Agenda
Public Policy Committee
June 12, 2024 – 12:00 p.m. to 1:30 p.m.
Via Zoom Meetings

Public Policy Committee……Joseph P. McGill, Chairperson

A. Reports
1. Approval of April 17, 2024 minutes
2. Public Policy Report

B. Court Rule Amendments
1. ADM File No. 2024-05: Proposed Amendment of MCR 7.306
The proposed amendment of MCR 7.306 would establish a procedure for two new original actions in the Supreme Court related to presidential elections in conformity with MCL 168.46 (as amended by 2023 PA 269) and MCL 168.845a (as adopted by 2023 PA 255).

Status:	07/01/24 Comment Period Expires.
Referrals:	04/05/24 Civil Procedure & Courts Committee.
Comments:	Civil Procedure & Courts Committee.
Liaison:	John W. Reiser III

2. ADM File No. 2022-10: Proposed Alternative Amendments of MCR 8.126
The proposed alternative amendments of MCR 8.126 would clarify and streamline the process for pro hac vice admission to practice in Michigan courts. A summary of the differences between the two alternatives is provided in the staff comment.

Status:	07/01/24 Comment Period Expires.
Referrals:	04/05/24 Civil Procedure & Courts Committee; Professional Ethics Committee.
Comments:	Civil Procedure & Courts Committee.
Liaison:	Aaron V. Burrell

C. Legislation
1. HB 4427 (Young) Civil rights: public records; limited access to public records; provide for incarcerated individuals. Amends secs. 1, 2, 3 & 5 of 1976 PA 442 (MCL 15.231 et seq.).

Status:	05/14/24 Reported Out of the House Committee on Criminal Justice as Substitute H-5.
Referrals:	04/15/24 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:	Takura N. Nyamfukudza

2. Jury Legislation

HB 5689 (O'Neal) Courts: juries; local jury boards; eliminate, and create a centralized jury process. Amends secs. 857, 1301a, 1304a, 1307a, 1326, 1332, 1334, 1343, 1344, 1345, 1346, 1371 & 1372 of 1961 PA 236 (MCL 600.857 et seq.); adds secs. 1306 & 1307 & repeals secs. 1301, 1301b, 1302, 1303, 1303a, 1304, 1305, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1327, 1328, 1330, 1331, 1338, 1339, 1341, 1342, 1353, 1375 & 1376 of 1961 PA 236 (MCL 600.1301 et seq.) & repeals 1929 PA 288 (MCL 730.251 - 730.271) & repeals 1951 PA 179 (MCL 730.401 - 730.419).

HB 5690 (Hope) Courts: juries; reference in the uniform condemnation procedures act; amend to reflect repeal. Amends sec. 12 of 1980 PA 87 (MCL 213.62).

HB 5691 (Tsernoglou) Courts: juries; prospective jurors with certain criminal records and protected statuses; amend eligibility for service and peremptory challenges. Amends sec. 1307a of 1961 PA 236 (MCL 600.1307a) & adds secs. 1307b & 1356.

HB 5692 (Wilson) Appropriations: supplemental; funding for jury selection program; provide for. Creates appropriation act.

HB 5693 (Young) Courts: juries; reference in the probate code; amend to reflect repeal. Amends sec. 17, ch. XIIA of 1939 PA 288 (MCL 712A.17).

Status:	04/25/24 Referred to the House Committee on Criminal Justice.
Referrals:	04/30/24 Access to Justice Policy Committee, Civil Procedure & Courts Committee, Criminal Jurisprudence & Practice Committee, All Sections.
Comments:	Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.
Liaison:	Valerie R. Newman

3. SB 723 (Santana) Criminal procedure: mental capacity; evaluation of competency to waive Miranda rights; require. Amends 1974 PA 258 (MCL 330.1101 - 330.2106) by adding secs. 1080, 1081, 1082 & 1083.

Status:	02/22/24 Referred to the Senate Committee on Civil Rights, Judiciary & Public Safety.
Referrals:	02/26/24 Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.
Comments:	Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee.
Liaison:	Danielle Walton

4. SB 813 (Cherry) Criminal procedure: evidence; consideration of videorecorded statements in certain proceedings; allow. Amends sec. 2163a of 1961 PA 236 (MCL 600.2163a).

Status:	04/10/24 Referred to the Senate Committee on Civil Rights, Judiciary & Public Safety.
Referrals:	04/14/24 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:	Thomas P. Murray Jr.

MINUTES
Public Policy Committee
April 17, 2024 – 12 p.m. to 1:30 p.m.

Committee Members: Aaron V. Burrell, Lori A. Buiteweg, Suzanne C. Larsen, Joshua A. Lerner, Joseph P. McGill, Thomas P. Murray, Jr., Valerie R. Newman, Takura N. Nyamfukudza, John W. Reiser, Former Judge Cynthia D. Stephens
SBM Staff: Peter Cunningham, Nathan A. Triplett, Carrie Sharlow
GCSI: Marcia Hune

A. Reports

1. Approval of January 17, 2024 minutes – The minutes were unanimously adopted.
2. Public Policy Report

B. Court Rules

1. ADM File No. 2023-34: Proposed Amendment of MCR 3.967

The proposed amendment of MCR 3.967 would align the rule with MCL 712B.15, as amended in 2016, to clarify the applicability of qualified expert witness testimony in a removal hearing involving an Indian child.
The following entities provided recommendations for consideration: Access to Justice Policy Committee; Civil Procedure & Courts Committee; American Indian Law Section.
The committee voted unanimously (10) to support the proposed amendment to Rule 3.967.

2. ADM File No. 2023-36: Proposed Amendments of MCR 3.937, 3.950, 3.955, 3.993, and 6.931

The proposed amendments of MCR 3.937, 3.950, 3.955, 3.993, and 6.931 would implement 2023 PA 299 and incorporate additional changes from the SADO/MAACS Youth Defense Project regarding requests for and appointment of appellate counsel in cases involving juveniles.
The following entities provided recommendations for consideration: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Children's Law Section.
The committee voted unanimously (9) to support the proposed amendments as drafted.[1]

3. ADM File No. 2023-36: Proposed Amendments of MCR 3.901, 3.915, 3.916, 3.922, 3.932, 3.933, 3.935, 3.943, 3.944, 3.950, 3.952, 3.955, 3.977, and 6.931 and Proposed Addition of MCR 3.907

The proposed amendments would implement the Justice for Kids and Communities legislation and align with recommendations of the Michigan Task Force on Juvenile Justice Reform.
The following entities provided recommendations for consideration: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Children's Law Section.
The committee voted unanimously (10) to support the proposed amendments as drafted.

C. Legislation

1. HB 5393 (Hope) Juveniles: other; default maximum time for a juvenile to complete the terms of a consent calendar case plan; increase to 6 months. Amends sec. 2f, ch. XIIA of 1939 PA 288 (MCL 712A.2f).
The following entities provided recommendations for consideration: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee.
The committee voted unanimously (9) that the legislation is *Keller*-permissible in affecting the functioning of the courts.
The committee voted unanimously (10) to support HB 5393.

2. HB 5429 (Morse) Children: services; court-appointed special advocate program; create. Creates new act.

[1] Former Judge Cynthia D. Stephens arrived after this vote.

The following entities provided recommendations for consideration: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Children's Law Section.
The committee voted unanimously (10) that the legislation is *Keller*-permissible in affecting the functioning of the courts.
The committee voted 9 with 1 one abstention to support HB 5429.

3. HB 5431 (Andrews) Civil procedure: remedies; wrongful imprisonment compensation act; modify evidence requirements. Amends secs. 2, 4, 5 & 7 of 2016 PA 343 (MCL 691.1752 et seq.).
The following entities provided recommendations for consideration: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee.
The committee voted 7 to 3 that the legislation is *Keller*-permissible.
The committee voted 9 with 1 one abstention to support HB 5431.

4. Incumbency Designation for Judges
HJR O (Green) Elections: judicial; incumbency designation for judges; eliminate. Amends sec. 24, art. VI of the state constitution.
HB 5565 (Green) Elections: judicial; incumbency designation for judges; eliminate. Amends secs. 409b, 409l, 424, 424a, 433, 444, 467b, 467c, 467m, 561 & 696 of 1954 PA 116 (MCL 168.409b et seq.) & repeals sec. 435a of 1954 PA 116 (MCL 168.435a).
The following entities provided recommendations for consideration: Civil Procedure & Courts Committee; Family Law Section.
The committee voted 7 to 2[2] that the legislation is *Keller*-permissible in affecting the functioning of the courts.
The committee voted 4 to 5 to table the legislation. The motion failed.
The committee voted 7 to 2 to take no position.[3]

5. SB 665 (Hoitenga) Courts: district court; magistrate qualifications; modify. Amends secs. 8501 & 8507 of 1961 PA 236 (MCL 600.8501 & 600.8507).
The following entities provided recommendations for consideration: Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee.
The committee voted unanimously (8) that the legislation is *Keller*-permissible in affecting the functioning of the courts.
The committee voted 1 to 7 with one abstention to oppose the bill. The motion failed.
The committee voted 7 in favor with 1 abstention to support the bill in concept.

6. SB 688 (Chang) Juveniles: juvenile justice services; certain information sharing for research purposes in juvenile justice cases; allow. Amends sec. 9 of 1988 PA 13 (MCL 722.829).
The following entities provided recommendations for consideration: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Civil Procedure & Courts Committee; Children's Law Section.
The committee voted unanimously (10) that the legislation is *Keller*-permissible in affecting the functioning of the courts and improving the access to justice.
The committee voted unanimously (10) to support SB 688 in concept with the following amendments:

- **Specific requirements for data-sharing agreements (specifically limitations on time and use of such records, and security and record destruction requirements);**

[2] Thomas Murray left before this vote.
[3] Takura Nyamfukudza left after this vote.

- **An additional provision requiring courts to maintain comprehensive records identifying all entities that have made requests to see records and what records are released; and**
- **A sanction provision (or extension of the sanction provision at MCL 722.829(4)) that would apply to researchers and their universities, agencies, or organizations who violate the data-sharing agreement required in subsection (2).**
- **A definition of the term "researcher."**

D. Consent Agenda

The committee agreed 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 1.9(3) and 3.2(3)

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

2. M Crim JI 20.2 and M Crim JI 20.13

The Committee proposes amending jury instructions M Crim JI 20.2 (Criminal Sexual Conduct in the Second Degree [MCL 750.520c]) and M Crim JI 20.13 (Criminal Sexual Conduct in the Fourth Degree [MCL 750.520e]) to add definitional "sexual contact" language from MCL 750.520a(q). Deletions are in strike-through, and new language is underlined.

3. M Crim JI 40.7 and M Crim JI 40.7a

The Committee proposes two jury instructions, M Crim JI 40.7 (loitering where prostitution is practiced) and M Crim JI 40.7a (loitering where an illegal occupation or business is practiced or conducted) for the "loitering" crimes found in the Disorderly Person statute at MCL 750.167(i) and (j). The instructions are entirely new.

4. M Crim JI 41.3, M Crim JI 41.3a, and M Crim JI 41.3b

The Committee proposes three jury instructions, M Crim JI 41.3 (placing eavesdropping devices), 41.3a (placing eavesdropping devices for a lewd or lascivious purpose), and 41.3b (disseminating images obtained by eavesdropping devices) for the crimes found in an eavesdropping and surveillance statute: MCL 750.539d. These instructions are entirely new.

May 2, 2024

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

RE: ADM File No. 2023-34: Proposed Amendment of Rule 3.967 of the Michigan Court Rules

Dear Clerk Royster:

At its April 19, 2024 meeting, the Board of Commissioners of the State Bar of Michigan considered ADM File No. 2023-34. In its review, the Board considered recommendations from the Access to Justice Policy Committee, Civil Procedure & Courts Committee, and American Indian Law Section. The Board voted unanimously to support the proposed amendment.

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

Sincerely,

Peter Cunningham
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court
Daniel D. Quick, President

May 2, 2024

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

RE: ADM File No. 2023-36: Proposed Amendments of Rules MCR 3.901, 3.915, 3.916, 3.922, 3.932, 3.933, 3.935, 3.943, 3.944, 3.950, 3.952, 3.955, 3.977, and 6.931 and Proposed Addition of Rule 3.907 of the Michigan Court Rules

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The Board previously reviewed the twenty-bill Justice for Kids and Communities legislative package and adopted positions supporting many of the bills. With nearly all of the legislation slated to become law effective October 1, 2024, the Board appreciates the Court's effort to ensure that the Michigan Court Rules are updated to align with the new statutes. This allows ample time for both the bench and the bar to become acquainted with the new rules before their implementation is required.

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

Sincerely,

Peter Cunningham
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court
Daniel D. Quick, President

May 2, 2024

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Clerk of the Court
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Thank you for the opportunity to comment on the proposed amendments.

Sincerely,

Peter Cunningham
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court
Daniel D. Quick, President

Order

Michigan Supreme Court
Lansing, Michigan

March 27, 2024

Elizabeth T. Clement,
Chief Justice

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

ADM File No. 2024-05

Proposed Amendment of
Rule 7.306 of the Michigan
Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 7.306 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the Public Administrative Hearings page.

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

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

Rule 7.306 Original Proceedings

(A)-(B) [Unchanged.]

(C) An action for judicial review under MCL 168.46 or MCL 168.845a must be initiated only in the Supreme Court as an original proceeding and in accordance with this rule.

(D~~C~~) What to File. Service provided under this subrule must be verified by the clerk. To initiate an original proceeding, a plaintiff must file with the clerk all of the following:

(1) 1 signed copy of a complaint prepared in conformity with MCR 2.111(A) and (B). ~~and entitled, for e~~Example~~,~~ titles include:

"[*Plaintiff*] *v* [*Court of Appeals, Governor [NAME], Board of State Canvassers, Board of Law Examiners, Attorney Discipline Board, Attorney Grievance Commission, or Independent Citizens Redistricting Commission*]."

The clerk shall retitle a complaint that is named differently.

(2) 1 signed copy of a brief conforming as nearly as possible to MCR 7.212(B) and (C).~~;~~

(3) P~~p~~roof that the complaint and brief were served on the defendant, and~~,~~

(a) for a complaint filed against the Attorney Discipline Board or Attorney Grievance Commission, on the respondent in the underlying discipline matter;

(b) 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:

(i~~1~~) the chairperson of the Independent Citizens Redistricting Commission,~~;~~

(ii~~2~~) the secretary of the Independent Citizens Redistricting Commission, or

(iii~~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~~

(c) for purposes of a complaint filed under MCL 168.46, service of a copy of the complaint and brief shall be made on the defendant(s) and all of the following persons if not named as a defendant:

(i) the candidates who were declared the winners of the office of President or Vice President of the United States,

(ii) the chairperson of the board of state canvassers,

(iii) the attorney general, and

(iv) the secretary of state.

A complaint filed under MCL 168.46 must be filed with the Court within 24 hours after the governor's certification of the completed recount but no later than 8:00 a.m. on the day before the electors of

President and Vice President are required to convene pursuant to MCL 168.47.

(d) for purposes of a complaint filed under MCL 168.845a, service of a copy of the complaint and brief shall be made on the defendant(s) and all of the following persons if not named as a defendant:

(i) the candidates who were declared the winners of the office of President or Vice President of the United States,

(ii) the governor,

(iii) the attorney general, and

(iv) the secretary of state.

A complaint filed under MCL 168.845a must be filed with the Court within 48 hours after the certification or determination of the results of a presidential election and must name the board of state canvassers as a defendant.

(4) Tthe fees provided by MCR 7.319(C)(1) and MCL 600.1986(1)(a).

Copies of relevant documents, record evidence, or supporting affidavits may be attached as exhibits to the complaint.

(ED) Answer.

(1) [Unchanged.]

(2) A defendant challenging a certification or ascertainment after recount under MCL 168.46 must file the following with the clerk within 24 hours of the complaint being filed or by 12 p.m. on the day before the electors of President and Vice President are required to convene pursuant to MCL 168.47, whichever is earlier, 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.

(3) A defendant in an action filed under MCL 168.845a must file the following with the clerk within 48 hours after service of the complaint and supporting brief, 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 and any intervenors.

(2) [Renumbered as (4) but otherwise unchanged.]

(E) [Relettered as (F) but otherwise unchanged.]

(GF) 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. In an action filed under MCL 168.845a, a reply brief may be filed within 1 day after service of the answer and supporting brief, unless the Court directs otherwise. A plaintiff may not file a reply brief in an action for judicial review under MCL 168.46.

(H) Notice of Intervention and Brief. In an action filed under MCL 168.845a(1), the governor, attorney general, secretary of state, and the winner of the presidential election may intervene by filing a notice of intervention and brief in support of or opposition to the complaint within 48 hours after service of the complaint and supporting brief.

(G)-(I) [Relettered as (I)-(K) but otherwise unchanged.]

(LJ) Decision. The Court may set the case for argument as a calendar case, grant or deny the relief requested, or provide other relief that it deems appropriate, including an order to show cause why the relief sought in the complaint should not be granted. To have conclusive effect in an action for judicial review under MCL 168.46, the Court's final order must be issued no later than 4 p.m. the day before the electors for President and Vice President of the United States convene under MCL 168.47. To have conclusive effect in an action for judicial review under MCL 168.845a, the Court's final order must be issued no later than the day before the electors for President and Vice President of the United States convene under MCL 168.47.

Staff Comment (ADM File No. 2024-05): The proposed amendment of MCR 7.306 would establish a procedure for two new original actions in the Supreme Court related to presidential elections in conformity with MCL 168.46 (as amended by 2023 PA 269) and MCL 168.845a (as adopted by 2023 PA 255).

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

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by July 1, 2024 by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When submitting a comment, please refer to ADM File No. 2024-05. Your comments and the comments of others will be posted under the chapter affected by this proposal.

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

March 27, 2024

Clerk

Public Policy Position
ADM File No. 2024-05: Proposed Amendment of MCR 7.306

Support

Explanation
The Committee voted to support the proposed amendment of MCR 7.306 and noted that the proposal aligns the rule with the relevant provisions of the Michigan Election Law, 1954 PA 116, and facilitates their implementation.

