

Agenda
Public Policy Committee

Via Zoom Meeting

Meeting starts promptly at 10 a.m.
(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, or State Bar of Michigan-related.)

B. Reports

1. Approval of March 23, 2020 minutes
2. Public Policy Report

C. Legislation

1. HB 5296 (Hornberger) Family law; marriage and divorce; public disclosure of divorce filings; modify. Amends 1846 RS 84 (MCL 552.1 - 552.45) by adding sec. 6a.

Status: 02/19/20 Referred to the House Judiciary Committee as Substitute H-1.
Referrals: 01/06/20 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Family Law Section.
Comments: Access to Justice Policy Committee; Family Law Section.
Comments provided to the January 22 and February 19 meetings of the House Families, Children & Seniors Committee are included in materials.
Liaison: Judge Cynthia D. Stephens

2. HB 5304 (Filler) Courts; judges; procedure for certain circuit court judges to sit as judges of the court of claims; establish. Amends secs. 6404, 6410 & 6413 of 1961 PA 236 (MCL 600.6404 et seq.).

Status: 12/19/19 Referred to the House Judiciary Committee.
Referrals: 01/28/20 Civil Procedure & Courts Committee; All Sections.
Comments: Civil Procedure & Courts Committee; Appellate Practice Section; Judicial Section.
Liaison: Mark A. Wisniewski

3. HB 5442 (Elder) Courts; district court; compensation for district court judges; increase. Amends sec. 8202 of 1961 PA 236 (MCL 600.8202).

Status: 02/04/20 Referred to the House Judiciary Committee.
Referrals: 03/01/20 Civil Procedure & Courts Committee; Judicial Section.
Comments: Judicial Section.
Liaison: E. Thomas McCarthy, Jr.

4. HB 5464 (Lightner) Criminal procedure; bail; requirements for the use of a pretrial risk assessment tool by a court making bail decision; create. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 6e to ch. V.

Status: 02/05/20 Referred to the House Judiciary Committee.
Referrals: 02/10/20 Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.
Comments: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.
Liaison: Valerie R. Newman

5. SB 0724 (Lucido) Criminal procedure; indigent defense; appointment and compensation of defense attorneys for indigent defendants during certain stages of criminal cases; require. Amends sec. 11 of 2013 PA 93 (MCL 780.991).

Status: 01/16/20 Referred to the Senate Judiciary & Public Safety Committee.

Referrals: 01/21/20 Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.

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

Liaison: Valerie R. Newman

6. SB 0790 (Runestad) Civil procedure; other; video recordings of court proceedings; provide for availability and review. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 1429.

Status: 02/11/20 Referred to the Senate Judiciary & Public Safety Committee.

Referrals: 03/02/20 Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; All Sections.

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

Liaison: Mark A. Wisniewski

7. SB 0792 (Barrett) Retirement; judges; contributions to tax-deferred accounts instead of retiree health benefits for certain employees; provide for, and establish auto enrollment feature for defined contribution plan. Amends secs. 301 & 604 of 1992 PA 234 (MCL 38.2301 & 38.2604) & adds secs. 509a & 714a.

Status: 02/13/20 Referred to the Senate Appropriations Committee.

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

Comments: Judicial Section.

Liaison: Suzanne C. Larsen

D. FY 2020-2021 Budget

1. FY 2020-2021 Budget for the Judiciary as contained in **HB 5554** and **SB 0802**, and the Executive Budget Recommendation, pages B-45 through B-47.

Status: HB 5554 – Referred to the House Appropriations Committee on 02/26/20.
SB 0802 – Referred to the Senate Appropriations Committee on 02/26/20.

Referrals: 02/11/20 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee.

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

Liaison: Judge Cynthia D. Stephens

2. FY 2020-2021 Budget for the Michigan Indigent Defense Commission as contained in **HB 5554** and **SB 0802**, and the Executive Budget Recommendation, pages B-55 through B-57.

Status: HB 5554 – Referred to the House Appropriations Committee on 02/26/20.
SB 0802 – Referred to the Senate Appropriations Committee on 02/26/20.

Referrals: 02/11/20 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee.

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

Liaison: Kim Warren Eddie

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 17.37

The Committee proposes an instruction, M Crim JI 17.37, where the prosecutor has charged an offense found in MCL 750.411t involving the crime of “hazing.” The instruction is entirely new.

2. M Crim JI 35.1a

The Committee proposes an instruction, M Crim JI 35.1a, where the prosecutor has charged an offense found in MCL 750.540e involving the crime of malicious use of a telecommunications service. The instruction is entirely new.

3. M Crim JI 38.1, 38.4, 38.4a

The Committee proposes instructions M Crim JI 38.1, 38.4, and 38.4a where the prosecutor has charged an offense found in MCL 750.543f or 750.543m, which involve committing an act of terrorism, making a terrorist threat, or making a false report of terrorism. The instructions are entirely new.

Minutes
Public Policy Committee
March 23, 2020

Committee Members: Robert J. Buchanan, Joseph J. Baumann, Judge Shauna L. Dunnings, Kim Warren Eddie, Suzanne C. Larsen, Valerie R. Newman, Thomas G. Sinas, Hon. Cynthia D. Stephens
SBM Staff: Peter Cunningham, Elizabeth Goebel, Kathryn Hennessey, Carrie Sharlow

A. Opening Statements

B. Reports

1. Approval of January 24, 2020 minutes

The minutes were unanimously approved.

C. Court Rules

1. ADM File No. 2002-37: Proposed Amendments of E-Filing Rules

The proposed amendments of MCR 1.109, 2.002, 2.302, 2.306, 2.315, 2.603, 3.222, 3.618, 4.201, and 8.119 are the latest proposed revisions as part of the design and implementation of the statewide electronic-filing system.

The following entities offered comments: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; and Family Law Section.

The committee voted unanimously to support the Court's continued effort to implement a statewide e-filing system. Because the proposed e-filing amendments are nuanced and practice specific, the committee voted to authorize individual committees and sections to submit their position reports to the Court.

2. ADM File No. 2019-13: Proposed Amendments of MCR 7.118

This proposal, suggested by the Prisons and Corrections Section of the State Bar of Michigan, would require counsel to be appointed to an indigent prisoner when an application for leave to appeal a grant of parole is filed by the prosecutor or victim. The right to counsel also would be included on the notice to be provided the prisoner.

The following entities offered comments: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Appellate Practice Section; and Prisons & Corrections Section.

The committee voted unanimously to support the proposed amendment to MCR 7.118 with an amendment to also include a process for the appointment of counsel for victims who initiate an appeal when the prosecutor does not pursue an appeal.

To: Members of the Public Policy Committee
Board of Commissioners

From: Government Relations Team

Date: April 17, 2020

Re: HB 5296 – Public Disclosure of Divorce Filings

Background

HB 5296 would delay making complaints for divorce publicly available until the defendant has been served or otherwise notified of the complaint. Currently, when a person files for divorce, the complaint is immediately available to the public, including online for those courts that have implemented electronic filing. This practice allows attorneys to review the list of publicly posted divorce complaints and contact defendants and offer to provide legal services before defendants are even aware that their spouse has filed for divorce, a marketing practice sometimes colloquially described as trolling.

This attorney contact can potentially create vulnerabilities for the plaintiff, particularly if that party is a survivor of domestic abuse. The Michigan Poverty Law Program stated in in January 21, 2020 letter to the House Families, Children & Seniors Committee that “the time when a survivor leaves the abuser, including filing a divorce complaint which signals the end of the relationship, can be a dangerous time.” HB 5296 amends MCL 552.1-552.45 by adding Section 6a to prohibit a complaint for divorce filed with the court from being made available to the public until the proof of service has been filed with the court.

In 2010, the Representative Assembly (RA) considered similar issues to those presented by HB 5296. From 2008-2010, the Family Law Section Council was deeply involved in efforts to address and limit the practice of attorneys making unsolicited offers of legal services to potential family law clients. The Council’s efforts culminated in a resolution to the RA that presented two options for curtailing attorney trolling in divorce cases: (1) a change to the Michigan Rules of Professional Conduct (MRPC) or (2) a change to the Michigan Court Rules (MCR). The specific language of their proposal read as follows:

In any matter involving a family law case in a Michigan Trial Court, a lawyer may not initiate contact or solicit a party for the purposes of establishing a client-lawyer relationship, where the party and lawyer had no pre-existing relationship, until the first to occur of the following: service of process upon the party or fourteen (14) days has expired from the date of filing of the particular case.

The RA passed the resolution on March 27, 2010. The Michigan Supreme Court ultimately declined to adopt the RA’s recommendations. Importantly, the Family Law Section’s proposal addressed the conduct through regulation of attorney conduct, whereas HB 5296 addresses the conduct through statutory regulation of court processes.

***Keller* Considerations**

The Access to Justice Policy (ATJ Policy) Committee determined that the bill was *Keller*-permissible because it affects the functioning of the courts “by limiting public access to divorce pleadings that may contain personal information about individuals and children.”

Although the bill would modify the operational functions of the court, this change does not appear to either improve or diminish the functioning of the courts. The bill may, however, impact the availability of legal services to society, as survivors of domestic violence may feel more comfortable filing for divorce, knowing that they have control over when to serve the defendant and that he or she will not receive early notice of the action by an attorney soliciting business. Alternatively, it could be (and has been) argued that the type of trolling addressed by the bill expands consumer knowledge of and access to lawyer resources.

Unlike the proposal approved by the RA, HB 5296 does not regulate attorney behavior, rather defines court process with no impact on the function of the court.

***Keller* Quick Guide**

THE TWO PERMISSIBLE SUBJECT-AREAS UNDER <i>KELLER</i>:	
Regulation of Legal Profession	Improvement in Quality of Legal Services
<p style="writing-mode: vertical-rl; transform: rotate(180deg);">As interpreted by AO 2004-1</p> <ul style="list-style-type: none"> • Regulation and discipline of attorneys • Ethics • Lawyer competency • Integrity of the Legal Profession • Regulation of attorney trust accounts 	<ul style="list-style-type: none"> • Improvement in functioning of the courts ✓ Availability of legal services to society

Staff Recommendation

The conduct at which the bill is aimed is *Keller* permissible, although the way in which the bill addresses the conduct makes the *Keller* case more attenuated.

House Bill 5296 (2019)  rss?Friendly Link: <http://legislature.mi.gov/doc.aspx?2019-HB-5296>**Sponsor**

Pamela Hornberger (district 32)

(click name to see bills sponsored by that person)

Categories

Family law; marriage and divorce; Records: divorce;

Family law; marriage and divorce; public disclosure of divorce filings; modify. Amends 1846 RS 84 (MCL 552.1 - 552.45) by adding sec. 6a.

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/less 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 (1/21/2020)**

This document analyzes: HB5296

**Summary of Proposed H-1 Substitute (2/18/2020)**

This document analyzes: HB5296

History

(House actions in lowercase, Senate actions in UPPERCASE)

Date ▲	Journal	Action
12/11/2019	HJ 114 Pg. 2085	introduced by Representative Pamela Hornberger
12/11/2019	HJ 114 Pg. 2085	read a first time
12/11/2019	HJ 114 Pg. 2085	referred to Committee on Families, Children, and Seniors
12/19/2019	HJ 115 Pg. 2097	bill electronically reproduced 12/19/2019
2/19/2020	HJ 18 Pg. 281	referred to Committee on Judiciary, with substitute (H-1)

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SUBSTITUTE FOR
HOUSE BILL NO. 5296

A bill to amend 1846 RS 84, entitled
"Of divorce,"

(MCL 552.1 to 552.45) by adding section 6a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 6a. Beginning January 1, 2021, a complaint for divorce
2 filed with the court shall not be made available to the public
3 until the proof of service has been filed with the court.



LTB

Final Page
H04414'19 (H-1)



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PUBLIC DISCLOSURE OF DIVORCE FILINGS

House Bill 5296 (proposed substitute H-1)

Sponsor: Rep. Pamela Hornberger

Committee: Families, Children and Seniors

Complete to 2-18-20

SUMMARY:

House Bill 5296 would amend Chapter 84 (Of Divorce) of the Revised Statutes of 1846 by adding section 6a to prohibit a complaint for divorce filed with the court from being made available to the public until the proof of service has been filed with the court. The prohibition would be effective beginning January 1, 2021.

Proposed MCL 552.46a

FISCAL IMPACT:

House Bill 5296 would have no fiscal impact on the state or on local units of government.

Legislative Analyst: E. Best

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 5296**

Support with Amendment

Explanation

The committee voted to support the bill with an amendment. The bill would be beneficial to domestic violence survivors filing divorce cases because it would provide survivors with a period of time to safety-plan before the defendant is served and learns about the action. The bill's requirement that the complaint is not available "until the proof of service is filed with court" prevents a defendant from learning about the case from an attorney who reviews the court website or files and contacts the defendant before the defendant is served with the pleadings.

However, the committee recommends the bill be amended to clarify that the term "the public" means anyone who is not party to the action, including attorneys who are not on record as representing a party to the action.

Position Vote:

Voted for position: 19

Voted against position: 0

Abstained from vote: 1

Did not vote (due to absence): 7

Keller Permissibility:

The committee agreed that the bill is *Keller*-permissible because it addresses the improvement of the functioning of the court by limiting public access to divorce pleadings that may contain personal information about individuals and children.

Contact Persons:

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

Valerie R. Newman vnewman@waynecounty.com

**Public Policy Position
HB 5296**

Support with Recommended Amendments

Explanation

The Family Law Section supports the concept of the bill, but has concerns about the approach taken in the bill. Council would support this bill, or an alternative bill, stating as follows:

LIMITS ON ATTORNEY SOLICITATION IN FAMILY LAW MATTERS
REQUESTING EX-PARTE RELIEF

A lawyer shall not directly or indirectly, individually or by their agent or anyone working on their behalf, solicit a person with whom the lawyer has no family or prior professional relationship, who is named as a Defendant and/or Respondent in a family law matter with a circuit court case code of DC (Custody), DM (Divorce, with minor children), DO (Divorce, no children), DP (Paternity), DS (Other Support), or DZ (Other Domestic Relations Matters), or PP (Personal Protection Matter) seeking to provide a service to the Defendant and/or Respondent for a fee or other remuneration where the Complaint or Petition filed in that matter seeks ExParte Relief, unless and until 21 days have elapsed from the filing of such case, or after service of the Complaint or Petition seeking Ex-Parte Relief in such case, whichever is less. Term “solicit” does not include letters addressed or advertising distributed by a lawyer generally to persons not known to need legal services of the kind provided by the lawyer in a particular matter, but are so situated that they might in general find such services useful.

The Section believes that plaintiffs in divorce and domestic cases often have a need to enter Ex Parte Orders for various reasons, including but not limited to, domestic violence, financial abuse, and other forms of conduct the plaintiff seeks to be prohibited through an ex parte order. By allowing unregulated solicitation of legal services to defendants, thus alerting them to the legal action before service of process and before an ex parte order may be granted, the solicitation can have the effect of causing the very conduct plaintiff sought to deter by the proposed ex parte order. By requiring attorneys soliciting their services to wait 21 days where an ex parte order has been requested before contacting defendant, this would allow time for plaintiff to obtain ex parte orders and provide plaintiff the protection they need, while still allowing defendant his/her due process, and without curbing the attorney's commercial free speech.

Position Vote:

Voted For position: 18

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 3



FAMILY LAW SECTION

Contact Person: James Chryssikos

Email: jwc@chryssikoslaw.com

#3

CARLO J. MARTINA, J.D.
ATTORNEY
CARLO@MARTINALAW.COM

PETER G. BISSETT, J.D.
ATTORNEY
PETER@MARTINALAW.COM

CARLO J. MARTINA, P.C.

ATTORNEYS AND COUNSELORS AT LAW
1158 SOUTH MAIN STREET
PLYMOUTH, MICHIGAN 48170-2214

TELEPHONE (734) 254-1140
FACSIMILE (734) 254-1427
WWW.MARTINALAW.COM

CATHY L. DONAHUE
LEGAL ASSISTANT
CATHY@MARTINALAW.COM

CHANTAE M. NEMETH
LEGAL ASSISTANT
CHANTAE@MARTINALAW.COM

February 18, 2020

Michigan House of Representatives
Families, Children and seniors Committee
Hon. Kathy Crawford, Chair
Hon. Daire Rendon, Majority Vice Chair
Hon. Diana Farrington
Hon. Michele Hoitenga
Hon. Douglas Wozniak
Hon. LaTanya Garrett, Minority Vice Chair
Hon. Frank Liberati
Hon. Brenda Carter
Hon. Cynthia Johnson

Re: State Bar of Michigan Family Law Council support of the underlying purpose of House Bill 5296 and Council's proposed amendment.

Hearing date: Wednesday, February 19, 2020 @ 9:00 a.m.

House Office Building Room 308, Lansing Michigan

Dear Chairwoman Crawford, Vice Chairwoman Rendon, Minority Chairwoman Garrett, and Representatives Farrington, Hoitenga, Wozniak, Liberati, Carter and Johnson,

I am writing on behalf of the State Bar of Michigan Family Law Section Council. The Family Law Council has long supported efforts to put reasonable limits on attorney solicitation of Defendants in family law cases, and applauds Rep. Pamela Hornberger and this Committee for taking on this problem with House Bill No. 5296. While several attempts over the last 10 years to enact protective rules to govern such conduct have been attempted as either a modification of the Michigan Rules of Professional Conduct or legislation, they were not successful. But that does not mean that it is impossible to craft a rule that passes constitutional muster, while reasonably addressing unreasonable solicitation of legal services in family law matters.

This legislature has for years, crafted laws to protect Michigan's citizens, and particularly so when they are experiencing one of the most difficult, vulnerable times of their lives. There are numerous examples throughout Michigan's statutes, but one, while not dealing with family law matters, is directly on point in terms of putting reasonable limits on solicitation.

