

**Agenda**  
**Public Policy Committee**  
**November 22, 2019 – 8:00 am**  
**State Bar of Michigan, Room 2**

*For those joining by phone, the conference call number is  
1.877.352.9775, passcode 651 620 4165#.*

**Meeting starts promptly at 8 am**

(Vince Lombardi Rule: “Early is on time. On time is late.”)

*Public Policy Committee.....Robert J. Buchanan, Chairperson*

**A. Opening Statements**

(Each member’s “good news,” whether personal, business to State Bar of Michigan-related.)

**B. Reports**

1. Approval of September 25, 2019 minutes
2. Public Policy Report

**C. Court Rules**

**1. ADM File 2019-12: Amendments of MCR 1.109, 3.206, 3.931, and 3.961**

The amendments of MCR 1.109, 3.206, 3.931, and 3.961 enable family division courts to use the required case inventory form to administer cases while keeping the information confidential. This change is intended to prevent providing information that could affect the safety of domestic violence victims and their children.

Status: 01/01/20 Comment Period Expires.

Referrals: 09/18/19 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Children's Law Section; Family Law Section.

Comments: Access to Justice Policy Committee; Civil Procedure & Courts Committee.

Liaison: Hon. Shauna L. Dunnings

**2. ADM File 2014-46: Proposed Alternative Amendments of MCR 6.508**

The proposed alternative amendments of MCR 6.508 would allow a court to consider previously-decided claims in the context of a new claim for relief, consistent with footnote 17 in *People v Johnson*, 502 Mich 541 (2018), as expressed in Alternative A, or under a slightly different formulation in Alternative B.

Status: 01/01/20 Comment Period Expires.

Referrals: 09/23/19 Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.

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

Liaison: Valerie R. Newman

### **3. ADM File 2018-29: Proposed Amendments of MCR 6.302 and 6.610**

The proposed amendments of MCR 6.302 and MCR 6.610 would eliminate the requirement for a court to establish support for a finding that defendant is guilty of the offense charged as opposed to an offense to which defendant is pleading guilty or nolo contendere. The sentencing guidelines make clear that offense variables are to be scored on the basis of the “sentencing offense alone,” not the charged offense. Further, an “offense to which defendant is pleading” would include the charged offense (if defendant is pleading to the charged offense) as well as any other offense that may have been offered by the prosecutor, so the “charged offense” clause may well be unnecessary.

Status: 01/01/20 Comment Period Expires.

Referrals: 09/18/19 Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.

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

Comments provided to the Court included in materials.

Liaison: Kim Warren Eddie

### **4. ADM File 2018-24: Proposed Amendment of MCR 8.301**

The proposed amendment of MCR 8.301 would make the rule consistent with the statute (MCL 600.834) allowing only the probate registers and deputy probate registers to perform certain administrative tasks that would otherwise be performed by the probate judge.

Status: 01/01/20 Comment Period Expires.

Referrals: 09/18/19 Civil Procedure & Courts Committee; Probate & Estate Planning Section.

Comments: Civil Procedure & Courts Committee.

Liaison: Hon. Shauna L. Dunning

## **D. Legislation**

### **1. Bail Bond Procedures**

**HB 4351** (LaGrand) Criminal procedure; bail; procedure for bail hearings and criteria a court must consider; amend. Amends sec. 6, ch. V of 1927 PA 175 (MCL 765.6).

**HB 4352** (Peterson) Criminal procedure; bail; procedure a court must follow in imposing financial condition on pretrial release; amend. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 6f to ch. V.

**HB 4353** (Howell) Crimes; penalties; remove cases in which a court must impose a cash bond and penalties for misrepresentation on a financial disclosure form; provide for. Amends sec. 6a, ch. V of 1927 PA 175 (MCL 765.6a).

**HB 4354** (VanSingel) Criminal procedure; bail; criteria a court must consider before imposing a financial condition of release; amend. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 6e to ch. V.

**HB 4355** (Neeley) Criminal procedure; bail; interim bail bonds for misdemeanors; modify. Amends sec. 1 of 1961 PA 44 (MCL 780.581).

**HB 4356** (Johnson) Criminal procedure; bail; authority for officer to issue appearance ticket; modify. Amends sec. 9c, ch. IV of 1927 PA 175 (MCL 764.9c).

**HB 4357** (Brann) Criminal procedure; bail; setting of bond related to spousal or child support arrearage; modify. Amends sec. 165 of 1931 PA 328 (MCL 750.165).

**HB 4358** (Garrett) Criminal procedure; bail; data on specific number and type of bonds issued; require district court to submit to state court administrative office. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 6g to ch. V.

**HB 4359** (Yancey) Criminal procedure; bail; data on specific number and type of bonds issued; require circuit court to submit to state court administrative office. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 6h to ch. V.

**HB 4360** (LaFave) Traffic control; driver license; reference to surrendering license as condition of pretrial release; remove to reflect changes in code of criminal procedure. Amends sec. 311a of 1949 PA 300 (MCL 257.311a).

Status: 03/13/19 Referred to House Committee on Judiciary.

Referrals: 04/22/19 Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.

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

Liaison: Valerie R. Newman

### **2. Jury Pool Selection**

**HB 5026** (Yancey) Courts; juries; jury pool selection process; revise. Amends secs. 1304, 1312 & 1321 of 1961 PA 236 (MCL 600.1304 et seq.) & adds secs. 1301c, 1310a & 1310b.

Status: 09/25/19 Referred to House Committee on Judiciary.

Referrals: 10/15/19 Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section; Litigation Section; Negligence Law Section.

Comments: Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee.

Liaison: Hon. Cynthia D. Stephens

**HB 5027** (LaGrand) Courts; juries; jury selection for circuit court; modify. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 1321a.

Status: 09/25/19 Referred to House Committee on Judiciary.

Referrals: 10/15/19 Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section; Litigation Section; Negligence Law Section.

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

Liaison: Hon. Cynthia D. Stephens

**3. HB 5106** (Schroeder) Criminal procedure; evidence; use of expert testimony for domestic violence in criminal cases; allow. Amends 1927 PA 175 (MCL 760.1 - 760.69) by adding sec. 27d to ch. VIII.

Status: 10/15/19 Referred to House Committee on Judiciary.

Referrals: 10/17/19 Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.

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

Liaison: Kim Warren Eddie

**4. HB 5169** (Hernandez) Torts; nonmedical malpractice; affidavit of merit; require for malpractice action against architect or professional engineer. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 2912i.

Status: 10/29/19 Referred to House Committee on Judiciary.

Referrals: 11/07/19 Civil Procedure & Courts Committee; Negligence Law Section.

Comments: Civil Procedure & Courts Committee.

Liaison: Thomas G. Sinas

**5. SB 0420** (Lucido) Civil procedure; execution; service of execution; modify procedures. Amends secs. 2559, 6002 & 6012 of 1961 PA 236 (MCL 600.2559 et seq.).

Status: 08/20/19 Referred to Senate Committee on Judiciary & Public Safety.

Referrals: 10/15/19 Civil Procedure & Courts Committee.

Comments: Civil Procedure & Courts Committee.

Liaison: Mark A. Wisniewski

**6. HB 4329** (Vaupel) Civil procedure; costs and fees; transcript fee; increase. Amends sec. 2543 of 1961 PA 236 (MCL 600.2543).

Status: 03/12/19 Referred to House Committee on Judiciary.

Referrals: 04/06/19 Civil Procedure & Courts Committee; 10/31/19 Access to Justice Policy Committee.

Comments: Civil Procedure & Courts Committee; Family Law Section.

Liaison: Joseph J. Baumann

### **E. Consent Agenda**

**To support the positions submitted by the Criminal Jurisprudence and Practice Committee on each of the following items:**

#### **Model Criminal Jury Instructions**

##### **1. M Crim JI 2.26, 3.1, and 3.6**

The Committee proposes amending procedural and composite instructions M Crim JI 2.26, 3.1, and 3.6 to include cautionary information concerning “implicit bias” similar to those adopted July 2019 by the Committee on Model Civil Jury Instructions in M Civ JI 1.01, 2.06 and 3.02.

**Minutes  
Public Policy Committee  
September 25, 2019**

Committee Members: Dennis M. Barnes, Joseph J. Baumann, Hon. Shauna L. Dunning, Kim Warren Eddie, Andrew F. Fink, III, Valerie R. Newman, Daniel D. Quick, Victoria A. Radke  
Commissioner Guests: Jennifer M. Grieco, Erika L. Butler, Samantha J. Orvis, Thomas G. Sinas, Mark A. Wisniewski  
SBM Staff: Janet Welch, Peter Cunningham, Kathryn Hennessey, Carrie Sharlow  
GCSI Staff: Marcia Hune

**A. Reports**

1. Approval July 26, 2019 Minutes

**The minutes were unanimously approved.**

2. Public Policy Report

**The Governmental Relations staff offered a written report and Peter Cunningham offered a verbal report.**

**B. Court Rules**

**1. ADM File 2018-36: Proposed Amendment of MCR 3.802**

The proposed amendment of MCR 3.802 would eliminate references to the “noncustodial parent” to make the rule consistent with the statute (MCL 710.51) allowing stepparent adoption when the petitioning stepparent’s spouse has custody according to a court order, rather than requiring sole legal custody.

**The committee voted unanimously (8) to support the proposed amendment to MCR 3.802.**

**2. ADM File 2015-21: Amendments of MCR 3.965, 3.971, 3.972, 3.973, and 3.993**

The amendments of MCR 3.965, 3.971, 3.972, 3.973, and 3.993 incorporate a requirement for a trial court to notify a respondent in a child protection proceeding of the right to appeal following a child’s removal from the home and the initial dispositional order, and that failure to do so may bar respondent from later challenging the court’s assumption of jurisdiction.

The following entities offered recommendations: Access to Justice Policy Committee; Civil Procedure & Courts Committee; and Appellate Practice Section.

**The committee voted unanimously (8) to support the rule changes as a necessary first step in responding to the *In re Ferranti* decision; however, the committee understands that SCAO has formed a workgroup with judges, court administrators, representatives from DHHS, and practitioners and support that workgroup’s efforts to further improve the rules, and (3) recommend the changes recommended by the Civil Procedure & Courts Committee be incorporated into the rules.**

**3. ADM File 2018-23: Proposed Alternative Amendments of MCR 6.610**

The proposed alternative amendments of MCR 6.610 would allow discovery in misdemeanor proceedings in the district court. Alternative A would create a structure similar to the federal rules (FR Crim P 16[b]) in which a defendant’s duty to provide certain discovery would be triggered only if defense counsel first requested discovery from the prosecution, and the prosecution complied.

Alternative B is a proposal recommended by the Prosecuting Attorneys Association of Michigan in its comment on the original proposal published for comment in this file.

**The committee voted 7 to 1 to support Alternative A and continue to urge the Court to assist with funding to carry out these orders.**

#### **4. ADM File 2019-02: Proposed Amendment of MCR 9.123**

The proposed amendment of MCR 9.123 would update the attorney discipline process for reinstatement of short-term suspensions and allow for abatement or modification of a condition in certain circumstances. The Attorney Discipline Board and Attorney Grievance Commission submitted the proposal jointly.

**The committee voted unanimously (8) to support the concept of the proposed rule amendment but note that further amendments are needed to address timelines, forums and procedure/due process.**

#### **5. ADM File 2018-31: Proposed Amendment of Rule 2 of the Rules Concerning the State Bar**

The proposed amendment of Rule 2 of the Rules Concerning the State Bar of Michigan would update and expand the rule slightly to include reference to a member's email address.

**The committee voted unanimously (8) to support the proposed amendment to Rule 2 with one amendment that attorneys be required to submit only one primary email address that can be used for electronic service and SBM license notifications.**

### **C. Legislation**

#### **1. Bail Bond Procedures**

**HB 4351** (LaGrand) Criminal procedure; bail; procedure for bail hearings and criteria a court must consider; amend. Amends sec. 6, ch. V of 1927 PA 175 (MCL 765.6).

**HB 4352** (Peterson) Criminal procedure; bail; procedure a court must follow in imposing financial condition on pretrial release; amend. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 6f to ch. V.

**HB 4353** (Howell) Crimes; penalties; remove cases in which a court must impose a cash bond and penalties for misrepresentation on a financial disclosure form; provide for. Amends sec. 6a, ch. V of 1927 PA 175 (MCL 765.6a).

**HB 4354** (VanSingel) Criminal procedure; bail; criteria a court must consider before imposing a financial condition of release; amend. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 6e to ch. V.

**HB 4355** (Neeley) Criminal procedure; bail; interim bail bonds for misdemeanors; modify. Amends sec. 1 of 1961 PA 44 (MCL 780.581).

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**HB 4357** (Brann) Criminal procedure; bail; setting of bond related to spousal or child support arrearage; modify. Amends sec. 165 of 1931 PA 328 (MCL 750.165).

**HB 4358** (Garrett) Criminal procedure; bail; data on specific number and type of bonds issued; require district court to submit to state court administrative office. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 6g to ch. V.

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**HB 4360** (LaFave) Traffic control; driver license; reference to surrendering license as condition of pretrial release; remove to reflect changes in code of criminal procedure. Amends sec. 311a of 1949 PA 300 (MCL 257.311a).

**The committee tabled the legislation.**

**D. Model Criminal Jury Instructions**

**1. M Crim JI 3.33 and 16.24**

The Committee proposes a new verdict form, M Crim JI 3.33, for use where “open murder” has been charged by the prosecutor and the degree of murder is left for the jury to determine, and proposes to eliminate M Crim JI 16.24 as unnecessary in light of the composite instructions, such as M Crim JI 3.17, and possibly confusing in many contexts.

**2. M Crim JI 7.17**

The Committee proposes a new jury instruction, M Crim JI 7.17, for defense of habitation per *Pond v People*, 8 Mich 150 (1860).

**3. M Crim JI 13.21, 13.22, 13.23, 13.24 and 13.25**

The Committee proposes a new set of jury instructions, M Crim JI 13.21, 13.22, 13.23, 13.24 and 13.25, where the prosecutor has charged offenses found in MCL 801.262 and 801.263 that involve bringing weapons or alcohol or drugs into jail, or possession of weapons or alcohol or drugs by prisoners. The instructions are entirely new.

**4. M Crim JI 35.11**

The Committee proposes a new jury instruction, M Crim JI 35.11, where the prosecutor has charged an offense found in MCL 750.411w involving the possession or use of devices or programs for “skimming” or for deleting or altering financial transactions. The instruction is entirely new.

**The committee adopted the consent agenda.**



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October 1, 2019

p 800-968-1442

f 517-482-6248

www.michbar.org

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

306 Townsend Street

Michael Franck Building

Lansing, MI

48933-2012

**RE: ADM File No. 2018-36: Proposed Amendment of Rule 3.802 of the Michigan Court Rules**

Dear Clerk Royster:

At its September 25, 2019 meeting, the State Bar of Michigan Board of Commissioners (Board) considered the above-referenced proposed rule amendment published by the Court for comment. The Board voted unanimously to support the rule change to make the court rule consistent with MCL 710.51.

We thank the Court for the opportunity to convey the Board's position on this rule proposal.

Sincerely,

Janet K. Welch  
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court  
Dennis M. Barnes, President, State Bar of Michigan





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306 Townsend Street

Michael Franck Building

Lansing, MI

48933-2012

October 1, 2019

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

**RE: ADM File No. 2015-21: Proposed Amendment of Rules 3.965, 3.971, 3.972, 3.973, and 3.993 of the Michigan Court Rules**

Dear Clerk Royster:

At its September 25, 2019 meeting, the State Bar of Michigan Board of Commissioners (Board) considered the above-referenced proposed rule amendments published by the Court for comment. As part of its review, the Board considered recommendations from the Access to Justice Policy Committee, the Appellate Practice Section, and the Civil Procedure & Courts Committee.

After this review, the Board voted unanimously to support the rules changes in concept as an excellent first step in responding to the *In re Ferranti* decision; however, the Board notes that the rules need more attention. The Board understands that the Court has formed a workgroup of stakeholders – including judges, representatives from the Department of Health and Human Services, court administrators, and practitioners – to further review these rules. The Board supports the workgroup’s efforts in improving the rules.

To clarify the rules, the Board urges that the Court address two specific issues. First, to avoid confusion, the Court should clarify whether litigants should follow the time deadline set forth in MCL 712A.21 or MCL 3.992. As currently written, MCL 712A.21 says that the petition for rehearing must be filed within **20 days** after the date of entry of the order terminating parental rights, whereas MCR 3.992 says a motion for new trial, rehearing, reconsideration or other postjudgment relief shall be filed within **14 days** after the date of the order terminating parental rights. The Board takes no position on which time deadline is appropriate.

Second, assuming that the purpose of MCR 3.973(G)(1) is to advise people that the procedure for challenging the continued exercise of jurisdiction in this situation is contained in MCL 712A.21 and MCR 3.992, then the word, “under,” or some similar phrase, should be inserted prior to the MCL 712A.21, such that it would read:

...that at any time while the court retains jurisdiction over the minor, the respondent may challenge the continuing exercise of that jurisdiction by filing a motion for rehearing, under MCL 712A.21 or MCR 3.992, or by filing an application for leave to appeal with the Michigan Court of Appeals.

We thank the Court for the opportunity to convey the Board's position on this rule proposal.

Sincerely,



Janet K. Welch  
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court  
Dennis M. Barnes, President, State Bar of Michigan

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

306 Townsend Street

Michael Franck Building

Lansing, MI

48933-2012

**RE: ADM File No. 2018-23: Proposed Amendment of Rule 6.610 of the Michigan Court Rules**

Dear Clerk Royster:

At its September 25, 2019 meeting, the State Bar of Michigan Board of Commissioners (Board) considered the above-referenced proposed rule amendment published by the Court for comment. As part of its review, the Board considered a recommendation from the Criminal Jurisprudence & Practice Committee.

After this review, the Board voted to support Alternative A, as it will allow defendants access to discovery when needed, but not unnecessarily slow down misdemeanor cases in district court. The Board, however, continues to be concerned that this rule will place increased burdens on prosecutors and urges additional funding to help prosecutors meet their new responsibilities of providing discovery in misdemeanor cases when requested by defendants. Further, the Board notes that this burden may be eased with the expanded use of electronic discovery.

We thank the Court for the opportunity to convey the Board's position on this rule proposal.

Sincerely,



Janet K. Welch  
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court  
Dennis M. Barnes, President, State Bar of Michigan



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October 1, 2019

p 800-968-1442

f 517-482-6248

www.michbar.org

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

306 Townsend Street

Michael Franck Building

Lansing, MI

48933-2012

**RE: ADM File No. 2019-02: Proposed Amendment of Rule 9.123 of the Michigan Court Rules**

Dear Clerk Royster:

At its September 25, 2019 meeting, the State Bar of Michigan Board of Commissioners (Board) considered the above-referenced proposed rule amendment published by the Court for comment. As part of its review, the Board considered a recommendation from the Professional Ethics Committee.

After this review, the Board voted unanimously to support the rule proposal in concept, but the Board believes that the rule should be modified to take further consideration of the timeline, forum, and procedure for reinstatement of licenses after a short-term suspension, including modifying the process to help ensure that suspended attorneys are not punished with an extended suspension simply because the Attorney Discipline Board has raised an objection to the affidavit.

We thank the Court for the opportunity to convey the Board's position on this rule proposal.

Sincerely,



Janet K. Welch  
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court  
Dennis M. Barnes, President, State Bar of Michigan



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www.michbar.org

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

306 Townsend Street

Michael Franck Building

Lansing, MI

48933-2012

**RE: ADM File No. 2018-31: Proposed Amendment of Rule 2 of the Rules Concerning the State Bar of Michigan**

Dear Clerk Royster:

At its September 25, 2019 meeting, the State Bar of Michigan Board of Commissioners (Board) considered the above-referenced proposed rule amendment published by the Court for comment. The Board voted unanimously to support the rule proposal with the recommendation that attorneys be required to provide only one e-mail address to prevent confusion as to where to send electronic service and annual SBM licensing notices.

We thank the Court for the opportunity to convey the Board's position on this rule proposal.

Sincerely,

Janet K. Welch  
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court  
Dennis M. Barnes, President, State Bar of Michigan



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www.michbar.org

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

October 3, 2019

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

**RE: M Crim JI 3.33  
M Crim JI 7.17  
M Crim JI 13.21, 13.22, 13.23, 13.24 and 13.25  
M Crim JI 35.11**

Dear Mr. Smith:

At its last meeting, the Board of Commissioners of the State Bar of Michigan considered the above-referenced model criminal jury instructions published for comment. In its review, the Board considered recommendations from the Criminal Jurisprudence & Practice Committee. The Board voted unanimously to support the proposed criminal jury instructions as written.

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

Sincerely,



Janet K. Welch  
Executive Director

cc: Dennis M. Barnes, President



To: Board of Commissioners  
From: Governmental Relations Division Staff  
Date: November 14, 2019  
Re: Governmental Relations Update

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

### **Civil Discovery Resource Center**

In anticipation of the new civil discovery rules taking effect on January 1, 2020, the State Bar has created numerous educational materials to help the bench and bar prepare for the changes. The *Michigan Bar Journal* has published a series of articles discussing the rule changes in its September, October, and November issues. The State Bar was honored to partner with the Detroit Chapter of the Association of Certified e-Discovery Specialists to provide a free electronic Civil Discovery Guidebook, which was authored by attorneys at Dickinson Wright and Warner Norcross + Judd. A paper version of the guidebook is available for purchase through the State Bar. In addition, the State Bar partnered with the Institute of Continuing Legal Education to provide a free webinar in which Judge Christopher Yates and Daniel Quick discuss the rule changes. These materials and more are available on the State Bar Civil Discovery Resource Center at [www.michbar.org/civildiscovery](http://www.michbar.org/civildiscovery).

### **COURT RULES**

#### **[ADM File 2002-37: Amendment of E-Filing Rules](#)**

On May 15, 2019, the Court published for comment proposed amendments for the continued design and implementation of the statewide e-filing system. The Board has supported the Court's efforts but took no position on the specific rule amendments and instead forwarded the Court the comments the Board had received from its sections and committees. The new rules are effective on January 1, 2020.

#### **[ADM File 2017-02: Amendment of MCR 6.508](#)**

On May 1, 2019, the Court published for comment amendments to MCR 6.508 that would allow a defendant to show actual prejudice in a motion for relief for judgment where defendant rejected a plea based on incorrect information from the trial court or ineffective assistance of counsel if it was reasonably likely the defendant and court would have accepted the plea but for the improper advice. The Boards supported the rule change. On September 1, 2019, the Court adopted the rule as originally published for comment. The rule amendment is effective on January 1, 2020.

#### **[ADM File 2018-11: Amendments of comments of MRPC 1.1 and 1.6](#)**

At its July 27, 2018 meeting, the Board voted unanimously to propose amendments to the comments of MRPC 1.1 to make clear that attorneys have an ethical obligation to maintain technological competence and amendments to the comments of MRPC 1.6 to require attorneys to take reasonable steps to ensure confidentiality when sending confidential or privileged documents electronically.

On April 22, 2019, the Court published the rule proposal for comment as proposed by the State Bar. After an opportunity for public comment and a public administrative hearing, the Court adopted slightly revised language, most notably, in the comment to MRPC 1.1, changing “knowledge and skills regarding developing technology” to “knowledge and skills regarding existing technology.” The new comments to the rules are effective on January 1, 2020.

#### **[ADM File 2018-12: Amendment of MCR 2.612](#)**

On April 18, 2019, the Court published for comment amendments to MCR 2.612 to clarify that parties may not use writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review. The Board supported the rule proposal but suggested modifying the language to further clarify the rule. While the Court did not adopt the language proposed by the Board, on September 18, 2019, the Court adopted alternative language that improved and clarified the rule. The rule amendment is effective on January 1, 2020.