Position Vote:
Voted For position: 14
Voted against position: 1
Abstained from vote: 3
Did not vote (absence): 12

Contact Person:
Marla Linderman Richelew lindermanlaw@sbcglobal.net

Order

Michigan Supreme Court
Lansing, Michigan

March 27, 2024

Elizabeth T. Clement,
Chief Justice

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

ADM File No. 2022-10

Proposed Alternative Amendments of Rule 8.126 of the Michigan Court Rules

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On order of the Court, this is to advise that the Court is considering alternative amendments of Rule 8.126 of the Michigan Court Rules. Before determining whether either of the alternative proposals should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the Public Administrative Hearings page.

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

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

ALTERNATIVE A

Rule 8.126 Temporary Admission to the Bar

(A) Definitions. For purposes of this rule:

(1) "Foreign attorney" is an attorney who is

(a) licensed to practice law in another state or territory of the United States of America, in the District of Columbia, in a Tribal court, or in a foreign country;

(b) not a member of the Bar; and

(c) not disbarred or suspended in any jurisdiction.

(2) "Sponsoring attorney" is an attorney who is a member of the Bar.

(3) "Tribunal" is a court, administrative agency, or arbitrator. Tribunal also

includes a mediator who conducts a facilitation or mediation that is not in connection with a filed court case.

(4) "The Bar" is the State Bar of Michigan.

(B~~A~~) Temporary Admission.

(1) A foreign attorney may request temporary admission to practice before tribunals in this state through a sponsoring attorney. Permission for a foreign attorney to appear and practice is within the discretion of the tribunal.

(2) A foreign attorney may not appear in more than five cases in any 365-day period.

(3) For a foreign attorney employed by a legal services program that is a grantee of the federal Legal Services Corporation or the Michigan State Bar Foundation, or employed by a law school clinic that provides services on the basis of indigence, for the time period in which the foreign attorney's application to be licensed in Michigan is submitted and pending before the Board of Law Examiners, the foreign attorney shall:

(a) pay the fee for temporary admission with the first application for temporary admission; and

(b) have fees waived for all subsequent applications for admission after the fee is paid for the first application for temporary admission.

A foreign attorney who is no longer employed as required by this subrule or whose application to be licensed in Michigan has been withdrawn or denied must notify the Bar and will no longer be eligible for temporary admission under this subrule.

~~Except as otherwise provided in this rule, an out of state attorney may seek temporary admission as determined by this subsection. Any person who is licensed to practice law in another state or territory, or in the District of Columbia, of the United States of America, or in any foreign country, and who is not disbarred or suspended in any jurisdiction, and who is eligible to practice in at least one jurisdiction, may be permitted to appear and practice in a specific case in a court, before an administrative tribunal or agency, or in a specific arbitration proceeding in this state when associated with and on motion of an active member of the State Bar of Michigan who appears of record in the case. An out-of-state attorney may be temporarily admitted to practice under this rule in no more than five cases in a 365-day period.~~

~~Permission to appear and practice is within the discretion of the court, administrative tribunal or agency, or arbitrator and may be revoked at any time for misconduct. For purposes of this rule, an out-of-state attorney is one who is licensed to practice law in another state or territory, or in the District of Columbia, of the United States of America, or in a foreign country and who is not a member of the State Bar of Michigan.~~

(C~~1~~) Procedure for Foreign Attorneys.

(1) The sponsoring attorney must appear as counsel of record and file a motion asking the tribunal to grant the foreign attorney temporary admission to practice. The motion must be supported with:

(a) a certificate of good standing for the foreign attorney issued within the last 30 days by a jurisdiction where the foreign attorney is licensed and eligible to practice;~~Motion. An attorney seeking temporary admission must be associated with a Michigan attorney. The Michigan attorney with whom the out-of-state attorney is associated shall file with the court or administrative tribunal or agency, or arbitrator an appearance and a motion that seeks permission for the temporary admission of the out-of-state attorney. The motion shall be supported by a current certificate of good standing issued by a jurisdiction where the out-of-state attorney is licensed and eligible to practice, the document supplied by the State Bar of Michigan showing that the required fee has been paid and an affidavit of the out-of-state attorney seeking temporary admission, which affidavit shall verify~~

(b) an affidavit signed by the foreign attorney that verifies:

(i) the jurisdiction(s) in which the foreign attorney is or has been licensed or has sought licensure;

(ii) the jurisdiction(s) where the attorney is presently eligible to practice and the attorney's good standing in all jurisdictions where licensed;

(iii) that the foreign attorney is not disbarred, ~~or~~ suspended from the practice of law, nor~~in any jurisdiction, and is not~~ the subject of any pending disciplinary action~~, and that the attorney is licensed and is in good standing~~ in any~~all~~ jurisdiction~~s where licensed~~; and

(iv) that the foreign attorney~~he or she~~ is familiar with the Michigan Rules of Professional Conduct, ~~Michigan Court Rules, and~~ the Michigan Rules of Evidence, and these court rules.

(c) a copy of any disciplinary dispositions concerning the foreign attorney;

~~The out-of-state attorney must attach to the affidavit copies of any disciplinary dispositions. The motion shall include an attestation of the Michigan attorney that the attorney has read the out-of-state attorney's affidavit, has made a reasonable inquiry concerning the averments made therein, believes the out-of-state attorney's representations are true, and agrees to ensure that the procedures of this rule are followed. The motion shall also include the addresses and email addresses of both attorneys.~~

(d) a statement by the sponsoring attorney that the sponsoring attorney:

(i) has read the foreign attorney's affidavit and any disciplinary dispositions concerning the foreign attorney;

(ii) believes the foreign attorney's representations to be true; and

(iii) will ensure that the procedures of this rule are followed.

(2) Prior to filing the motion with the tribunal, the motion and supporting materials must be filed with the Bar together with a fee equal to the discipline and client-protection portions of a Bar member's annual dues. Within seven days thereafter, the Bar must report to the tribunal, the sponsoring attorney, and the foreign attorney:

(a) that the fee has been paid to the Bar; and

(b) the number of times that the foreign attorney has been granted temporary admission to practice within the past 365 days.

(3) If, after receiving the Bar's report, the tribunal finds that the requirements of this rule have been met, it may issue an order granting the foreign attorney temporary admission to practice in this state. The tribunal shall not enter such an order until after it receives the Bar's report.

(4) If a tribunal issues an order granting the foreign attorney temporary admission to practice in this state, the foreign attorney must file a copy of the order with the Bar within seven days.

(5) The foreign attorney must notify the Bar if the case is dismissed or closed prior to the tribunal granting or denying temporary admission.

(6) Within seven days of learning that they are no longer in good standing with any jurisdiction where licensed or temporarily admitted to practice, the foreign attorney must notify the Bar and the tribunal(s) in which the foreign attorney is temporarily admitted to practice under this rule.

(7) By seeking permission to appear under this rule, the foreign attorney consents to the jurisdiction of Michigan's attorney disciplinary system.

~~(b) Fee. In each case in which an out-of-state attorney seeks temporary admission in Michigan, the out-of-state attorney must pay a fee equal to the discipline and client protection portions of a bar member's annual dues. The fee must be paid electronically to the State Bar of Michigan, in conjunction with submission of an electronic copy of the motion, the certificate of good standing and the affidavit to the State Bar of Michigan, pursuant to procedures established by the State Bar of Michigan. Upon receipt of the fee remitted electronically, confirmation of payment will issue electronically to the out-of-state attorney through the State Bar of Michigan's automated process.~~

~~Within seven days after receipt of the copy of the motion and fee, the State Bar of Michigan must notify the court, administrative tribunal or agency, or arbitrator and both attorneys whether the out-of-state attorney has been granted permission to appear temporarily in Michigan within the past 365 days, and, if so, the number of such appearances. The notification will be issued electronically, pursuant to the procedures established by the State Bar of Michigan. No order or other writing granting permission to appear in a case shall be entered by a court, administrative tribunal or agency, or arbitrator until the notification is received from the State Bar of Michigan.~~

(D) Duration and Scope of Temporary Admission.

(1) If the tribunal granting temporary admission to practice is a court, then the temporary admission continues for the entire case, including through all appeals, any remands, and any facilitation, mediation, or arbitration that may be ordered by a court.

(2) If the tribunal granting temporary admission to practice is a mediator, arbitrator, or administrative agency, that tribunal may grant a foreign

attorney temporary admission to practice only for the limited purpose of representing a party in the facilitation, mediation, arbitration, or administrative proceeding. If the facilitation, mediation, arbitration, or administrative proceeding results in a case or other proceeding before a court, then the foreign attorney must apply for temporary admission before the court.

(E) Revocation. The tribunal before whom a foreign attorney is practicing:

(1) may revoke the attorney's temporary admission at any time for misconduct, or

(2) must revoke the attorney's temporary admission upon receiving notice that the attorney is no longer in good standing under subrule (C)(6).

If the tribunal revokes a foreign attorney's temporary admission under this rule, it must immediately notify the foreign attorney, the Bar, and the sponsoring attorney of its decision.

(F) A Sponsoring Attorney.

(1) If a tribunal allows a sponsoring attorney to withdraw, another member of the Bar must appear as a sponsoring attorney with the foreign attorney. A sponsoring attorney must have the authority to conduct the case or proceeding if the foreign attorney does not or is unable to do so for any reason.

(2) After a foreign attorney is granted temporary admission to practice, a tribunal may waive the requirements under subrule (1).

(G) Distribution of SBM Fee. If a request for investigation is filed with the grievance administrator against a foreign attorney temporarily admitted to practice under this rule, the entire amount of the fee(s) paid to the Bar for the case(s) in which the allegations of misconduct arose must be transferred to the disciplinary system.

~~The State Bar of Michigan shall retain the discipline portion of the fee for administration of the request for temporary admission and disciplinary oversight and allocate the client protection portion to the Client Protection Fund. If a request for investigation is filed with the grievance administrator against an attorney while temporarily admitted to practice in Michigan, the entire amount of the administration fee paid by that attorney for the case in which the allegations of misconduct arose would be transferred to the disciplinary system.~~

~~(c) Order. Following notification by the State Bar of Michigan, if the out-of-state attorney has been granted permission to appear temporarily in fewer than 5 cases within the past 365 days, the court, administrative tribunal or agency, or arbitrator may enter an order granting permission to the out-of-state attorney to appear temporarily in a case. If an order or other writing granting permission is entered, the Michigan attorney shall submit an electronic copy of the order or writing to the State Bar of Michigan within seven days.~~

~~(d) By seeking permission to appear under this rule, an out-of-state attorney consents to the jurisdiction of Michigan's attorney disciplinary system.~~

(~~H~~B) Waiver. A~~n~~ foreign attorney~~applicant~~ is not required to associate with a sponsoring attorney~~local counsel~~, limited to the number of appearances to practice, or required to pay the fee to the ~~State~~ Bar ~~of Michigan~~, if the foreign attorney~~applicant~~ establishes to the satisfaction of the tribunal~~court~~ in which the foreign attorney seeks to appear that:

(1) the foreign attorney~~applicant~~ appears for the limited purpose of participating in a child custody proceeding as defined by MCL 712B.3(b) in a Michigan court pursuant to the Michigan Indian Family Preservation Act, MCL 712B.1 *et seq.*; and

(2) the foreign attorney~~applicant~~ represents an Indian tribe as defined by MCL 712B.3; and

(3) the foreign attorney~~applicant~~ presents an affidavit from the Indian child's tribe asserting the tribe's intent to intervene and participate in the state court proceeding, and averring the child's membership or eligibility for membership under tribal law; and

(4) the foreign attorney~~applicant~~ presents an affidavit that verifies:

(a) the jurisdiction(s) in which the foreign attorney is or has been licensed or has sought licensure;

(b) the jurisdiction(s) in which~~where~~ the foreign attorney is presently admitted and eligible to practice and is in good standing in all jurisdictions where licensed;

(c) that the foreign attorney is not disbarred, ~~or~~ suspended from the practice of law~~in any jurisdiction~~, nor~~is not~~ the subject of any pending

disciplinary action, in any jurisdiction~~and that the attorney is licensed and is in good standing in all jurisdictions where licensed~~; and

(d) that the foreign attorney~~he or she~~ is familiar with the Michigan Rules of Professional Conduct, ~~Michigan Court Rules, and~~ the Michigan Rules of Evidence, and these rules.

(5) If the court in which the foreign attorney seeks to appear is satisfied that the foreign~~out of state~~ attorney has met the requirements in this subrule, the court shall enter an order authorizing the foreign~~out of state~~ attorney's temporary admission.

ALTERNATIVE B

Rule 8.126 Temporary Admission to the Bar

(A) Definitions. For purposes of this rule:

(1) "Foreign attorney" is an attorney who is

(a) licensed to practice law in another state or territory of the United States of America, in the District of Columbia, in a Tribal court, or in a foreign country;

(b) not a member of the Bar; and

(c) not disbarred or suspended in any jurisdiction.

(2) "Sponsoring attorney" is an attorney who is a member of the Bar.

(3) "Tribunal" is a court, administrative agency, or arbitrator. Tribunal also includes a mediator who conducts a facilitation or mediation that is not in connection with a filed court case.

(4) "The Bar" is the State Bar of Michigan.

(B~~A~~) Temporary Admission.

(1) A foreign attorney may request temporary admission to practice before tribunals in this state through a sponsoring attorney.

(2) Except as provided in subrule (B)(3), a foreign attorney may not appear in more than five cases in any 365-day period.

(3) For a foreign attorney employed by a legal services program that is a grantee of the federal Legal Services Corporation or the Michigan State Bar Foundation, or employed by a law school clinic that provides services on the basis of indigence, for the time period in which the foreign attorney's application to be licensed in Michigan is submitted and pending before the Board of Law Examiners, the foreign attorney shall:

(a) pay the fee for temporary admission with the first application for temporary admission;

(b) have fees waived for all subsequent applications for admission after the fee is paid for the first application for temporary admission; and

(c) not be subject to any limitation on the number of cases in which the foreign attorney may be eligible for temporary admission.

A foreign attorney who is no longer employed as required by this subrule or whose application to be licensed in Michigan has been withdrawn or denied must notify the Bar and will no longer be eligible for temporary admission under this subrule.

~~Except as otherwise provided in this rule, an out of state attorney may seek temporary admission as determined by this subsection. Any person who is licensed to practice law in another state or territory, or in the District of Columbia, of the United States of America, or in any foreign country, and who is not disbarred or suspended in any jurisdiction, and who is eligible to practice in at least one jurisdiction, may be permitted to appear and practice in a specific case in a court, before an administrative tribunal or agency, or in a specific arbitration proceeding in this state when associated with and on motion of an active member of the State Bar of Michigan who appears of record in the case. An out-of-state attorney may be temporarily admitted to practice under this rule in no more than five cases in a 365-day period. Permission to appear and practice is within the discretion of the court, administrative tribunal or agency, or arbitrator and may be revoked at any time for misconduct. For purposes of this rule, an out-of-state attorney is one who is licensed to practice law in another state or territory, or in the District of Columbia, of the United States of America, or in a foreign country and who is not a member of the State Bar of Michigan.~~

(C~~1~~) Procedure for Foreign Attorneys.

(1) The sponsoring attorney must appear as counsel of record and file a motion asking the tribunal to grant the foreign attorney temporary admission to practice. The motion must be supported with:

(a) a certificate of good standing for the foreign attorney issued within the last 30 days by a jurisdiction where the foreign attorney is licensed and eligible to practice;~~Motion. An attorney seeking temporary admission must be associated with a Michigan attorney. The Michigan attorney with whom the out-of-state attorney is associated shall file with the court or administrative tribunal or agency, or arbitrator an appearance and a motion that seeks permission for the temporary admission of the out-of-state attorney. The motion shall be supported by a current certificate of good standing issued by a jurisdiction where the out-of-state attorney is licensed and eligible to practice, the document supplied by the State Bar of Michigan showing that the required fee has been paid and an affidavit of the out-of-state attorney seeking temporary admission, which affidavit shall verify~~

(b) an affidavit signed by the foreign attorney that verifies:

(i) the jurisdiction(s) in which the foreign attorney is or has been licensed or has sought licensure;

(ii) the jurisdiction(s) where the attorney is presently eligible to practice and the attorney's good standing in all jurisdictions where licensed;

(iii) that the foreign attorney is not disbarred, ~~or~~ suspended from the practice of law, nor~~in any jurisdiction, and is not~~ the subject of any pending disciplinary action~~, and that the attorney is licensed and is in good standing~~ in anyall jurisdictions~~ where licensed~~; and

(iv) that the foreign attorney~~he or she~~ is familiar with the Michigan Rules of Professional Conduct, ~~Michigan Court Rules, and~~ the Michigan Rules of Evidence, and these court rules.

(c) a copy of any disciplinary dispositions concerning the foreign attorney;

~~The out-of-state attorney must attach to the affidavit copies of any disciplinary dispositions. The motion shall include an attestation of the Michigan attorney that the attorney has read the out-of-state attorney's~~

~~affidavit, has made a reasonable inquiry concerning the averments made therein, believes the out-of-state attorney's representations are true, and agrees to ensure that the procedures of this rule are followed. The motion shall also include the addresses and email addresses of both attorneys.~~

(d) a statement by the sponsoring attorney that the sponsoring attorney:

(i) has read the foreign attorney's affidavit and any disciplinary dispositions concerning the foreign attorney;

(ii) believes the foreign attorney's representations to be true; and

(iii) will ensure that the procedures of this rule are followed.

(2) Prior to filing the motion with the tribunal, the motion and supporting materials must be filed with the Bar together with a fee equal to the discipline and client-protection portions of a Bar member's annual dues. Within seven days thereafter, the Bar must report to the tribunal, the sponsoring attorney, and the foreign attorney:

(a) that the fee has been paid to the Bar; and

(b) the number of times that the foreign attorney has been granted temporary admission to practice within the past 365 days.

(3) If, after receiving the Bar's report, the tribunal finds that the requirements of this rule have been met, it may issue an order granting the foreign attorney temporary admission to practice in this state. The tribunal shall not enter such an order until after it receives the Bar's report.

(4) If a tribunal issues an order granting the foreign attorney temporary admission to practice in this state, the foreign attorney must file a copy of the order with the Bar within seven days.

(5) The foreign attorney must notify the Bar if the case is dismissed or closed prior to the tribunal granting or denying temporary admission.

(6) Within seven days of learning that they are no longer in good standing with any jurisdiction where licensed or temporarily admitted to practice, the foreign attorney must notify the Bar and the tribunal(s) in which the foreign attorney is temporarily admitted to practice under this rule.