In the weeks immediately following an automobile accident, the injured party is in a vulnerable position. While they may require legal assistance, they should not be unreasonably pursued by lawyers seeking their business. This legislative body decided there needed to be limits. In what many call the “ambulance-chaser” statute, in 2013, this legislative body passed and the Governor signed legislation to do just that. Effective January 1, 2014, MCL 750.410b of Michigan’s Penal Code prohibits a person’s intentional contact with a person they know has sustained a personal injury as a direct result of a motor vehicle accident, or an immediate family member of that individual, with a direct solicitation to provide a service until the expiration of 30 days after the date of that motor vehicle accident. The exception being if the accident victim or their immediate family members acting on their behalf, request such contact, or the contact is by a person acting on behalf of an insurance company attempting to adjust a claim.

A first violation for such solicitation, can result in a fine of not more than \$30,000. A second or subsequent violation, can result in imprisonment for not more than 1 year or a fine of not more than \$60,000, or both, in addition to the cost of prosecution. This is established Michigan law, and has been for over 6 years now.

While the State Bar of Michigan Family Law Council is supportive of the intent of House Bill No. 5296, there is concern that it may have some of the same constitutional defects that prevented prior attempts to limit solicitation from being enacted. In order to try to better meet the United States Supreme Court’s three-part test outlined in Central Hudson Gas and Elec Corp v Public Serv Comm of NY, 477 US 557 (1988), the Family Law Council crafted the following proposed language that may better stand the constitutional challenges that are sure to be made.

On Monday February 17th, 2020, the State Bar of Michigan Family Law Council voted 18-0 (3 members not voting) to present the following proposal to this committee in order to provide reasonable limits on solicitation in family law matters:

**LIMITS ON ATTORNEY SOLICITATION IN FAMILY LAW MATTERS
REQUESTING EX-PARTE RELIEF**

A lawyer shall not directly or indirectly, individually or by their agent or anyone working on their behalf, solicit a person with whom the lawyer has no family or prior professional relationship, who is named as a Defendant and/or Respondent in a family law matter with a circuit court case code of DC

(Custody), DM (Divorce, with minor children), DO (Divorce, no children), DP (Paternity), DS (Other Support), or DZ (Other Domestic Relations Matters), or PP (Personal Protection Matter) seeking to provide a service to the Defendant and/or Respondent for a fee or other remuneration where the Complaint or Petition filed in that matter seeks ExParte Relief, unless and until 21 days have elapsed from the filing of such case, or after service of the Complaint or Petition seeking Ex-Parte Relief in such case, whichever is less.

The term “solicit” does not include letters addressed or advertising distributed by a lawyer generally to persons not known to need legal services of the kind provided by the lawyer in a particular matter, but are so situated that they might in general find such services useful.

It is the decided hope of the Family Law Council that the aforesaid proposed language may better address the constitutional challenges that have faced prior attempts at putting reasonable limits on solicitation at this most difficult time of a person life, while still being within the parameters of the US Supreme Court’s 3 prong analysis in the Central Hudson Gas case.

1. Does the proposed regulation protect a substantial interest?

- a. The proposal doesn’t apply to every family law case filed, because it’s not just any family law matter that requires specific limits on solicitation. It seeks to protect a Plaintiff/Petitioner in a family law case from harm at a particularly vulnerable time. For that reason, it’s directed at family law cases that are filed where an ExParte Order is being sought.

Getting an ExParte Order under Michigan Court Rule 3.207 is not easy. It’s typically done at the very outset of the family law case, contemporaneous with the case filing. There have to be specific facts set forth in an affidavit or verified pleading that irreparable injury, loss, or damage will result from the delay required to give notice to the Defendant that a Court Order is being sought, or that Defendant’s notice of the Plaintiff seeking that relief will itself precipitate the adverse action sought to be avoided before an order can be issued.

For example, the Plaintiff is justly fearful that the Defendant may take off with the children, cause physical harm to them personally or to their children or the marital property, cancel health or auto insurance, transfer assets to third parties to prevent the Court from reaching them for division between the parties, etc.

Once the Court has a chance to review the request for ExParte relief, if the Court believes that the allegations have merit, an ExParte Order can be entered by the Court restraining certain types of conduct, without notice to the Defendant/Respondent. This is because the Michigan Supreme Court, in adopting this Court Rule over 25 years ago, recognized that there is a substantial interest in preserving the status quo because irreparable injury, before the parties can even get to court, is not a desired outcome. Further, that while due process must be followed in every other instance of seeking entry of an Order, if giving the other side notice will precipitate the very adverse action sought to be prevented, the court has the discretion to enter an ExParte Order without notice to the other side, and restrain harmful conduct. But again, this can happen only if certain things exist.

- i. The Petition must allege the facts under oath,
- ii. Not just any general statements, but specific facts indicating that irreparable injury, loss or damage will result in delay of entry, or...and most important here...
- iii. That notice itself will precipitate adverse action before the order can be issued.

The State Bar of Michigan Family Law Council's proposal is designed to protect substantial interests of those filing a family law case.

2. The regulation must directly and materially advance that interest.

- a. Implicitly, MCR 3.207 recognizes that if a Defendant is tipped off that a Plaintiff has sought an ExParte Order to prevent Defendant from causing irreparable injury, loss or damage, giving the Defendant notice that protection from such harm is being sought may trigger them doing that harmful action BEFORE the Court order is entered and the Defendant served with it. To prevent this foreseeable problem, it's prudent to protect the legal process and implement reasonable steps to prevent notice to the Defendant prematurely, so that the Court has time to enter an appropriate ExParte Order and the Defendant be served with it.
- b. Of course, the Court Rule allows for due process immediately thereafter. In fact, the Court Rule requires that a detailed "Notice" be included in the ExParte Order informing the Defendant of their right

to object to the order, and directions of when and how to effectuate their objections being heard by the Court or the issue resolved by the friend of the court. **The problem is, while under MCR 3.207 (B)(3) the ExParte Order is technically in effect upon entry, it is only enforceable upon service.** Council's proposal is directly related to the substantial interests sought by both the Plaintiff and the Court, and permitted under Michigan's Court Rules; specifically, to prevent notice that may precipitate irreparable injury, loss or damage.

Even if the requisite elements of the Court Rule for an ExParte Order are met, thus satisfying the substantial interests of preventing irreparable harm under prong 1 of the Central Hudson Gas case, that substantial interest is undermined if a lawyer, trolling the court's records to solicit business, tips off the Defendant that an ExParte Order is being sought before its entry and a reasonable time for it to be served on the Defendant. This solicitation undermines the very purpose of a valid ExParte Court Order, entered after the Court has reviewed the Plaintiff's sworn-to factual allegations, and concluded that the Defendant must be restrained from certain conduct by its ExParte Order.

3. The regulation, in this case briefly delaying an attorney's right to solicit Defendants in a family law case when a ExParte Order is sought to prevent irreparable harm, must be narrowly drawn to meet the substantial interest.

- a. This is where many prior attempts to put reasonable limits on attorney solicitation in family law cases, fail. They are drag net rules, sweeping every type of family law case in, even though many do not involve allegations of impending irreparable harm.
- b. The proposal Council has submitted, narrowly restricts itself to family law cases where the risk of irreparable harm has been alleged, and an ExParte Order sought.
- c. Additionally, the proposed legislation makes clear that this limitation on solicitation will not continue indefinitely...something that prior opponents of such legislation have alleged can happen not only by a meritorious litigant, but someone using the rule to game the system...and it also makes clear what is is not intended to do:

- i. It does not prevent a lawyer's protected commercial speech or prevent them from providing legal information given generally.
- ii. It will not result in penalties if a lawyer inadvertently sends legal information to the public generally and it gets into the hands of a Defendant in a family law case, so long as the lawyers actions were not directed at a specific Defendant. It's specifically designed to limit solicitation to where the lawyer seeking a fee or other remuneration in a family law matter involving a request for an ExParte Order, tries to solicit a prospective new client.
- iii. It also addresses arguments that pose the ethical dilemma: what if a lawyer already has a prior professional relationship with the Defendant, or the Defendant is a member of the lawyers own family. This proposed rule exempts solicitation if there is a prior attorney-client relationship, or involves a member of the lawyer's own family.
- iv. Lastly, it can't be gamed, or go on forever. Once filed, the petitioner has a reasonable period of time...21 days... to get it served. Beyond that limited time period, a lawyer can solicit a Defendant in a family law matter for a fee or other remuneration.

Accordingly, the State Bar of Michigan Family Law Council supports this Committee's addressing harmful solicitation of family law clients, suggests the proposed statutory language stated above, and is interested in working with this Committee's members, as well as the sponsor of this legislation, in whatever way necessary to ensure that eventually, and hopefully soon, Michigan's legislature gives Plaintiff's in family law cases where ExParte relief is sought to prevent irreparable harm, a chance to get the protection the court has found that they deserve.

Respectfully Submitted,


Carlo J. Martina

Carlo J. Martina is a former Chair of the State Bar of Michigan Family Law Council, former President of the Wayne County Family Law Bar Association, former President of the Collaborative Practice Institute of Michigan, has served on various State Court Administrative Office committees, written and lectured on various family law topics for the Institute for Continuing Legal Education over the years, and testified before the Michigan Supreme Court on attorney ethics.

STATE BAR OF MICHIGAN FAMILY LAW COUNCIL PROPOSAL

**LIMITS ON ATTORNEY SOLICITATION IN FAMILY LAW MATTERS
REQUESTING EX-PARTE RELIEF**

A lawyer shall not directly or indirectly, individually or by their agent or anyone working on their behalf, solicit a person with whom the lawyer has no family or prior professional relationship, who is named as a Defendant and/or Respondent in a family law matter with a circuit court case code of DC (Custody), DM (Divorce, with minor children), DO (Divorce, no children), DP (Paternity), DS (Other Support), or DZ (Other Domestic Relations Matters), or PP (Personal Protection Matter) seeking to provide a service to the Defendant and/or Respondent for a fee or other remuneration where the Complaint or Petition filed in that matter seeks ExParte Relief, unless and until 21 days have elapsed from the filing of such case, or after service of the Complaint or Petition seeking Ex-Parte Relief in such case, whichever is less.

The term “solicit” does not include letters addressed or advertising distributed by a lawyer generally to persons not known to need legal services of the kind provided by the lawyer in a particular matter, but are so situated that they might in general find such services useful.



To: Jean Doss
From: Rebecca Shiemke
Re: HB 5296
Date: January 21, 2020

On behalf of the family law task force of Michigan Poverty Law Program, I support HB 5296, but suggest possible amendments to fully effectuate its intent. The time when a survivor leaves the abuser, including filing a divorce complaint which signals the end of the relationship, can be a dangerous time. The bill would be helpful to domestic violence survivors filing divorce cases because it would provide survivors with a period of time to safety-plan before the defendant is served and learns about the action. Otherwise, the defendant could learn about the case from an attorney who reviewed the court website or filing and contacted the defendant even before the defendant was served with the pleadings.

The issues to consider include:

Expand the actions to which the bill applies.

- Right now, the bill is limited to filings of divorce complaints. Consider expanding it to all domestic relations actions as delineated in MCR 3.201(A), which includes separate maintenance, annulment, paternity, support and child custody.

Whether it should also apply to Personal Protection Order (PPO) filings.

- PPOs are governed by separate court rules, MCR 3.700 et seq. There is a rule in place now that prohibits courts from posting on a public website any information in a PPO action that would lead to identifying information about the petitioner. However, there may be reasons to include PPO actions in this bill since many survivors file PPOs at or near the same time as filing a divorce action. Consider whether limiting access to PPO files would also help survivors, or whether it's unlikely that PPOs would be linked to divorce actions.

Clarify the meaning of "made available to the public."

- The bill should specifically indicate that the prohibition applies to availability through a court's public websites as well as its paper files.
- It should also be clear that "public" includes attorneys. That may be the case, but it was a question.
- There may need to be a limited exception to disclosure of filings when an attorney is asking the court whether or not the other party has already filed an action, since two actions involving the same parties cannot be filed.

1 of 2

Clarify date of service on defendant.

- **The bill provides a compliant is not available “until the defendant has been served with or received notice of that complaint.” It’s not clear how that fact will be known to the court or the public. Rather, the bill could read that the compliant is not available “until a proof of service is filed with the court.”**



HB 5296 – Divorce Filings
Written Testimony on Behalf of Michigan Poverty Law Program
February 20, 2020

I am Rebecca Shiemke, the family law attorney-specialist with the Michigan Poverty Law Program. Michigan Poverty Law Program (MPLP) provides advocacy, legal support and training to poverty law advocates statewide, including attorneys who provide free legal assistance to indigent Michigan families and individuals in a host of legal issues. In that capacity, I have consulted or co-counseled on hundreds of family law matters, with a priority on assistance to survivors of domestic violence. I have personally represented hundreds of survivors in court proceedings over the past 20 years. On behalf of MPLP, I ask that you support the draft 2 substitute for House Bill 5296.

The bill provides that “a complaint for divorce filed with the court shall not be made available to the public until the proof of service has been filed with the court.” It is designed to prevent third parties from accessing new divorce filings in order to provide defendants with advance notice of the action, including any protective orders, before proper service. It maintains control of the process with the plaintiff, including control over when and how the defendant is served.

This bill will protect survivors of domestic violence by providing them with an opportunity to develop a safety plan and serve protective orders along with the divorce complaint before the defendant learns of the filing through other means. Often the most dangerous time for survivors is when they leave the

relationship because it is the time that the abuser loses control; and power and control over an intimate partner is the primary aim of the abuser. Filing a divorce is a clear message to the abuser that the survivor intends to leave the relationship and doing so puts the victim at risk of retaliation, manipulation and further violence. Even in situations where past abuse has been emotional, the filing for divorce may be the tipping point and cause a violent response. Specifically, in a divorce action the abuser could hide marital and other financial assets from the survivor during the time the abuser learns of the filing and is properly served.

Additionally, not all risks are foreseeable. While many attorneys who represent survivors do assess the risk an abuser poses and develop a practical plan to keep their client safe, not all survivors disclose the abuse to their attorneys, or are represented by attorneys. The abuser may have threatened to hurt the survivor if the survivor tells others about the abuse. The survivor may not identify as a "victim" of abuse. Or, the attorney may have dissuaded the survivor from disclosing to reduce the conflict in the case. If attorneys are not aware the client is a survivor, they are unable to plan for the client's safety prior to filing. A violent or harmful response by an abusive spouse cannot always be prevented by good lawyering.

Thus, a brief window of time to arrange service in a safe matter, such as that provided by HB 5296, is reasonable given the serious potential risks involved

Rebecca Shiemke
Michigan Poverty Law Program
rshiemke@mplp.org

Hi Kathy:

An overwhelming number of highly ethical and respected attorneys are appalled at Family-Law-Ambulance-Chasing which has gone on unchecked, and unregulated for years.

Long and the short of the issue is: A very small number of bottom feeding lawyers, haunt the county clerks office, obtain daily access to new divorce filings, and generate unasked for solicitations, before the other party even knows a divorce case has been filed; they routinely spark fear and anxiety in the recipients, and tout their family law background, and inferring if not outright claiming that bad, bad things will happen if they don't immediately hire a lawyer.

The noise generated by these half a dozen or so "trollers" is far disproportionate to their standing or status in the legal community. The claims of "constitutional violations" are Fake News, and Fake claims. There are tons of areas in our legal system where there are restrictions on public access to files, or restrictions upon attorney solicitations. Example: (a) all adoption files (b) all juvenile files (c) certain Domestic Violence filings (d) personal injury solicitations (e) airline disaster solicitations, and the list goes on and on...

Kathy is on the committee looking at the statute, and I wanted to let her know that as a family law attorney of 46 years, as a solid Republican, and as a competent professional 95% or more of us solidly support this bill. Within the family law attorney there is broad, bipartisan, support for this bill, and the only internal discussions regard what is the best way to fix this question.

There are a number of our cases where we can petition the Court for immediate issuance of a temporary restraining order, preventing the kidnaping of children, or emptying of bank accounts, or changing beneficiary designations, or running up debt... these restraining orders are not effective until served upon the other party... which means that these solicitations can tip off the defendant before they are served with the restraining orders.

Because these "temporary" orders are, by and large, even handed and apply to both parties, and just preserve the "status quo" it is my professional experience that 95% of the initial orders remain in place throughout the case. Solicitation prior to the defendants even being served is the evil to be avoided.

I am out of the Country on Monday for 14 days, but I did want to personally reach out to Kathy on this critical issues.

These bottom feeders successfully evaded a Court Rule change a number of years ago, and they are just as frenzied at the attempt to use the Legislative route. (Which is the best "fix" for the issue, anyway..)

Thanks

JIM

James J. Harrington, III
HARRINGTON LAW, PLC
42400 Grand River Ave., Suite 204
Novi, MI 48375
(248) 347-9620 / fx (248) 347-9634
jjh@jjharringtonlaw.com

Law Offices of
MERRILL GORDON, P.C.
31275 Northwestern Highway • Suite 145
Farmington Hills, Michigan 48334-2531

www.merrillgordon.com
(248) 626-3000 • Fax (248) 932-5201
E-Mail: mgordon@merrillgordon.com

MERRILL GORDON

Of Counsel
Richard Bloom
Kenneth Bloom

February 10, 2020

VIA EMAIL ONLY

kathycrawford@house.mi.gov
dairerendon@house.mi.gov
laTonyagarrett@house.mi.gov
dianafarrington@house.mi.gov
douglaswozniak@house.mi.gov
frankliberati@house.mi.gov
brendacarter@house.mi.gov
hoitenga@house.mi.gov
cynthiajohnson@house.mi.gov

Re: House Bill 5296
Hearing date: Wednesday, February 12, 2020 @ 9:00 A.M.
House Office Building Room 308, Lansing Michigan
Opposition to **House Bill 5296**

Dear Chairman Crawford, Majority Vice Chairman Rendon, Minority Vice Chairman Garrett and Representatives Farrington, Wozniak, Liberatia, Carter, Hoitenga and Johnson:

I write to you in opposition to House Bill 5296 and request that you vote **no** on House Bill 5296 in committee.

