

**State Bar of Michigan
Criminal Jurisprudence and Practice Committee**

February 14, 2008 at 2:00 P.M. State Bar Building Lansing

D-R-A-F-T MINUTES

Attendees: Michael J. Brady, Michael H. Gordner, Hon. David A. Hoort, Erika Julien, Martin Krohner, John L. Livesay, J. Kevin McKay, Donna McKneelen, Valerie Newman, Richmond Riggs, Gretchen Schlaff, Samuel R. Smith

SBM Staff: Elizabeth Lyon and Carrie Sharlow

Excused: John Boufford, Richard Cunningham, Mitchell T. Foster, Abed Hammoud, Timothy Havis, Richard Levitt, Patrick M. O'Connell, Tamara Phillips, Angela Povilaitis, Shannon L.W. Schlegel

1. Call to Order – Quorum was reached at 2:10 PM
2. Old Business
 - a. [HB 4951](#) (Johnson) Crimes; homicide; delayed right to appeal for persons convicted of felony murder before November 25, 1980; provide if malice not proved. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 13 to ch. X.
Status: 6/19/07 Referred to House Judiciary

The motion to support the concept of the bill passed unanimously with twelve members voting. The committee desires to work on the language of the bill, with Valerie Newman volunteering to do so.

- b. [HB 5260](#) (Constan) Criminal procedure; search and seizure; warrants authorizing electronic interception or recording of communications; revise certain procedures for. Amends 1966 PA 189 (MCL 780.651 - 780.659) by adding sec. 2b.
Status: 9/20/07 Referred to House Judiciary

There were questions concerning the Keller permissibility of the bill. However, any bill that affects the workload of the court is deemed Keller permissible.
Committee members disliked the bill's taking away of checks and balances, along with the possibility of judge-shopping. There was also a question concerning the possibility of the judge who signed the warrant becoming a witness in the case.
The motion to oppose the bill passed unanimously with twelve members voting.

- c. [HB 5089](#) (Condino) Criminal procedure; DNA; deadline for filing petition for DNA testing in felony conviction cases; extend, and revise certain procedures for obtaining test of DNA evidence. Amends sec. 16, ch. X of 1927 PA 175 (MCL 770.16).

Status: 8/8/07 Referred to House Judiciary

The motion to support the bill passed nine to three. Those three individuals against the motion felt that this bill would open a floodgate of DNA cases and questioned as to how it would affect the state crime labs.

At the next meeting, HB 4092 will be discussed with a similar DNA context.

3. New Business:

- a. [HB 5534](#) (Tobocman) Criminal procedure; verdicts; recording of order setting aside forged deed following criminal conviction; provide for. Amends secs. 248 & 249 of [1931 PA 328](#) (MCL [750.248](#) & [750.249](#)).

Status: 12/6/07 Referred to House Judiciary

There was a question as to the Keller permissibility of this bill. However, there is a judicial function in the validating or invalidating of deeds. This is seen as a “victim’s rights” bill, especially when concerned with the vacated property issues in Detroit.

The motion to support the concept of the bill passed unanimously with twelve members voting.

b. SB 0988 to SB 0995: Juror Bills

- i. [SB 0988](#) (George) Courts; juries; discussion among jurors before trial concludes; allow under certain circumstances. Amends [1961 PA 236](#) (MCL [600.101](#) - [600.9947](#)) by adding sec. 1350a.

Status: 12/11/07 Referred to Senate Judiciary

- ii. [SB 0989](#) (Kuipers) Courts; juries; submission of written questions to witnesses by jurors; allow. Amends [1961 PA 236](#) (MCL [600.101](#) - [600.9947](#)) by adding sec. 2170.

Status: 12/11/07 Referred to Senate Judiciary

- iii. [SB 0990](#) (Sanborn) Courts; juries; jury summons; require to clearly explain conditions for exemption from jury service. Amends sec. 1332 of [1961 PA 236](#) (MCL [600.1332](#)).

Status: 12/11/07 Referred to Senate Judiciary

- iv. [SB 0991](#) (Cropsey) Courts; juries; various requirements regarding jurors; implement. Amends [1961 PA 236](#) (MCL [600.101](#) - [600.9947](#)) by adding sec. 1350a.

Status: 12/11/07 Referred to Senate Judiciary

- v. [SB 0992](#) (Kahn) Courts; juries; exemption from jury service for individuals who have served within the preceding 24 months; provide for. Amends sec. 1307a of [1961 PA 236](#) (MCL [600.1307a](#)).
Status: 12/11/07 Referred to Senate Judiciary
- vi. [SB 0993](#) (George) Courts; juries; penalties for failure to appear or complete jury duty; provide for. Amends sec. 1332 of [1961 PA 236](#) (MCL [600.1332](#)).
Status: 12/11/07 Referred to Senate Judiciary
- vii. [SB 0994](#) (George) Courts; funding; filing fees; increase, and dedicate amount of increase to the juror compensation reimbursement fund. Amends secs. 1344, 2529 & 8371 of [1961 PA 236](#) (MCL [600.1344](#) et seq.).
Status: 12/11/07 Referred to Senate Judiciary
- viii. [SB 0995](#) (George) Courts; juries; peremptory challenges when selecting jurors; eliminate. Amends [1961 PA 236](#) (MCL [600.101](#) - [600.9947](#)) by adding sec. 1350b & repeals secs. 12 & 13, ch. VIII & sec. 17, ch. XIV of [1927 PA 175](#) (MCL [768.12](#) et seq.).
Status: 12/11/07 Referred to Senate Judiciary
- ix. [SB 0996](#) (George) Civil procedure; costs and fees; separate filing fee for each defendant named in a lawsuit; require. Amends secs. 2529 & 8371 of [1961 PA 236](#) (MCL [600.2529](#) & [600.8371](#)).
Status: 12/11/07 Referred to Senate Judiciary

The Committee made the decision to view the bills listed above as a group. A very similar package was introduced in the Senate during the 2005-2006 Session. The Board of Commissioners previously took the position to oppose in principle the bills due to the long-standing position of the State Bar that the reform intended by the legislation was primarily within the jurisdiction of the Supreme Court and that such legislative action raised concerns with the separation of powers.