#### **[ADM File 2018-16: Amendment of MCR 3.201 and Addition of MCR 3.230](#)**

On April 22, 2019, the Court published for comment proposed amendments MCR 3.201 and a proposed new rule, MCR 3.230, to provide procedural rules to incorporate the Summary Support and Paternity Act (366 PA 2014; MCL 722.1491, et seq.) to establish a parent’s paternity or support obligation through a summary action. The Board supported the rule amendments, but recommended that the rules be revised to require (1) the agency to file a domestic violence screening tool completed by each party and the court hold a hearing if domestic violence is indicated, and (2) the agency to file a waiver signed by each party that they were informed of their right to opt out of the process. On September 18, 2019, the Court adopted the rule amendments as proposed with minor amendments; the Court declined to adopt the State Bar’s recommendations. The rule amendments are effective on January 1, 2020.

#### **[ADM File 2018-18: Amendment of MCR 3.106](#)**

On May 15, 2019, the Court published for comment amendments to MCR 3.106, to require trial courts to provide a copy of each court officer’s bond to SCAO along with the list of court officers. The Board supported the rule amendment. On September 18, 2019, the Court adopted the version of the rule amendment that was published for comment. The rule amendments are effective on January 1, 2020.

#### **[ADM File 2018-27: Rescission of MCR 8.123 and Administrative Order 1997-5](#)**

On March 20, 2019, the Court published for comment proposals rescinding MCR 8.123 and AO 1997-5 because counsel appointment plan review and data collection regarding payments for appointed counsel is now, by statute, a requirement of the Michigan Indigent Defense Commission under MCL 780.989 and MCL 780.99. While the Court allowed for a comment period, the rule had immediate effect. The Board supported the proposed rescissions. On September 18, 2019, the Court adopted the proposed rescissions with immediate effect.

#### **[ADM Files 2002-37/2018-19: Amendment of MCR 3.206](#)**

Through separate ADM files, one of which was SBM’s proposed amendments to the Civil Discovery Rules, the Court proposed changes MCR 3.206. On November 13, 2019, the Court adopted amendments to MCR 3.206 to require that parties provide verified financial information forms in appropriate domestic relations proceedings, as proposed by the State Bar. The rule is effective on January 1, 2020.



## LEGISLATION

[HB 5117](#) (Revised Judicature Act of 1961, Wrongful Imprisonment Compensation) and [HB 5118](#) (Wrongful Imprisonment Compensation Act, Time of Claims) – SBM supports based on a vote taken on April 20, 2018 for SB 0895 and SB 0896 of 2018.

Both bills passed the House unanimously on November 6 and now go before the Senate Committee on Judiciary & Public Safety.

[SB 76](#) (Exception to Jury Service for Address Confidentiality Program Participants) – SBM opposes because the bill creates an additional exemption to jury service and courts already have the ability to excuse these individuals from jury service on a case-by-case basis.

On October 22, the Senate passed SB 0076 unanimously without any amendments. The bill had a hearing before the House Committee on Judiciary on November 5.

### **Trial Court Funding Commission**

The final report was presented to the House Appropriations Subcommittee on the Judiciary on November 5.

# Order

Michigan Supreme Court  
Lansing, Michigan

September 11, 2019

Bridget M. McCormack,  
Chief Justice

ADM File No. 2019-12

David F. Viviano,  
Chief Justice Pro Tem

Amendments of Rules 1.109,  
3.206, 3.931, and 3.961 of  
the Michigan Court Rules

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Stephen J. Markman  
Brian K. Zahra  
Richard H. Bernstein  
Elizabeth T. Clement  
Megan K. Cavanagh,  
Justices

On order of the Court, this is to advise that the amendments of Rules 1.109, 3.206, 3.931, and 3.961 of the Michigan Court Rules are adopted, effectively immediately, and are also the subject of comment during a public comment period. This notice is given to afford interested persons the opportunity to comment on the form or the merits of the amendments. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at [Administrative Matters & Court Rules page](#).

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

Rule 1.109 Court Records Defined; Document Defined; Filing Standards; Signatures;  
Electronic Filing and Service; Access

(A)-(C) [Unchanged.]

(D) Filing Standards.

(1) [Unchanged.]

(2) Case Initiation Information. A party filing a case initiating document and a party filing any response or answer to a case initiating document shall provide specified case information in the form and manner established by the State Court Administrative Office and as specified in other applicable rules. At a minimum, specified case information shall include the name, an address for service, an e-mail address, and a telephone number of every party, and:

(a) [Unchanged.]

(b) in proceedings governed by chapters 3.200 and 3.900, except for outgoing requests to other states and incoming registration actions filed under the Revised Uniform Reciprocal Enforcement of Support

Act, MCL 780.151 et seq. and the Uniform Interstate Family Support Act, MCL 552.2101 et seq., either of the following statements, if known:

- (i) [Unchanged.]
- (ii) There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person[s] who [is/are] the subject of the complaint or petition. I have filed~~Attached is~~ a completed case inventory listing those cases.

(3)-(8) [Unchanged.]

(E)-(G) [Unchanged.]

#### Rule 3.206 Initiating a Case

(A) Information in Case Initiating Document.

(1)-(2) [Unchanged.]

- (3) When any pending or resolved family division case exists that involves family members of the person(s) named in the case initiation document filed under subrule (2), the filing party must complete and file~~attach~~ a ~~completed~~ case inventory listing those cases, if known. The case inventory is confidential, not subject to service requirements in MCR 3.203, and is available only to the party that filed it, the filing party's attorney, the court, and the friend of the court. The case inventory must be on a form approved by the State Court Administrative Office. This does not apply to outgoing requests to other states and incoming registration actions filed under the Revised Uniform Reciprocal Enforcement of Support Act, MCL 780.151 *et seq.* and the Uniform Interstate Family Support Act, MCL 552.2101 *et seq.*

(4)-(6) [Unchanged.]

(B)-(D) [Unchanged.]

### Rule 3.931 Initiating Delinquency Proceedings

(A) Commencement of Proceeding. Any request for court action against a juvenile must be by written petition. The form, captioning, signing, and verifying of documents are prescribed in MCR 1.109(D). When any pending or resolved family division case exists that involves family members of the person(s) named in the petition filed under subrule (B), the petitioner must complete and file~~attach to the petition~~ a ~~completed~~ case inventory listing those cases, if known. The case inventory is confidential, not subject to service requirements in MCR 3.203, and is available only to the party that filed it, the filing party's attorney, the court, and the friend of the court. The case inventory must be on a form approved by the State Court Administrative Office.

(B)-(D) [Unchanged.]

### Rule 3.961 Initiating Child Protective Proceedings

(A) Form. Absent exigent circumstances, a request for court action to protect a child must be in the form of a petition. The form, captioning, signing, and verifying of documents are prescribed in MCR 1.109(D). When any pending or resolved family division case exists that involves family members of the person(s) named in the petition filed under subrule (B), the petitioner must complete and file~~attach to the petition~~ a ~~completed~~ case inventory listing those cases, if known. The case inventory is confidential, not subject to service requirements in MCR 3.203, and is available only to the party that filed it, the filing party's attorney, the court, and the friend of the court. The case inventory must be on a form approved by the State Court Administrative Office.

(B)-(C) [Unchanged.]

*Staff Comment:* The amendments of MCR 1.109, 3.206, 3.931, and 3.961 enable family division courts to use the required case inventory form to administer cases while keeping the information confidential. This change is intended to prevent providing information that could affect the safety of domestic violence victims and their children.

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 amendment may be sent to the Supreme Court Clerk in writing or electronically by January 1, 2020, at P.O. Box 30052, Lansing, MI 48909, or [ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov). When filing a comment, please refer to ADM File No. 2019-12. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



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

September 11, 2019

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

Clerk

**Public Policy Position  
ADM File 2019-12**

**Support with Amendment**

**Explanation**

The committee voted unanimously (19) to support the rule proposal with an amendment to clarify that tribal courts should be listed in the Case Inventory Addendum and included in the list of courts to be notified.

The proposed changes in these Court Rules center on the Case Inventory Addendum, which is a mandatory form to be filed at the outset of all domestic relations cases, juvenile delinquencies, and child protective proceedings. A Case Inventory Addendum lists all previous family court matters involving the parties or their children, including the case number, assigned judge, and whether the case is pending.

Currently, the Case Inventory Addendum must be served on all parties in domestic relations, juvenile delinquency, and child protective proceedings. The Case Inventory Addendum contains information about court matters involving children and, potentially, someone who is a domestic violence survivor.

The proposed changes would make the Case Inventory Addendum a confidential pleading in those cases and exempt it from service requirements, making it only available to the filing party, their attorney, the court, and the friend of the court. The information contained in the Case Inventory Addendum may be necessary for the court and friend of the court, but it is not necessary to the parties. Making such information confidential may serve to protect domestic violence survivors and their children.

The proposed changes would in no way inhibit the functioning of the court.

The committee supports this amendment with the recommended addition.

**Position Vote:**

Voted For position: 19

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 9

**Contact Persons:**

Lorray S.C. Brown [lorrayb@mplp.org](mailto:lorrayb@mplp.org)

Valerie R. Newman [vnewman@waynecounty.com](mailto:vnewman@waynecounty.com)

**Public Policy Position  
ADM File 2019-12**

**SUPPORT WITH RECOMMENDATIONS**

**Explanation**

Committee supports making the case inventory confidential. The committee suggests that the Court further review the service rules in MCR 3.931 and 3.961; these rules relate to delinquency and child protective proceedings, but refer to MCR 3.203, which is the service rule for domestic relations proceedings. Delinquency and child protective proceedings have their own service rules, MCR 3.920(I). Further, the committee questioned whether the rules should explicitly provide that the case inventory is available to Friend of the Court, as the Friend of the Court is part of the circuit court and, for MCR 3.931 and 3.961, not typically involved in delinquency or child protective proceedings.

**Position Vote:**

Voted For position: 19

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 8

**Contact Person:** Randy J. Wallace

**Email:** [rwallace@olsmanlaw.com](mailto:rwallace@olsmanlaw.com)

# Order

Michigan Supreme Court  
Lansing, Michigan

September 18, 2019

Bridget M. McCormack,  
Chief Justice

ADM File No. 2014-46

David F. Viviano,  
Chief Justice Pro Tem

Proposed Amendment of  
Rule 6.508 of the Michigan  
Court Rules

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Stephen J. Markman  
Brian K. Zahra  
Richard H. Bernstein  
Elizabeth T. Clement  
Megan K. Cavanagh,  
Justices

On order of the Court, this is to advise that the Court is considering alternative amendments of Rule 6.508 of the Michigan Court Rules. Before determining whether either 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 proposals or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at [Administrative Matters & Court Rules 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 6.508 Procedure; Evidentiary Hearing; Determination

(A)-(C) [Unchanged.]

(D) Entitlement to Relief. The defendant has the burden of establishing entitlement to the relief requested. The court may not grant relief to the defendant if the motion

(1) [Unchanged.]

(2) alleges grounds for relief which were decided against the defendant in a prior appeal or proceeding under this subchapter, unless the defendant establishes that a retroactive change in the law has undermined the prior decision; for purposes of this provision, a court is not precluded from considering previously-decided claims in the context of a new claim for relief, such as in determining whether new evidence would make a different result probable on retrial;



(3) [Unchanged.]

(E) [Unchanged.]

### **Alternative B**

Rule 6.508 Procedure; Evidentiary Hearing; Determination

(A)-(C) [Unchanged.]

(D) Entitlement to Relief. The defendant has the burden of establishing entitlement to the relief requested. The court may not grant relief to the defendant if the motion

(1) [Unchanged.]

(2) alleges grounds for relief which were decided against the defendant in a prior appeal or proceeding under this subchapter, unless the defendant establishes that a retroactive change in the law has undermined the prior decision, or if the previously-decided claims, when considered together, create a strong likelihood of actual innocence;

(3) [Unchanged.]

(E) [Unchanged.]

*Staff Comment:* The proposed alternative amendments of MCR 6.508 would allow a court to consider previously-decided claims in the context of a new claim for relief, consistent with footnote 17 in *People v Johnson*, 502 Mich 541 (2018), as expressed in Alternative A, or under a slightly different formulation in Alternative B.

The staff comment is not an authoritative construction by the Court. In addition, adoption of an 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 sent to the Supreme Court Clerk in writing or electronically by January 1, 2020, at P.O. Box 30052, Lansing, MI 48909, or [ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov). When filing a comment, please refer to ADM File No. 2014-46. Your comments and the comments of others will be posted under the chapter

affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



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

September 18, 2019

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

Clerk

**Public Policy Position  
ADM File 2014-46**

**Support with Amendment**

**Explanation**

The committee believes that either Alternative A or Alternative B would improve the rules with regard to the court's ability to consider previously-decided claims. The committee believes that both alternatives are valuable and address potentially different circumstances; therefore, the committee believes the best option is to combine Alternative A and a modified version of Alternative B, as follows (modified language is highlighted in gray):

(2) alleges grounds for relief which were decided against the defendant in a prior appeal or proceeding under this subchapter, unless the defendant establishes that a retroactive change in the law has undermined the prior decision; **for purposes of this provision, a court is not precluded from considering previously-decided claims in the context of a new claim for relief, such as in determining whether new evidence would make a different result probable on retrial, or if the previously-decided claims, when considered together with the new claim for relief, create a strong likelihood of actual innocence.**

**Position Vote:**

Voted For position: 18

Voted against position: 0

Abstained from vote: 2

Did not vote (absent): 8

**Contact Persons:**

Lorray S.C. Brown [lorryb@mplp.org](mailto:lorryb@mplp.org)

Valerie R. Newman [vnewman@waynecounty.com](mailto:vnewman@waynecounty.com)

**Public Policy Position**  
**ADM File No. 2014-46**

**Explanation**

The committee voted unanimously (16) to communicate to the November 22 Board of Commissioners that the committee does not support Alternative B, and is requesting more time to consider an expected Alternative C drafted by PAAM and the published Alternative A.

**Position Vote:**

Voted For position: 16

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 5

**Contact Persons:**

Mark A. Holsomback [mahols@kalcounty.com](mailto:mahols@kalcounty.com)

Sofia V. Nelson [snelson@sado.org](mailto:snelson@sado.org)

# Order

Michigan Supreme Court  
Lansing, Michigan

September 11, 2019

Bridget M. McCormack,  
Chief Justice

ADM File No. 2018-29

David F. Viviano,  
Chief Justice Pro Tem

Proposed Amendments of  
Rule 6.302 and Rule 6.610  
of the Michigan Court Rules

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Stephen J. Markman  
Brian K. Zahra  
Richard H. Bernstein  
Elizabeth T. Clement  
Megan K. Cavanagh,  
Justices

On order of the Court, this is to advise that the Court is considering amendments of Rule 6.302 and Rule 6.610 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at [Administrative Matters & Court Rules page](#).

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

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

Rule 6.302 Pleas of Guilty and Nolo Contendere

(A)-(C) [Unchanged.]

(D) An Accurate Plea.

- (1) If the defendant pleads guilty, the court, by questioning the defendant, must establish support for a finding that the defendant is guilty of ~~the offense charged or~~ the offense to which the defendant is pleading.
- (2) If the defendant pleads nolo contendere, the court may not question the defendant about participation in the crime. The court must:
  - (a) [Unchanged.]
  - (b) hold a hearing, unless there has been one, that establishes support for a finding that the defendant is guilty of ~~the offense charged or~~ the offense to which the defendant is pleading.

(E)-(F) [Unchanged.]

## Rule 6.610 Criminal Procedure Generally

(A)-(D) [Unchanged.]

(E) Pleas of Guilty and Nolo Contendere. Before accepting a plea of guilty or nolo contendere, the court shall in all cases comply with this rule.

(1) The court shall determine that the plea is understanding, voluntary, and accurate. In determining the accuracy of the plea,

(a) if the defendant pleads guilty, the court, by questioning the defendant, shall establish support for a finding that defendant is guilty of ~~the offense charged~~ or the offense to which the defendant is pleading, or

(b) [Unchanged.]

(2)-(9) [Unchanged.]

(F)-(H) [Unchanged.]

*Staff Comment:* The proposed amendments of MCR 6.302 and MCR 6.610 would eliminate the requirement for a court to establish support for a finding that defendant is guilty of the offense charged as opposed to an offense to which defendant is pleading guilty or nolo contendere. The sentencing guidelines make clear that offense variables are to be scored on the basis of the “sentencing offense alone,” not the charged offense. Further, an “offense to which defendant is pleading” would include the charged offense (if defendant is pleading to the charged offense) as well as any other offense that may have been offered by the prosecutor, so the “charged offense” clause may well be unnecessary.

The staff comment is not an authoritative construction by the Court. In addition, adoption of an 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 sent to the Supreme Court Clerk in writing or

electronically by January 1, 2020, at P.O. Box 30052, Lansing, MI 48909, or [ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov). When filing a comment, please refer to ADM File No. 2018-29. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



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

September 11, 2019

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

Clerk

**Public Policy Position  
ADM File 2018-29**

**Oppose**

**Explanation**

The committee voted unanimously (19) to oppose these amendments as unnecessary.

**Position Vote:**

Voted For position: 19

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 9

**Contact Persons:**

Lorray S.C. Brown [lorryb@mplp.org](mailto:lorryb@mplp.org)

Valerie R. Newman [vnewman@waynecounty.com](mailto:vnewman@waynecounty.com)



**Public Policy Position**  
**ADM File No. 2018-29**

**Explanation**

The committee voted unanimously to oppose these proposed rule amendments as being unnecessary. The committee – comprised of prosecutors, defense attorneys, judges, and court staff – agreed that the language stricken-out – “the offense charged” – removes a valuable tool used by all sides in the criminal justice process.

**Position Vote:**

Voted For position: 15

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 6

**Contact Persons:**

Mark A. Holsomback [mahols@kalcounty.com](mailto:mahols@kalcounty.com)

Sofia V. Nelson [snelson@sado.org](mailto:snelson@sado.org)



**Public Policy Position  
ADM File 2018-29**

**Oppose**

**Position Vote:**

Voted For position: 19

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 7

**Contact Person:** Michael J. Marutiak

**Email:** [mjmarutiak@comcast.net](mailto:mjmarutiak@comcast.net)

**From:** [Ed Black](#)  
**To:** [ADMcomment](#)  
**Subject:** MCR 6.302  
**Date:** Thursday, September 26, 2019 8:54:00 AM

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To Whom It May Concern:

I am writing in regard to the proposed changes to MCR 6.302, and specifically to the changes in paragraph (D)(1). The current rule allows pleas taken to lesser offense with a factual basis for the greater offense. This assists in the taking of pleas as it allows the parties to come to a mutually agreed upon solution. Changing the rule and requiring facts only for the lesser offense will make the options for a plea more limited and make settlement more difficult.

While having more trials may not always be a bad thing, it will serve to frustrate the just, speedy, and economical determination of every action. This will merely promote trials in instances where one was not otherwise necessary.

The recent changes to indigent defense through the MIDC have increased the pressure on the judicial system as a whole. Going forward with this amendment will add to that. In short, in my opinion, this is an ill advised modification which does not take into account the ability of the attorneys to negotiate meaningful solutions for their clients and the public.

Very Respectfully,

K. Edward Black

Alpena County Prosecuting Attorney  
719 W. Chisholm St., Ste 2  
Alpena, Michigan 49707  
Phone: (989)354-9738  
Fax: (989) 354-9788

**From:** [Michael Roehrig](#)  
**To:** [ADMcomment](#)  
**Subject:** ADM File No. 2018-29 - Proposed Amendments to MCR 6.302 and 6.610 - Comment  
**Date:** Tuesday, October 1, 2019 11:30:38 AM

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I am writing to comment on the proposed amendments to Rule 6.302 and Rule 6.610 of the Michigan Court Rules.

I read the changes to require defendants to put on the record the elements of (only) the offense to which they are pleading guilty (which is invariably a less serious offense) while eliminating the option to offer facts satisfying the elements of the charged offense. The amendments appear to want to offer a solution for a non-existent problem, and fail to account for a myriad of situations where a plea to a lesser offense is warranted by the interests of justice.

These proposed changes would, instead, create a problem by impeding plea agreements for (factually unsubstantiated) lesser offenses because the defendants would not be able to establish a factual basis to satisfy the elements of the less serious offense. This would inure to the detriment of both defendants and the interests of justice.



Michael G. Roehrig  
Prosecuting Attorney

**OFFICE OF PROSECUTING ATTORNEY**  
Monroe County Courthouse  
125 E. Second Street  
Monroe, Michigan 48161  
(734) 240-7617 (direct)  
(734) 240-7600 (main)  
(734) 240-7626 (fax)

THIS EMAIL TRANSMISSION IS INTENDED FOR THE EXCLUSIVE USE OF THE INDIVIDUAL TO WHOM IT IS ADDRESSED, AND MAY CONTAIN PRIVILEGED AND CONFIDENTIAL INFORMATION COVERED BY THE ELECTRONIC COMMUNICATIONS PRIVACY ACT (18 USC §§ 2510-2521). IF YOU ARE NOT THE INTENDED RECIPIENT OR AN AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY THE MONROE COUNTY OFFICE OF PROSECUTING ATTORNEY IMMEDIATELY BY TELEPHONE (734-240-7600) OR EMAIL AND DELETE THE ORIGINAL MESSAGE. THANK YOU.



# Michigan District Judges Association

PAST PRESIDENT

Hon. Shelia Johnson  
Southfield

PRESIDENT

Hon. Beth Gibson  
Newberry

PRESIDENT-ELECT

Hon. Tim Kelly  
Bay City

VICE-PRESIDENT

Hon. Michelle Appel  
Oak Park

SECRETARY

Hon. Raymond Voet  
Ionia

TREASURER

Hon. Kim Wiegand  
Sterling Heights

November 1, 2019

Dear Ms. Boomer:

The Michigan District Judges Association has reviewed the proposed amendments to court rules, MCR 6.302 and 6.610. We strongly object to the changes. One of our members has accurately referred to this as "a solution in search of a problem". The plea bargains which keep our dockets moving often involve a plea to a lesser charge. The defendant has usually had the option of presenting proofs to either the original charge or the charge to which he/she is pleading. Eliminating the possibility of taking proofs regarding the original charge will make it more difficult to negotiate resolutions of some cases. The busy schedules of many judges would be negatively impacted by a court rule change that makes it more difficult for attorneys and defendants to negotiate guilty pleas to reduced charges.

We realize that MCR 6.302 and 6.610 are not included in MCR 6.001(B) which is the list of rules that apply to district court. The portions of those court rules which we so commonly use should probably be included in MCR 6.001(B). These would be MCR 6.302(D) and MCR 6.610(E)(1).

Thank you for considering our position.

Sincerely,



# Michigan District Judges Association

PAST PRESIDENT

Hon. Shelia Johnson  
Southfield

PRESIDENT

Hon. Beth Gibson  
Newberry

PRESIDENT-ELECT

Hon. Tim Kelly  
Bay City

VICE-PRESIDENT

Hon. Michelle Appel  
Oak Park

SECRETARY

Hon. Raymond Voet  
Ionia

TREASURER

Hon. Kim Wiegand  
Sterling Heights

Julie H. Reincke  
Chair, Michigan District Court Judges  
Court Rules Committee

Cc: Beth Gibson

# Order

Michigan Supreme Court  
Lansing, Michigan

September 11, 2019

Bridget M. McCormack,  
Chief Justice

ADM File No. 2018-24

David F. Viviano,  
Chief Justice Pro Tem

Proposed Amendment of  
Rule 8.301 of the Michigan  
Court Rules

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Stephen J. Markman  
Brian K. Zahra  
Richard H. Bernstein  
Elizabeth T. Clement  
Megan K. Cavanagh,  
Justices

On order of the Court, this is to advise that the Court is considering an amendment of Rule 8.301 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at [Administrative Matters & Court Rules 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 8.301 Powers of Register of Probate, Deputy Registers, and Clerks

(A) [Unchanged.]

(B) Entry of Order Specifying Authority.

(1) To the extent authorized by the chief judge of a probate court by a general order, the probate register, and the deputy probate register, ~~the clerks of the probate court, and other court employees designated in the order,~~ have the authority, until the further order of the court, to do all acts required of the probate judge except judicial acts in a contested matter and acts forbidden by law to be performed by the probate register.

(2) [Unchanged.]

