not referred at this time.
Comments: None at this time.
Liaison: Thomas G. Sinas

4. HB 5593 (Calley) Criminal procedure: mental capacity; community mental health oversight of competency exams for defendants charged with misdemeanors; provide for. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 20b to ch. VIII.

Status:	12/01/21 Referred to House Committee on Health Policy.
Referrals:	12/13/21 Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.
Comments:	Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee.
Liaison:	Suzanne C. Larsen

E. Consent Agenda

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

1. M Crim JI 3.13 – Penalty
The Committee proposes to amend M Crim JI 3.13 [Penalty] to remove any possible implication that the jury should find the defendant guilty so that the court could perform its duty of imposing a penalty. Deletions are in strike-through, and new language is underlined.

2. M Crim JI 20.11 – Sexual Act with Mentally Incapable, Mentally Disabled, Mentally Incapacitated, or Physically Helpless Person
The Committee proposes to amend M Crim JI 20.11 [Sexual Act with Mentally Incapable, Mentally Disabled, Mentally Incapacitated, or Physically Helpless Person] to eliminate the element requiring that the defendant know of the complainant's mental impairment because the applicable statute, MCL 750.520b(1)(h), does not require proof of such knowledge. Deletions are in strike-through, and new language is underlined.

3. M Crim JI 24.1 – Unlawfully Driving Away an Automobile
The Committee proposes to amend M Crim JI 24.1 [Unlawfully Driving Away an Automobile] to correct the fourth element currently addressing "intent" to be in accord with the statutory language of MCL 750.413 and *People v Crosby* 82 Mich App 1 (1978). Deletions are in strike-through, and new language is underlined.

4. M Crim JI 34.6 – Food Stamp Fraud
The Committee proposes a new instruction, M Crim JI 34.6 [Food Stamp Fraud], for crimes charged under MCL 750.300a.

5. M Crim JI 35.12 – Cyberbullying/Aggravated Cyberbullying
The Committee proposes a new instruction, M Crim JI 35.12 [Cyberbullying / Aggravated Cyberbullying], for crimes charged under MCL 750.411x.

MINUTES
Public Policy Committee
November 18, 2021 – 12:00 p.m. to 1:30 p.m.

Committee Members: James W. Heath, Lori A. Buiteweg, Suzanna C. Larsen, E. Thomas McCarthy, Jr., Valerie R. Newman, Takura N. Nyamfukudza, Brian D. Shekell, Thomas G. Sinas, Judge Cynthia D. Stephens, Mark A. Wisniewski
SBM Staff: Janet K. Welch, Peter Cunningham, Carrie Sharlow, Nathan Triplett
GCSI Staff: Marcia Hune, Samantha Zandee

A. Reports

1. Approval of September 15, 2021 minutes
The minutes were approved unanimously.

2. Public Policy Report
A written report was provided by the Governmental Relations staff, and Peter Cunningham provided a verbal report.

B. Court Rules

1. ADM File No. 2021-34: Proposed Amendment of MCR 5.125
The proposed amendment of MCR 5.125 would add the community mental health program as an interested person to be served a copy of the court's order when assisted outpatient treatment is ordered.
The following entities offered recommendations: Access to Justice Policy Committee.
The committee voted unanimously (10) to support the proposed amendment to Rule 5.125.

2. ADM File No. 2018-26: Proposed Amendment of MCR 6.502
The proposed amendment of MCR 6.502 would make the rule consistent with the Court's ruling in *People v Washington*, ___Mich___(2021) by allowing a defendant to file a second or subsequent motion for relief from judgment based on a claim of a jurisdictional defect in the trial court when the judgment was entered. Although the Court's analysis in *Washington* related specifically to subject matter jurisdiction, reference to "jurisdictional defect" is consistent with MCR 6.508(D).
The following entities offered recommendations: Criminal Jurisprudence & Practice Committee.
The committee voted unanimously (10) to support the proposed amendment to Rule 6.502.

3. ADM File No. 2021-33: Proposed Amendment of Administrative Order No. 1997-10
The proposed amendment of Administrative Order No. 1997-10 would clarify which information about jobs within the judiciary would be available to the public and the manner in which it will be made available.
The committee voted unanimously (10) to support the proposed amendment of Administrative Order No. 1997-10.

C. Legislation

1. HB 5309 (LaFave) Occupations: attorneys; eligibility requirements for attorney licensed in another state to practice law in Michigan; modify.
The committee agreed that this legislation is *Keller* permissible in affecting the regulation of attorneys and the integrity of the legal profession.
The committee voted unanimously (10) to support HB 5309.

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

HB 5437 (Yancey) Criminal procedure: bail; criteria a court must consider before imposing certain conditions of release and due process hearing related to pretrial detention; provide for. Amends sec. 6b, ch. V of 1927 PA 175 (MCL 765.6b) & adds sec. 6f, ch. V.
HB 5438 (VanWoerkom) Criminal procedure: other; certain definitions in the code of criminal procedure and time period required for disposition of criminal charges; provide for. Amends sec. 1, ch. I & sec. 1, ch. VIII of 1927 PA 175 (MCL 761.1 & 768.1).
HB 5439 (Young) Criminal procedure: bail; interim bail bonds for misdemeanors; modify. Amends sec. 1 of 1961 PA 44 (MCL 780.581).
HB 5440 (LaGrand) Criminal procedure: bail; requirements for the use of a pretrial risk assessment tool by a court making bail decision; create. Amends 1927 PA 175 (MCL 760.1 - 7677.69) by adding sec. 6f, ch. V.
HB 5441 (Johnson) Criminal procedure: bail; act that provides bail for traffic offenses or misdemeanors; repeal. Repeals 1966 PA 257 (MCL 780.61 - 780.73).
HB 5442 (Meerman) Traffic control: driver license; reference to surrendering license as condition of pretrial release and certain other references; amend to reflect changes in code of criminal procedure. Amends secs. 311 & 727 of 1949 PA 300 (MCL 257.311 & 257.727) & repeals sec. 311a of 1949 PA 300 (MCL 257.311a).
HB 5443 (Brann) Criminal procedure: bail; setting of bond related to spousal or child support arrearage; modify. Amends sec. 165 of 1931 PA 328 (MCL 750.165).
The following entities offered recommendations: Access to Justice Policy Committee, Criminal Jurisprudence & Practice Committee, Criminal Law Section, Family Law Section.
The committee agreed that this legislation is *Keller* permissible in affecting the functioning of the courts. The committee voted 9 to 2 to support HB 5436 – HB 5439 and HB 5441 – HB 5443, the legislation that aligns with the Michigan Joint Task Force on Jail and Pretrial Incarceration. The committee voted to oppose HB 5440.

SBM STATE BAR OF MICHIGAN

To: Members of the Public Policy Committee
Board of Commissioners

From: Governmental Relations Staff

Date: January 12, 2022

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

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Background

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

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

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

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

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

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

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

Keller Considerations

HB 5309 deals directly with admission to the profession.

Keller Quick Guide

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

Staff Recommendation

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

HOUSE BILL NO. 5309

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

A bill to amend 1961 PA 236, entitled

"Revised judicature act of 1961,"

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

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

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

the satisfaction of the board of law examiners:

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

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

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

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

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

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

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

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

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

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

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

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

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

delegated. ~~; or any~~

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

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

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

MEMORANDUM IN SUPPORT OF SENATE BILL 195

Date: March 14, 2017

To: Michigan Senate Judiciary Committee

From: Daryl Waters

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

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

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

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

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

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

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

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

Respectfully Submitted,

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

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Senator Rick Jones, Chairman
Michigan Senate Judiciary Committee
P.O. Box 30036
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Testimony in support of SB 195

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

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

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

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

MEMORANDUM

Date: March 10, 2017

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

From: Luke Bowman

Subject: Senate Bill 195 (2017)

Introduction

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

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

Discussion

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

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

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

Comparison with Other State Requirements

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

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

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

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

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

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

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

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

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

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

Personal Background

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

Historical Precedent

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

Conclusion

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

Respectfully Submitted,

Luke Bowman
Licensed in California, Wisconsin, US District Court for the Eastern District of Michigan, and US District Court for the Southern District of Indiana
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[4] https://en.wikipedia.org/wiki/Western_Michigan_University_Cooley_Law_School

Material Considered by Board for 2016 Similar Legislation

Report on Public Policy Position

Name of section:
Criminal Law Section

Contact person:
Stephanie Farkas

E-Mail:
attorneyfarkas@gmail.com

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

Date position was adopted:
March 15, 2016

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

Number of members in the decision-making body:
24

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

Position:
Oppose

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

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

Material Considered by Board for 2016 Similar Legislation

FOR LEGISLATIVE ISSUES ONLY:

This position falls within the following Keller-permissible category:

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

Frequently Asked Questions

Official Guide to ABA-Approved Law Schools

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

ACCREDITATION PROCESS

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

Click here to learn more about the ABA Accreditation Process.

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

APPROVAL OF LAW SCHOOLS

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

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

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

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

Material Considered by Board for 2016 Similar Legislation

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

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

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

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

ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS

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

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

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

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

Material Considered by Board for 2016 Similar Legislation

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

ABA Standards and Rules of Procedure for Approval of Law Schools

ACADEMIC DISMISSAL

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

Admission or readmission after academic dismissal

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

ADMISSION TO THE BAR

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

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

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

ADMISSIONS TO LAW SCHOOL

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

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

ATTRITION RATES

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

CHARACTER, FITNESS, AND OTHER REQUIREMENTS FOR ADMISSION

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

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

COMPLAINTS

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

COMPLETION OF J.D. PROGRAM

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

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

DISTANCE EDUCATION

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

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

ELIGIBILITY TO TAKE THE BAR EXAMINATION: FOREIGN LAWYERS

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

GRANTING CREDIT FOR PRIOR LAW STUDY

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

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

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

POST-J.D. PROGRAMS

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

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

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

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

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

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

RANKING OF LAW SCHOOLS

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

STUDENT EMPLOYMENT

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

SBM STATE BAR OF MICHIGAN

To: Board of Commissioners

From: Governmental Relations Staff

Date: January 12, 2022

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

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At the November 19 meeting, the Board considered a legislative package related to pretrial detention and bail/bond reform HB 5436 through HB 5443. This bill package was based upon recommendations made by the Michigan Joint Task Force on Jail and Pretrial Incarceration. The executive summary of the Task Force recommendations is included in the Board packet for your reference and the full report may be accessed online. In addition, the materials that were provided to the Board for the November 19 meeting have also been attached for ease of access.

Because a number of Commissioners had to leave the meeting before the Board was prepared to vote on this package, a motion was made and approved to conduct a vote electronically on the following motion:

> Support bail/bond legislation that aligns with the recommendations of the Michigan Joint Task Force on Jail and Pretrial Incarceration—namely, HB 5436-HB 5439 and HB 5441-HB 5443—and to oppose HB 5440, as it was not based upon any Task Force recommendation. The Board further authorizes Sections to advocate their public policy positions on this legislative package. (Motion made by Commissioner Takura Nyamfukudza; Seconded by James Heath.)

In the days following the November Board meeting and the approval of the motion to conduct an electronic vote on this package, SBM staff continued to monitor the legislative activity on this package, and it became apparent that action on this item was not urgently required. Because not all Board members had the benefit of the full Board discussion on November 19, and timing was not believed to be a consideration, the vote is now scheduled to take place in the normal course at the January Board meeting.

Michigan Joint Task Force on Jail and Pretrial Incarceration

January 2020

Executive Summary of Findings

In a relatively short period of time, county jail populations nearly tripled in Michigan. Elevating jails as a shared bipartisan priority, state and local leaders created the Michigan Joint Task Force on Jail and Pretrial Incarceration, directing the body to analyze jail populations across the state and develop legislative recommendations for consideration in 2020.

Jails as a tool for public safety. County jails are high traffic institutions, impacting hundreds of thousands more Michiganders each year than state prisons. Incarceration in a jail can prevent an immediately dangerous situation from escalating, enable a court to evaluate conditions of release or responses to probation violations, and allow a person who has been victimized to plan for their safety. At the same time, research shows that even short periods of jail incarceration can increase future criminal behavior, suggesting that, while jail may be appropriate for those who pose a significant threat to an individual or the public, policymakers should expand and incentivize jail alternatives for those who do not.

Constitutional protections. The use of jail as a tool is limited by the Constitution's guarantees of liberty, due process, and equal protection. Former Chief Justice Rehnquist wrote in *United States v. Salerno* (1987), "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." In just the last five years, courts across the country have upheld challenges to common pretrial practices, finding that those detained in jails were not getting meaningful due process hearings, and that poor people were being denied equal protection of the laws when access to money was the deciding factor between those released and those detained. A similar lawsuit is currently pending in Michigan.

Increased jail use over time. Michigan's jail growth was driven equally by incarceration of pretrial defendants and of those serving a sentence post-conviction. Local estimates suggest that roughly a quarter of people entering jails have serious mental illnesses. Both the jail population growth and the prevalence of mental illness in jails were more pronounced in rural Michigan counties where treatment and other resources are less available. While taxpayers spend nearly half a billion dollars annually on jails, alternatives to jail and services for crime victims are relatively underfunded and in high demand across the state.

Little guidance on the use of jail alternatives. Law enforcement, pretrial, and sentencing practices vary widely and in many key policy areas, ranging from arrest and bail to sentencing and probation violations. Michigan law provides little to no guidance on when alternatives to jail should be the preferred or presumed intervention.

Who is coming to jail? Traffic offenses accounted for half of all criminal court cases in 2018 and driving without a valid license was the third most common reason people went to jail in Michigan. Other common reasons ranged from theft, drug possession, and probation violations to more serious charges like domestic violence, drunk driving, and drug sales.

How long are people staying in jail? Between 2016 and 2018, average jail stays were 45 days for felony offenses and 11 days for misdemeanor offenses. These averages comprised a wide range, however, with nearly half spending a day or less in jail, 65 percent staying less than a week, and 17 percent remaining for longer than a month (a relatively small group, but one that accounted for 82 percent of the jail space used). This broad range was also seen in pretrial detention lengths, with a large portion of people able to post bond and be released within a day, a substantial number being detained for one or two weeks and then sentenced to "time served," and some stays lasting months or years without going to trial.

Policymakers in Michigan aiming to address jail incarceration must therefore address both the large number of people whose lives are disrupted by short jail stays, who consume significant amounts of public safety resources, and the relatively small group of people whose long stays drive up county jail populations.

Overview of Recommendations

Traffic violations: Stop suspending and revoking licenses for actions unrelated to safe driving. Reclassify most traffic offenses and some other minor misdemeanors as civil rather than criminal infractions.

Arrest: Expand officer discretion to use appearance tickets as an alternative to arrest and jail. Reduce the use of arrest warrants to enforce court appearance and payments, and establish a statewide initiative to resolve new warrants and recall very old ones.

Behavioral health diversion: Provide crisis response training for law enforcement and incentivize programs and partnerships between law enforcement and treatment providers to divert people with behavioral health needs from the justice system pre- and post-arrest.

The first 24 hours after arrest: Release people jailed on certain charges pre-arraignment and guarantee appearance before a judicial officer within 24-48 hours for anyone still detained.

Pretrial release and detention: Strengthen the presumption of release on personal recognizance and set higher thresholds for imposing non-financial and financial conditions. Provide a detention hearing for all defendants still detained 48 hours after arraignment.

Speedy trial: Require defendants to be tried within 18 months of arrest and preserve speedy trial rights unless waived by the defendant.

Alternatives to jail sentences: Presumptively impose sentences other than jail for non-serious misdemeanors and for felonies marked for "intermediate sanctions" under the sentencing guidelines.

Probation and parole: Shorten maximum probation terms for most felonies, establish new caps on jail time for technical violations, and streamline the process for those in compliance to earn early discharge.

Financial barriers to compliance: Reduce fine amounts for civil infractions. Require criminal courts to determine ability to pay fines and fees at sentencing and to modify unaffordable obligations. Repeal the law authorizing sheriffs to bill people for their own incarceration.

Victim services: Invest significant resources in victim services and strengthen protection order practices.

Data collection: Standardize criminal justice data collection and reporting across the state.

Full report and other resources available at courts.michigan.gov/micjreform.

SBM STATE BAR OF MICHIGAN

To: Members of the Public Policy Committee
Board of Commissioners

From: Governmental Relations Staff

Date: January 12, 2022

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

Background
This eight-bill package of legislation is based on recommendations made by the Michigan Joint Task Force on Jail and Pretrial Incarceration, which was charged by Executive Order No. 2019-10 to, among other things, "support consistent, objective, and evidence-based pretrial decision-making." The Task Force found wide variation in practices across Michigan related to pretrial detention and conditions of release and noted that current pretrial practices raised due process and equal protection concerns under both the Michigan and U.S. Constitutions.

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

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

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

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

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

Keller Considerations of Individual Bills

HB 5436

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

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

HB 5437

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

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

HB 5438

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

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

HB 5439

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

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

HB 5440

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

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

HB 5441

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

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

HB 5442

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

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

HB 5443

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

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

***Keller* Quick Guide**

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

Staff Recommendation

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

Public Policy Position
HB 5436 – HB 5443

Support

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

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

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

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

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Public Policy Position
HB 5436 – HB 5443

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Contact Persons:

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Public Policy Position
HB 5436 – HB 5443

Position Vote on HB 5436:
Voted for position: 10
Voted against position: 10
Abstained from vote: 1
Did not vote: 0

Explanation:
We voted three times, once to support which failed 10-6-5. Then voted to adopt CJ&P Comm. position of supporting in theory not as written, but supports reforms that mirror federal system. This vote failed 9-11-1. Then we moved to reconsider to see if some of the abstentions may have changed their mind (not letting perfect be the enemy of the good), that vote failed 10-10-1. Approx half of committee strongly reported these needed reforms. Several members supports what cj&p did, because they do not like all the specific rules in this bill—fine with burden on pros, but this seems too complicated. PAAM's position is to oppose. There was concerns about reporting requirements on courts. Others believed that without reporting requirement courts won't follow.

Position Vote on HB 5437: Support
Voted for position: 12
Voted against position: 8
Abstained from vote: 1
Did not vote: 0

Position Vote on HB 5438: Support
Voted for position: 19
Voted against position: 2
Abstained from vote: 0
Did not vote: 0

Position Vote on HB 5439: Support
Voted for position: 21
Voted against position: 0
Abstained from vote: 0
Did not vote: 0

Position Vote on HB 5440: Oppose
Voted for position: 21
Voted against position: 0
Abstained from vote: 0
Did not vote: 0

Explanation:
The Council opposes the use of such instruments in general due to bias and lack of transparency by the companies about the algorithms.

Position Vote on HB 5441 & HB 5442: Support
Voted for position: 21
Voted against position: 0
Abstained from vote: 0
Did not vote: 0

Position Vote on HB 5443: Support
Voted for position: 21
Voted against position: 0
Abstained from vote: 0
Did not vote: 0

***Keller* Permissibility Explanation:**
The improvement of the functioning of the courts.

Contact Person: Sofia Nelson
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Public Policy Position
HB 5443

OPPOSE

Explanation

The bill would amend section 165 of the penal code as it relates to setting bond related to spousal support and child support arrearage in felony non-payment of support cases. It would change the manner of determining bonds for a person arrested for non-appearance on a support enforcement proceeding by deleting language referencing the support and parenting time enforcement act, MCL 552.631, as a framework for setting bond, and replaces it with the framework in MCL 765.6 under the Code of Criminal Procedure, which would also be amended as set forth in an accompanying/tie-barred bill, HB 5436. The Family Law Council concluded that HB 5436 was not appropriate for support cases because it does not provide for the payment of a cash bond (currently $500 or 25% of the outstanding arrearage, whichever is greater). Requiring a cash bond is often the only way to ensure some payment to the recipient and serves as significant motivation for the payer that incarceration or personal recognizance doesn't. HB 5436 does not appear to be written with support cases in mind, causing the Family Law Section to not only recommend opposing 5443, but also that 5436 should not be tie barred with 5443.

Position Vote:
Voted for position: 19
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 2

Contact Person: James Chryssikos
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HOUSE BILL NO. 5436

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

A bill to amend 1927 PA 175, entitled

"The code of criminal procedure,"

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER V

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The defendant shall appear as required.

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

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

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

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

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

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

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

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

(a) An assaultive crime.

(b) A listed offense.

(c) A serious misdemeanor.

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

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

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

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

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

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

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

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

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

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

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

(11) As used in this section:

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

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

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

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

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

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

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

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

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

include the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Whether the defendant was detained or released.

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

(d) Judge or magistrate issuing the bond.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HOUSE BILL NO. 5437

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

A bill to amend 1927 PA 175, entitled

"The code of criminal procedure,"

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER V

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) A statement of the conditions imposed.

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

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

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

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

only if 1 or more of the following circumstances apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

shall not be released from custody prior to arraignment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

of release.

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

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

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

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

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

(6) As used in this section:

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

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

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

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

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

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

HOUSE BILL NO. 5438

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

A bill to amend 1927 PA 175, entitled

"The code of criminal procedure,"

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER I

Sec. 1. As used in this act:

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

to avoid or delay adjudication.

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

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

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

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

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

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

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

(*i*) An indictment.

(*ii*) An information.

(*iii*) A presentment.

(*iv*) A complaint.

(*v*) A warrant.

(*vi*) A formal written accusation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

more than 48 hours after a person is arrested.

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

CHAPTER VIII

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

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

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

(b) The delay is attributable to the defendant.

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

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

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

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

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

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

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

HOUSE BILL NO. 5439

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

A bill to amend 1961 PA 44, entitled

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

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

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

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

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

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

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

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

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

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

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

HOUSE BILL NO. 5440

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

A bill to amend 1927 PA 175, entitled

"The code of criminal procedure,"

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER V

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

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

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

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

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

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

(4) Before approving an instrument for use under subsection

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

(*i*) District court judges.

(*ii*) Circuit court judges.

(*iii*) Prosecutors.

(*iv*) Defense attorneys.

(*v*) Law enforcement agencies.

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

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

(*viii*) Other relevant advocacy organizations.

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

(6) As used in this section:

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

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

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

HOUSE BILL NO. 5441

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

A bill to repeal 1966 PA 257, entitled

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

(MCL 780.61 to 780.73).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

repealed.