I am a practicing family law attorney and as part of my practice, I often contact Defendants shortly after a Complaint for Divorce has been filed, and many of those I contact, whether or not they become clients of mine, thank me for providing them with notice and allowing them to prepare for divorce proceedings in an orderly and thoughtful manner.

This Bill, imposing in a sealing Court records, is yet another attempt to curtail the ability of individuals to be informed as to the existence of legal proceedings. This matter was previously brought before the Michigan Supreme Court in 2012 and before the Michigan Senate in 2014 and 2015, proposing the same substantive effect in Senate Bill 351, prior to that in S.B. 981. The matter before the Michigan Supreme Court and before the Senate, sought to impose, what I believe, is an unconstitutional waiting period, between the time that a case is filed and the time that individual

Chairman Crawford, Majority Vice Chairman Rendon,
Minority Vice Chairman Garrett and
Representatives Farrington, Wozniak,
Liberatia and Johnson
February 10, 2020
Page 2

litigants can be contacted by attorneys. This legislation, House Bill 5296, seeks to impose the very same type of unconstitutional prohibition on commercial free speech and on contact under the guise of sealing these records initially, rather than allowing them to become matters of public record. There has been no substantiation for this legislation, which itself, like Senate Bill 351 in 2015, and S.B. 981 in 2014 prior to that sought to accomplish the very same unconstitutional goal. There is no quantifiable identifiable problem.

Justice Young in his April 5, 2012 letter to the State Bar of Michigan, in rejecting the same type of probation stated:

To protect against potential [constitutional] challenges that might be raised if the Court adopts the proposed amendment, the Court invites the bar [State Bar of Michigan] to conduct such a study to gather empirical evidence to support the proposed amendment (see attached April 5, 2012 letter from Chief Justice Yung to Janet Welch Executive Director of the State Bar of Michigan)

The State Bar never conducted such a study and again failed to present any empirical evidence and no such evidence was submitted to this committee.

I have enclosed for your review, my letter previously sent to the committee members of the Senate Committee as well as the House Committee concerning Senate Bill 351, in addition, the Order of the Supreme Court of Michigan penned by Justice Robert Young Jr. dated April 5, 2012, indicating that it was the Court's position that such restriction was unconstitutional.

In addition to the foregoing, I submit for your consideration, a letter previously penned by Mr. John Allen, a practitioner with the Varnum Law Firm at the time, which is addressed to then Senator Schuitmaker, outlining the unconstitutionality of the previous Bill submitted as Senate Bill 981, seeking to impose the same restriction as is included in House Bill 5296.

For the reason stated in the documents provided, it is my belief that the restriction sought to be imposed at this time is unconstitutional and undue interference with commercial free speech, and such would likely be challenged in Federal Court as that type of restriction and not be able to be upheld, nor past constitutional muster.

For the foregoing reasons, it is my belief that this matter should not be passed out of committee, and eventually sent to the full house for a vote as there is improper substantiation for an imposition on what is an "end run" around a matter previously put before the Senate and the Supreme Court on at least three different occasions and as indicated by former Chief Justice Young in 2012, such was not appropriately substantiated so as to allow a rule to be implemented by the Supreme Court.

Chairman Crawford, Majority Vice Chairman Rendon,
Minority Vice Chairman Garrett and
Representatives Farrington, Wozniak,
Liberatia and Johnson
February 10, 2020
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The Supreme Court went on to say that should the Michigan Bar engage in a study to seek substantiation for the imposition of such restriction on viable commercial free speech, the Court would reconsider its determination. The State Bar of Michigan has failed to engage in such a study, nor present any evidence to the Supreme Court, nor to this body for a substantiation of such imposition of an improper restriction on Commercial Free Speech.

Thank you for your consideration and your anticipated **no** vote.

Very truly yours,

A handwritten signature in black ink, appearing to be 'Merrill Gordon', with a long horizontal flourish extending to the right.

Merrill Gordon

MG/mmh

cc: Stephanie Johnson (stephanie@kilmteam.com)
Elizabeth Bransdorfer (ebransdorfer@micameyers.com)
K.C. Steckelberg (kcs@michiganprosecutor.org)
Mari Manoogian (marimanoogian@house.mi.gov)

Senatebill351.11

HOUSE BILL NO. 5296

December 11, 2019, Introduced by Rep. Hornberger and referred to the Committee on Families, Children, and Seniors.

A bill to amend 1846 RS 84, entitled
"Of divorce,"
(MCL 552.1 to 552.45) by adding section 6a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 6a. Beginning January 1, 2021, a complaint for divorce
2 filed with the court shall not be made available to the public
3 until the defendant has been served with or received notice of that
4 complaint.



Michigan Supreme Court

ROBERT P. YOUNG, JR.
CHIEF JUSTICE

MICHIGAN HALL OF JUSTICE
925 WEST OTTAWA STREET
LANSING, MICHIGAN 48913
313-972-3250

April 5, 2012

Janet K. Welch
Executive Director
State Bar of Michigan
306 Townsend Street
Michael Franck Building
Lansing, MI 48933-2012

RE: ADM File No. 2010-22

Dear Janet:

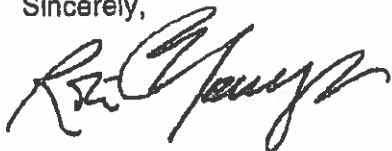
After the administrative public hearing held March 28, 2012, the Supreme Court considered the proposal that was submitted by the State Bar of Michigan's Representative Assembly in Administrative File No. 2010-22. As you are aware, the United States Supreme Court has held that although attorneys have a right to send truthful and nondeceptive communications to potential clients (under *Shapero v Ky Bar Ass'n*, 486 US 466 [1988]), a state may restrict that right under *Florida v Went For It*, 515 US 618 (1995), if the regulation meets the three-part test outlined in *Central Hudson Gas & Elec Corp v Public Serv Comm of NY*, 447 US 557 (1988). The Supreme Court's description of the test in *Went for It* states:

First, the government must assert a substantial interest in support of its regulation; second the government must demonstrate that the restriction on commercial speech directly and materially advances that interest; and third, the regulation must be narrowly drawn.

In applying this test, the United States Supreme Court discussed the second prong at length. In *Went for It*, the Court held that the findings of an extensive study conducted by the Florida state bar, which included both statistical and anecdotal data, were sufficient to satisfy the second prong of the *Central Hudson* test. The Court distinguished the facts in *Went for It* from the facts of another solicitation case (*Edenfield v Fane*, 507 US 761 [1993]), in which no evidence had been offered in support of the regulation, and which was struck down by the Supreme Court for that reason. The Court in *Went for It* (quoting *Edenfield*), explained that meeting the second prong "is not satisfied by mere speculation or conjecture; rather, a governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree."

During the Court's discussion relating to the bar's proposed amendment in this file, there was significant concern that adoption of the proposed amendment without a basis of support shown in more empirical terms may violate the second prong of the *Central Hudson* test. Members of the bar who submitted comments and spoke in support of the proposed amendment provided anecdotal references, but United States Supreme Court opinions do not clearly define the type and amount of evidence that would be sufficient to uphold the sort of regulation on commercial speech that is contained in the proposed amendment. To protect against potential challenges that might be raised if the Court adopted the proposed amendment, the Court invites the bar to conduct a study to gather empirical evidence in support of the proposed amendment. Upon completion of such a study, the Court will be happy to consider adoption of the proposed amendment.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert P. Young, Jr.", written in a cursive style.

Robert P. Young, Jr.

Law Offices of
MERRILL GORDON, P.C.
31275 Northwestern Highway • Suite 145
Farmington Hills, Michigan 48334-2531

www.merrillgordon.com
(248) 626-3000 • Fax (248) 932-5201
E-Mail: mgordon@merrillgordon.com

MERRILL GORDON

Of Counsel
Richard Bloom
Kenneth Bloom

May 22, 2015

VIA EMAIL ONLY

Via email only to:

senrjones@senate.michigan.gov
sentschuitmaker@senate.michiana.gov
sensbieda@senate.michigan.gov
sentrocca@senate.michigan.gov
senpcolbeck@senate.michigan.gov

Michigan Senate Judiciary Committee Chairman, Senator Rick Jones
Michigan Senate Judiciary Committee Members
Senator Tonya Schuitmaker
Senator Steven Bieda
Senator Tory Rocca
Senator Patrick Colbeck
State Capital
Lansing, MI 48909

Re: *Opposition to Senate Bill 351*
Senate Judiciary Committee
Committee meeting Tuesday, May 26, 2015 @ 3:00 P.M.

Dear Committee Chairman Jones and Committee Members Schuitmaker, Bieda, Rocca and Colbeck:

I write the committee in opposition to Senate Bill 351. As part of my practice, I often contact defendants within this 21 day period and many of those I contact, whether or not becoming a client of mine, thank me for providing them notice and allowing them to prepare for divorce proceedings in an orderly and thoughtful manner.

This criminal bill seeks to impose a 21 day waiting period, from the date a summons is

Page 2

issued for direct solicitation of divorce clients by attorneys. The stated reason for such legislation, proponents state, is to avoid possible spousal abuse. In reality, if an abuser learns of divorce proceedings by a letter or by being served with a Summons and Complaint, his action will likely not change. An abuse victim needs to take protective action from the outset. This proposed legislation is not been demonstrated as warranted, is an unconstitutional incursion on commercial free speech, and has been previously proposed before the Supreme Court and not

implemented, Chief Justice Young stating in his April 5, 2012 letter to the State Bar of Michigan, that the proponents of the proposal failed to present any empirical evidence to support that proposal (in substance much the same as S.B. 981, now S.B. 351) Chief Justice Young stated:

To protect against potential [constitutional] challenges that might be raised if the Court adopts the proposed amendment, the Court invites the bar [State Bar of Michigan] to conduct a study to gather empirical evidence to support the proposed amendment. (see attached April 5, 2012 letter from Chief Justice Young to Janet Welch Executive Director of the State Bar of Michigan)

The State Bar never conducted such a study and again failed to present any empirical evidence.

This proposed legislation should not be passed out of committee nor adopted for the following reasons:

1. S.B. 351 is an unnecessary and unwarranted intrusion on protected commercial free speech (proponents can only point to anecdotal stories).
2. S.B. 351 has not been demonstrated necessary by any empirical evidence, finding or study.
3. S.B. 351 is likely unconstitutional.
4. S.B. 351 invites significant and costly court challenges.
5. The proponents of S.B. 351 were unable to demonstrate the need for this intrusion on legitimate commercial free speech to the Supreme Court and without any further evidence or justification seek to have S.B. 351 passed as law.
6. That the "wrong" seeking to be corrected will be ineffective as any potential abuser will receive notice when served regardless.
7. That Michigan Court Rule 8.119(F), which is already in place and available remedies this perceived problem by allowing the sealing of records by the assigned judge.
8. Other than in the area of personal injury, I am unaware of any other state imposing such restriction.

Page 3

In support of my opposition to S.B. 351, I have attached the following for your further consideration:

1. Chief Justice Young's April 5, 2012 letter to Janet Welch Executive Director of the State Bar of Michigan, in which the Supreme Court declines to adopt a like measure in 2012 finding it not supported by empirical evidence and likely unconstitutional.
2. My previous letter to the Supreme Court of February 27, 2012 and my cover letter to the Senate Judiciary Committee dated September 12, 2014.
3. A letter of September 13, 2014 from Attorney John Allen, setting out in detail the likely constitutional short falls of S.B. 981 of last session and further arguments against adoption of S.B. 981 which is substantially the same as S.B. 351.
4. Senate Bill 351 (for reference).

It is my belief that this matter should not be considered by the committee and if considered rejected by this committee.

Should this committee hearing go forward, I look forward to testifying in opposition.

Should any member wish to discuss this matter with me or should you wish me to provide any additional information, please feel free to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Merrill Gordon', with a long horizontal flourish extending to the right.

Merrill Gordon

MG/mmh

cc: Senate Judiciary Committee
Nick Plescia (nplescia@senate.michigan.gov) Senatbill351.01.doc

Law Offices of
MERRILL GORDON, P.C.
31275 Northwestern Highway • Suite 145
Farmington Hills, Michigan 48334-2531

www.merrillgordon.com
(248) 626-3000 • Fax (248) 932-5201
E-Mail: mgordon@merrillgordon.com

MERRILL GORDON

Of Counsel
Richard Bloom
Kenneth Bloom

September 12, 2014

Via email only to:

senrjones@senate.michigan.gov
sentschuitmaker@senate.michiana.gov
sensbieda@senate.michigan.gov
sentrocca@senate.michigan.gov

Michigan Senate Judiciary Committee Chairman, Senator Rick Jones
Michigan Senate Judiciary Committee Members
Senator Tonya Schuitmaker
Senator Steven Bieda
Senator Tory Rocca
State Capital
Lansing, MI 48909

*Re: Senate Bill 981
Senate Judiciary hearing date: September 16, 2014 @ 2:30 P.M.*

Dear Chairman Jones and Committee Members Schuitmaker, Bieda and Rocca:

I write this letter with attachments in opposition to S.B. 981 and request an opportunity to be heard before the committee.

There was a previous attempt to adopt the substance of this bill in 2012. In 2012 the Michigan Supreme Court considered a proposal with a less restrictive 14 day waiting period. This was ADM 2010-22 seeking to amend Michigan Rule of Professional Conduct 7.3. Public hearing was held before the Michigan Supreme Court on March 28, 2012, at which time this matter was considered. (Please see attached Michigan Supreme Court Release and Notice of Public Administrative Hearing regarding this matter).

September 12, 2014

Page 2

I testified at this hearing in opposition to that proposal and submitted the attached letter dated February 27, 2012 in opposition to the proposed amendment. By attachment hereto, I incorporate that letter to this letter and ask that you consider both regarding this matter and that these letters with attachments be made part of the public record.

After comment period and public hearing the Supreme Court determined not to adopt this proposal as an amendment to the Michigan Rule of Professional Conduct 7.3 and the matter was administratively closed by the Supreme Court on June 6, 2012.

It is my belief that there was not then nor is there now a proper or sufficient basis for the imposition of the restrictions contained in Senate Bill 981.

For the reasons set forth in this letter and those contained in my attached letter of February 27, 2012, I urge this committee to vote against this bill and not pass this bill out of committee.

Very truly yours,



Merrill Gordon

MG/mmh

Enclosure

cc: Ms. Sandra McCormick, smccormick@senate.michigan.gov
Ms. Renee Edmondson, redmondson@house.mi.gov

Misc.091214.MISenate

Law Offices of
MERRILL GORDON, P.C.
31275 Northwestern Highway • Suite 145
Farmington Hills, Michigan 48334-2531

www.merrillgordon.com
(248) 626-3000 • Fax (248) 932-5201
E-Mail: mgordon@merrillgordon.com

MERRILL GORDON

Of Counsel
Richard Bloom
Kenneth Bloom

February 27, 2012

VIA U.S. MAIL AND
EMAIL MSC_clerk@courts.mi.gov

Mr. Corbin R. Davis
Clerk Michigan Supreme Court
P O Box 30052
Lansing, MI 48909

Re: ADM 2010-22 and MRPC7.3

Dear Mr. Davis:

This letter is to advise the Court of my position in opposing the adoption of ADM 2010-22. Although I had been sending letters to prospective clients, based on filings in Circuit Court, and am aware of the proposed rule indicating that there should be a fourteen day waiting period before this type of letter could be sent, I believe that this waiting period is over broad and not warranted. Advising potential clients of the existence of litigation, is a service to these litigants. Further, I am offended at the characterization of this as "Trolling" and the rule being labeled an "anti-trolling" proposal by those in support of this proposal. This proposal seeks to artificially limit information that is a matter of public record. If the sealing of records is necessary, the Plaintiff should seek ex-parte relief to do so. The filing party should not be given an advantage by limiting a responding parties' access to information or representation. Any actions that a Plaintiff could take within 14 days after filing, such Plaintiff could take prior to filing. Thus obviating the need for a fourteen day waiting period, or any waiting period for that matter.

I received phone calls from many individuals to whom I have sent correspondence who have indicated to me that they were thankful that they were made aware that litigation was pending so that they could timely prepare for this litigation and hire counsel, myself or other counsel, to represent them in this matter without waiting an extended period of time, thus avoiding having their spouse or the opposing party gaining an advantage. If this proposal is

Mr. Corbin Davis
February 27, 2012
Page 2

adopted, Plaintiffs would have the same advantage this proposal seeks to control responding parties from having.

It seems to me that setting an artificial limit on the ability of a responding party to seek counsel and/or counsel seeking to help those responding parties by offering representation, is unfair and unwarranted. There is no limit to the extent of preparation a Plaintiff has in determining to move forward with divorce litigation, if this proposal is enacted, Defendant's would be severely disadvantaged in their ability to respond and be properly represented.

I bring to the Court's attention, my representation of an, active duty military service member and a resident of Hawaii, who was sued for divorce in the Oakland County Circuit Court. He was served on December 26, 2011, in Michigan while on leave, after filing was made on December 22, 2011, by his wife who had their child here in Michigan. He became a client of mine after I had sent him a letter concerning representation immediately after his wife had filed her Complaint. He had previously instituted divorce proceedings in Hawaii on December 16, 2011. His wife had not yet been served and was avoiding service. If he had not received my letter indicated above and been unaware of counsel to represent him he would have been prejudiced by his return to Hawaii without seeking counsel to respond to his wife's "Emergency Motion", concerning his daughter. Being properly represented by the undersigned resulted in the Oakland County Circuit Court declining jurisdiction in favor of the Court in Hawaii. This is but one of many instances where early representation has resulted in a level playing field for both litigating parties.

To the extent that prior violence is deemed to be an issue to be considered as is noted in the staff comments, surely minor restrictions as to the "solicitation" could be imposed such as a preclusion of "solicitation" of an individual when there is a Personal Protection Order filed. To the extent that Plaintiffs' attorneys need to properly arrange affairs of their clients at the outset of litigation, this should be completed prior to the filing of the Complaint. In reality, what is the difference in a Defendant's first knowledge being served with a Summons and Complaint by a process server or receiving a "solicitation" letter? There seems to be no difference affecting a Defendant's propensity for violence.