(C) [Unchanged.]

*Staff comment:* The proposed amendment of MCR 8.301 would make the rule consistent with the statute (MCL 600.834) allowing only the probate registers and deputy probate registers to perform certain administrative tasks that would otherwise be performed by the probate judge.

The staff comment is not an authoritative construction by the Court. In addition, adoption of an 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 sent to the Supreme Court Clerk in writing or electronically by January 1, 2020, at P.O. Box 30052, Lansing, MI 48909, or [ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov). When filing a comment, please refer to ADM File No. 2018-24. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



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

September 11, 2019

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

Clerk



**Public Policy Position  
ADM File 2018-24**

**SUPPORT**

**Explanation**

The Committee supports the proposed amendments to MCR 8.301; the changes are appropriate and consistent with MCL 600.834.

**Position Vote:**

Voted For position: 19

Voted against position: 0

Abstained from vote: 0

Did not vote: 0

**Contact Person:** Randy J. Wallace

**Email:** [rwallace@olsmanlaw.com](mailto:rwallace@olsmanlaw.com)



To: Members of the Public Policy Committee  
Board of Commissioners

From: Janet Welch, Executive Director  
Peter Cunningham, Director of Governmental Relations  
Kathryn L. Hennessey, Public Policy Counsel

Date: September 19, 2019

Re: HB 4351 – HB 4360: Pretrial Detention Legislation

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### **Background**

This 10-bill package of legislation seeks to ensure that pretrial detention is used only when those accused of a crime either pose a danger to society or are considered a flight risk. The package of bills is designed to prevent defendants from being held in custody only because they do not have the funds to pay for their own release.

These bills were considered by both the Criminal Jurisprudence and Practice Committee (CJAP) and the Access to Justice Policy Committee (ATJP). CJAP considered the package as a whole and determined the bills collectively to be *Keller*-permissible in affecting the functioning of the courts related to whether defendants and witnesses will appear in court. ATJP examined each bill individually and determined that all but HB 4360 were *Keller*-permissible because they would improve the functioning of the courts.

### ***Keller* Discussion of Bill Package**

The justice system is premised on a presumption that defendants are innocent until proven guilty, and the law thus favors the release of defendants pending adjudication of charges except when the defendant poses a threat to victims, witnesses, or society, or when there is a significant risk that a defendant will not appear in court as required. The bail system was established to help ensure that defendants who are released will return to court while their charges are being adjudicated. Any changes to the bail system could be considered *Keller*-permissible to the extent that one of the rationales of pretrial detention/release decisions is to maintain the integrity of the judicial process by securing defendants for trial.

Recent studies on the impact of pretrial detention show that pretrial detention, predictably, leads to decreases in failures to appear in court, pretrial detention significantly increases the probability of a conviction, primarily through an increase in guilty pleas.<sup>1</sup> Another study that looked at the impact of pretrial detention on sentence length determined that, when controlling for other factors, defendants

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<sup>1</sup> Dobbie, Goldin & Yang, [The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges](#), Am. Econ. Rev. 108, 2, pp. 201-240 (accessed September 18, 2019).

who are detained for the entire pretrial period receive longer jail and prison sentences than those who released.<sup>2</sup> Other studies have looked at how pretrial detention degrades the right to counsel by limiting a defendant's ability to effectively participate in their own defense<sup>3</sup>, and has been a contributing factor to wrongful convictions.<sup>4</sup> Although none of these studies are definitive, they strongly suggest that defendants who receive pretrial release have improved access to legal services.

Therefore, the bill package as a whole is likely *Keller*-permissible because it affects the functioning of the courts and the availability of legal services.

### ***Keller* Discussion of Individual Bills**

#### **HB 4351 and 4354**

HB 4351 would make pretrial release the standard unless, based on a preponderance of the evidence, if released, the defendant would either pose an undue danger to society or there was a significant risk that he or she would not appear in court as required. The bill would also require judges to take a person's ability to pay into account when setting bail.

HB 4354 would prohibit courts from setting bail at an amount that results in the defendant being detained solely because he or she is financially incapable of meeting that financial condition.

These tie-barred bills amend the Code of Criminal Procedure and impact how decisions about pretrial detention are to be determined by court with the aim of reducing pretrial detentions. The procedural nature of the bills means that it would have an impact on the functioning of the courts. Because these bills would likely make pretrial release more prevalent, based on the research discussed above, the bills could improve the quality of legal services to society by allowing defendants to more effectively participate in their own defense.

#### **HB 4352**

This bill would prohibit courts from using bail schedules and require courts to order the least onerous condition of release. The bill also requires defendants to provide a financial disclosure form and provides that a defendant may post a quarter of the bail amount when using a surety.

This bill improves the functioning of the courts by increasing judicial discretion by prohibiting the use of bail schedules and requiring courts to order the least onerous condition of release. In addition, the bills improve the functioning of the courts by providing better guidance to defendants by outlining a specific amount necessary to post bail. This bill focuses on the court's procedures, a fundamentally permissible *Keller* category, when ordering pretrial conditions.

#### **HB 4353**

This bill provides the courts with contempt power when defendants misrepresent their information on the financial disclosure used to determine the financial condition of bond. Because this bill vests

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<sup>2</sup> Holsinger, Lowenkamp & VanNostrand, Laura & John Arnold Foundation (LJAF), [Investigating the Impact of Pretrial Detention on Sentencing Outcomes](#) (accessed September 18, 2019).

<sup>3</sup> Kalb, [Gideon Incarcerated: Access to Counsel in Pre-Trial Detention](#), 9 UC Irvine L. Rev. 101 (2018) (accessed September 18, 2019).

<sup>4</sup> Leipold, *How the Pretrial Process Contributes to Wrongful Convictions*, 42 Am. Crim. L. Rev. 2015, pp. 1123-1165.

contempt power with the courts, rather than through the executive in the form of a new criminal offense, it directly relates to the functioning of the courts.

#### **HB 4354**

Discussed with HB 4351 above.

#### **HB 4355 and 4356**

HB 4355 would lower the maximum amount for an interim bond for misdemeanor and local ordinance violations to 50% of the maximum allowable fine for the offense, down from the full amount of the maximum fine. The bill also allows for a personal recognizance bond to be issued by the arresting officer instead of an interim bond.

HB 4356 would expand the authority of police officers to issue an appearance ticket to all misdemeanors and ordinance violations. Currently appearance tickets may only be issued for misdemeanors that do not exceed 93 days in jail.

These two bills are aimed at making it easier for individuals who have been charged with misdemeanors or local ordinances to either be released under personal recognizance or to more easily post interim bonds, thus eliminating the need for the individuals to appear before magistrates or judges to consider pretrial release. By potentially expanding the use the interim bonds, personal recognizance, and appearance tickets, these two bills could potentially improve the functioning of the courts.

#### **HB 4357**

This bill would amend the felony non-support statute by eliminating the current requirement that the court must impose a cash bond at arrest or arraignment, which is the greater of \$500 or 25% of the arrears owed.

This bill would improve the functioning of the courts by giving discretion to judges to set appropriate bonds in felony non-support cases, rather than imposing a specific bond requirement in all cases.

#### **HB 4358 & HB 4359**

These two bills would require the district court (4358) and circuit court (4359) to submit a quarterly report that documents the type of bail issued: (1) personal recognizance; (2) money bail with a 10% deposit bond; or (3) cash bond for the full bail amount set by the court.

These two bills would require district and circuit courts to report data on bonds and the types of bonds issued, providing bail accountability and documentation of the functioning of the courts. Collecting this data could help identify biases in the system and point toward best practices that can be codified in the future. Therefore, these bills affect the functioning of the courts.

#### **HB 4360**

This bill simply amends the Michigan Vehicle Code to delete references to sections of the Code of Criminal Procedure that would be deleted by other bills in the package.

*Keller* Quick Guide

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

**Staff Recommendation**

As a package, the bills' subject matter is entirely related to the functioning of the courts and is thus *Keller*-permissible.

## House Bill 4351 (2019) rss?

Friendly Link: <http://legislature.mi.gov/doc.aspx?2019-HB-4351>

### Sponsors

David LaGrand (district 75)

Yusef Rabhi, Jim Haadsma, Beau LaFave, Gary Howell, Sheldon Neeley, LaTanya Garrett, Tenisha Yancey, Ronnie Peterson, Tommy Brann, Steven Johnson, Scott VanSingel, Sheryl Kennedy, Cynthia Johnson, Brenda Carter, Alex Garza, Tyrone Carter, Laurie Pohutsky, Donna Lasinski, Terry Sabo, William Sowerby, Jon Hoadley, Kevin Hertel  
(click name to see bills sponsored by that person)

### Categories

Criminal procedure: bail;

Criminal procedure; bail; procedure for bail hearings and criteria a court must consider; amend. Amends sec. 6, ch. V of 1927 PA 175 (MCL 765.6). TIE BAR WITH: HB 4352'19, HB 4353'19, HB 4354'19, HB 4360'19

### Bill Documents

Bill Document Formatting Information

[x]

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- New language in an amendatory bill will be shown in **BOLD AND UPPERCASE**.
- Language to be removed will be ~~stricken~~.
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(gray icons indicate that the action did not occur or that the document is not available)

### Documents



#### House Introduced Bill

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#### As Passed by the House

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



#### As Passed by the Senate

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



#### House Enrolled Bill

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

### Bill Analysis

### History

(House actions in lowercase, Senate actions in UPPERCASE)

Date ▲	Journal	Action
3/13/2019	HJ 26 Pg. 265	introduced by Representative David LaGrand

3/13/2019 HJ 26 Pg. 265 read a first time  
3/13/2019 HJ 26 Pg. 265 referred to Committee on Judiciary  
3/14/2019 HJ 27 Pg. 275 bill electronically reproduced 03/13/2019

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# HOUSE BILL No. 4351

March 13, 2019, Introduced by Reps. LaGrand, Rabhi, Haadsma, LaFave, Howell, Neeley, Garrett, Yancey, Peterson, Brann, Steven Johnson, VanSingel, Kennedy, Cynthia Johnson, Brenda Carter, Garza, Tyrone Carter, Pohutsky, Lasinski, Sabo, Sowerby, Hoadley and Hertel and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending section 6 of chapter V (MCL 765.6), as amended by 2004 PA 167.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

CHAPTER V

Sec. 6. (1) Except as otherwise provided by law, a person accused of a criminal offense is entitled to bail. The amount of bail shall ~~MUST~~ not be excessive. ~~The court in fixing the amount of the bail shall consider and make findings on the record as to each of the following:~~

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

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

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



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

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

8 ~~—— (3) If a person is arrested for an ordinance violation or a~~  
9 ~~misdemeanor and if the defendant's operator's or chauffeur's~~  
10 ~~license is not expired, suspended, revoked, or cancelled, the court~~  
11 ~~may require the defendant, in place of other security for the~~  
12 ~~defendant's appearance in court for trial or sentencing or, as a~~  
13 ~~condition for release of the defendant on personal recognizance, to~~  
14 ~~surrender to the court his or her operator's or chauffeur's~~  
15 ~~license. The court shall issue to the defendant a receipt for the~~  
16 ~~license, as provided in section 311a of the Michigan vehicle code,~~  
17 ~~1949 PA 300, MCL 257.311a. If the trial date is set at the~~  
18 ~~arraignment, the court shall specify on the receipt the date on~~  
19 ~~which the defendant is required to appear for trial. If a trial~~  
20 ~~date is not set at the arraignment, the court shall specify on the~~  
21 ~~receipt a date on which the receipt expires. By written notice the~~  
22 ~~court may extend the expiration date of the receipt, as needed, to~~  
23 ~~secure the defendant's appearance for trial and sentencing. The~~  
24 ~~written notice shall instruct the person to whom the receipt was~~  
25 ~~issued to attach the notice to the receipt. Upon its attachment to~~  
26 ~~the receipt, the written notice shall be considered a part of the~~  
27 ~~receipt for purposes of determining the expiration date. At the~~

1 ~~conclusion of the trial or imposition of sentence, as applicable,~~  
2 ~~the court shall return the license to the defendant unless other~~  
3 ~~disposition of the license is authorized by law.~~

4 (2) ABSENT A PREPONDERANCE OF EVIDENCE THAT 1 OR BOTH OF THE  
5 FOLLOWING CIRCUMSTANCES APPLIES, THE COURT MUST RELEASE A DEFENDANT  
6 ON A PERSONAL RECOGNIZANCE BOND:

7 (A) IF RELEASED, A DEFENDANT WOULD POSE AN UNDUE DANGER TO THE  
8 COMMUNITY.

9 (B) IF RELEASED, THERE IS A SIGNIFICANT RISK THAT A DEFENDANT  
10 WOULD WILLFULLY FAIL TO APPEAR IN COURT AS REQUIRED.

11 (3) IF THE COURT DETERMINES 1 OR BOTH OF THE CIRCUMSTANCES  
12 DESCRIBED IN SUBSECTION (2) APPLY AND THAT THE DEFENDANT WILL NOT  
13 BE RELEASED ON A PERSONAL RECOGNIZANCE BOND, THE COURT, IN FIXING  
14 THE AMOUNT OF THE BAIL, SHALL CONSIDER THE FACTORS IN SUBDIVISIONS  
15 (A) TO (K) AND SHALL MAKE ITS FINDINGS ON THE RECORD. THE COURT  
16 SHALL BASE ITS WRITTEN OR ORAL DETERMINATION WHETHER OR NOT TO  
17 RELEASE A DEFENDANT OR ON WHAT CONDITIONS TO RELEASE A DEFENDANT ON  
18 A CONSIDERATION OF THE SPECIFIC FACTS AND CIRCUMSTANCES APPLICABLE  
19 TO THE PARTICULAR DEFENDANT. THE COURT SHALL CONSIDER ALL OF THE  
20 FOLLOWING FACTORS:

21 (A) THE DEFENDANT'S PRIOR ADULT PUBLIC CRIMINAL RECORD,  
22 INCLUDING ANY CHARGES THAT WERE DEFERRED AND DISMISSED BY LAW,  
23 INCLUDING, BUT NOT LIMITED TO, CHARGES DEFERRED AND DISMISSED UNDER  
24 SECTIONS 11 TO 15 OF CHAPTER II, SECTION 4A OF CHAPTER IX, OR  
25 SECTION 7411 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7411.

26 (B) THE DEFENDANT'S PRIOR JUVENILE CRIMINAL HISTORY AS  
27 FOLLOWS:

1 (i) ALL JUVENILE ADJUDICATIONS FOR CASES DESIGNATED UNDER  
2 SECTION 2D OF THE PROBATE CODE OF 1939, 1939 PA 288, MCL 712A.2D,  
3 REGARDLESS OF WHEN THE ADJUDICATION OCCURRED.

4 (ii) AN ADJUDICATION FOR ANY OTHER JUVENILE OFFENSE THAT  
5 OCCURRED WITHIN 5 YEARS OF THE DEFENDANT'S ARRAIGNMENT.

6 (C) THE DEFENDANT'S RECORD OF APPEARANCE OR NONAPPEARANCE AT  
7 CRIMINAL COURT PROCEEDINGS OR FLIGHT TO AVOID PROSECUTION IN THE  
8 IMMEDIATELY PRECEDING 10 YEARS.

9 (D) THE DEFENDANT'S HISTORY OF SUBSTANCE ABUSE OR ADDICTION.

10 (E) THE DEFENDANT'S MENTAL CONDITION, INCLUDING CHARACTER AND  
11 REPUTATION FOR DANGEROUSNESS.

12 (F) THE SERIOUSNESS OF THE OFFENSE CHARGED AND THE PRESENCE OR  
13 ABSENCE OF THREATS BY THE DEFENDANT.

14 (G) THE DEFENDANT'S EMPLOYMENT AND FINANCIAL STATUS AND  
15 HISTORY AND FINANCIAL HISTORY INsofar AS THESE FACTORS RELATE TO  
16 THE ABILITY TO POST MONEY BAIL.

17 (H) THE AVAILABILITY OF RESPONSIBLE MEMBERS OF THE COMMUNITY  
18 WHO WOULD VOUCH FOR OR MONITOR THE DEFENDANT.

19 (I) ANY FACTS INDICATING THE DEFENDANT'S TIES TO THE  
20 COMMUNITY, INCLUDING FAMILY TIES AND RELATIONSHIPS.

21 (J) THE SCORE FROM A PRETRIAL RISK ASSESSMENT INSTRUMENT THAT  
22 HAS BEEN APPROVED FOR USE BY THE STATE COURT ADMINISTRATIVE OFFICE.

23 (K) ANY OTHER FACTS BEARING ON THE RISK OF NONAPPEARANCE OR  
24 DANGER TO THE PUBLIC.

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

27 Enacting section 2. This amendatory act does not take effect

1 unless all of the following bills of the 100th Legislature are  
2 enacted into law:

3 (a) Senate Bill No. \_\_\_\_\_ or House Bill No. 4360 (request no.  
4 00792'19 a).

5 (b) Senate Bill No. \_\_\_\_\_ or House Bill No. 4353 (request no.  
6 00821'19).

7 (c) Senate Bill No. \_\_\_\_\_ or House Bill No. 4352 (request no.  
8 00947'19).

9 (d) Senate Bill No. \_\_\_\_\_ or House Bill No. 4354 (request no.  
10 01820'19).

## House Bill 4352 (2019) rss?

Friendly Link: <http://legislature.mi.gov/doc.aspx?2019-HB-4352>

### Sponsors

Ronnie Peterson (district 54)

Yusef Rabhi, Jim Haadsma, Beau LaFave, Gary Howell, Sheldon Neeley, LaTanya Garrett, Tenisha Yancey, Tommy Brann, Steven Johnson, Scott VanSingel, Sheryl Kennedy, Cynthia Johnson, Brenda Carter, Alex Garza, Tyrone Carter, Donna Lasinski, Laurie Pohutsky, Terry Sabo, William Sowerby, Jon Hoadley, Kevin Hertel, David LaGrand  
(click name to see bills sponsored by that person)

### Categories

Criminal procedure: bail;

Criminal procedure; bail; procedure a court must follow in imposing financial condition on pretrial release; amend. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 6f to ch. V. TIE BAR WITH: HB 4351'19, HB 4353'19, HB 4354'19

### Bill Documents

Bill Document Formatting Information

[x]

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### Documents



#### House Introduced Bill

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#### As Passed by the House

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#### As Passed by the Senate

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#### House Enrolled Bill

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

### Bill Analysis

### History

(House actions in lowercase, Senate actions in UPPERCASE)

Date ▲	Journal	Action
3/13/2019	HJ 26 Pg. 265	introduced by Representative Ronnie Peterson

3/13/2019 HJ 26 Pg. 265 read a first time  
3/13/2019 HJ 26 Pg. 265 referred to Committee on Judiciary  
3/14/2019 HJ 27 Pg. 275 bill electronically reproduced 03/13/2019

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# HOUSE BILL No. 4352

March 13, 2019, Introduced by Reps. Peterson, Rabhi, Haadsma, LaFave, Howell, Neeley, Garrett, Yancey, Brann, Steven Johnson, VanSingel, Kennedy, Cynthia Johnson, Brenda Carter, Garza, Tyrone Carter, Lasinski, Pohutsky, Sabo, Sowerby, Hoadley, Hertel and LaGrand and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled  
"The code of criminal procedure,"  
(MCL 760.1 to 777.69) by adding section 6f to chapter V.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1

CHAPTER V

2

**SEC. 6F. (1) WHEN FIXING THE AMOUNT OF BAIL UNDER THIS**

3

**CHAPTER, THE COURT SHALL NOT SET A FINANCIAL CONDITION OF RELEASE**

4

**BASED ON A PREESTABLISHED BAIL SCHEDULE, SUCH AS A SCHEDULE OF BOND**

5

**AMOUNTS FIXED ACCORDING TO THE NATURE OF THE CHARGE.**

6

**(2) IF THE COURT DETERMINES THAT A DEFENDANT WILL BE RELEASED**

7

**OTHER THAN ON A PERSONAL RECOGNIZANCE OR UNSECURED BOND WITHOUT**

8

**SPECIAL CONDITIONS, THE COURT SHALL IMPOSE ON THE DEFENDANT THE**

9

**LEAST ONEROUS CONDITION OR COMBINATION OF CONDITIONS OF RELEASE**

1 THAT WILL REASONABLY ENSURE THE APPEARANCE OF THE DEFENDANT AND THE  
2 SAFETY OF EACH ALLEGED VICTIM, OTHER PERSONS, AND THE COMMUNITY.

3 (3) THE COURT SHALL PROVIDE A FINANCIAL DISCLOSURE FORM TO  
4 EACH DEFENDANT PRIOR TO THE DEFENDANT'S ARRAIGNMENT FOR USE BY THE  
5 COURT AT THE DEFENDANT'S ARRAIGNMENT. THE FORM MUST CONTAIN THE  
6 FOLLOWING LANGUAGE OR SUBSTANTIALLY SIMILAR LANGUAGE DISPLAYED IN A  
7 PROMINENT POSITION:

8 "WARNING: YOU MAY BE REQUIRED TO AFFIRM THE ACCURACY  
9 OF THIS FORM UNDER OATH AT YOUR ARRAIGNMENT. FILING  
10 AN INTENTIONALLY INACCURATE STATEMENT OF FINANCES  
11 MAY RESULT IN PERJURY CHARGES OR ACTION FOR CONTEMPT  
12 OF COURT. BY SIGNING THIS FORM, YOU AUTHORIZE ANYONE  
13 POSSESSING ANY INFORMATION OR RECORDS PERTAINING TO  
14 YOUR PERSONAL FINANCES OR INCOME TO PROVIDE SUCH  
15 INFORMATION TO THE COURTS."

16 (4) IF THE COURT FIXES A BAIL AMOUNT UNDER THIS CHAPTER AND  
17 ALLOWS THE POSTING OF A 10% DEPOSIT BOND, THE DEFENDANT MAY POST  
18 BAIL BY A SURETY BOND IN AN AMOUNT EQUAL TO 1/4 OF THE FULL BAIL  
19 AMOUNT FIXED UNDER THIS CHAPTER AND EXECUTED BY A SURETY APPROVED  
20 BY THE COURT.

21 (5) THE SUPREME COURT MAY PRESCRIBE RULES TO IMPLEMENT THIS  
22 CHAPTER.

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

25 Enacting section 2. This amendatory act does not take effect  
26 unless all of the following bills of the 100th Legislature are  
27 enacted into law:



1 (a) Senate Bill No. \_\_\_\_\_ or House Bill No. 4351 (request no.  
2 00792'19).

3 (b) Senate Bill No. \_\_\_\_\_ or House Bill No. 4353 (request no.  
4 00821'19).

5 (c) Senate Bill No. \_\_\_\_\_ or House Bill No. 4354 (request no.  
6 01820'19).

## House Bill 4353 (2019) rss?

Friendly Link: <http://legislature.mi.gov/doc.aspx?2019-HB-4353>

### Sponsors

Gary Howell (district 82)

Yusef Rabhi, Jim Haadsma, Beau LaFave, Sheldon Neeley, LaTanya Garrett, Tenisha Yancey, Ronnie Peterson, Tommy Brann, Steven Johnson, Scott VanSingel, Sheryl Kennedy, Brenda Carter, Alex Garza, Tyrone Carter, Laurie Pohutsky, Donna Lasinski, Terry Sabo, William Sowerby, Jon Hoadley, Kevin Hertel, David LaGrand  
(click name to see bills sponsored by that person)

### Categories

Crimes: penalties; Criminal procedure: bail;

Crimes; penalties; remove cases in which a court must impose a cash bond and penalties for misrepresentation on a financial disclosure form; provide for. Amends sec. 6a, ch. V of 1927 PA 175 (MCL 765.6a). TIE BAR WITH: HB 4351'19, HB 4352'19, HB 4354'19

### Bill Documents

Bill Document Formatting Information

[x]

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### Documents



#### House Introduced Bill

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#### As Passed by the House

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#### As Passed by the Senate

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#### House Enrolled Bill

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### Bill Analysis

### History

(House actions in lowercase, Senate actions in UPPERCASE)

Date ▲	Journal	Action
3/13/2019	HJ 26 Pg. 265	introduced by Representative Gary Howell

3/13/2019 HJ 26 Pg. 265 read a first time  
3/13/2019 HJ 26 Pg. 265 referred to Committee on Judiciary  
3/14/2019 HJ 27 Pg. 275 bill electronically reproduced 03/13/2019

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# HOUSE BILL No. 4353

March 13, 2019, Introduced by Reps. Howell, Rabhi, Haadsma, LaFave, Neeley, Garrett, Yancey, Peterson, Brann, Steven Johnson, VanSingel, Kennedy, Brenda Carter, Garza, Tyrone Carter, Pohutsky, Lasinski, Sabo, Sowerby, Hoadley, Hertel and LaGrand and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled  
"The code of criminal procedure,"  
by amending section 6a of chapter V (MCL 765.6a).