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

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

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

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

HOUSE BILL NO. 5442

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

A bill to amend 1949 PA 300, entitled

"Michigan vehicle code,"

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

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

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

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

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

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

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

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

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

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

HOUSE BILL NO. 5443

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

A bill to amend 1931 PA 328, entitled

"The Michigan penal code,"

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

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

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

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

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

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

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

Enacting section 2. This amendatory act does not take effect

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

Order

Michigan Supreme Court
Lansing, Michigan

November 17, 2021

Bridget M. McCormack,
Chief Justice

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

ADM File No. 2021-41

Proposed Amendments of Rules 6.001, 6.003, 6.006, 6.102, 6.103, 6.106, 6.445, 6.615, and 6.933 and Proposed Addition of Rules 6.105, 6.441, and 6.450 of the Michigan Court Rules

_____

On order of the Court, this is to advise that the Court is considering amendments of Rules 6.001, 6.003, 6.006, 6.102, 6.103, 6.106, 6.445, 6.615, and 6.933 and additions of Rules 6.105, 6.441, and 6.450 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 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 6.001 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, 6.101~~-, 6.102(D) and (F),~~ 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~~(A)-(G)~~, 6.450, and the rules in subchapter 6.600 govern matters of procedure in criminal cases cognizable in the district courts.

(C)-(E) [Unchanged.]

Rule 6.003 Definitions

For purposes of subchapters 6.000-6.800:

(1)-(6) [Unchanged.]

(7) "Technical probation violation" means any violation of the terms of a probation order, including missing or failing a drug test, excluding the following:

(a) A violation of an order of the court requiring that the probationer have no contact with a named individual.

(b) A violation of a law of this state, a political subdivision of this state, another state, or the United States or of tribal law, whether or not a new criminal offense is charged.

(c) The consumption of alcohol by a probationer who is on probation for a felony violation of MCL 257.625.

(d) Absconding, defined as the intentional failure of a probationer to report to his or her supervising agent or to advise his or her supervising agent of his or her whereabouts for a continuous period of not less than 60 days.

Rule 6.006 Video and Audio Proceedings

(A) Defendant in the Courtroom or at a Separate Location. District and circuit courts may use two-way interactive video technology to conduct the following proceedings between a courtroom and a prison, jail, or other location: initial arraignments on the warrant or complaint, probable cause conferences, arraignments on the information, motions and hearings for bail, pretrial conferences, pleas, sentencings for misdemeanor offenses, show cause hearings, waivers and adjournments of extradition, referrals for forensic determination of competency, waivers and adjournments of preliminary examinations, hearings for discharge from probation, and hearings on postjudgment motions to amend restitution.

(B)-(E) [Unchanged.]

Rule 6.102 ~~Arrest on a~~ Warrants and Summons

(A) Issuance of Summons; Warrant. A court must issue an arrest warrant~~,~~ or a summons as provided in this rule~~in accordance with MCR 6.103,~~ if presented with a proper complaint and if the court finds probable cause to believe that the accused committed the alleged offense.

(B) [Unchanged.]

(C) Summons. A court must issue a summons unless otherwise provided in subrule (D).

(1) Form. A summons must contain the same information as an arrest warrant, except that it should summon the accused to appear before a designated court at a stated time and place.

(2) Service and Return of Summons. A summons may be served by the court or prosecuting attorney by

(a) delivering a copy to the named individual; or

(b) leaving a copy with a person of suitable age and discretion at the individual's home or usual place of abode; or

(c) mailing a copy to the individual's last known address.

Service should be made promptly to give the accused adequate notice of the appearance date. Unless service is made by the court, the person serving the summons must make a return to the court before the person is summoned to appear.

(3) If the accused fails to appear in response to a summons, the court may issue a bench warrant pursuant to MCR 6.103.

(D) Arrest Warrant. A court may issue an arrest warrant, rather than a summons, if any of the following circumstance apply

(1) the complaint is for an assaultive crime or an offense involving domestic violence, as defined in MCL 764.1a.

(2) there is reason to believe from the complaint that the person against whom the complaint is made will not appear upon a summons.

(3) the issuance of a summons poses a risk to public safety.

(4) the prosecutor has requested an arrest warrant.

(C)-(F) [Relettered (E)-(H) but otherwise unchanged.]

Rule 6.103 Failure to Appear~~Summons Instead of Arrest~~

(A) In General. Except as provided in MCR 6.615(B), if a defendant fails to appear in court, the court must wait 48 hours, excluding weekends and holidays if the court is closed to the public, before issuing a bench warrant to allow the defendant an opportunity to voluntarily appear before the court.

(1) This rule does not apply if the case is for an assaultive crime or domestic violence offense, as defined in MCL 764.3, or if the defendant previously failed to appear in the case.

(2) If this rule does apply, the court may immediately issue a bench warrant only if the court has a specific articulable reason, stated on the record, to suspect any of the following apply:

(a) the defendant has committed a new crime.

(b) a person or property will be endangered if a bench warrant is not issued.

(c) prosecution witnesses have been summoned and are present for the proceeding.

(d) the proceeding is to impose a sentence for the crime.

(e) there are other compelling circumstances that require the immediate issuance of a bench warrant.

(3) If the defendant does not appear within 48 hours, the court must issue a bench warrant unless the court believes there is good reason to instead schedule the case for further hearing.

(B) Show Cause. This rule does not abridge a court's authority to issue an order to show cause, instead of a bench warrant, if a defendant fails to appear in court.

(C) Release Order. The court must not revoke a defendant's release order or forfeit bond during the 48-hour period of delay before a warrant is issued.

~~(A) Issuance of Summons. If the prosecutor so requests, the court may issue a summons instead of an arrest warrant. If an accused fails to appear in response to a summons, the court, on request, must issue an arrest warrant.~~

~~(B) Form. A summons must contain the same information as an arrest warrant, except that it should summon the accused to appear before a designated court at a stated time and place.~~

~~(C) Service and Return of Summons. A summons may be served by~~

~~(1) delivering a copy to the named individual; or~~

~~(2) leaving a copy with a person of suitable age and discretion at the individual's home or usual place of abode; or~~

~~(3) mailing a copy to the individual's last known address. Service should be made promptly to give the accused adequate notice of the appearance date. The person serving the summons must make a return to the court before which the person is summoned to appear.~~

[NEW] Rule 6.105 Voluntary Appearance

(A) In General. If a defendant, wanted on a bench or arrest warrant, voluntarily presents himself or herself to the court that issued the warrant within one year of the warrant issuance, the court must either

(1) arraign the defendant, if the court is available to do so within two hours of the defendant presenting himself or herself to the court; or

(2) recall the warrant and schedule the case for a future appearance.

It is presumed the defendant is not a flight risk when the court sets bond or other conditions of release at an arraignment under this rule.

(B) Exceptions. This rule does not apply to assaultive crimes or domestic violence offenses, as defined in MCL 762.10d, or to defendants who have previously benefited from this rule on any pending criminal charge.

Rule 6.106 Pretrial Release

(A)-(H) [Unchanged.]

(I) Termination of Release Order.

(1) [Unchanged.]

(2) If the defendant has failed to comply with the conditions of release, the court may<u>, pursuant to MCR 6.103,</u> issue a warrant for the arrest of the defendant and enter an order revoking the release order and declaring the bail money deposited or the surety bond, if any, forfeited.

(a)-(c) [Unchanged.]

(3) [Unchanged.]

[NEW] Rule 6.441 Early Probation Discharge

(A) Eligibility. Except as otherwise provided in statute, a probationer is eligible for early discharge from probation when the probationer has completed half of the original probationary period and all required programming. The court must notify the probationer at the time of sentencing, either orally or in writing, about the probationer's early probation discharge eligibility and the notice process contained in this rule.

(B) Notice of Eligibility. The probation department may file notice with the sentencing court when a probationer becomes eligible for early probation discharge. The notice must be served on the prosecuting attorney and probationer. If the probation department does not file the notice, and the probationer has not violated probation within the last 3 months, the probationer may file the notice with the sentencing court and serve copies to the prosecuting attorney and probation department. The prosecuting attorney must file any written objection to early probation discharge within 14 days of receiving service of the notice.

(C) Case Review. Upon receiving notice under subrule (B), the court must conduct a preliminary review of the case to determine whether the probationer's behavior warrants a reduction in the original probationary term. A court must not deny early discharge because of outstanding court-ordered fines, fees, or costs, if the probationer has an inability to pay and has made good-faith efforts to make payments. Before granting early discharge to a probationer who owes outstanding restitution, the court must consider the impact of early discharge on the victim and the payment of outstanding restitution.

(D) Discharge Without a Hearing. Except as provided in subrule (E), the court must discharge a probationer from probation, without a hearing, if the prosecutor does not submit a timely objection and the court's review in subrule (C) determines the probationer

(1) is eligible for early probation discharge;

(2) achieved all the rehabilitation goals of probation; and

(3) is not a specific, articulable, and ongoing risk of harm to a victim that can only be mitigated with continued probation supervision.

If the probationer owes outstanding restitution but has made a good-faith effort to make payments, the court may retain the probationer on probation with the sole condition of continuing restitution payments.

(E) Hearing Requirement. The court must hold a hearing after conducting the review in subrule (C) if

(1) the prosecutor submits a timely objection, or

(2) a circumstance identified in MCL 771.2(7) is applicable, or

(3) the court reviewed the case and does not grant an early discharge or retain the probationer on probation with the sole condition of continuing restitution payment.

If the hearing is held pursuant to MCL 771.2(7), the prosecuting attorney shall notify the victim of the date and time of the hearing. Both the probationer and victim, if applicable, must be given an opportunity to be heard at the hearing.

(F) Discharge After Hearing. Upon the conclusion of the hearing, the court must either grant early discharge or, if applicable, retain the probationer on probation with the sole condition of continuing restitution payments, if the probationer proves by a preponderance of the evidence that he or she

(1) is eligible for early probation discharge;

(2) achieved all the rehabilitation goals of probation; and

(3) is not a specific, articulable, and ongoing risk of harm to a victim that can only be mitigated with continued probation supervision.

(G) Impact on Sentencing. The eligibility for early probation discharge under this rule must not influence the court's sentencing decision regarding the length of the original probationary period.

(H) Motions. This rule does not prohibit a defendant from motioning, a probation officer from recommending, or the court from considering, a probationer for early discharge from probation at the court's discretion at any time during the duration of the probation term.

Rule 6.445 Probation Violation and Revocation

(A) Issuance of Summons; Warrant. The court may issue a bench warrant, summons, or show cause upon~~On~~ finding probable cause to believe that a probationer has committed a non-technical violation~~violated a condition~~ of probation~~, the court may~~. The court must issue a summons or show cause, rather than a bench warrant, upon

finding probable cause to believe a probationer has committed a technical violation of probation unless the court states on the record a specific reason to suspect that one or more of the following apply

(1) the probationer presents an immediate danger to himself or herself, another person, or the public.~~issue a summons in accordance with MCR 6.103(B) and (C) for the probationer to appear for arraignment on the alleged violation, or~~

(2) the probationer has left court-ordered inpatient treatment without the court's or the treatment facility's permission.~~issue a warrant for the arrest of the probationer.~~

(3) A summons or show cause has already been issued for the technical probation violation and the probationer failed to appear as ordered.

An arrested probationer must promptly be brought before the court for arraignment on the alleged violation.

(B) Arraignment on the Charge. At the arraignment on the alleged probation violation, the court must

(1) [Unchanged.]

(2) inform the probationer whether the alleged violation is charged as a technical or non-technical violation of probation, and the maximum possible jail or prison sentence.

(2)-(5) [Renumbered (3)-(6) but otherwise unchanged.]

(C) Scheduling or Postponement of Hearing. The hearing of a probationer being held in custody for an alleged probation violation must be held within the permissible jail sentence for the probation violation, but in no event longer than 14 days after the arrest~~arraignment~~ or the court must order the probationer released from that custody pending the hearing. If the alleged violation is based on a criminal offense that is a basis for a separate criminal prosecution, the court may postpone the hearing for the outcome of that prosecution.

(D) [Unchanged.]

(E) The Violation Hearing.

(1) [Unchanged.]

(2) Judicial Findings. At the conclusion of the hearing, the court must make findings in accordance with MCR 6.403 and, if the violation is proven, whether the violation is a technical or non-technical violation of probation.

(F) Pleas of Guilty. The probationer may, at the arraignment or afterward, plead guilty to the violation. Before accepting a guilty plea, the court, speaking directly to the probationer and receiving the probationer's response, must

(1) advise the probationer that by pleading guilty the probationer is giving up the right to a contested hearing and, if the probationer is proceeding without legal representation, the right to a lawyer's assistance as set forth in subrule (B)(3~~2~~)(b),

(2)-(3) [Unchanged.]

(4) establish factual support for a finding that the probationer is guilty of the alleged violation and whether the violation is a technical or non-technical violation of probation.

(G) Sentencing. If the court finds that the probationer has violated a condition of probation, or if the probationer pleads guilty to a violation, the court may continue probation, modify the conditions of probation, extend the probation period, or revoke probation and impose a sentence of incarceration pursuant to law. The court may not sentence the probationer to prison without having considered a current presentence report and may not sentence the probationer to prison or jail (including for failing to pay fines, costs, restitution, and other financial obligations imposed by the court) without having complied with the provisions set forth in MCR 6.425(B) and (D).

(H) [Unchanged.]

[NEW] Rule 6.450 Technical Probation Violation Acknowledgment

(A) Acknowledgment. In lieu of initiating a probation violation proceeding under MCR 6.445, the court may allow a probationer to acknowledge a technical probation violation without a hearing. The acknowledgement must be in writing and advise the probation of the following information

(1) the probationer has a right to contest the alleged technical probation violation at a formal probation violation hearing;

(2) the probationer is entitled to a lawyer's assistance at the probation violation hearing and at all subsequent court proceedings, and that the court will

appoint a lawyer at public expense if the probationer wants one and is financially unable to retain one;

(3) the court will not revoke probation or sentence the probationer to incarceration as a result of the acknowledgment, but the court may continue probation, modify the conditions of probation, or extend probation;

(4) if the probationer violates probation again, the court may consider the acknowledgment a prior technical probation violation conviction for the purposes of determining the maximum jail or prison sentence and probation revocation eligibility authorized by law;

(5) acknowledging a technical probation violation may delay the probationer's eligibility for an early discharge from probation.

(B) Review. Upon acknowledgment of a technical probation violation by a probationer, the court may continue probation, modify the conditions of probation, or extend the term of probation. The court may not impose a sentence of incarceration or revoke probation for acknowledging a technical probation violation under this rule, but the court may count the acknowledgment for the purpose of identifying the number of technical probation violations under MCL 771.4b.

Rule 6.615 Misdemeanor ~~Traffic~~ Cases

(A) Citation; Complaint; Summons; Warrant.

(1) A misdemeanor ~~traffic~~ case may be initiated by one of the following procedures:

(a) Subject to the exceptions in MCL 764.9c, s~~S~~ervice by a law enforcement officer on the defendant of a written citation, and the filing of the citation in the district court. The citation may be prepared electronically or on paper. The citation must be signed by the officer in accordance with MCR 1.109(E)(4); if a citation is prepared electronically and filed with a court as data, the name of the officer that is associated with issuance of the citation satisfies this requirement.

(b) The filing of a sworn complaint in the district court and the issuance of a summons or an arrest warrant. ~~A citation may serve as the sworn complaint and as the basis for a misdemeanor warrant.~~

(c) [Unchanged.]

(2) The citation may serves as a sworn complaint and as a summons to command

(a) [Unchanged.]

(b) for misdemeanor traffic cases, a response from the defendant as to his or her guilt of the violation alleged.

(B) Appearances; Failure To Appear. If a defendant fails to appear or otherwise to respond to any matter pending relative to a misdemeanor traffic citation issued under MCL 764.9c, the court shall issue an order to show causeproceed as provided in this subrule.

(1) The court may immediately issue a bench warrant, rather than an order to show cause, if the court has a specific articulable reason to suspect that any of the following apply and states it on the record:

(a) the defendant has committed a new crime.

(b) the defendant's failure to appear is the result of a willful intent to avoid or delay the adjudication of the case.

(c) another person or property will be endangered if a warrant is not issued.

(2) If a defendant fails to appear or otherwise respond to any matter pending relative to a misdemeanor traffic citation, the court must also initiate the procedures required by MCL 257.321a.

(1) If the defendant is a Michigan resident, the court

(a) must initiate the procedures required by MCL 257.321a for the failure to answer a citation; and

(b) may issue a warrant for the defendant's arrest.

(2) If the defendant is not a Michigan resident,

(a) the court may mail a notice to appear to the defendant at the address in the citation;

(b) the court may issue a warrant for the defendant's arrest; and

~~(c) if the court has received the driver's license of a nonresident, pursuant to statute, it may retain the license as allowed by statute. The court need not retain the license past its expiration date.~~

(C) Arraignment. An arraignment in a misdemeanor ~~traffic~~ case may be conducted by

(1)-(2) [Unchanged.]

(D) Contested Cases. A misdemeanor ~~traffic~~ case must be conducted in compliance with the constitutional and statutory procedures and safeguards applicable to misdemeanors cognizable by the district court.

Rule 6.933 Juvenile Probation Revocation

(A) ~~General Procedure. When a juvenile, who was placed on juvenile probation and committed to an institution as a state ward, is alleged to have violated juvenile probation, the court shall proceed as provided in MCR 6.445(A)-(F).~~Issuance of Summons; Warrant. When a juvenile, who was placed on juvenile probation and committed to an institution as a state ward, is alleged to have violated juvenile probation, on finding probable cause to believe that a probationer has violated a condition of probation, the court may

(1) issue a summons in accordance with MCR 6.102 for the probationer to appear for arraignment on the alleged violation, or

(2) issue a warrant for the arrest of the probationer.

An arrested probationer must promptly be brought before the court for arraignment on the alleged violation.

(B) Arraignment on the Charge. At the arraignment on the alleged probation violation, the court must

(1) ensure that the probationer receives written notice of the alleged violation,

(2) advise the probationer that

(a) the probationer has a right to contest the charge at a hearing, and

(b) the probationer is entitled to a lawyer's assistance at the hearing and at all subsequent court proceedings, and that the court will appoint a lawyer at public expense if the probationer wants one and is financially unable to retain one,

(3) if requested and appropriate, appoint a lawyer,

(4) determine what form of release, if any, is appropriate, and

(5) subject to subrule (C), set a reasonably prompt hearing date or postpone the hearing.

(C) Scheduling or Postponement of Hearing. The hearing of a probationer being held in custody for an alleged probation violation must be held within 14 days after the arraignment or the court must order the probationer released from that custody pending the hearing. If the alleged violation is based on a criminal offense that is a basis for a separate criminal prosecution, the court may postpone the hearing for the outcome of that prosecution.

(D) Continuing Duty to Advise of Right to Assistance of Lawyer. Even though a probationer charged with probation violation has waived the assistance of a lawyer, at each subsequent proceeding the court must comply with the advice and waiver procedure in MCR 6.005(E).

(E) The Violation Hearing.

(1) Conduct of the Hearing. The evidence against the probationer must be disclosed to the probationer. The probationer has the right to be present at the hearing, to present evidence, and to examine and cross-examine witnesses. The court may consider only evidence that is relevant to the violation alleged, but it need not apply the rules of evidence except those pertaining to privileges. The state has the burden of proving a violation by a preponderance of the evidence.

(2) Judicial Findings. At the conclusion of the hearing, the court must make findings in accordance with MCR 6.403.

(F) Pleas of Guilty. The probationer may, at the arraignment or afterward, plead guilty to the violation. Before accepting a guilty plea, the court, speaking directly to the probationer and receiving the probationer's response, must

(1) advise the probationer that by pleading guilty the probationer is giving up the right to a contested hearing and, if the probationer is proceeding without legal representation, the right to a lawyer's assistance as set forth in subrule (B)(2)(b),

(2) advise the probationer of the maximum possible jail or prison sentence for the offense,

(3) ascertain that the plea is understandingly, voluntarily, and accurately made, and

(4) establish factual support for a finding that the probationer is guilty of the alleged violation.

(B)-(E) [Relettered (G)-(J) but otherwise unchanged.]

Staff Comment: The proposed amendments would make the rules consistent with recent statutory revisions that resulted from recommendations of the Michigan Joint Task Force on Jail and Pretrial Incarceration.

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 March 1, 2022 by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2021-41. 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.

November 17, 2021

Clerk

Public Policy Position
ADM File No. 2021-41

Support

Explanation

The Committee voted to support ADM File No. 2021-41. The amendments to Chapter 6 of the Michigan Rules of Court proposed in ADM File No. 2021-41 are necessary to align the Rules with statutory enactments recently made by the Legislature and based upon the recommendations of the Michigan Joint Task Force on Jail and Pretrial Incarceration. Neither judges, attorneys, nor the general public are well served by the current conflicts between the language of statute and court rule. Clarity and consistency are far preferable and can be accomplished by approving the proposed amendments.

Position Vote:

Voted For position: 17
Voted against position: 0
Abstained from vote: 1
Did not vote (absence): 9

Contact Persons:

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

Public Policy Position
ADM File No. 2021-41

Support

Explanation:
The Committee voted to support ADM File No. 2021-41. These amendments will align several provisions of Chapter 6 of the Michigan Rules of Court with statutory enactments recently made by the Legislature and based upon the recommendations of the Michigan Joint Task Force on Jail and Pretrial Incarceration.

Position Vote:
Voted For position: 21
Voted against position: 0
Abstained from vote: 1
Did not vote (absence): 2

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

Public Policy Position
ADM File No. 2021-41 – Proposed Amendments of MCR 6.001, 6.003, 6.006, 6.102, 6.103, 6.106, 6.445, 6.615, and 6.933 and Proposed Additions of MCR 6.105, 6.441, and 6.450

Support

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

Contact Person: Sofia Nelson
Email: snelson@sado.org

Order

Michigan Supreme Court
Lansing, Michigan

November 17, 2021

Bridget M. McCormack,
Chief Justice

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

ADM File No. 2021-05

Proposed Amendments of
Rules 6.302 and 6.310 of
the Michigan Court Rules

_____

On order of the Court, this is to advise that the Court is considering amendments of Rules 6.302 and 6.310 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 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 6.302 Pleas of Guilty and Nolo Contendere

(A)-(C) [Unchanged.]

(D) An Accurate Plea.

(1) If the court engages in a preliminary evaluation of the sentence to be imposed, the court must specify the estimated sentencing guidelines range as part of the evaluation.

(1)-(2) [Renumbered (2)-(3) but otherwise unchanged.]

(E)-(F) [Unchanged.]

Rule 6.310 Withdrawal or Vacation of Plea

(A) [Unchanged.]

(B) Withdrawal After Acceptance but Before Sentence. Except as provided in subsection (3), after acceptance but before sentence,

(1) [Unchanged.]

(2) the defendant is entitled to withdraw the plea if

(a) [Unchanged.]