There is no limitation on broader market advertising, nor should there be. This restriction on solicitation unfairly limits the sole or small practitioner and others from seeking to timely advise potential clients of available services and puts Defendants at a disadvantage. In my opinion it is an unnecessary restraint. Proponents may cite limited circumstances, which are problematic for the filing spouse, but such anecdotal and infrequent circumstances should not dictate wholesale restrictions on such direct contact. On the whole, it has been my experience that individuals who receive information from me that litigation is pending are pleased that they have adequate timely information about the filing of the initial pleadings and timely information concerning representation.

Mr. Corbin Davis
February 27, 2012
Page 3

Should you wish me to provide additional information regarding this matter, I would be happy to do so.

Very truly yours,

A handwritten signature in black ink, appearing to read "Merrill Gordon", with a long horizontal flourish extending to the right.

Merrill Gordon

MG/mmh

MICHIGAN SUPREME COURT



Office of Public Information

contact: Marcia McBrien | (517) 373-0129

FOR IMMEDIATE RELEASE

PROPOSED JUDICIAL CONDUCT RULES CHANGES ON AGENDA FOR MICHIGAN SUPREME COURT MARCH 28 PUBLIC ADMINISTRATIVE HEARING

Proposal specifies appropriate roles for judges at charity fundraisers and similar events

LANSING, MI, March 27, 2012 – A proposed clarification of ethics rules that prevent judges from soliciting donations for charities and similar organizations is on the agenda for the Michigan Supreme Court's public hearing tomorrow.

Canon 5 of the Code of Judicial Conduct allows judges to participate in "civic and charitable activities" that do not put a judge's impartiality in doubt or interfere with the judge's duties. But, while allowing a judge to "join a general appeal on behalf of an educational, religious, charitable, or fraternal organization," ethics rules bar judges from individually soliciting donations for such groups. The proposed changes would clarify that "[a] judge may speak on behalf of such an organization and may speak at or receive an award or other recognition in connection with an event of such an organization." The proposals would allow a judge to participate in the same ways at a law-related organization's fundraiser. But the amendments would also prohibit a judge from allowing his or her name to be used in fundraiser advertising, unless the judge was simply a member of an honorary committee or participating in a general appeal. (ADM File No. 2005-11).

The proposals for all public hearing items and their related comments are available online at <http://www.courts.michigan.gov/supremecourt/Resources/Administrative/index.htm#proposed>.

The public hearing, which begins at 9:30 a.m., will take place in the Supreme Court courtroom on the sixth floor of the Michigan Hall of Justice in Lansing.

Also on the Supreme Court's agenda:

- ADM File No. 2010-22, proposed amendment of Michigan Rule of Professional Conduct 7.3, "Direct Contact with Prospective Clients." The rule prevents attorneys from soliciting "professional employment from a prospective client with whom the lawyer has no family or prior professional relationship ..." The proposed amendment would add that, in family law cases, "a lawyer shall not initiate contact or solicit a party to establish a client-lawyer relationship until the initiating documents have been served upon that party or 14 days have passed since the document was filed, whichever action occurs first." The State Bar of Michigan's Representative Assembly suggested the service/14-day restriction to reduce the risk that a defendant in a family law case would assault the other partner, abscond with children, or commit "other illegal actions" before the papers can be served.

MICHIGAN SUPREME COURT

NOTICE OF PUBLIC ADMINISTRATIVE HEARING

Pursuant to Administrative Order No. 1997-11, the Michigan Supreme Court will hold a public administrative hearing on Wednesday, March 28, 2012, in the Supreme Court courtroom located on the sixth floor of the Michigan Hall of Justice, 925 W. Ottawa Street, Lansing, Michigan 48915. The hearing will begin promptly at 9:30 a.m. and adjourn no later than 11:30 a.m. Persons who wish to address the Court regarding matters on the agenda will be allotted three minutes each to present their views, after which the speakers may be questioned by the Justices. To reserve a place on the agenda, please notify the Office of the Clerk of the Court in writing at P.O. Box 30052, Lansing, Michigan 48909, or by e-mail at MSC_clerk@courts.mi.gov, no later than Monday, March 26, 2012.

Administrative matters on the agenda for this hearing are:

1. 2005-11 Proposed Alternative Amendments of the Code of Judicial Conduct.
Published at 490 Mich 1208 (Part 3, 2011).
Issue: *Whether to adopt one of the proposed alternatives of various Canons of the Code of Judicial Conduct, or take other action. Alternative A would combine Canons 4 and 5 so that obligations imposed regarding extrajudicial activities would be the same for law- and nonlaw-related activities. Alternative B would loosely model the ABA Model Code of Judicial Conduct, but the ABA's 15 model rules would be combined within Michigan's current two Canons 4 and 5 and would retain nearly all current language of Canons 4 and 5. Both alternatives would eliminate language in Canon 7 that prohibits judges from accepting testimonials and would clarify Canon 2 so that activities allowed in Canons 4 and 5 would not be considered a violation of "prestige of office." Also both proposals would clarify the scope of activities within which a judge may participate (especially when the activities would serve a fundraising purpose).*

2. 2010-22 Proposed Amendment of Rule 7.3 of the Michigan Rules of Professional Conduct.
Published at 490 Mich 1219 (Part 3, 2011).
Issue: *Whether to adopt the proposed amendment of MRPC 7.3 that would limit the ability of an attorney to contact or solicit a defendant in a family-law case for 14 days after the suit is filed, or until the defendant is served (whichever occurs first).*
3. 2010-25 Proposed Amendment of Rule 7.210 of the Michigan Court Rules.
Published at 490 Mich 1205-1206 (Part 2, 2011).
Issue: *Whether to adopt the proposed amendment of MCR 7.210 that would require trial courts to become the depository for exhibits offered in evidence (whether the exhibits are admitted, or not) instead of requiring parties to submit those exhibits when a case is submitted to the Court of Appeals.*
4. 2010-26 Proposed Amendment of Rule 7.210 and Rule 7.212 of the Michigan Court Rules.
Published at 490 Mich 1206-1208 (Part 2, 2011).
Issue: *Whether to adopt the proposed amendments of MCR 7.210 and MCR 7.212 that would extend the time period in which parties may request that a court settle a record for which a transcript is not available and would clarify the procedure for doing so.*



251 North Rose Street • Fourth Floor
Kalamazoo, Michigan 49007-3823
Telephone 269 / 382-2300 • Fax 269 / 382-2382 • www.varnumlaw.com

John W. Allen
Board Certified Civil Trial Advocate (NBTA)
American Board of Trial Advocates (ABOTA)
Family Law Practice Certificate (ICLE)
Admitted in Illinois, Indiana, Michigan, Minnesota, Wisconsin and Florida

Direct: 269 / 553-3501
Mobile: 269 / 491-0056
jwallen@varnumlaw.com

September 13, 2014

sentschuitmaker@senate.michigan.gov

Senator Tonya Schuitmaker
P.O. Box 30036
Lansing, MI 48909-7536

Re: **Senate Bill 981 Should be Rejected; Hearing September 16, 2014;
IMMEDIATE Action Required.**

Dear Tonya:

Thank you for taking time to speak with me about this important issue. Senate Bill 981 is a bad idea, tucked into a package of bills most of which are very good ideas. Not only is SB 981 likely unconstitutional, but also it holds the prospect of harming the very persons it seeks to protect. It requires some detailed examination to see this, and why Senate Bill 981 should be rejected. In this very busy season, I appreciate your taking the time to do that.

It is my understanding that SB 981 is part of a package of Domestic Violence Bills that includes SB 980 and 981, and House Bills 5652-5659. The hearing on Senate Bill 981 is set for hearing before the Senate Judiciary Committee next Tuesday September 16, 2014 at 2:30 PM. Prompt action is required to avoid what will likely be a very bad law.

As you know, I am a partner with Varnum Riddering Schmidt & Howlett LLP (Varnum Attorneys), with over 40 years of experience in Michigan Family Law. In the past, I have also served as Chair of the State Bar of Michigan Special Committee on Grievance, and have served as the Chair of the State Bar of Michigan Standing Committee on Professional and Judicial Ethics (the "Ethics Committee").

Senator Tonya Schuitmaker
September 13, 2014
Page 2

I also served on the ABA Ethics 2000 Advisory Committee, and chaired the Ethics and Professionalism Committee of the ABA, Trial Tort and Insurance Practice Section (TIPS) through the ABA Ethics 2000 process. Currently, I serve as the TIPS Liaison to the ABA Committee on Professionalism. In all these capacities, I have had the honor of studying in depth the issues of lawyer solicitation in SB 981.

This letter contains the views of me only, not those of the Varnum Firm, the State Bar of Michigan, the ABA, nor their Committees.

Earlier Versions before the Michigan Supreme Court

Earlier, the Michigan Supreme Court rejected other versions of a very similar proposal, when proposed as amendments to the Michigan Rules of Professional Conduct (MRPC-, sometimes called the "Ethics Rules" for Michigan Lawyers). In 2012, the Court considered proposed amendments to MRPC 7.3 (Supreme Court ADM File No. 2010-22). Much like SB 981, ADM 2010-22 originated from the State Bar of Michigan Family Law Section, in a concern over the practice of "trolling" (that is, a lawyer's using the publicly available information of Family Law court commencement filings to solicit Defendants or Respondents as prospective clients). Most of the submitted Comment Letters supported the proposal, as did a committed group of individuals. In contrast, a smaller but vocal group (including me) opposed the amendment.

After months of careful consideration, the Court rejected the proposal. Among the likely reasons were that the proposal (like SB 981) infringed important Constitutional rights of both respondents and lawyers, and that ample protections already exist within the Michigan Court Rules to accomplish the stated goals. Like SB 981, the MRPC proposal also had very likely, and very bad, unintended consequences. This letter explains more fully those reasons.

1. It is a dangerous custom to single out one area of law practice (i.e., Family Law) for specific prohibitions under the criminal law. SB 981 would impose strict criminal liability (First Offense- Misdemeanor- \$30,000 fine; Subsequent Offenses- Misdemeanor- 1 year in jail, plus \$60,000 fine). The criminal law is a strict liability, penal system. It does not rely on "fault" or "causation" to determine strict culpability; other facts such as care in the past or lack of earlier violations does not enter that finding. If you did it, it is a violation – it is just that simple.

Senator Tonya Schuitmaker
September 13, 2014
Page 3

Moreover, any such criminal violation would certainly result in Disciplinary Proceedings against the lawyer by the Attorney Grievance Commission (AGC) before the Attorney Discipline Board (ADB). Thus, even if some violation were the result of negligence or with lack of direct intent or knowledge, nevertheless, some discipline (ranging from Informal Reprimand to full Revocation of License—see MCR 9.106) must almost always be imposed. This is why attempting to regulate the Practice of Law by the Criminal Law is such a bad idea. The real penalty is not "just" the loss the financial fine, nor even "just" the jail term. It is the loss of a career and the other jobs created by that career. Any proposed criminal penalty, to regulate what is now accepted and legal conduct, must be taken with the utmost seriousness. Momentary political popularity should not be a criterion.

It is also a bad idea to single out one area of Law Practice for statutory regulation, or criminal penalties. If SB 981 becomes law, Family Law practitioners might likely be singled out for other such criminal prohibitions or rules in the future, applicable only to Family Law matters. If "trolling" is really that bad, then the prohibitions should apply to all lawyers in all cases—something which would not likely ever be approved, and certainly would be unconstitutional. [In fact, an earlier broader proposal to amend MRPC to limit solicitation more generally was once adopted by the Michigan Supreme Court, then quickly rescinded because of protests by many clients and lawyers, and threats of constitutional challenges. Eventually that proposal was unanimously rejected and withdrawn from Supreme Court consideration. See Supreme Court ADM 2002-24.]

2. There are serious Constitutional Defects in SB 981, under Prong 2 of the *Central Hudson* Test. Like it or not, attorney solicitation is protected commercial speech under the U.S. Constitution, Amendment 1, and correlative provisions of the several State Constitutions, including Michigan. *Central Hudson v. PSC*, 447 U.S. 557 (1980). In the comments for ADM 2010-22, the State Bar of Michigan Family Law Section correctly noted the applicability of *Florida Bar v. Went For It, Inc.*, 515 U.S. 618 (1995), and *Shapiro v. Kentucky Bar Assn.*, 486 U.S. 466 (1988) as controlling U.S. Supreme Court Cases, all of which determine whether the restriction or prohibition upon lawyer solicitation is constitutionally permissible by applying the *Central Hudson* 4-Prong test:



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306 Townsend Street

Michael Franck Building

Lansing, MI

48933-2012

April 30, 2010

Corbin Davis

Clerk of the Court

Michigan Supreme Court

P.O. Box 30052

Lansing, MI 48909

RE: The solicitation of potential Family Law clients by attorneys

Dear Clerk Davis:

At its March 27, 2010 meeting, the State Bar of Michigan's Representative Assembly voted to support a rule amendment to address the solicitation of clients for matters involving Family Law.

The State Bar of Michigan respectfully submits for consideration by the Michigan Supreme Court the following language that could be adopted either as an amendment to the Michigan Rules of Professional Conduct, §7.3 (adding a new section "c") or as an addition to the Michigan Court Rules §8.xxxx, Administrative Rules of Court:

In any matter involving a family law case in a Michigan trial court, a lawyer may not initiate contact or solicit a party for purposes of establishing a client-lawyer relationship, where the party and lawyer had no pre-existing family or client-lawyer relationship, until the first to occur of the following: service of process upon the party or fourteen (14) days has elapsed from the date of filing of the particular case."

To aid your consideration of the proposal, enclosed are both the proposal submitted to the members, which indicates that there was no known opposition to the proposal, and the transcript of the debate on the proposal, which includes concerns voiced by the State Bar's Ethics committee and the responses to those concerns.

If you have any questions or would like any additional information please contact me. Thank you for your consideration of this proposal.

Sincerely,

Janet K. Welch

Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Elizabeth M. Johnson, Representative Assembly Chairperson
Charles R. Toy, President

Proposal Re: Attorney Solicitation

Issue

Should the State Bar of Michigan adopt the following resolution submitted by the Family Law Council on behalf of the Family Law Section of the State Bar of Michigan calling for an Amendment to **either** the Michigan Rules of Professional Conduct **or** the Michigan Court Rules regarding the solicitation of potential Family Law clients by attorneys?

RESOLVED, that the State Bar of Michigan supports an Amendment to **either** the Michigan Rules of Professional Conduct (MRPC) **or** the Michigan Court Rules regarding the solicitation of potential Family Law clients by attorneys.

FURTHER RESOLVED that the State Bar of Michigan proposes either an Amendment to the Michigan Rules of Professional Conduct, §7.3 (adding a new section "c") or an addition to the Michigan Court Rules §8.xxxx, Administrative Rules of Court the following:

"In any matter involving a family law case in a Michigan trial court, a lawyer may not contact or solicit a party for purposes of establishing a client-lawyer relationship, where the party and lawyer had no pre-existing family or client-lawyer relationship, until the first to occur of the following: service of process upon the party or fourteen (14) days has elapsed from the date of filing of the particular case."

Synopsis

Family Law cases involve unique risks to vulnerable parties, as well as innocent children, not present in other areas of our jurisprudence. There are no current restrictions preventing attorneys from soliciting legal representation of parties who may engage in Domestic Violence **prior to** being served with Personal Protection Orders or Ex Parte Orders intended to safeguard the parties' physical safety and preserve the financial *status quo* between litigants in a Family Law case. This proposal is limited to Family Law cases, insofar as general civil litigation cases do not customarily involve high conflict disputes associated with threats of physical or emotional harm, or dissipation of assets associated with the filing of a case.

Information regarding case filings is readily available to attorneys through personal inspection of public filings, newspapers, and the Internet. There is an alarming incidence of attorneys soliciting prospective representations before a party even knows that an action has been filed, as well as prior to *ex parte* Orders having been entered by the Court, received by the attorney and served upon the other party. Courts do not routinely issue Injunctions or *ex parte* Orders the same day the Family Law case is filed, and there may be a delay between the date of the filing of the case, and the time of issuance or receipt of the *ex parte* Orders by the attorney. This narrow 14 day restriction on solicitation is designed to permit Service of the pleadings prior to a party receiving "notice" via a 3rd party attorney solicitation.

The Family Law Council, on behalf of the Family Law Section, has been working on this issue for a year and a half, and is unanimous in its support for the proposal. In contrast with the initial proposal, the current Resolution is specifically limited to Family Law cases, and the period of restriction is shortened to a bare minimum period of time: fourteen (14) days. The framing of the proposal as either a MRPC Amendment or a Court Rule Amendment is specifically designed to provide maximum flexibility to the Supreme Court in its consideration of these issues.

Background

While the Family Law Council commenced work on this issue in 2008, after lengthy discussion and debate, Council unanimously voted 18-0 on July 30, 2009 to submit a proposed Amendment for consideration by the Representative Assembly at the September 17, 2009 meeting of the Representative Assembly. The initial "information proposal" had been presented at the April, 2009 meeting of the Representative Assembly. At the September 17, 2009 meeting the proposal was "tabled" until the next meeting of the Representative Assembly on March 27, 2010.

The Family Law Council views the issues as of such paramount importance that it recommends that **either** an Amendment to the Michigan Rules or Professional Conduct **or** an Amendment to the Michigan Court Rules address this problem. The Family Law Council does not believe that the "form" of the proposed Amendment (as either a MRPC or Court Rule Amendment) is nearly as important as the critical importance of it being enacted. The proposal "in the alternative" is intended to communicate the flexibility of the Council on the issue.

The current proposal involves far narrower restrictions upon solicitation by attorneys than submitted at the April, 2009 meeting in at least the following respects: (1) the proposal would only apply to Family Law matters, and (2) the *de minimis* restrictions has been reduced from twenty-one (21) days to fourteen (14) days.

Council is convinced that there is a compelling interest in prohibiting a party from evading the specific terms of *ex parte* Orders involving Domestic Violence & Personal Protection, or Restraining Orders prohibiting illegal transfers of assets, during the period of time from presentation of an Order to the Court, and service upon a Party.