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

CHAPTER V

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

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

~~— (2) Has been twice convicted of a felony within the preceding 5 years.~~

**AN INDIVIDUAL WHO KNOWINGLY MISREPRESENTS HIS OR HER FINANCIAL STATUS ON THE FINANCIAL DISCLOSURE FORM DESCRIBED IN**

1 SECTION 6F(3) OF THIS CHAPTER MAY BE FOUND IN CONTEMPT OF COURT AND  
2 MAY BE PUNISHED AS PROVIDED IN SECTION 1715 OF THE REVISED  
3 JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.1715.

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

6 Enacting section 2. This amendatory act does not take effect  
7 unless all of the following bills of the 100th Legislature are  
8 enacted into law:

9 (a) Senate Bill No. \_\_\_\_ or House Bill No. 4351 (request no.  
10 00792'19).

11 (b) Senate Bill No. \_\_\_\_ or House Bill No 4352 (request no.  
12 00947'19).

13 (c) Senate Bill No. \_\_\_\_ or House Bill No. 4354 (request no.  
14 01820'19).

## House Bill 4354 (2019) rss?

Friendly Link: <http://legislature.mi.gov/doc.aspx?2019-HB-4354>

### Sponsors

Scott VanSingel (district 100)

Yusef Rabhi, Jim Haadsma, Beau LaFave, Gary Howell, Sheldon Neeley, LaTanya Garrett, Tenisha Yancey, Ronnie Peterson, Tommy Brann, Steven Johnson, Sheryl Kennedy, Brenda Carter, Alex Garza, Tyrone Carter, Donna Lasinski, Laurie Pohutsky, Terry Sabo, William Sowerby, Jon Hoadley, Kevin Hertel, David LaGrand  
(click name to see bills sponsored by that person)

### Categories

Criminal procedure: bail;

Criminal procedure; bail; criteria a court must consider before imposing a financial condition of release; amend. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 6e to ch. V. TIE BAR WITH: HB 4351'19, HB 4352'19, HB 4353'19

### Bill Documents

Bill Document Formatting Information

[x]

The following bill formatting applies to the 2019-2020 session:

- New language in an amendatory bill will be shown in **BOLD AND UPPERCASE**.
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(gray icons indicate that the action did not occur or that the document is not available)

### Documents



#### House Introduced Bill

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



#### As Passed by the House

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



#### As Passed by the Senate

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



#### House Enrolled Bill

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

### Bill Analysis

### History

(House actions in lowercase, Senate actions in UPPERCASE)

Date ▲	Journal	Action
3/13/2019	HJ 26 Pg. 265	introduced by Representative Scott VanSingel

3/13/2019 HJ 26 Pg. 265 read a first time  
3/13/2019 HJ 26 Pg. 265 referred to Committee on Judiciary  
3/14/2019 HJ 27 Pg. 275 bill electronically reproduced 03/13/2019

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# HOUSE BILL No. 4354

March 13, 2019, Introduced by Reps. VanSingel, Rabhi, Haadsma, LaFave, Howell, Neeley, Garrett, Yancey, Peterson, Brann, Steven Johnson, Kennedy, Brenda Carter, Garza, Tyrone Carter, Lasinski, Pohutsky, Sabo, Sowerby, Hoadley, Hertel and LaGrand and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled  
"The code of criminal procedure,"  
(MCL 760.1 to 777.69) by adding section 6e to chapter V.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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CHAPTER V

SEC. 6E. IF THE COURT DETERMINES THAT 1 OR BOTH OF THE  
CIRCUMSTANCES DESCRIBED IN SECTION 6(2) APPLY AND THAT A DEFENDANT  
WILL NOT BE RELEASED ON A PERSONAL RECOGNIZANCE BOND, THE COURT, IN  
FIXING THE AMOUNT OF BAIL UNDER THIS CHAPTER, SHALL NOT IMPOSE A  
FINANCIAL CONDITION OF RELEASE THAT RESULTS IN THE PRETRIAL  
DETENTION OF A DEFENDANT SOLELY BECAUSE THE DEFENDANT IS  
FINANCIALLY INCAPABLE OF MEETING THAT CONDITION. THE COURT MAY  
CONSIDER ALL RESOURCES AVAILABLE TO THE DEFENDANT FROM ANY LAWFUL



1 **SOURCE IN DETERMINING THE DEFENDANT'S FINANCIAL CAPABILITIES.**

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

4 Enacting section 2. This amendatory act does not take effect  
5 unless all of the following bills of the 100th Legislature are  
6 enacted into law:

7 (a) Senate Bill No. \_\_\_\_ or House Bill No. 4351 (request no.  
8 00792'19).

9 (b) Senate Bill No. \_\_\_\_ or House Bill No. 4353 (request no.  
10 00821'19).

11 (c) Senate Bill No. \_\_\_\_ or House Bill No. 4352 (request no.  
12 00947'19).

## House Bill 4355 (2019) rss?

Friendly Link: <http://legislature.mi.gov/doc.aspx?2019-HB-4355>

### Sponsors

Sheldon Neeley (district 34)

Yusef Rabhi, Jim Haadsma, Beau LaFave, Gary Howell, LaTanya Garrett, Tenisha Yancey, Ronnie Peterson, Tommy Brann, Steven Johnson, Scott VanSingel, Sheryl Kennedy, Brenda Carter, Alex Garza, Tyrone Carter, Donna Lasinski, Laurie Pohutsky, Terry Sabo, William Sowerby, Jon Hoadley, Kevin Hertel, David LaGrand  
(click name to see bills sponsored by that person)

### Categories

Criminal procedure: bail;

Criminal procedure; bail; interim bail bonds for misdemeanors; modify. Amends sec. 1 of 1961 PA 44 (MCL 780.581). TIE BAR WITH: HB 4356'19

### Bill Documents

Bill Document Formatting Information

[x]

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### Documents



#### House Introduced Bill

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#### As Passed by the House

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#### As Passed by the Senate

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



#### House Enrolled Bill

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

### Bill Analysis

### History

(House actions in lowercase, Senate actions in UPPERCASE)

Date ▲	Journal	Action
3/13/2019	HJ 26 Pg. 266	introduced by Representative Sheldon Neeley
3/13/2019	HJ 26 Pg. 266	read a first time

3/13/2019 HJ 26 Pg. 266 referred to Committee on Judiciary  
3/14/2019 HJ 27 Pg. 275 bill electronically reproduced 03/13/2019

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# HOUSE BILL No. 4355

March 13, 2019, Introduced by Reps. Neeley, Rabhi, Haadsma, LaFave, Howell, Garrett, Yancey, Peterson, Brann, Steven Johnson, VanSingel, Kennedy, Brenda Carter, Garza, Tyrone Carter, Lasinski, Pohutsky, Sabo, Sowerby, Hoadley, Hertel and LaGrand and referred to the Committee on Judiciary.

A bill to amend 1961 PA 44, entitled

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

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

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. (1) ~~If~~ **EXCEPT IN A CASE IN WHICH AN APPEARANCE TICKET**  
 2 **IS ISSUED UNDER SECTION 9C OF CHAPTER IV OF THE CODE OF CRIMINAL**  
 3 **PROCEDURE, 1927 PA 175, MCL 764.9C, IF** a person is arrested without  
 4 a warrant for a misdemeanor or a violation of a city, village, or  
 5 township ordinance, and the misdemeanor or violation is punishable  
 6 by imprisonment for not more than 1 year, or by a fine, or both,  
 7 the officer making the arrest shall take, without unnecessary  
 8 delay, the person arrested before the most convenient magistrate of  
 9 the county in which the offense was committed ~~to answer to the~~

1 ~~complaint.~~ **FOR AN ARRAIGNMENT.**

2           (2) Except as otherwise provided in **THIS SUBSECTION AND**  
3 section 2a, if a magistrate is not available or immediate trial  
4 cannot be had **IN A TIMELY MANNER**, the person arrested may deposit  
5 with the arresting officer or the direct supervisor of the  
6 arresting officer or department, or with the sheriff or a deputy in  
7 charge of the county jail if the person arrested is lodged in the  
8 county jail, an interim bond to guarantee his or her appearance.  
9 The bond ~~shall~~ **MUST** be a sum of money, as determined by the officer  
10 who accepts the bond, not to exceed **50% OF** the amount of the  
11 maximum possible fine ~~but not less than 20% of the amount of the~~  
12 ~~minimum possible fine~~ that may be imposed for the offense for which  
13 the person was arrested. The person ~~shall~~ **MUST** be given a receipt  
14 as provided in section 3. **INSTEAD OF REQUIRING AN INTERIM BOND THE**  
15 **PERSON MAY BE RELEASED ON HIS OR HER OWN RECOGNIZANCE. IF THE**  
16 **PERSON IS RELEASED ON HIS OR HER OWN RECOGNIZANCE UNDER THIS**  
17 **SECTION HE OR SHE MUST BE GIVEN A RECEIPT AS PROVIDED IN SECTION 3.**

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

27           (4) For purposes of subsection (3), if the person is arrested

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

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

13 Enacting section 2. This amendatory act does not take effect  
14 unless Senate Bill No. \_\_\_\_ or House Bill No. 4356 (request no.  
15 00774'19 a) of the 100th Legislature is enacted into law.

## House Bill 4356 (2019) rss?

Friendly Link: <http://legislature.mi.gov/doc.aspx?2019-HB-4356>

### Sponsors

Steven Johnson (district 72)

Yusef Rabhi, Jim Haadsma, Beau LaFave, Gary Howell, Sheldon Neeley, LaTanya Garrett, Tenisha Yancey, Ronnie Peterson, Tommy Brann, Scott VanSingel, Sheryl Kennedy, Brenda Carter, Alex Garza, Tyrone Carter, Laurie Pohutsky, Donna Lasinski, Terry Sabo, William Sowerby, Jon Hoadley, Kevin Hertel, David LaGrand

(click name to see bills sponsored by that person)

### Categories

Criminal procedure: bail; Criminal procedure: other;

Criminal procedure; bail; authority for officer to issue appearance ticket; modify. Amends sec. 9c, ch. IV of 1927 PA 175 (MCL 764.9c). TIE BAR WITH: HB 4355'19

### Bill Documents

Bill Document Formatting Information

[x]

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### Documents



#### House Introduced Bill

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#### As Passed by the House

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#### As Passed by the Senate

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#### House Enrolled Bill

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

### Bill Analysis

### History

(House actions in lowercase, Senate actions in UPPERCASE)

Date ▲	Journal	Action
3/13/2019	HJ 26 Pg. 266	introduced by Representative Steven Johnson
3/13/2019	HJ 26 Pg. 266	read a first time

3/13/2019 HJ 26 Pg. 266 referred to Committee on Judiciary  
3/14/2019 HJ 27 Pg. 275 bill electronically reproduced 03/13/2019

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# HOUSE BILL No. 4356

March 13, 2019, Introduced by Reps. Steven Johnson, Rabhi, Haadsma, LaFave, Howell, Neeley, Garrett, Yancey, Peterson, Brann, VanSingel, Kennedy, Brenda Carter, Garza, Tyrone Carter, Pohutsky, Lasinski, Sabo, Sowerby, Hoadley, Hertel and LaGrand and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled  
"The code of criminal procedure,"  
by amending section 9c of chapter IV (MCL 764.9c), as amended by  
2001 PA 208.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

CHAPTER IV

1  
2           Sec. 9c. (1) Except as provided in subsection (3), if a police  
3 officer has arrested a person without a warrant for a misdemeanor  
4 or ordinance violation ~~for which the maximum permissible penalty~~  
5 ~~does not exceed 93 days in jail or a fine, or both,~~ instead of  
6 taking the person before a magistrate and promptly filing a  
7 complaint as provided in section 13 of this chapter, the officer  
8 may issue to and serve upon the person an appearance ticket as  
9 defined in section 9f of this chapter and release the person from

1 custody.

2 (2) A public servant other than a police officer, who is  
3 specially authorized by law or ordinance to issue and serve  
4 appearance tickets with respect to a particular class of offenses  
5 of less than felony grade, may issue and serve upon a person an  
6 appearance ticket if the public servant has reasonable cause to  
7 believe that the person has committed an offense.

8 (3) An appearance ticket ~~shall~~**MUST** not be issued to any of  
9 the following:

10 (a) A person arrested for a violation of section 81 or 81a of  
11 the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, or a  
12 local ordinance substantially corresponding to section 81 of the  
13 Michigan penal code, 1931 PA 328, MCL 750.81, if the victim of the  
14 assault is the offender's spouse, former spouse, an individual who  
15 has had a child in common with the offender, an individual who has  
16 or has had a dating relationship with the offender, or an  
17 individual residing or having resided in the same household as the  
18 offender. As used in this subdivision, "dating relationship" means  
19 frequent, intimate associations primarily characterized by the  
20 expectation of affectional involvement. This term does not include  
21 a casual relationship or an ordinary fraternization between 2  
22 individuals in a business or social context.

23 (b) A person subject to detainment for violating a personal  
24 protection order.

25 (c) A person subject to a mandatory period of confinement,  
26 condition of bond, or other condition of release until he or she  
27 has served that period of confinement or meets that requirement of

1 bond or other condition of release.

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

4 Enacting section 2. This amendatory act does not take effect  
5 unless Senate Bill No. \_\_\_\_ or House Bill No. 4355 (request no.  
6 00774'19) of the 100th Legislature is enacted into law.

## House Bill 4357 (2019) rss?

Friendly Link: <http://legislature.mi.gov/doc.aspx?2019-HB-4357>

### Sponsors

Tommy Brann (district 77)

Yusef Rabhi, Jim Haadsma, Beau LaFave, Gary Howell, Sheldon Neeley, LaTanya Garrett, Tenisha Yancey, Ronnie Peterson, Steven Johnson, Scott VanSingel, Sheryl Kennedy, Cynthia Johnson, Brenda Carter, Alex Garza, Tyrone Carter, Donna Lasinski, Laurie Pohutsky, Terry Sabo, William Sowerby, Jon Hoadley, Kevin Hertel, David LaGrand

(click name to see bills sponsored by that person)

### Categories

Criminal procedure: bail; Family law: child support;

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

### Bill Documents

Bill Document Formatting Information

[x]

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### Documents



#### House Introduced Bill

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#### As Passed by the House

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#### As Passed by the Senate

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#### House Enrolled Bill

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

### Bill Analysis

### History

(House actions in lowercase, Senate actions in UPPERCASE)

Date ▲	Journal	Action
3/13/2019	HJ 26 Pg. 266	introduced by Representative Tommy Brann
3/13/2019	HJ 26 Pg. 266	read a first time

3/13/2019 HJ 26 Pg. 266 referred to Committee on Judiciary  
3/14/2019 HJ 27 Pg. 275 bill electronically reproduced 03/13/2019

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# HOUSE BILL No. 4357

March 13, 2019, Introduced by Reps. Brann, Rabhi, Haadsma, LaFave, Howell, Neeley, Garrett, Yancey, Peterson, Steven Johnson, VanSingel, Kennedy, Cynthia Johnson, Brenda Carter, Garza, Tyrone Carter, Lasinski, Pohutsky, Sabo, Sowerby, Hoadley, Hertel and LaGrand and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled  
"The Michigan penal code,"  
by amending section 165 (MCL 750.165), as amended by 2014 PA 377.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 165. (1) If the court orders an individual to pay support  
2 for the individual's former or current spouse, or for a child of  
3 the individual, and the individual does not pay the support in the  
4 amount or at the time stated in the order, the individual is guilty  
5 of a felony punishable by imprisonment for not more than 4 years or  
6 by a fine of not more than \$2,000.00, or both.

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

1           (3) ~~Unless the individual deposits a cash bond of not less~~  
2 ~~than \$500.00 or 25% of the arrearage, whichever is greater, upon~~  
3 ~~arrest for a violation of this section, the individual shall remain~~  
4 ~~in custody until the arraignment. If the individual remains in~~  
5 ~~eustody, the court shall address the amount of the cash bond at the~~  
6 ~~arraignment and at the preliminary examination and, except for good~~  
7 ~~cause shown on the record, shall order the bond to be continued at~~  
8 ~~not less than \$500.00 or 25% of the arrearage, whichever is~~  
9 ~~greater. At the court's discretion, the court may set the cash bond~~  
10 ~~at an amount not more than 100% of the arrearage and add to that~~  
11 ~~amount the amount of the costs that the court may require under~~  
12 ~~section 31(3) of the support and parenting time enforcement act,~~  
13 ~~1982 PA 295, MCL 552.631. The court shall specify that the cash~~  
14 ~~bond amount be entered into the law enforcement information~~  
15 ~~network.~~ If a bench warrant under section 31 of the support and  
16 parenting time enforcement act, 1982 PA 295, MCL 552.631, is  
17 outstanding for an individual when the individual is arrested for a  
18 violation of this section, the court shall notify the court  
19 handling the civil support case under the support and parenting  
20 time enforcement act, 1982 PA 295, MCL 552.601 to 552.650, that the  
21 bench warrant may be recalled.

22           (4) The court may suspend the sentence of an individual  
23 convicted under this section if the individual files with the court  
24 a bond in the amount and with the sureties the court requires. At a  
25 minimum, the bond must be conditioned on the individual's  
26 compliance with the support order. If the court suspends a sentence  
27 under this subsection and the individual does not comply with the

1 support order or another condition on the bond, the court may order  
2 the individual to appear and show cause why the court should not  
3 impose the sentence and enforce the bond. After the hearing, the  
4 court may enforce the bond or impose the sentence, or both, or may  
5 permit the filing of a new bond and again suspend the sentence. The  
6 court shall order a support amount enforced under this section to  
7 be paid to the clerk or friend of the court or to the state  
8 disbursement unit.

9 (5) An order for restitution for a violation of this section  
10 ~~shall~~**MUST** not include a separate award for the unpaid amount in  
11 arrearage under the support order. The restitution order ~~shall~~**MUST**  
12 reference the support order and direct the individual to pay the  
13 unpaid amount in arrearage under the support order pursuant to the  
14 support order. The court may impose such terms and conditions in  
15 the restitution order as are appropriate to ensure compliance with  
16 payment of the arrearage due under the support order. The court may  
17 order additional restitution as provided under the William Van  
18 Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to  
19 780.834.

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

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



## House Bill 4358 (2019) rss?

Friendly Link: <http://legislature.mi.gov/doc.aspx?2019-HB-4358>

### Sponsors

LaTanya Garrett (district 7)

Yusef Rabhi, Jim Haadsma, Beau LaFave, Gary Howell, Sheldon Neeley, Wendell Byrd, Tenisha Yancey, Ronnie Peterson, Tommy Brann, Steven Johnson, Scott VanSingel, Sheryl Kennedy, Cynthia Johnson, Brenda Carter, Alex Garza, Tyrone Carter, Donna Lasinski, Laurie Pohutsky, Terry Sabo, William Sowerby, Jon Hoadley, Kevin Hertel, David LaGrand  
(click name to see bills sponsored by that person)

### Categories

Criminal procedure: bail; Courts: circuit court;

Criminal procedure; bail; data on specific number and type of bonds issued; require district court to submit to state court administrative office. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 6g to ch. V.

### Bill Documents

Bill Document Formatting Information

[x]

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### Documents



#### House Introduced Bill

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#### As Passed by the House

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#### As Passed by the Senate

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#### House Enrolled Bill

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

### Bill Analysis

### History

(House actions in lowercase, Senate actions in UPPERCASE)

Date ▲	Journal	Action
3/13/2019	HJ 26 Pg. 266	introduced by Representative LaTanya Garrett

3/13/2019 HJ 26 Pg. 266 read a first time  
3/13/2019 HJ 26 Pg. 266 referred to Committee on Judiciary  
3/14/2019 HJ 27 Pg. 275 bill electronically reproduced 03/13/2019

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# HOUSE BILL No. 4358

March 13, 2019, Introduced by Reps. Garrett, Rabhi, Haadsma, LaFave, Howell, Neeley, Byrd, Yancey, Peterson, Brann, Steven Johnson, VanSingel, Kennedy, Cynthia Johnson, Brenda Carter, Garza, Tyrone Carter, Lasinski, Pohutsky, Sabo, Sowerby, Hoadley, Hertel and LaGrand and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled  
"The code of criminal procedure,"  
(MCL 760.1 to 777.69) by adding section 6g to chapter V.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

CHAPTER V

1  
2           **SEC. 6G. EACH DISTRICT COURT OF THIS STATE SHALL SUBMIT A**  
3 **QUARTERLY REPORT TO THE STATE COURT ADMINISTRATIVE OFFICE THAT**  
4 **PROVIDES DATA DETAILING THE TYPES OF BAIL ISSUED BY THE COURT TO**  
5 **INDIVIDUALS RELEASED AS PROVIDED UNDER THIS CHAPTER FOR THE**  
6 **PREVIOUS QUARTER. THE REPORT REQUIRED UNDER THIS SECTION MUST**  
7 **INCLUDE AN ACCOUNTING OF THE NUMBER OF INDIVIDUALS RELEASED ON**  
8 **PERSONAL RECOGNIZANCE OR ON MONEY BAIL WITH A 10% DEPOSIT BOND OR A**  
9 **CASH BOND FOR THE FULL BAIL AMOUNT SET BY THE COURT. THE SUPREME**  
10 **COURT MAY PROMULGATE COURT RULES REGARDING THE TYPE AND FORMAT OF**

**1 DATA THAT ARE REQUIRED TO BE SUBMITTED TO THE STATE COURT  
2 ADMINISTRATIVE OFFICE UNDER THIS SECTION.**

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

## House Bill 4359 (2019) rss?

Friendly Link: <http://legislature.mi.gov/doc.aspx?2019-HB-4359>

### Sponsors

Tenisha Yancey (district 1)

Yusef Rabhi, Jim Haadsma, Beau LaFave, Gary Howell, Sheldon Neeley, LaTanya Garrett, Ronnie Peterson, Tommy Brann, Steven Johnson, Scott VanSingel, Sheryl Kennedy, Brenda Carter, Alex Garza, Tyrone Carter, Donna Lasinski, Laurie Pohutsky, Terry Sabo, William Sowerby, Jon Hoadley, Kevin Hertel, David LaGrand  
(click name to see bills sponsored by that person)

### Categories

Criminal procedure: bail; Courts: circuit court;

Criminal procedure; bail; data on specific number and type of bonds issued; require circuit court to submit to state court administrative office. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 6h to ch. V.