(b) the plea involves a statement by the court that it will sentence to a specified term or within a specified range, and the court states that it is unable to sentence as stated or determines that the actual range is different than initially estimated; the trial court shall provide the defendant the opportunity to affirm or withdraw the plea, but shall not state the sentence it intends to impose.

(3) [Unchanged.]

(C)-(E) [Unchanged.]

Staff Comment: The proposed amendments of MCR 6.302 and 6.310 would require a court to specify the estimated sentencing guideline range as part of a preliminary evaluation of the sentence and to clarify that a defendant may withdraw a plea when the actual guidelines range is different than initially estimated.

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 March 1, 2022 by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2021-05. Your comments and the comments of others will be posted under the chapter affected by this proposal.

ZAHRA and VIVIANO, JJ., would decline to publish the proposed amendments for comment.

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.

November 17, 2021

Clerk

Public Policy Position
ADM File No. 2021-05

Support with Amendment

Explanation

The Committee voted unanimously to support the proposed amendments to MCR 6.302 and 6.310. These amendments will ensure that a defendant is fully advised of the consequences of entering into a plea agreement and ensure that, if the sentencing guideline range is different, the defendant has the ability to withdraw the plea.

The Committee recommends that additional language be added to MCR 6.302 to state explicitly that the defendant may be allowed to withdraw his/her plea should the guideline range be different than the one stated on the plea agreement. This would make the court rule more consistent with MCR 6.310.

Position Vote:

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

Contact Persons:

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

Public Policy Position
ADM File No. 2021-05

Oppose as Drafted

Explanation:
The Committee voted to oppose the proposed amendments as drafted due to concerns about the practicality and necessity of the changes to MCR 6.302 and 6.310 and to recommend that the Rules be amended to clarify the *Cobbs* evaluation process. The Committee expressed concern about the utility of requiring an estimated sentencing guideline range at the preliminary evaluation stage and whether this range would have the unintended consequence of misleading a defendant about potential sentences under the facts and circumstances of their particular case.

Position Vote:
Voted For position: 16
Voted against position: 3
Abstained from vote: 1
Did not vote (absence): 4

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

Order

Michigan Supreme Court
Lansing, Michigan

November 5, 2021

Bridget M. McCormack,
Chief Justice

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

ADM File No. 2019-16

Proposed Amendment of
Rule 7.212 of the Michigan
Court Rules

_____

On order of the Court, this is to advise that the Court is considering an amendment of Rule 7.212 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 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 7.212 Briefs

(A) Time for Filing and Service.

(1) Appellant's Brief.

(a) Filing. The appellant must~~shall~~ file ~~5 typewritten, xerographic, or printed copies of~~ a brief with the Court of Appeals within

(i)-(iii) [Unchanged.]

(b) Service. The appellant~~Within the time for filing the appellant's brief, 1 copy~~ must serve the brief~~be served~~ on all other parties to the appeal and file proof of that service ~~filed with the Court of Appeals and served~~ with the brief.

(2) Appellee's Brief.

(a) Filing. The appellee may~~shall~~ file ~~5 typewritten, xerographic, or printed copies of~~ a brief with the Court of Appeals within

(i)-(ii) [Unchanged.]

(b) Service. An appellee's briefWithin the time for filing the appellee's brief, 1 copy must be served on all other parties to the appeal and proof of that service must be filed with the briefCourt of Appeals.

(3) Earlier Filing and Service. The time for filing aand serving the appellant's or the appellee's brief may be shortened by order of the Court of Appeals on motion showing good cause.

(4) Late Filing. Any party failing to timely file and serve a brief underrequired by this rule forfeits the right to oral argument.

(5) [Unchanged.]

(B) Length and Form of Briefs. Except as permitted by order of the Court of Appeals, and except as provided in subrule (G), briefs are limited to 50 pages double-spaced, exclusive of tables, indexes, and appendixes. Quotations and footnotes may be single-spaced. At least one-inch margins must be used, and printing shall not be smaller than 12-point type. A motion for leave to file a brief in excess of the page limitations of this subrule must be filed by the due date of the brief and shall accompany the proposed brief. Such motions are disfavored and will be granted only for extraordinary and compelling reasons. If the motion is denied, the movant shall file a conforming brief within 21 days after the date of the order deciding the motion.

(1) Except as otherwise provided in this rule or by court order, briefs are limited to no more than 16,000 words. A self-represented party who does not have access to a word-processing system may file a typewritten or legibly handwritten brief of not more than 50 pages.

(2) The elements of a brief listed in subrules (C)(1)-(5) and (10) are not included in the word or page limit, but footnotes and text contained in embedded graphics are included.

(3) A brief filed under the word limitation of this subrule must include a statement after the signature block stating the number of countable words. The filer may rely on the word count of the word-processing system used to prepare the brief.

(4) A motion for leave to file a brief in excess of the word or page limitations must be filed by the due date of the brief and must accompany the proposed brief. Such motions are disfavored and will be granted only for extraordinary

and compelling reasons. If the motion is denied, the movant must file a conforming brief within 21 days after the date of the order deciding the motion.

(5) Briefs must have at least one-inch page margins, 12-point font, and double-spaced text, except quotations and footnotes may be single-spaced.

(C)-(E) [Unchanged.]

(F) Supplemental Authority. Without leave of court, a party may file ~~an original and four copies of~~ a one-page communication, titled "supplemental authority," to call the court's attention to new authority released after the party filed its brief. Such a communication,

(1)-(3) [Unchanged.]

(G) Reply Briefs. ~~An appellant or a cross-appellant may reply to the brief of an appellee or cross-appellee w~~Within 21 days after service of an~~the brief of the~~ appellee's or cross-appellee's brief, appellant or cross-appellant may file a reply brief~~. Reply briefs must be~~ confined to rebuttal of the arguments in the appellee's or cross-appellee's brief.~~ and must be limited to 10 pages, exclusive of tables, indexes, and appendices, and must include a table of contents and an index of authorities. No additional or supplemental briefs may be filed except as provided by subrule (F) or by leave of the Court~~. Reply briefs are limited to no more than 3,200 words, but are otherwise governed by subrule (B). A self-represented party who does not have access to a word-processing system may file a typewritten or legibly handwritten reply brief of not more than 10 pages.

(H)-(J) [Unchanged.]

Staff Comment: The proposed amendment of MCR 7.212 would require appellate briefs to be formatted for optimized reading on electronic displays.

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 March 1, 2022 by clicking on the

"Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2019-16. 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.

November 5, 2021

Clerk

Public Policy Position
ADM File No. 2019-16

Support

Explanation:
The Committee voted to support proposed amendment of MCR 7.212 and to further recommend that the other components of the pilot program authorized by Administrative Order No. 2019-6 be retained as optional alternatives for brief formatting.

Position Vote:
Voted For position: 23
Voted against position: 0
Abstained from vote: 1
Did not vote (absence): 8

Contact Person:
Lori J. Frank lori@markofflaw.com

Public Policy Position
ADM File No. 2019-16

Support with Amendment

Explanation:
The Committee voted to support the proposed amendments of MCR 7.212 with a further amendment to (B)(4) that strikes the "extraordinary and compelling reasons" standard for granting a motion for leave to file a brief in excess of the word or page limitations and replaces it with a good cause standard. While providing clear requirements for the formatting of appellate briefs is important, maintaining meaningful judicial discretion to deviate from these requirements will ensure that briefing parameters may reflect the parties and judiciary's needs in a given case.

Position Vote:
Voted For position: 21
Voted against position: 0
Abstained from vote: 0
Did not vote (absence): 3

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

Public Policy Position
ADM File No. 2019-16

Support with Recommended Amendments

Explanation
The Section is generally supportive of the 16,000 word limit, as proposed to be stated in MCR 7.212(B)(1). However, the Section suggests that MCR 7.212(B)(2), as proposed, should be amended to also include the (C)(9) signature requirement as an element which is excluded from the word count.

The Section also suggests that the second sentence in the proposed MCR 7.212(B)(4) (related to extended briefs) be stricken and replaced with alternate language as proposed by the Section. The proposed sentence currently reads: "Such motions are disfavored and will be granted only for extraordinary and compelling reasons."

There are certain areas of practice, such as family law, where extended briefs are regular and necessary, and the proposed language could have unintended consequences. Therefore, the Section suggests that the proposed stricken sentence be replaced with this language: "Such motions will be considered for good cause including factors such as length of the trial court record, the number and type of issues involved, and the amount of time provided in the rules to submit a timely brief."

Position Vote:
Voted for position: 21
Voted against position: 1
Abstained from vote: 0
Did not vote (absent): 2

Contact Person: Stephanie Simon Morita
Email: smorita@rsjalaw.com

SBM
STATE BAR OF MICHIGAN

APPELLATE PRACTICE SECTION

Board of Commissioners
State Bar of Michigan
306 Townsend Street
Lansing, MI 48933

Date: January 10, 2022

Re: **ADM File no. 2019-16 – Proposed Amendment of Rule 7.212 of the Michigan Court Rules**

Dear Sirs and Madams,

Thank you for the opportunity to comment on the proposed amendments to Michigan Court Rule 7.212. The Council for the SBM Appellate Practice Section offers the following comments for consideration.

The Section is generally supportive of the 16,000 word limit, as proposed to be stated in MCR 7.212(B)(1). *However, the Section suggests that MCR 7.212(B)(2), as proposed, should be amended to also include the (C)(9) signature requirement as an element which is excluded from the word count.*

The Section also suggests that the second sentence in the proposed MCR 7.212(B)(4) (related to extended briefs) be stricken and replaced with alternate language as proposed by the Section. The proposed sentence currently reads: "Such motions are disfavored and will be granted only for extraordinary and compelling reasons."

There are certain areas of practice, such as family law, where extended briefs are regular and necessary, and the proposed language could have unintended consequences. *Therefore, the Section suggests that the proposed stricken sentence be replaced with this language: "Such motions will be considered for good cause including factors such as length of the trial court record, the number and type of issues involved, and the amount of time provided in the rules to submit a timely brief."*

Thank you for considering the Appellate Section's input on this matter.

Sincerely,

Stephanie Simon Morita

Stephanie Simon Morita
Appellate Practice Section Chair

SBM State Bar of Michigan | CRIMINAL LAW SECTION

Public Policy Position
ADM File No. 2019-16 – Proposed Amendment of MCR 7.212

Support

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

Contact Person: Sofia Nelson
Email: snelson@sado.org

SBM State Bar of Michigan | FAMILY LAW SECTION

Public Policy Position
ADM File No. 2019-16 – Proposed Amendment of MCR 7.212

Support with Recommended Amendments

Explanation

The Family Law Section of the State Bar of Michigan has reviewed the proposed changes to MCR 7.212 and, upon recommendation of its Amicus Committee, have prepared this Position Summary with our Requested Modifications and our rationale for said modifications. If the requested modifications are made, the Family Law Section supports adoption of the proposed amendments with modifications to MCR 7.212.

Requested Modifications
1. Permit spacing of 1.5;
2. A higher word count limit (20,000) for domestic cases (specifically custody/parenting time) involving a minor; and
3. Extend the word limit on reply briefs to 3500 word count.

Position Vote:
Voted for position: 21
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 0

Contact Person: Gail Towne
Email: gtowne@lennonmiller.com

Amended January 19, 2022

Proposed Amendment of Rule 7.212
of the Michigan Court Rules

Family Law Section Position & Requested Modifications

Introduction

The Family Law Section of the State Bar of Michigan has reviewed the proposed changes to MCR 7.212 and, upon recommendation of its Amicus Committee, have prepared this Position Summary, with requested modifications. If the requested modifications are adopted, the Family Law Section supports the amendment of MCR 7.212.

Requested Modifications

1. **Permit spacing of 1.5;**

2. **Permit a higher word count limit (20,000) for briefs in domestic cases (specifically custody/parenting time); and**

3. **Permit a higher word count of 3500 words for reply briefs in domestic cases.**

Reasons for Requested Modifications

Upon extensive discussion, the Family Law Section respectfully requests the above modifications to the proposed amendments to MCR 7.212.

The pilot program, upon which much of the proposed changes are based, permitted line spacing of 133% and 150% (i.e., spacing set at 1.5 and 1.8). The proposed rule amendment, however, simply states "double space," which would significantly affect the ability to meet the proposed requirements. The pilot program provided for uniformity and clarity and the pilot program guidelines have been well received, well understood, and well utilized.

There are studies which indicate that double-spaced text is actually more difficult to read in digital format. With the continual movement towards a paperless practice in the courts and in private practice, it is increasingly important to consider how documents will be presented not only on paper, but on the various digital technologies available to those reviewing the documents. In addition to advancing accessibility through technology, individual accessibility is crucial. Those who may have vision impairments would benefit from having text spacing more compact, as amplification of documents not only increases font size, but the spacing in between.

The request for exceptions in domestic cases is not new, as there are already exceptions carved out for domestic/custody cases in the Michigan Court Rules, including but not limited to the following:

- MCR 7.212(a)(i) provides a shorter time for filing appellant's brief in custody cases.
- MCR 7.212(b)(i) provides a shorter time for filing appellee's brief in custody cases.
- MCR 2.302(A)(4)(c) provides an exemption from the general civil 14-day timing requirements for initial disclosures in 2.302 for domestic relations actions (the domestic relations provisions have its own disclosure requirements at MCR 3.206(C)(2))
- MCR 2.309(A)(2) limits interrogatories to 20, but domestic cases are granted additional interrogatories per MCR 3.201(C).
- MCR 3.207(B) requires special language in orders involving child support, custody, or visitation. And domestic relations judgments require certain provisions per MCR 3.211(C).
- MCR 7.202(6)(a)(iii) provides for post-judgment appeals of right of domestic relations orders modifying legal and physical custody and domicile.
- MCR 2.301(A)(4) authorizes post-judgment discovery upon the filing of a motion in domestic relations actions defined in subchapter 3.200.

Custody orders are already treated differently than most other post-judgment orders; post-judgment orders changing custody or residence (domicile) are appealable by right. There is no application process, there is only mandatory review, and the brief on appeal will be subject to any briefing requirements.

Other exceptions or specifics carved out for domestic/custody cases recognize that these cases often require more discovery and more nuanced arguments for preparation. These cases often involve litigation which may continue over an extended period of time, involving multiple transcripts, which requires additional discussion and argument upon appeal.

Domestic cases involving custody determinations require review of the 12 statutory best interest factors, which can be lengthy and intricate, and often require a thorough analysis of some or all of those factors. If there is more than one child, a separate analysis of the best interest factors for each child is required, which also demands more space.

Domestic cases already have more discovery requests because there is more information to exchange (and custody cases arising from a Judgment of Divorce will often have other issues like property division, child support, and /or spousal support).

Briefs in custody cases are due within 28 days after transcripts are filed, whereas all other cases receive 56 days. Appellees receive only 21 days to file their brief, whereas others receive 35 days. The abbreviated time periods in custody case limit time for editing briefs. The editing process itself is time-consuming and the shortened custody time period is already taken up with reading transcripts, which are often extensive, reviewing the record and exhibits, and drafting fact-intensive briefs often with a number of issues.

Parties cannot stipulate to an extension of time in a custody case, the only way forward is to file a motion and show good cause for the requested relief. The motion process itself is cumbersome.

The collective experiences of the Amicus Committee of the Family Law Section indicate that many briefs are commonly between 18,000 and 22,000 words, even when working within the limit of 50 pages. While the option to request more words is available, it takes substantially more time and judicial resources to file and review the motion, have that

motion be denied, and then resubmit the brief within the extra 21 days allowed for correction. Permitting domestic relations appeals involving children to have briefs with additional words, up to 20,000, would alleviate this burden.

From: State Bar of Michigan
To: Peter Cunningham; Carrie Sharlow; Nathan Triplett
Subject: Public Policy Member Comments
Date: Sunday, December 5, 2021 2:22:35 AM

Member Name: *	Maria Hoebeke
E-mail: *	mhoebeke@taylorbutterfield.com
Proposed Court Rule or Administrative Order Number:	Referral of ADM File No. 2019-16

Comment:

"A motion for leave to file a brief in excess of the word or page limitations must be filed by the due date of the brief and must accompany the proposed brief. Such motions are disfavored and will be granted only for extraordinary and compelling reasons. If the motion is denied, the movant must file a conforming brief within 21 days after the date of the order deciding the motion."

I strongly disagree with the requirement to file a proposed brief when the motion for leave can be denied. I do a considerable amount of family law and CPS cases some of which have a multitude of pleadings and numerous complex issues. Parties in domestic matters, especially those involving CPS can rarely afford to appeal in the first place. Requiring them to pay for the extra time to draft a "proposed" brief is bad enough but having to then pare down the brief should the motion be denied —which is not a simple task—is quite costly and will unfairly prejudice those who already can barely afford to appeal the injustices and violations of their constitutional rights. Most attorneys strive to do a good job and often write off some of their time for various reasons. The effect of this requirement will be to limit access to the Courts for those who already struggle to afford access.

May the State Bar post your comment on its website?	Yes
May a member of the State Bar contact you concerning this comment?	Yes

From: State Bar of Michigan
To: Peter Cunningham; Carrie Sharlow; Nathan Triplett
Subject: Public Policy Member Comments
Date: Wednesday, January 12, 2022 1:39:12 PM

Member Name: *	Gerald Posner
E-mail: *	posnerposnerposner@comcast.net
Proposed Court Rule or Administrative Order Number:	ADM File No. 2019-16, MCR 7.212

Comment:

I am strongly opposed to the proposed change from page limits to word limits, and believe that the Court should adopt an "either-or" approach, allowing brief length to be governed either a by a page limit or by a word limit. Brief length would be limited to either 50 pages, the current limitation, or to 16,000 words, as in the proposed changes.

The proposed change to word limits would impose a significant and unnecessary burden on the vast majority of attorneys and their staff who have never dealt with word limits, and would do nothing to advance the ends of justice.

I have been practicing law for 47 years and have been a member of the Council of the State Bar of Michigan Appellate Practice Section for 18 years. I understand that the Council is taking a position in favor of the change to word limits, but I strongly oppose such a change and believe that I speak for the overwhelming majority of the attorneys in this state.

I was also actively involved on the subcommittee that drafted the e-briefing pilot program rule, and I, together with some other members with more years behind them, finally convinced the "techies" that some attorneys and judges (more judges than we originally thought) printed out briefs on paper, made their notes, and worked in that manner, so that had to be taken into consideration. We found some suggested e-brief formats difficult to read and work with to the chagrin of others on the subcommittee, and argued that some of the more advanced/radical proposals would make it difficult or impossible for the average attorney to file an appellate brief.

The page limit vs. word limit debate only has relevance when a brief reaches the length limitation. For a brief less than 50 pages, properly formatted under the current court rule, it makes no difference how many words it contains.
The Staff Comment states that "The proposed amendment of MCR 7.212 would require appellate briefs to be formatted for optimized reading on electronic displays", but all the proposed amendment does is to change from a page limit to a word limit. That change, in and of itself, does little or nothing to optimize reading on electronic displays, but only gives flexibility in formatting briefs that would otherwise exceed the page limitation.

Yes, a word limit option gives advocates flexibility to try to create more readable briefs or to include elements, such as photographs or charts, which may contribute to better advocacy. Word limits allow attorneys to choose different fonts, either wider fonts or larger fonts, such as 14 point fonts required in federal appeals, which they believe are more readable than the usual fonts used by most attorneys, without worrying about how that will affect the number of pages their text takes up. They may shorten the length of each line of text to achieve the sweet spot for easiest reading on a pad or tablet without concern for the significant effect this can have on a page count; the pilot project

found that to be 1½ inch margins and 5½ inches of 12-point text. And word counts free advocates to more often include helpful images and graphics in their briefs, despite the significant amount of page-space these items take up.

However, the vast majority of attorneys in this state do not study book after book on typography, and spend countless hours experimenting with different fonts and margins. Except for the small percentage of lawyers who have filed federal appeals, the attorneys and their staffs have never had to deal with word limits, but have always dealt solely with pages. What percentage of the lawyers in this state deal in federal appeals? Where else would lawyers be dealing with word limits?

Most lawyers are used to working with pages, not word limits. All briefs filed in trial courts are in pages, not words. Transcripts, jury instructions, exhibits, those matters which are copied into briefs, all are in pages. That is the clear norm for lawyers. Everyone knows what a page is. Lawyers are much more easily able to figure out which issues and the number of issues that can be raised on appeal and can roughly figure how many pages it takes to argue a certain point when they know how many pages were used in trial court motions and briefs, the number of pages of transcript or the portions of exhibits and records that need to be quoted, the jury instructions that need to be set forth in full, and so on. For lawyers who are not used to word limits and the lawyers and their staff who have never looked at a word count feature, word limits are not a good thing. Pages are easy, word limits not so much.

We all too often lose sight of the fact that these rules are not just for lawyers and staff who regularly do appellate work and/or are used to federal appeals and lawyers who are great with technology - though we do have minimum technological requirements - but are also for the vast majority of lawyers and their staff who only file an occasional appeal, or are a little more technologically challenged, and we promulgate rules to improve the end product – justice. The vast majority of lawyers have neither the expertise or the extra time - which also results in an increase in the cost to the client who can often not afford to pay the increased cost - to experiment with different fonts and margins and reformatting. What is important for the lawyer is to spend the time on substantive briefing to properly present the issues in order to reach the proper result.
The proposed rule, which does not allow an either-or for a page limit or word limit, does not contribute to the ends of justice. The “either-or” approach, allowing brief length to be governed either a by a page limit or by a word limit, does far more to achieve the ultimate goal of justice.

Rules are not justice in and of themselves, but a tool to try to achieve justice. They must work for all lawyers in this state who do some appellate work, not just the few with a regular appellate practice. Allowing a word limit option to give flexibility to briefing helps to achieve the ultimate goal of justice. Eliminating a page limit option most certain does not.

There should be no objection to an either or approach. Giving flexibility with a word limit is just fine, no issue with that. But that word limits are easy for some lawyers doesn’t mean that they are easy for other attorneys and their secretarial staff to work with or even to learn, and denigrating all those people, which is unfortunately the way I see the views of some of my colleagues, is just plain unacceptable.

My office is in a shared space with many lawyers, so I ran an informal poll. These lawyers, who do the occasional appeal, practice in many areas of the law including business and contracts, transactional law, real estate, fire loss, insurance claims, estate and probate, PI, divorce/family law, and general practice. When I informed them that the court proposed to change from a page limit on appellate briefs to a word limit, I received a universal response which can be summed up as

“Expletive deleted”. I polled many other attorneys I know and their experienced secretarial staff and the response was the same.