Elizabeth Lyon doesn't see the State Bar reversing its position on the issues and expects the Board to adopt the same position as last time.

The Committee voted to adopt the already decided position from the Board for the above bills.

It was noted that the Committee did not oppose increasing juror fees, but didn't want that increase to come out of the increase of filing fees.

- c. [HB 5568](#) (Schuitmaker) Criminal procedure; sentencing; certain records necessary to obtain identification documents; assist convicted persons in obtaining. Amends sec. 14, ch. XI of [1927 PA 175](#) (MCL [771.14](#)).
Status: 2/7/08 Referred to Second Reading (House)

Previous positions have shown support for the concept.

The motion to support this bill passed with ten in favor, and one member abstaining from the vote.

- d. HB 4402 to HB 4405: Juvenile Offenders
- i. [HB 4402](#) (Condino) Crimes; penalties; penalties for certain crimes of imprisonment for life without parole eligibility; amend Michigan penal code to exclude application to juvenile offenders. Amends [1931 PA 328](#) (MCL [750.1](#) - [750.568](#)) by adding sec. 506b.
Status: 3/6/07 Referred to House Judiciary
 - ii. [HB 4403](#) (Smith) Criminal procedure; sentencing; sentencing juvenile to imprisonment for life without parole eligibility; amend probate code of 1939 to prohibit. Amends secs. 2d & 18, ch. XIA of [1939 PA 288](#) (MCL 712A.2d & 712A.18).
Status: 3/6/07 Referred to House Judiciary
 - iii. [HB 4404](#) (Meadows) Criminal procedure; sentencing; sentencing individual convicted as a juvenile to imprisonment for life without parole eligibility; prohibit. Amends secs. 1 & 1b, ch. IX of [1927 PA 175](#) (MCL [769.1](#) & [769.1b](#)).
Status: 3/6/07 Referred to House Judiciary
 - iv. [HB 4405](#) (Jones, Robert) Corrections; parole; parole of certain juvenile offenders sentenced to imprisonment for life; allow. Amends sec. 34 of [1953 PA 232](#) (MCL [791.234](#)).
Status: 3/6/07 Referred to House Judiciary

This group of bill created a great deal of discussion. The final motion was to support the bill as written. Seven committee members were in favor of this position. Three committee members were against these bills as written, but would support if the age was changed to “under 17.” One member was completely against these bills.

The three committee objections to these bills were concerned with (1) the age at which the person committed the crime (under 17, under 18, under 21 were all suggested); (2) the absence of the judge’s discretion in assigning mandatory life without parole; and (3) the number of sentences/crimes the juvenile had committed.

Early motions included: (1) support all four bills as written; (2) support all four bills in principle and suggest a change in language to allow for “under 17”; (3) support all four bills with the increase of age to “under 21” and allowance for more judicial discretion.

Within the Chambers and the Committee room, there have been very passionate arguments on both sides.

This is a dispute between vengeance and rehabilitation. These bills look at those who are left behind, the jailed individual. The basic question is whether juveniles have the ability to rehabilitate.

Some felt that there is allowance in these bills for reasonable criteria, such as judicial discretion or multiple sentencing. These bills are not mandates for parole, but just allowances for the possibility. These bills give the parole board a chance to consider these juveniles.

- e. [HB 5321](#) (Amos) Corrections; parole; prohibition of convicted sex offenders participating in Halloween activities; implement in parole orders. Amends sec. 36 of [1953 PA 232](#) (MCL [791.236](#)).
Status: 10/16/07 Referred to House Judiciary

This bill is not Keller permissible and will be removed from the report.

- f. [HB 5273](#) (Jackson) Criminal procedure; sentencing; assessment of \$10.00 to individuals who have committed an alcohol-related offense; require, and earmark to drug treatment courts. Amends [1927 PA 175](#) (MCL [760.1 - 777.69](#)) by adding sec. 1m to ch. IX.
Status: 9/28/08 Referred to House Judiciary

This bill is not Keller permissible and will be removed from the report.

- g. [HB 5669](#) (Constan) Criminal procedure; arrests; complainant's signature requirement to file a criminal complaint in cases alleging vulnerable adult abuse; prohibit magistrate from refusing to accept complaint because signed upon information and belief by individual other than the victim. Amends sec. 1a, ch. IV of [1927 PA 175](#) (MCL [764.1a](#)).
Status: 1/24/08 Referred to House Committee on Senior Health, Security, and Retirement

The motion to support the concept of the bill passed unanimously with eleven members voting.

- h. [HJR KK](#) (Lemmons) Elections; judicial; ballot designation for incumbent judges; eliminate. Amends sec. 24, art. VI of the state constitution.
Status: 1/16/08 Referred to House Judiciary

The Committee is generally opposed, but no position is needed

4. Next meeting date.
5. Adjournment.