(7) By seeking permission to appear under this rule, the foreign attorney consents to the jurisdiction of Michigan's attorney disciplinary system.

~~(b) Fee. In each case in which an out-of-state attorney seeks temporary admission in Michigan, the out-of-state attorney must pay a fee equal to the discipline and client protection portions of a bar member's annual dues. The fee must be paid electronically to the State Bar of Michigan, in conjunction with submission of an electronic copy of the motion, the certificate of good standing and the affidavit to the State Bar of Michigan, pursuant to procedures established by the State Bar of Michigan. Upon receipt of the fee remitted electronically, confirmation of payment will issue electronically to the out-of-state attorney through the State Bar of Michigan's automated process.~~

~~Within seven days after receipt of the copy of the motion and fee, the State Bar of Michigan must notify the court, administrative tribunal or agency, or arbitrator and both attorneys whether the out-of-state attorney has been granted permission to appear temporarily in Michigan within the past 365 days, and, if so, the number of such appearances. The notification will be issued electronically, pursuant to the procedures established by the State Bar of Michigan. No order or other writing granting permission to appear in a case shall be entered by a court, administrative tribunal or agency, or arbitrator until the notification is received from the State Bar of Michigan.~~

(D) Duration and Scope of Temporary Admission.

(1) If the tribunal granting temporary admission to practice is a court or administrative agency, then the temporary admission continues for the entire case, including through all appeals, any remands, and any facilitation, mediation, or arbitration that may be ordered by a court or administrative agency. A foreign attorney is not required to reapply for temporary admission each time the case moves to or from an administrative agency or between courts.

(2) If the tribunal granting temporary admission to practice is a mediator or arbitrator, the mediator or arbitrator may grant a foreign attorney temporary admission to practice only for the limited purpose of representing a party in the facilitation, mediation, or arbitration. If the facilitation, mediation, or arbitration results in a case or other proceeding before a court or administrative agency, then the foreign attorney must apply for temporary admission before the court or administrative agency.

(E) Revocation. The tribunal that granted the foreign attorney's temporary admission

(1) may revoke the attorney's temporary admission at any time for misconduct, or

(2) must revoke the attorney's temporary admission upon receiving notice that the attorney is no longer in good standing under subrule (C)(6).

If the tribunal revokes a foreign attorney's temporary admission under this rule, it must immediately notify the foreign attorney, the Bar, and the sponsoring attorney of its decision.

(F) A Sponsoring Attorney.

(1) If a tribunal allows a sponsoring attorney to withdraw, another member of the Bar must appear as a sponsoring attorney with the foreign attorney. A sponsoring attorney must have the authority to conduct the case or proceeding if the foreign attorney does not or is unable to do so for any reason.

(2) A tribunal may waive the requirement for a foreign attorney to have a sponsoring attorney.

(G) Distribution of SBM Fee. If a request for investigation is filed with the grievance administrator against a foreign attorney temporarily admitted to practice under this rule, the entire amount of the fee(s) paid to the Bar for the case(s) in which the allegations of misconduct arose must be transferred to the disciplinary system.

~~The State Bar of Michigan shall retain the discipline portion of the fee for administration of the request for temporary admission and disciplinary oversight and allocate the client protection portion to the Client Protection Fund. If a request for investigation is filed with the grievance administrator against an attorney while temporarily admitted to practice in Michigan, the entire amount of the administration fee paid by that attorney for the case in which the allegations of misconduct arose would be transferred to the disciplinary system.~~

~~(c) Order. Following notification by the State Bar of Michigan, if the out-of-state attorney has been granted permission to appear temporarily in fewer than 5 cases within the past 365 days, the court, administrative tribunal or agency, or arbitrator may enter an order granting permission to the out-of-state attorney to appear temporarily in a case. If an order or other writing granting permission is entered, the Michigan attorney shall submit an~~

~~electronic copy of the order or writing to the State Bar of Michigan within seven days.~~

~~(d) By seeking permission to appear under this rule, an out-of-state attorney consents to the jurisdiction of Michigan's attorney disciplinary system.~~

(H~~B~~) Waiver. A~~n~~ foreign attorney~~applicant~~ is not required to associate with a sponsoring attorney~~local counsel~~, limited to the number of appearances to practice, or required to pay the fee to the ~~State~~ Bar ~~of Michigan~~, if the foreign attorney~~applicant~~ establishes to the satisfaction of the tribunal~~court~~ in which the foreign attorney seeks to appear that:

(1) the foreign attorney~~applicant~~ appears for the limited purpose of participating in a child custody proceeding as defined by MCL 712B.3(b) in a Michigan court pursuant to the Michigan Indian Family Preservation Act, MCL 712B.1 *et seq.*; and

(2) the foreign attorney~~applicant~~ represents an Indian tribe as defined by MCL 712B.3; and

(3) the foreign attorney~~applicant~~ presents an affidavit from the Indian child's tribe asserting the tribe's intent to intervene and participate in the state court proceeding, and averring the child's membership or eligibility for membership under tribal law; and

(4) the foreign attorney~~applicant~~ presents an affidavit that verifies:

(a) the jurisdiction(s) in which the foreign attorney is or has been licensed or has sought licensure;

(b) the jurisdiction(s) in which~~where~~ the foreign attorney is presently admitted and eligible to practice and is in good standing in all jurisdictions where licensed;

(c) that the foreign attorney is not disbarred, ~~or~~ suspended from the practice of law~~in any jurisdiction~~, nor~~is not~~ the subject of any pending disciplinary action, in any jurisdiction~~and that the attorney is licensed and is in good standing in all jurisdictions where licensed~~; and

(d) that the foreign attorney~~he or she~~ is familiar with the Michigan Rules of Professional Conduct, ~~Michigan Court Rules, and~~ the Michigan Rules of Evidence, and these rules.

(5) If the court in which the foreign attorney seeks to appear is satisfied that the foreign~~out of state~~ attorney has met the requirements in this subrule, the court shall enter an order authorizing the foreign~~out of state~~ attorney's temporary admission.

Staff Comment (ADM File No. 2022-10): The proposed alternative amendments of MCR 8.126 would clarify and streamline the process for pro hac vice admission to practice in Michigan courts. A summary of the differences between the two alternatives is provided in this staff comment.

Limitations on the number of pro hac vice admissions. Generally, a foreign attorney may not appear in more than five cases in any 365-day period. Alternative A would retain this limitation for all foreign attorneys. Alternative B would eliminate this limitation for foreign attorneys employed by certain legal services programs and certain law school clinics. See Alternative B, proposed MCR 8.126(B)(3)(c).

Tribunal discretion. Under the current rule, admission of pro hac vice is "within the discretion of the court." Alternative A would incorporate similar language in proposed MCR 8.126(B)(1) whereas Alternative B would not.

Agency admission decisions. Alternative A would clarify that an administrative agency's decision to temporarily admit a foreign attorney does not bind the appellate courts to that agency's pro hac vice decision; rather, the attorney would need to apply for temporary admission before the court. See Alternative A, proposed MCR 8.126(D)(1)-(2). Alternative B would bind the appellate courts to an administrative agency's pro hac vice admission decision. See Alternative B, proposed MCR 8.126(D)(1).

Revocation of admission. Alternative A would provide revocation authority to the tribunal before whom a foreign attorney is practicing, whereas Alternative B would provide this authority to the tribunal that granted the admission. See Alternatives A and B, proposed MCR 8.126(E).

Sponsoring attorneys. Under MCR 8.126(F)(2), Alternative A specifies that a tribunal may waive the requirements under MCR 8.126(F)(1) and may do so after the foreign attorney is granted temporary admission. Alternative B does not include those conditions and states that "[a] tribunal may waive the requirement for a foreign attorney to have a sponsoring attorney." See Alternatives A and B, proposed MCR 8.126(F)(2).

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

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by July 1, 2024 by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When submitting a comment, please refer to ADM File No. 2022-10. Your comments and the comments of others will be posted under the chapter affected by this proposal.

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

March 27, 2024

Clerk

Public Policy Position
ADM File No. 2022-10: Proposed Alternative Amendments of MCR 8.126

Support

Explanation
The Committee voted to support the proposed amendments of MCR 8.126 in Alternative B. The Committee did express a concern about the resources requirements and feasibility of implementing MCR 8.126(C)(4)-(6) and suggested that the Court given consideration to the matter.

Position Vote:
Voted For position: 10
Voted against position: 6
Abstained from vote: 2
Did not vote (absence): 12

Contact Person:
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SBM STATE BAR OF MICHIGAN

To: Members of the Public Policy Committee
Board of Commissioners

From: Nathan A. Triplett, Director of Governmental Relations

Date: June 6, 2024

Re: **HB 4427 – Limited Access to FOIA for Incarcerated Persons**

Background

The Freedom of Information Act ("FOIA"), 1976 PA 442, defines incarcerated individuals as nonpersons. Section 1(2) establishes that "[i]t is the public policy of this state that all persons, except those persons incarcerated in state or local correctional facilities, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees[.]" MCL 15.231(2). Section 2(g) defines the term "person," but notes that "[p]erson does not include an individual serving a sentence of imprisonment in a state or county correctional facility in this state or any other state, or in a federal correctional facility." MCL 15.231(g). House Bill 4427 would amend FOIA to remove this blanket disability and instead provide incarcerated individuals with limited access to certain public records that contain one or more specific references to the incarcerated individual or to their minor child.

In addition to containing specific references to the incarcerated individual or minor child, the requested record would need to be related to one or more of the following: (1) an arrest or prosecution of the incarcerated individual, (2) an arrest, prosecution, or juvenile adjudication of the incarcerated individual's minor child, (3) an arrest, prosecution, or juvenile adjudication that involves the incarcerated individual as an alleged victim, or (4) an arrest, prosecution, or juvenile adjudication that involves the incarcerated individual's minor child as an alleged victim. An incarcerated individual could not obtain records related to their minor child in any of these circumstances if they have been denied parenting time for the child under the Child Custody Act, 1970 PA 91.

Any request made by an incarcerated individual under the provisions proposed in HB 4427 would still be subject to the general FOIA disclosure exemptions enumerated in MCL 15.243, including "information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy," "investigating records compiled for law enforcement purposes," public records that if disclosed "would prejudice a public body's ability to maintain the physical security or custodial or penal institutions," and "records or information specifically described and exempted from disclosure by statute."

A request made by an incarcerated individual related to their minor child would be required to be accompanied by an affidavit attesting to the fact that child is their minor child and that they have not been denied parenting time. Incarcerated individuals would be exempt from the general requirement that requires a requestor's valid phone number or email address.

If a public body does not possess any records responsive to the incarcerated individual's request, they must deny the request within 30 calendar days after receiving the request. Unlike other FOIA denials, a denial made under the new provisions pertaining to an incarcerated individual is not subject to appeal. Generally, if a public body does possess responsive records, they must respond within five business days. Under HB 4427, the Michigan Department of Corrections or a local law enforcement agency that receives a FOIA request from an incarcerated individual would instead have 30 calendar days to respond.

Similar legislation was introduced in the last legislative session as 2021 HB 4617. It was reported with recommendation by the House Committee on Oversight, but never approved by the full House. Interestingly, as introduced, 2021 HB 4617 was tie-barred to legislation that would have created a Legislative Open Records Act applying FOIA-like disclosure requirements to the Michigan Legislature. In the current legislative session, HB 4427 was reported with recommendation with substitute (H-5) on May 15, 2024. It is presently awaiting action by the full House.

Keller Considerations

Generally speaking, amendments to Michigan's FOIA statute rarely fall into the subject areas permissible under *Keller*. HB 4427 presents such a case for the Board's consideration, because the bill is narrowly drafted to provide incarcerated individuals access to records that are essential to facilitating their access to the court system, and their ability to pursue legal claims and defenses related to themselves and their children. Other defendants/litigants already have access to FOIA to acquire similar public records today and frequently use the statute to develop and advance their cases. Because incarcerated individuals are presently nonpersons, as defined by FOIA, they do not. Were HB 4427 drafted simply to amend the definition of "person" to remove the exclusion of incarcerated individuals completely, the bill would likely fail *Keller's* requirement that legislation be germane (reasonably or necessarily related) to the improvement in the quality of legal services. However, because the bill is drafted specifically and narrowly to facilitate incarcerated individuals' access to the courts, it satisfies the germaneness standard and may be considered on its merits. The two Bar committees that reviewed HB 4427—Access to Justice Policy and Criminal Jurisprudence & Practice—concurred that the bill was *Keller*-permissible.

Note that the Board reached a similar conclusion on another piece of legislation amending FOIA earlier this session: SB 73. That bill proposed to amend FOIA to preserve a party's ability to proceed anonymously in a civil action in the narrow circumstance of the party alleging that they were the victim of sexual misconduct. The Board reasoned that a court's ability to permit anonymous proceedings is undermined when the identity of that party can be easily obtained via a FOIA public records request to an investigating law enforcement agency. Permitting a public body to exempt such investigating records from disclosure would help preserve the anonymous nature of the civil proceedings and its integrity. At the same time, the Board concluded that the absence of reasonable assurances that the anonymity of a court proceedings under these circumstances could be maintained would be a significant barrier to some parties seeking redress through the courts. Therefore, the Board determined that SB 73 was *Keller*-permissible in that it was reasonably related to both the functioning of the courts and access to legal services.

Amendments to FOIA that are narrowly drafted to facilitate individuals' access to courts and legal services, as in both SB 73 and HB 4427, are germane to the *Keller*-permissible subject area of improving the availability of legal services to society.

***Keller* Quick Guide**

THE TWO PERMISSIBLE SUBJECT-AREAS UNDER KELLER:

As interpreted by AO 2004-1

Regulation of Legal Profession	**Improvement in Quality of Legal Services**
Regulation and discipline of attorneys	Improvement in functioning of the courts
Ethics	✓ Availability of legal services to society
Lawyer competency	
Integrity of the Legal Profession	
Regulation of attorney trust accounts	

Staff Recommendation

HB 4427 is reasonably related to the availability of legal services to society and therefore *Keller*-permissible. It may be considered on its merits.

SUBSTITUTE FOR

HOUSE BILL NO. 4427

A bill to amend 1976 PA 442, entitled

"Freedom of information act,"

by amending sections 1, 2, 3, and 5 (MCL 15.231, 15.232, 15.233, and 15.235), section 1 as amended by 1997 PA 6, section 2 as amended by 2018 PA 68, section 3 as amended by 2018 PA 523, and section 5 as amended by 2020 PA 36.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. (1) This act ~~shall be known and~~ may be cited as the "freedom of information act".

(2) It is the public policy of this state that, **subject to section 3(7) to (9)**, all persons ~~, except those persons incarcerated in state or local correctional facilities,~~ are entitled to full and complete information regarding the affairs of

government and the official acts of those who represent them as public officials and public employees, consistent with this act. The people ~~shall~~ **must** be informed so that they may fully participate in the democratic process.

Sec. 2. As used in this act:

(a) "Cybersecurity assessment" means an investigation undertaken by a person, governmental body, or other entity to identify vulnerabilities in cybersecurity plans.

(b) "Cybersecurity incident" includes, but is not limited to, a computer network intrusion or attempted intrusion; a breach of primary computer network controls; unauthorized access to programs, data, or information contained in a computer system; or actions by a third party that materially affect component performance or, because of impact to component systems, prevent normal computer system activities.

(c) "Cybersecurity plan" includes, but is not limited to, information about a person's information systems, network security, encryption, network mapping, access control, passwords, authentication practices, computer hardware or software, or response to cybersecurity incidents.

(d) "Cybersecurity vulnerability" means a deficiency within computer hardware or software, or within a computer network or information system, that could be exploited by unauthorized parties for use against an individual computer user or a computer network or information system.

(e) "Field name" means the label or identification of an element of a computer database that contains a specific item of information, and includes, but is not limited to, a subject heading such as a column header, data dictionary, or record layout.

(f) "FOIA coordinator" means either of the following:

(*i*) An individual who is a public body.

(*ii*) An individual designated by a public body ~~in accordance with~~ **under** section 6 to accept and process requests for public records under this act.

(g) "Person" means an individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity. ~~Person does not include an individual serving a sentence of imprisonment in a state or county correctional facility in this state or any other state, or in a federal correctional facility.~~

(h) "Public body" means any of the following:

(*i*) A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of the state government, but does not include the governor or lieutenant governor, the executive office of the governor or lieutenant governor, or employees thereof.

(*ii*) An agency, board, commission, or council in the legislative branch of the state government.

(*iii*) A county, city, township, village, intercounty, intercity, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof.

(*iv*) Any other body that is created by state or local authority or is primarily funded by or through state or local authority, except that **it does not include** the judiciary ~~, including~~ **or** the office of the county clerk and its employees when acting in the capacity of clerk to the circuit court. ~~, is not included in the definition of public body.~~

(i) "Public record" means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. Public record does not include computer software. This act separates public records into the following 2 classes:

(*i*) Those that are exempt from disclosure under section 13.

(*ii*) All public records that are not exempt from disclosure under section 13 and that are subject to disclosure under this act.

(j) "Software" means a set of statements or instructions that when incorporated in a machine usable medium is capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular function, task, or result. Software does not include computer-stored information or data, or a field name if disclosure of that field name does not violate a software license.

(k) "Unusual circumstances" means any 1 or a combination of the following, but only to the extent necessary for the proper processing of a request:

(*i*) The need to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct public records pursuant to a single request.

(*ii*) The need to collect the requested public records from numerous field offices, facilities, or other establishments ~~which~~ **that** are located apart from the particular office receiving or processing the request.

(*l*) "Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or

paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, hard drives, solid state storage components, or other means of recording or retaining meaningful content.

(m) "Written request" means a writing that asks for information, and includes a writing transmitted by facsimile, ~~electronic mail,~~ **email**, or other electronic means.

Sec. 3. (1) Except as expressly provided in section 13, **and subject to subsections (7) to (9)**, upon providing a public body's FOIA coordinator with a written request that describes a public record sufficiently to enable the public body to find the public record, a person has a right to inspect, copy, or receive copies of the requested public record of the public body. A request from a person, other than an individual who qualifies as indigent under section 4(2)(a), must include the requesting person's complete name, address, and contact information, and, if the request is made by a person other than an individual, the complete name, address, and contact information of the person's agent who is an individual. An address must be written in compliance with United States Postal Service addressing standards. ~~Contact~~ **Except for an individual who makes a request under subsection (7), contact** information must include a valid telephone number or ~~electronic mail~~ **email** address. A person has a right to subscribe to future issuances of public records that are created, issued, or disseminated on a regular basis. A subscription is valid for up to 6 months, at the request of the subscriber, and is renewable. An employee of a public body who receives a request for a public record shall promptly forward that request to the freedom of information act coordinator.