The court rules must be for “normal” lawyers, ones whose practice is other than or exclusively appellate. More power to those lawyers who want to play with fonts and margins and formatting and all of those things that they think may make a brief more readable, and it is laudable that a rule change to word limits gives that flexibility; but the vast majority of attorneys do not play around with fonts and margins and formatting because they (and their staff) (a) have no desire to do so, (b) don’t have the technical expertise, and (c) don’t have the time, you know, the thing you don’t have a lot of in a busy practice, the thing you need in order to work on the substantive aspects of the brief, and the thing you have to charge your client for. In my opinion, those attorneys who love word limits to the exclusion of page limits and do not understand why it is so difficult for the rest of the lawyers in the state and their staff ignores the fact that the rules should work for all of the lawyers in this state, not just the few who have primarily an appellate practice. The end goal is to do justice.

A 2022 editorial in WIRED Magazine stated: “The lesson of the last 30-odd years is not that we were wrong to think tech could make the world a better place. Rather, it’s that we were wrong to think tech itself was the solution—and that we’d now be equally wrong to treat tech as the problem. It’s not only possible, but normal, for a technology to do both good and harm at the same time.”

Likewise, a technological change in the court rules to word limits only can do both good and harm at the same time. An either-or approach, word limits or page limits, will do good without doing harm.

I am attaching my suggested revision to the proposed rule. It incorporates the either-or length limitation for both principal and reply briefs. It only requires a certification of word count if the brief exceeds the page limitations; if the brief is no longer than 50 pages, the number of words it contains is irrelevant.

My revision also makes one additional change in which I understand the Council concurs. In the current and proposed rules, as drafted, the relevant elements of the brief for word count purposes do not include those elements required by MCR 7.212(C)(1)-(5) and (10). The spirit of this rule is to count the elements of the brief that are used for advocacy and to not count those elements that are not. So the revision provides that the signature, as required by MCR 7.212(C)(9), also be excluded from the word count. Signature blocks can, at times, be wordy, especially when co-counsel are involved, yet they are never used for advocacy, so I urge the Court to exclude signature blocks from the word count.

Very truly yours,

POSNER, POSNER AND POSNER

Gerald F. Posner

GFP:j
Encl.

ADM File No. 2019-16

Revisions to the Proposed Amendment

of Rule 7.212 of the Michigan Court Rules

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

Rule 7.212 Briefs

(A) Time for Filing and Service.

(1) Appellant's Brief.

(a) Filing. The appellant mustshall file 5 typewritten, xerographic, or printed copies of a brief with the Court of Appeals within

(i)–(iii) [Unchanged.]

(b) Service. The appellantWithin the time for filing the appellant's brief, 1 copy must serve the briefbe served on all other parties to the appeal and file proof of that service filed with the Court of Appeals and served with the brief.

(2) Appellee's Brief.

(a) Filing. The appellee mayshall file 5 typewritten, xerographic, or printed copies of a brief with the Court of Appeals within

(i)–(ii) [Unchanged.]

(b) Service. An appellee's briefWithin the time for filing the appellee's brief, 1 copy must be served on all other parties to the appeal and proof of that service must be filed with the briefCourt of Appeals.

(3) Earlier Filing and Service. The time for filing aand serving the appellant's or the appellee's brief may be shortened by order of the Court of Appeals on motion showing good cause.

(4) Late Filing. Any party failing to timely file and serve a brief underrequired by this rule forfeits the right to oral argument.

(5) [Unchanged.]

(B) Length and Form of Briefs.Except as permitted by order of the Court of Appeals, and except as provided in subrule (G), briefs are limited to 50 pages double-spaced, exclusive of tables, indexes, and appendixes. Quotations and footnotes may be single-spaced. At least one-inch margins must be used, and printing shall not be smaller than 12-point type. A motion for leave to file a brief in excess of the page limitations of this subrule must be filed by the due date of the brief and shall accompany the proposed brief. Such motions are disfavored and will be granted only for extraordinary and compelling reasons. If the motion is denied, the movant shall file a conforming brief within 21 days after the date of the order deciding the motion. Except as otherwise provided in this rule or by court order, briefs are limited to no more than either 50 pages or 16,000 words.

(1) The elements of a brief listed in subrules (C)(1)–(5) and (9)–(10) are not included in the word or

page limit, but footnotes and text contained in embedded graphics are included.

(2) Briefs must have at least one-inch page margins, 12-point font, and double-spaced text, except quotations and footnotes may be single-spaced.

(3) A brief filed under the word limitation of this subrule which is in excess of the page limitation must include a statement after the signature block stating the number of countable words. The filer may rely on the word count of the word-processing system used to prepare the brief.

(4) A motion for leave to file a brief in excess of the word or page limitations must be filed by the due date of the brief and must accompany the proposed and compelling reasons. If the motion is denied, the movant must file a conforming brief within 21 days after the date of the order deciding the motion.

(C)-(E) [Unchanged.]

(F) Supplemental Authority. Without leave of court, a party may file an original and four copies of a one-page communication, titled "supplemental authority," to call the court's attention to new authority released after the party filed its brief. Such a communication,

(1)-(3) [Unchanged.]

(G) Reply Briefs. An appellant or a cross-appellant may reply to the brief of an appellee or cross-appellee wWithin 21 days after service of anthe brief of the appellee's or cross-appellee's brief, appellant or cross-appellant may file a reply brief. Reply briefs must be confined to rebuttal of the arguments in the appellee's or cross- appellee's brief. and must be limited to 10 pages, exclusive of tables, indexes, and appendices, and must include a table of contents and an index of authorities. No additional or supplemental briefs may be filed except as provided by subrule (F) or by leave of the Court. Reply briefs are limited to no more than 10 pages or 3,200 words, but are otherwise governed by subrule (B).

(H)-(J) [Unchanged.]

May the State Bar post your comment on its website?	Yes
May a member of the State Bar contact you concerning this comment?	Yes

From: Melissa Hagen
To: ADMcomment
Subject: Proposed changes to MCR 7.212
Date: Monday, November 8, 2021 9:16:37 AM

I am not in favor of amending the current MCR 7.212. The current system works fine.

Sent from Mail for Windows

POSNER, POSNER AND POSNER
ATTORNEYS AND COUNSELORS AT LAW
30300 NORTHWESTERN HIGHWAY, SUITE 300
FARMINGTON HILLS, MICHIGAN 48334

(248) 355-2999

GERALD F. POSNER

SAMUEL POSNER
(1916-2006)
ELIZABETH F. POSNER
(1916-1995)

Via email only

January 12, 2022

Michigan Supreme Court

Re: Proposed amendment to MCR 7.212
ADM File No. 2019-16
Change in length of briefs from page limits to word limits

Dear Justices:

I am strongly opposed to the proposed change from page limits to word limits, and believe that the Court should adopt an "either-or" approach, allowing brief length to be governed either a by a page limit or by a word limit. Brief length would be limited to either 50 pages, the current limitation, or to 16,000 words, as in the proposed changes.

The proposed change to word limits would impose a significant and unnecessary burden on the vast majority of attorneys and their staff who have never dealt with word limits, and would do nothing to advance the ends of justice.

I have been practicing law for 47 years and have been a member of the Council of the State Bar of Michigan Appellate Practice Section for 18 years. I understand that the Council is taking a position in favor of the change to word limits, but I strongly oppose such a change and believe that I speak for the overwhelming majority of the attorneys in this state.

I was also actively involved on the subcommittee that drafted the e-briefing pilot program rule, and I, together with some other members with more years behind them, finally convinced the "techies" that some attorneys and judges (more judges than we originally thought) printed out briefs on paper, made their notes, and worked in that manner, so that had to be taken into consideration. We found some suggested e-brief formats difficult to read and work with to the chagrin of others on the subcommittee, and argued that some of the more advanced/radical proposals would make it difficult or impossible for the average attorney to file an appellate brief.

The page limit vs. word limit debate only has relevance when a brief reaches the length limitation. For a brief less than 50 pages, properly formatted under the current court rule, it makes no difference how many words it contains.

The Staff Comment states that "The proposed amendment of MCR 7.212 would require appellate briefs to be formatted for optimized reading on electronic displays", but all the proposed amendment does is to change from a page limit to a word limit. That change, in and of itself, does little or nothing to optimize reading on electronic displays, but only gives flexibility in formatting briefs that would otherwise exceed the page limitation.

Yes, a word limit option gives advocates flexibility to try to create more readable briefs or to include elements, such as photographs or charts, which may contribute to better advocacy. Word limits allow attorneys to choose different fonts, either wider fonts or larger fonts, such as 14 point fonts required in federal appeals, which they believe are more readable than the usual fonts used by most attorneys, without worrying about how that will affect the number of pages their text takes up. They may shorten the length of each line of text to achieve the sweet spot for easiest reading on a pad or tablet without concern for the significant effect this can have on a page count; the pilot project found that to be 1½ inch margins and 5½ inches of 12-point text. And word counts free advocates to more often include helpful images and graphics in their briefs, despite the significant amount of page-space these items take up.

However, the vast majority of attorneys in this state do not study book after book on typography, and spend countless hours experimenting with different fonts and margins. Except for the small percentage of lawyers who have filed federal appeals, the attorneys and their staffs have never had to deal with word limits, but have always dealt solely with pages. What percentage of the lawyers in this state deal in federal appeals? Where else would lawyers be dealing with word limits?

Most lawyers are used to working with pages, not word limits. All briefs filed in trial courts are in pages, not words. Transcripts, jury instructions, exhibits, those matters which are copied into briefs, all are in pages. That is the clear norm for lawyers. Everyone knows what a page is. Lawyers are much more easily able to figure out which issues and the number of issues that can be raised on appeal and can roughly figure how many pages it takes to argue a certain point when they know how many pages were used in trial court motions and briefs, the number of pages of transcript or the portions of exhibits and records that need to be quoted, the jury instructions that need to be set forth in full, and so on. For lawyers who are not used to word limits and the lawyers and their staff who have never looked at a word count feature, word limits are not a good thing. Pages are easy, word limits not so much.

We all too often lose sight of the fact that these rules are not just for lawyers and staff who regularly do appellate work and/or are used to federal appeals and lawyers who are great with technology - though we do have minimum technological requirements - but are also for the vast majority of lawyers and their staff who only file an occasional appeal, or are a little more technologically challenged, and we promulgate rules to improve the end product – justice. The vast majority of lawyers have neither the expertise or the extra time - which also results in an increase in the cost to the client who can often not afford to pay the increased cost - to experiment with different fonts and margins and reformatting. What is important for the lawyer is to spend the time on substantive briefing to properly present the issues in order to reach the proper result.

The proposed rule, which does not allow an either-or for a page limit or word limit, does not contribute to the ends of justice. The "either-or" approach, allowing brief length to be governed either a by a page limit or by a word limit, does far more to achieve the ultimate goal of justice.

Rules are not justice in and of themselves, but a tool to try to achieve justice. They must work for all lawyers in this state who do some appellate work, not just the few with a regular appellate practice. Allowing a word limit option to give flexibility to briefing helps to achieve the ultimate goal of justice. Eliminating a page limit option most certain does not.

There should be no objection to an either or approach. Giving flexibility with a word limit is just fine, no issue with that. But that word limits are easy for some lawyers doesn't mean that they are easy for other attorneys and their secretarial staff to work with or even to learn, and denigrating all those people, which is unfortunately the way I see the views of some of my colleagues, is just plain unacceptable.

My office is in a shared space with many lawyers, so I ran an informal poll. These lawyers, who do the occasional appeal, practice in many areas of the law including business and contracts, transactional law, real estate, fire loss, insurance claims, estate and probate, PI, divorce/family law, and general practice. When I informed them that the court proposed to change from a page limit on appellate briefs to a word limit, I received a universal response which can be summed up as "Expletive deleted". I polled many other attorneys I know and their experienced secretarial staff and the response was the same.

The court rules must be for "normal" lawyers, ones whose practice is other than or exclusively appellate. More power to those lawyers who want to play with fonts and margins and formatting and all of those things that they think may make a brief more readable, and it is laudable that a rule change to word limits gives that flexibility; but the vast majority of attorneys do not play around with fonts and margins and formatting because they (and their staff) (a) have no desire to do so, (b) don't have the technical expertise, and (c) don't have the time, you know, the thing you don't have a lot of in a busy practice, the thing you need in order to work on the substantive aspects of the brief, and the thing you have to charge your client for. In my opinion, those attorneys who love word limits to the exclusion of page limits and do not understand why it is so difficult for the rest of the lawyers in the state and their staff ignores the fact that the rules should work for all of the lawyers in this state, not just the few who have primarily an appellate practice. The end goal is to do justice.

A 2022 editorial in WIRED Magazine stated: "The lesson of the last 30-odd years is not that we were wrong to think tech could make the world a better place. Rather, it's that we were wrong to think tech itself was the solution—and that we'd now be equally wrong to treat tech as the problem. It's not only possible, but normal, for a technology to do both good and harm at the same time."

Likewise, a technological change in the court rules to word limits only can do both good and harm at the same time. An either-or approach, word limits or page limits, will do good without doing harm.

I am attaching my suggested revision to the proposed rule. It incorporates the either-or length limitation for both principal and reply briefs. It only requires a certification of word count if the brief exceeds the page limitations; if the brief is no longer than 50 pages, the number of words it contains is irrelevant.

My revision also makes one additional change in which I understand the Council concurs. In the current and proposed rules, as drafted, the relevant elements of the brief for word count purposes do not include those elements required by MCR 7.212(C)(1)–(5)and (10). The spirit of this rule is to count the elements of the brief that are used for advocacy and to not count those elements that are not. So the revision provides that the signature, as required by MCR 7.212(C)(9), also be excluded from the word count. Signature blocks can, at times, be wordy, especially when co-counsel are involved, yet they are never used for advocacy, so I urge the Court to exclude signature blocks from the word count.

Very truly yours,

POSNER, POSNER AND POSNER

Gerald F. Posner

GFP:j
Encl.

ADM File No. 2019-16

Revisions to the Proposed Amendment
of Rule 7.212 of the Michigan Court Rules

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

Rule 7.212 Briefs

(A) Time for Filing and Service.

(1) Appellant's Brief.

(a) Filing. The appellant must~~shall~~ file ~~5 typewritten, xerographic, or printed copies of~~ a brief with the Court of Appeals within

(i)-(iii) [Unchanged.]

(b) Service. The appellant~~Within the time for filing the appellant's brief, 1 copy~~ must serve the brief~~be served~~ on all other parties to the appeal and file proof of that service ~~filed with the Court of Appeals and served~~ with the brief.

(2) Appellee's Brief.

(a) Filing. The appellee may~~shall~~ file ~~5 typewritten, xerographic, or printed copies of~~ a brief with the Court of Appeals within

(i)-(ii) [Unchanged.]

(b) Service. An appellee's brief~~Within the time for filing the appellee's brief, 1 copy~~ must be served on all other parties to the appeal and proof of that service must be filed with the brief~~Court of Appeals~~.

(3) Earlier Filing ~~and Service~~. The time for filing a~~and serving the appellant's or the appellee's~~ brief may be shortened by order of the Court of Appeals on motion showing good cause.

(4) Late Filing. Any party failing to timely file ~~and serve~~ a brief under~~required by~~ this rule forfeits the right to oral argument.

(5) [Unchanged.]

(B) Length and Form of Briefs.~~Except as permitted by order of the Court of Appeals, and except as provided in subrule (G), briefs are limited to 50 pages double-spaced, exclusive of tables, indexes, and appendixes. Quotations and footnotes may be single-spaced. At least one-inch margins must be used, and printing shall not be smaller than 12-point type. A motion for leave to file a brief in excess of the page limitations of this subrule must be filed by the due date of the brief and shall accompany the proposed brief. Such motions are disfavored and will be granted only for extraordinary and compelling reasons. If the motion is denied, the movant shall file a conforming brief within 21 days after the date of the order deciding the motion.~~ Except as otherwise provided in this rule or by court order, briefs are limited to no more than either 50 pages or 16,000 words.

(1) The elements of a brief listed in subrules (C)(1)-(5) and (9)-(10) are not included in the word or page limit, but footnotes and text contained in embedded graphics are included.

(2) Briefs must have at least one-inch page margins, 12-point font, and double-spaced text, except quotations and footnotes may be single-spaced.

(3) A brief filed under the word limitation of this subrule which is in excess of the page limitation must include astatement after the signature block stating the number of countable words. The filer may rely on the word count of the word-processing system used to prepare the brief.

(4) A motion for leave to file a brief in excess of the word or page limitations must be filed by the due date of the brief and must accompany the proposed and compelling reasons. If the motion is denied, the movant must file a conforming brief within 21 days after the date of the order deciding the motion.

(C)-(E) [Unchanged.]

(F) Supplemental Authority. Without leave of court, a party may file ~~an original and four copies of~~ a one-page communication, titled "supplemental authority," to call the court's attention to new authority released after the party filed its brief. Such a communication,

(1)-(3) [Unchanged.]

(G) Reply Briefs. ~~An appellant or a cross-appellant may reply to the brief of an appellee or cross-appellee w~~Within 21 days after service of an~~the brief of the~~ appellee's or cross-appellee's brief, appellant or cross-appellant may file a reply brief~~. Reply briefs must be~~ confined to rebuttal of the arguments in the appellee's or cross-appellee's brief~~ and must be limited to 10 pages, exclusive of tables, indexes, and appendices, and must include a table of contents and an index of authorities. No additional or supplemental briefs may be filed except as provided by subrule (F) or by leave of the Court~~. Reply briefs are limited to no more than 10 pages or 3,200 words, but are otherwise governed by subrule (B).

(H)-(J) [Unchanged.]

Order

Michigan Supreme Court
Lansing, Michigan

October 27, 2021

Bridget M. McCormack,
Chief Justice

ADM File No. 2021-45

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

Amendment of Rule 7.306 of the Michigan Court Rules

_____

On order of the Court, this is to advise that the amendment of Rules 7.306 of the Michigan Court Rules is adopted, effective immediately. Concurrently, individuals are invited to comment on the form or the merits of the amendment during the usual comment period. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for public hearing are posted on the Public Administrative Hearings page.

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

Rule 7.306 Original Proceedings

(A) Superintending Control~~When Available~~. A complaint may be filed to invoke the Supreme Court's superintending control power:

(1)-(2) [Unchanged.]

When a dispute regarding court operations arises between judges within a court that would give rise to a complaint under this rule, the judges shall participate in mediation as provided through the State Court Administrator's Office before filing such a complaint. The mediation shall be conducted in compliance with MCR 2.411(C)(2).

(B) A complaint may be filed to invoke the Supreme Court's original jurisdiction under Const 1963, art 4, § 6(19).

(C~~B~~) What to File. To initiate an original proceeding, a plaintiff must file with the clerk:

(1) 1 signed copy of a complaint prepared in conformity with MCR 2.111(A) and (B)~~7.212(B)~~ and entitled, for example,

"[*Plaintiff*] v [*Court of Appeals, Board of Law Examiners, Attorney Discipline Board, ~~or~~ Attorney Grievance Commission, or Independent Citizens Redistricting Commission*]."

The clerk shall retitle a complaint that is named differently.

(2) [Unchanged.]

(3) proof that the complaint and brief were served on the defendant, and, for a complaint filed against the Attorney Discipline Board or Attorney Grievance Commission, on the respondent in the underlying discipline matter; for purposes of a complaint filed under Const 1963, art 4, §6(19), service of a copy of the complaint and brief shall be made on any of the following persons: (1) the chairperson of the Independent Citizens Redistricting Commission; (2) the secretary of the Independent Citizens Redistricting Commission or (3) upon an individual designated by the Independent Citizens Redistricting Commission or Secretary of State as a person to receive service. Service shall be verified by the Clerk of the Court; and

(4) [Unchanged.]

Copies of relevant documents, record evidence, or supporting affidavits may be attached as exhibits to the complaint.

(DC) Answer.

(1) A defendant in an action filed under Const 1963, art 4, § 6(19) must file the following with the clerk within 7 days after service of the complaint, unless the Court directs otherwise:

(a) 1 signed copy of an answer in conformity with MCR 2.111(C);

(b) 1 signed copy of a supporting brief in conformity with MCR 7.212(B) and (D); and

(c) Proof that a copy of the answer and supporting brief was served on the plaintiff.

(2) In all other original actions, tThe defendant must file the following with the clerk within 28 days after service of the complaint:

(a1) 1 signed copy of an answer in conformity with MCR 7.212(B) and (D). The grievance administrator's answer to a complaint against the Attorney Grievance Commission must show the investigatory steps taken and any other pertinent information.

(b~~2~~) Proof that a copy of the answer was served on the plaintiff.

(E~~D~~) [Relettered but otherwise unchanged.]

(F~~E~~) Reply Brief. 1 signed copy of a reply brief may be filed as provided in MCR 7.305(E). In an action filed under Const 1963, art 4, § 6(19), a reply brief may be filed within 3 days after service of the answer and supporting brief, unless the Court directs otherwise.

(F)-(I) [Relettered (G)-(J) but otherwise unchanged.]

Staff Comment: The amendment of MCR 7.306 creates procedure specific to original actions relating to cases filed involving the Independent Citizens Redistricting Commission.

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 February 1, 2022 by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2021-45. 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.

October 27, 2021

Clerk

Public Policy Position
ADM File No. 2021-45

Support

Explanation:
The Committee voted to support the proposed amendment of MCR 7.306.

Position Vote:
Voted For position: 20
Voted against position: 0
Abstained from vote: 4
Did not vote (absence): 8

Contact Person:
Lori J. Frank lori@markofflaw.com

Order

Michigan Supreme Court
Lansing, Michigan

October 20, 2021

Bridget M. McCormack,
Chief Justice

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

ADM File No. 2021-31

Proposed Amendment of
Rule 8.110 of the Michigan
Court Rules

_____

On order of the Court, this is to advise that the Court is considering an amendment of Rule 8.110 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearing are posted on the Public Administrative Hearings page.

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

Rule 8.110 Chief Judge Rule

(A)-(C) [Unchanged.]

(D) Court Hours; Court Holidays; Judicial Absences.

(1) [Unchanged.]

(2) Court Holidays; Local Modification.

(a) The following holidays are to be observed by all state courts, except those courts which have adopted modifying administrative orders pursuant to MCR 8.112(B):

New Year's Day, January 1;
Martin Luther King, Jr., Day, the third Monday in January in conjunction with the federal holiday;
Presidents' Day, the third Monday in February;
Memorial Day, the last Monday in May;
<u>Juneteenth, June 19;</u>
Independence Day, July 4;
Labor Day, the first Monday in September;
Veterans' Day, November 11;

Thanksgiving Day, the fourth Thursday in November;
~~Friday after Thanksgiving;~~ [Option A]
~~Christmas Eve, December 24;~~ [Option B]
Christmas Day, December 25;
~~New Year's Eve, December 31;~~ [Option C]
[Note that there is also Option D, which would be to add Juneteenth as a holiday and *not* omit another holiday.]