### Bill Documents

Bill Document Formatting Information

[x]

The following bill formatting applies to the 2019-2020 session:

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

### Documents



#### House Introduced Bill

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#### As Passed by the House

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



#### As Passed by the Senate

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



#### House Enrolled Bill

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

### Bill Analysis

### History

(House actions in lowercase, Senate actions in UPPERCASE)

Date ▲	Journal	Action
3/13/2019	HJ 26 Pg. 266	introduced by Representative Tenisha Yancey

3/13/2019 HJ 26 Pg. 266 read a first time  
3/13/2019 HJ 26 Pg. 266 referred to Committee on Judiciary  
3/14/2019 HJ 27 Pg. 275 bill electronically reproduced 03/13/2019

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# HOUSE BILL No. 4359

March 13, 2019, Introduced by Reps. Yancey, Rabhi, Haadsma, LaFave, Howell, Neeley, Garrett, Peterson, Brann, Steven Johnson, VanSingel, Kennedy, Brenda Carter, Garza, Tyrone Carter, Lasinski, Pohutsky, Sabo, Sowerby, Hoadley, Hertel and LaGrand and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled  
"The code of criminal procedure,"  
(MCL 760.1 to 777.69) by adding section 6h to chapter V.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

CHAPTER V

1  
2           **SEC. 6H. EACH CIRCUIT COURT OF THIS STATE SHALL SUBMIT A**  
3 **QUARTERLY REPORT TO THE STATE COURT ADMINISTRATIVE OFFICE THAT**  
4 **PROVIDES DATA DETAILING THE TYPES OF BAIL ISSUED BY THE COURT TO**  
5 **INDIVIDUALS RELEASED AS PROVIDED UNDER THIS CHAPTER FOR THE**  
6 **PREVIOUS QUARTER. THE REPORT REQUIRED UNDER THIS SECTION MUST**  
7 **INCLUDE AN ACCOUNTING OF THE NUMBER OF INDIVIDUALS RELEASED ON**  
8 **PERSONAL RECOGNIZANCE OR ON MONEY BAIL WITH A 10% DEPOSIT BOND OR A**  
9 **CASH BOND FOR THE FULL BAIL AMOUNT SET BY THE COURT. THE SUPREME**  
10 **COURT MAY PROMULGATE COURT RULES REGARDING THE TYPE AND FORMAT OF**

**1 DATA THAT ARE REQUIRED TO BE SUBMITTED TO THE STATE COURT**  
**2 ADMINISTRATIVE OFFICE UNDER THIS SECTION.**

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



## House Bill 4360 (2019) rss?

Friendly Link: <http://legislature.mi.gov/doc.aspx?2019-HB-4360>

### Sponsors

Beau LaFave (district 108)

Yusef Rabhi, Jim Haadsma, Gary Howell, Sheldon Neeley, LaTanya Garrett, Ronnie Peterson, Tenisha Yancey, Tommy Brann, Steven Johnson, Scott VanSingel, Sheryl Kennedy, Cynthia Johnson, Brenda Carter, Alex Garza, Tyrone Carter, Donna Lasinski, Laurie Pohutsky, Terry Sabo, William Sowerby, Jon Hoadley, Kevin Hertel, David LaGrand  
(click name to see bills sponsored by that person)

### Categories

Traffic control: driver license; Criminal procedure: bail;

Traffic control; driver license; reference to surrendering license as condition of pretrial release; remove to reflect changes in code of criminal procedure. Amends sec. 311a of 1949 PA 300 (MCL 257.311a). TIE BAR WITH: HB 4351'19

### Bill Documents

Bill Document Formatting Information

[x]

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#### House Enrolled Bill

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

### Bill Analysis

### History

(House actions in lowercase, Senate actions in UPPERCASE)

Date ▲	Journal	Action
3/13/2019	HJ 26 Pg. 266	introduced by Representative Beau LaFave

3/13/2019 HJ 26 Pg. 266 read a first time  
3/13/2019 HJ 26 Pg. 266 referred to Committee on Judiciary  
3/14/2019 HJ 27 Pg. 275 bill electronically reproduced 03/13/2019

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# HOUSE BILL No. 4360

March 13, 2019, Introduced by Reps. LaFave, Rabhi, Haadsma, Howell, Neeley, Garrett, Peterson, Yancey, Brann, Steven Johnson, VanSingel, Kennedy, Cynthia Johnson, Brenda Carter, Garza, Tyrone Carter, Lasinski, Pohutsky, Sabo, Sowerby, Hoadley, Hertel and LaGrand and referred to the Committee on Judiciary.

A bill to amend 1949 PA 300, entitled "Michigan vehicle code," by amending section 311a (MCL 257.311a), as added by 1983 PA 63.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

HOUSE BILL No. 4360

1           Sec. 311a. If the court requires a person who is accused of a  
2 misdemeanor or ordinance violation to surrender his or her  
3 operator's or chauffeur's license ~~pursuant to section 6 of chapter~~  
4 ~~V of the code of criminal procedure, Act No. 175 of the Public Acts~~  
5 ~~of 1927, being section 765.6 of the Michigan Compiled Laws, or~~  
6 **UNDER** section 4 of Act No. 257 of the Public Acts of 1966, being  
7 section 780.64 of the Michigan Compiled Laws, **1966 PA 257, MCL**  
8 **780.64**, and if the license is not expired, suspended, revoked, or  
9 canceled, the court shall issue to the licensee a receipt for the  
10 license. The form of the receipt shall ~~shall~~ **MUST** be approved or provided

1 by the secretary of state. The form ~~shall~~**MUST** be designed so that  
2 it may contain a photocopy of an operator's or chauffeur's license.  
3 The receipt ~~shall~~**MUST** have the effect of granting driving  
4 privileges identical to the operator's or chauffeur's license  
5 surrendered to the court but that effect ~~shall~~**MUST** cease on the  
6 date ~~on which~~**THAT** the receipt expires or on the date ~~on which~~**THAT**  
7 the license expires, whichever date occurs first. If the license  
8 expires or will expire while the license is surrendered, the  
9 secretary of state may renew the operator's or chauffeur's license  
10 pursuant to ~~UNDER~~ section 314. The expiration date of the receipt  
11 ~~shall~~**MUST** be specified by the court on the receipt.

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

14 Enacting section 2. This amendatory act does not take effect  
15 unless Senate Bill No. \_\_\_\_\_ or House Bill No. 4351 request no.  
16 00792'19) of the 100th Legislature is enacted into law.

**Public Policy Position  
HB 4351 – HB 4359**

**Support**

**Explanation**

The committee voted unanimously to support HB 4351 – HB 4359. Collectively, these bills would provide for a more uniform and fair system of pretrial release that will better serve defendants, the courts and the public.

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

**Position Vote:**

Voted for position: 16

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 7

**Keller Permissibility:**

**HB 4351** is *Keller* permissible because it would improve the functioning of the courts.

The pending legislation is aimed at stopping the now routine practice of imposing cash bond on someone eligible for a personal recognizance bond. Requiring a bond for people who are not a flight risk or danger to the community results in innocent people being detained unless they have the funds to pay their bond. This is contrary to the courts function of upholding peoples’ pre-trial liberty interest. Consistently ordering cash rather than personal recognizance bonds results in the needless and expensive jailing of indigent individuals. This detention is correlated to an increased risk that the detained individual will be sentenced longer than someone who is not pretrial detained – another needless and expensive cost on the judicial system. For these reasons, HB 4351 is *Keller* permissible.

**HB 4352** is procedural in nature and provides that: the court shall not use bail schedules and shall order the least onerous condition of release; defendants must provide an honest financial disclosure form; and that a defendant may post bail in the amount of 1/4 the full bail when using a surety.

These procedures are geared at improving the functioning of the courts in that they prevent the court from the unconstitutional practice of using bail schedules, they seek to prevent perjury, and they outline a specific amount necessary to post bail. Due to the focus on the court’s procedures when ordering pretrial conditions, this bill is *Keller* permissible.

**HB 4353** provides the courts with contempt power when defendants misrepresent their information on the financial disclosure used to determine the financial condition of bond. Because this bill vests

this power with the courts, rather than through the executive in the form of a new criminal offense, it directly relates to the function of the courts and would seem to be *Keller* permissible.

**HB 4354** is *Keller* permissible in that it improves the functioning of the courts by providing for an increased and fairer use of pretrial release. Increased pretrial release, especially among non-violent offenders, has been shown to positively affect the outcome of cases. It makes it easier for defendants to assist their attorney and meaningfully participate in their cases. Most notably, low-risk offenders unnecessarily detained have a higher risk of recidivism. See [National Association of Pretrial Services Agencies](#).

**HB 4355** is *Keller* permissible in affecting the functioning of the courts. If an individual is arrested over the weekend, the judge must either come in on the weekend or return Monday to a backlog of cases. Lowering the maximum amount required for an interim bail bond or releasing individuals on personal recognizance will help alleviate the backlog of cases that often occur over weekends.

**HB 4356** is *Keller* permissible because it would improve the functioning of the courts by allowing police officers to serve appearance tickets for any misdemeanor or ordinance violation. This would improve the efficiency of the courts by not requiring those individuals to appear before magistrates or judges to consider pretrial release.

**HB 4357** improves the functioning of the courts by giving discretion to judges to set appropriate bonds, rather than imposing a specific bond requirement in all cases.

**HB 4358** and **HB 4359** are *Keller* permissible because they would improve functioning of the courts. These two bills would require district and circuit courts to report data on bonds and the types of bonds issued. This data on bonds would provide accountability and documentation of the functioning of the courts in the area of bail. Collecting this data could help identify biases in the system and point toward best practices that can be codified in the future.

**Contact Persons:**

Lorray S.C. Brown [lorryb@mplp.org](mailto:lorryb@mplp.org)

Valerie R. Newman [vnewman@waynecounty.com](mailto:vnewman@waynecounty.com)

**Public Policy Position**  
**HB 4351 – HB 4360**

**Explanation**

The committee recognizes the importance of addressing the problems around cash bail.

Considering, however, that the Governor has recently convened the bipartisan Task Force on Jail & Pretrial Incarceration with the assistance from Pew Charitable Trust, the committee feels it is ill-advised for the legislature to move forward before the work of the Task Force has been completed.

Should the legislature move forward with this package, the committee recommends amendments to HB 4354 allowing judicial discretion in setting an appropriately high bond in cases where, pursuant to HB 4351, the Court has already determined by the preponderance of the evidence that the defendant either presents a danger to society, or will willfully not appear.

**Position Vote:**

Voted For position: 8

Voted against position: 4

Abstained from vote: 0

Did not vote (absent): 5

**Keller Explanation:**

The committee agreed that this legislation is *Keller* permissible in affecting the functioning of the courts in relating to whether defendants and witnesses will appear in court.

**Contact Persons:**

Sofia V. Nelson

[snelson@sado.org](mailto:snelson@sado.org)

Michael A. Tesner

[mtesner@co.geneseec.mi.us](mailto:mtesner@co.geneseec.mi.us)



To: Members of the Public Policy Committee  
Board of Commissioners

From: Janet Welch, Executive Director  
Peter Cunningham, Director of Governmental Relations  
Kathryn L. Hennessey, General Counsel

Date: November 13, 2019

Re: Jury Pool Selection HB 5026 & HB 5027

---

### **Background**

The State Bar has previously taken positions on bills that affect the composition and selection of jury pools. Most recently in 2017, the Board considered HB 4797 which would have allowed circuit courts that had a population over 250,000 in the 1970 census to adopt a jury selection plan to “provide for a jury pool consisting of jurors drawn from within a municipality in counties with concentrations of specific and identifiable ethnic groups that are not represented in a countywide pool to increase the likelihood of drawing juries of one's peers.” The Board discussed this bill at its November 2017 meeting and agreed to take no position. However, SBM staff were given permission to speak with the sponsor about this issue and look into the option of forming a task force to look into the issue of obtaining more representative jury pools.

HB 5026 would expand potential juror pools by including both voter registration lists and state income tax return lists in generating juror lists. In addition, the bill would require that juror pools be apportioned to match the population by zip code within a judicial jurisdiction.

HB 5027 would require circuit courts that contain second- or third-class district courts to limit jury pools to the geographical area of the second- or third-class district courts of where the crime or cause of action occurred.

### ***Keller* Considerations**

From the promulgation of the first Michigan Supreme Court *Keller* order, the State Bar has considered the jury selection process, including the jury pool process, *Keller*-permissible. The Criminal Jurisprudence & Practice Committee discussed both bills and agreed that they were *Keller*-permissible in affecting the functioning of the courts by changing the composition and selection of juries.



*Keller* Quick Guide

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

**Staff Recommendation**

These bills satisfy the requirements of Keller and can be considered on their merits.

## House Bill 5026 (2019) rss?

Friendly Link: <http://legislature.mi.gov/doc.aspx?2019-HB-5026>

### Sponsors

Tenisha Yancey (district 1)

David LaGrand, Rachel Hood, Sara Cambensy, Lori Stone, Christine Greig, Sherry Gay-Dagnogo, Tyrone Carter, Cynthia Johnson, LaTanya Garrett, Kevin Hertel, Ronnie Peterson, Kara Hope, Kyra Harris Bolden, Donna Lasinski, Tim Sneller, Yousef Rabhi, Jewell Jones  
(click name to see bills sponsored by that person)

### Categories

Courts: juries; Courts: circuit court;

Courts; juries; jury pool selection process; revise. Amends secs. 1304, 1312 & 1321 of 1961 PA 236 (MCL 600.1304 et seq.) & adds secs. 1301c, 1310a & 1310b.

### Bill Documents

Bill Document Formatting Information

[x]

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#### House Enrolled Bill

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### Bill Analysis

### History

(House actions in lowercase, Senate actions in UPPERCASE)

Date ▲	Journal	Action
9/25/2019	Expected in HJ 90	introduced by Representative Tenisha Yancey
9/25/2019	Expected in HJ 90	read a first time
9/25/2019	Expected in HJ 90	referred to Committee on Judiciary
9/26/2019	Expected in HJ 91	bill electronically reproduced 09/26/2019

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# HOUSE BILL NO. 5026

September 25, 2019, Introduced by Reps. Yancey, LaGrand, Hood, Cambensy, Stone, Greig, Gay-Dagnogo, Tyrone Carter, Cynthia Johnson, Garrett, Hertel, Peterson, Hope, Bolden, Lasinski, Sneller, Rabhi and Jones and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled  
"Revised judicature act of 1961,"

by amending sections 1304, 1312, and 1321 (MCL 600.1304, 600.1312, and 600.1321), sections 1304 and 1321 as amended by 2004 PA 12 and section 1312 as amended by 2005 PA 6, and by adding sections 1301c, 1310a, and 1310b.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1301c. (1) The county board of commissioners shall oversee the operations of the jury board in each county.

(2) The jury board in each county shall not enter into any contract for equipment or services without the prior approval of the county board of commissioners.

(3) The jury board in each county shall report annually to the county board of commissioners on the geographical diversity of juries selected in that county during the preceding 12 months.

Sec. 1304. The jury board shall select the names of persons as provided in this chapter to serve as jurors from a list that combines the driver's license list, and the personal identification cardholder list, ~~the names of persons as provided in this chapter to serve as jurors~~ current voter registration lists or books, and a list of individuals who filed a state income tax return.

Sec. 1310a. (1) Between April 15 and May 1 of each year, the township or city clerk shall deliver to the county clerk a full, current, and accurate copy of the voter registration cards containing the names and addresses of the registered voters, or a full, current, and accurate list of those registered together with the current addresses shown on the card.

(2) The board shall secure from the county clerk, and the county clerk shall provide, copies of the current voter registration cards or the current voter registration lists for each precinct in the county. The board shall treat the cards and lists as 1 list, with voters grouped either by precinct or by city, township, or village, as they may be provided.

(3) If electronic or mechanical devices are used by the township, city, or village clerks to carry out their duties, the board, instead of receiving a list from the county clerk of current registered voters, may order the clerks to provide only

the names and addresses selected by applying the key number and starting number designated by the board.

Sec. 1310b. (1) Between April 15 and May 1 of each year, the state treasurer shall transmit annually to the clerk of each county at no expense a full, current, and accurate copy of a list of the names and addresses of all individuals residing in that county who filed a state income tax return for the preceding calendar year. At the request of the board before March 1, the state treasurer shall transmit only a first jury list consisting of the names and addresses of those persons selected at random, based on the total number of jurors required as submitted to the state treasurer by the board, using electronic or other mechanical devices.

(2) If a county uses electronic or mechanical devices to carry out its duties, the county may request and receive a copy of the list described in subsection (1) on any electronically produced medium under specifications prescribed by the state treasurer. The state treasurer shall establish specifications standardizing the size, format, and content of media utilized to transmit information used for jury selection.

Sec. 1312. The board shall apply the key number uniformly to the names on the list received pursuant to section ~~under~~ sections 1310, 1310a, and 1310b and compile a list or card index, to be known as the first jury list, which shall ~~must~~ include every name and only those names as the application of the key number has designated. The board shall do this as follows:

(a) Select by a random method a starting number between 0 and the key number.

(b) Count down the list the number of names to reach the starting number. That name shall ~~must~~ be placed on the first jury list.

(c) Continue from that name counting down the list, beginning to count again with the number 1, until the key number is reached. That name shall ~~must~~ be placed on the first jury list.

(d) Repeat the process provided in subdivision (c) until the whole list has been counted and the names placed on the first jury list.

(e) The board shall then remove from the first jury list the name of any person who its records show served, pursuant to ~~under~~ the provisions of this chapter, as a petit or grand juror in any court of record in the county at any time in the preceding 1 year.

(f) The board, with the approval of the chief circuit judge, may remove from the first jury list the name of any person who has been convicted of a felony and is therefore disqualified from serving as a juror pursuant to ~~under~~ section 1307a(1)(e).

(g) The board shall reorder the first jury list to the extent necessary to ensure that names of persons residing in each postal zip code within the county will be represented in jury pools selected in that county in proportion to that postal zip code's percentage of the county's total population, as reflected in the most recent federal decennial census.

Sec. 1321. (1) The names of those persons on the first jury list whom the board accepts as persons qualified for and not exempt from jury service shall ~~must~~ be compiled into a list to be known as the second jury list. The list shall ~~must~~ remain sealed until otherwise ordered by the chief circuit judge.

(2) The board shall make an additional list consisting of the names on the

second jury list segregated by the geographical area of the jurisdiction of each district court district. If there are not sufficient names on the segregated list for any district court district, the board shall apply again the key number to that district only and obtain as many additional jurors as needed for that district.

(3) After completing the operation required under subsection (2), the board shall make an additional list consisting of the names on the list compiled under subsection (2), segregated by geographical areas within the county. If there is not sufficient geographical diversity within the segregated list, the board again shall apply the key number to any underrepresented geographical area and obtain as many additional jurors needed to ensure geographical diversity. As used in this subsection, "geographical diversity" means the proportional representation of the population of each postal zip code within the county as a percentage of the total population of the county, as reflected in the most recent federal decennial census.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No.\_\_\_\_ or House Bill No.\_\_\_\_ (request no. 01060'19 a) of the 100th Legislature is enacted into law.

**Public Policy Position  
HB 5026 and HB 5027**

**Support Criminal Jurisprudence & Practice Committee's Position**

**Explanation**

The committee supports the goal of diversifying the jury pool; however, implementing these bills will create several administrative and financial problems, therefore, the committee supports the recommendations set forth by the Criminal Jurisprudence & Practice Committee for HB 5026 and 5027.

In addition, to the extent that this bill moves forward, the committee notes that Section 1304 should be clarified as follows (suggested changes shown in bold and underline):

The jury board shall select the names of persons as provided in this chapter to serve as jurors from a list that combines the driver's license list, current voter registration lists or books, and a list of individuals who **reside in the county and** filed a state income tax return.

**Position Vote:**

Voted For position: 19

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 8

**Keller Explanation**

HB 5026 and 5027 concern the composition of jury pools and would directly affect the functioning of the courts.

**Contact Person:** Randy J. Wallace

**Email:** [rwallace@olsmanlaw.com](mailto:rwallace@olsmanlaw.com)

**Public Policy Position**  
**HB 5026**

**Explanation**

The committee supports expanding the jury pool criteria to include both voter registration lists and state income tax return lists as defined in Sections 1301c, 1304, 1310a, and 1310b of HB 5026. However, the committee does not support the changes in Section 1312 that would require jury boards to apportion the jury pool by zip code. The process of apportioning jury pools would be difficult to perform as zip codes often cross court jurisdictional boundaries, making it difficult to know population size within a zip code and a court's jurisdiction. Additionally, this process of apportionment could lead to individuals within certain zip codes to be called far more frequently for jury service if the ratio of potential jurors to population is significantly lower than the ratio in surrounding jurisdictions.

**Position Vote:**

Voted For position: 13

Voted against position: 2

Abstained from vote: 0

Did not vote (absent): 6

**Keller Explanation:**

The committee agreed that the bill is *Keller* permissible because it affects the functioning of the courts because it would provide greater opportunity for the court to obtain sufficient numbers of jurors.

**Contact Persons:**

Mark A. Holsomback [mahols@kalcounty.com](mailto:mahols@kalcounty.com)

Sofia V. Nelson [snelson@sado.org](mailto:snelson@sado.org)



**Public Policy Position  
HB 5026 and HB 5027**

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HB 5026**

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**Contact Persons:**

Mark A. Holsomback [mahols@kalcounty.com](mailto:mahols@kalcounty.com)

Sofia V. Nelson [snelson@sado.org](mailto:snelson@sado.org)



To: Members of the Public Policy Committee  
Board of Commissioners

From: Janet Welch, Executive Director  
Peter Cunningham, Director of Governmental Relations  
Kathryn L. Hennessey, General Counsel

Date: November 13, 2019

Re: Jury Pool Selection HB 5026 & HB 5027

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### **Background**

The State Bar has previously taken positions on bills that affect the composition and selection of jury pools. Most recently in 2017, the Board considered HB 4797 which would have allowed circuit courts that had a population over 250,000 in the 1970 census to adopt a jury selection plan to “provide for a jury pool consisting of jurors drawn from within a municipality in counties with concentrations of specific and identifiable ethnic groups that are not represented in a countywide pool to increase the likelihood of drawing juries of one's peers.” The Board discussed this bill at its November 2017 meeting and agreed to take no position. However, SBM staff were given permission to speak with the sponsor about this issue and look into the option of forming a task force to look into the issue of obtaining more representative jury pools.

HB 5026 would expand potential juror pools by including both voter registration lists and state income tax return lists in generating juror lists. In addition, the bill would require that juror pools be apportioned to match the population by zip code within a judicial jurisdiction.

HB 5027 would require circuit courts that contain second- or third-class district courts to limit jury pools to the geographical area of the second- or third-class district courts of where the crime or cause of action occurred.

### ***Keller* Considerations**

From the promulgation of the first Michigan Supreme Court *Keller* order, the State Bar has considered the jury selection process, including the jury pool process, *Keller*-permissible. The Criminal Jurisprudence & Practice Committee discussed both bills and agreed that they were *Keller*-permissible in affecting the functioning of the courts by changing the composition and selection of juries.

*Keller* Quick Guide

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

**Staff Recommendation**

These bills satisfy the requirements of Keller and can be considered on their merits.

## House Bill 5027 (2019) rss?

Friendly Link: <http://legislature.mi.gov/doc.aspx?2019-HB-5027>

### Sponsors

David LaGrand (district 75)

Sherry Gay-Dagnogo, LaTanya Garrett, Cynthia Johnson, Tenisha Yancey, Larry Inman, Ronnie Peterson, Rachel Hood, Sara Cambensy, Lori Stone, Christine Greig, Tyrone Carter, Kevin Hertel, Kara Hope, Kyra Harris Bolden, Donna Lasinski, Tim Sneller, Yousef Rabhi, Jewell Jones  
(click name to see bills sponsored by that person)

### Categories

Courts: juries; Courts: jurisdiction; Courts: circuit court;

Courts: juries; jury selection for circuit court; modify. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 1321a.