There is also a particular vulnerability to parties receiving initial notice of the filing of a Family Law action from a third party solicitation for legal representation, in contrast with traditional service of a Summons & Complaint and customary legal pleadings. The Family Law Council has grave concern over the nature of the third party solicitations which are occurring with increasing frequency.

The "Case Codes" to which this proposal would apply involve the following specific actions: DC; DM; DO; DP; DS; DZ; NA; PJ; PH; PP; or VP. The application to these particular Case Codes is targeted toward application of this narrow restriction to Family Law cases only, and not apply to the remainder of our civil or criminal cases.

Clearly, attorney solicitation issues involve "Commercial Free Speech". However, *Shapero v Kentucky Bar Association* which is referenced in current MRPC 7.3 does **not** preclude all restrictions on attorney solicitation. In fact, *Shapero* affirms that restrictions upon commercial Free Speech are permissible.

Attached is supporting documentation regarding the proposal.

Opposition

None known.

Prior Action by Representative Assembly

This issue was presented to the Representative Assembly as an information item at the April, 2009 meeting. This issue was tabled at the September, 2009 Representative Assembly meeting.

Fiscal and Staffing Impact on State Bar of Michigan

None known.

STATE BAR OF MICHIGAN POSITION By vote of the Representative Assembly on March 27, 2010

Should the Representative Assembly adopt the above resolution?

(a) Yes

or

(b) No

1 pro bono service, please indicate by saying aye.

2 Those opposed say no.

3 Abstentions.

4 The motion in favor of the proposed revision
5 of the Michigan Rules of Professional Conduct 6.1,
6 voluntary pro bono service, passes and is approved.

7 Thank you, Terri Stangl and to Judge Stephens
8 and your committee for your work on this matter.

9 (Applause.)

10 The next item is number 16, consideration of
11 a proposal concerning attorney solicitation. At this
12 time would the proponent, Ms. Elizabeth Sadowski from
13 the 6th circuit, please come forward, and I understand
14 there are also two other presenters, Mr. Carlo Martina
15 and Mr. Jim Harrington, if you would also like to come
16 forward.

17 MS. SADOWSKI: Good afternoon. My name is
18 Elizabeth Sadowski. I represent the 6th circuit. I
19 am also a past chair of the Family Law Section of the
20 State Bar.

21 As you are by now aware, our section has
22 become quite alarmed at the incidence of attorneys who
23 have sent unsolicited letters to clients who are going
24 through domestic relations cases before the defendants
25 in these actions have had the opportunity to be

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1 personally served with the action for divorce or
2 custody or support and before they have been able to
3 receive the injunctive orders that courts typically
4 enter under our Court Rules.

5 Now, I understand from some of you that there
6 are concerns that this is merely hypothetical. I can
7 assure it is not merely hypothetical. Domestic
8 violence and removal of children from the jurisdiction
9 of the state to another state, or worse yet to a
10 foreign state, especially a country that is not part
11 of the Hague convention can have disastrous,
12 disastrous effects.

13 I want to tell you about an incident that
14 happened just within the last 90 days in just one of
15 my cases. In this particular case the husband had
16 retained me but had not yet given me his retainer
17 check. He had borrowed it from his mother. He had it
18 in his pocket. This was a volatile divorce situation
19 to begin with. The wife pulled it out of his pocket,
20 said what's this, became absolutely enraged and
21 started grabbing the children, putting them in the
22 car, telling them to get their clothes and packing, we
23 are leaving for New Hampshire now.

24 In a fortunate turn of events, she then
25 became so enraged at my client that she began to hit

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1 him and strike him, and he called the police. She was
2 arrested. And during the time she was arrested, I was
3 able to file that case and get an immediate ex parte
4 order restraining her from taking those children.

5 Now, whether she had found that check or
6 found a letter in the mailbox would have made all the
7 difference in the world, because if she had gotten to
8 that mailbox and gotten notice of a filing that I had
9 done before she could be served, that woman and those
10 children would have been long gone. It was only
11 because I was fortunate enough to have a judge who was
12 able to give me an ex parte order, sign that order
13 within a day or two and fortunate enough to have a
14 defendant to happen to be cooling her heels in jail
15 overnight that I was able to stop this event.

16 Now we are engaged in an ongoing custody
17 case, custody trial in Oakland County Circuit Court,
18 but for this fortunate chain of events I don't know
19 where those kids would be, but I know they wouldn't be
20 here. They would be gone.

21 We are asking you to approve a motion that
22 our Family Law Section takes as very, very serious.
23 We are asking you to adopt a resolution that our
24 Family Law Council has unanimously approved. We are
25 asking that the State Bar of Michigan support an

1 amendment to either the Michigan Rules of Professional
2 Conduct or the Michigan Court Rules regarding
3 solicitation of potential family law clients by
4 attorneys.

5 Further resolved that the State Bar of
6 Michigan proposes either an amendment to the Michigan
7 Rules of Professional Conduct adding a new section or
8 an addition to the Michigan Court Rules,
9 Administrative Rules of Court as follows:

10 In any matter involving a family law case in
11 a Michigan trial court a lawyer may not contact or
12 solicit a party for purposes of establishing a
13 client/lawyer relationship where the party and lawyer
14 had no preexisting family or client lawyer
15 relationship until the first to occur of the
16 following: Service of process upon the party or 14
17 days has elapsed from the date of filing of the
18 particular case.

19 I am going to ask two of our preeminent
20 members of our Family Law Section to address you next.
21 Mr. Carlo Martina, like I am, is a former chair of the
22 Family Law Section. Mr. Jim Harrington is on our
23 executive board. Both of these individuals are going
24 to talk to you about the seriousness of our situation,
25 and we hope you will give them your attention, because

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1 we do believe this matter is of utmost importance to
2 the families of the state of Michigan and their
3 children. Thank you.

4 MR. MARTINA: Madam Chair and distinguished
5 members of this Representative Assembly. We are here
6 because of a genuine concern that Michigan families
7 are going to suffer irreparable harm if we don't at
8 least to some degree slightly restrict our conduct in
9 the way that potential clients are contacted in
10 domestic relations matters.

11 Our proposal is not about prohibiting
12 attorneys from providing direct, truthful,
13 nondeceptive information, as has been suggested. It's
14 about ensuring that the very reasons for issuing an
15 ex parte order, the prevention of irreparable harm, is
16 not abrogated because someone drops a form letter on a
17 defendant telling them they have been served.

18 Now, I know that there has been concern that
19 we have left two categories out. One has to do with
20 if there is a family member. The other has to do if
21 it's a former lawyer. First, the fact that we left
22 that in this parallels the very language that this
23 august body and the Supreme Court has already approved
24 in the very first sentence of MCR 7.3, that those are
25 exemptions in terms of solicitation.

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1 Someone who is family member, by virtue of
2 that relationship, and is a lawyer may feel compelled
3 to tell them. We can't prohibit that, they are family
4 and a lawyer, but we wouldn't be wanting to prevent a
5 lawyer from contacting, nor would we want to prevent a
6 lawyer from contacting a former client after they have
7 learned that their client has had an action against
8 them. In that particular instance the attorney may be
9 in some better position to be able to give them some
10 perspective.

11 What we are looking at is a situation where a
12 lawyer who has no idea what the case is about, no idea
13 whether or not a restraining order has been issued and
14 no idea that a circuit court judge has been elected by
15 our citizens who has passed judgment based upon the
16 rules of ex parte orders that there has been a showing
17 that not only is there a risk of irreparable harm but
18 also that notice itself will precipitate adverse
19 action before an order can be issued.

20 This has been the law of the land forever.
21 What does this mean? This means that we have accepted
22 as lawyers and as jurists that there are instances
23 where irreparable harm can be caused by mere notice.
24 There is a reason why this is here. There is a reason
25 why it's in the PPO statute. This has been well

1 thought out. There are many instances in which giving
2 somebody notice of that harm is going to precipitate
3 it.

4 Now, yes, there is always going to be people
5 who no matter what an order says, they are going to do
6 it. We can't stop that. But the Supreme Court and
7 the U.S. Supreme Court has made it incumbent upon us
8 to regulate our actions so we don't make the situation
9 worse.

10 There are situations like Liz talked about in
11 terms of taking a child where an ex parte order may
12 make a substantial difference. There are situations
13 where threats are made, that if you file for divorce I
14 will clean out the bank accounts, I will change the
15 beneficiary of the health insurance. You won't be
16 able to get health insurance. I will change
17 beneficiaries on the pension. Oftentimes these can't
18 be undone. Harm happens. There is no insurance
19 coverage.

20 The other interesting thing about this is,
21 besides the fact that Mr. Harrington will talk to you
22 about several U.S. Supreme Court cases that involve
23 very similar rules, realistically speaking, 14 days is
24 a very short period of time. It's less than the time
25 to answer. And, additionally, if the defendant is

1 served in two or three days, an attorney can solicit
2 them all they want. The problem with it is that so
3 often in domestic relations matters there is a lapse
4 between the time that the action is filed, whether
5 it's a personal protection order, custody matter,
6 divorce matter, or separate maintenance, and it's
7 served.

8 And there is also one other issue in terms of
9 just basic privacy. I mean, this time right
10 afterwards is very difficult. Most of us,
11 particularly, for example, in domestic violence cases,
12 we want our -- I mean, I have been doing domestic
13 violence work for 25 years. Nancy Diehl and I had the
14 good fortune of getting a lifetime achievement award
15 on the 25th anniversary of the Wayne County Coalition
16 Against Family Violence. We know something about
17 this. We need to be able to give our clients plans on
18 what to do once that person is served, because we know
19 statistically the chance they will be injured or
20 killed in those first several days are through the
21 roof.

22 And, you know, it's been suggested that the
23 Family Law Section is doing this because we don't want
24 those trollers to take cases from us. Believe me,
25 most of us, just like you, spend enough time doing

1 this that that's the least of our worries. We are
2 contributing our time towards this Bar. That's not
3 why we are doing this. It's because this problem,
4 which has just started and which we can nip in the bud
5 with a very simple rule, is going to pick up momentum,
6 and sooner or later there are going to be tragic
7 events. People are going to do outrageous things, and
8 then the public is going to ask, This was foreseeable.
9 As lawyers we know we have to take action if we know
10 there is a reasonable risk of foreseeable harm. Why
11 didn't you do anything? I think this is our
12 opportunity, and I believe that we need to do
13 something.

14 Mr. Harrington will give you a little bit of
15 background on the Supreme Court issues that Mr. Dunn
16 had addressed.

17 MR. HARRINGTON: Thank you, Carlo. Attached
18 to your materials is an article that I wrote and was
19 published in the March Family Law Journal which I
20 entitled, The Constitutional Case for Controlling
21 Trolling, which is what this petition and motion
22 before you this afternoon is all about. But I would
23 like to briefly give you a little evolution on how we
24 got to where we are today.

25 Three years ago this matter came up when I

1 was on a council, and my initial reaction when someone
2 said they wanted to control attorney solicitation was
3 don't we have enough controls already? Why do we need
4 another rule regulating our behavior? And
5 Judge Hammond spoke at that initial meeting, and
6 Judge Hammond said, from Berrien County, a wise
7 gentleman beyond his years, he said, One dead body is
8 one dead body too many. We need to do something here,
9 not after that dead body gets walked into this room or
10 we have to respond to why we didn't do something when
11 we had opportunity to do something today.

12 The original proposals that we talked about,
13 and we have had a lot of communication back and forth
14 with the Representative Assembly, originally was in
15 all cases you may not solicit direct mail solicitation
16 for a period of 21 days. Then we heard, oh no, that's
17 way too broad. We have to go back and let's just have
18 it in family law case codes, which is what you have
19 here today. And then we heard 21 days is too long.
20 What's the minimum that can possibly be invoked in
21 order to affect this behavior?

22 What you see before you is the narrowest
23 conceivable proposal which will, we believe, help
24 impact a potentially lethal problem. Will a PPO stop
25 a bullet? No. Have PPO's been an instrumental weapon

1 to try and preserve health and safety? Absolutely.

2 I then received feedback, and I am the chair
3 of the Court Rules and Ethics, so feedback comes to
4 me, and my committee, consisting of judges, referees,
5 family law practitioners, nearly all of whom have 20,
6 25 years of experience, began to hear about the
7 constitutional issues. We have a rule in my office.
8 It's called Rule 11, enough research supports your
9 conclusions. I had concluded that I thought this was
10 constitutional, but I read about the Shapero case,
11 which is actually in our MRPC.

12 The Shapero case does not say that you can't
13 pass this proposal. The Shapero case by the United
14 States Supreme Court said you cannot ban all direct
15 mail solicitation, which is the opposite of what we
16 are doing here. We are talking about a minimal 14-day
17 or proof of service, whichever comes first. Shapero
18 also opened the door to state regulation, and it's in
19 the body of the case, state regulation. The Shapero
20 case, and it's in your materials, was followed by
21 Central Hudson holding you can regulate nonmisleading
22 commercial speech where a substantial government
23 interest is at stake.

24 I was asked a question by one of my friends
25 out here who I haven't seen in a while, and said,

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1 Well, Jim, do you any empirical studies to present to
2 us today like they had in the Went For It case. Well,
3 the empirical studies that the United States Supreme
4 Court relied on in the Florida situation were letters,
5 mass mailings that were sent out, and in one part of
6 the response 50 percent of the people felt
7 uncomfortable with direct mail solicitation. These
8 weren't even family law cases. These were ambulance
9 chasers.

10 Justice Souter in the Went For It opinion
11 says you don't have to have empirical studies.
12 Sometimes you can just rely on good old-fashioned
13 common sense. Common sense says that when a judge has
14 issued an ex parte restraining order or a personal
15 protection order, common sense says that the best way
16 to preserve the intention of those orders is that it
17 be served by a process server, that notice not be
18 given by a direct mail solicitation.

19 The support for this is not Oakland County
20 support, it's not Wayne County support. We have had
21 unanimous support for this proposal, every single
22 member that has been on the Family Law Council
23 representing 2,200 members of the section for the last
24 three years. That's our empirical study.

25 Since we have made this proposal, our

1 committee has not received a single negative response
2 to it representing the Family Law Section, and I can
3 also tell you that I have had 13 of my clients, the
4 other side of which have received these targetted
5 solicitations, and the universal reaction has been
6 offense that my divorce, why am I getting a letter
7 from some lawyer that I never even heard about? And
8 that percentage is 100 percent.

9 I think we have the opportunity to do the
10 right thing today. Carlo and I and Liz are urging you
11 to do the right thing today. In my materials I have
12 cited federal statutes where they have a 45-day delay
13 from soliciting representation where there has been
14 mass accidents, 45-day delays where you have got
15 Amtrak or other accidents.

16 The Arizona Bar has passed a 45-day
17 suppression, and some people have suggested, well, why
18 don't we just suppress the files? I submit that that
19 is not a cost effective solution. I submit that we
20 are seeing E-filing in our family law cases in Oakland
21 County. Anything that is going to increase county or
22 state taxes one dollar will be universally opposed,
23 and the message we send out to Lansing with this
24 proposal is we don't want to spend any more dollars.
25 It won't cost any more dollars.

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1 The other thing I want to mention to you is
2 the reason we have put this in the form of either a
3 proposed MRPC or in the form of a Court Rule is we
4 just want it fixed. We don't want to tie ourselves in
5 to whether the Supreme Court will get around it an
6 MRPC two or three years from now or they might get
7 into a Court Rule quicker.

8 The relief that we are asking you to give us
9 today to send us on with your blessing to Lansing is
10 either/or, whatever works. It's a very serious
11 problem, and I submit there is a constitutional
12 solution to it. Thank you.

13 CHAIRPERSON JOHNSON: Thank you very much,
14 Mr. Martina and Mr. Harrington. Ms. Sadowski, I would
15 call you again to the podium. At this time I would
16 entertain a motion concerning your presentation.

17 MS. SADOWSKI: I move the materials as
18 recited in the materials be adopted.

19 MS. FIELDMAN: Excuse me. I am here on
20 behalf of the State Bar Professional Ethics Committee.
21 I have been told I have an opportunity --

22 CHAIRPERSON JOHNSON: You are part of the
23 discussion.

24 MS. FIELDMAN: I am sorry.

25 CHAIRPERSON JOHNSON: Not a problem.

1 There is a motion on the floor. Is there a
2 second?

3 VOICE: Support.

4 CHAIRPERSON JOHNSON: There is a motion and
5 support.

6 I do understand Mr. Bill Dunn, who has
7 written you a letter that was in your materials, is
8 not available today. I do understand that a
9 Ms. Elaine Fieldman is here today, and in accordance,
10 pursuant to Rule 3 of our permanent Rules of
11 Procedure, a committee chair is allowed to have a
12 microphone privilege, and in speaking with our
13 parliamentarian, in Mr. Dunn's stead you may come and
14 present at the podium. No objection.

15 MS. FIELDMAN: Good afternoon. Thank you so
16 much. My name is Elaine Fieldman. I am here
17 representing the State Bar Professional Ethics
18 Committee in opposition to the proposal in front of
19 you this afternoon.

20 The proposed rule restrains certain, not all,
21 lawyers from soliciting prospective clients who are
22 named parties in family law cases, all family law
23 cases, not family law cases where it is alleged that
24 there is a possibility for domestic violence or a
25 possibility that children will be removed from the

1 home, all domestic violence cases for 14 days or until
2 the lawsuit has been served.

3 Listening to the proponents of this rule, it
4 sounds like every family matter case involves children
5 being abducted or violence being committed. The
6 solicitation at issue or the solicitation complained
7 about typically involve a letter being sent to a named
8 defendant saying do you know there has been a case
9 filed against you. I am a divorce lawyer. You can
10 call me.

11 Proponents concede that this very information
12 of the information that there has been a case filed is
13 readily available, public record, in newspapers, on
14 the internet, matters of public record. People can
15 find out about these things. These clients, the
16 prospective clients, these defendants can hear about
17 them from other people, from the newspaper, from the
18 media, from friends, from their ministers, from
19 others. The rule does not prohibit lawyers who have
20 had relationships with these people in the past from
21 telling them about it.