(b) When New Year's Day, Juneteenth, Independence Day, Veterans' Day, or Christmas Day falls on Saturday, the preceding Friday shall be a holiday. When New Year's Day, Juneteenth, Independence Day, Veterans' Day, or Christmas Day falls on Sunday, the following Monday shall be a holiday. When Christmas Eve or New Year's Eve falls on Friday, the preceding Thursday shall be a holiday. When Christmas Eve or New Year's Eve falls on Saturday or Sunday, the preceding Friday shall be a holiday. [Note that this provision would be updated to reflect if any of the holidays mentioned in subsection (a) are eliminated.]

(c)-(e) [Unchanged.]

(3)-(6) [Unchanged.]

Staff Comment: In light of the federal Act making Juneteenth a federal holiday (PL 117-17), this proposed amendment would similarly require that courts observe Juneteenth as a holiday. This proposed amendment is being considered in conjunction with other proposed amendments that would eliminate an existing holiday so as to retain the same number of holidays that are currently provided under the rule. The options the Court would like commenters to consider eliminating, if the commenters believe the number of holidays should remain the same, include the day after Thanksgiving, Christmas Eve, or New Year's Eve, similar to Federal legal holiday designations. For purposes of comment, commenters are invited to indicate their support or opposition to any of the proposed amendments individually or combined.

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 February 1, 2022 by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted

Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2021-31. Your comments and the comments of others will be posted under the chapter affected by this proposal.

VIVIANO, J. (*dissenting*). I dissent from the Court's decision to publish for comment a proposed court rule amendment adding Juneteenth to the list of weekday holidays that must be observed by all state courts. Juneteenth commemorates a date of historical significance to all Americans: on June 19, 1865, Major General Gordon Granger of the Union Army issued a general order proclaiming, in accordance with the Emancipation Proclamation, that all slaves in Texas (the last state of the Confederacy with institutional slavery) were free. Official recognition of the Juneteenth holiday has gained traction in recent years, and it became a federal holiday on June 17, 2021. PL 117-17; 135 Stat 287. But a number of years ago, in 2005, our Legislature adopted a law declaring that "the third Saturday in June of each year shall be known as 'Juneteenth National Freedom Day[.]' " MCL 435.361(1). The statute further provides that

> [t]he legislature encourages individuals, educational institutions, and social, community, religious, labor, and business organizations to pause on Juneteenth National Freedom Day and reflect upon the strong survival instinct of the African-American slaves and the excitement and great joy with which African-Americans first celebrated the abolition of slavery. It is a reminder to all Americans of the status and importance of Americans of African descent as American citizens. [*Id*.]

Thus, our state has recognized and celebrated Juneteenth longer than most other jurisdictions, and well before it became fashionable to do so.

As I noted recently in another context, "[m]any of our trial courts—including some of our largest courts—are confronting a significant backlog of criminal and civil cases resulting from their inability to conduct in-person court proceedings for long stretches of time during the COVID-19 pandemic." Administrative Order No. 2021-7, ___ Mich ___ (2021) (VIVIANO, J., concurring in part and dissenting in part). Our Court already requires state courts to observe 12 holidays that occur or are celebrated on weekdays. MCR 8.110(D)(2). And these holidays are in addition to the 30 days of annual vacation leave that are available to judges. MCR 8.110(D)(3). Rather than adding to the list of weekday holidays, which would create added stress on our trial courts' ability to process and dispose of cases, or engage in a lengthy and contentious debate over the relative merits of Juneteenth and other holidays, I believe this Court should join with the Legislature by encouraging our judges, court staffs, litigants, attorneys, law enforcement, and others who work or have business in our state courts "to pause on Juneteenth National Freedom Day and reflect upon the strong survival instinct of the African-American slaves and the

excitement and great joy with which African-Americans first celebrated the abolition of slavery." MCL 435.361(1). This would be an appropriate way to celebrate a date of historical significance, while also allowing our judges and courts staffs to continue to fulfill their public duties.

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.

October 20, 2021

Clerk

Public Policy Position
ADM File No. 2021-31

Support

Explanation:
The Committee voted to support the amendment of MCR 8.110 to require that Michigan courts observe Juneteenth as a holiday and further to support proposed Option D, which would add Juneteenth as a holiday without omitting another holiday.

Position Vote:
Voted For position: 22
Voted against position: 0
Abstained from vote: 2
Did not vote (absence): 8

Contact Person:
Lori J. Frank lori@markofflaw.com

10/21/2021 Cindy Morales

In regards to ADM File 2021-31 (**I select option D). No change to the current holiday schedule.**

10/21/2021 Deborah Fahr

Good Afternoon,
As an Oakland County Circuit Court employee for almost 27 years, I wanted to voice my opinion on the proposed replacement of one of Oakland County's holiday dates with the new proposed "Juneteenth" replacement holiday.
Personally, although I fully support the Juneteenth holiday, I would hope that our normally scheduled holiday dates would not be taken away in order to acknowledge this new proposed holiday.
As I'm sure most employees who would be affected by this proposed change would agree, most everyone makes family plans during these special holiday times. These holiday traditions have been in our families for decades, or longer. The time we are allowed to be with our families during the holidays is certainly a treasured tradition, and if this were to change, plans to follow lifelong holiday and family traditions would be altered considerably.
Please take this into consideration.
Thank you for your time.

10/21/2021 Debra Brown

In regards to ADM File No. 2021-31 I would choose OPTION D (do not remove any currently observed holidays)

10/21/2021 Lori Hale

Option D.

10/21/2021 Mikayla Torres

I regards to ADM File No. 2021-31 I chose Option D in NOT removing any currently observed holidays.

10/21/2021 Patrice Harlan

Good Morning,
In recognizing Junteenth as a holiday, I am NOT in favor of giving up any of the holidays which I spend with my family.
Thanksgiving, Christmas and New Year's are all very big family holidays.
Thank you for your time.

10/21/2021 Rebecca Noel

In regard to the above, I am in agreement with Justice Viviano and his comment that,
"Our Court already requires state courts to observe 12 holidays that occur or are celebrated on weekdays. MCR 8.110(D)(2). And these holidays are in addition to the 30 days of annual vacation leave that are available to judges. MCR 8.110(D)(3). Rather than adding to the list of weekday holidays, which would create added stress on our trial courts' ability to process and dispose of cases, or engage in a lengthy and contentious debate over the relative merits of Juneteenth and other holidays, I believe this Court should join with the Legislature by encouraging our judges, court staffs, litigants, attorneys, law enforcement, and others who work or have business in our state courts "to pause on Juneteenth National Freedom Day and reflect upon the strong survival instinct of the African-American slaves and the 4 excitement and great joy with

which African-Americans first celebrated the abolition of slavery." MCL 435.361(1). **This would be an appropriate way to celebrate a date of historical significance, while also allowing our judges and courts staffs to continue to fulfill their public duties."**
Removing the day after Thanksgiving, Christmas Eve, or New Year's Eve would, in my opinion, greatly inconvenience those who travel for those holidays, which is undoubtedly a large number of people.
For those reasons, I believe there should either be an observance of Juneteenth or adding Juneteenth as a holiday and not omit another holiday.

10/21/2021 Sabrina Czyz

OPTION D

10/21/2021 Vanessa Guerra

I support option D. We should celebrate the federally recognized holiday by giving court staff the day off to be able to attend the plethora of Juneteenth community events that exist in many of our counties. This is a significant day in the history of our country and must be celebrated in the same manner we celebrate the 4th of July. Further, court staff are often underpaid and underappreciated, the least we could do is provide them one day off without forcing them to sacrifice a different day.

10/22/2021 Linette Miller

Please note I am not opposed to the holiday June 19 being celebrated by Oakland County. However, I would not want to lose any of the current holidays that have been in place for employees such as: the Friday after Thanksgiving, Christmas Eve or New Year's Day. Please leave the Holidays as is in 2021.
Thank you,

10/22/2021 Lizzie Mesko

Good morning,
I am writing you regarding ADM File No. 2021-31 in regards to Juneteenth. I am opposed to removing the Friday after Thanksgiving, Christmas Eve and/or New Year's Eve as holidays and replacing one of those with Juneteenth. I believe the Courts will be short staffed if any of these holidays are removed because employees will take the day(s) off regardless if it's a paid holiday or not. Those three days are normally spent celebrating with family. College students are home for their break, elementary through high school students are on break, people travel during those holidays and much more.
I believe Justice Viviano dissented accurately that adding the holiday will add stress on the trial courts along with the lengthy discussions that will take place over the potential change. I believe the pause he suggested is appropriate and the best way to observe Juneteenth.
Thank you.

10/25/2021 Jenna Smith

I would like to vote for Option D (no change in holiday time) I believe that Juneteenth should be observed but I don't think it should cut into Thanksgiving, Christmas or New Years holidays. This time frame is when most families are able to gather with those that come in from out of town. It is a very busy time of year, please reconsider.

10/25/2021 Shani Johnson

I have to agree with Viviano regarding the observance of Juneteenth. I don't think we need to have a day off to observe this Holiday but just to take a moment to remember what that Holiday represents to us as a nation. If it is decided that we do observe this with a day off I don't believe taking away one of our other

Holiday's is appropriate. For years people have used the times suggested for family and vacations and to take that away from them is not fair.

10/27/2021 **Susan Bennington**

Option D... if the holiday is to be added, then add it... don't take away the holidays that are for families to get together.

11/09/2021 **Judge John Hallacy, 37th Circuit Court**

I support option D which would add the holiday and keep all other holidays in place.
Thanks.

11/09/2021 **Katherine Ambrose, Court Administrator: 10th District Court**

Option D

11/17/2021 **Lisa Withers, 4th District Court Administrator**

Good afternoon,
I am writing you regarding ADM File No. 2021-31 in regards to Juneteenth. I am opposed to removing the Friday after Thanksgiving, Christmas Eve and/or New Year's Eve as holidays and replacing one of those with Juneteenth. I believe the Courts will be short staffed if any of these holidays are removed because employees will take the day(s) off regardless if it's a paid holiday or not. Those three days are spent celebrating the holidays with family. College students are home for their break and people travel during those holidays and much more.
I believe Justice Viviano dissented accurately that adding the holiday will add stress on the trial courts along with the lengthy discussions that will take place over the potential change. I believe the pause he suggested is appropriate and the best way to observe Juneteenth.
Thank you.

12/15/2021 **Angela Easterday, Assistant Public Defender**

In light of the Federal Act making Juneteenth a Federal Holiday, I am requesting this court simply add this holiday to the list of recognized holidays without eliminating any other holiday.

12/15/2021 **Brian Fish, Attorney**

I would ask that the Court consider simply adding a new holiday, rather than eliminating a current holiday. The Courts are working at a feverish pace to try to clear their bloated dockets from the COVID shut down adding another day to rest may do a great deal of good for productivity if nothing else.
Thank you.

12/15/2021 **Karen Kelley, Deputy Public Defender**

I would like to comment on the proposed Holiday change. I believe adding Juneteenth as a holiday is appropriate, but it should be added in addition to the current holidays, not instead of one of the 3 that are proposed to be eliminated – the day after Thanksgiving, Christmas Eve or New Year's Eve. I do not believe adding this holiday will cause any additional stress on the court's docket. Thank you.

12/16/2021 Autumne Keifer, Probation Officer/Magistrate

I feel if the government is going to honor this new holiday we shouldn't have to lose another holiday that we have been observing for years. If anything this should just be added if the government feels it warrants to be acknowledged as a holiday.

12/16/2021 Naesha Leys, Public Defender

I would like to see the Courts not remove an already schedule holiday, rather just add 19th of June to the Holiday Schedule.

12/16/2021 Charlisse Smith

I vote to add Juneteenth as a national holiday that is observed by the courts and with no other changes to the current national holiday schedule. However, if changes must be made, then I am not opposed to removing an "eve" holiday such as New Year's Eve or Christmas Eve or even a day after a holiday such as the day after Thanksgiving. Those days hold no significant historical meaning other than a day for traveling or extra time with family. Now, while those things are indeed important and are wanted or even needed for many, they should not have more significance than the observance of a day that American citizens were emancipated from slavery if such a choice needed to be made. If there is a concern of staffing stress by adding one more observed holiday off, then the appropriate course of action should be to eliminate a "traveling" day off instead of denying a national holiday off to one of the greatest events in this country's history.

Furthermore, I do not agree that Juneteenth should be observed as only a pause instead of a national holiday off.

Our nation has long recognized the need to give pause as a unifying act of remembrance to important events while also observing that day off as a way for citizens to celebrate those events that have impacted this great country. Such recognized moments, like veterans and memorial days, are recognized with both a pause and as an observed holiday off in remembrance and celebration of those days. The practice of both giving a pause and recognition as a national holiday honors both those who are to be remembered but also those who are still here and were impacted by those events. It is also a symbol of the significance that our nation places on these events. Juneteenth, nicknamed "Freedom Day," the day observed for celebrating the emancipation of slavery in this country, finally and formally recognized nationally as a day of significance, should be treated with the same weight as other great historical events of this country; it is a celebration of freedom, no different than the celebration of freedom on July 4th, and should be treated as such.

12/16/2021 Emily Shelton

I would like to request that Juneteenth be added as a holiday without removing any other holidays that the court already observes. Thank you!

12/16/2021 Ilyssa Beltzman

Option D

12/16/2021 Lauren Wands

No alteration to our current holiday schedule. Option D

12/16/2021 Marsha Gorbitz

I feel Juneteenth should be an added holiday in addition to other holidays. No other holidays should be eliminated.

12/16/2021 Megan DeVoir

Option D

12/16/2021 Rachael Annala

Option D

12/17/2021 David Makled

I support adding Juneteenth as a holiday. However it should be added and not replace any of the current holidays

12/17/2021 John Sims

I want option D

12/17/2021 Katherine Nichols-Leindecker, Attorney

I support option D which would add the Juneteenth holiday and keep all other holidays in place.

12/17/2021 Melissa Heffner

I support Option D to add Juneteenth to the holiday schedule and not to eliminate any of the current holidays.
Thank you.

12/28/2021 Patrick Kolehouse

Adding Juneteenth as a holiday is obviously a good thing, but if it takes the place of another holiday it's just gonna breed resentment. The obvious thing to do is to add the holiday without taking another holiday away. Besides, we would still have fewer holidays than every other civilized country.

Comments Received at the Michigan Supreme Court

01/10/2022 Jennifer Brill

Option D

01/10/2022 Julie Smith

REGARDING: I VOTE Option D, which would be to add Juneteenth as a holiday and not omit another holiday.]
---------The Michigan Supreme Court is taking steps towards adopting Juneteenth as a court holiday.
Right now, there are several options being proposed for how to observe the new holiday; three of the four options are to swap the holiday with an already existing observed holiday:
Friday after Thanksgiving; [Option A]
Christmas Eve, December 24; [Option B]
New Year's Eve, December 31; [Option C]
[Note that there is also Option D, which would be to add Juneteenth as a holiday and not omit another holiday.]
The proposed amendment is open for public comment until 02/01/2022 and you are welcome to comment if you have an opinion on how you feel the courts should observe this holiday:

01/10/2022 Tonya Fox

I am commenting on the proposal to have Juneteenth as a recognized holiday through the State Court. I would like to see the holiday added and strongly believe that the bearing on this holiday being added should not be at the cost of removing an other already established holiday. I feel the recognition of the holiday is very significant and to forgo another day to add it would disrespect the significance of the existing holidays and show a lack of recognition on behalf of the State for the contributions of the employees. Thank you for your time in considering my point of view.

01/11/2022 Karri Essner

Option D

01/11/2022 Kelsea Staines

Option D

SBM STATE BAR OF MICHIGAN

To: Members of the Public Policy Committee
Board of Commissioners

From: Governmental Relations Staff

Date: January 12, 2022

Re: HB 5340 – Family Treatment Courts

Background

House Bill 5340 would amend the Revised Judicature Act, 1961 PA 236, by adding a new Chapter 10D to authorize circuit courts to adopt or institute family treatment courts. The language of the bill is modeled on similar statutory provisions permitting the adoption of other problem-solving courts (e.g., drug treatment courts). To institute a family treatment court, the circuit court is required to enter into a memorandum of understanding with the prosecuting attorney, a representative of the bar specializing in family or juvenile law, a lawyer-guardian ad litem, a representative from the Michigan Department of Health and Human Services, and a representative of community treatment providers.

Circuit courts interested in adopting a family treatment court would be mandated to participate in training required by SCAO and be certified by SCAO. As with other problem-solving courts, no individual is granted a right to be admitted into a family treatment court and violent offenders, as defined in the bill, are categorially excluded from participation. Note that the violent offender exclusion contained in the drug treatment and mental health court authorizing statutes, and mirrored in HB 5340, is currently the subject of pending legislation that would permit violent offender participation in problem-solving courts under specified circumstances (HB 5482-HB 5484).

HB 5340 prescribes the process for preadmission screening, evaluation, or assessment that must be undertaken and the findings that must be made on the record by the court before a participant is admitted to the proposed family treatment court. The bill outlines the minimum requirements for a family treatment court and requirements for data collection and reporting to SCAO.

Finally, HB 5340 would amend MCL 600.1082 to add a circuit court judge who has presided over a family treatment court to the State Drug Treatment Court Advisory Committee within the Legislative Council.

***Keller* Considerations**

HB 5340 deals principally with the procedures circuit courts must use to adopt and operate the proposed family treatment courts; as such, the legislation concerns the functioning of the courts. In addition, the family treatment court is intended to ensure that participants are provided with access to legal services that are appropriate to the circumstances of their situation, rather than placing them in the traditional family court system, which will be poorly suited to these cases. As such, HB 5340 is

Keller-permissible because it implicates both the functioning of the courts and the availability of legal services. Note that prior legislation creating similar specialty courts has also been considered *Keller*-permissible by the Bar on this basis.

***Keller* Quick Guide**

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

Staff Recommendation

HB 5340 implicates both the functioning of the courts and the availability of legal services. It therefore satisfies the requirements of *Keller* and may be considered on its merits.

HOUSE BILL NO. 5340

September 23, 2021, Introduced by Rep. Whiteford and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled

"Revised judicature act of 1961,"

by amending section 1082 (MCL 600.1082), as amended by 2012 PA 334, and by adding chapter 10D.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1082. (1) A state drug treatment court advisory committee is created in the legislative council. The state drug treatment court advisory committee consists of the following members:

(a) The state court administrator or his or her designee.

(b) ~~Seventeen~~ **Eighteen** members appointed jointly by the speaker of the house of representatives and the senate majority leader, as follows:

(*i*) A circuit court judge who has presided for at least 2 years over a drug treatment court.

(*ii*) A district court judge who has presided for at least 2 years over a drug treatment court.

(*iii*) A judge of the family division of circuit court who has presided for at least 2 years over a juvenile drug treatment court program.

(*iv*) A circuit or district court judge who has presided for at least 2 years over an alcohol treatment court.

(*v*) A circuit or district court judge who has presided over a veterans treatment court.

(*vi*) A circuit court judge who has presided over a family treatment court.

(*vii*) ~~(*vi*)~~ A court administrator who has worked for at least 2 years with a drug or alcohol treatment court.

(*viii*) ~~(*vii*)~~ A prosecuting attorney who has worked for at least 2 years with a drug or alcohol treatment court.

(*ix*) ~~(*viii*)~~ An individual representing law enforcement in a jurisdiction that has had a drug or alcohol treatment court for at least 2 years.

(*x*) ~~(*ix*)~~ An individual representing drug treatment providers who has worked at least 2 years with a drug or alcohol treatment court.

(*xi*) ~~(*x*)~~ An individual representing criminal defense attorneys, who has worked for at least 2 years with drug or alcohol treatment courts.

(*xii*) ~~*(xi)*~~ An individual who has successfully completed a drug treatment court program.

(*xiii*) ~~*(xii)*~~ An individual who has successfully completed a juvenile drug treatment court program.

(*xiv*) ~~*(xiii)*~~ An individual who is an advocate for the rights of crime victims.

(*xv*) ~~*(xiv)*~~ An individual representing the Michigan association of drug court professionals.

(*xvi*) ~~*(xv)*~~ An individual who is a probation officer and has worked for at least 2 years for a drug or alcohol treatment court.

(*xvii*) ~~*(xvi)*~~ An individual representing a substance abuse coordinating agency.

(*xviii*) ~~*(xvii)*~~ An individual representing domestic violence service provider programs that receive funding from the state domestic violence prevention and treatment board.

(2) Members of the advisory committee shall serve without compensation. However, members of the advisory committee may be reimbursed for their actual and necessary expenses incurred in the performance of their duties as members of the advisory committee.

(3) Members of the advisory committee shall serve for terms of 4 years each, except that the members first appointed shall serve terms as follows:

(a) The members appointed under subsection (1)(b)(*i*) to ~~*(vi)*~~ **(*vii*)** shall serve terms of 4 years each.

(b) The members appointed under subsection ~~(1)(b)(*vii*)~~ **(1)(b)(*viii*)** to ~~*(xi)*~~ **(*xii*)** shall serve terms of 3 years each.

(c) The members appointed under subsection ~~(1)(b)(*xii*)~~ **(1)(b)(*xiii*)** to ~~*(xvii)*~~ **(*xviii*)** shall serve terms of 2 years each.

(4) If a vacancy occurs in an appointed membership on the advisory committee, the appointing authority shall make an appointment for the unexpired term in the same manner as the original appointment.

(5) The appointing authority may remove an appointed member of the advisory committee for incompetency, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

(6) The first meeting of the advisory committee ~~shall~~ **must** be called by the speaker of the house of representatives and the senate majority leader. At the first meeting, the advisory committee shall elect from among its members a chairperson and other officers as it considers necessary or appropriate. After the first meeting, the advisory committee shall meet at least quarterly, or more frequently at the call of the chairperson or if requested by 9 or more members.

(7) A majority of the members of the advisory committee constitute a quorum for the transaction of business at a meeting of the advisory committee. A majority of the members present and serving are required for official action of the advisory committee.

(8) The business that the advisory committee may perform ~~shall~~ **must** be conducted at a public meeting of the advisory committee held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(9) A writing prepared, owned, used, in the possession of, or retained by the advisory committee in the performance of an official function is subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(10) The advisory committee shall monitor the effectiveness of

drug treatment courts, **family treatment courts,** and veterans treatment courts and the availability of funding for those courts and shall present annual recommendations to the legislature and supreme court regarding proposed statutory changes regarding those courts.