(2) A freedom of information act coordinator shall keep a copy

of all written requests for public records on file for ~~no~~ **not** less than 1 year.

(3) A public body shall furnish a requesting person a reasonable opportunity for inspection and examination of its public records, and shall furnish reasonable facilities for making memoranda or abstracts from its public records during the usual business hours. A public body may make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions. A public body shall protect public records from loss, unauthorized alteration, mutilation, or destruction.

(4) This act does not require a public body to make a compilation, summary, or report of information, except as required in section 11.

(5) This act does not require a public body to create a new public record, except as required in section 11, and to the extent required by this act for the furnishing of copies, or edited copies pursuant to section 14(1), of an already existing public record.

(6) The custodian of a public record shall, upon written request, furnish a requesting person a certified copy of a public record.

(7) The right to receive a copy of a public record under this act is available to an individual incarcerated in a county, state, or federal correctional facility in this state or any other state only if all of the following conditions are met:

(a) In addition to complying with the requirements for a proper request for public records under this act, the request must indicate that it is made pursuant to this subsection.

(b) The requested record must not be exempt under section 13.

(c) The requested record must contain 1 or more specific references to the incarcerated individual or the individual's minor child for whom the individual has not been denied parenting time under the child custody act of 1970, 1970 PA 91, MCL 722.21 to 722.31, and the record must otherwise be accessible to the individual by law.

(d) The requested record must be related to 1 or more of the following:

(*i*) An arrest or prosecution of the incarcerated individual.

(*ii*) An arrest, a prosecution, or a juvenile adjudication of the incarcerated individual's minor child as described in subdivision (c).

(*iii*) An arrest, a prosecution, or a juvenile adjudication as to which the incarcerated individual is an alleged victim.

(*iv*) An arrest, a prosecution, or a juvenile adjudication as to which the incarcerated individual's minor child, as described in subdivision (c), is an alleged victim.

(e) If the asserted right to disclosure of a public record under this subsection is based on the record containing 1 or more specific references to the incarcerated individual's minor child, as described in subdivisions (c) and (d)(*ii*) or (*iv*), the request must be accompanied by an affidavit of the incarcerated individual attesting to both of the following:

(*i*) That the individual identified as the incarcerated individual's minor child is in fact the incarcerated individual's minor child.

(*ii*) That the incarcerated individual has in fact not been denied parenting time of that minor child under the child custody act of 1970, 1970 PA 91, MCL 722.21 to 722.31.

(8) The right of incarcerated individuals described in subsection (7) is not intended to interfere with any properly adopted rules that the department of corrections may have regarding the content of mail that may be delivered to an individual incarcerated in a state correctional facility in this state.

(9) If a public body that receives a request for a public record pursuant to subsection (7) does not possess any record related to an arrest or prosecution as described in subsection (7)(c) and (d), the public body shall deny the request in a response provided within 30 days after receiving the request certifying that the public body does not possess any record related to an arrest or prosecution as described in subsection (7)(c) and (d). A public body's denial made in accordance with this subsection is not subject to appeal under this act.

Sec. 5. (1) Except as provided in section 3, a person desiring to inspect or receive a copy of a public record shall make a written request for the public record to the FOIA coordinator of a public body. A written request made by facsimile, ~~electronic mail,~~ **email**, or other electronic transmission is not received by a public body's FOIA coordinator until 1 business day after the electronic transmission is made. However, if a written request is sent by ~~electronic mail~~ **email** and delivered to the public body's spam or junk-mail folder, the request is not received until 1 day after the public body first becomes aware of the written request. The public body shall note in its records both the time a written request is delivered to its spam or junk-mail folder and the time the public body first becomes aware of that request.

(2) Unless otherwise agreed to in writing by the person making the request, a public body shall, subject to ~~subsection~~ **subsections**

(10) **and (11) and section 3(9)**, respond to a request for a public record within 5 business days after the public body receives the request by doing 1 of the following:

(a) Granting the request.

(b) Issuing a written notice to the requesting person denying the request.

(c) Granting the request in part and issuing a written notice to the requesting person denying the request in part.

(d) Issuing a notice extending for not more than 10 business days the period during which the public body shall respond to the request. A public body shall not issue more than 1 notice of extension for a particular request. **This subdivision does not apply to a response that is subject to subsection (11).**

(3) Failure to respond to a request under subsection (2) constitutes a public body's final determination to deny the request if either of the following applies:

(a) The failure was willful and intentional.

(b) The written request included language that conveyed a request for information within the first 250 words of the body of a letter, facsimile, ~~electronic mail,~~ **email**, or ~~electronic mail~~ **email** attachment, or specifically included the words, characters, or abbreviations for "freedom of information", "information", "FOIA", "copy", or a recognizable misspelling of such, or appropriate legal code reference to this act, on the front of an envelope or in the subject line of an ~~electronic mail,~~ **email**, letter, or facsimile cover page.

(4) In a civil action to compel a public body's disclosure of a public record under section 10, the court shall assess damages against the public body under section 10(7) if the court has done

both of the following:

(a) Determined that the public body has not complied with subsection (2).

(b) Ordered the public body to disclose or provide copies of all or a portion of the public record.

(5) A written notice denying a request for a public record in whole or in part is a public body's final determination to deny the request or portion of that request. The written notice must contain:

(a) An explanation of the basis under this act or other statute for the determination that the public record, or portion of that public record, is exempt from disclosure, if that is the reason for denying all or a portion of the request.

(b) A certificate that the public record does not exist under the name given by the requester or by another name reasonably known to the public body, if that is the reason for denying the request or a portion of the request.

(c) A description of a public record or information on a public record that is separated or deleted under section 14, if a separation or deletion is made.

(d) A full explanation of the requesting person's right to do either of the following:

(*i*) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the disclosure denial.

(*ii*) Seek judicial review of the denial under section 10.

(e) Notice of the right to receive ~~attorneys'~~ **attorney** fees and damages as provided in section 10 if, after judicial review, the court determines that the public body has not complied with

this section and orders disclosure of all or a portion of a public record.

(6) The individual designated in section 6 as responsible for the denial of the request shall sign the written notice of denial.

(7) If a public body issues a notice extending the period for a response to the request, the notice must specify the reasons for the extension and the date by which the public body will do 1 of the following:

(a) Grant the request.

(b) Issue a written notice to the requesting person denying the request.

(c) Grant the request in part and issue a written notice to the requesting person denying the request in part.

(8) If a public body makes a final determination to deny in whole or in part a request to inspect or receive a copy of a public record or portion of that public record, the requesting person may do either of the following:

(a) Appeal the denial to the head of the public body under section 10.

(b) Commence a civil action, under section 10.

(9) Notwithstanding any other provision of this act to the contrary, a public body that maintains a law enforcement records management system and stores public records for another public body that subscribes to the law enforcement records management system is not in possession of, retaining, or the custodian of, a public record stored on behalf of the subscribing public body. If the public body that maintains a law enforcement records management system receives a written request for a public record that is stored on behalf of a subscribing public body, the public body that

maintains the law enforcement records management system shall, within 10 business days after receipt of the request, give written notice to the requesting person identifying the subscribing public body and stating that the requesting person ~~shall~~ **must** submit the request to the subscribing public body. As used in this subsection, "law enforcement records management system" means a data storage system that may be used voluntarily by subscribers, including any subscribing public bodies, to share information and facilitate intergovernmental collaboration in the provision of law enforcement services.

(10) A person making a request under subsection (1) may stipulate that the public body's response under subsection (2) be ~~electronically mailed,~~ **emailed**, delivered by facsimile, or delivered by first-class mail. This subsection does not apply if the public body lacks the technological capability to provide an ~~electronically mailed~~ **emailed** response.

(11) If the department of corrections or a local law enforcement agency receives a request submitted pursuant to section 3(7) by an individual incarcerated in a state correctional facility in this state or a local correctional facility in this state, the department of corrections or local law enforcement agency shall respond to the request in the manner prescribed in subsection (2)(a) to (c) within 30 days after the department of corrections or local law enforcement agency receives the request. This subsection does not apply to a request that is properly denied under section 3(9).

Legislative Analysis

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

FOIA REQUESTS BY INCARCERATED INDIVIDUALS

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

House Bill 4427 (proposed substitute H-5)
Sponsor: Rep. Stephanie A. Young
Committee: Criminal Justice
Complete to 5-13-24

SUMMARY:

House Bill 4427 would amend the Freedom of Information Act (FOIA) to allow access by an incarcerated individual to certain public documents that relate to their own case, to an arrest or prosecution or juvenile adjudication of their minor child for whom they have not been denied parenting time under the Child Custody Act, or to an arrest or prosecution or juvenile adjudication for an offense the incarcerated individual or minor child was an alleged victim of.

Persons who can request FOIA records

Currently, FOIA says that it is the state's public policy that all ***persons***, *except those persons incarcerated in state or local correctional facilities*, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with the act. The bill would delete the italicized text and provide that the remainder of the sentence is subject to the provisions described under "Records requests by incarcerated individuals," below.

The act currently defines ***person*** as an individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity. However, the definition now specifically excludes an individual serving a sentence of imprisonment in a federal correctional facility or in a state or county correctional facility in Michigan or any other state. The bill would eliminate this exclusion.

Records requests by incarcerated individuals

The bill would instead newly provide that the right to receive a copy of a public record under FOIA is available to an individual incarcerated in a county, state, or federal correctional facility in Michigan or any other state only if all of the following are met:

- In addition to the other requirements for properly requesting public records under the act, the request indicates that it is made under these particular provisions.
- The record requested contains one or more specific references to the incarcerated individual or to their minor child they have not been denied parenting time for under the Child Custody Act.
- The record is related to one or more of the following:
    - An arrest or prosecution of the incarcerated individual.
    - An arrest, prosecution, or juvenile adjudication of the individual's minor child described above.
    - An arrest, prosecution, or juvenile adjudication that involves the incarcerated individual as an alleged victim.
    - An arrest, prosecution, or juvenile adjudication that involves the individual's minor child described above as an alleged victim.
- The record is otherwise accessible to the incarcerated individual by law.

- The record is not exempt under section 13 of the act.[1]
- If applicable, the request is accompanied by an affidavit of the incarcerated individual attesting to both of the following:
    - That the individual identified in the request as the individual's minor child to whom a record relates is in fact the individual's minor child.
    - That the incarcerated individual has in fact not been denied parenting time for that minor child under the Child Custody Act.

An incarcerated individual making a request as described above would be exempt from a provision that requires the requestor's contact information to include a valid phone number or email address.

The bill says that the right of incarcerated individuals described above is not intended to interfere with any properly adopted Department of Corrections rules regarding the content of mail that may be delivered to an individual incarcerated in a state correctional facility in Michigan.

Denial of a request

If a ***public body*** that receives a request from an incarcerated individual as described above does not possess any record related to an arrest or prosecution involving the incarcerated individual or their minor child, the public body would have to deny the request in a response provided within 30 calendar days after receiving the request. The response would have to certify that the public body does not possess any record related to an arrest or prosecution involving the incarcerated individual or their minor child as described above. A denial made under these provisions would not be subject to appeal under the act.

Public body means any of the following:

- A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of the state government, except for the governor or lieutenant governor, the executive office of the governor or lieutenant governor, or employees thereof.
- An agency, board, commission, or council in the legislative branch of the state government.
- A county, city, township, village, intercounty, intercity, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof.
- Any other body created by state or local authority or primarily funded by or through state or local authority, except for the judiciary, including the office of the county clerk and its employees when acting in the capacity of clerk to the circuit court.

Response to request from incarcerated individual

In general under FOIA, a public body is required to respond to a request for a public record within five business days after receiving the request by granting the request, issuing a written notice denying the request, granting the request in part and issuing a written notice denying the

[1] The section describes records a public body may exempt from disclosure under FOIA, such as those involving security concerns, trade secrets, or invasion of privacy. http://legislature.mi.gov/doc.aspx?mcl-15-243

request in part, or *issuing a notice extending for not more than 10 business days the period during which the public body must respond to the request*.

Under the bill, the above response requirement would not apply to a request received under the bill by the Department of Corrections or a local law enforcement agency from an individual incarcerated in a state or local correctional facility in Michigan. In those cases, except as described under "Denial of a request," below, the department or agency would have 30 calendar days after receiving the request to grant the request, issue a written notice denying it, or grant it in part and issue a written notice denying it in part.

In addition, the language italicized above (related to issuing a notice of extension) would not apply to a request received by the Department of Corrections or a local law enforcement agency from an individual incarcerated in a state or local correctional facility in Michigan.

MCL 15.231 et seq.

BACKGROUND:

The bill is similar to House Bill 4617 of the 2021-22 legislative session, which was reported from the House Oversight committee.[2]

FISCAL IMPACT:

House Bill 4427 could have a fiscal impact on the state or local units of government depending on the number of public records requested under provisions of the bill and how the increase in record requests affects administrative costs. An increase in records requested from the Department of Corrections would have a nominal fiscal impact on the department, and any associated costs could be absorbed by existing appropriations.

Legislative Analyst: Rick Yuille
Fiscal Analysts: Robin Risko
Michael Cnossen

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

[2] https://www.legislature.mi.gov/documents/2021-2022/billanalysis/House/pdf/2021-HLA-4617-5C0381C5.pdf

Public Policy Position
HB 4427

Support

Explanation
The Committee voted unanimously (14) to support HB 4427. The legislation will permit incarcerated individuals to utilize FOIA to obtain records that may be essential to their ability to assert their legal claims/rights or legal claims/rights related to their minor children (for whom the incarcerated individual has not been denied parenting time). Today, by comparison, FOIA defines incarcerated individuals as non-persons and leaves them without access to this information.

While the Committee supports HB 4427 as an important, incremental improvement over existing law, it believes that the bill is overly restrictive in several respects and would therefore recommend that the Legislature consider further legislation in the future to expand the scope of records that are accessible to incarcerated individuals. The Committee believes that such expansion can be accomplished while also addressing concerns around the time and expense of processing requests and victims' privacy/safety.

Position Vote:
Voted For position: 14
Voted against position: 0
Abstained from vote: 0
Did not vote (absence): 10

***Keller* Permissibility Explanation**
The Committee voted unanimously (14) that the legislation is germane to access to/availability of legal services and is therefore *Keller*-permissible.

Contact Persons:
Daniel S. Korobkin dkorobkin@aclumich.org
Katherine L. Marcuz kmarcuz@sado.org

Public Policy Position
HB 4427

Support

Explanation:
The Committee voted to support HB 4427. The legislation will make certain, limited records available to incarcerated individuals via FOIA. The types of records available are tailored to those necessary for an incarcerated individual to assert their legal claims/rights or legal claims/rights related to their minor children (for whom the incarcerated individual has not been denied parenting time). The Committee believes that HB 4427 strikes an appropriate balance between the need incarcerated individuals have to access records related to themselves and their children and concerns regarding the time and expense of processing records requests and victims' privacy/safety.

Position Vote:
Voted For position: 10
Voted against position: 5
Abstained from vote: 1
Did not vote (absent): 8

***Keller* Permissibility Explanation**
The Committee determined that the legislation is germane to access to/availability of legal services and is therefore *Keller*-permissible.

Contact Persons:
Nimish R. Ganatra ganatran@washtenaw.org
John A. Shea jashea@earthlink.net

Public Policy Position
HB 4427

Support

Position Vote:
Voted for position: 11
Voted against position: 0
Abstained from vote: 1
Did not vote: 2

Contact Person: Edwar Zeineh
Email: edwar@zeinehlaw.com

INNOCENCE PROJECT

Executive Director
Christina Swarns

Co-Founders & Special Counsel
Barry C. Scheck, Esq.
Peter J. Neufeld, Esq.

Amanda Wallwin, Innocence Project
Testimony to the Criminal Justice Committee of the Michigan House of Representatives
27 February 2024

My name is Amanda Wallwin and I'm a State Policy Advocate with the Innocence Project. The Innocence Project is a national organization that represents wrongfully convicted clients across the country. We also work to enact state-level policy reforms that prevent and reveal wrongful convictions.

Our cases vary widely but there is one thing they all have in common: reinvestigating an innocence case requires information from the underlying case. In most cases, the first step for our attorneys is to request our clients' case files, whether that's through discovery, FOIA or directly from a prosecutor. Without that information, there's simply no way to make decisions about how to pursue an innocence claim.

In Michigan, 71 of the 173 exonerations involve Brady violations, that is, exculpatory evidence that was withheld from the defense. Those 71 exonerees could never have demonstrated their innocence without access to the information in their case, including the exculpatory evidence.

For incarcerated people who aren't represented by counsel, the only way to receive their case file is through using the Freedom of Information Act. However, Michigan law expressly prohibits incarcerated people from filing requests under FOIA. This leaves those people without an avenue to be able to see their case file, to understand the details in their case, and often, to be able to convince an attorney that they have a viable innocence claim.

House Bill 4427 is a narrowly tailored bill that will allow people who are incarcerated to access only their case files through FOIA requests. This legislation can make all the difference for wrongfully convicted people working to demonstrate their innocence, and is limited to only the information that will help them do that. The Innocence Project supports

this bill and we applaud Representative Stephanie Young for introducing this important legislation.

Thank you for the opportunity to testify.

SBM STATE BAR OF MICHIGAN

To: Members of the Public Policy Committee
Board of Commissioners

From: Nathan A. Triplett, Director of Governmental Relations

Date: June 6, 2024

Re: **HB 5689 – HB 5693 – Jury Administration and Selection Reform Package**

Background

In 2021, then-Senator Adam Hollier convened a workgroup composed of prosecutors, judges, defense attorneys, academics, and other legal system stakeholders to draft legislation aimed at improving Michigan's jury administration and selection system and addressing the persistent unrepresentativeness of jury pools. Based on the workgroup's efforts, Senator Hollier introduced Senate Bill 1175 in September 2022—the waning days of the 101st Legislature. The bill was referred to the Senate Judiciary & Public Safety Committee, but a hearing was never held.