### Bill Documents

Bill Document Formatting Information

[x]

The following bill formatting applies to the 2019-2020 session:

- New language in an amendatory bill will be shown in **BOLD AND UPPERCASE**.
  - Language to be removed will be ~~stricken~~.
  - Amendments made by the House will be blue with square brackets, such as: [House amended text].
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- (gray icons indicate that the action did not occur or that the document is not available)

### Documents



#### House Introduced Bill

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



#### As Passed by the House

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



#### As Passed by the Senate

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



#### House Enrolled Bill

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

### Bill Analysis

### History

(House actions in lowercase, Senate actions in UPPERCASE)

Date ▲	Journal	Action
9/25/2019	Expected in HJ 90	introduced by Representative David LaGrand
9/25/2019	Expected in HJ 90	read a first time
9/25/2019	Expected in HJ 90	referred to Committee on Judiciary
9/26/2019	Expected in HJ 91	bill electronically reproduced 09/26/2019

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# HOUSE BILL NO. 5027

September 25, 2019, Introduced by Reps. LaGrand, Gay-Dagnogo, Garrett, Cynthia Johnson, Yancey, Inman, Peterson, Hood, Cambensy, Stone, Greig, Tyrone Carter, Hertel, Hope, Bolden, Lasinski, Sneller, Rabhi and Jones and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled  
"Revised judicature act of 1961,"

(MCL 600.101 to 600.9947) by adding section 1321a.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

**Sec. 1321a. A jury trial in a circuit court for a criminal case or other cause of action that occurred within the geographical area of a district of the second or third class must be before a jury of citizens who are residents of a political subdivision within that geographical area and are selected from a list segregated under section 1321.**

**Public Policy Position  
HB 5026 and HB 5027**

**Support Criminal Jurisprudence & Practice Committee's Position**

**Explanation**

The committee supports the goal of diversifying the jury pool; however, implementing these bills will create several administrative and financial problems, therefore, the committee supports the recommendations set forth by the Criminal Jurisprudence & Practice Committee for HB 5026 and 5027.

In addition, to the extent that this bill moves forward, the committee notes that Section 1304 should be clarified as follows (suggested changes shown in bold and underline):

The jury board shall select the names of persons as provided in this chapter to serve as jurors from a list that combines the driver's license list, current voter registration lists or books, and a list of individuals who **reside in the county and** filed a state income tax return.

**Position Vote:**

Voted For position: 19

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 8

**Keller Explanation**

HB 5026 and 5027 concern the composition of jury pools and would directly affect the functioning of the courts.

**Contact Person:** Randy J. Wallace

**Email:** [rwallace@olsmanlaw.com](mailto:rwallace@olsmanlaw.com)



**Public Policy Position**  
**HB 5027**

**Explanation**

The committee opposes HB 5027. Under the bill, circuit courts that contain second- or third-class district courts would limit jury pools to the geographical area of the second- or third-class district courts of where the crime or cause of action occurred. This would require those circuit courts to maintain multiple jury pools within their jurisdiction. Because the bill would only apply to counties that currently have second- or third-class district courts, it would not apply to those counties/circuits that previously contained second- and third-class district courts, but have since merged them into a single district court. The committee also noted that at least one of the six circuits that currently have multiple district courts is trying to merge those courts. If that happens, this bill would no longer apply.

Finally, the committee was concerned that this bill could have the opposite of the intended effect in some circumstances, and could have defendants face less diverse juries than a jury pool selected from an entire county if the crime was committed in a place like Warren. While the committee acknowledged that in many circumstances it would have the effect of increasing diversity of the pool in cities like Detroit.

**Position Vote:**

Voted For position: 13  
Voted against position: 2  
Abstained from vote: 0  
Did not vote (absent): 6

**Keller Explanation:**

The committee agreed that the bill is *Keller* permissible because it would affect the functioning of the courts by changing the composition and selection of juries.

**Contact Persons:**

Mark A. Holsomback [mahols@kalcounty.com](mailto:mahols@kalcounty.com)  
Sofia V. Nelson [snelson@sado.org](mailto:snelson@sado.org)



**Public Policy Position  
HB 5027**

**Oppose**

**Position Vote:**

Voted For position: 12

Voted against position: 5

Abstained from vote: 4

Did not vote (absent): 6

**Contact Person:** Michael J. Marutiak

**Email:** [mjmarutiak@comcast.net](mailto:mjmarutiak@comcast.net)

**Public Policy Position  
HB 5026 and HB 5027**

**Support Criminal Jurisprudence & Practice Committee's Position**

**Explanation**

The committee supports the goal of diversifying the jury pool; however, implementing these bills will create several administrative and financial problems, therefore, the committee supports the recommendations set forth by the Criminal Jurisprudence & Practice Committee for HB 5026 and 5027.

In addition, to the extent that this bill moves forward, the committee notes that Section 1304 should be clarified as follows (suggested changes shown in bold and underline):

The jury board shall select the names of persons as provided in this chapter to serve as jurors from a list that combines the driver's license list, current voter registration lists or books, and a list of individuals who **reside in the county and** filed a state income tax return.

**Position Vote:**

Voted For position: 19

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 8

**Keller Explanation**

HB 5026 and 5027 concern the composition of jury pools and would directly affect the functioning of the courts.

**Contact Person:** Randy J. Wallace

**Email:** [rwallace@olsmanlaw.com](mailto:rwallace@olsmanlaw.com)

**Public Policy Position  
HB 5027**

**Explanation**

The committee opposes HB 5027. Under the bill, circuit courts that contain second- or third-class district courts would limit jury pools to the geographical area of the second- or third-class district courts of where the crime or cause of action occurred. This would require those circuit courts to maintain multiple jury pools within their jurisdiction. Because the bill would only apply to counties that currently have second- or third-class district courts, it would not apply to those counties/circuits that previously contained second- and third-class district courts, but have since merged them into a single district court. The committee also noted that at least one of the six circuits that currently have multiple district courts is trying to merge those courts. If that happens, this bill would no longer apply.

Finally, the committee was concerned that this bill could have the opposite of the intended effect in some circumstances, and could have defendants face less diverse juries than a jury pool selected from an entire county if the crime was committed in a place like Warren. While the committee acknowledged that in many circumstances it would have the effect of increasing diversity of the pool in cities like Detroit.

**Position Vote:**

Voted For position: 13  
Voted against position: 2  
Abstained from vote: 0  
Did not vote (absent): 6

**Keller Explanation:**

The committee agreed that the bill is *Keller* permissible because it would affect the functioning of the courts by changing the composition and selection of juries.

**Contact Persons:**

Mark A. Holsomback [mahols@kalcounty.com](mailto:mahols@kalcounty.com)  
Sofia V. Nelson [snelson@sado.org](mailto:snelson@sado.org)



**Public Policy Position  
HB 5027**

**Oppose**

**Position Vote:**

Voted For position: 12

Voted against position: 5

Abstained from vote: 4

Did not vote (absent): 6

**Contact Person:** Michael J. Marutiak

**Email:** [mjmarutiak@comcast.net](mailto:mjmarutiak@comcast.net)

## House Bill 5106 (2019) rss?

Friendly Link: <http://legislature.mi.gov/doc.aspx?2019-HB-5106>

### Sponsors

Andrea Schroeder (district 43)  
Luke Meerman  
(click name to see bills sponsored by that person)

### Categories

Criminal procedure: evidence; Criminal procedure: defenses; Crimes: domestic violence;

Criminal procedure; evidence; use of expert testimony for domestic violence in criminal cases; allow.  
Amends 1927 PA 175 (MCL 760.1 - 760.69) by adding sec. 27d to ch. VIII.

### Bill Documents

Bill Document Formatting Information

[x]

The following bill formatting applies to the 2019-2020 session:

- New language in an amendatory bill will be shown in **BOLD AND UPPERCASE**.
  - Language to be removed will be ~~stricken~~.
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- (gray icons indicate that the action did not occur or that the document is not available)

### Documents



#### House Introduced Bill

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#### As Passed by the Senate

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



#### House Enrolled Bill

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

### Bill Analysis

### History

(House actions in lowercase, Senate actions in UPPERCASE)

Date ▲	Journal	Action
10/15/2019	HJ 96 Pg. 1766	introduced by Representative Andrea Schroeder
10/15/2019	HJ 96 Pg. 1766	read a first time
10/15/2019	HJ 96 Pg. 1766	referred to Committee on Judiciary
10/16/2019	Expected in HJ 97	bill electronically reproduced 10/16/2019

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# HOUSE BILL NO. 5106

October 15, 2019, Introduced by Reps. Schroeder and Meerman and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled  
"The code of criminal procedure,"

(MCL 760.1 to 777.69) by adding section 27d to chapter VIII.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

## CHAPTER VIII

Sec. 27d. (1) Except if offered against a defendant to prove the occurrence of the act or acts of domestic violence which form the basis of a criminal charge, in a criminal action, expert testimony is admissible by either the prosecution or the defense regarding intimate partner battering and its effects, including the nature and effect of physical, emotional, or mental abuse on the beliefs, perceptions, or behavior of victims of domestic violence.

(2) The foundation is sufficient for admission of expert testimony under subsection (1) if the proponent of the evidence establishes its relevancy and the proper qualifications of the expert witness. Expert opinion testimony on intimate partner battering and its effects must not be considered a new scientific technique whose reliability is unproven.

(3) For purposes of this section, "domestic violence" means that term as defined in section 1 of 1978 PA 389, MCL 400.1501.

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

## Public Policy Position HB 5106

### Support

#### Explanation

The committee voted unanimously to support the legislation. HB 5106 clarifies ongoing confusion within courts about the field of domestic violence, including research and expert testimony, helping both defendants and victims. The statute is aligned with Michigan caselaw. *See, e.g., People v Christel*, 449 Mich 578; 537 NW2d 194 (1995) (holding that “expert testimony regarding the battered woman syndrome is admissible only when it is relevant and helpful to the jury in evaluating a complainant’s credibility and the expert witness is properly qualified”). HB 5106 uses more modern terminology of “intimate partner battering” rather than the outdated term “battered woman syndrome.”

The committee disagrees with the Criminal Jurisprudence & Practice Committee’s position, which opposed the bill. The Criminal Jurisprudence & Practice Committee is of the opinion that the bill creates separate standards for expert witness testimony on the effects of domestic violence and circumvents the well-established *Daubert* standards for expert witness testimony. This Committee disagrees with that interpretation. HB 5106 explicitly requires the proponent to establish the expert testimony’s relevancy and the proper qualifications for the expert witness. Under this statute, courts would still apply *Daubert*, and this statute simply creates a shared understanding of the parameters for intimate partner battering testimony, namely that, upon establishing a sufficient foundation, expert testimony regarding intimate partner battering and its effects are admissible, including “the nature and effect of physical, emotion, or mental abuse on the beliefs, perceptions, or behavior of victims of domestic violence.”

#### Position Vote:

Voted For position: 20

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 8

#### Keller Permissibility:

The committee agreed that the bill is *Keller* permissible in improving the functioning of the courts by further defining the parameter of expert witness testimony concerning intimate partner battering.

#### Contact Persons:

Lorray S.C. Brown [lorrayb@mplp.org](mailto:lorrayb@mplp.org)

Valerie R. Newman [vnewman@waynecounty.com](mailto:vnewman@waynecounty.com)



**Public Policy Position**  
**HB 5106**

**Explanation**

The committee opposes this bill would create separate standards for expert witness testimony on the effects of domestic violence. This bill would circumvent the well-established *Daubert* standards for expert witness testimony, and eliminate any judicial discretion in applying those standards.

**Position Vote:**

Voted For position: 16

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 5

**Keller Explanation:**

The committee agreed that the bill is *Keller* permissible because it improves the functioning of the courts.

**Contact Persons:**

Mark A. Holsomback [mahols@kalcounty.com](mailto:mahols@kalcounty.com)

Sofia V. Nelson [snelson@sado.org](mailto:snelson@sado.org)



To: Members of the Public Policy Committee  
Board of Commissioners

From: Janet Welch, Executive Director  
Peter Cunningham, Director of Governmental Relations  
Kathryn L. Hennessey, General Counsel

Date: November 12, 2019

Re: HB 5169

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### **Background**

HB 5169 would require a plaintiff in an action alleging malpractice or negligence against an architect or engineer to file an affidavit of merit (AOM). In 2015, the Board of Commissioners considered a similar bill (SB 149 of 2015) that it found to be *Keller* permissible. The Board opposed SB 149, based on the recommendation of the Civil Procedure and Courts Committee that found the bill to put prohibitive restrictions on meritorious claims.

### ***Keller* Considerations**

The express intent of affidavit of merit legislation is to reduce frivolous malpractice lawsuits and associated costs. On those terms, affidavit of merit bills can be considered *Keller*-permissible, as a reduction in frivolous legislation and costs clearly falls within the category of improving the quality of legal services. To the extent that AOM legislation overreaches and deters non-frivolous litigation it would also fall within that category. Under that view the State Bar can take a position on AOM legislation, but its position must rest on an informed analysis of the legislation's possible effects, not only on frivolous lawsuits but also on non-frivolous lawsuits. (Note that the legislature has the authority to sanction or eliminate causes of actions directly, and that in Michigan and other mandatory bar states such legislation has been considered outside of *Keller* boundaries. Bills that create barriers so onerous that they have the practical effect of eliminating a cause of action, however, are not *Keller*-impermissible, as the express intent of such bills is not the elimination of a cause of action.)

*Keller* Quick Guide

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

**Staff Recommendation**

To the extent that the State Bar's position is based on an informed analysis of how the bill impacts the quality of legal services by reducing frivolous malpractice lawsuits and associated costs without putting prohibitive restrictions on meritorious claims, it would be *Keller*-permissible.

## House Bill 5169 (2019) rss?

Friendly Link: <http://legislature.mi.gov/doc.aspx?2019-HB-5169>

### Sponsor

Shane Hernandez (district 83)  
(click name to see bills sponsored by that person)

### Categories

Torts: nonmedical malpractice; Torts: civil procedure; Civil procedure: civil actions; Occupations: architects, professional engineers, and surveyors;

Torts; nonmedical malpractice; affidavit of merit; require for malpractice action against architect or professional engineer. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 2912i.

### Bill Documents

Bill Document Formatting Information

[x]

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### Documents



#### House Introduced Bill

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#### As Passed by the Senate

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#### House Enrolled Bill

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### Bill Analysis

### History

(House actions in lowercase, Senate actions in UPPERCASE)

Date ▲	Journal	Action
10/29/2019	HJ 102 Pg. 1844	introduced by Representative Shane Hernandez
10/29/2019	HJ 102 Pg. 1844	read a first time
10/29/2019	HJ 102 Pg. 1844	referred to Committee on Judiciary
10/30/2019	Expected in HJ 103	bill electronically reproduced 10/30/2019

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# HOUSE BILL NO. 5169

October 29, 2019, Introduced by Rep. Hernandez and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled  
"Revised judicature act of 1961,"

(MCL 600.101 to 600.9947) by adding section 2912i.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 2912i. (1) Within 56 days after a request is made under subsection (3), the plaintiff in an action or arbitration proceeding alleging malpractice or negligence against an architect, engineer, or surveyor shall file an affidavit of merit signed by an individual who the plaintiff or, if the plaintiff is represented by an attorney, the plaintiff's attorney reasonably believes meets the requirements of subsection (4). The affiant shall state in the affidavit of merit all of the following:

(a) That he or she has reviewed all records supplied by the plaintiff or the plaintiff's attorney concerning the conduct that is the subject of the action or arbitration.

(b) That he or she has reviewed the applicable standard of care.

(c) That it is his or her opinion that the applicable standard of care was breached by the architect, engineer, or surveyor.

(d) The actions that should have been taken or omitted by the architect, engineer, or surveyor to comply with the applicable standard of care.

(e) That the breach of the standard of care was a proximate cause of the alleged injury or damage to the plaintiff.

(2) In an action or arbitration described in subsection (1), the court or arbitrator, on motion and a showing of good cause, may grant 1 extension of time for filing an affidavit under subsection (1), for not more than 56 days. A motion to extend the time for filing an affidavit under subsection (1) must be filed before the expiration of the original 56 days provided under subsection (1).

(3) A defendant in an action or arbitration proceeding described in subsection (1) may request an affidavit under subsection (1) within 56 days after the complaint or notice requesting arbitration is served on the defendant. A defendant who does not request an affidavit as provided in this subsection waives the right to do so.

(4) To qualify to sign an affidavit under subsection (1), an individual must be

licensed in this state as an architect, engineer, or surveyor, as applicable depending on the licensure of the defendant, and be engaged in the practice of the same discipline as the defendant.

(5) If a plaintiff fails to file an affidavit as required by subsection (1), the court or arbitrator shall dismiss the action or arbitration proceeding with prejudice. The plaintiff may voluntarily dismiss the action or arbitration before the expiration of the time for filing the affidavit as required under subsection (1). A voluntary dismissal by the plaintiff under this subsection is without prejudice. Any action or arbitration refiled after a voluntary dismissal by the plaintiff under this subsection must be filed with an affidavit that complies with subsection (1). The court or arbitrator shall dismiss a refiled action or arbitration proceeding that is not accompanied by an affidavit that complies with subsection (1) with prejudice.

(6) A defendant's objection to an affidavit filed under subsection (1) must be raised in a motion filed within 90 days after the affidavit is served. An objection to an affidavit filed under this section that is not included in a timely filed motion is waived.

(7) If the court determines that an affidavit filed under subsection (1) does not fully comply with this section, the court shall allow the plaintiff 56 days to file 1 or more affidavits that correct the deficiencies identified by the court. The filing of an affidavit under this subsection relates back to the date of filing the original complaint or notice requesting arbitration. If 1 or more affidavits are filed under this subsection, the defendant may renew its objections by filing a motion within 14 days after service of the affidavits.

(8) A defendant in an action described in subsection (1) shall in good faith participate in discovery in the action as required by the court rules.

(9) An affidavit under subsection (1) is not required in an action for breach of contract against an architect, engineer, or surveyor that does not involve the standard of care.

(10) As used in this section:

(a) "Architect" means an individual who is licensed as an architect under article 20 of the occupational code, 1980 PA 299, MCL 339.2001 to 339.2014, and who is actively engaged in the practice of architecture in this state. As used in subsection (1), architect includes an organization in which an architect practices.

(b) "Defendant" includes a cross, counter, or third-party defendant or respondent.

(c) "Engineer" means an individual who is licensed as a professional engineer under article 20 of the occupational code, 1980 PA 299, MCL 339.2001 to 339.2014, and who is actively engaged in the practice of engineering in this state. As used in subsection (1), engineer includes an organization in which an engineer practices.

(d) "Organization" means a corporation, partnership, limited liability company, joint venture, or other business entity.

(e) "Plaintiff" includes a cross, counter, or third-party plaintiff or claimant.

(f) "Surveyor" means an individual who is licensed as a professional surveyor under article 20 of the occupational code, 1980 PA 299, MCL 339.2001 to 339.2014, and who is actively engaged in the practice of surveying in this state. As used in

**subsection (1), surveyor includes an organization in which a surveyor practices.**

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

**Public Policy Position  
HB 5169**

**OPPOSE**

**Explanation**

The committee opposes HB 5169 because the bill would impair the public's access to courts. As proposed in this bill, the affidavit of merit requirement would create additional burdens to litigants and possibly courts with litigation over the affidavits of merit. The bill would also result in different rules of law for plaintiffs bringing claims against engineers and architects, and the committee favors uniform application of law to all litigants.

The committee is particularly concerned with plaintiffs' ability to obtain an affidavit of merit. Pursuing an architecture malpractice case is much different from a medical malpractice case because, unlike medical cases, the plaintiff does not have access to architectural records prior to discovery, which may make it difficult, even in a meritorious case, for an architect to be willing to sign an affidavit of merit prior to filing suit. The committee particularly objects to the requirement that the affidavit of merit must be a Michigan architect or engineer, which unnecessarily limits plaintiff's ability to find a person willing to execute an affidavit of merit.

**Position Vote:**

Voted For position: 19

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 8

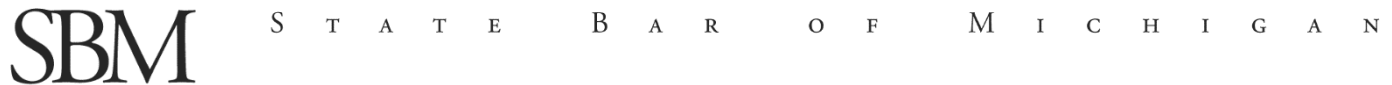
**Keller Explanation**

This bill is *Keller*-permissible as it affects the functioning of the courts and the availability of legal services to society.

**Contact Person:** Randy J. Wallace

**Email:** [rwallace@olsmanlaw.com](mailto:rwallace@olsmanlaw.com)





To: Members of the Public Policy, Image and Identity Committee  
Board of Commissioners

From: Janet Welch, Executive Director  
Peter Cunningham, Director of Governmental Relations

Date: May 24, 2015

Re: SB 0149 – Affidavits of merit

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### **Background**

SB 149 would require a plaintiff in an action alleging malpractice or negligence against an architect or engineer to file an affidavit of merit. The bill would require a person to have certain professional credentials in order to sign an affidavit of merit, and the affidavit would be required to include the following:

- That the signer had reviewed all records supplied by the plaintiff or the plaintiff's attorney concerning the conduct that was the subject of the affidavit.
- That the signer had reviewed the applicable standard of practice or care.
- That it was the signer's opinion that the architect or engineer breached the applicable standard of practice or care.
- A detailed description of the actions that the architect or engineer should have taken or omitted, to have complied with the applicable standard of practice or care.
- The manner in which the breach of the standard of practice or care was the proximate cause of the alleged injury to the plaintiff.

The introduced version of the bill required that the plaintiff would have to file the AOM with the complaint, and on motion of a party for good cause shown, the court in which the complaint was filed could grant the plaintiff an additional 28 days to file the affidavit of merit. The S-1 substitute of the bill delays the necessity to file an AOM until 56 days following a demand by the defendant design professional, which could be extended an additional 56 days upon a showing of good cause. In addition, the S-1 version of the bill allows the plaintiff to voluntarily dismiss the complaint to avoid a dismissal with prejudice if the affidavit is not prepared by that date.

### ***Keller* Considerations**

The Civil Procedure & Courts Committee, which considered the introduced version of the bill, provided the following explanation for why the bill is *Keller*-permissible:

The bill falls within the following *Keller*-permissible categories: improvement of the functioning of the courts, and availability of legal services to society. The Committee opposes the Bill out of concerns that the Bill can impair the public's access to the courts, can create additional burdens to litigants and the courts due to litigation over affidavits of merit,

and would result in different rules of law for different constituents. The Committee favors uniform application of the law to all litigants.

The express intent of affidavit of merit legislation is to reduce frivolous malpractice lawsuits and associated costs. On those terms, affidavit of merit bills can be considered *Keller*-permissible, as a reduction in frivolous legislation and costs clearly falls within the category of improving the quality of legal services. To the extent that any AOM legislation overreaches and deters non-frivolous litigation it would also fall within that category. Under that view the State Bar can take a position on AOM legislation, but its position must rest on an informed analysis of the legislation's possible effects, not only on frivolous lawsuits but also on non-frivolous lawsuits. (Note that the legislature has the authority to sanction or eliminate causes of actions directly, and that in Michigan and other mandatory bar states such legislation has been considered outside of *Keller* boundaries. Bills that create barriers so onerous that they have the practical effect of eliminating a cause of action, however, are not *Keller*-impermissible, as the express intent of such bills is not the elimination of a cause of action.)

### ***Keller* Quick Guide**

<b>THE TWO PERMISSIBLE SUBJECT-AREAS UNDER <i>KELLER</i>:</b>	
<b>Regulation of Legal Profession</b>	<b>Improvement in Quality of Legal Services</b>
<b>As interpreted by AO 2004-1</b>	
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**

To the extent that the State Bar's position is based on an informed analysis of how the bill impacts the quality of legal services by reducing frivolous malpractice lawsuits and associated costs without putting prohibitive restrictions on meritorious claims, it would be *Keller*-permissible.



p 517-346-6300 June 25, 2015

p 800-968-1442

f 517-482-6248

www.michbar.org

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

The Honorable Jack Brandenburg  
State Senator  
State Capitol  
P.O. Box 30036  
Lansing, MI 48909-7536

**Re: SB 0149 – Affidavit of Merit**

Dear Senator Brandenburg:

At its June meeting, the State Bar of Michigan's Board of Commissioners voted to **oppose SB 149 (S-1)**. Although the bill's intent to reduce frivolous lawsuits is a laudable goal, the Board is concerned that, as currently drafted, the bill would impair the public's access to the courts by imposing onerous restrictions on meritorious claims.