CHAPTER 10D

Sec. 1099aa. As used in this chapter:

(a) "Department" means the department of health and human services.

(b) "Family treatment court" means any of the following:

(*i*) A court-supervised treatment program for individuals with a civil child abuse or neglect case who are diagnosed with a substance use disorder.

(*ii*) A program designed to adhere to the family treatment court best practice standards promulgated by the National Association of Drug Court Professionals and the Center for Children and Family Futures, which include all of the following:

(A) Early identification, screening, and assessment of eligible participants with prompt placement in the program.

(B) Integration of timely, high-quality, and appropriate substance use disorder treatment services with justice system case processing.

(C) Access to comprehensive case management, services, and supports for families.

(D) Valid, reliable, random, and frequent drug testing.

(E) Therapeutic responses to improve parent, child, and family functioning, ensure children's safety, permanency, and well-being, support participant behavior change, and promote participant accountability.

(F) Ongoing close judicial interaction with each participant.

(G) Collecting and reviewing data to monitor participant progress, engage in a process of continuous quality improvement, monitor adherence to best practice standards, and evaluate outcomes using scientifically reliable and valid procedures.

(H) Continued interdisciplinary education in order to promote effective family treatment court planning, implementation, and operation.

(I) The forging of partnerships among other family treatment courts, public agencies, and community-based organizations to generate local support.

(J) A family-centered, culturally relevant, and trauma-informed approach.

(K) Ensuring equity and inclusion.

(c) "Indian child's tribe" means that term as defined in section 3 of the Michigan Indian family preservation act, chapter XIIB of the probate code of 1939, 1939 PA 288, MCL 712B.3.

(d) "Lawyer-guardian ad litem" means that term as defined in section 13a of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.13a.

(e) "Participant" means an individual who is admitted into a family treatment court.

(f) "Prosecutor" means the prosecuting attorney of the county, attorney general, or attorney retained by the department.

(g) "Termination" means removal from the family treatment court due to a new offense, noncompliance, absconding, voluntary withdrawal, medical discharge, or death.

(h) "Violent offender" means an individual who is currently charged with or has pled guilty to an offense involving the death

of or serious bodily injury to any individual, whether or not any of the circumstances are an element of the offense, or an offense that is criminal sexual conduct of any degree.

Sec. 1099bb. (1) The circuit court in any judicial circuit may adopt or institute a family treatment court, pursuant to statute or court rules. The circuit court shall not adopt or institute the family treatment court unless the circuit court enters into a memorandum of understanding with the prosecuting attorney, a representative of the bar specializing in family or juvenile law, a lawyer-guardian ad litem, a representative or representatives of the department, and a representative or representatives of community treatment providers. The memorandum of understanding also may include other parties considered necessary, such as a court appointed special advocate, local law enforcement, the local substance abuse coordinating agency for that circuit court, a mental health treatment provider, an Indian child's tribe, or child and adolescent services providers. The memorandum of understanding must describe the role of each party.

(2) A court that is adopting a family treatment court shall participate in training as required by the state court administrative office.

(3) A family treatment court operating in this state, or a circuit court in any judicial circuit seeking to adopt or institute a family treatment court, must be certified by the state court administrative office. The state court administrative office shall establish the procedure for certification. Approval and certification under this subsection of a family treatment court by the state court administrative office is required to begin or to continue the operation of a family treatment court under this

chapter. The state court administrative office shall include a family treatment court certified under this subsection on the statewide official list of family treatment courts. The state court administrative office shall not recognize and include a family treatment court that is not certified under this subsection on the statewide official list of family treatment courts. A family treatment court that is not certified under this subsection shall not perform any of the functions of a family treatment court, including, but not limited to, receiving funding under section 1099*ll*.

Sec. 1099cc. A family treatment court may hire or contract with licensed or accredited treatment providers in consultation and cooperation with the local substance abuse coordinating agency, the local community mental health service provider, and other such appropriate persons to assist the family treatment court in fulfilling its requirements under this chapter, including, but not limited to, the investigation of an individual's background or circumstances, the clinical evaluation of an individual for his or her admission into or participation in a family treatment court, providing a recommended treatment modality and level of care, and providing evidence-based, family-centered treatment using an integrated, comprehensive continuum of care.

Sec. 1099dd. (1) A family treatment court shall determine whether an individual may be admitted to the family treatment court. No individual has a right to be admitted into a family treatment court. However, an individual is not eligible for admission into a family treatment court if he or she is a violent offender.

(2) To be admitted into a family treatment court, admission

must be indicated as appropriate as a result of a preadmission screening, evaluation, or assessment with an evidence-based screening and assessment tool. An individual shall cooperate with and complete a preadmission screening, evaluation, or assessment, and shall agree to cooperate with any future evaluation or assessment as directed by the family treatment court. A preadmission screening, evaluation, or assessment must include all of the following:

(a) A complete review of the individual's criminal history, and a review of whether or not the individual has been admitted to, has participated in, or is currently participating in a problem-solving court. The court may accept verifiable and reliable information from the prosecution or the individual's attorney to complete its review and may require the individual to submit a statement as to whether or not he or she has previously been admitted to a problem-solving court and the results of his or her participation in the prior program or programs.

(b) A complete review of the individual's child protective services history.

(c) An assessment of the family situation, including any nonrespondent parent and family support.

(d) An assessment of the risk of danger or harm to the individual, the individual's children, or the community.

(e) As much as practicable, a complete review of the individual's history regarding the use or abuse of any controlled substance or alcohol and an assessment of whether the individual abuses controlled substances or alcohol or is drug or alcohol dependent. As much as practicable, the assessment must be a clinical assessment.

(f) A review of any special needs or circumstances of the individual that may potentially affect the individual's ability to receive substance abuse treatment and follow the court's orders.

(3) The information received for an assessment under subsection (2) is confidential and must not be used for any purpose other than treatment and case planning.

(4) Except as otherwise permitted in this act, any statement or other information obtained as a result of participating in a preadmission screening, evaluation, or assessment under subsection (2) is confidential and is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be used in a criminal prosecution, unless it reveals criminal acts other than, or inconsistent with, personal drug use.

(5) The court may request that the department provide to the court information pertaining to an individual applicant's child protective services history for the purposes of determining an individual's admission into the family treatment court. The department shall provide the information requested by a family treatment court under this subsection and as required under section 7(2)(g) of the child protection law, 1975 PA 238, MCL 722.627.

Sec. 1099ee. Before an individual is admitted into a family treatment court, the court shall find on the record, or place a statement in the court file establishing all of the following:

(a) That the individual has a substance use disorder and is an appropriate candidate for participation in the family treatment court as determined by the preadmission screening, evaluation, or assessment.

(b) That the individual understands the consequences of entering the family treatment court and agrees to comply with all

court orders and requirements of the family treatment court and treatment providers.

(c) That the individual is not a violent offender.

(d) That the individual has completed a preadmission screening, evaluation, or assessment under section 1099dd and has agreed to cooperate with any future evaluation assessment as directed by the family treatment court.

(e) The terms and conditions of the agreement between the parties.

Sec. 1099ff. If the individual being considered for admission to a family treatment court is adjudicated in a civil neglect and abuse case, his or her admission is subject to all of the following conditions:

(a) The allegations contained in the petition must be related to the abuse, illegal use, or possession of a controlled substance or alcohol.

(b) The individual must make an admission of responsibility to the allegations on the record.

(c) The individual must waive, in writing, the right to representation at family treatment court review hearings by an attorney. However, an individual maintains the right to an attorney for any program violation where the facts are contested, a liberty interest is at stake, or if the individual may be terminated from the family treatment court program.

(d) The individual must sign a written agreement to participate in the family treatment court.

Sec. 1099gg. (1) Upon admitting an individual into a family treatment court, all of the following apply:

(a) For an individual who is admitted to a family treatment

court based on having an adjudicated child abuse or neglect case, the court shall accept the admission of responsibility to the allegations in section 1099ff.

(b) The court may place the individual under court jurisdiction in the family treatment court program with terms and conditions as considered necessary by the court.

(2) The family treatment court shall cooperate with, and act in a collaborative manner with, the prosecutor, representative of the bar specializing in family or juvenile law, treatment providers, lawyer-guardian ad litem, local substance abuse coordinating agency, department, and, to the extent possible, court appointed special advocate, local law enforcement, child and adolescent services providers, Indian child's tribe, and community corrections agencies.

(3) The family treatment court may require an individual admitted into the court to pay a reasonable family treatment court fee that is reasonably related to the cost to the court for administering the family treatment court program as provided in the memorandum of understanding under section 1099bb. The clerk of the circuit court shall transmit the fees collected to the treasurer of the local funding unit at the end of each month.

(4) The family treatment court may request that the department provide to the court information pertaining to an individual applicant's child protective services history for the purposes of determining an individual's admission into the family treatment court. The department shall provide the information requested by a family treatment court under this subsection and as required under section 7(2)(g) of the child protection law, 1975 PA 283, MCL 722.627.

Sec. 1099hh. (1) A family treatment court shall provide a family treatment court participant with all of the following:

(a) Consistent, continual, and close monitoring of the participant and interaction among the court, treatment providers, department, and participant.

(b) Mandatory periodic and random testing for the presence of any controlled substance, alcohol, or other abused substance in a participant's blood, urine, saliva, or breath, using to the extent practicable the best available, accepted, and scientifically valid methods.

(c) Periodic evaluation assessments of the participant's circumstances and progress in the program.

(d) A regimen or strategy of appropriate and graduated but immediate rewards for compliance and sanctions for noncompliance, including, but not limited to, the possibility of incarceration or confinement.

(e) Substance abuse treatment services, including, but not limited to, family-centered treatment, relapse prevention services, mental health treatment services, education, and vocational opportunities as appropriate and practicable.

(2) Any statement or other information obtained as a result of participating in an assessment, evaluation, treatment, or testing while in a family treatment court is confidential and is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and must not be used in a criminal prosecution, unless it reveals criminal acts other than, or inconsistent with, personal drug use.

Sec. 1099ii. (1) In order to continue to participate in and successfully complete a family treatment court program, an

individual shall do all of the following:

(a) Pay the family treatment court fee allowed under section 1099gg, as applicable.

(b) Comply with all court orders and case service plans, violations of which may be sanctioned according to national and state recognized family treatment court best practices and standards.

(2) The family treatment court must be notified of any new neglect and abuse allegations against the participant or if the participant is accused of a crime. The judge shall consider whether to terminate the participant's participation in the family treatment court in conformity with the memorandum of understanding under section 1099bb.

(3) The court shall require that a participant pay the fee described in subsection (1)(a). However, if the court determines that the payment of the fee under this subsection would be a substantial hardship for the participant or would interfere with the participant's substance abuse treatment, the court may waive all or part of that fee.

Sec. 1099jj. (1) Upon completion of or termination from a family treatment court program, the court shall find on the record or place a written statement in the court file as to whether the participant completed the program successfully or whether the individual's participation in the program was terminated and, if it was terminated, the reason for the termination.

(2) If a participant has successfully completed family treatment court, the court shall send a notice of the family treatment court completion and final disposition to the department. The department shall record successful participation by the

individual in a family treatment court.

(3) For a participant whose participation is terminated from the family treatment court program, the court shall send a notice of the termination to the department and the department shall record the termination.

(4) All court proceedings under this section must be open to the public.

Sec. 1099kk. (1) Each family treatment court shall collect and provide data on each individual applicant and participant in the program as required by the state court administrative office.

(2) A family treatment court shall maintain files or databases on each individual applicant or referral who is denied or refused admission to the program, including the reasons for the denial or rejection, the criminal history of the applicant, the preadmission evaluation or assessment, and other demographic information as required by the state court administrative office.

(3) A family treatment court shall maintain files or databases on each individual participant in the program for review and evaluation, as directed by the state court administrative office. The information collected for evaluation purposes must include a minimum standard data set developed and specified by the state court administrative office. This information should be maintained in the court files or otherwise accessible by the courts and the state court administrative office and, as much as practicable, should include all of the following:

(a) Location and contact information for each individual participant, upon admission and termination or completion of the program for follow-up reviews, and third-party contact information.

(b) Significant transition point dates, including dates of

referral, enrollment, new court orders, violations, detentions, changes in services or treatments provided, discharge for completion or termination, any provision of after-care, and after-program recidivism.

(c) The individual's precipitating adjudication and significant factual information, source of referral, and all family treatment court evaluations and assessments.

(d) Treatments provided, including the intensity of care or dosage, and the outcome of each treatment.

(e) Other services or opportunities provided to the individual and resulting use by the individual, such as education or employment and the participation of and outcome for that individual.

(f) Reasons for discharge, completion, or termination of the program.

(g) Outcomes related to reunification and placement of a child or children.

(4) As directed by the state court administrative office, after an individual is discharged either upon completion of or termination from the program, the family treatment court should conduct, as much as practicable, follow-up contacts with and reviews of participants for key outcome indicators, such as substance use, custody status of children, recidivism, and employment, as frequently and for a period of time determined by the state court administrative office based on the nature of the family treatment court and the nature of the participant. The follow-up contact and review of former participants is not an extension of the court's jurisdiction over the individual.

(5) A family treatment court shall provide to the state court

administrative office all information requested by the state court administrative office.

(6) With the approval and at the discretion of the supreme court, the state court administrative office is responsible for evaluating and collecting data on the performance of family treatment courts in this state as follows:

(a) Provide an annual review of the performance of family treatment courts in this state to the minority and majority party leaders in the senate and house of representatives, the state drug treatment court advisory committee created under section 1082, the governor, and the supreme court.

(b) Provide standards for family treatment courts in this state, including, but not limited to, developing a list of approved measurement instruments and indicators for data collection and evaluation. These standards must provide comparability between programs and their outcomes.

(c) Provide evaluation plans, including appropriate and scientifically valid research designs that, as soon as practicable, include the use of comparison and control groups.

(7) The information collected under this section regarding individual applicants to family treatment court programs for the purpose of application to that program and participants who have successfully completed family treatment courts is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

Sec. 1099*ll*. (1) The supreme court is responsible for the expenditure of state funds for the establishment and operation of family treatment courts. Federal funds provided to the state for the operation of family treatment courts must be distributed by the

department or the appropriate state agency as otherwise provided by law.

(2) The state treasurer may receive money or other assets from any source for deposit into the appropriate state fund or funds for the purposes described in subsection (1).

(3) Each family treatment court shall report quarterly to the state court administrative office on the funds received and expended by that family treatment court, in a manner prescribed by the state court administrative office.

Public Policy Position
HB 5340

Oppose as Drafted

Explanation

Recognizing the significant value that specialty courts provide to both the legal system and the public, the Committee voted to support the concept of a family treatment court, but to oppose House Bill 5340 as drafted. The Committee raised two principal concerns about the bill language:

First, the legislation limits judicial discretion by prohibiting participation in the proposed family treatment courts by a "violent offender." The Committee found this blanket approach to be especially notable given that legislation (HB 5782-5484) is presently pending in the State House of Representatives to permit judicial discretion to admit violent offenders, under specified circumstances, in other specialty courts.

Second, the legislation would require program participants to sign a written waiver of their right to counsel. Such a mandatory waiver of counsel never serves to increase access to justice. Moreover, a significant and troubling power imbalance would be created when prosecutors and lawyer-guardian ad litems are permitted to participate in family treatment court proceedings, thereby affording other parties' legal representation, while the program participants are denied representation.

Position Vote:

Voted For position: 19
Voted against position: 0
Abstained from vote: 0
Did not vote (absence): 8

***Keller* Permissibility Explanation:**

The creation of a properly structured family treatment court would expand access to the courts and the availability of legal services and, by providing the courts with innovative tools to address cases for which the traditional family court system may be poorly suited, improve the functioning of the courts. Conversely, the creation of a family treatment court that does not address the drafting concerns identified by the Committee has the potential to reduce access to legal services and representation. As such, HB 5340 is *Keller*-permissible.

Contact Persons:

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SBM State Bar of Michigan | CRIMINAL LAW SECTION

Public Policy Position
HB 5340

Support

Position Vote:
Voted for position: 15
Voted against position: 0
Abstained from vote: 2
Did not vote (absent): 0

***Keller* Permissibility Explanation:**
The improvement of the functioning of the courts
The availability of legal services to society

Contact Person: Sofia Nelson
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Public Policy Position
HB 5340

Oppose

Explanation:
There was general consensus among the Family Law Council that the concept of a family treatment court, if properly implemented, can be very impactful. There were concerns about certain provisions in the bill as drafted, including a provision that an individual must waive their right to counsel to enter the program. Other concerns raised included the fact that commission of a "violent crime" in the past disqualified an individual from the program, regardless of the circumstances of the crime, and the length of time that has passed since. It was agreed that judicial discretion should be provided for in the bill so as to allow a judge to consider the specifics facts and circumstances and allow an individual into the program. Such judicial discretion is not provided for in the current draft of the bill.

Position Vote:
Voted for position: 16
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 5

***Keller* Permissibility Explanation:**
This bill provides for the improvement of the functioning of the court by creating a family drug treatment court, which would include at least one circuit court judge who has presided over family treatment court. The bill further impacts the availability of legal services to society, in that it requires an individual seeking to enter the program to waive their right to legal counsel.

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SBM STATE BAR OF MICHIGAN

To: Members of the Public Policy Committee
Board of Commissioners

From: Governmental Relations Staff

Date: January 12, 2022

Re: HB 5482 - HB 5484 — Violent Offender Participation in Problem Solving Courts

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Background

Taken together, House Bills 5482 – 5484 would permit violent offenders to be admitted as participants in drug treatment courts and mental health courts. Such offenders are categorially excluded from participation today.

HB 5482 would amend Sec. 1066 of the Revised Judicature Act, 1961 PA 236, which prescribes the findings a court must make before an individual is admitted into a drug treatment court. Current law requires that the court find that the individual is not a violent offender.[1] HB 5482 would permit the court to find either that the individual is not a violent offender or permit a violent offender to be admitted as a participant if the drug treatment court judge and prosecuting attorney, in consultation with any known victim in the instant case, consent to such admission.

HB 5483 would amend Sec. 1093 of the Revised Judicature Act, 1961 PA 236. This section presently has a categorical exclusion of violent offenders[2] from admission to a mental health court. The bill would permit a mental health court judge to admit a violent offender if the judge and prosecuting attorney, in consultation with any known victim in the instant case, consent to the admission.

House Bill 5484 would amend Sec. 1074 of the Revised Judicature Act, 1961 PA 236, which specifies conditions for an individual's continued participation in a drug treatment court program. Current law requires that a drug treatment court be notified if a participant is accused of a new crime and that the judge then consider whether to terminate the individual's participation as a result. In the event that a participant is convicted of a felony offense that occurred after admission to the drug treatment court, the statute requires the termination of participation. HB 5484 would permit a drug treatment court judge the discretion to allow continued participation in the felony circumstance after consultation with the treatment team and agreement by the prosecuting attorney.

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[1] MCL 600.1060 defines a "violent offender" for the purposes of a drug treatment court as "an individual who is currently charged with or has pled guilty to, or, if the individual is a juvenile, is currently alleged to have committed or has admitted responsibility for, an offense involving the death of or serious bodily injury to any individual, whether or not any of the circumstances are an element of the offense, or an offense that is criminal sexual conduct of any degree."

[2] MCL 600.1090 defines "violent offender" for the purposes of a mental health court as "an individual who is currently charged with, or has been convicted of, an offense involving the death of, or a serious bodily injury to, any individual, whether or not any of these circumstances are an element of the offense, or with criminal sexual conduct in any degree."

Keller Considerations

These bills, taken together or individually, pertain to the functioning of the courts by prescribing the scope of a judge's discretion to permit a violent offender to participate in a problem-solving court and the process that must be followed to permit participation. They also impact the availability of legal services by expanding access to problem solving courts to violent offenders. As such, HB 5482, HB 5483, and HB 5484 are *Keller*-permissible because they implicate both the functioning of the courts and the availability of legal services. Note that prior legislation concerning specialty courts has also been considered *Keller*-permissible by the Bar on this basis.

Keller Quick Guide

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

Staff Recommendation

HB 5482, HB 5483, and HB 5484 implicate both the functioning of the courts and the availability of legal services. They, therefore, individually or taken together, satisfy the requirements of *Keller* and may be considered on their merits.

HOUSE BILL NO. 5482

October 27, 2021, Introduced by Reps. Howell, LaGrand, Anthony, Brenda Carter, Cavanagh, Hood, Haadsma, Hertel, Weiss, Tyrone Carter, Kuppa, Young, Sowerby, Aiyash, Brabec, Peterson and Yancey and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled

"Revised judicature act of 1961,"

by amending section 1066 (MCL 600.1066), as added by 2004 PA 224.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1066. Before an individual is admitted into a drug treatment court, the court shall find on the record, or place a statement in the court file pertaining to, all of the following:

(a) The individual is dependent upon or abusing drugs or alcohol and is an appropriate candidate for participation in the

drug treatment court.

(b) The individual understands the consequences of entering the drug treatment court and agrees to comply with all court orders and requirements of the court's program and treatment providers.

(c) The individual is not an unwarranted or substantial risk to the safety of the public or any individual, based upon the screening and assessment or other information presented to the court.

(d) ~~The~~ **Either the** individual is not a violent offender **or the drug treatment court judge and the prosecuting attorney in consultation with any known victim in the instant case consent to the violent offender being admitted to the drug treatment court.**

(e) The individual has completed a preadmission screening and evaluation assessment under section 1064(3) and has agreed to cooperate with any future evaluation assessment as directed by the drug treatment court.

(f) The individual meets the requirements, if applicable, under section 7411 of the public health code, 1978 PA 368, MCL 333.7411, section 11 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11, section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a, section 1 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.1, section 350a of the Michigan penal code, 1931 PA 328, MCL 750.350a, or section 430 of the Michigan penal code, 1931 PA 328, MCL 750.430.

(g) The terms, conditions, and the duration of the agreement between the parties, especially as to the outcome for the participant of the drug treatment court upon successful completion by the participant or termination of participation.

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

HOUSE BILL NO. 5483

October 27, 2021, Introduced by Reps. LaGrand, Howell, Anthony, Brenda Carter, Cavanagh, Hood, Haadsma, Hertel, Weiss, Tyrone Carter, Kuppa, Young, Sowerby, Aiyash, Brabec, Peterson and Yancey and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled

"Revised judicature act of 1961,"

by amending section 1093 (MCL 600.1093), as amended by 2018 PA 591.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1093. (1) Each mental health court shall determine whether an individual may be admitted to the mental health court. ~~No~~ **An** individual ~~has~~ **does not have** a right to be admitted into a mental health court. Admission into a mental health court program is at the discretion of the court based on the individual's legal

or clinical eligibility. An individual may be admitted to mental health court regardless of prior participation or prior completion status. ~~However, in no case shall~~ **Unless the mental health court judge and the prosecuting attorney in consultation with any known victim in the instant case consent**, a violent offender **must not** be admitted into mental health court.