22 So, for example, under the proposed rule a
23 lawyer who learns that an 80-year-old man who has
24 filed a divorce case against his 80-year-old wife who
25 is in a wheelchair can't hear about that divorce case

1 from a lawyer who is trolling, but a 30-year-old man
2 who was previously represented by a lawyer when he
3 beat up his wife can hear about that divorce case
4 being filed from the lawyer who represented him five
5 years ago on that assault case.

6 That's because the proposed rule is aimed at
7 solicitation and not at the threat of domestic
8 violence. There is no requirement that in preventing
9 the solicitation that there be any allegation of a
10 threat or a reasonable suspicion that there is going
11 to be domestic violence, nothing like that. All you
12 have to do is have the suffix, the prefix, whatever,
13 on your complaint that matches a domestic -- a family
14 matter case, and automatically for 14 days or until
15 proof of service is filed you can't send your trolling
16 letter.

17 Now, we have heard that, well, it really is a
18 short period of time, and it's probably less than 14
19 days, because often within two or three days of the
20 proof of service service is made, but there is no
21 requirement that you file a proof of service in two or
22 three days. How does anybody know that service has
23 been made? So for all intents and purposes it's going
24 to be a 14-day period.

25 The cases that were cited to you involving

1 the stay periods -- 45 days, 30 days, 20 days -- in
2 ambulance chasing cases simply don't apply. Those
3 involve, as was stated, ambulance chasing. That's for
4 purposes of starting a lawsuit, where you are looking
5 for plaintiffs.

6 If we are going to analogize it to our
7 situation here, if you saw an article in the paper
8 about a woman in a hospital who was beat up and her
9 husband was under suspicion, he was a person of
10 interest being interviewed by the police, and there
11 was a court rule or there was a statute that said you
12 can't call the wife, the woman sitting in the
13 hospital, and say, you know, you don't have to take
14 this kind of abuse. We are very experienced in
15 handling divorce cases for abused spouses, why don't
16 you let us start a divorce action for you? Then it
17 would be analogous to the ambulance chasing cases.
18 But here we have a case that's already been filed.
19 The solicitation goes to a party, not to a prospective
20 plaintiff.

21 If we want to analogize to the ambulance
22 chasing cases on the other side, you have already had
23 your complaint filed, you had your plane crash, you
24 are representing the family, somebody is representing
25 the family. Would anybody say you can't write a

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1 letter to United Airlines and say did you know a
2 complaint has been filed against you? Would you have
3 to wait 14 days to send a letter to United Airlines?
4 That's how they are trying to analogize it in this
5 situation. The cases simply do not apply.

6 I think we all agree that commercial speech
7 is protected. You can have restrictions. They just
8 have to be very narrowly drawn. Here they are not
9 narrowly drawn. While 14 days may be considered
10 narrow, it's not narrow here, because it applies to
11 every family matter case, not just cases where there
12 is some reasonable chance that you have a problem, and
13 it applies to lawyers in certain situations and not
14 other situations. There is no showing here that there
15 is a bigger danger if you find out from a lawyer who
16 doesn't know the plaintiff -- know the defendant
17 versus if you find out about the case from the
18 newspaper, from a different lawyer, from a family
19 member, from another source, from the internet.

20 In the example that was given, the very
21 personal example that you heard about where the wife
22 found the check in the pocket, she found out that way
23 about a potential divorce case. She didn't find out
24 about it because a lawyer wrote a letter. So there is
25 no showing that this is going to prevent any harm, and

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1 it's very, very, very overbroad. The Ethics Committee
2 urges you not to adopt the proposed rule, and I thank
3 you very much for your time.

4 CHAIRPERSON JOHNSON: Thank you. Is there
5 any further discussion on the motion? Hearing none,
6 there is -- I am sorry. If you would please go to the
7 microphone and indicate -- excuse me, we'll have
8 order. If you will please go to the microphone and
9 give your name and your circuit, please.

10 MS. HAROUTUNIAN: Madam Chair, Ed Haroutunian
11 from the 6th circuit. I have two questions for the
12 proponents. One, what other states have such a rule
13 with regard to the family law area, and, secondly, if
14 a client finds out about a divorce but has not been
15 served, can the attorney ethically deal with that
16 client? Those are the two questions that I have,
17 Madam Chair, and I would hope that someone from the
18 proponent's side would respond.

19 CHAIRPERSON JOHNSON: Mr. Martina, if you can
20 respond to that.

21 MR. MARTINA: I have to say, just like
22 Arizona and Florida and other states who have taken, I
23 think, very responsible moves towards dealing with
24 issues like this, I don't know of other states that
25 have done this. I don't know though if in other

1 states there are people out there who are contacting
2 individuals on family law matters before they are even
3 served. The reality of it is that we know this is a
4 problem for those of us that do family law. You know,
5 a substantial number of cases that get filed do
6 require some sort of ex parte relief, and so what we
7 are trying to do is deal with the problem before it
8 develops a lot of momentum.

9 I really didn't understand the second
10 question. I apologize.

11 MS. HAROUTUNIAN: May I?

12 CHAIRPERSON JOHNSON: Without objection, you
13 may restate.

14 MS. HAROUTUNIAN: For clarification, here is
15 the question. If a client finds out about a divorce
16 but he has not been served with that divorce, can he
17 go to an attorney and speak to the attorney without
18 having been served?

19 MR. MARTINA: Oh, absolutely. First we have
20 to remember, just because an ex parte order is
21 effective when entered, it's not enforceable till
22 served, but the bottom line is that if a person finds
23 out that, absolutely, and they can look at an
24 advertisement to take them to that lawyer or they
25 could have maybe gotten a general solicitation by mail

1 from that lawyer previously, thought, you know, they
2 look competent, they are in the area, I can go to
3 them, or they could have seen them on radio or
4 television or any number of reasons. Absolutely
5 nothing would prevent that whatsoever. The lawyer
6 would be doing nothing wrong.

7 MS. HAROUTUNIAN: In follow up.

8 JUDGE CHMURA: If he wants to finish making a
9 statement.

10 CHAIRPERSON JOHNSON: Sure, and please
11 remember each speaker may only speak once and speak
12 for no more than three minutes.

13 If you want to follow up on your question,
14 yes, you may do that, Mr. Haroutunian.

15 MS. HAROUTUNIAN: The follow-up is, from the
16 attorney's point of view, will the lawyer be somehow
17 ethically, have an ethical problem by speaking to a
18 client who has not been served but who knows that a
19 divorce is coming, and my concern is what does that do
20 to the lawyer, because you are now potentially putting
21 that lawyer on the spot, and in my judgment there are
22 enough things in this world where lawyers are put on
23 the spot.

24 MR. MARTINA: This would not prohibit that at
25 all. If a person --

1 CHAIRPERSON JOHNSON: Mr. Martina, I am
2 sorry. You can't answer that at this point. Thank
3 you.

4 Yes, sir.

5 MR. MCCLORY: Mike McClory from the 3rd
6 circuit. I am a former chair of the Probate Estate
7 Planning Section, so I have enough knowledge to be
8 dangerous about court rules. We dealt with a new
9 probate code. We have a new trust code that takes
10 effect April 1st. I doubt my wisdom in this area,
11 because I don't do anything in it, but I just want to
12 throw out some general things that I think we should
13 consider as we are deliberating this.

14 The first is I was struck by, you know, not
15 really having a valid example of it, like something
16 that actually occurred as a result of solicitation
17 that did cause this harm.

18 The other thing that I am, you know, struck
19 by is that this is how we work with both trust code,
20 probate code, other probate legislation, other court
21 rules. If you don't have a consensus from these
22 different groups and you try to get that, we would not
23 usually go forward. What I am saying is that they
24 have chosen, the Family Law Section, for their own
25 tactical reasons when they had this consensus 18

1 months ago to come to the Bar section to try to get
2 our endorsement to somehow maybe grease the skids.

3 Now, I have never dealt with something along
4 this nature. Why they haven't and why they still
5 don't, and they are free to do so as far as I know,
6 unless this is one of those administration of justice
7 issues, just submit this to the Supreme Court
8 themselves, just to go ahead and do that and then have
9 the comment process go through. I think what we have
10 to be careful with as an organization, however we
11 decide, and I am just really not quite sure what I am
12 going to do myself, is that why they haven't chosen to
13 do that 18 months ago when they had this consensus.

14 The other thing that strikes me is the
15 question Ed asked about no other states having done
16 something similar. For instance, when we were
17 adopting Michigan Trust Code, which takes place
18 April 1st, there are 22 states that have different
19 versions of the Uniform Trust Code, which we drew out
20 significant parts. So that shows we are kind of like
21 in a trend line. We are going along in terms of doing
22 that.

23 I am not saying that there can't be a problem
24 here, but these are all issues from a policy
25 standpoint that we have to consider in terms of doing

1 that, in terms of letting this go ahead on our own if
2 there is this dispute between the two different
3 sections or whether we are so sure that it's
4 overridingly important to go ahead and give this huge
5 endorsement. That's all I have to say.

6 CHAIRPERSON JOHNSON: Thank you, Mr. McClory.

7 MR. KRIEGER: Madam Chair, Nick Krieger from
8 the 3rd circuit. I have a couple questions.
9 Constitutional issues aside, I think it could be more
10 precisely tailored, but that's neither here nor there.
11 I suppose it is, but my real question is what teeth
12 are there here? I mean, would this just be a general
13 grievable offense, and, if so, isn't it already
14 covered by MRPC 7.3(A)? 7.3(A), of course, is very
15 broad, but if you read the official comments, the
16 Supreme Court has stated that it is to be interpreted,
17 you know, in accordance with Shapero. It needs to be
18 read in a limited fashion so as not to violate
19 Shapero. Well, neither would this maybe, at least the
20 proponents say that it wouldn't.

21 So I think it might be a duplication of
22 7.3(A), which, of course, is broader and doesn't just
23 apply to family law cases, but it says that you can't
24 go out and solicit somebody if you are looking for
25 your own pecuniary gain. Well, of course, attorneys

1 always solicit people for their own pecuniary gain,
2 but maybe it's already covered.

3 And the last thing is, if it's in the
4 Professional Rules of Conduct or the Court Rules, I
5 don't think it's anything more than a sanctionable
6 offense, and I want to know if I am wrong about that
7 and if someone who does this could be sanctioned by a
8 trial court. I find no parallel provisions to 7219 or
9 7319 for trial courts, which would allow a trial court
10 to award general sanction for gross violation of the
11 Court Rules or the Michigan Rules of Professional
12 Conduct, whereas the Court of Appeals and the
13 Supreme Court can. So maybe somebody could address
14 that. Thank you.

15 CHAIRPERSON JOHNSON: Thank you, Mr. Krieger.
16 Woman at the microphone here.

17 MS. OEMKE: Kathleen Oemke, 44th circuit. I
18 am speaking in favor of the proposal. The idea that
19 domestic violence is predictable is ridiculous. One
20 never knows when anything is going to erupt. The
21 calmest families can have emotional breakdowns and
22 breakdowns in temperament so that people can be put in
23 danger at a moment's notice.

24 People can find out about their situation in
25 public record if they are looking for it; however, as

1 we all know, people don't go looking for that
2 information unless they have suspicions regarding
3 that.

4 I believe that the previous attorneys or the
5 family members that are attorneys that have contact
6 with the person would have an established method of
7 trust and would be able to assist the people in a
8 domestic arena and perhaps prevent further damage.
9 Thank you.

10 CHAIRPERSON JOHNSON: Thank you, Ms. Oemke.
11 Gentleman here at this microphone.

12 MR. LINDEN: Jeff Linden, 6th circuit. I am
13 not necessarily in favor or against the concept of
14 protecting the perceived harm. I tend to want to
15 protect the perceived harm from occurring. My concern
16 is in line with Mr. Haroutunian's comment that I don't
17 think this proposal gets us there in the following
18 way: It reads in the second clause, A lawyer may not
19 contact or solicit a party for purposes of
20 establishing a client/lawyer relationship.

21 In Mr. Haroutunian's example where a family
22 law defendant becomes aware of the case that has not
23 been either served with the case and the 14 days has
24 not expired and seeks to contact a lawyer, as this is
25 written, that lawyer that is contacted, let's say a

1 voicemail message was left, could not call that person
2 back without violating this proposal. And I don't
3 think that in this circumstance, as written, that the
4 risks to the professional who is not doing the
5 trolling that the people are trying to prohibit stands
6 at risk of having ethical or professional discipline,
7 which I don't believe was intended, and I understand
8 the proponents have argued that that isn't what it
9 says and that's not what's intended, but the language
10 used does appear to be contact, and calling somebody
11 back would be contact for purposes of establishing a
12 special relationship, and if you are not a relative
13 and you don't have prior business with that person,
14 you would violate this proposal, and to that extent I
15 think as written this is overbroad.

16 CHAIRPERSON JOHNSON: Thank you, Mr. Linden.
17 The woman at the microphone over here.

18 MS. WASHINGTON: Good afternoon,
19 Erane Washington, 22nd circuit, and I am neither in
20 favor or opposed. I don't know where I am yet, but I
21 do have some concerns with the way it's currently
22 written as well, and this goes to the issue of
23 predicting. I think that it's not in every case you
24 can predict whether there is going to be domestic
25 violence, but there are indicators. Having done

1 criminal law and some family law, I know that there
2 are indicators and there is a series of standards that
3 are used to determine whether or not someone is going
4 to be a batterer in a domestic situation, and there
5 are indicators with respect to children and whether
6 there is a risk of harm or them being taken out of the
7 city.

8 So my concern is in addressing that I have
9 the overly broad issue with family law in every family
10 law case this particular statute would apply, and I
11 would ask the committee whether or not they would
12 consider imposing some type of a duty on the family
13 law practitioner who is filing the case to provide an
14 affidavit indicating that there is some type of
15 domestic situation going on. In that event it would
16 be narrowly tailored to situations in which there were
17 domestic violence, and then you impose an ethical duty
18 upon the practitioner to actually take a look at that
19 and see whether there is an indicator.

20 And then, secondly, my next concern is that
21 in this particular situation where this rule would
22 apply it seems to go further in basically sending to
23 the public that whole rule that the first to file
24 actually ends up with the right to the children and
25 all those other issues. So I think you have to look

1 at it and deal with the overly broad way that it's
2 written right now.

3 CHAIRPERSON JOHNSON: Thank you. Gentleman
4 over here.

5 MR. WEINER: James C. Weiner from the 6th
6 circuit. Two things. One, I listened to this, and I
7 have feelings both ways, but I would like to say that
8 I think this is simple enough, 14 days and up, it's a
9 bright line rule, and it's actually probably very easy
10 even ethically for us to take a look at.

11 Now, I would like to also propose a friendly
12 amendment to say, A lawyer may not initiate contact or
13 solicit a party. So that gets us around returning
14 phone calls from somebody that's contacted them. That
15 gets us around talking to somebody that they had
16 solicited an attorney.

17 CHAIRPERSON JOHNSON: Mr. Weiner, will you
18 repeat your friendly amendment, then I will ask the
19 proponent if she is in favor of that.

20 MR. WEINER: I would like to add the word
21 "initiate" immediately prior to "contact" on the
22 second line.

23 MS. SADOWSKI: The proponent accepts the
24 friendly amendment.

25 CHAIRPERSON JOHNSON: Thank you,

1 Ms. Sadowski.

2 Is there any further discussion?

3 MR. MIENK: Roy Mienk from the 55th circuit.

4 I think to me the problem is that, as stated, it's a
5 simple rule, and it was originally targetted at a
6 specific problem of trolling. The rule should
7 actually be specific to the problem. I mean, you can
8 analogize this to all kinds of cases. Some of the
9 worst cases I have seen are real estate property line
10 cases, and the neighbors get notice of it, and then
11 they are fighting.

12 So if you are looking to do all cases, then
13 do all cases, but just to limit it to family law, if
14 you are going to do this for trolling, make it
15 specific for trolling. Define trolling and put it in
16 the resolution, because it's just a general rule which
17 to me anybody that did direct mailing would be in
18 violation of, and so now we have got somebody who does
19 a direct mailing in violation of the rule, and he
20 could be brought up on ethical charges, and I think
21 that's where I see the Ethics Committee is coming,
22 that people that are not targetted by the rule would
23 be in trouble.

24 CHAIRPERSON JOHNSON: Thank you very much.

25 Any further discussion?

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1 MS. SADOWSKI: Is response from the proponent
2 allowable?

3 CHAIRPERSON JOHNSON: From the floor, if you
4 want to move to close debate.

5 MR. WEINER: Point of order, shouldn't we
6 vote on the friendly amendment first before we vote
7 on --

8 CHAIRPERSON JOHNSON: No.

9 MR. WEINER: Oh, it's a friendly amendment.

10 CHAIRPERSON JOHNSON: It was accepted.

11 You are the proponent. If you wish to make a
12 final statement, you may.

13 MR. REISER: May I just briefly be heard? If
14 not, I will sit down and we will vote.

15 CHAIRPERSON JOHNSON: She has not come to the
16 podium yet. I will allow it.

17 MR. REISER: John Reiser, 22nd circuit. I
18 don't think this is to address trolling. I think this
19 is to address the extra judicial things that go on
20 prior. It's not the receipt of the letter or the
21 sending of the letter. It's what gets done once they
22 get notice and don't hire the lawyer. It's that which
23 is done prior to the defendant coming in to court,
24 alienating the assets.

25 As an assistant prosecuting attorney in

1 Ann Arbor, I have the luxury of law enforcement
2 policies which strongly favor arrests in domestic
3 violence cases, which means that the defendant is
4 hauled before the court and the conditions are gone
5 over with that defendant. Why I am supporting this is
6 because over the last three years the Family Law
7 Council has unanimously been in favor of it, and I
8 understand that the Family Law Council is attorneys
9 who represent both plaintiffs and defendants, both the
10 wives and the husbands, and if we are nothing, we are
11 an organization which regulates ourself, and those
12 people who know best about this stuff are saying we
13 got to do this to protect people, to protect families,
14 and that's why I would urge our members to support
15 this. Thank you.