SB 1175 was referred for review by SBM committees and sections. The Civil Procedure & Courts Committee opted to take no position on the bill, because they believed it was unlikely to be taken up in the short time between the bill's introduction and the Legislature's *sine die* adjournment. Likewise, Criminal Jurisprudence & Practice voted to support the legislation in concept, but to recommend that the Board defer action until a future date. The Board of Commissioners, based upon a recommendation from the Public Policy Committee, did just that at its November 2022 meeting.

When the 102nd Legislature convened in 2023, State Representative Amos O'Neal assumed the reins of Senator Hollier's workgroup. Using text of 2022 SB 1175 as a starting point, the workgroup met for over a year to refine their proposals. House Bills 5689-5693 are the result. This jury administration and selection reform package was referred to the House Criminal Justice Committee. No hearing has been scheduled at this time.

House Bill 5689 is the principal bill in this package. It would amend the Revised Judicature Act, 1961 PA 236, to eliminate the existing county-by-county patchwork of jury boards and replace them with a single statewide jury management system administered by the State Court Administrative Office ("SCAO"). SCAO would be charged with creating jury pool lists and developing a standardized jury questionnaire. Notably, this questionnaire would include collecting data on prospective jurors' race and ethnicity. SCAO, under the direction and supervision of the Michigan Supreme Court, is charged with promulgating rules to implement the new statewide system. Additionally, HB 5689 requires courts to provide annual reports to SCAO as well as collect and record information regarding individuals who do not return juror qualifications questionaries, who are disqualified from jury service, who are examined for jury service, who are excused from service, who are removed for cause, who are removed by preemptory challenge, and who are selected. The bill also increases juror compensation. Under the bill, jurors are to receive pay "consistent with the state minimum wage per hour," indexed to the Consumer Price Index. Reimbursement for a juror's travel expenses is set at the Internal Revenue Service standard mileage rate and jurors would be entitled to have their required

parking costs reimbursed. Finally, the bill permits a juror to waive pay and earmark it toward the court's operating budget for juror compensation/reimbursement.

House Bill 5690 is a technical trailer bill tie-barred to HB 5689. It amends the Uniform Condemnation Procedures Act, 1980 PA 87, to correct references to the Revised Judicature Act, 1961 PA 236.

House Bill 5691 would amend the Revised Judicature Act, 1961 PA 236, to allow individuals who were formerly incarcerated to serve on a jury. The bill prohibits a court from disqualifying a juror for cause based solely on the juror's criminal record. It prohibits a juror from being excluded based on "the prospective juror's protected status" under the Elliott-Larsen Civil Rights Act, 1976 PA 453. The bill also seeks to address abuse of peremptory challenges by outlining a process by which a party or the court may object to a peremptory challenge based on a juror's protected status. The bill requires a court to presume that a preemptory challenge is invalid if it is based upon six specified reasons:

> (1) a juror's expressed distrust of law enforcement or belief that law enforcement officers engage in racial profiling;
> (2) the juror or an individual with whom the juror has a close relationship has been stopped, arrested, investigated, or convicted of a crime;
> (3) the juror lives in a "high-crime neighborhood";
> (4) the juror has a child outside of marriage;
> (5) the juror receives state benefits; or
> (6) the juror is not a native English speaker.

Proponents of this package argue that the presumption is necessary to address widespread use of preemptory challenges for impermissible purposes, most notably the use of these circumstances as proxies for an individual's race to evade *Batson* challenges.

House Bill 5692 is a supplemental appropriations bill that would provide $4 million to support the establishment of the proposed statewide jury selection program and $1 million for staffing and software maintenance. This bill is tie-barred to HB 5689.

House Bill 5693 is a technical trailer bill tie-barred to HB 5689. It amends the Probate Code, 1938 PA 288, to correct references to the Revised Judicature Act, 1961 PA 236.

Keller Considerations

The three Bar committees that reviewed HBs 5689 – HB 5693—Access to Justice Policy, Criminal Jurisprudence & Practice, and Civil Procedure & Courts—all concurred that the bills were *Keller*-permissible. HBs 5689-5693 would make significant changes to the administration of jury selection in Michigan courts and impose new requirements on both circuit courts and SCAO to implement a centralized jury selection process, as well as data collection. The bills will also have a significant impact on jury pools and who is ultimately seated to serve on juries. As the selection of a jury is a foundational component of many trials and the reforms proposed by this legislation would alter jury selection in Michigan significantly from existing procedures, this legislation is necessarily related to the functioning of the courts and therefore *Keller*-permissible.

***Keller* Quick Guide**

THE TWO PERMISSIBLE SUBJECT-AREAS UNDER KELLER:

As interpreted by AO 2004-1

Regulation of Legal Profession	**Improvement in Quality of Legal Services**
Regulation and discipline of attorneys	✓ Improvement in functioning of the courts
Ethics	Availability of legal services to society
Lawyer competency	
Integrity of the Legal Profession	
Regulation of attorney trust accounts	

Staff Recommendation

House Bills 5689-5693 are necessarily related to the functioning of the courts and therefore *Keller*-permissible. The bill package may be considered on its merits.

HOUSE BILL NO. 5689

April 25, 2024, Introduced by Reps. O'Neal, Neeley, Dievendorf, Brenda Carter, Rheingans, Wilson, MacDonell, Brabec, Tsernoglou, Rogers, Hood, Price, Andrews, Grant, McKinney and Scott and referred to the Committee on Criminal Justice.

A bill to amend 1961 PA 236, entitled

"Revised judicature act of 1961,"

by amending sections 857, 1301a, 1304a, 1307a, 1326, 1332, 1334, 1343, 1344, 1345, 1346, 1371, and 1372 (MCL 600.857, 600.1301a, 600.1304a, 600.1307a, 600.1326, 600.1332, 600.1334, 600.1343, 600.1344, 600.1345, 600.1346, 600.1371, and 600.1372), sections 1301a, 1304a, 1326, 1332, 1334, 1343, 1345, 1346, and 1372 as amended by 2004 PA 12, section 1307a as amended by 2023 PA 308, section 1344 as amended by 2017 PA 51, and by adding sections 1306 and 1307; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 857. (1) If a party to a proceeding in the probate court would have had a right before January 1, 1971 to demand a jury to determine a particular issue of fact in the circuit court upon a de novo appeal from that proceeding to the circuit court, that party shall on and after January 1, 1971 have the right to demand a jury to determine that issue of fact in the probate court proceeding.

(2) When a jury is demanded pursuant to law in a proceeding in the probate court, the jury ~~shall be~~ **is** summoned and selected in accordance with ~~sections 1301 to 1354.~~ **this act.** With respect to jurors, ~~any~~ **an** examination, challenge, replacement, oath, or other practice ~~which~~ **that** is not governed by ~~the provisions of sections 1301 to 1354 shall be~~ **this act is** governed by rules adopted by the supreme court.

(3) If a jury trial is demanded in ~~any~~ **a** proceeding by a party ~~having~~ **that has** a right to have a jury determine an issue, the demanding party shall pay ~~into~~ **the** court a jury fee in an amount equal to the jury fee required in the circuit court in the same county but not to exceed $30.00. ~~, which~~ **The jury** fee ~~shall be~~ **is** paid to the county treasurer for deposit in the general fund of the county. A jury fee ~~shall~~ **is** not ~~be~~ required from a party demanding a jury trial in the juvenile division of the probate court or under ~~Act No. 258 of the Public Acts of 1974, as amended, being sections 330.1001 to 330.2106 of the Michigan Compiled Laws.~~**the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.**

Sec. 1301a. (1) ~~Except as provided in subsection (2), this~~ **This** chapter governs the selection of juries in the following courts:

(a) Circuit court.

(b) Probate court.

(c) District court.

(d) Municipal court.

(2) ~~Sections 1310, 1311, 1312, 1321(1), 1322, 1323, 1330, 1338, and 1343 do not apply to a court that adopts a method of jury selection described in section 1371.~~**As designated by the chief judge of the circuit court, only the circuit court administrator or the clerk of the circuit court may determine if an individual meets the qualifications to be a potential juror in a county.**

Sec. 1304a. ~~(1) The jury board~~ **A court or clerk of the court** may use **a computerized,** electronic, ~~and~~ **or** mechanical ~~devices~~ **process within jury management software or other software** in carrying out its duties under this chapter.

~~(2) The jury board may use the historic method of preparing separate slips of paper for the second jury list and drawing slips from a jury board box to determine a panel or array of jurors.~~

Sec. 1306. (1) The state court administrative office, under the supervision and direction of the supreme court, shall promulgate rules to implement this section, including, but not limited to, providing consistent policies, practices, and procedures relating to the provision of jury pool lists. The rules must make allowance, as necessary, for a court that adopts a 1 day, 1 trial jury system as defined in section 1371.

(2) The state court administrative office, under the supervision and direction of the supreme court, shall create and implement a jury selection program in accordance with this chapter and court rules.

(3) The state court administrative office, under the supervision and direction of the supreme court, shall compile a

first jury list of individuals who reside in each jurisdiction to serve as potential jurors under this chapter from the driver license and state personal identification cardholder list of names received from the secretary of state.

(4) Each year before April 15, the secretary of state shall transmit to the state court administrative office at no cost a randomized full, current, and accurate copy of a list that combines the driver license list and state personal identification cardholder list of the name, address, and date of birth of individuals residing in each jurisdiction. Upon request, the secretary of state shall furnish additional lists to any federal, state, or local governmental agency, other than the clerk of each county, for the purpose of jury selection. An agency that requests and receives a list shall reimburse the secretary of state for actual costs incurred in the preparation and transmittal of the list and all reimbursements must be deposited in the state general fund. If an agency uses computerized, electronic, or mechanical devices to carry out its duties, the agency may request and receive a copy of the combined driver license and personal identification cardholder list on any electronically produced medium as required by the secretary of state. The secretary of state shall create and use standard size, format, and content of media utilized specifications to transmit information used for jury selection.

(5) The state court administrative office, under the supervision and direction of the supreme court, shall electronically transmit the first jury list to the clerk of the court of record or municipal court.

(6) The state court administrative office, under the supervision and direction of the supreme court, shall repeat the

first jury list process under this section as necessary if additional jurors are required.

(7) The state court administrative office, under the supervision and direction of the supreme court, shall create a standard juror qualifications questionnaire to be used by either the circuit court administrator or the clerk of the circuit court. The standard juror qualifications questionnaire must contain blanks for the following information:

(a) A juror's personal information, including, but not limited to, phone number, race, and ethnicity.

(b) The juror's qualifications for, and exemptions from, jury service, as applicable.

Sec. 1307. (1) The circuit court administrator or the clerk of the circuit court shall receive the first jury list provided by the state court administrative office under section 1306 and remove from the list the individuals who served as a petit or grand juror in that jurisdiction within the last year. If the names are not to be immediately used, the names must be protected or sealed and remain in the custody of the circuit court administrator or the clerk of the circuit court until additional names are needed or until ordered to be released by the chief judge.

(2) On or before May 1, the chief judge of the circuit court shall receive from the chief judge of each court of record and any municipal courts in the circuit an estimate of the number of jurors who will be needed by the court for a 1-year period beginning September 1 of that year. The estimate must be submitted in writing and delivered to the circuit court administrator or the clerk of the circuit court, as designated by the chief judge.

(3) The circuit court administrator or the clerk of the

circuit court shall randomly select individuals from the first jury list as needed to ensure sufficient potential jurors. The circuit court administrator or the clerk of the circuit court shall concurrently send by ordinary mail or personal service the standard juror qualifications questionnaire created in section 1306 and a summons to individuals selected in accordance with section 1332. If the trial court determines that a supplemental juror qualifications questionnaire is necessary, the circuit court administrator or the clerk of the circuit court may include the supplemental juror qualifications questionnaire in the summons sent to the selected individuals or mail the supplemental juror qualifications questionnaire individually. An individual shall complete and return a questionnaire that was sent under this subsection to the circuit court administrator or the clerk of the circuit court not later than 10 days after the questionnaire is received. All juror qualifications questionnaires must be kept on file by the clerk of the court for 3 years, but the chief circuit judge may order the juror qualifications questionnaires to be kept on file for a longer period.

(4) The circuit court administrator or the clerk of the circuit court shall provide annual reports to the state court administrative office as required by the supreme court. The state court administrative office, under the supervision and direction of the supreme court, shall develop and adopt rules regarding the contents of the annual reports and determine access to the annual reports data for research and litigation purposes. In addition to the information required for the annual reports, the circuit court administrator or the clerk of the circuit court of record shall collect and record of all of the following information:

(a) The name of an individual who does not return the juror qualifications questionnaire.

(b) The name of an individual who is disqualified from jury service based on the individual's juror qualifications questionnaire responses.

(c) The name of an individual examined under subsection (6) and a record of the individual's qualifications to serve as a juror.

(d) The name of an individual excused from service under subsection (7).

(e) For an individual examined on a jury panel, all of the following, if applicable:

(*i*) The case name and number.

(*ii*) The name of an individual removed from a jury panel for cause by a judge.

(*iii*) The name of an individual removed from a jury panel by peremptory challenge.

(*iv*) If a party challenged the validity of an individual's removal from the jury by peremptory challenge.

(f) The name of an individual who was selected to serve on the jury or as an alternate juror.

(5) On the basis of the answers to the juror qualifications questionnaire, the circuit court administrator or the clerk of the circuit court may excuse from service an individual who claims exemption and gives satisfactory proof of the right to an exemption and an individual who is not qualified for jury service. The circuit court administrator or the clerk of the circuit court may investigate the accuracy of the answers to a juror qualifications questionnaire and may call on law enforcement agencies for

assistance in the investigation.

(6) The chief circuit judge, or the clerk of the court, may require an individual to appear before the circuit court at a specified time to testify under oath or affirmation concerning the individual's qualifications to serve as a juror, in addition to completing the juror qualifications questionnaire. Notice must be given, personally or by mail, to an individual not less than 7 days before the individual is required to appear before the circuit court. The circuit court shall hold evening sessions as necessary to examine prospective jurors who are unable to attend at other times. A clerk of the court may administer an oath or affirmation in relation to the examination of a matter in this chapter.

(7) If a prospective juror without legal disqualification or exemption applies to the clerk of a court of record or municipal court to be excused from jury service, the clerk may, with the written approval of the chief circuit judge, excuse the prospective juror if it appears that the interests of the public or of the prospective juror will be materially injured by the prospective juror's attendance or if the health of the prospective juror or that of a member of the prospective juror's family requires the prospective juror's absence from court.

(8) If an individual who was selected for jury service is deceased, the name of that individual must be removed from the first jury list and that fact may be forwarded to the local clerk.

(9) The trial judge, in the trial judge's discretion, may grant a deferral of jury service to an individual if the individual claims that serving on the date the individual is called creates a hardship. If the trial judge grants a deferral, the individual must be rescheduled by the court to serve on a future date. The circuit

court administrator or clerk of the court may also reschedule a prospective juror with written permission of the chief judge.

(10) Upon the order of the chief circuit judge, jury panels or parts of jury panels selected for any court in the county may be used for jury selection in any court of record or municipal court in the county, if jurors on the panel or part of a panel selected are otherwise eligible to serve as jurors in the particular court.

(11) The circuit court administrator or clerk of the circuit court shall make and transmit to the district court a list of prospective jurors segregated by the geographical area of the jurisdiction of each district court district.

(12) If a city located in more than 1 county is placed entirely within a single district of the district court under chapter 81, the state court administrative office, under the supervision and direction of the supreme court, by rule shall specify the procedure for compiling the jury list for that district court district so that it includes the names and addresses of residents from the parts of the counties that comprise that district.

(13) Except as otherwise provided in this subsection, the judges of each circuit court may establish rules, not inconsistent with this chapter, necessary to carry out and ensure the proper selection of jurors. A court that adopts a 1 day, 1 trial jury system as that term is defined in section 1371 may establish rules inconsistent with this chapter only as necessary to select jurors in accordance with sections 1371 and 1372.

Sec. 1307a. (1) To qualify as a juror, an individual must meet all of the following criteria:

(a) Be a citizen of the United States, 18 years of age or

older, and a resident in the county for which the individual is selected, and in the case of a district court in districts of the second and third class, be a resident of the district.

(b) Be able to communicate in the English language.

(c) Be physically and mentally able to carry out the functions of a juror. Temporary inability must not be considered a disqualification.

(d) Not have served as a petit or grand juror in a court of record during the preceding 12 months.

(e) Not have been convicted of a felony.

(2) An individual more than 70 years of age may claim exemption from jury service and must be exempt upon making the request.

(3) An individual who is a nursing mother may claim exemption from jury service for the period during which she is nursing her child and must be exempt upon making the request if she provides a letter from a physician, a lactation consultant, or a certified nurse midwife verifying that she is a nursing mother.

(4) An individual who is a participant in the address confidentiality program created under the address confidentiality program act, 2020 PA 301, MCL 780.851 to 780.873, may claim exemption from jury service for the period during which the individual is a program participant. To obtain an exemption under this subsection, the individual must provide the participation card issued by the department of attorney general upon the individual's certification as a program participant to the court as evidence that the individual is a current participant in the address confidentiality program.

(5) An individual who is a service member of the United States

Armed Forces may claim exemption from jury service for the period during which the individual is on active duty and must be exempt upon making the request of the court and providing a copy of the service member's orders.

(6) An individual who is the spouse of a service member of the United States Armed Forces may claim exemption from jury service for the period during which the individual resides outside of this state or the United States due to the service member's active duty status. The spouse under this section must be exempt upon making the request of the court and providing a copy of the service member's orders.

(7) For the purposes of this section and sections 1371 ~~to 1376,~~ **and 1372,** an individual has served as a juror if that individual has been paid for jury service.

(8) As used in this section:

(a) "Certified nurse midwife" means an individual licensed as a registered professional nurse under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, who has been issued a specialty certification in the practice of nurse midwifery by the board of nursing under section 17210 of the public health code, 1978 PA 368, MCL 333.17210.

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

(c) "Lactation consultant" means a lactation consultant certified by the International Board of Lactation Consultant Examiners.