(2) In addition to admission to a mental health court under this chapter, an individual who is eligible for admission under this chapter may also be admitted to a mental health court under any of the following circumstances:

(a) The individual has been assigned the status of youthful trainee under section 11 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11.

(b) The individual has had criminal proceedings against him or her deferred and has been placed on probation under any of the following:

(*i*) Section 7411 of the public health code, 1978 PA 368, MCL 333.7411.

(*ii*) Section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a.

(*iii*) Section 350a or 430 of the Michigan penal code, 1931 PA 328, MCL 750.350a and 750.430.

(3) To be admitted to a mental health court, an individual shall cooperate with and complete a preadmission screening and evaluation assessment and shall submit to any future evaluation assessment as directed by the mental health court. A preadmission screening and evaluation assessment must include all of the following:

(a) A review of the individual's criminal history. A review of

the law enforcement information network may be considered sufficient for purposes of this subdivision unless a further review is warranted. The court may accept other verifiable and reliable information from the prosecution or defense to complete its review and may require the individual to submit a statement as to whether or not he or she has previously been admitted to a mental health court and the results of his or her participation in the prior program or programs.

(b) An assessment of the risk of danger or harm to the individual, others, or the community.

(c) A mental health assessment, clinical in nature, and using standardized instruments that have acceptable reliability and validity, meeting diagnostic criteria for a serious mental illness, serious emotional disturbance, co-occurring disorder, or developmental disability.

(d) A review of any special needs or circumstances of the individual that may potentially affect the individual's ability to receive mental health or substance abuse treatment and follow the court's orders.

(4) Except as otherwise permitted in this chapter, any statement or other information obtained as a result of participating in a preadmission screening and evaluation assessment under subsection (3) is confidential and is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and must not be used in a criminal prosecution, unless it reveals criminal acts other than, or inconsistent with, personal drug use.

(5) The court may request that the department of state police provide to the court information contained in the law enforcement

information network pertaining to an individual applicant's criminal history for the purposes of determining an individual's eligibility for admission into the mental health court and general criminal history review.

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

HOUSE BILL NO. 5484

October 27, 2021, Introduced by Reps. Yancey, LaGrand, Howell, Anthony, Cavanagh, Hood, Haadsma, Weiss, Tyrone Carter, Young, Kuppa, Sowerby, Aiyash, Brabec and Peterson and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled

"Revised judicature act of 1961,"

by amending section 1074 (MCL 600.1074), as added by 2004 PA 224.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1074. (1) In order to continue to participate in and successfully complete a drug treatment court program, an individual shall comply with all of the following:

(a) Pay all court ordered fines and costs, including minimum state costs.

(b) Pay the drug treatment court fee allowed under section

1070(4).

(c) Pay all court ordered restitution.

(d) Pay all crime ~~victims~~ **victims'** rights assessments under section 5 of 1989 PA 196, MCL 780.905.

(e) Comply with all court orders, violations of which may be sanctioned ~~according to~~ **at** the court's discretion.

(2) The drug treatment court must be notified if the participant is accused of a new crime, and the judge shall consider whether to terminate the participant's participation in the drug treatment program in conformity with the memorandum of understanding under section 1062. If the participant is convicted of a felony for an offense that occurred after the defendant is admitted to drug treatment court, the judge shall terminate the participant's participation in the program **unless, after consultation with the treatment team and the agreement of the prosecuting attorney, the judge decides to continue the participant in the program.**

(3) The court shall require that a participant pay all fines, costs, the fee, restitution, and assessments described in subsection (1)(a) to (d) and pay all, or make substantial contributions toward payment of, the costs of the treatment and the drug treatment court program services provided to the participant, including, but not limited to, the costs of urinalysis and such testing or any counseling provided. However, if the court determines that the payment of fines, the fee, or costs of treatment under this subsection would be a substantial hardship for the individual or would interfere with the individual's substance abuse treatment, the court may waive all or part of those fines, the fee, or costs of treatment.

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

Public Policy Position
HB 5482 – HB 5484

HB 5482 – Support with Amendment
HB 5483 - Support
HB 5484 - Support

Explanation
The Committee voted unanimously to support HB 5482 with the amendment proposed by the Criminal Jurisprudence & Practice Committee: "to amend MCL 600.1064(1) to align that provision's language related to drug treatment court eligibility requirements for violent offenders with the language proposed in HB 5482. Amending only one section will create a statutory conflict and unnecessary confusion."

The Committee voted unanimously to support HB 5483 as drafted.

The Committee voted unanimously to support HB 5484 as drafted.

Taken together, these three bills would expand access to successful drug and mental health treatment courts by providing judges and prosecutors with the discretion, in consultation with any known victim, to admit violent offenders as program participants.

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

***Keller* Permissibility Explanation:**
By permitting judges and prosecutors with the discretion to admit violent offenders to both drug and mental health treatment courts, HBs 5482-5484 would increase the number of defendants eligible to become program participants and thereby improve access to legal services for eligible defendants. Additionally, by providing courts with innovative tools to address cases for which the traditional criminal legal system may be poorly suited, these bills will improve the functioning of the courts. As such, each bill is *Keller*-permissible.

Contact Persons:
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Public Policy Position
HB 5482

Support with Amendment

Explanation:
The committee voted unanimously to support HB 5482. The committee further recommends that legislation be introduced to amend MCL 600.1064(1) to align that provision's language related to drug treatment court eligibility requirements for violent offenders with the language proposed in HB 5482. Amending only one section will create a statutory conflict and unnecessary confusion.

Position Vote:
Voted For position: 18
Voted against position: 0
Abstained from vote: 0
Did not vote (absence): 6

***Keller* Permissibility Explanation:**
The committee agreed that legislation is *Keller* permissible because it would affect the functioning of the courts by altering the procedure by which violent offenders are permitted to participate in drug treatment court programs. Additionally, the legislation would increase the number of individuals eligible to enter the drug treatment court system, and thereby improve access to legal services, by expanding eligibility for these programs to encompass violent offenders with the consent of the prosecuting attorney and judge, in consultation with any known victim in the instant case.

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SBM State Bar of Michigan | CRIMINAL LAW SECTION

Public Policy Position
HB 5482

Support

Position Vote:
Voted for position: 20
Voted against position: 1
Abstained from vote: 0
Did not vote (absent): 0

Keller Permissibility Explanation:
The improvement of the functioning of the courts.

Contact Person: Sofia Nelson
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Public Policy Position
HB 5483

Support

Explanation:
The committee voted unanimously to support HB 5483. The committee believes there is value to defendants, the courts, and the community in providing expanded access to problem solving courts.

Position Vote:
Voted For position: 18
Voted against position: 0
Abstained from vote: 0
Did not vote (absence): 6

***Keller* Permissibility Explanation:**
The committee agreed that legislation is *Keller* permissible because it would affect the functioning of the courts by altering the procedure by which violent offenders are permitted to participate in mental health court programs. Additionally, the legislation would increase the number of individuals eligible to enter the mental health court system, and thereby improve access to legal services, by expanding eligibility for these programs to encompass violent offenders with the consent of the prosecuting attorney and judge, in consultation with any known victim in the instant case.

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SBM State Bar of Michigan | CRIMINAL LAW SECTION

Public Policy Position
HB 5483

Support

Position Vote:
Voted for position: 21
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 0

Keller Permissibility Explanation:
The improvement of the functioning of the courts.

Contact Person: Sofia Nelson
Email: snelson@sado.org

Public Policy Position
HB 5484

Support

Explanation:
The committee voted unanimously to support HB 5484. The committee believes there is value to defendants, the courts, and the community in providing expanded access to problem solving courts.

Position Vote:
Voted For position: 21
Voted against position: 0
Abstained from vote: 0
Did not vote (absence): 3

***Keller* Permissibility Explanation:**
The committee agreed that legislation is *Keller* permissible because it would affect the functioning of the courts by altering the procedure by which violent offenders are permitted to participate in drug treatment court programs. Additionally, the legislation would increase the number of individuals eligible to enter the drug treatment court system, and thereby improve access to legal services, by expanding eligibility for these programs to encompass violent offenders with the consent of the prosecuting attorney and judge, in consultation with any known victim in the instant case.

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SBM State Bar of Michigan | CRIMINAL LAW SECTION

Public Policy Position
HB 5484

Support

Position Vote:
Voted for position: 17
Voted against position: 3
Abstained from vote: 1
Did not vote (absent): 0

Keller Permissibility Explanation:
The improvement of the functioning of the courts.

Contact Person: Sofia Nelson
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SBM STATE BAR OF MICHIGAN

To: Members of the Public Policy Committee
Board of Commissioners

From: Governmental Relations Staff

Date: January 12, 2022

Re: HB 5541 (H-1) – Implementing the Uniform Bar Examination in Michigan

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Background

House Bill 5541 is companion legislation to amendments to the Rules for the Board of Law Examiners to implement the Uniform Bar Exam in Michigan, which were approved by the Court in October 2021. The House Judiciary Committee held two committee hearings on the measure, adopted a substitute, and reported the bill, as substituted, to the full House with a recommendation that it be approved. The substitute was then adopted by the full House on January 12 and the bill was advanced to the order of Third Reading where it is presently awaiting final passage. This memorandum describes the H-1 substitute version of HB 5541.

Generally speaking, the bill makes three substantive changes to the Revised Judicature Act, 1961 PA 236: (1) it authorizes the use of the Uniform Bar Exam ("UBE"); (2) it removes the requirement that an applicant for admission by motion express an intention to maintain an office in the state; and (3) it adds a fee of $400 for admission by UBE score transfer. Background information related to each of these statutory changes is provided in turn below.

Uniform Bar Examination

The Uniform Bar Examination ("UBE") is a uniformly administered, graded, and scored bar exam that results in a portable score, which applicants may use to seek admission to the bar across UBE jurisdictions. The UBE is coordinated by the National Conference of Bar Examiners and consists of three components: the Multistate Bar Examination ("MBE"), the Multistate Essay Examination ("MEE"), and two Multistate Performance Test ("MPT") tasks. While the content of these three components is uniform across the nation, each user jurisdiction retains the ability to determine, among other things, who may sit for the exam, educational requirements for admission, whether to require a separate, jurisdiction-specific test, and who will ultimately be admitted to the bar. In short, the UBE provides applicants with a score, not a status. Presently, thirty-eight states, the District of Columbia, and one U.S. territory utilize the UBE.

At the July 23, 2021 meeting, the Board of Commissioners reviewed ADM File No. 2019-34, which proposed amendments to the Rules for the Board of Law Examiners to implement the UBE in Michigan. The Board voted overwhelmingly (with only one vote in opposition) to support the

proposed amendments and sent a letter to the Court to that effect on July 30, 2021.[1] The proposed amendments were discussed at the September 22 Public Administrative Hearing and adopted by the Court shortly thereafter. The amendments were scheduled to take effect on March 1, 2022, with the expectation that the UBE would be used for the July 2022 administration of the bar exam in Michigan. However, the Court noted in its order that "[d]elay in companion legislative action may defer implementation of these rules." House Bill 5541 is the companion legislation alluded to by the Court. When it became apparent that the legislation would not be enacted prior to the end of 2021, the Court issued an order extending the effective date of the amendments to August 1, 2022, with the expectation that the UBE will be used for the February 2023 administration of the bar exam.

Amending MCL 600.946

On December 21, 2011, the Court published for consideration a proposed amendment to Rule 5 of the Rules for the Board of Law Examiners:

> This proposed amendment would eliminate the requirement that an applicant for admission by motion be required to express an intention to maintain an office in the state. Michigan is among a minority of states that requires that assertion, and maintaining this provision has resulted in at least one state rejecting the petition for admission of a Michigan lawyer because Michigan retains this type of requirement.[2]

Chief Justice Young noted in his concurrence with the Court's publication order that "the requirement that foreign attorneys seeking to practice law in Michigan must maintain a law office in Michigan is imposed by MCL 600.946" and therefore a statutory amendment is necessary to effectuate a change in policy. To that end, Chief Justice Young wrote: "If the State Bar of Michigan supports the change, I encourage the bar to petition the Legislature and seek amendment of MCL 900.946. The proposed rule change can have no force or effect unless a legislative change is accomplished."[3]

The Civil Procedure & Courts Committee recommended that the Board oppose the proposed rule amendment having "concluded that [it] creates a conflict between the court rule and the statute."[4] The Executive Committee considered the matter at its March 27, 2012 meeting and voted to support the rule amendment with a recommendation "that the Court adopt the amendment with an effective date of January 1, 2013, to allow the Legislature to act on a corresponding statutory change consistent with the proposed amendment."[5]

The Court reviewed the proposed amendment at the May 16, 2012 Public Administrative Hearing and adopted the amendment, with an effective date of January 1, 2013. The corresponding statutory

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[1] Additional comments submitted to the Court on ADM File No. 2019-34 are listed below: 06/18/2021 Attorney Scott Bassett; 07/19/2021 Attorney Theresa Bodwin; 08/04/2021 Attorney John Reardon; 08/24/2021 Rebecca Wise; 08/26/2021 Reham Mahdi; 08/31/2021 Michael Wayne; 08/31/2021 Nick Goedde; 09/01/2021 Ashley Miller; 09/01/2021 Sarah Shea

[2] ADM File No. 2010-31 – Proposed Amendment of Rule 5 of the Rules for the Board of Law Examiners (published December 21, 2011).

[3] ADM File No. 2010-31 – Proposed Amendment of Rule 5 of the Rules for the Board of Law Examiners (published December 21, 2011).

[4] Civil Procedure & Courts Committee Position on ADM File No. 2010-31 (February 18, 2012).

[5] SBM Letter to the Court Regarding ADM File No. 2010-31 (March 29, 2012).

change has not been changed, although it has been part of legislation supported by the State Bar in the past, most recently SB 742 of 2016.

Bar Examination Fees

The range of fees that may be charged for admission to the bar is set by the Legislature in MCL 600.931. The current fee ranges were established nearly 22 years ago by 2000 PA 86. Section 931 authorizes the Court, by administrative order or rule, to increase fees within legislatively prescribed limits. At present, the Court has reached the limit of the authority set by statute and cannot increase bar examination fees without a statutory amendment. As introduced, HB 5541 adjusted the authorized fee ranges to give the Court authority to raise examination fees. As substituted, the existing ranges are left undisturbed, but a $400 fee for admission by UBE score transfer is added.

Keller Considerations

The "guiding standard" established by the United States Supreme Court in *Keller* for assessing the permissibility of Bar engagement on a matter of public policy is that the matter be "necessarily or reasonably" related to "the purpose of regulating the legal profession." *Keller v State Bar of California*, 496 US 1, 14; 110 S Ct 2228, 2236; 110 L Ed 2d 1 (1990). The question of who may be admitted to the practice of law, based on what requirements, is a central, necessary question—perhaps *the* central question—of regulating the legal profession. All other questions of the manner in which attorneys practice their craft follow necessarily from the threshold question of whether or not an individual is permitted to practice. Additionally, ensuring that attorneys possess the knowledge and skill required to effectively represent the interests of their clients is necessary to maintaining the integrity of the legal profession and protecting the public. How Michigan chooses to examine applicants for admission to the bar and whether applicants by motion are required to maintain an office in the state both squarely implicate these considerations and are therefore *Keller*-permissible.

Likewise, the provision of HB 5541 (H-1) related to examination fees is *Keller*-permissible as reasonably related to regulating the legal profession. A fee is necessary to the administration of the bar examination. The cost of admission also has implications for how accessible the legal profession is to prospective attorneys.

Keller Quick Guide

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

Staff Recommendation

House Bill 5541 is necessarily and reasonably related to the regulation of the legal profession. Its components implicate questions related to the regulation of attorneys, the integrity of the legal profession, and the functioning of courts. The bill is therefore *Keller*-permissible.

SUBSTITUTE FOR

HOUSE BILL NO. 5541

A bill to amend 1961 PA 236, entitled

"Revised judicature act of 1961,"

by amending sections 931, 934, and 946 (MCL 600.931, 600.934, and 600.946), section 931 as amended by 2000 PA 86 and section 934 as amended by 2020 PA 369, and by adding section 935.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 931. (1) The fees required to be paid by each applicant for admission to the bar ~~shall~~ **must** be paid to the board of law examiners, and ~~shall~~ **must** be deposited in the general fund for the restricted purpose of expenditures of the supreme court related to the administration of the board of law examiners.

(2) Subject to subsection (3), the fees described in this section are as follows:

(a) The fee for applying for examination is ~~$175.00 for an examination occurring before January 1, 2001, or~~ $300.00. ~~for an examination occurring after January 1, 2001.~~

(b) The fee for applying for reexamination or recertification is ~~$100.00 for a reexamination or recertification occurring before January 1, 2001, or~~ $200.00. ~~for a reexamination or recertification occurring after January 1, 2001.~~

(c) The fee for admission without examination is ~~$400.00 for an admission without examination before January 1, 2001, or~~ $600.00. ~~for an admission without examination after January 1, 2001.~~

(d) The additional fee for late filing of **an** application or transfer of an application is $100.00.

(e) The fee for admission by uniform bar examination score transfer is $400.00.

(3) The supreme court, by administrative order or rule, may increase the amounts prescribed in subsection (2)(a), (b), or (c) within the following limits:

(a) The fee for applying for an examination ~~occurring after January 1, 2002~~ may be increased to not more than $400.00.

(b) The fee for applying for a reexamination or recertification ~~occurring after January 1, 2002~~ may be increased to not more than $300.00.

(c) The fee for admission without examination ~~after January 1, 2002~~ may be increased to not more than $800.00.

(4) Each member of the board is entitled to receive compensation for his or her services as are authorized by the supreme court and appropriated by the legislature, and in addition the actual and necessary expenses incurred in the discharge of his

or her duties as a member of the board. The expenses of the board ~~shall~~ **must** be paid upon certification by the supreme court pursuant to the procedures established by the supreme court.

(5) As used in this section:

(a) "Uniform bar examination" means the examination as defined and administered by the National Conference of Bar Examiners.

(b) "Uniform bar examination score transfer" means the transfer to this state of a uniform bar examination score achieved in another jurisdiction for purposes of admission to the state bar.

Sec. 934. (1) An individual is qualified for admission to the bar of this state if he or she proves to the satisfaction of the board of law examiners that he or she is an individual of good moral character, is 18 years of age or older, has the required general education, learning in the law, and fitness and ability to enable him or her to practice law in the courts of record of this state, and that he or she intends in good faith to practice or teach law in this state. Additional requirements concerning the qualifications for admission are contained in subsequent sections of this chapter. For purposes of this subsection, good moral character is determined by the board of law examiners and 1974 PA 381, MCL 338.41 to 338.47, does not apply to that determination.

(2) An individual may elect to use the ~~multi-state~~ **multistate** bar examination scaled score that he or she achieved on a ~~multi-state~~ **multistate** bar examination administered in another state or territory when applying for admission to the bar of this state, but only if all of the following are met:

(a) The score that the individual elects to use was achieved on a ~~multi-state~~ **multistate** examination administered within the 3 years immediately preceding the ~~multi-state~~ **multistate** bar

examination in this state for which the individual would otherwise sit.

(b) The individual achieved a passing grade on the bar examination of which the ~~multi-state~~ **multistate** examination the score of which the individual elects to use was a part.

(c) The ~~multi-state~~ **multistate** examination the score of which the individual elects to use was administered in a state or territory that provides a reciprocal right to elect to use the score achieved on the ~~multi-state~~ **multistate** examination administered in this state to Michigan residents who are seeking admission to the bar of that state or territory.

(d) The individual earns a grade on the essay portion of the bar examination that when combined with the transferred ~~multi-state~~ **multistate** scaled score constitutes a passing grade for that bar examination.

(e) The individual otherwise meets all requirements for admission to the bar of this state.

(3) The state board of law examiners shall disclose to an individual who elects under subsection (2) to transfer the ~~multi-state~~ **multistate** bar examination scaled score achieved on an examination administered in another state or territory the score the individual achieved as soon as that score is received by the board regardless of whether the individual could have obtained that score in the jurisdiction in which the examination was administered. This subsection does not require disclosure by the board of the score achieved on a ~~multi-state~~ **multistate** bar examination administered in another state or territory until the scores achieved on that examination administered in Michigan are released.

(4) An individual who elects to use a multistate bar examination scaled score as described in subsection (2) shall not receive a portable uniform bar examination score.

(5) As used in this section:

(a) "Portable uniform bar examination score" means a uniform bar examination score achieved in another jurisdiction for purposes of admission to the bar that meets this state's multistate bar examination minimum passing score as established by the board of law examiners.

(b) "Uniform bar examination" means the examination as defined and administered by the National Conference of Bar Examiners.

Sec. 935. (1) An individual may elect to use the uniform bar examination score that the individual achieved on a uniform bar examination administered in another state or territory when applying for admission to the bar of this state, if all of the following occur:

(a) The score that the individual elects to use was achieved on a uniform bar examination administered within the 3 years immediately preceding the uniform bar examination in this state for which the individual would otherwise sit.

(b) The score that the individual elects to use meets the passing uniform bar examination score for this state set by the board of law examiners.

(c) The individual otherwise meets all requirements for admission to the bar of this state.

(2) The board of law examiners, in its discretion, may administer in conjunction with the uniform bar examination a Michigan-law-specific component as part of the requirements for admission to the bar of this state.

(3) In the event of a national or state emergency, the board of law examiners, in its discretion, may administer an alternate examination consistent with the standards for entry into the bar of this state. If the alternate examination does not meet the portability requirements of the uniform bar examination, the board of law examiners may enter into reciprocal agreements with other uniform bar examination states to provide for agreed-upon score portability between those states and this state.

(4) The requirement that the board of law examiners accept a uniform bar examination score from another state is not effective until this state first administers the uniform bar examination.

(5) As used in this section, "uniform bar examination" means the examination as defined and administered by the National Conference of Bar Examiners.

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

(a) ~~(1)~~ He **or she** is **a member** in good standing ~~at~~ **of** the bar of ~~such~~ **that** other state, territory, or district ~~,~~ and has the qualifications as to moral character, citizenship, age, general education, fitness, and ability required for admission to the bar of this state. ~~; and~~

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

~~incorporated under the laws of~~ **located in** this state. ~~; and~~

(c) ~~(3) His~~ **Subject to subsections (2) and (3), his or her** principal business or occupation for at least 3 **years** of the 5 years immediately preceding his **or her** application ~~has been either the~~ **was any of the following:**

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

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

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

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

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

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

Why it's Time for Michigan to Adopt the Uniform Bar Examination

What is the Uniform Bar Examination (UBE)?