Some of the specific concerns with the S-1 substitute version of the bill include:

- The bill requires that the individual signing an affidavit of merit must be licensed in the state of Michigan. This is unreasonably restrictive.
- The bill includes no requirement for the defendant to provide an affidavit of meritorious defense. Affidavits of meritorious defense are required when affidavits of merit are filed in medical malpractice cases (MCL 600.2912e).
- There is no requirement on the defendant to engage in good faith discovery during the period that the affidavit of merit is required which could jeopardize the plaintiff's ability to obtain a competent affidavit of merit.

Finally, in addition to the matters above, there is a concern that requiring affidavits of merits for architects and engineers results in different rules of law for different litigants, and absent a compelling reason for differential treatment, a uniform approach and application of the law to all litigants is favored.

If you would like to discuss this position in further detail or have questions, please contact me directly at your convenience.

Sincerely,

A handwritten signature in blue ink that reads 'Peter Cunningham'.

Peter Cunningham  
Director of Governmental Relations  
Direct dial: (517) 346-6325  
Email: pcunningham@mail.michbar.org

CC. Thomas C. Rombach, President  
Marcia Hune, Governmental Consultant Services, Inc.  
Christopher Iannuzzi, Governmental Consultant Services, Inc.

## Senate Bill 0149 (2015) rss?

**Friendly Link:** <http://legislature.mi.gov/doc.aspx?2015-SB-0149>

### Sponsors

Jack Brandenburg (district 8)  
 Dale Zorn, David B. Robertson, Wayne A. Schmidt, Marty Knollenberg  
 (click name to see bills sponsored by that person)

### Categories

Torts: nonmedical malpractice; Torts: civil procedure; Civil procedure: civil actions; Occupations: architects, professional engineers, and surveyors;

Torts; nonmedical malpractice; affidavit of merit; require for malpractice action against architect or professional engineer. Amends 1961 PA 236 (MCL 600.1 - 600.9947) by adding sec. 2912i.

### Bill Documents

Bill Document Formatting Information

[X]

The following bill formatting applies to the 2015-2016 session:

- New language in an amendatory bill will be shown in **BOLD AND UPPERCASE**.
  - Language to be removed will be ~~stricken~~.
  - Amendments made by the House will be blue with square brackets, such as: [House amended text].
  - Amendments made by the Senate will be red with double greater/lesser than symbols, such as: <<Senate amended text>>.
- (gray icons indicate that the action did not occur or that the document is not available)

### Documents



#### Senate Introduced Bill

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



#### As Passed by the Senate

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



#### As Passed by the House

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



#### Senate Enrolled Bill

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

### Bill Analysis

#### Senate Fiscal Analysis



#### SUMMARY OF INTRODUCED BILL IN COMMITTEE (Date Completed: 4-23-15)

This document analyzes: SB0149

### History

(House actions in lowercase, Senate actions in UPPERCASE)

Date ▲	Journal	Action
2/19/2015 SJ 16 Pg. 180		INTRODUCED BY SENATOR JACK BRANDENBURG
2/19/2015 SJ 16 Pg. 180		REFERRED TO COMMITTEE ON JUDICIARY

# SENATE BILL No. 149

February 19, 2015, Introduced by Senators BRANDENBURG, ZORN, ROBERTSON, SCHMIDT and KNOLLENBERG and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled  
"Revised judicature act of 1961,"  
(MCL 600.101 to 600.9947) by adding section 2912i.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

**SEC. 2912I. (1) SUBJECT TO SUBSECTION (2), THE PLAINTIFF IN AN ACTION ALLEGING MALPRACTICE OR NEGLIGENCE AGAINST AN ARCHITECT OR ENGINEER SHALL FILE WITH THE COMPLAINT AN AFFIDAVIT OF MERIT SIGNED BY AN INDIVIDUAL WHO THE PLAINTIFF OR, IF THE PLAINTIFF IS REPRESENTED BY AN ATTORNEY, THE PLAINTIFF'S ATTORNEY REASONABLY BELIEVES MEETS THE REQUIREMENTS OF SUBSECTION (3). THE AFFIANT SHALL STATE IN THE AFFIDAVIT OF MERIT ALL OF THE FOLLOWING:**

**(A) THAT HE OR SHE HAS REVIEWED ALL RECORDS SUPPLIED BY THE PLAINTIFF OR THE PLAINTIFF'S ATTORNEY CONCERNING THE CONDUCT THAT IS THE SUBJECT OF THE AFFIDAVIT.**

(B) THAT HE OR SHE HAS REVIEWED THE APPLICABLE STANDARD OF PRACTICE OR CARE.

(C) THAT IT IS HIS OR HER OPINION THAT THE APPLICABLE STANDARD OF PRACTICE OR CARE WAS BREACHED BY THE ARCHITECT OR ENGINEER.

(D) A DETAILED DESCRIPTION OF THE ACTIONS THAT SHOULD HAVE BEEN TAKEN OR OMITTED BY THE ARCHITECT OR ENGINEER TO HAVE COMPLIED WITH THE APPLICABLE STANDARD OF PRACTICE OR CARE.

(E) THE MANNER IN WHICH THE BREACH OF THE STANDARD OF PRACTICE OR CARE WAS THE PROXIMATE CAUSE OF THE ALLEGED INJURY TO THE PLAINTIFF.

(2) ON MOTION OF A PARTY FOR GOOD CAUSE SHOWN, THE COURT IN WHICH THE COMPLAINT IS FILED MAY GRANT THE PLAINTIFF AN ADDITIONAL 28 DAYS IN WHICH TO FILE THE AFFIDAVIT REQUIRED UNDER SUBSECTION (1).

(3) TO QUALIFY TO SIGN AN AFFIDAVIT UNDER SUBSECTION (1), AN INDIVIDUAL SHALL MEET BOTH OF THE FOLLOWING REQUIREMENTS:

(A) BE LICENSED IN THIS STATE OR ANOTHER STATE AS AN ARCHITECT OR ENGINEER, AS APPLICABLE.

(B) DURING THE YEAR IMMEDIATELY PRECEDING THE DATE OF THE CONDUCT THAT IS THE SUBJECT OF THE AFFIDAVIT, HAVE DEVOTED A MAJORITY OF HIS OR HER PROFESSIONAL TIME TO 1 OR MORE OF THE FOLLOWING:

(i) THE ACTIVE PRACTICE OF ARCHITECTURE OR ENGINEERING, AS APPLICABLE.

(ii) THE INSTRUCTION OF STUDENTS IN AN ACCREDITED ARCHITECTURE OR ENGINEERING SCHOOL, AS APPLICABLE, OR ACCREDITED PROGRAM THAT PROVIDES STUDENTS WITH PRACTICAL EXPERIENCE IN ARCHITECTURE OR

ENGINEERING, AS APPLICABLE.

(iii) THE CONDUCT OF RESEARCH IN ARCHITECTURE OR ENGINEERING, AS APPLICABLE.

(4) AS USED IN THIS SECTION:

(A) "ARCHITECT" MEANS AN INDIVIDUAL WHO IS LICENSED AS AN ARCHITECT UNDER ARTICLE 20 OF THE OCCUPATIONAL CODE, 1980 PA 299, MCL 339.2001 TO 339.2014.

(B) "ENGINEER" MEANS AN INDIVIDUAL WHO IS LICENSED AS A PROFESSIONAL ENGINEER UNDER ARTICLE 20 OF THE OCCUPATIONAL CODE, 1980 PA 299, MCL 339.2001 TO 339.2014.

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

MALPRACTICE CLAIM: ARCH. OR ENG.

S.B. 149:  
SUMMARY OF INTRODUCED BILL  
IN COMMITTEE

Senate Bill 149 (as introduced 2-23-15)

Sponsor: Senator Jack Brandenburg

Committee: Judiciary

Date Completed: 4-23-15

**CONTENT**

**The bill would amend the Revised Judicature Act to do the following:**

- Require a plaintiff in an action alleging malpractice or negligence against an architect or engineer to file an affidavit of merit.**
- Require an affidavit of merit to contain certain statements.**
- Require a person to have certain professional credentials in order to sign an affidavit of merit.**

The bill would take effect 90 days after its enactment.

Specifically, a plaintiff in an action alleging malpractice or negligence against an architect or engineer would have to file with the complaint an affidavit of merit signed by an individual whom the plaintiff or his or her attorney reasonably believed met requirements outlined in the bill. The affiant (the person signing the affidavit) would have to state all of the following in the affidavit of merit:

- That he or she had reviewed all records supplied by the plaintiff or the plaintiff's attorney concerning the conduct that was the subject of the affidavit.
- That he or she had reviewed the applicable standard of practice or care.
- That it was his or her opinion that the architect or engineer breached the applicable standard of practice or care.
- A detailed description of the actions that the architect or engineer should have taken or omitted, to have complied with the applicable standard of practice or care.
- The manner in which the breach of the standard of practice or care was the proximate cause of the alleged injury to the plaintiff.

On motion of a party for good cause shown, the court in which the complaint was filed could grant the plaintiff an additional 28 days to file the affidavit of merit.

To qualify to sign an affidavit of merit, an individual would have to be licensed in Michigan or another state as an architect or engineer, as applicable. Also, during the year immediately before the date of the conduct that was the subject of the affidavit, the individual signing it would have to have devoted a majority of his or her professional time to one or more of the following:

- The active practice of architecture or engineering, as applicable.



Affidavits of Merits from 2015-2016 Legislative Session (SB 0149)

- The instruction of students in an accredited architecture or engineering school, as applicable, or accredited program that provided students with practical experience in architecture or engineering, as applicable.
- The conduct of research in architecture or engineering, as applicable.

"Architect" would mean an individual licensed as an architect, and "engineer" would mean an individual licensed as a professional engineer, under Article 20 of the Occupational Code.

Proposed MCL 600.2912i

Legislative Analyst: Patrick Affholter

**FISCAL IMPACT**

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

Fiscal Analyst: John Maxwell

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.



To: Members of the Public Policy Committee  
Board of Commissioners

From: Janet Welch, Executive Director  
Peter Cunningham, Director of Governmental Relations  
Kathryn L. Hennessey, General Counsel

Date: November 13, 2019

Re: SB 0420

**Background**

SB 420 involves seizures of property to execute judgments. During such seizures, officers of the court assist the judgment holder in executing the judgment by seizing the property. SB 420 would allow officers of the court, in lieu of seizing the property, to allow the debtor to enter into a payment plan to be put toward satisfying the judgment. According to an attorney who routinely represents creditors and has been involved with the creation of this legislation, this situation typically arises when a court officer attempts to repossess a family car and, instead of losing access to transportation, the debtor would prefer to enter into a payment plan.

***Keller* Considerations**

SB 420 is likely *Keller*-permissible, as it relates to the functioning of the courts by affecting litigants’ ability to execute and satisfy judgments with the assistance of officers of the court. The Civil Procedure & Courts Committee found the bill to be *Keller*-permissible because it relates to the functioning of the courts, particularly access to the court system in enforcing judgments.

***Keller* Quick Guide**

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

**Staff Recommendation**

The bill prompts the question of the whether the authority granted the Bar under AO 2004-1 to speak on improvement in the functioning of the courts extends wholesale to the enforcement capability of

the courts, or is limited to the court functions with which attorneys interact. The State Bar has easily deemed post-judgment matters in family law cases, matters in which attorneys typically play a key role, as *Keller*-permissible. The subject matter of this legislation involves processes akin to post-conviction enforcement of criminal convictions, i.e., corrections and probation, a *Keller* area in which the State Bar has treaded more cautiously. One can imagine post-judgement policy proposals so problematic that they would undermine the faith in and the functioning of the courts, as well as access to justice, e.g. a hefty surcharge levied specifically for the enforcement of a judgment. One can also imagine the possibility of proposals so ingenious that they hold great promise of improving the functioning of the courts in a substantial enough way to satisfy that prong of a *Keller* rationale. Whether this legislation falls into this category is debatable.

## Senate Bill 0420 (2019) rss?

**Friendly Link:** <http://legislature.mi.gov/doc.aspx?2019-SB-0420>

### Sponsor

Peter Lucido (district 8)  
(click name to see bills sponsored by that person)

### Categories

Civil procedure: execution; Civil procedure: service of process; Law enforcement: other;

Civil procedure; execution; service of execution; modify procedures. Amends secs. 2559, 6002 & 6012 of 1961 PA 236 (MCL 600.2559 et seq.).

### Bill Documents

Bill Document Formatting Information

[x]

The following bill formatting applies to the 2019-2020 session:

- New language in an amendatory bill will be shown in **BOLD AND UPPERCASE**.
- Language to be removed will be ~~stricken~~.
- Amendments made by the House will be blue with square brackets, such as: [House amended text].
- Amendments made by the Senate will be red with double greater/lesser than symbols, such as: <<Senate amended text>>.

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

### Documents



#### Senate Introduced Bill

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



#### As Passed by the Senate

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



#### As Passed by the House

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



#### Senate Enrolled Bill

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

### Bill Analysis

### History

(House actions in lowercase, Senate actions in UPPERCASE)

Date ▲	Journal	Action
8/20/2019	Expected in SJ 77	INTRODUCED BY SENATOR PETER J. LUCIDO
8/20/2019	Expected in SJ 77	REFERRED TO COMMITTEE ON JUDICIARY AND PUBLIC SAFETY

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# SENATE BILL NO. 420

August 20, 2019, Introduced by Senator LUCIDO and referred to the Committee on Judiciary and Public Safety.

A bill to amend 1961 PA 236, entitled  
"Revised judicature act of 1961,"

by amending sections 2559, 6002, and 6012 (MCL 600.2559, 600.6002, and 600.6012),  
section 2559 as amended by 2018 PA 261.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 2559. (1) Except as provided in subsection (7), the following is the  
schedule of fees allowed for process or papers served out of a court in this state by  
a person authorized under this act or supreme court rule to serve process:

(a) For personal service of a summons and complaint in a civil action, along  
with supporting documents, for each defendant, \$26.00 plus mileage.

(b) For personal service of an affidavit and account, for each defendant, \$26.00  
plus mileage.

(c) For a request for and writ of garnishment, for each garnishee and defendant,  
\$23.00 plus mileage.

(d) For personal service of an order to seize goods that are the subject of a  
claim and delivery action, \$40.00 plus mileage, plus the actual and reasonable  
expense of seizing, keeping, and delivering the goods.

(e) For receiving and filing a bond from or on behalf of a defendant in a claim  
and delivery action, \$20.00.

(f) For an order to show cause, for each person served, \$26.00 plus mileage.

(g) For a subpoena on discovery, for each person served, \$26.00 plus mileage.

(h) For levying under or serving an order for the seizure of property and any  
accompanying paper, \$40.00 plus mileage, plus the actual and reasonable expense of  
seizing and keeping the property under the order.

(i) If the person has seized property, **physically or constructively**, under an  
order for the seizure of property issued in an action in which a judgment is entered  
against the owner of the property, regardless of whether the judgment is entered  
before or after the order is issued, and if the judgment is satisfied **in whole or in  
part** before sale of the seized property by ~~full payment of the judgment~~ **payments to  
the person** or settlement between the parties, 7% of the first \$8,000.00 of the  
~~payment~~ **payments** or settlement amount and 3% of the ~~payment~~ **payments** or settlement  
amount exceeding the first \$8,000.00.

(j) For ~~sale of money seized or received or for~~ property seized **and sold** under an order for the seizure of property, 7% of the first \$8,000.00 ~~in receipts of the amount received~~ and 3% of any receipts ~~amount received~~ exceeding the first \$8,000.00.

(k) For each notice of sale under an order for the seizure of property or construction lien posted in a public place in the city or township, \$26.00 plus mileage.

(l) For an order of eviction or a writ for the restitution of premises, for each defendant, \$40.00 plus mileage, plus the actual and reasonable expense for the physical removal of property from the premises.

(m) For a subpoena directed to a witness, including a judgment debtor, \$26.00 plus mileage.

(n) For a civil bench warrant or body execution, \$40.00 plus mileage, plus a reasonable fee per hour for the amount of time involved in executing the warrant.

(o) For service by mail, \$13.00 plus the actual cost of postage.

(p) For each verification by a process server, \$10.00 plus mileage.

(q) For each postal change of address verification requested by the plaintiff, \$10.00.

(r) For each global positioning service verification requested by the plaintiff, \$5.00.

(s) For each photo verification requested by the plaintiff, \$5.00.

(2) On submitting a sworn affidavit, a person authorized by this act or supreme court rule to serve process or papers out of a court in this state is entitled to receive a \$10.00 fee plus mileage for each process that has an incorrect address. This fee is in addition to any fee the person is entitled to receive under subsection (1).

(3) Mileage is allowed under subsection (1) **for each defendant, garnishee, and person served** at 1-1/2 times the rate allowed by the state civil service commission for employees in the state classified civil service. Mileage is computed, each way, using the shortest reasonable route from the place where the court that issued or filed the process or paper is located to the place of service.

(4) The fees and expenses allowed under subsection (1)(h) to (k) must be collected in the same manner as the sum directed to be levied or collected under the order for the seizure of property. If at the time of advertising property for sale a sheriff or other officer has several orders for the seizure of property against the same defendant, the sheriff or officer shall charge only 1 advertising fee on the whole, and shall elect on which order he or she will receive the fee.

(5) A person authorized by this act or supreme court rule to serve process or papers out of a court in this state who demands and receives a greater fee or compensation for performing a service mentioned in this section than allowed by this section is, in addition to all other liability provided by law, liable to the party injured by paying the illegal fees for 3 times the amount of illegal fees actually paid and all costs of the action.

(6) A sheriff or other officer who, after the fees specified by this section have been tendered, neglects or refuses a service required by law is liable to the party injured for all damages that the party sustains as a result of the neglect or refusal.

(7) A person authorized under this act or supreme court rule to serve process may charge a fee for service of process that exceeds the fee prescribed under this section or other law if the fee is agreed to in advance in writing by the person serving process and the person requesting the service.

(8) Regardless of whether a fee charged or paid for service of process exceeds the fee prescribed by this section or other law, including a fee allowed under subsection (7), a person entitled to tax costs shall not attempt to tax and is not entitled to recover a fee for service of process that exceeds the fee prescribed by this section or other law.

(9) As used in this section, "order for the seizure of property" includes **an order to seize property**, a writ of attachment, and a writ of execution, including, but not limited to, execution in a claim and delivery action on property other than the property that is the subject of the claim and delivery action.

Sec. 6002. (1) ~~Upon~~**On** receipt of ~~any~~**an** execution, the ~~sheriff or other officer receiving who receives~~ the execution shall indorse ~~thereon~~**on the execution** the year, month, day, and hour of receipt, and that time ~~shall be~~**is** the **effective** date of the execution.

(2) ~~Executions shall~~**An execution must** be made returnable not less than 20 ~~nor~~**and not** more than 90,~~180~~ days ~~from that date~~**after the effective date of the execution**.

(3) ~~When~~**If** an officer has begun to serve an execution issued out of any court ~~on or before the return day of the execution, he~~**the officer** may complete service and return after the return date.

(4) **An officer who serves an execution may physically or constructively seize property subject to execution. To effect a constructive seizure, the officer shall prominently post or attach to the property a notice stating that the property has been seized under an execution, the date the seizure commenced, and the name, address, and phone number of the officer. The officer may, but is not required to, immobilize or disable property that is constructively seized.**

(5) ~~(4) When~~**If** an officer has begun to serve an execution and dies ~~or~~ becomes incapable of completing service and return, any other officer who might by law have originally served the execution ~~may complete it~~**the service**. If the first officer fails to make a certificate, the second officer shall do so, including the ~~doings~~**actions** of both officers ~~therein~~**in the certificate**. If the first officer makes a certificate, the second officer shall make a certificate as to his **or her** own ~~doings~~**actions** in completing service.

(6) ~~(5)~~**If** there are joint or joint and several obligors and jurisdiction was not acquired over all of them, the names of those over whom jurisdiction was not acquired ~~shall~~**must** be indorsed on ~~the~~**an** execution.

(7) **If an execution is received by a person that is not an officer, the person shall not serve the execution but shall promptly deliver the execution to the issuing court.**

(8) **As used in this section:**

(a) **"Execution" means an order for the seizure of property, as that term is defined in section 2559.**

(b) **"Officer" means a person that is either of the following:**

(i) A sheriff or deputy sheriff, acting in the county the sheriff or deputy sheriff serves or under section 582(a).

(ii) A person acting at the direction of the court that issued the execution and that, before the execution was issued, appointed the person a court officer in accordance with the general court rules or by ex parte motion and order.

Sec. 6012. ~~Whenever an~~ **If an** execution ~~issues~~ **is issued** against the property of ~~any a~~ person, ~~his~~ **the person's** goods and chattels, **and** lands and tenements, levied upon ~~on~~ by such ~~the~~ execution, shall ~~be~~ **are** bound from the time ~~of~~ such ~~levy.~~ **effective date of the execution.**



**Public Policy Position  
SB 0420**

**Support Amendments to MCL 600.2559**

**Explanation**

The committee supports the proposed changes to 600.2559 and takes no position on the amendments to MCL 600.6002 and 600.6012. MCL 600.2559 provides that court officers can set up payment plans with debtors instead of taking tangible property when assisting with executive a court judgment. This situation typically arises when a court officer attempts to repossess a family car and, instead of losing access to transportation, the debtor would prefer to enter into a payment plan. The bill would help debtors by giving them the option to enter into a payment plan rather than have their tangible property sold at auction.

The committee notes that the language in the statute should be revised as follows:

- “Person that” should be changed to “person who”; and
- Reference to the “General Court Rules” should be updated to the “Michigan Court Rules.”

**Position Vote:**

Voted For position: 12

Voted against position: 1

Abstained from vote: 6

Did not vote (absent): 8

**Keller Explanation**

SB 420 involves court officers assisting with executive judgment. The bill is *Keller*-permissible as it relates to the functioning of the courts in and particularly access to the court system in enforcing judgments.

**Contact Person:** Randy J. Wallace

**Email:** [rwallace@olsmanlaw.com](mailto:rwallace@olsmanlaw.com)



To: Members of the Public Policy Committee  
Board of Commissioners

From: Janet Welch, Executive Director  
Peter Cunningham, Director of Governmental Relations  
Kathryn L. Hennessey, General Counsel

Date: November 13, 2019

Re: HB 4329

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### **Background**

HB 4329 would increase the payment due to circuit court reporters or recorders for transcripts ordered by litigants, rather than allowing a higher fee only for certain transcripts as part of a program of differentiated case management. The regular fees, set in statute, have not been increased since 1986, and are currently \$1.75 per original page and 30 cents per page for each copy. There is a higher fee, set in 2004, of \$3.00 per original page and 50 cents per page for each copy, for transcripts ordered and timely filed as part of a program of differentiated case management for appeals of civil cases, and then only for cases in which the circuit court either grants or denies summary disposition.

The bill would increase the rate for all transcription requests to \$3.50 per original page and 75 cents per page for each copy, unless a lower rate is agreed upon.

In 2005, the Board of Commissioners found a similar bill (SB 33 of 2005) *Keller*-permissible, although this was before the Board was provided with staff-written *Keller* memos. The Board's position in 2005 was concerned about the effects of increased transcript costs on the availability of legal services to society.

We recognize the need for court reporters to receive an increase, especially given the considerable period of time since the last increase. However, we are concerned that a mechanism be in place to ensure record fees are not increased for those parties who cannot afford to pay the current rates, or the proposed increase. If access to court records is diminished due to increased costs, then an individual's access to justice may be directly affected.

The State Bar's position in 2005 wanted the transcript fee increase to be amended or tie-barred to legislation that would provide for fee waivers to indigent parties. The 2005 bill never received a hearing in the Senate, so the Bar's concerns were not addressed.

### ***Keller* Considerations**

In their *Keller* explanation, the Civil Procedure and Courts Committee said that the bill affects the functioning of courts and availability of legal services to society because the bill would directly impact access to vital court records.

The House Fiscal Agency analysis of the bill expands on how the bill could improve the functioning courts: “If an increase in transcript fees resulted in more timely completion of transcripts, the bill could possibly generate administrative efficiencies and, ultimately, a savings for the Judiciary.” An argument advanced by the proponents of the bill at a House Judiciary Committee meeting was that the current low rate makes it difficult to find people willing to work as court reporters or recorders, and that an increase in the transcription rate will make it easier to attract well-qualified individuals to the field.