(d) "Physician" means an individual licensed by the state to engage in the practice of medicine or osteopathic medicine and surgery under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

Sec. 1326. If a grand jury is ordered by the court, or required by statute, the ~~board~~ **trial court** shall select ~~the names of~~ a sufficient number of ~~persons, as determined by the chief circuit judge,~~ **individuals** to serve as grand jurors in accordance with the provisions of section 11 of chapter VII of the code of criminal procedure, 1927 PA 175, MCL 767.11. The ~~names shall~~ **individuals must** be selected in the same manner and from the same source as petit jurors. The term of service of grand jurors ~~shall be as~~ **is** prescribed ~~by~~ **under** section 7a of chapter VII of the code of criminal procedure, 1927 PA 175, MCL 767.7a.

Sec. 1332. The **circuit court administrator, the** clerk **of the circuit court,** ~~jury board,~~ or **the** sheriff shall summon jurors for ~~court~~ attendance at ~~such~~ **the** times and in ~~such~~ **the** manner as directed by the chief judge or by the judge to whom the action in which jurors are being called for service is assigned. For a juror's first required court appearance, service ~~shall~~ **must** be **made** by a written notice addressed to the juror at the juror's place of residence as shown by the records of the ~~board, which~~ **court. The** notice **for a juror's first required court appearance** may be by ordinary mail or by personal service. For subsequent service, notice may be in any manner directed by the judge. The **person or** officer giving notice to jurors shall keep a record of the service of the notice and ~~shall~~ make a return if directed by the court. The return ~~shall be~~ **is** presumptive evidence of the fact of service. **The circuit court administrator or the clerk of the circuit court**

shall, not later than 14 days after the return, notify a juror in writing by ordinary mail or electronic communication if the juror is excused.

Sec. 1334. (1) The chief judge may excuse any juror or jurors from attendance without pay for any portion of the term. The chief judge shall excuse jurors from attendance on days when it is not expected that ~~they~~ **the jurors** will be required. ~~The~~ **If a juror has not been called for voir dire examination in an action, the** chief judge may postpone the **juror's** service ~~of a juror~~ to a later term of court ~~if the juror has not been called for voir dire examination in any action.~~**or up to 1 year, whichever is less.**

(2) The judge presiding at the trial of an action may excuse jurors from attendance at that trial for cause.

Sec. 1343. The term of service of petit jurors ~~shall be~~ **is** determined by local court rule but ~~shall~~ **must** not exceed the term of court, unless at the end of this period a juror is serving in connection with an unfinished case, in which event the juror shall continue to serve, in that case only, until the case in which ~~he or she~~ **the juror** is serving is finished. Once commenced, the term of service shall be continuous except as provided in sections 1334 to 1336. **This section does not apply to a court that adopts a 1 day, 1 trial jury system as that term is defined in section 1371.**

Sec. 1344. (1) ~~A~~ **Except as provided under subsection (6), a** juror must be reimbursed for ~~his or her~~ **the juror's** traveling expenses ~~at a~~ **as follows:**

(a) At the Internal Revenue Service standard mileage rate ~~,~~ ~~determined by the county board of commissioners, that is not less than 10 cents per mile or, beginning April 1, 2018, not less than 20 cents per mile~~ for traveling from the juror's residence to the

place of holding court and returning for each day or 1/2 day of actual attendance at sessions of the court.

(b) For all required costs to park a vehicle for each day of attendance at sessions of the court.

(2) ~~A~~ **Except as provided under subsection (6), in addition to reimbursement under subsection (1) and subject to subsection (5), a** juror ~~also~~ must be compensated at a rate ~~, determined by the county board of commissioners, as follows:~~

~~(a) Except as provided in subdivision (b), a rate determined as follows:~~

~~(*i*) For the first day or 1/2 day of actual attendance at the court, not less than $25.00 per day and $12.50 per 1/2 day.~~

~~(*ii*) For each subsequent day or 1/2 day of actual attendance at the court, not less than $40.00 per day and $20.00 per 1/2 day.~~

~~(b) Beginning April 1, 2018, and every subsequent fiscal year, if, as of the end of the 2 most recent fiscal years, the state court administrator, at the direction of the supreme court and upon confirmation by the state treasurer, determines that sufficient funds are available in the juror compensation reimbursement fund created in section 151d, a rate determined as follows:~~

~~(*i*) For the first day or 1/2 day of actual attendance at the court, not less than $30.00 per day and $15.00 per 1/2 day.~~

~~(*ii*) For each subsequent day or 1/2 day of actual attendance at the court, not less than $45.00 per day and $22.50 per 1/2 day.~~**consistent with the state minimum wage per hour for each 1/2 day or full day of required actual attendance in court.**

(3) If an action is removed from the circuit court to a lower court, the jury fee must be paid to the circuit court whether paid before or after removal of the action to the lower court, and the

circuit court is responsible for payment of the compensation to the juror involved.

(4) A clerk or deputy clerk of the court who fraudulently issues a certificate of attendance of a juror on which the juror receives pay, except as allowed by law, is guilty of a misdemeanor punishable by imprisonment for not more than 6 months, ~~or~~ a fine of not more than $500.00, or both.

(5) Every 5 years beginning January 1, 2025, the state treasurer shall adjust the state minimum wage in effect by an amount determined by the state treasurer at the end of the preceding calendar year to reflect the percentage change in the Consumer Price Index for the most recent 5-year period for which data is available. The state court administrative office shall post the adjusted state minimum wage on its website by January 1 of the year it is calculated, and the adjusted rate is effective beginning October 1 of that year.

(6) Upon request, a juror may waive reimbursement and compensation under this section.

(7) ~~(5)~~ As used in this section: ~~, "sufficient funds" means an amount exceeding $2,000,000.00 in the juror compensation reimbursement fund created in section 151d.~~

(a) "1/2 day" means 4 hours.

(b) "Consumer Price Index" means the most comprehensive index of consumer prices available for this state from the Bureau of Labor Statistics of the United States Department of Labor.

(c) "Full day" means 8 hours.

(d) "State minimum wage" means the minimum hourly wage rate determined under the workforce opportunity wage act, 2014 PA 138, MCL 408.411 to 408.424.

Sec. 1345. ~~A board member~~ **The clerk of the court of record** shall report to the prosecuting attorney and the chief circuit judge the name of ~~any person~~ **an individual** who in any manner seeks by request, hint, or suggestion to influence the ~~board or its members in the~~ selection of ~~any~~ **a** juror.

Sec. 1346. The ~~following acts are punishable by the~~ circuit court **may punish any of the following acts** as ~~contempts~~ **contempt** of court:

(a) Failing to answer ~~the~~ **a** questionnaire provided for in section ~~1313.~~**1307.**

(b) Failing to appear before the ~~board or a member of the board, without being excused at the time and place notified to appear.~~**circuit court that sent the juror qualifications questionnaire.**

(c) Refusing to take an oath or affirmation.

(d) Refusing to answer questions pertaining to ~~his or her~~ **the individual's** qualifications as a juror ~~,~~ when asked by ~~a member of~~ the ~~board.~~**circuit court.**

(e) Failing to attend court, without being excused, at the time specified in the notice, or from day to day, when summoned as a juror.

(f) Giving a false certificate, making a false representation, or refusing to give information that he or she can give affecting the liability or qualification of ~~a person~~ **an individual** other than himself or herself to serve as a juror.

(g) Offering, promising, paying, or giving money or anything of value to, or taking money or anything of value from, a person, firm, or corporation for the purpose of enabling himself or herself or another ~~person~~ **individual** to evade service or to be wrongfully

discharged, exempted, or excused from service as a juror.

(h) Tampering unlawfully in any manner with a jury list or the jury selection process.

(i) Willfully doing or ~~omitting~~ **failing** to do an act with the design to subvert the purpose of this act.

(j) Willfully omitting ~~to put on~~ **from** the jury list the name of ~~a person~~ **an individual** qualified and liable for jury duty.

(k) Willfully ~~omitting~~ **failing** to prepare or file a list or slip.

(*l*) Doing or ~~omitting~~ **failing** to do an act with the design to prevent the name of ~~a person~~ **an individual** qualified and liable to serve as a juror from being placed on a jury list or from being selected for service as a juror.

(m) Willfully placing the name of ~~a person upon~~ **an individual on** a list who is not qualified as a juror.

Sec. 1371. As used in ~~sections 1371 to 1376, "one~~ **section 1372, "1** day, ~~one~~ **1** trial **jury** system" means a system of selection of jurors ~~which~~ **that** incorporates ~~either~~ **all** of the following:

~~(a) A system of jury selection whereby:~~

(a) ~~(*i*)~~ Jury service is completed when the first trial to which the juror is sworn is concluded regardless of the length of the trial or the manner in which the case is disposed.

(b) ~~(*ii*)~~ A juror who is challenged ~~shall be~~ **is** returned to the jury pool and ~~shall be~~ subject to voir dire examination in other cases for the remainder of that day.

(c) ~~(*iii*)~~ A juror who remains unseated and unchallenged at voir dire examination ~~shall be~~ **is** excused at the end of that day. A juror may be held over for another day for continuation of voir dire examination at the discretion of the trial judge.

~~(b) A system of jury selection established pursuant to section 1301b.~~

Sec. 1372. ~~(1) Sections 1371 to 1376 apply only to those districts of the district court, circuits of the circuit court, and county or probate court districts of the probate court that adopt the 1 day, 1 trial jury system.~~

~~(2)~~ Any court in this state may adopt a 1 day, 1 trial jury system.

Enacting section 1. Sections 1301, 1301b, 1302, 1303, 1303a, 1304, 1305, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1327, 1328, 1330, 1331, 1338, 1339, 1341, 1342, 1353, 1375, and 1376 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1301, 600.1301b, 600.1302, 600.1303, 600.1303a, 600.1304, 600.1305, 600.1308, 600.1309, 600.1310, 600.1311, 600.1312, 600.1313, 600.1314, 600.1315, 600.1316, 600.1317, 600.1318, 600.1319, 600.1320, 600.1321, 600.1322, 600.1323, 600.1324, 600.1327, 600.1328, 600.1330, 600.1331, 600.1338, 600.1339, 600.1341, 600.1342, 600.1353, 600.1375, and 600.1376, are repealed.

Enacting section 2. 1929 PA 288, MCL 730.251 to 730.271, is repealed.

Enacting section 3. 1951 PA 179, MCL 730.401 to 730.419, is repealed.

Enacting section 4. This amendatory act takes effect 1 year after the date it is enacted into law.

HOUSE BILL NO. 5690

April 25, 2024, Introduced by Reps. Hope, Grant, O'Neal, Neeley, Dievendorf, Brenda Carter, Rheingans, Wilson, MacDonell, Brabec, Tsernoglou, Rogers, Hood, Price, McKinney and Scott and referred to the Committee on Criminal Justice.

A bill to amend 1980 PA 87, entitled

"The uniform condemnation procedures act,"

by amending section 12 (MCL 213.62).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 12. (1) A plaintiff or defendant may demand a trial by jury as to the issue of just compensation pursuant to applicable law and court rules. The jury ~~shall consist of~~ **must be** 6 qualified electors selected ~~pursuant to~~ **under** chapter 13 of ~~Act No. 236 of the Public Acts of 1961, as amended, being sections 600.1301 to 600.1376 of the Michigan Compiled Laws,~~ **the revised judicature act**

of 1961, 1961 PA 236, MCL 600.1300 to 600.1372, and ~~shall be~~ **are** governed by court rules applicable to juries in civil cases in circuit court.

(2) Unless there is good cause shown to the contrary, there ~~shall~~ **must** be a separate trial as to just compensation with respect to each parcel.

Enacting section 1. This amendatory act takes effect 1 year 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. 5689 (request no. 01578'23) of the 102nd Legislature is enacted into law.

HOUSE BILL NO. 5691

April 25, 2024, Introduced by Reps. Tsernoglou, Grant, Neeley, Hope, O'Neal, Dievendorf, Brenda Carter, Rheingans, Wilson, Farhat, MacDonell, Brabec, Rogers, Hood, Price, Andrews, McKinney and Scott and referred to the Committee on Criminal Justice.

A bill to amend 1961 PA 236, entitled

"Revised judicature act of 1961,"

by amending section 1307a (MCL 600.1307a), as amended by 2023 PA 308, and by adding sections 1307b and 1356.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1307a. (1) To qualify as a juror, an individual must meet all of the following criteria:

(a) Be a citizen of the United States, 18 years of age or older, and a resident in the county for which the individual is

selected, and in the case of a district court in districts of the second and third class, be a resident of the district.

(b) Be able to communicate in the English language.

(c) Be physically and mentally able to carry out the functions of a juror. Temporary inability must not be considered a disqualification.

(d) Not have served as a petit or grand juror in a court of record during the preceding 12 months.

(e) Not ~~have been convicted of a felony.~~**be currently incarcerated or on probation or parole.**

(2) An individual more than 70 years of age may claim exemption from jury service and must be ~~exempt~~ **exempted** upon making the request.

(3) An individual who is a nursing mother may claim exemption from jury service for the period during which she is nursing her child and must be ~~exempt~~ **exempted** upon making the request if she provides a letter from a physician, a lactation consultant, or a certified nurse midwife verifying that she is a nursing mother.

(4) An individual who is a participant in the address confidentiality program created under the address confidentiality program act, 2020 PA 301, MCL 780.851 to 780.873, may claim exemption from jury service for the period during which the individual is a program participant. To obtain an exemption under this subsection, the individual must provide the participation card issued by the department of attorney general upon the individual's certification as a program participant to the court as evidence that the individual is a current participant in the address confidentiality program.

(5) An individual who is a service member of the United States

Armed Forces may claim exemption from jury service for the period during which the individual is on active duty and must be ~~exempt~~ **exempted** upon making the request of the court and providing a copy of the service member's orders.

(6) An individual who is the spouse of a service member of the United States Armed Forces may claim exemption from jury service for the period during which the individual resides outside of this state or the United States due to the service member's active duty status. The spouse under this section must be ~~exempt~~ **exempted** upon making the request of the court and providing a copy of the service member's orders.

(7) For the purposes of this section and sections 1371 to 1376, an individual has served as a juror if that individual has been paid for jury service.

(8) As used in this section:

(a) "Certified nurse midwife" means an individual licensed as a registered professional nurse under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, who has been issued a specialty certification in the practice of nurse midwifery by the board of nursing under section 17210 of the public health code, 1978 PA 368, MCL 333.17210.

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

(b) ~~(c)~~ "Lactation consultant" means a lactation consultant certified by the International Board of Lactation Consultant Examiners.

(c) ~~(d)~~ "Physician" means an individual licensed by the state to engage in the practice of medicine or osteopathic medicine and surgery under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

Sec. 1307b. The court shall not disqualify a juror for cause based solely on the juror's criminal record.

Sec. 1356. (1) A prospective juror must not be excluded from service on a civil or criminal jury based on the prospective juror's protected status.

(2) A party or the court may object to a peremptory challenge to raise the issue of improper exclusion of a juror based on a protected status. An objection under this section is made by citing this section and any further discussion of the objection must be conducted outside the presence of the jury panel. The objection must be made before the prospective juror is excused, unless new information is discovered.

(3) Upon objection to the exercise of a peremptory challenge under subsection (2), the party exercising the peremptory challenge shall articulate the reasons that the peremptory challenge has been exercised.

(4) The court shall consider the totality of the circumstances when evaluating the reasons given by a party under subsection (3). If the court determines that an objective individual would consider protected status to be a factor in the exercise of the peremptory challenge, the peremptory challenge must be denied. The court is not required to find purposeful discrimination to deny the peremptory challenge. The court shall explain its findings for a ruling on the record. As used in this subsection, an "objective individual" means an individual who is aware that implicit,

institutional, and unconscious biases, in addition to purposeful discrimination, have resulted in the unfair exclusion of potential jurors in this state.

(5) The circumstances the court may consider in making its determination under subsection (4) include, but are not limited to, the following:

(a) The number and types of questions posed to the prospective juror, including whether the party exercising the peremptory challenge failed to question the prospective juror about the reason for the peremptory challenge.

(b) If the party exercising the peremptory challenge asked significantly more or different questions of the prospective juror against whom the peremptory challenge was used than of other jurors.

(c) If other prospective jurors provided similar answers but were not the subject of a peremptory challenge by that party.

(d) If a reason might be disproportionately associated with a protected status.

(e) If in the present case or in past cases the party has used peremptory challenges disproportionately against a specific protected status.

(6) The court shall presume a peremptory challenge is invalid if a party under subsection (3) provides 1 of the following reasons for exercising a peremptory challenge:

(a) The juror expressed a distrust of law enforcement or a belief that law enforcement officers engage in racial profiling.

(b) The juror or an individual with whom the juror has a close relationship has been stopped, arrested, investigated, or convicted of a crime.

(c) The juror lives in a high-crime neighborhood.

(d) The juror has a child outside of marriage.

(e) The juror receives state benefits.

(f) The juror is not a native English speaker.

(7) As used in this section, "protected status" means any of the statuses recognized as protected under section 102 of the Elliot-Larsen civil rights act, 1976 PA 453, MCL 37.2102.

(8) The purpose of this section is to address historical discrimination in the use of peremptory challenges on potential jurors who are members of a protected status or certain demographic groups or who have certain beliefs.

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

HOUSE BILL NO. 5692

April 25, 2024, Introduced by Reps. Wilson, Grant, Hope, Neeley, O'Neal, Dievendorf, Brenda Carter, Rheingans, MacDonell, Brabec, Tsernoglou, Rogers, Hood, Price, Andrews, McKinney and Scott and referred to the Committee on Criminal Justice.