The UBE is a nationally administered bar examination that tests knowledge of general principles of law, legal and factual analysis, reasoning, and communication skills to determine readiness to enter legal practice in any jurisdiction. Every state that offers the UBE is afforded the opportunity to test for an understanding of jurisdiction-specific law. Applicants who take the UBE may transfer their scores to seek admission in other UBE jurisdictions.

Why adopt the UBE?

- Strengthens the bar exam to test for lawyering skills not tested under the current bar examination.
- Ends Michigan's status as "behind the times" when it comes to examining new lawyers.
- Continues to protect the public by assuring that Michigan lawyers are appropriately prepared to practice law and serve their clients both in Michigan and nationwide.
- Attracts graduates from other states because score portability allows them to transfer their scores to Michigan and practice here.
- Continues to provide necessary accommodations for test takers with disabilities.

What is the current bar examination system?

- Law school graduates who want to practice here take a two-part Michigan bar exam:
  - The Multistate Bar Exam (MBE)–a 200 question multiple-choice test developed by the National Conference of Bar Examiners and used by 54 jurisdictions nationwide.
  - Fifteen essay questions prepared by the Michigan Board of Law Examiners (BLE) consisting of Michigan law specific questions that are vetted by the BLE and answers reviewed by state law schools prior to the grading process beginning. Essay topics range from contracts to worker's compensation.
- In most jurisdictions nationwide, lawyers who have practiced at least five years can be admitted to the bar without reexamination, creating a "gap" for new Michigan lawyers.

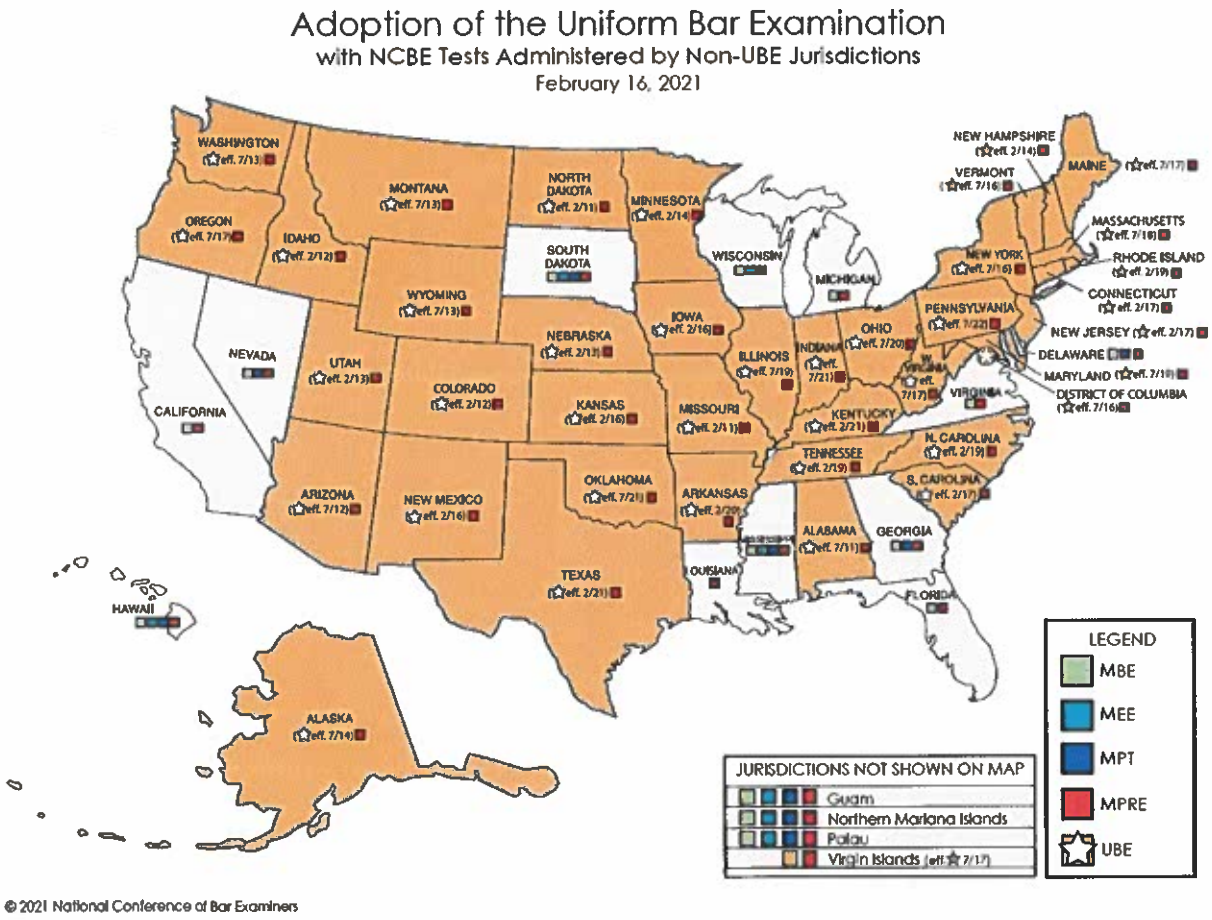
How is the UBE different from Michigan's exam?

- In use by 40 states (see map on reverse), the UBE is written, scored, and administered under the supervision of the National Conference of Bar Examiners, in conjunction with the Michigan Board of Law Examiners. This approach provides for consistency across jurisdictions.
- Like the Michigan Bar Exam, the UBE includes the Multistate Bar Exam; however, the UBE also includes the Multistate Essay Exam (MEE) and the Multistate Performance Test (MPT).
  - The MEE is a six-question essay test that has been adopted by 47 jurisdictions.
  - The MPT is a lawyering skills test that been adopted by 50 jurisdictions and includes basic legal skills such as drafting a will or writing a letter to a client.

Bar Exam Comparisons	
Jurisdictions with Michigan's bar exam system	3
Jurisdictions using Uniform Bar Examination (UBE)	40
Jurisdictions using the Multistate Essay Exam (MEE)	47
Jurisdictions using the Multistate Performance Test (MPT)	50
Jurisdictions using the Multistate Bar Exam (MBE)	54

What statutory changes might be needed to adopt the UBE?

- Revision of MCL 600.931 to include a fee for admission by the UBE.
- Revision of MCL 600.934 to include a timeframe limit of three years for transfers of UBE scores. Currently in Michigan, transfers of Multistate Bar Exam scores are limited to three years. In UBE states, the limits range from two to five years.
- A new section will need to be added to the Public Act providing for admission to the State Bar by transferred UBE score.



SBM STATE BAR OF MICHIGAN

To: Members of the Public Policy Committee
Board of Commissioners

From: Governmental Relations Staff

Date: January 12, 2022

Re: HB 5593 - CMHSP Oversight of Misdemeanor Competency Exams

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Background
In short, House Bill 5593 would amend the Code of Criminal Procedure, 1927 PA 175, to give Community Mental Health Services Programs greater oversight and control over competency exams in misdemeanor cases.

The bill would permit either the prosecuting attorney or defense counsel to bring a motion to refer an individual to the community mental health services program at the time they are charged with a misdemeanor offense. When such a motion is made under the proposed provision, the court is required to grant it. The prosecuting attorney or defense counsel are also permitted to file a petition for a clinical evaluation. The legislation would require the community mental health services program to evaluate a referred individual's needs and to connect the person with appropriate mental health programming/treatment. The bill would require the community mental health services program to provide the findings of its assessment to the prosecuting attorney and defense counsel if an appropriate release is provided. HB 5593 would require a person who is deemed incompetent to stand trial on a misdemeanor be referred to the community mental health services program for further review. If an individual is determined to be incompetent under this new subsection, the bill would require dismissal of the criminal case. The prosecuting attorney is also permitted under the bill to file a probate action to determine if the person is a "person requiring treatment," as defined in MCL 330.11401. If the individual is determined not to be a person requiring treatment, the community mental health services program is mandated to connect the person to appropriate programming/treatment as determined by the program.

***Keller* Considerations**
HB 5593 would significantly impact the functioning of the courts by altering the procedure by which courts make competency determinations in misdemeanor cases and, as a result, on which cases are removed from the court's docket. As such, the bill is *Keller*-permissible.

***Keller* Quick Guide**

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

Staff Recommendation

The procedures proposed in HB 5593 would have a significant impact on the functioning of the courts. The bill is therefore *Keller*-permissible and may be considered on its merits.

HOUSE BILL NO. 5593

December 01, 2021, Introduced by Rep. Calley and referred to the Committee on Health Policy.

A bill to amend 1927 PA 175, entitled

"The code of criminal procedure,"

(MCL 760.1 to 777.69) by adding section 20b to chapter VIII.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER VIII

Sec. 20b. (1) At the time a misdemeanor offense is charged, or at any later time before trial, the prosecuting attorney or defense counsel may bring a motion to refer the person to the community mental health services program. The court shall grant a motion for

referral to the community mental health services program made under this subsection.

(2) The community mental health services program shall evaluate the person's needs and, if appropriate, either enter or connect the person to the appropriate mental health programming to ensure that the person receives necessary mental health treatment in the community. In addition to the motion under subsection (1), the prosecuting attorney or defense counsel may file a petition for a clinical evaluation to determine whether the person is a person requiring treatment.

(3) If the appropriate authorization for the release of information is provided, the community mental health services program must provide the findings of the assessment to the prosecuting attorney and defense counsel.

(4) If a person is deemed incompetent to stand trial on a misdemeanor offense punishable by 1 year in jail or less, that person must be referred to the local community mental health services program for further review and treatment. The prosecuting attorney may file a petition with the probate court of the defendant's county of residence or of the county in which the criminal trial would be held to determine if the person is a person requiring treatment using the community mental health services program finding of incompetency as part of the required proofs. If a person is determined incompetent under this subsection, the criminal case must be dismissed.

(5) If after a petition by the prosecuting attorney under subsection (4) the person is determined by the probate court or community mental health services program to not be a person requiring treatment, the community mental health services program

must enter or connect the person to the appropriate mental health programming to ensure the person receives treatment as deemed appropriate by the community mental health services program.

(6) As used in this section, "person requiring treatment" means that term as defined in section 401 of the mental health code, 1974 PA 258, MCL 330.1401.

Public Policy Position
HB 5593

Oppose

Explanation
While the Committee supports providing defendants in need with mental health referrals and treatment, it voted unanimously to oppose the legislation as drafted. Among the concerns raised by the Committee during its deliberations were role confusion between the court's obligation to determine competency and the community mental health program's evaluation of whether an individual requires mental health programming or treatment, the wisdom (and ethical considerations) of permitting a prosecutor to file a probate proceeding against a defendant over the objection of the defendant's attorney, concerns about defendant privacy, concerns about how the legislation would interact with MCR 6.125 (Mental Competency Hearing), and the possibility that an unfunded mandate of this magnitude would negatively impact the functioning of the courts.

Position Vote:
Voted For position: 16
Voted against position: 0
Abstained from vote: 0
Did not vote (absence): 11

***Keller* Permissibility Explanation:**
The Committee agreed (though the vote was not unanimous) that HB 5593 is *Keller*-permissible in that it would impact the functioning of the courts by prescribing the procedure by which certain misdemeanor cases are removed from the court's docket.

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

Public Policy Position
HB 5593

Explanation:
The Committee supports providing defendants with community mental health services, but opposes the legislation as drafted. Too many people charged with misdemeanors currently do not get the mental health evaluation/services that they need, but this bill will not solve that problem. In part, this is because community mental health systems across Michigan are already overtaxed and, without adequate funding, they would not have the capacity to provide the evaluations and services required under this legislation. There may be other solutions that would be more effective for evaluation purposes. Finally, there were also concerns about the unintended consequences of this bill creating a pathway where mental health treatment is embedded in the criminal system and the court's processes.

Position Vote:
Voted For position: 21
Voted against position: 0
Abstained from vote: 0
Did not vote (absence): 3

***Keller*-Permissible Explanation:**
The Committee agreed that HB 5593 is *Keller*-permissible in that it would impact the functioning of the courts by prescribing the procedure by which certain misdemeanor cases are removed from the court's docket.

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

FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS

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The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by January 1, 2022. Comments may be sent in writing to Samuel R. Smith, 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 .

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PROPOSED

The Committee proposes to amend M Crim JI 3.13 [Penalty] to remove any possible implication that the jury should find the defendant guilty so that the court could perform its duty of imposing a penalty. Deletions are in strike-through, and new language is underlined.

[AMENDED] **M Crim JI 3.13** Penalty

Possible penalty should not influence your decision. If you find the defendant guilty, it ~~I~~t is the duty of the judge to fix the penalty within the limits provided by law.

Public Policy Position
M Crim JI 3.13

Support

Explanation:
The Committee voted unanimously to support the amendment to Model Criminal Jury Instruction 3.13 as drafted. The proposed amendment provides further clarity to the jury about its duty should it "find the defendant guilty."

Position Vote:
Voted For position: 21
Voted against position: 0
Abstained from vote: 0
Did not vote (absence): 3

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

Public Policy Position
M Crim JI 3.13

Support

Position Vote:
Voted for position: 16
Voted against position: 0
Abstained from vote: 1
Did not vote (absent): 0

***Keller* Permissibility Explanation:**
The improvement of the functioning of the courts

Contact Person: Sofia Nelson
Email: snelson@sado.org

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

==========

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by January 1, 2022. Comments may be sent in writing to Samuel R. Smith, 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 to amend M Crim JI 20.11 [Sexual Act with Mentally Incapable, Mentally Disabled, Mentally Incapacitated, or Physically Helpless Person] to eliminate the element requiring that the defendant know of the complainant's mental impairment because the applicable statute, MCL 750.520b(1)(h), does not require proof of such knowledge. Deletions are in strike-through, and new language is underlined.

[AMENDED] M Crim JI 20.11 Sexual Act with Mentally Incapable, Mentally Disabled, Mentally Incapacitated, or Physically Helpless Person

(1) [Second / Third], that [*name complainant*] was [mentally incapable / mentally disabled / mentally incapacitated / physically helpless] at the time of the alleged act.

[*Choose one or more of (2), (3), (4), or (5):*]

(2) Mentally incapable means that [*name complainant*] was suffering from a mental disease or defect that made [him / her] incapable of appraising either the physical or moral nature of [his / her] conduct.

(3) Mentally disabled means that [*name complainant*] has a mental illness, is intellectually disabled, or has a developmental disability. "Mental illness" is a substantial disorder of thought or mood that significantly impairs judgment, behavior, or the ability to recognize reality and deal with the ordinary demands of

life. "Intellectual disability" means significantly subaverage intellectual functioning that appeared before [*name complainant*] was 18 years old and impaired two or more of [his / her] adaptive skills.[1] "Developmental disability" means an impairment of general thinking or behavior that originated before the age of eighteen, has continued since it started or can be expected to continue indefinitely, is a substantial burden to [*name complainant*]'s ability to function in society, and is caused by [intellectual disability as described / cerebral palsy / epilepsy / autism / an impairing condition requiring treatment and services similar to those required for intellectual disability].

(4) Mentally incapacitated means that [*name complainant*] was [temporarily] unable to understand or control what [he / she] was doing because of [drugs, alcohol or another substance given to (him / her) / something done to (him / her)] without [his / her] consent.

(5) Physically helpless means that [*name complainant*] was unconscious, asleep, or physical incapable to communicate that take part in the alleged act.

~~(6) [Third / Fourth], that the defendant knew or should have known that [name complainant] was [mentally incapable / mentally incapacitated / physically helpless] at the time of the alleged act.~~

[*Choose the appropriate option according to the charge and the evidence*:]

(6) [~~Fourth / Fifth~~ Third / Fourth], that the defendant and [*name complainant*] were related to each other, either by blood or marriage, as [*state relationship, e.g., first cousins*].

(6) [~~Fourth / Fifth~~ Third / Fourth], that at the time of the alleged act the defendant was in a position of authority over [*name complainant*], and used this authority to coerce [*name complainant*] to submit to the sexual acts alleged. It is for you to decide whether, under the facts and circumstances of this case, the defendant was in a position of authority.

Public Policy Position
M Crim JI 20.11

Support

Explanation:
The Committee voted to support the amendments to Model Criminal Jury Instruction 20.11, removing the requirement that the defendant be aware of the complainant's mental impairment in order to be charged with "criminal sexual conduct in the first degree." MCL 750.520b(1) makes no such requirement of knowledge.

Position Vote:
Voted For position: 19
Voted against position: 2
Abstained from vote: 0
Did not vote (absence): 3

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

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

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The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by January 1, 2022. Comments may be sent in writing to Samuel R. Smith, 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 .

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PROPOSED

The Committee proposes to amend M Crim JI 24.1 [Unlawfully Driving Away an Automobile] to correct the fourth element currently addressing "intent" to be in accord with the statutory language of MCL 750.413 and *People v Crosby* 82 Mich App 1 (1978). Deletions are in strike-through, and new language is underlined.

[AMENDED] M Crim JI 24.1 Unlawfully Driving Away an Automobile

(1) The defendant is charged with the crime of unlawfully driving away a motor vehicle. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the vehicle belonged to someone else.

(3) Second, that the defendant took possession of the vehicle and [drove / took] it away.

(4) Third, that these acts were both done [without authority / without the owner's permission].

(5) Fourth, that ~~the defendant intended to take possession of the vehicle and [drive / take] it away.~~ when the defendant took possession of the vehicle and drove or took it away, [he / she] did so knowing that [he / she] did not have authority to do so. It does not matter whether the defendant intended to keep the vehicle.*

[(6) Anyone who assists in taking possession of a vehicle or assists in driving or taking away a vehicle knowing that the vehicle was unlawfully possessed is also

guilty of this crime if the assistance was given with the intention of helping another commit this crime.]

Use Note

To distinguish unlawfully taking and using from UDAA, see M Crim JI 24.4.

~~*This is a specific intent crime.~~

Public Policy Position
M Crim JI 24.1

Support

Explanation:
The Committee voted to support the amendment to Model Criminal Jury Instruction 24.1 as drafted.

Position Vote:
Voted For position: 18
Voted against position: 2
Abstained from vote: 1
Did not vote (absence): 3

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

Position Adopted: January 7, 2022

Public Policy Position
M Crim JI 24.1

Oppose

Explanation:
Concern that the changes do not track the statute.

Position Vote:
Voted for position: 12
Voted against position: 3
Abstained from vote: 2
Did not vote (absent): 0

***Keller* Permissibility Explanation:**
The improvement of the functioning of the courts

Contact Person: Sofia Nelson
Email: snelson@sado.org

FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS

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PROPOSED

The Committee proposes a new instruction, M Crim JI 34.6 [Food Stamp Fraud], for crimes charged under MCL 750.300a.

[NEW] M Crim JI 34.6 Food Stamp Fraud

(1) The defendant is charged with food stamp fraud. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [used / transferred / acquired / altered / purchased / possessed / presented for redemption / transported] food stamps, coupons, or access devices. *Food stamps* or *coupons* means the coupons issued pursuant to the food stamp program established under the Food Stamp Act. An *access device* means any card, plate, code, account number, or other means of access that can be used, alone or in conjunction with another access device, to obtain payments, allotments, benefits, money, goods, or other things of value or that can be used to initiate a transfer of funds pursuant to the food stamp program.

(3) Second, that the defendant [used / transferred / acquired / altered / purchased / possessed / presented for redemption / transported] food stamps, coupons, or access devices by [*specify alleged wrongful conduct*].

(4) Third, that the defendant knew that [he / she] had [*specify alleged wrongful conduct*] when [he / she] [used / transferred / acquired / altered / purchased / possessed / presented for redemption / transported] the food stamps, coupons, or access devices.

[*Use the following where the aggregate value of food stamps allegedly exceeded $250*:]

(5) Fourth, that the aggregate value of the food stamps, coupons, or access devices was [more than $250.00 but less than $1,000 / $1,000 or more]. The aggregate value is the total face value of any food stamps or coupons resulting from the alleged [*specify alleged wrongful conduct*] plus the total value of any access devices. The value of an access device is the total value of the payments, allotments, benefits, money, goods, or other things of value that could be obtained, or the total value of funds that could be transferred, by use of the access device at the time of the violation. You may add together the various values of the food stamps, coupons, or access devices [used / transferred / acquired / altered / purchased / possessed / presented for redemption / transported] by the defendant over a period of 12 months when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.

Public Policy Position
M Crim JI 34.6

Support

Explanation:
The Committee voted unanimously to support the proposed new instruction Model Criminal Jury Instruction 34.6 as drafted.

Position Vote:
Voted For position: 21
Voted against position: 0
Abstained from vote: 0
Did not vote (absence): 3

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

Public Policy Position
M Crim JI 34.6

Support

Position Vote:
Voted for position: 13
Voted against position: 0
Abstained from vote: 4
Did not vote (absent): 0

***Keller* Permissibility Explanation:**
The improvement of the functioning of the courts

Contact Person: Sofia Nelson
Email: snelson@sado.org

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

==========

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by January 1, 2022. Comments may be sent in writing to Samuel R. Smith, 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 .

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PROPOSED

The Committee proposes a new instruction, M Crim JI 35.12 [Cyberbullying / Aggravated Cyberbullying], for crimes charged under MCL 750.411x.

[NEW] M Crim JI 35.12 Cyberbullying / Aggravated Cyberbullying

(1) The defendant is charged with [cyberbullying / aggravated cyberbullying]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant posted a message or statement about or to any other person in a public media forum used to convey information to others, such as the Internet.

(3) Second, that the message expressed an intent to commit violence against any other person and was intended to place any person in fear of bodily harm or death.

(4) Third, that the defendant intended to communicate a threat with the message or [he / she] knew that the message would be viewed as a threat.

[*Use the following only where an aggravating element has been charged*:]

(5) Fourth, that the defendant committed two or more separate non-continuous acts of harassing or intimidating behavior on different occasions.

(6) Fourth/Fifth, that the defendant's actions in this case caused [(*name complainant or other person*) to suffer permanent, serious disfigurement, serious

impairment of health, or serious impairment of a bodily function / the death of (*decedent's name*)].

Public Policy Position
M Crim JI 35.12

Support

Explanation:
The Committee voted unanimously to support the proposed new Model Criminal Jury Instruction 35.12 as drafted.

Position Vote:
Voted For position: 21
Voted against position: 0
Abstained from vote: 0
Did not vote (absence): 3

Contact Persons:
Mark A. Holsomback mahols@kalcounty.com
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