16 CHAIRPERSON JOHNSON: Thank you very much,
17 Mr. Reiser.

18 If there is no further discussion, the
19 proponent may make a final statement, and I will call
20 you to the podium, please.

21 MS. SADOWSKI: As Mr. Reiser stated, this is
22 not an anti-trolling statute. This is a proposal to
23 stop prior notice in order to prevent irreparable
24 injury, loss, other damage resulting from the delay
25 required to effect notice or that notice will

1 precipitate adverse action before an order is issued.
2 That's what this is about. It is the problem with the
3 notice requirement that would violate an ex parte
4 order, the spirit of an ex parte order already in our
5 statutes.

6 Our special proceedings section of our Court
7 Rules, the 3.200, is inclusive of all family law
8 matters. Thank you.

9 CHAIRPERSON JOHNSON: Thank you very much.
10 There is now a motion on the floor, and the debate has
11 been closed with the final proponent. There is a
12 motion and a second on the floor to move the proposal
13 as presented with the one word "initiate" inserted.

14 Hearing no further discussion, all those in
15 favor of the proposal for attorney solicitation as
16 proposed with the insertion please signify by saying
17 aye.

18 All those opposed say no.

19 Any abstentions?

20 VOICE: Division.

21 CHAIRPERSON JOHNSON: At this point I have
22 heard a call for division. There is no debate. I
23 would ask -- I am going to repeat the request again,
24 and I am going to ask you to stand. Will the clerk
25 and the vice chairperson please count the votes.

1 Those in favor of the proposal for the
2 attorney solicitation with the one word "initiate"
3 inserted, please stand now.

4 (Votes being counted.)

5 CHAIRPERSON JOHNSON: Thank you. Those
6 members may be seated. All those opposed please stand
7 now.

8 (Votes being counted.)

9 CHAIRPERSON JOHNSON: Thank you. You may all
10 be seated. The tellers have counted. The votes were
11 68 aye, 43 no. The motion carries. Thank you to all
12 who participated in this, the Family Law Section, the
13 Civil Procedure Committee. We appreciate very much
14 your involvement in this issue.

15 The next and final item on our calendar is
16 number 17, which is an informational update from the
17 Special Issues Committee considering the revised
18 Uniform Arbitration Act, and at this time I would like
19 to call to the podium the chairperson of the Special
20 Issues Committee, Ms. Krista Licata Haroutunian for
21 her report of the Special Issues Committee.

22 MS. HAROUTUNIAN: Good afternoon. My name is
23 Krista Licata Haroutunian. I am chair of the Special
24 Issues Committee. I am from the 6th circuit.

25 I wanted to, number one, thank the officers,

Order

Michigan Supreme Court
Lansing, Michigan

December 2, 2011

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2010-22

Michael F. Cavanagh
Marilyn Kelly
Stephen J. Markman
Diane M. Hathaway
Mary Beth Kelly
Brian K. Zahra,
Justices

Proposed Amendment of Rule 7.3
of the Michigan Rules of Professional
Conduct (Regarding Solicitation of Potential
Family Law Clients by Attorneys)

On order of the Court, this is to advise that the Court is considering an amendment of Rule 7.3 of the Michigan Rules of Professional Conduct. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will be considered at a public hearing. The notices and agendas for public hearings are posted at www.courts.michigan.gov/supremecourt/resources/administrative/ph.htm.

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.

[The present language is amended with new language indicated
in underlining and deleted language overstricken.]

Rule 7.3 Direct Contact with Prospective Clients

- (a) A lawyer shall not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for doing so is the lawyer's pecuniary gain. The term "solicit" includes contact in person, by telephone or telegraph, by letter or other writing, or by other communication directed to a specific recipient, but does not include letters addressed or advertising circulars distributed generally to persons not known to need legal services of the kind provided by the lawyer in a particular matter, but who are so situated that they might in general find such services useful, nor does the term "solicit" include "sending truthful and nondeceptive letters to potential clients known to face particular legal problems" as elucidated in *Shapero v Kentucky Bar Ass'n*, 486 US 466, 468; 108 S Ct 1916; 100 L Ed 2d 475 (1988). However, in any matter that involves a family law case in a Michigan trial court, a

lawyer shall not initiate contact or solicit a party to establish a client-lawyer relationship until the initiating documents have been served upon that party or 14 days have passed since the date the document was filed, whichever action occurs first. This limitation does not apply if the party and lawyer have a pre-existing family or client-lawyer relationship. For purposes of this rule, "family law case" includes the following case-type code designations from MCR 8.117: DC, DM, DO, DP, DS, DZ, NA, PJ, PH, PP, or VP.

- (b) A lawyer shall not solicit professional employment from a prospective client by written or recorded communication or by in-person or telephone contact even when not otherwise prohibited by paragraph (a), if:
- (1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or
 - (2) the solicitation involves coercion, duress, or harassment.

Staff Comment: This proposal was submitted by the State Bar of Michigan Representative Assembly. The proposed amendment is designed so that it would limit situations in which an attorney soliciting new clients would inform a defendant or respondent that an action has been filed against him or her before the defendant or respondent is served with the papers. The bar argues that allowing attorneys to notify defendants before service leads to greater risk of domestic violence against the filing party or other illegal actions (such as absconding with children or removing assets from a joint bank or other financial account) that may occur before service can be completed.

The staff comment is not an authoritative construction by the Court.

A copy of the 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 March 1, 2012, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2010-22. Your comments and the comments of others will be posted at www.courts.mi.gov/supremecourt/resources/administrative/index.htm.

HATHAWAY, J. When commenting on the proposed amendment to the rule, please address whether the proposed amendment is consistent with *Shapero v Kentucky Bar Ass'n*, 486 US 466; 108 S Ct 1916; 100 L Ed 2d 475 (1988), or raises any other constitutional concerns.



I, Corbin R. Davis, 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.

December 2, 2011

Corbin R. Davis

Clerk

FAMILY LAW SECTION

OFFICERS

CHAIR

Connie R. Thacker
Rhoades McKee PC
161 Ottawa Ave NW Ste 600
Grand Rapids, MI 49503-2766

CHAIR-ELECT

Traci L. Rink, Pontiac

RECORDING SECRETARY

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CORRESPONDING SECRETARY

Rebecca E. Shiemke, Ann Arbor

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Donald E. McGinnis, Jr., Troy

December 5, 2011

Mr. Corbin R. Davis
Clerk, Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

Re: AM 2010-22 & MRPC 7.3:
Controlling Family Law Attorney "Trolling"

Dear Mr. Davis:

The Family Law Council, representing the Family Law Section of the State Bar of Michigan, unanimously voted 19-0 to support AM 2010-22 at its December 3, 2011 meeting. The proposed Court Rule Amendment is carefully tailored to restrict an attorney's targeted solicitation of a party to a divorce case for the lesser of fourteen (14) days or service of process on the other party.

The Family Law Section has been a strong proponent of controlling the increasingly widespread practice of attorneys soliciting the representation of prospective clients prior to a party having been served with a copy of a Complaint, Injunctions against Transfer of Assets, Temporary Custody Orders, Personal Protection Orders or other initial pleadings in a Divorce case.

This practice is commonly referred to as "trolling" for Divorce clients. It typically involves an attorney inspecting the case filings in a County and immediately soliciting the representation of a client by mail or otherwise. These are "targeted" solicitations because they are directed to persons who have actually been named as defendants or parties in a family law case.

Because *ex parte* relief, injunctions, temporary restraining Orders, Personal Protection Orders may still be in process, a party in receipt of a targeted solicitation prior to being served with the pleadings and Orders in a family law case, is not yet subject to the jurisdiction of the court, and advance notice furnishes the opportunity to transfer assets, change beneficiary designations, remove the children from their custodial environment, or otherwise avoid and evade Court process prior to being served with the Complaint, Injunctions, Restraining Orders, Personal Protection Orders or other pleadings.

This is a matter of grave concern to the Family Law Section because “tipping off” a Defendant in a family law case to a divorce or family law case filing before a party can be served with the Complaint, or a Personal Protection Order, or an Ex Parte Order substantially increases the risk of physical or economic harm to the Plaintiff or the children involved in a *high conflict* divorce. Michigan law is clear that prior to issuance of an injunction, or an *ex parte* order, or an order restraining the transfer of assets, the trial Court must make a specific determination, based upon well pled facts, that *irreparable harm* in the form of physical or economic injury is imminent.

Our Michigan statutes and common law authorize PPOs, injunctions, temporary Custody Orders, asset restraining Orders, and other injunctive relief which may clearly be frustrated when the a party receives advance notice through a targeted solicitation from an unknown attorney prior to service of a Complaint, or service of an injunction, restraining Order, personal protection order or other ex parte Order from a trial court. Until an injunction or restraining Order is served upon a Defendant there is **nothing**: (1) prohibiting a party from seizing children and passports and fleeing the County; (2) from emptying out bank accounts, and fleeing the jurisdiction; (3) from changing beneficiary insurance designations, transferring money or assets into the hands of third parties; (4) from assaulting, wounding, molesting or beating the other party.

Justice Hathaway has requested that *Shapero* issues be addressed in any commentary to AM 2010-22. Constitutional restrictions upon commercial free speech are a relevant consideration in this discussion.

SHAPERO v KENTUCKY BAR ASSOCIATION

The case of *Shapero v Kentucky Bar Association*, 496 U.S. 466 (1988) is neither a bar nor an impediment to controlling lawyer *trolling* in family law cases. *Shapero* involved a foreclosure proceeding, not a family law case. Injunctions, ex parte orders, restraining orders, and personal protections orders are neither regular nor routine in foreclosure cases. These were not considerations in the *Shapero* case.

Shapero challenged a **total ban** on targeted, direct mail solicitation by attorneys. Contrast this with AM 2010-22, which restricts attorney solicitation to the **first to occur** of either service of process of the Complaint and other pleadings, or fourteen (14) days. This temporary waiting period is the **opposite** of a total ban on attorney solicitation. This temporary ban could be a minimal as a day or two, depending upon service upon the Defendant, and not longer than a maximum period of fourteen (14) days.

Moreover, *Shapero, id* at 476, reaffirmed the power of the State to regulate abuses, which might require attorneys to file their proposed solicitation letter with the state:

“The state can regulate such abuses and minimize mistakes through far less restrictive and more precise means, the most obvious of which is to require the lawyer to file any solicitation letter with a state agency.”

However, the *Shapero* suggestion of “filing a letter with the State” ignores the stark reality that providing prior advance notice to a party who may be served with an Injunction or Restraining may invite the very conduct sought to be restrained by Court Order. Approving the generic content of a targeted solicitation to a prospective defendant utterly fails to address to issues of prior notice to a party about to be served with a Complaint for Divorce and *ex parte* restraining orders, injunctions, or a personal protection order.

FLORIDA BAR v WENT FOR IT

The United States Supreme Court specifically **upheld** a 30 day “blackout period” prohibiting the solicitation victims of accidents in *Florida Bar v Went For It*, 515 U.S. 618 (1995). The Supreme Court noted that “pure commercial advertising” has “...always reserved a lesser degree of protection under the First Amendment”, *id.* at 635.

The Supreme Court concluded:

“We believe that the Bar’s 30 day restriction on targeted direct mail solicitation of accident victims and their relatives withstands scrutiny under the three pronged Central Hudson test that we have devised for this context. The Bar has substantial interest both in protecting injured Floridians from invasive conduct by lawyers and preventing the erosion of confidence in the profession that such repeated invasions have engendered.”

The *Florida Bar v Went For It* case is good law today.

Significantly, AM 2010-22 is **even less restrictive** than the Florida rule: (1) It only applies only to family law cases; (2) the longest period of restriction is fourteen (14) days — less than half the thirty (30) days in Florida; (3) the restriction disappears if the other party is served with process, which may only involve a day or two delay; (4) AM 2010-22 is carefully and precisely constructed to impose minimal limitation upon direct or targeted lawyer solicitation, and does not deal with the content of the solicitation. .

RESTRICTIONS ON COMMERCIAL FREE SPEECH ARE SUBJECT TO A FOUR PRONG FREE SPEECH TEST

The *Shapero* case has frequently been suggested as standing for the proposition that it is “unconstitutional” to impair the free speech/commercial advertising rights of attorneys. A careful reading of *Shapero* makes clear it did **not** stand for this proposition. Subsequently, *Florida Bar v Went For It* confirmed the right of the State to impose a 30 ban on direct, targeted solicitation to accident victims.

When dealing with regulation of commercial free speech, which the *Florida Bar* case held was subject to “lesser” standards of protection. Moreover, and even prior to *Shapero*, the United States Supreme Court had enunciated the four prong test to regulate

commercial speech in *Central Hudson Gas & Electric v Public Service Commission*, 447 U.S. 557 (1980) which **can** be regulated if (1) If the advertising is not accurate it can be suppressed. (2) If the Government has a *substantial interest* in the restrictions, speech can be restricted. (3) A showing that the restriction is something more than “ineffective” or “remote support” for the asserted purpose. (4) If the restriction could be the subject of a more limited restriction, it may be subject to challenge.

Subsequent to the *Central Hudson Gas* case, the United States Supreme Court relaxed this test, and held in *Board of Trustees v Fox*, 492 U.S. 469 (1980) ruled that there must only be a “reasonable fit” between the goals and the restriction.

Clearly there is a “reasonable fit” between the goal of preventing advance notice of a filing of a complaint, restraining orders, personal protections orders, and other injunctions in a family law case and prohibiting the targeted solicitation. What valid public policy goal can possibly be asserted in arguing that persons who are the subject of Court Orders are entitled to “advance notice” prior to their being effective?

What about “suppressing all family law files”? This is not a reasonable solution because: (1) it is overbroad, (2) it would make it more difficult for attorneys to exercise their commercial free speech rights, (3) would interfere with the rights of the public to access court files and records; and (4) it would impose a significant additional cost upon counties, courts, and clerks who are already resource strained. Is there any conceivable lesser period of time for the restriction to be meaningful or effective? Hardly. It is common place in divorce cases, particularly in the larger population areas, for **ex parte** orders to take several days to enter. It may take even longer for them to be returned to counsel for service of process. Moreover, the advent of “e-filing” in many counties makes it impossible for counsel to personally deliver the proposed orders and injunctions to the assigned judge.

Significantly, AM 2010-22 does **not** preclude either the attorney or the public from examining and inspecting public files and records; it does **not** prohibit the direct solicitation of the prospective client. It does not prevent the soliciting attorney from drafting the solicitation letter and putting postage on it — it only delays the mailing! ADM 2010-22 does impose an absolute minimal period of time prior an attorney being able to forward the direct, targeted solicitation. This “waiting period” of fourteen (14) days will be even shorter if the attorney for the Plaintiff files a Proof of Service, further reducing the impact of the restriction.

**TEMPORARY RESTRICTIONS ON TARGETED SOLICITATIONS ARE
COMMON THROUGHOUT THE UNITED STATES.**

A recent case from the 2nd Circuit Court of Appeals has exhaustively analyzed the constitutionality of 30 day “moratoriums” applicable to personal injury or wrongful death cases in the State of New York; *Alexander v Cahill*, 598 F. 3rd. 79 (2010) **affirmed** the 30 day moratorium on targeted solicitations of accident victims.

In the course of its analysis, the Court of Appeals noted, *id* at p. 98, the following states that have banned direct, targeted solicitation in personal injury or wrongful death cases: (1) Ariz. Rules of Prof'l Conduct R. 7.3(b)(3) (prohibiting "written, recorded or electronic communication or by in-person, telephone or real-time electronic" solicitation where "the solicitation relates to a personal injury or wrongful death and is made within thirty (30) days of such occurrence"); (2) Conn. Rules of Prof'l Conduct R. 7.3(b)(5) (imposing a forty-day moratorium on "written or electronic communication concern[ing] an action for personal injury or wrongful death"); (3) Ga. Rules of Prof'l Conduct R. 7.3(a)(3) (imposing a thirty-day moratorium on "written communication concern[ing] an action for personal injury or wrongful death"); (4) La. Rules of Prof'l Conduct R. 7.3(b)(iii)(C) (imposing a thirty-day moratorium on communication "concern[ing] an action for personal injury or wrongful death"); (5) Mo. Rules of Prof'l Conduct 7.3(c)(4) (prohibiting written solicitation, including by e-mail, "concern[ing] an action for personal injury or wrongful death ... if the accident or disaster occurred less than 30 days prior to the solicitation"); (6) Tenn. Rules of Prof'l Conduct R. 7.3(b)(3) (prohibiting solicitation of "professional employment from a potential client by written, recorded, or electronic communication or by in-person, telephone, or real-time electronic contact" if "the communication concerns an action for personal injury, worker's compensation, wrongful death, or otherwise relates to an accident or disaster involving the person to whom the communication is addressed ... unless the accident or disaster occurred more than thirty (30) days prior to the mailing or transmission of the communication.

***CONGRESS HAS MIRRORED STATE RESTRICTIONS ON ATTORNEY
SOLICITATION IN AIRLINE CASES.***

A paramount example of Federal concern over the rights of parties to be free from improper solicitation by attorneys or their representatives has occurred in airline cases. It is illegal under Federal Law to solicit victims or the families of victims of airline crashes for a period of time after a crash. The Aviation Disaster Federal Assistance Act of 1996, Pub. L. No. 104-264, 110 Stat. 3213 (codified at 49 U.S.C. 1136 (2006)). This Act was amended in 2000 and the moratorium extended to 45 days. No challenge has ever been brought to this Statute.

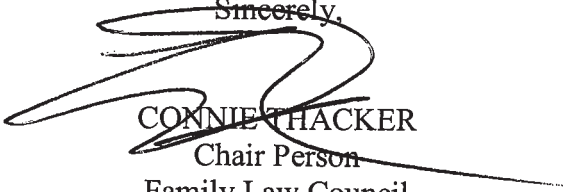
CONCLUSION

Not all divorces are *high conflict* divorces. Not all divorces involve assault, battery, mayhem, murder, misappropriation of assets, kidnapping of children out of the Country, or pillaging of a marital estate. However, our Statutes specifically provide for orderly processes designed to prevent irreparable harm to parties and children.