A bill to make, supplement, and adjust appropriations for the judiciary for the fiscal year ending September 30, 2024; to provide for certain conditions on appropriations; and to provide for the expenditure of the appropriations.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

PART 1

LINE-ITEM APPROPRIATIONS

Sec. 101. There is appropriated for the judiciary to supplement appropriations for the fiscal year ending September 30, 2024, from the following funds:

APPROPRIATION SUMMARY		
GROSS APPROPRIATION	**$**	**5,000,000**
Interdepartmental grant revenues:		
Total interdepartmental grants and intradepartmental transfers		0
ADJUSTED GROSS APPROPRIATION	**$**	**5,000,000**
Federal revenues:		
Total federal revenues		0
Special revenue funds:		
Total local revenues		0
Total private revenues		0
Total other state restricted revenues		0
State general fund/general purpose	**$**	**5,000,000**
Sec. 102. JUDICIARY		
(1) APPROPRIATION SUMMARY		
GROSS APPROPRIATION	**$**	**5,000,000**
Interdepartmental grant revenues:		
Total interdepartmental grants and intradepartmental transfers		0
ADJUSTED GROSS APPROPRIATION	**$**	**5,000,000**
Federal revenues:		
Total federal revenues		0
Special revenue funds:		
Total local revenues		0
Total private revenues		0
Total other state restricted revenues		0
State general fund/general purpose	**$**	**5,000,000**
(2) ONE-TIME APPROPRIATIONS		

Jury selection program	$	5,000,000
GROSS APPROPRIATION	**$**	**5,000,000**
Appropriated from:		
State general fund/general purpose	**$**	**5,000,000**

PART 2

PROVISIONS CONCERNING APPROPRIATIONS

GENERAL SECTIONS

Sec. 201. Pursuant to section 30 of article IX of the state constitution of 1963, total state spending from state sources under part 1 for the fiscal year ending September 30, 2024 is $5,000,000.00 and total state spending from state sources to be paid to local units of government is $0.00.

Sec. 202. The appropriations made and expenditures authorized under this part and part 1 and the departments, commissions, boards, offices, and programs for which appropriations are made under this part and part 1 are subject to the management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594.

Sec. 203. If the state administrative board, acting under section 3 of 1921 PA 2, MCL 17.3, transfers funds from an amount appropriated under this act, the legislature may, by a concurrent resolution adopted by a majority of the members elected to and serving in each house, inter-transfer funds within this act for the particular department, board, commission, office, or institution.

JUDICIARY

Sec. 301. (1) Funds appropriated in part 1 for jury selection program must be used by the state court administrative office to create and implement a jury selection program in accordance with

chapter 13 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1300 to 600.1372. From the funds appropriated in part 1 for jury selection program, $4,000,000.00 is allocated for establishing the system and $1,000,000.00 is allocated for staffing and software maintenance.

(2) Unexpended funds appropriated in part 1 for jury selection program are designated as a work project appropriation. Unencumbered or unallotted funds must not lapse at the end of the fiscal year and must be available for expenditure until the project has been completed. The following is in compliance with section 451a of the management and budget act, 1984 PA 431, MCL 18.1451a:

(a) The purpose of the project is to create and implement a jury selection program.

(b) The project will be accomplished by utilizing state employees or contracts with service providers, or both.

(c) The total estimated cost of the project is $5,000,000.00.

(d) The tentative completion date is September 30, 2028.

(3) Funds appropriated in part 1 for jury selection program must not be spent or otherwise distributed unless Senate Bill No.____ or House Bill No. 5689 (request no. 01578'23) of the 102nd Legislature is enacted into law.

HOUSE BILL NO. 5693

April 25, 2024, Introduced by Reps. Young, Grant, Neeley, Hope, O'Neal, Dievendorf, Brenda Carter, Rheingans, Wilson, MacDonell, Brabec, Tsernoglou, Rogers, Hood, Price, Andrews, McKinney and Scott and referred to the Committee on Criminal Justice.

A bill to amend 1939 PA 288, entitled

"Probate code of 1939,"

by amending section 17 of chapter XIIA (MCL 712A.17), as amended by 1998 PA 474.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XIIA

Sec. 17. (1) The court may conduct a hearing other than a criminal hearing in an informal manner. The court shall require stenographic notes or another transcript to be taken of the hearing. The court shall adjourn a hearing or grant a continuance

regarding a case under section 2(b) of this chapter only for good cause with factual findings on the record and not solely ~~upon~~ **on the** stipulation of counsel or for the convenience of a party. In addition to a factual finding of good cause, the court shall not adjourn the hearing or grant a continuance unless 1 of the following is also true:

(a) The motion for the adjournment or continuance is made in writing not less than 14 days before the hearing.

(b) The court grants the adjournment or continuance ~~upon~~ **on** its own motion after taking into consideration the child's best interests. An adjournment or continuance granted under this subdivision ~~shall~~ **must** not last more than 28 days unless the court states on the record the specific reasons why a longer adjournment or continuance is necessary.

(2) Except as otherwise provided in this subsection, in a hearing other than a criminal trial under this chapter, a person interested in the hearing may demand a jury of 6 individuals, or the court, on its own motion, may order a jury of 6 individuals to try the case. In a proceeding under section 2(h) of this chapter, a jury ~~shall~~ **must** not be demanded or ordered on a supplemental petition alleging a violation of a personal protection order. In a criminal trial, a jury may be demanded as provided by law. The jury shall be summoned and impaneled in accordance with chapter 13 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1300 to ~~600.1376,~~ **600.1372**, and, in the case of a criminal trial, as provided in chapter VIII of the code of criminal procedure, 1927 PA 175, MCL 768.1 to ~~768.36.~~**768.37.**

(3) A parent, guardian, or other custodian of a juvenile held under this chapter has the right to give bond or other security for

the appearance of the juvenile at the hearing of the case.

(4) The prosecuting attorney shall appear for the people when requested by the court, and in a proceeding under section 2(a)(1) of this chapter, the prosecuting attorney shall appear if the proceeding requires a hearing and the taking of testimony.

(5) In a proceeding under section 2(b) of this chapter, upon request of the ~~family independence agency~~ **department** or an agent of the ~~family independence agency~~ **department** under contract with the ~~family independence agency,~~ **department**, the prosecuting attorney shall serve as a legal consultant to the ~~family independence agency~~ **department** or its agent at all stages of the proceeding. If in a proceeding under section 2(b) of this chapter the prosecuting attorney does not appear on behalf of the ~~family independence agency~~ **department** or its agent, the ~~family independence agency~~ **department** may contract with an attorney of its choice for legal representation.

(6) A member of a local foster care review board established under 1984 PA 422, MCL 722.131 to 722.139a, ~~shall~~ **must** be admitted to a hearing under subsection (1).

(7) Upon motion of a party or a victim, the court may close the hearing of a case brought under this chapter to members of the general public during the testimony of a juvenile witness or the victim if the court finds that closing the hearing is necessary to protect the welfare of the juvenile witness or the victim. In determining whether closing the hearing is necessary to protect the welfare of the juvenile witness or the victim, the court shall consider **all of** the following:

(a) The age of the juvenile witness or the victim.

(b) The nature of the proceeding.

(c) The desire of the juvenile witness, of the witness's family or guardian, or of the victim to have the testimony taken in a room closed to the public.

(8) As used in subsection (7), "juvenile witness" does not include a juvenile against whom a proceeding is brought under section 2(a)(1) of this chapter.

Enacting section 1. This amendatory act takes effect 1 year 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. 5689 (request no. 01578'23) of the 102nd Legislature is enacted into law.

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Michigan House of Representatives
Amos O'Neal
STATE REPRESENTATIVE
CAUCUS CHAIR

Committees:
Labor
Appropriations
Subcommittee Corrections
Subcommittee DHHS
Subcommittee Gen. Government
Subcommittee Joint Capitol Outlay

House Bills 5689-5693 of 2024
Jury Reform Package

The Jury Task Force has come up with the following changes to update the jury selection process in Michigan:

1. Create a statewide jury management system run by SCAO.
2. Have SCAO develop the standard questionnaire language and they are to include gathering info on race and ethnicity to help us learn more about any bias that may continue.
3. Change over from a 2 step to a 1-step jury system.
    - Two step systems are more expensive and less efficient.
    - One-step jury systems combine the qualification and summoning steps by sending the qualification questionnaire and the jury summons in the same mailing with instructions for jurors to return the

qualification questionnaire for processing.

    - This 1 step process run by SCAO is drafted to be implemented 1 year after passage to allow for plenty of time for our courts to switch over.
4. Requires the circuit court administrator or the clerk of the circuit court to provide annual reports to SCAO and to collect and record the name, sex, race, ethnicity, and religion of all prospective jurors who are selected and summoned from the first jury list.
5. Strengthens protections against the unlawful removal of jurors based on race or other protected status.
6. Allows individuals who were formerly incarcerated to serve on a jury.
7. Funding support for cost and FTEs for implementation of a statewide jury management system
8. Increases to Juror compensation.
    - Last year, NCSC found that on average jurors are paid an average of $16.61. Michigan is currently paying $20 a day and these drafts change jury pay to minimum wage and ties mileage reimbursement to the standard IRS rate.
        - New Mexico is the other state that does it this way?
    - The compensation for jurors currently comes from the Juror Compensation Reimbursement Fund.
        - In 2020, the legislature passed, and the Governor signed, HB 5486 which, among other things, restricted the number of qualifying offenses that would trigger assessment of driver's license reinstatement and clearance fees. The bill further eliminated the penalty of a misdemeanor charge for failure to pay an assessment. These assessments in part provide revenue to the Juror Compensation Fund, and the fiscal analyses associated with HB 5846 indicated that one impact of the bill would be reduced revenue to the Juror Compensation Fund. Revenue to the fund was down $2.5 million in the last fiscal year, largely because of these changes.
        - Due to these recent legislative changes, the Juror Compensation Reimbursement Fund receives 80% less revenues than it did a few years ago.
9. Adds the ability for a juror to wave pay to return the money to the court's operating budget earmarked for juror compensation/reimbursement.
    - 51% of courts reported that jurors are permitted to waive or donate their juror fees.
    - Of the courts that permit jurors to waive or donate, an average of 12% of jurors do so.
    - Waived/donated funds are returned to the court's operating budget (15%); donated to court-related charities (e.g., CASA) (9%), donated to community charities (8%); used for juror amenities (coffee, snacks, etc.) (2%); or used for some other purpose (18%).
10. MCL 600.151e (7) expansion to allow for juror reimbursement for parking.

Public Policy Position
HB 5689 – HB 5693

Support

Explanation

The Committee voted to support HB 5689-5693. This package of bills, based on over a year of work by a workgroup composed of a broad swath of legal system stakeholders, will put in place a number of important reforms that will improve the functioning of Michigan's jury system and help address the persistent problem of racial bias in jury selection. More specifically, as to the substantive bills in this package:

HB 5689 will create a centralized system that will iron out discrepancies between jurisdictions—and allow litigants to effectively identify problems with jury selection. Right now, the process is opaque, and it varies from county to county. Problems escape notice in large part because there's no standard procedure or measuring stick to which someone can compare. The Committee is not aware of any jurisdiction that collects data on jurors' race and ethnicity. Because this information is not available, criminal defendants cannot identify patterns either in jury summons or in the exercise of peremptory or for-cause challenges. Finally, jurors themselves will receive a much-needed pay bump for their jury service. At $45 per day, jurors are currently compensated at far less than minimum wage while being asked to take time off from work. For individuals who are paid on an hourly basis and may have limited or no PTO available, the current system causes financial hardship. This is not only unfair, but also creates disincentives for those individuals to participate in jury duty, thus affecting the socioeconomic diversity of the jury pool.

HB 5691 would take the important step of eliminating the current prohibition on individuals with prior felony convictions serving on Michigan juries. It also prohibits the exclusion of an individual from jury service based on the juror's protected status and addresses the troubling practice of using preemptory challenges based on certain proxies for a prospective juror's race (e.g., distrust of law enforcement). The Committee was concerned that the bill, as written, would leave prosecutors with an end-run to dismiss jurors with criminal convictions. Under MCR 2.511(E)(10), a prosecutor can have a juror dismissed for cause if the individual has been "complained of or has been accused by that party in a criminal prosecution." In *People v Eccles,* 260 Mich App 379 (2004), the Court of Appeals interpreted this rule to require a trial court to excuse a juror if a prosecutor's office has charged that person with any crime, including a misdemeanor. Because the court rule does not reference a conviction—only the charging decision—the Committee worried that the discrepancy will give prosecutors room to exclude people with convictions, people who've been accused and acquitted (or had charges dismissed), or people with pending charges. The Committee believes that the bill should clarify that a juror shall not be disqualified based solely on "the juror's criminal record or a formal complaint or accusation by a prosecutor's office."

HB 5692 appropriates funds for the creation and initial implementation of the jury selection program, including $4 million for establishing the system and $1 million for staffing and

software maintenance. The Committee is encouraged by the fact that the package includes funding in this manner, as opposed to addressing funding after the fact.

Position Vote:
Voted For position: 12
Voted against position: 1
Abstained from vote: 1
Did not vote (absence): 10

***Keller* Permissibility Explanation**
By streamlining the jury selection process and expanding the pool of eligible jurors, this package of bills will improve the functioning of the courts. The bill package is therefore *Keller*-permissible.

Contact Persons:
Daniel S. Korobkin dkorobkin@aclumich.org
Katherine L. Marcuz kmarcuz@sado.org

Public Policy Position
HB 5689 – HB 5693

Support HB 5689, HB 5690, HB 5692, and HB 5693;
Support HB 5691 In Part; Oppose In Part

Explanation
The Committee voted to support the position adopted by the Criminal Jurisprudence & Practice Committee. Namely, to support HB 5689, HB 5690, HB 5692, and HB 5693 in full, and to support HB 5691 as it relates to the treatment of individuals with prior criminal records serving on juries, but to oppose Sec. 1356(6), which would require the court to presume a peremptory challenge is invalid in certain specified circumstances.

Position Vote:
Voted For position: 9
Voted against position: 6
Abstained from vote: 6
Did not vote (absence): 12

Keller Permissibility Explanation:
This legislation significantly impacts the jury-selection process and the pool of eligible jurors. As such, it is germane to the functioning of the courts and therefore *Keller*-permissible.

Contact Person:
Marla Linderman Richelew lindermanlaw@sbcglobal.net

Public Policy Position
HB 5689 – HB 5693

Support HB 5689, HB 5690, HB 5692, and HB 5693;
Support HB 5691 In Part

Explanation:
The Committee voted to support HB 5689, HB 5690, HB 5692, and HB 5693 in full. The Committee voted to support HB 5691 as it relates to the treatment of individuals with prior criminal records serving on juries, but to oppose Sec. 1356(6), which would require the court to presume a peremptory challenge is invalid in certain specified circumstances.

HB 5689 Position Vote:
Voted For position: 13
Voted against position: 3
Abstained from vote: 0
Did not vote (absent): 8

HB 5690 Position Vote:
Voted For position: 16
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 8

HB 5691 (Prior Criminal History) Position Vote:
Voted For position: 15
Voted against position: 3
Abstained from vote: 0
Did not vote (absent): 6

HB 5691 (Peremptory Challenge Invalidity) Position Vote:
Voted For position: 12
Voted against position: 5
Abstained from vote: 0
Did not vote (absent): 7

HB 5692 Position Vote:
Voted For position: 18
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 6

HB 5693 Position Vote:
Voted For position: 18
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 6

***Keller* Permissibility Explanation**
This legislation significantly impacts the jury-selection process and the pool of eligible jurors. As such, it is germane to the functioning of the courts and therefore *Keller*-permissible.

Contact Persons:
Nimish R. Ganatra ganatran@washtenaw.org
John A. Shea jashea@earthlink.net

Public Policy Position
HB 5689 – HB 5693

Support

Position Vote for HB 5689:
Voted for position: 10
Voted against position: 2
Abstained from vote: 2
Did not vote: 0

Position Vote for HB 5690, HB 5692, HB 5693:
Voted for position: 12
Voted against position: 1
Abstained from vote: 1
Did not vote: 0

Position Vote for HB 5691:
Voted for position: 11
Voted against position: 2
Abstained from vote: 1
Did not vote: 0

Contact Person: Edwar Zeineh
Email: edwar@zeinehlaw.com

SBM STATE BAR OF MICHIGAN

To: Members of the Public Policy Committee
Board of Commissioners

From: Nathan A. Triplett, Director of Governmental Relations

Date: June 6, 2024

Re: **SB 723 – Evaluation of Competency to Waive *Miranda* Rights**

Background

Senate Bill 723 would statutorily establish a presumption that a defendant is competent to waive their *Miranda* rights. It would permit the defense, prosecution, or court to raise the issue of a defendant's competence using a procedure to be determined by court rule. If raised, the bill requires the court to determine if the defendant was competent to waive their *Miranda* rights (meaning that the waiver was knowingly and intelligently made).

On a showing that a defendant may not have been competent, the court must order the defendant to undergo an examination by a qualified clinician at the Center for Forensic Psychiatry or another facility certified by the Department of Health & Human Services. The defendant is required to make themselves available for an examination. If they fail to do so, the court may order the defendant's commitment without a hearing.

The Center or other facility must examine the defendant and consult with defense counsel, and may consult with the prosecutor or other individuals. A written report—the required contents of which are described in the bill—must be issued within 60 days of the court ordering the examination. A clinician's opinion on the defendant's competence derived from the court-ordered examination may not be admitted as evidence except as to issues required or permitted by the competency provisions added by SB 723. After receiving the report, the court must hold a hearing within a reasonable time and, on the basis of the evidence admitted at that hearing, determine the issue of competence to waive *Miranda* rights.

The Center for Forensic Psychiatry has conducted similar evaluations in the past but has not done so since 2022. There is no current, specific statutory authority for the Center to do so.

Senate Bill 723 was referred to the Senate Civil Rights, Judiciary & Public Safety Committee. The Committee has not yet scheduled the bill for a hearing.

***Keller* Considerations**

SB 723 sets forth detailed procedures governing how courts must address a defendant's competency to waive their *Miranda* rights. The legislation will necessarily impact the functioning of the courts by requiring them to order clinical evaluations, empowering the court to commit uncooperative defendants, establishing the purposes for which the court may admit a clinician's report as evidence, and requiring the court to hold a hearing after reviewing the required evaluation. While a significant body of precedent and court practice already exists surrounding *Walker* hearings, with SB 723, the Legislature would be in the position of shaping any area of court functioning that heretofore was

determined by the courts themselves. Whether one believes the Legislature's proposed procedures are beneficial or harmful, it is incontrovertible that they will significantly impact court functioning, which makes this legislation germane to a *Keller*-permissible subject area.

The two Bar committees that reviewed SB 723—Access to Justice Policy and Criminal Jurisprudence & Practice—concurred that the bill was *Keller*-permissible.

***Keller* Quick Guide**

THE TWO PERMISSIBLE SUBJECT-AREAS UNDER KELLER:

As interpreted by AO 2004-1

Regulation of Legal Profession	**Improvement in Quality of Legal Services**
Regulation and discipline of attorneys	✓ Improvement in functioning of the courts
Ethics	Availability of legal services to society
Lawyer competency	
Integrity of the Legal Profession	
Regulation of attorney trust accounts	

Staff Recommendation

Senate Bill 723 is necessarily related to the functioning of the courts and is therefore *Keller*-permissible. The bill may be considered on its merits.