### ***Keller* Quick Guide**

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

### **Staff Recommendation**

To the extent that transcription fees affect the operations of the court through the market effects of reasonableness (or unreasonableness) of compensation for those who provide the work, or access to the legal process through the affordability of necessary transcripts, the bill satisfies the requirements of *Keller* and can be considered on its merits.

## House Bill 4329 (2019) rss?

Friendly Link: <http://legislature.mi.gov/doc.aspx?2019-HB-4329>

### Sponsors

Hank Vaupel (district 47)

Julie Brixie

(click name to see bills sponsored by that person)

### Categories

Civil procedure: costs and fees; Courts: reporters or recorders; Courts: circuit court;

Civil procedure; costs and fees; transcript fee; increase. Amends sec. 2543 of 1961 PA 236 (MCL 600.2543).

### Bill Documents

Bill Document Formatting Information

[x]

The following bill formatting applies to the 2019-2020 session:

- New language in an amendatory bill will be shown in **BOLD AND UPPERCASE**.
- Language to be removed will be ~~stricken~~.
- Amendments made by the House will be blue with square brackets, such as: [House amended text].
- Amendments made by the Senate will be red with double greater/lesser than symbols, such as: <<Senate amended text>>.

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

### Documents



#### House Introduced Bill

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



#### As Passed by the House

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



#### As Passed by the Senate

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



#### House Enrolled Bill

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

### Bill Analysis

#### House Fiscal Agency Analysis



#### Summary As Introduced (10/21/2019)

This document analyzes: HB4329

### History

(House actions in lowercase, Senate actions in UPPERCASE)

Date ▲	Journal	Action
3/12/2019	HJ 25 Pg. 254	introduced by Representative Hank Vaupel
3/12/2019	HJ 25 Pg. 254	read a first time
3/12/2019	HJ 25 Pg. 254	referred to Committee on Judiciary
3/13/2019	HJ 26 Pg. 261	bill electronically reproduced 03/12/2019

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# HOUSE BILL NO. 4329

March 12, 2019, Introduced by Reps. Vaupel and Brixie and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled  
"Revised judicature act of 1961,"

by amending section 2543 (MCL 600.2543), as amended by 2004 PA 328.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 2543. (1) The circuit court reporters or recorders are entitled to demand and receive per page for a transcript ordered by any person ~~the sum of \$1.75~~ **\$3.50** per original page and ~~30~~**75** cents per page for each copy, unless a lower rate is agreed upon. ~~on.~~ For a transcript ordered by the circuit judge, reporters or recorders are entitled to receive from the county the same compensation. ~~The supreme court, by administrative order or court rule, may authorize the payment to circuit court reporters or recorders the sum of \$3.00 per original page and 50 cents per page for each copy for transcripts ordered and timely filed as part of a program of differentiated case management for appeals of civil cases in which the circuit court either grants or denies summary disposition. If a transcript ordered under a program of differentiated case management is not timely filed, the circuit court reporter or recorder is not entitled to receive the increased rate for that transcript.~~

(2) Only if the transcript is desired for the purpose of moving for a new trial or preparing a record for appeal shall the amount of reporters' or recorders' fees paid for the transcript be recovered as a part of the taxable costs of the prevailing party in the motion, in the court of appeals or the supreme court.



## CIRCUIT COURT TRANSCRIPT FEES

House Bill 4329 as introduced

Sponsor: Rep. Hank Vaupel

Committee: Judiciary

Complete to 10-21-19

### SUMMARY:

House Bill 4329 would amend the Revised Judicature Act (RJA) to increase the payment due to circuit court reporters or recorders for transcripts ordered by any person, rather than allowing a higher fee only for certain transcripts ordered and timely filed as part of a program of differentiated case management.

The RJA authorizes circuit court reporters or recorders to be paid by any person requesting a transcript of a criminal or civil court case. Unless a lower fee is agreed on, the current fee is \$1.75 per original page and 30 cents per page for each copy. However, 2004 PA 328 amended the RJA to allow a higher fee, of \$3.00 per original page and 50 cents per page for each copy, for transcripts ordered and timely filed as part of a program of *differentiated case management* for appeals of civil cases, and then only for cases in which the circuit court either grants or denies summary disposition. If such a transcript is not timely filed, the court reporter is not entitled to receive the increased rate for the transcript. (*Differentiated case management* refers to a technique a court can use to process a case in accordance with the time frame and judicial resources required for the case rather than by using a “wait in line” process.)

The bill would eliminate the provision allowing a higher fee for transcribing records of summary dispositions of civil cases. Instead, the bill would increase the transcribing fees and apply the same rate to all transcription requests. Under the bill, the new fee to transcribe a circuit court case record would be \$3.50 per original page and 75 cents per page for each copy. [It should be noted that the current fee that applies to most transcription requests was established in statute over 30 years ago.]

MCL 600.2543

### FISCAL IMPACT:

Because transcript fees are paid for by litigants, HB 4329 would not have any fiscal impact on the state or on local units of government. However, if the state or a local unit of government was a party to the case, it would then incur the costs. If an increase in transcript fees resulted in more timely completion of transcripts, the bill could possibly generate administrative efficiencies and, ultimately, a savings for the Judiciary.

Legislative Analyst: Susan Stutzky

Fiscal Analyst: Robin Risko

---

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

**Public Policy Position  
HB 4329**

**No Position**

**Explanation**

The committee took no position on this bill. The committee, however, is committed to ensuring access to justice and court records for all. The committee notes the concerns raised by State Bar Executive Director Janet Welch for a similar bill in 2005:

We recognize the need for court reporters to receive an increase, especially given the considerable period of time since the last increase. However, we are concerned that a mechanism be in place to ensure record fees are not increased for those parties who cannot afford to pay the current rates, or the proposed increase. If access to court records is diminished due to increased costs, then an individual's access to justice may be directly affected.

The committee takes no position on whether HB 4329 raises similar access to justice concerns due to a lack of knowledge on the economic impacts of increased court reporter fees. To the extent that this bill raises access to justice concerns, the committee recommends further study into the court reporter system to formulate the solutions to address these concerns.

**Position Vote:**

Voted For position: 19

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 8

**Keller Explanation**

This bill affects the functioning of courts and availability of legal services as it directly impacts access to vital court records.

**Contact Person:** Randy J. Wallace

**Email:** [rwallace@olsmanlaw.com](mailto:rwallace@olsmanlaw.com)

**Public Policy Position  
HB 4329****Support with Recommended Amendments****Explanation:**

Bill would allow court reporters to charge up to \$3.50 per original page for transcripts and 75 cents per page for copies. The Family Law Section would support the bill if it was amended to allow court reporters to charge and receive \$3.50 per page for an original transcript, but electronic copies should be set at a flat fee of \$10 per volume, and printed copies at 75 cents per page.

The costs for copies seemed excessive since most copies of transcripts are sent electronically and there are no actual paper copies being produced, making it difficult to justify the proposed charge of 75 cents per page. The 30 cent per page copy rate was likely enacted before electronic copies were an option and the statute should be amended to reflect the current technology available.

**Position Vote:**

Voted For position: 19

Voted against position: 0

Abstained from vote: 1

Did not vote (absent): 1

**Contact Person:** James Chryssikos

**Email:** [jwc@chryssikoslaw.com](mailto:jwc@chryssikoslaw.com)



## Senate Bill 0033 (2005) rss?

**Friendly Link:** <http://legislature.mi.gov/doc.aspx?2005-SB-0033>

### Sponsor

Michael Switalski

(click name to see bills sponsored by that person)

### Categories

Civil procedure: costs and fees; Courts: reporters or recorders; Courts: circuit court;

Civil procedure; costs and fees; transcript fee; increase. Amends sec. 2543 of 1961 PA 236 (MCL 600.2543).

### Bill Documents

Bill Document Formatting Information

[x]

The following bill formatting applies to the 2005-2006 session:

- New language in an amendatory bill will be shown in **BOLD AND UPPERCASE**.
- Language to be removed will be ~~stricken~~.
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- Amendments made by the Senate will be red with double greater/lesser than symbols, such as: <<Senate amended text>>.

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

### Documents



#### Senate Introduced Bill

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#### As Passed by the Senate

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#### As Passed by the House

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



#### Senate Enrolled Bill

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

### Bill Analysis

### History

(House actions in lowercase, Senate actions in UPPERCASE)

Date ▲	Journal	Action
1/25/2005	SJ 2 Pg. 52	REFERRED TO COMMITTEE ON JUDICIARY

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# SENATE BILL No. 33

January 25, 2005, Introduced by Senator SWITALSKI and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled  
"Revised judicature act of 1961,"  
by amending section 2543 (MCL 600.2543), as amended by 2004 PA 328.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

Sec. 2543. (1) ~~The circuit~~ **CIRCUIT** court reporters or  
recorders are entitled to ~~demand and~~ receive **\$3.00** per page for ~~—~~  
~~a~~ **AN ORIGINAL** transcript ~~ordered by any person the sum of \$1.75~~  
~~per original page~~ and ~~30~~ **50** cents per page for each copy **OF THE**  
**TRANSCRIPT**, unless a lower rate is agreed upon. For a transcript  
ordered by the circuit judge, reporters or recorders are entitled  
to receive **THE SAME COMPENSATION** from the county. ~~the same~~  
~~compensation. The supreme court, by administrative order or court~~  
~~rule, may authorize the payment to circuit court reporters or~~  
~~—~~

## Transcript Fee Legislation from 2005-2006 (SB 0033)

~~recorders the sum of \$3.00 per original page and 50 cents per page  
for each copy for transcripts ordered and timely filed as part of a  
program of differentiated case management for appeals of civil  
cases in which the circuit court either grants or denies summary  
disposition. If a transcript ordered under a program of  
differentiated case management is not timely filed, the circuit  
court reporter or recorder is not entitled to receive the increased  
rate for that transcript.~~

(2) ~~Only if the~~ **IF A** transcript is ~~desired~~ **REQUESTED** for the purpose of moving for a new trial or preparing a record for appeal ~~shall~~ **TO THE COURT OF APPEALS OR SUPREME COURT, THE PARTY WHO PREVAILS ON THE MOTION OR IN THE APPEAL MAY RECOVER** the amount of reporters' or recorders' fees paid for the transcript ~~be recovered as a part of the taxable costs. of the prevailing party in the motion, in the court of appeals or the supreme court.~~

**SBM** S T A T E B A R O F M I C H I G A N

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www.michbar.org

306 Townsend Street  
Michael Franck Building  
Lansing, MI  
48933-2083

October 7, 2005

The Honorable Michael N. Switalski  
State Senator  
State Capitol  
P.O. Box 30036  
Lansing, MI 48909-7536

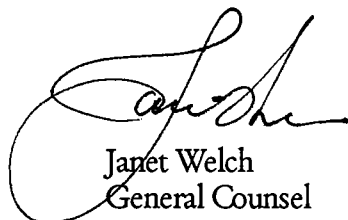
**Re: SB 33 Civil Procedure Transcript Fee Increase**

Dear Senator Switalski:

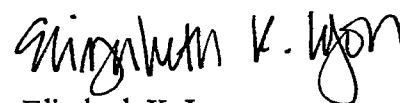
At its September 21, 2005 meeting, the State Bar of Michigan's Board of Commissioners unanimously voted to **support in principle<sup>1</sup> SB 33 provided that the bill is amended or tied to legislation enacted to recognize and provide relief for transcript fee costs for indigent parties and parties represented by pro bono counsel.** We recognize the need for court reporters to receive an increase, especially given the considerable period of time since the last increase. However, we are concerned that a mechanism be in place to ensure record fees are not increased for those parties who cannot afford to pay the current rates, or the proposed increase. If access to court records is diminished due to increased costs, then an individual's access to justice may be directly affected. We have enclosed for your information a position statement from the State Bar's Standing Committee on Justice Initiatives that provides greater detail.

If you would like to discuss this position in further detail or have questions, please contact Janet Welch directly at (517) 346-6375, [jwelch@mail.michbar.org](mailto:jwelch@mail.michbar.org); or Elizabeth Lyon directly at (517) 346-6325, [elyon@mail.michbar.org](mailto:elyon@mail.michbar.org).

Sincerely,



Janet Welch  
General Counsel



Elizabeth K. Lyon  
Public Policy Program Analyst

CC. Thomas W. Cranmer, President  
John T. Berry, Executive Director  
Nell Kuhnmuensch, Governmental Consultant Services, Inc.

<sup>1</sup> Definition of support in principle: Pending legislation that the State Bar supports but is not the subject of active lobbying effort. The State Bar is on record on this position and will explain it upon request.



## Report on Public Policy Position

**Name of Section:**

Appellate Practice Section

**Contact Person:**

Mark Cooney

**Email or Phone:**

cooneym@cooley.edu

**Bill Number:**

**SB 33** (Switalski) Civil procedure; costs and fees; transcript fee; increase. Amends sec. 2543 of 1961 PA 236 (MCL 600.2543).

**Date position was adopted:**

March 18, 2005

**Process used to take the ideological position:**

Discussion and analysis during the Appellate Practice Section's February 17, 2005 and March 18, 2005 council meetings.

**Number of members in the decision-making body:**

23

**Number who voted in favor and opposed to the position:**

15 voted in favor; 1 opposed; 1 abstained

**FOR SECTIONS ONLY:**

- ✓ This subject matter of this position is within the jurisdiction of the section.
- ✓ The position was adopted in accordance with the Section's bylaws.
- ✓ The requirements of SBM Bylaw Article VIII have been satisfied.

*If the boxes above are checked, SBM will notify the Section when this notice is received, at which time the Section may advocate the position.*

**Position:**

The Appellate Practice Section Council of the State Bar of Michigan supports Senate Bill No. 33, which amends MCL 600.2543 to increase the page rate circuit court reporters or recorders may receive. As explained below, the Section Council also recommends that the proposed amendment to MCL 600.2543(1) include the following language: "The Supreme Court, by administrative order or court rule, may itself, or may allow the Court of Appeals to, reduce the page rate when appeal transcripts are not timely filed."

The equities for supporting a rate increase for official court reporters and recorders are compelling and unavoidable. Last year, in P.A. 2004, No. 328, the Legislature authorized the Supreme Court to increase the page rate in MCL 600.2543 for timely filed transcripts in civil summary disposition appeals. SB 33 correctly recognizes that a page rate increase for circuit court reporters and recorders in all cases is long overdue.

The Legislature has not increased the general page rate for appellate transcripts in MCL 600.2543 since 1986. Over the past 18 years, the unchanged page rate for Michigan's official court reporters/recorders has dipped far below the rate their freelance and federal court counterparts receive.

Aside from simple fairness, passage of SB 33 will serve the better administration of justice. Timely preparation of accurate trial court transcripts is essential to the appellate process. Without quality transcripts, litigants cannot adequately present and judges cannot properly decide issues on appeal.

Over the past several years, appellate lawyers have become increasingly concerned with the state of official court reporting/recording. Systematically asked to do more for the same, antiquated page rate, the morale of many official court reporters and records has suffered. Some overworked court reporters/recorders face the dilemma of either paying substitutes to complete backlogged orders at far more than the statutory rate or receive show cause orders from the Court of Appeals.

Even more, quality court reporters and recorders, who can earn considerably more working as a freelancer or in federal court, choose not to be a Michigan official court reporter.

All circuit court reporters and recorders desperately need a rate increase. The Appellate Practice Section Council supports SB 33 in restoring compensation of official court reporters and recorders to a fair market level.

The Section Council also supports SB 33 because it paves the way for reformation of the cumbersome show cause system of enforcing appellate transcripts deadlines. For many years, the Court of Appeals has explored ways to improve the show cause system. One promising proposal is to implement a schedule reducing the page rate for delinquent transcripts.

Until all circuit court reporters and recorders receive higher page rates, financial penalties for late transcripts have not been considered fair. Many also question whether MCL 600.2543 currently authorizes the Supreme Court to reduce the statutory page rate.

Accordingly, the Section Council respectfully recommends that the amendment to MCL 600.2543(1) include the following language:

“The Supreme Court, by administrative order or court rule, may itself, or may allow the Court of Appeals to, reduce the page rate when appeal transcripts are not timely filed.”

This will eliminate any doubt that the Supreme Court has the authority to reduce the page rate to enforce transcript deadlines.

**The text (may be provided by hyperlink) of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report:**

<http://www.legislature.mi.gov/mileg.asp?page=getObject&objName=2005-SB-0033>



## Report on Public Policy Position

**Name of Section or Committee:**

Civil Procedure and Courts Committee

**Contact Person:**

Ronald S. Longhofer

**Email:**

rlonghofer@srr.com

**Bill Number:**

**SB 33** (Switalski) Civil procedure; costs and fees; transcript fee; increase. Amends sec. 2543 of 1961 PA 236 (MCL 600.2543).

**Date position was adopted:**

4/21/05

**Process used to take the ideological position:**

Discussion and vote

**Number of members in the decision-making body:**

20

**Number who voted in favor and opposed to the position:**

13 in favor; 1 opposed

**FOR SECTIONS ONLY:**

- ✓ This subject matter of this position is within the jurisdiction of the section.
- ✓ The position was adopted in accordance with the Section's bylaws.
- ✓ The requirements of SBM Bylaw Article VIII have been satisfied.

*If the boxes above are checked, SBM will notify the Section when this notice is received, at which time the Section may advocate the position.*

**Position:**

SUPPORT, because court reporter fees have not increased for a considerable period of time

The text (may be provided by hyperlink) of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report:

<http://www.legislature.mi.gov/mileg.asp?page=getObject&objName=2005-SB-0033>

**RECOMMEND STATE BAR ACTION ON THIS ISSUE:**

**Arguments for the position:**

None provided.

**Arguments against the position (if any):**

None provided.

**If the State Bar currently has a position on this subject matter, state the position, and an analysis of whether the recommended position and the current State Bar position are in conflict.**

At its September 21, 2005 meeting, the State Bar of Michigan's Board of Commissioners voted to support in principle provided that the bill is amended or tie-barred to legislation that is enacted to recognize and provide relief for transcript fee costs for indigent parties and parties represented pro bono by counsel.

**Fiscal implications of the recommended policy to the State Bar of Michigan:**

None provided.

**FOR LEGISLATIVE ISSUES ONLY:**

**This position falls within the following Keller-permissible category:**

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

**Keller- permissible explanation:**

Not provided.





**FROM THE COMMITTEE  
ON MODEL CRIMINAL  
JURY INSTRUCTIONS**

=====

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by February 1, 2020. Comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to [MCrimJI@courts.mi.gov](mailto:MCrimJI@courts.mi.gov) .

=====

**PROPOSED**

The Committee proposes amending procedural and composite instructions M Crim JI 2.26, 3.1, and 3.6 to include cautionary information concerning “implicit bias” similar to those adopted July 2019 by the Committee on Model Civil Jury Instructions in M Civ JI 1.01, 2.06 and 3.02.

**[AMENDED]            M Crim JI 2.26            Maintaining an Open Mind**

It is important for you to keep an open mind and not make a decision about anything in the case until you go to the jury room to decide the case.

You must not let bias, prejudice, or public opinion influence your decision. Each of us may have biases or perceptions about other people based on stereotypes. We may be aware of some of our biases, though we do not express them. We may not be fully aware of some of our other biases. Take the time you need to test what might be automatic or instinctive judgments and to reflect carefully about the evidence. I caution you again to avoid reaching conclusions that may have been unintentionally influenced by stereotypes. You must reach your own conclusions about this case individually, but you should do so only after listening to and considering the opinions of the other jurors, who may have different backgrounds and perspectives from yours.

**[AMENDED] M Crim JI 3.1 Duties of Judge and Jury**

(1) Members of the jury, the evidence and arguments in this case are finished, and I will now instruct you on the law. That is, I will explain the law that applies to this case.

(2) Remember that you have taken an oath to return a true and just verdict, based only on the evidence and my instructions on the law. You must not let sympathy, bias, or prejudice influence your decision. You must avoid reaching conclusions that may have been unintentionally influenced by stereotypes. You must reach your own conclusions about this case individually, but you should do so only after listening to and considering the opinions of the other jurors, who may have different backgrounds and perspectives from yours.

(3) As jurors, you must decide what the facts of this case are. This is your job, and nobody else's. You must think about all the evidence and then decide what each piece of evidence means and how important you think it is. This includes whether you believe what each of the witnesses said. What you decide about any fact in this case is final.

(4) It is my duty to instruct you on the law. You must take the law as I give it to you. If a lawyer says something different about the law, follow what I say. At various times, I have already given you some instructions about the law. You must take all my instructions together as the law you are to follow. You should not pay attention to some instructions and ignore others.

(5) To sum up, it is your job to decide what the facts of the case are, to apply the law as I give it to you, and, in that way, to decide the case.

*Use Note*

This instruction should be given in every case. On notice to the parties, the court, in its discretion, may give the final jury instructions to the jury before the parties make closing arguments.

**[AMENDED] M Crim JI 3.6 Witnesses—Credibility**

(1) As I said before, it is your job to decide what the facts of this case are. You must decide which witnesses you believe and how important you think their testimony is. You do not have to accept or reject everything a witness said. You are free to believe all, none, or part of any person's testimony.

(2) In deciding which testimony you believe, you should rely on your own common sense and everyday experience. However, in deciding whether you believe a witness's testimony, you must set aside any bias or prejudice you may have ~~based on the race, gender, or national origin of the witness.\*~~ and not be influenced by a witness's disability, gender, race, religion, ethnicity, sexual orientation, age, national origin, or socioeconomic status. Again, take the time you need to test what might be automatic or instinctive judgments, and to reflect carefully about the evidence.<sup>1</sup>

(3) There is no fixed set of rules for judging whether you believe a witness, but it may help you to think about these questions:

(a) Was the witness able to see or hear clearly? How long was the witness watching or listening? Was anything else going on that might have distracted the witness?

(b) Did the witness seem to have a good memory?

(c) How did the witness look and act while testifying? Did the witness seem to be making an honest effort to tell the truth, or did the witness seem to evade the questions or argue with the lawyers?

(d) Does the witness's age and maturity affect how you judge his or her testimony?

(e) Does the witness have any bias, prejudice, or personal interest in how this case is decided?

[(f) Have there been any promises, threats, suggestions, or other influences that affected how the witness testified?]<sup>2</sup>

(g) In general, does the witness have any special reason to tell the truth, or any special reason to lie?

(h) All in all, how reasonable does the witness's testimony seem when you think about all the other evidence in the case?

(4) Sometimes the testimony of different witnesses will not agree, and you must decide which testimony you accept. You should think about whether the disagreement involves something important or not, and whether you think someone is lying or is simply mistaken. People see and hear things differently, and witnesses may testify honestly but simply be wrong about what they thought they saw or remembered. It is also a good idea to think about which testimony agrees best with the other evidence in the case.

(5) However, you may conclude that a witness deliberately lied about something that is important to how you decide the case. If so, you may choose not to accept anything that witness said. On the other hand, if you think the witness lied about some things but told the truth about others, you may simply accept the part you think is true and ignore the rest.

*Use Note*

This instruction should be given in every case.

\* 1. The court should substitute other improper considerations, ~~such as religion or sexual orientation,~~ where appropriate.

2. ~~This instruction should be given in every case.~~ The bracketed portions should be given only on request, where there is evidence or argument that a witness's testimony may have been affected by promises, threats, suggestions, or other influences.

**Public Policy Position**  
**Model Criminal Jury Instructions 2.26, 3.1, and 3.6**

**Explanation**

The committee voted unanimously (16) to support the model criminal jury instructions with an addition of “gender identity” to the list of categories as found in M Crim JI 3.6(2) regarding witness credibility.

...and not be influenced by a witness’s disability, gender, **gender identity**, race, religion, ethnicity, sexual orientation, age, national origin, or socioeconomic status.

**Position Vote:**

Voted For position: 16

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 5

**Contact Persons:**

Mark A. Holsomback [mahols@kalcounty.com](mailto:mahols@kalcounty.com)

Sofia V. Nelson [snelson@sado.org](mailto:snelson@sado.org)