SENATE BILL NO. 723

February 22, 2024, Introduced by Senators SANTANA, CHANG, SHINK, GEISS and BAYER and referred to the Committee on Civil Rights, Judiciary, and Public Safety.

A bill to amend 1974 PA 258, entitled

"Mental health code,"

(MCL 330.1001 to 330.2106) by adding sections 1080, 1081, 1082, and 1083.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1080. (1) A defendant is presumed to have been competent to waive the defendant's Miranda rights. The issue of a defendant's competence to have waived the defendant's Miranda rights may be raised by the defense, the court, or the prosecution. The court shall determine the procedure for raising the issue by court rule.

(2) The court shall determine if the defendant was competent to waive the defendant's Miranda rights. A defendant was competent to waive the defendant's Miranda rights if the defendant's waiver was knowingly and intelligently made, which means that the defendant understood all of the following:

(a) The defendant did not have to speak.

(b) The defendant had the right to the presence of counsel.

(c) What the defendant said could be used in a later trial against the defendant.

Sec. 1081. (1) On a showing that a defendant may not have been competent to waive the defendant's Miranda rights, the court shall order the defendant to undergo an examination by a qualified clinician of either the center for forensic psychiatry or another facility officially certified by the department to perform examinations that relate to the issue of competence to waive Miranda rights. The defendant shall make himself or herself available for the examination at the places and times established by the center or other certified facility. If the defendant, after being notified, fails to make himself or herself available for the examination, the court may order the defendant's commitment to the center or other facility without a hearing.

(2) When a defendant is to be held in a jail or similar place of detention pending trial, the center or other facility may perform the examination in the place of detention or may notify the sheriff to transport the defendant to the center or other facility for the examination, and the sheriff shall return the defendant to the place of detention on completion of the examination.

(3) Except as provided in subsection (1), when a defendant is not to be held in a jail or similar place of detention pending

trial, the court shall commit the defendant to the center or other facility only if the commitment is necessary for the performance of the examination.

(4) A defendant must be released by the center or other facility on completion of the examination.

(5) As used in this section and section 1082, "examination" means a court-ordered examination of a defendant directed to develop information relevant to a determination of the defendant's competence to have waived the defendant's Miranda rights.

Sec. 1082. (1) When the defendant is ordered to undergo an examination under section 1081, the center or other facility shall, for the purpose of gathering psychiatric and other information pertinent to the issue of the defendant's competence to have waived the defendant's Miranda rights, examine the defendant and consult with defense counsel, and may consult with the prosecutor or other persons. Defense counsel must be available for consultation with the center or other facility. The examination must be performed, defense counsel must be consulted, and a written report must be submitted to the court, prosecuting attorney, and defense counsel within 60 days of the date of the order.

(2) The report described in subsection (1) must contain all of the following:

(a) The clinical findings of the center or other facility.

(b) The facts, in reasonable detail, on which the findings are based, and, on request of the court, the defense, or the prosecution, additional facts germane to the findings.

(c) The opinion of the center or other facility on the issue of the defendant's competence to have waived the defendant's Miranda rights.

(3) The qualified clinician's opinion on the defendant's competence to have waived the defendant's Miranda rights derived from the examination may not be admitted as evidence for any purpose in the pending criminal proceedings, except on the issues to be determined in the hearings required or permitted by section 1081. This bar to testimony does not prohibit the examining qualified clinician from presenting at other stages in the criminal proceedings opinions that concern criminal responsibility, disposition, or other issues if the opinions were originally requested by the court and are available. Information gathered in the course of a prior examination that is of historical value to the examining qualified clinician may be utilized in the formulation of an opinion in any subsequent court-ordered evaluation.

Sec. 1083. (1) On receipt of the written report under section 1082, the court shall have the defendant appear in court and hold a hearing within a reasonable time.

(2) On the basis of the evidence admitted at the hearing, the court shall determine the issue of whether the defendant was competent to waive the defendant's Miranda rights. If the court finds that the defendant's Miranda rights waiver was not knowingly and intelligently made, the court shall determine the appropriate remedy at law.

(3) The written report is admissible as competent evidence in the hearing, unless the defense or prosecution objects, but not for any other purpose in the pending criminal proceeding. The defense, the prosecution, and the court on its own motion may present additional evidence relevant to the issues to be determined at the hearing.

(4) The right of the defendant to be at liberty pending trial, on bail or otherwise, must not be impaired because the defendant has raised the issue of the defendant's competence to have waived Miranda rights or because the defendant was determined to be incompetent to have waived Miranda rights.

(5) After a hearing under this section, the defendant's trial must commence as soon as practicable.

Public Policy Position
SB 723

Oppose

Explanation
The Committee voted to oppose SB 723. The Committee believed that the bill is flawed in numerous respects, including its attempt to statutorily define individuals' constitutional rights, to overly prescribe the process by which an individual may challenge the validity of a *Miranda* waiver, in its misunderstanding of the applicable science and mental health issue, and the ineffectual/problematic manner of enforcement. While likely well-intentioned, the Committee believes that this legislation will do considerably more harm than good to individual defendants and to the functioning of Michigan courts.

Position Vote:
Voted For position: 13
Voted against position: 0
Abstained from vote: 2
Did not vote (absence): 9

***Keller* Permissibility Explanation**
The Committee determined that prescribing specific, detailed procedures for the handling of *Miranda* waivers in court proceedings was germane to the functioning of the courts and therefore *Keller*-permissible.

Contact Persons:
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Katherine L. Marcuz kmarcuz@sado.org

Public Policy Position
SB 723

Support with Amendments

Explanation:
The Committee voted to support SB 723 with two amendments:

First, the statute should track the procedure in MCL 768.20a(3) which states the following which occurs after the forensic center evaluation:

> (3) The defendant may, at his or her own expense, secure an independent psychiatric evaluation by a clinician of his or her choice on the issue of his or her insanity at the time the alleged offense was committed. If the defendant is indigent, the court may, upon showing of good cause, order that the county pay for an independent psychiatric evaluation. The defendant shall notify the prosecuting attorney at least 5 days before the day scheduled for the independent evaluation that he or she intends to secure such an evaluation. The prosecuting attorney may similarly obtain independent psychiatric evaluation. A clinician secured by an indigent defendant is entitled to receive a reasonable fee as approved by the court.

Second, there should be some penalty when a defendant declines to participate in the examination consistent with MCL 768.20a(4):

> (4) The defendant shall fully cooperate in his or her examination by personnel of the center for forensic psychiatry or by other qualified personnel, and by any other independent examiners for the defense and prosecution. If he or she fails to cooperate, and that failure is established to the satisfaction of the court at a hearing prior to trial, the defendant shall be barred from presenting testimony relating to his or her insanity at the trial of the case.

The penalty should only preclude defendant from asserting mental health grounds as a reason that he or she couldn't waive *Miranda* if he or she is uncooperative, not other grounds that he or she claims that the *Miranda* waiver was not knowing and voluntary.

Position Vote:
Voted For position: 10
Voted against position: 5
Abstained from vote: 2
Did not vote (absent): 7

Keller Permissibility Explanation

The Committee determined that prescribing specific, detailed procedures for the handling of *Miranda* waivers in court proceedings was germane to the functioning of the courts and therefore *Keller*-permissible.

Contact Persons:

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SBM STATE BAR OF MICHIGAN

To: Members of the Public Policy Committee
Board of Commissioners

From: Nathan A. Triplett, Director of Governmental Relations

Date: June 6, 2024

Re: **SB 813 – Admissibility of Videorecorded Statements in Certain Proceedings**

Background

Senate Bill 813 would amend the Revised Judicature Act, 1961 PA 236, to permit the use of videorecorded statements at preliminary examinations and criminal trials for certain enumerated offenses when the witness or victim recording the statement is under 16 years of age, over 16 years of age with a developmental disability, or a vulnerable adult.

Under current law, videorecorded statements are only permitted for four purposes: (1) as evidence in pretrial proceedings when used in lieu of live testimony, (2) impeachment, (3) for use by the court in sentencing, or (4) as a factual basis for a no contest plea or to supplement a guilty plea. SB 813 would expand the use of prerecorded statements in place of in-person witness testimony.

The bill removes the existing requirement that a videorecording identify the individuals present in the room for either the entire time or a portion of the time of the recording. It also eliminates the provision permitting videorecorded statements to be used for impeachment. The bill would permit the admission of recordings in lieu of live testimony in preliminary exams and allow admission of recordings as evidence at trial "so long as the admission is consistent with any requirements of the confrontation clause of Amendment VI to the Constitution of the United States."

SB 813 was referred to the Senate Civil Rights, Judiciary & Public Safety Committee. The Committee has not yet scheduled the bill for a hearing.

***Keller* Considerations**

The two Bar committees that reviewed SB 813—Access to Justice Policy and Criminal Jurisprudence & Practice—concurred that the bill was *Keller*-permissible. SB 813 directly and significantly impacts the admissibility of certain evidence in criminal trials and in preliminary exams, and the purposes for which a court may admit such evidence. Admissibility of evidence is a central question concerning the manner in which court proceedings are conducted. SB 813 is therefore necessarily related to the functioning of the courts. As such, the bill is *Keller*-permissible and may be considered on its merits.

***Keller* Quick Guide**

THE TWO PERMISSIBLE SUBJECT-AREAS UNDER KELLER:

As interpreted by AO 2004-1

Regulation of Legal Profession	**Improvement in Quality of Legal Services**
Regulation and discipline of attorneys	✓ Improvement in functioning of the courts
Ethics	Availability of legal services to society
Lawyer competency	
Integrity of the Legal Profession	
Regulation of attorney trust accounts	

Staff Recommendation

Senate Bill 813 is necessarily related to the functioning of the courts and therefore *Keller*-permissible. The bill may be considered on its merits.

SENATE BILL NO. 813

April 10, 2024, Introduced by Senator CHERRY and referred to the Committee on Civil Rights, Judiciary, and Public Safety.

A bill to amend 1961 PA 236, entitled

"Revised judicature act of 1961,"

by amending section 2163a (MCL 600.2163a), as amended by 2018 PA 343.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 2163a. (1) As used in this section:

(a) "Courtroom support dog" means a dog that has been trained and evaluated as a support dog pursuant to the Assistance Dogs International Standards for guide or service work and that is

repurposed and appropriate for providing emotional support to children and adults within the court or legal system or that has performed the duties of a courtroom support dog prior to September 27, 2018.

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

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

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

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

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

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

(*i*) A person under 16 years of age.

(*ii*) A person 16 years of age or older with a developmental disability.

(*iii*) A vulnerable adult.

(2) This section only applies to the following:

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

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

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

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

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

(4) The court ~~must~~ **shall** permit a witness who is called upon to testify to have a support person sit with, accompany, or be in close proximity to the witness during ~~his or her~~ **the witness's** testimony. The court ~~must~~ **shall** also permit a witness who is called

upon to testify to have a courtroom support dog and handler sit with, or be in close proximity to, the witness during ~~his or her~~ **the witness's** testimony.

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

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

(7) A custodian of the videorecorded statement may take a witness's videorecorded statement before the normally scheduled date for the defendant's preliminary examination. The videorecorded statement must state the date and time that the statement was taken

~~; must identify the persons present in the room and state whether they were present for the entire videorecording or only a portion of the videorecording;~~ and must show a time clock that is running during the taking of the videorecorded statement.

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

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

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

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

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

(d) Admission as evidence at trial, so long as the admission is consistent with any requirements of the confrontation clause of Amendment VI to the Constitution of the United States.

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

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

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

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

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

(d) The details of the offense or offenses.

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

(11) A custodian of the videorecorded statement may release or consent to the release or use of a videorecorded statement or copies of a videorecorded statement to a law enforcement agency, an agency authorized to prosecute the criminal case to which the videorecorded statement relates, or an entity that is part of county protocols established under section 8 of the child protection law, 1975 PA 238, MCL 722.628, or as otherwise provided by law. The defendant and, if represented, ~~his or her~~ **the defendant's** attorney has the right to view and hear a videorecorded statement before the defendant's preliminary examination. Upon request, the prosecuting attorney shall provide the defendant and, if represented, ~~his or her~~ **the defendant's** attorney with reasonable access and means to view and hear the videorecorded statement at a reasonable time **but in no event less than 10 days** before the defendant's pretrial or trial of the case. In preparation for a court proceeding and under protective conditions, including, but not limited to, a prohibition on the copying, release, display, or circulation of the videorecorded statement, the court may order that a copy of the videorecorded statement be given to the defense. **The protective conditions must include a prohibition on defense counsel providing a defendant with the defendant's own copy of the videorecorded statement or a prohibition on a defendant who is proceeding pro se from receiving or retaining the defendant's own copy of the videorecorded statement. The order shall specify who**

may view the videorecorded statement, indicate the time by which the videorecorded statement is required to be returned, and state a reason for the release of the videorecorded statement. The order may include any other protective conditions the court considers necessary.

(12) If authorized by the prosecuting attorney in the county in which the videorecorded statement was taken, and with the consent of a minor witness's nonoffending parent or legal guardian, a videorecorded statement may be used for purposes of training the custodians of the videorecorded statement in that county, or for purposes of training persons in another county who would meet the definition of custodian of the videorecorded statement had the videorecorded statement been taken in that other county, on the forensic interview protocol implemented as required by section 8 of the child protection law, 1975 PA 238, MCL 722.628, or as otherwise provided by law. The consent required under this subsection must be obtained through the execution of a written, fully informed, time-limited, and revocable release of information. An individual participating in training under this subsection is also required to execute a nondisclosure agreement to protect witness confidentiality.

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

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

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

(16) If, upon the motion of a party made before the preliminary examination, the court finds on the record that the special arrangements specified in subsection (17) are necessary to protect the welfare of the witness, the court ~~must~~ **shall** order those special arrangements. In determining whether it is necessary to protect the welfare of the witness, the court ~~must~~ **shall** consider all of the following factors:

(a) The age of the witness.

(b) The nature of the offense or offenses.

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

(d) The physical condition of the witness.

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

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

testimony must be made available.

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

(18) If upon the motion of a party made before trial the court finds on the record that the special arrangements specified in subsection (19) are necessary to protect the welfare of the witness, the court ~~must~~ **shall** order those special arrangements. In determining whether it is necessary to protect the welfare of the witness, the court ~~must~~ **shall** consider all of the following factors:

(a) The age of the witness.

(b) The nature of the offense or offenses.

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

(d) The physical condition of the witness.

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

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

sight of the witness.

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

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

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

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

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

(23) A person who intentionally releases a videorecorded statement in violation of this section is guilty of a misdemeanor punishable by imprisonment for not more than ~~93 days~~ **1 year** or a fine of not more than ~~$500.00,~~ **$2,500,00,** or both. **This section does not affect the ability to investigate, arrest, prosecute, or convict an individual for any other violation of the law of this state.**

(24) A videorecorded statement made under this section must adhere to the forensic interviewing protocol implemented as required under section 8 of the child protection law, 1975 PA 238, MCL 722.628, and must be retained under the county protocols established under section 8 of the child protection law, 1975 PA 238, MCL 722.628.

(25) The department of health and human services is not responsible for storing or retaining a videorecorded statement under this section.

(26) Failure to make a videorecording of an interview under this section, including failure to record the interview in its entirety, does not prevent a forensic interviewer or other witness present during the taking of the videorecorded statement from testifying in court as to the circumstances and content of the individual's statement if the court determines that the testimony is otherwise admissible.

Enacting section 1. This amendatory act takes effect 180 days after the date it is enacted into law.

Public Policy Position
SB 813

Oppose

Explanation
The Committee voted unanimously (15) to oppose SB 813.

The Committee believes that the legislation permitting the admission of a video-recorded statement of a witness, who is otherwise available to testify, violates the Confrontation Clause of the Constitution. This fact cannot be mitigated by the inclusion in the of the phrase "so long as the admission is consistent with any requirements of the confrontation clause of Amendment VI to the Constitution of the United States" in the bill. This concern exists at trial but also at the preliminary examination. While preliminary examinations are simple probable cause hearings, they exist to check, very early in the process, the wide discretion afforded prosecutors when they bring charges. These examinations also give the defense a chance to cross examine key witnesses and expose inconsistencies with previously taken statements or with subsequent trial testimony.

Additionally, there is no reason to not allow the use of such statements for impeachment purposes. Impeachment by a prior inconsistent statement is clearly allowed by both the state and federal rules of evidence.

The bill also adds language that would require that a video-recorded statement admitted under these provisions follow the forensic interview protocol. Such blanket admissibility at trial could lead to situations in which the interviewer is not called to testify, in which case the defense would not have an opportunity to cross-examine the interviewer regarding the forensic interview protocol, which is a very specific procedure for interviewing a child. Even a minor breach of the protocol could impact admissibility, but that may never be tested when the video is automatically admitted into evidence under this legislation.

Position Vote:
Voted For position: 15
Voted against position: 0
Abstained from vote: 0
Did not vote (absence): 9

***Keller* Permissibility Explanation**
The Committee determined that legislation directly impacting the admissibility of evidence in court proceedings was necessarily related to the functioning of the courts and therefore *Keller*-permissible.

Contact Persons:
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Public Policy Position
SB 813

Oppose

Explanation:
The Committee voted to oppose SB 813. The Committee believes that the portion of the bill setting forth the requirements for the contents of the protective order, the requirements regarding how the interview is conducted, and clarifying that MDHHS is not the custodian of the video appear only to codify existing practice in most jurisdictions. On the other hand, other components of the bill raise significant Confrontation Clause concerns.

Position Vote:
Voted For position: 13
Voted against position: 3
Abstained from vote: 1
Did not vote (absent): 7

***Keller* Permissibility Explanation**
The Committee determined that legislation directly impacting the admissibility of evidence in court proceedings was necessarily related to the functioning of the courts and therefore *Keller*-permissible.

Contact Persons:
Nimish R. Ganatra ganatran@washtenaw.org
John A. Shea jashea@earthlink.net

Public Policy Position
SB 813

Oppose

Position Vote:
Voted for position: 10
Voted against position: 0
Abstained from vote: 2
Did not vote: 2

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