These processes involve *ex parte* relief, injunctions, restraining orders, temporary custody orders, and personal protection orders. The public policy of the State of Michigan is subverted by *family law trolls* who provide advance notice to litigants, prior to their being served with legal process. The public policy of the State of Michigan is sabotaged when a party to a divorce case is able to act with impunity because of advance knowledge of a pending injunction or restraining order.

When this issue first came to the Family Law Council nearly four (4) years ago, Circuit Judge John Hammond, Berrien County, forcefully and passionately argued that “one dead body is too many”. If a single irreparable injury is prevented by approval of ADM 2010-22, then this goal will have been accomplished. The family law section, and the Michigan Supreme Court, should not have to wait for “one dead body” prior to taking action on this critical issue.

Sincerely,



CONNIE HACKER
Chair Person
Family Law Council
Family Law Section - State Bar of Michigan



To: Members of the Public Policy Committee
Board of Commissioners

From: Government Relations Team

Date: April 17, 2020

Re: HB 5304 – Judges of the Court of Claims

Background

The bill, generally speaking, would transfer the Court of Claims from the Court of Appeals to circuit court judges assigned by the Supreme Court.

The Court of Claims is the court with the jurisdiction over claims and demands against the State of Michigan and any of its departments, commissions, boards, institutions, arms, or agencies. It also has jurisdiction over any counterclaim on the part of the state against any claimant who brings an action in the Court of Claims.

Prior to 2013, under the Revised Judicature Act, the Court of Claims was created as a function of the circuit court for the 30th Judicial Circuit (Ingham County). Judges of that circuit exercised the jurisdiction of the Court of Claims. In 2013, the legislature transferred the Court of Claims from the 30th Judicial Circuit to the Court of Appeals. Under Public Act 164 of 2013, the Court of Claims has consisted of four appeals court judges from at least two Court of Appeals districts assigned by the Michigan Supreme Court.

Under House Bill 5304, the Court of Claims would consist of four or more circuit court judges as assigned by the Supreme Court. The bill contains provisions to ensure geographic diversity among the assigned circuit court judges by requiring that there must be at least one judge appointed from each district of the Court of Appeals along with additional requirements to ensure judges from an array of different population sized counties are appointed. The clerk of the Court of Appeals would continue to serve as the clerk of the Court of Claims, and would assign cases to the Court of Claims judges by blind draw. Finally, the bill provides for the counties from which the circuit court judge are appointed to be reimbursed for reasonable and actual costs incurred by the counties in performing the functions of the Court of Claims.

***Keller* Considerations**

This bill would directly impact the functioning of the Court of Claims by transferring the Court of Claims from the Court of Appeals to selected circuit court judges.

Keller Quick Guide

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

Staff Recommendation

The bill satisfies the requirements of *Keller* and can be considered on its merits.

House Bill 5304 (2019)  rss?Friendly Link: <http://legislature.mi.gov/doc.aspx?2019-HB-5304>**Sponsors**

Graham Filler (district 93)

Brian Elder

(click name to see bills sponsored by that person)

Categories

Courts: judges; Courts: circuit court; Courts: court of appeals;

Courts; judges; procedure for certain circuit court judges to sit as judges of the court of claims; establish. Amends secs. 6404, 6410 & 6413 of 1961 PA 236 (MCL 600.6404 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**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
12/19/2019	HJ 115 Pg. 2102	introduced by Representative Graham Filler
12/19/2019	HJ 115 Pg. 2102	read a first time
12/19/2019	HJ 115 Pg. 2102	referred to Committee on Judiciary
12/31/2019	Expected in HJ 116	bill electronically reproduced 12/31/2019

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HOUSE BILL NO. 5304

December 19, 2019, Introduced by Reps. Filler and Elder and referred to the Committee on Judiciary.

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

by amending sections 6404, 6410, and 6413 (MCL 600.6404, 600.6410, and 600.6413), as amended by 2013 PA 164.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 6404. (1) The court of claims consists of 4 ~~court of appeals judges from at least 2 court of appeals districts or more judges of the circuit court~~ assigned by the supreme court as provided in this subsection. A ~~court of appeals judge~~ judge of the circuit court while sitting as a judge of the court of claims may exercise the jurisdiction of the court of claims as provided by law. In assigning the judges of the circuit court who will sit as judges of the court of claims, the supreme court shall ensure all of the following:

(a) Not less than 1 judge of the circuit court in each of the 4 court of appeals districts is assigned to sit as a judge of the court of claims.

(b) Not less than 1 judge of the circuit court from a county with a population of less than 60,000 people is assigned to sit as a judge of the court of claims.

(c) Not more than half of the judges of the circuit court assigned to sit as judges of the court of claims are from counties that have populations of more than 250,000 people.

(2) All matters pending in the court of claims as of the effective date of the amendatory act that added ~~amended~~ this subsection shall ~~must~~ be transferred to the clerk of the court of appeals, acting as the clerk of the court of claims, for assignment to a ~~court of appeals judge~~ the judge of the circuit court sitting as a court of claims judge pursuant to section 6410. The transfer ~~shall be~~ is effective on the effective date of the amendatory act that added ~~amended~~ this subsection. After a matter is assigned to the judge of the circuit court, the clerk of the circuit court where the matter is assigned shall act as the clerk of the court of claims for that matter.

(3) Beginning on the effective date of the amendatory act that added ~~amended~~ this subsection, any matter within the jurisdiction of the court of claims described in section 6419(1) pending or later filed in any court must, upon notice of the state or a department or officer of the state, be transferred to the court of claims described in subsection (1). The transfer ~~shall be~~ is effective upon the filing of the transfer notice. The state or a department or officer of this state shall file a copy of the transfer notice with the clerk of the court of appeals, who shall act as the clerk of the court of claims, for purposes of assignment to a ~~the judge of the circuit court of appeals judge~~ sitting as a court of claims judge pursuant to section 6410. After a matter is assigned to the judge of the circuit court, the clerk of the circuit court where the matter is assigned shall act as the clerk of the court of claims for that matter.

(4) If a judge assigned to serve on the court of claims is disabled, disqualified, or otherwise unable to attend to a matter, another judge assigned to sit as a judge of the court of claims may continue, hear, determine, and sign orders and other documents in the matter. The

state court administrator may assign a replacement judge to sit as a court of claims judge for that matter only.

(5) ~~In case a court of appeals~~ **If a** judge designated to sit as the judge of ~~assigned to~~ **serve on** the court of claims dies before signing a judgment and after filing a finding of fact or rendering an opinion upon proof submitted and argument of counsel disposing of all or part of the issues in the case involved, a successor as judge of the court of claims may proceed with that action in a manner consistent with the finding or opinion and the judge is given the same powers as if the finding of fact had been made or the opinion had been rendered by the successor judge.

(6) A judge assigned as ~~a judge of~~ **to serve on** the court of claims shall ~~must~~ be assigned for a term of 2 years and may be reassigned at the expiration of that term.

(7) The term of a judge of the court of claims expires on May 1 of each odd-numbered year.

(8) When a judge who is sitting as a judge of the court of claims leaves office or is otherwise unable to serve as a judge of the court of claims, the supreme court may assign a ~~court of appeals judge~~ **judge of the circuit court** to serve for the remainder of the judge's term on the court of claims.

(9) The supreme court shall select a chief judge of the court of claims from among the ~~court of appeals judges~~ **judges of the circuit** assigned to the court of claims.

Sec. 6410. (1) The clerk of the court of appeals shall serve as the clerk of the court of claims **for purposes of receiving a filing under subsection (2), or for filing a notice of intention to file a claim under section 6431, assigning a cause of action under subsection (3), and all other matters requiring the attention of the clerk in a matter before the case is assigned under subsection (2).**

(2) A plaintiff ~~may~~ **shall** file a cause of action in the court of claims in any court of appeals district. **After issuing a summons, the clerk of the court of appeals shall forward a cause of action filed under this section to the clerk of the circuit court in which the matter will be heard. After a matter is forwarded as provided in this subsection, the clerk of the circuit court where the matter is assigned shall act as the clerk of the court of claims for that matter.**

(3) The clerk of the court of ~~elaims~~ **appeals** shall, by blind draw, assign a cause of action filed in the court of claims to a **judge of the circuit** court ~~of appeals judge~~ sitting as a court of claims judge.

(4) For making copies of records, proceedings, and testimony and furnishing the same at the request of the claimant, or any other person, the clerk of the court of claims or any reporter or recorder serving in the court of claims shall ~~be~~ **is** entitled, in addition to salary, to the same fees as are by law provided for court reporters or recorders in the circuit court. No charge shall ~~may~~ be made against the state for services rendered for furnishing copies of records, proceedings, or testimony or other papers to the attorney general.

(5) Process issued by the court may be served by any member of the Michigan ~~department of~~ state police as well as any other officer or person authorized to serve process issued out of the circuit court.

Sec. 6413. (1) The court of claims shall sit in the **circuit** court ~~of appeals district~~ where ~~a~~ **the judge of the circuit** court ~~of appeals judge~~ serving as a judge of the court of claims sits, unless otherwise determined by the chief judge of the court of claims.

(2) **The state shall reimburse the counties in which the court of claims sits for the reasonable and actual costs incurred by those counties for implementing jurisdictional duties in the circuit court imposed on the counties by this chapter. The counties in which the court of claims sits shall submit quarterly the counties' itemized costs as described in this section to the state court administrative office. After determination by the state court administrator of the reasonableness of the amount to be paid, payment must be made under the accounting laws of this state. Determination of reasonableness by the state court administrator is conclusive.**

**Public Policy Position
HB 5304**

Recommended Amendments

Explanation

The committee did not take a position on the policy underlying the legislation, namely whether the Court of Appeals or Circuit Court judges should hear Court of Claims cases; however, should the bill proceed, the committee recommends the following changes:

To ensure a timely transition, the bill should include a clear deadline for the clerk of the court of appeals to transfer pending claims to the appropriate circuit court. Therefore, the committee recommends that Section 2 of MCL 600.6410 be amended to require all transfers to be completed within 90 days.

The committee recommends inserting the word “court” before the phrase “assigned to the court of claims” in section 9 of MCL 600.6404 to improve the clarity and consistency of language within the statute.

The committee recommends the amended bill read (recommended change shown in bold and underline):

The supreme court shall select a chief judge of the court of claims form among the ~~court of appeals judges~~ **judges of the circuit court** assigned to the court of claims.

To account for circumstances in which multiple cases or an entire docket (rather than a single matter) must be transferred to another judge due to disability or disqualification of the sitting judge, the committee recommends amending subsection Section 3 of MCL 600.6404(3) as follows (recommended change shown in bold and underline, recommended deletion shown in bold and strikethrough):

If a judge assigned to a serve on the court of claims is disabled, disqualified, or otherwise unable to attend to a matter, another judge assigned to sit as a judge of the court of claims may continue, hear, determine, and sign orders and other documents in the matter. **The state court administrator may assign a replacement judge to sit as a court of claims judge ~~that matter~~ for those matters only.**

In addition, for consistency, the committee recommends changing all references to the word “shall” to the word “must.”

Position Vote:

Voted For position: 20

Voted against position: 0

Abstained from vote: 0

Did not vote (due to absence): 7



Keller Explanation:

HB 5304 is *Keller* permissible as it affects the functioning of both the circuit and appellate courts.

Contact Person: Randy J. Wallace

Email: rwallace@olsmanlaw.com

Public Policy Position HB 5304

Support

Explanation

The Appellate Practice Section Council has voted unanimously in support of HB 5304, under which the Michigan Court of Claims would consist of four or more geographically representative circuit court judges, rather than judges of the Court of Appeals as under the current scheme.

We support this legislation for the same reasons we opposed SB 652 in 2013, under which the functions of the Court of Claims were transferred from the Ingham County Circuit Court to a newly reconstructed body consisting of four judges of the Court of Appeals. Specifically, we argued that this legislation would have an adverse impact on the fair and efficient administration of appellate justice in Michigan, both because of inefficiencies and delay caused by the new trial-level responsibilities of appellate judges, and because of the structural irregularities inherent in relying on the Court of Appeals to review of the decisions of its own judges.

Time and experience have not dispelled our concerns. We support HB 5304 because it proposes a more sensible separation of the Court of Claims from the Court of Appeals.

Position Vote:

Voted For position: 23

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 1

Keller Permissibility

The improvement of the functioning of the courts

The availability of legal services to society

State Bar advocacy is appropriate because this legislation would improve the efficiency and fairness of the legal process.

Contact Person: Bradley R. Hall

Email: bhall@sado.org

**Public Policy Position
HB 5304**

Support

Position Vote:

Voted For position: 21

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 6

Contact Person: Lisa Sullivan

Email: sullivanl@clinton-county.org

To: Members of the Public Policy Committee
Board of Commissioners

From: Government Relations Team

Date: April 17, 2020

Re: HB 5442 – Compensation for District Court Judges

Background

HB 5442 changes the salary calculations for district court judges. The bill would provide pay equity for judges across Michigan’s three trial courts. Currently, district court judges receive lower salaries than circuit court and probate court judges. The Judicial Section supported the bill, explaining that pay parity is appropriate particularly because of “the use of blanket cross assignments and the assignment of circuit/family division work to District Judges.”

***Keller* Considerations**

The Judicial Section determined that this bill was *Keller*-permissible in that it relates to the functioning of the courts. Historically, the Board has found judicial compensation bills to be *Keller*-permissible. For example, in 2015, the Board supported SB 56 which introduced overarching reforms to the judicial compensation system.

***Keller* Quick Guide**

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

Staff Recommendation

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

House Bill 5442 (2020)  rss?Friendly Link: <http://legislature.mi.gov/doc.aspx?2020-HB-5442>**Sponsors**

Brian Elder (district 96)

Ronnie Peterson, Tyrone Carter, Jim Haadsma, Frank Liberati, Julie Brixie, Tim Sneller

(click name to see bills sponsored by that person)

Categories

Courts: district court; Courts: circuit court; Courts: judges;

Courts; district court; compensation for district court judges; increase. Amends sec. 8202 of 1961 PA 236 (MCL 600.8202).

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****Revised Summary of Proposed H-1 Substitute (3/12/2020)**

This document analyzes: HB5442

History

(House actions in lowercase, Senate actions in UPPERCASE)

Date	Journal	Action
2/4/2020	HJ 12 Pg. 173	introduced by Representative Brian Elder
2/4/2020	HJ 12 Pg. 173	read a first time
2/4/2020	HJ 12 Pg. 173	referred to Committee on Judiciary
2/5/2020	HJ 13 Pg. 186	bill electronically reproduced 02/05/2020

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HOUSE BILL NO. 5442

February 04, 2020, Introduced by Reps. Elder, Peterson, Tyrone Carter, Haadsma, Liberati, Brixie and Sneller and referred to the Committee on Judiciary.

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

by amending section 8202 (MCL 600.8202), as amended by 2016 PA 31.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 8202. (1) A district judge ~~shall~~**must** receive an annual salary payable by this state as calculated under this section.

(2) In addition to the salary received from this state under subsection (1), a district judge may receive from a district funding unit in which the judge regularly holds court an additional salary as determined by the governing legislative body of the district funding unit as provided in this section. Supplemental salaries paid by a district funding unit ~~shall~~**must** be uniform as to all judges who regularly hold court in the district funding unit. However, the total annual additional salary paid to a district court judge by the district funding units in which the judge regularly holds court ~~shall~~**must** not cause the district judge's total annual salary received from state and district funding unit funds to exceed the maximum total salary allowed under this section.

(3) Each district judge ~~shall~~**must** receive an annual salary calculated as follows:

(a) A minimum annual salary payable by the state that is equal to the difference between ~~84%~~**85%** of the salary of a justice of the supreme court as of December 31, ~~2015~~**2020** and \$45,724.00.

(b) In addition to the amount calculated under subdivision (a), a salary of \$45,724.00 from the district funding unit or units as provided in subsection (2). If a district judge receives a total additional salary of \$45,724.00 from the district funding unit or units and receives neither less than nor more than \$45,724.00, including any cost-of-living allowance, the state shall reimburse the district funding unit or units the amount that the unit or units have paid to the judge.

(c) In addition to the amounts under subdivisions (a) and (b), an amount payable by the state that is equal to the amounts calculated under subdivisions (a) and (b) multiplied by the compounded aggregate percentage pay increases, excluding lump-sum payments, paid to civil service nonexclusively represented employees classified as executives and administrators on or after January 1, ~~2016~~**2021**. The additional salary under this subdivision takes effect on the same date as the effective date of the pay increase paid to civil service nonexclusively represented employees classified as executives and administrators. The additional salary under this subdivision ~~shall~~**must** not be based on a pay increase paid to civil service nonexclusively represented employees classified as executives and administrators if the effective date of the increase was before January 1, ~~2016~~**2021**.

(d) In addition to the amounts under subdivisions (a), (b), and (c), an amount payable by the state that is equal to the difference between the amounts paid to probate court judges under section 821(2)(c) between January 1, 2016 and December 31, 2018 and paid to district court

judges under subdivision (c) between January 1, 2016 and December 31, 2018.

(4) A district judge who holds court in a county other than the county of the judge's residence ~~shall~~**must** be reimbursed for his or her actual and necessary expenses incurred in holding court upon certification and approval by the state court administrator. Upon certification of the judge's expenses, the sum ~~shall~~**must** be paid out of the state treasury under the accounting laws of this state.

(5) Salaries of a district court judge may be increased but ~~shall~~**must** not be decreased during a term of office, except to the extent of a general salary reduction in all other branches of government.

(6) A judge of the district court is eligible to be a member of the Michigan judges retirement system created under the judges retirement act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670.

(7) The district court in a district may hold evening and Saturday sessions.

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



DISTRICT COURT JUDGE COMPENSATION

House Bill 5442 (proposed substitute H-1)

Sponsor: Rep. Brian K. Elder

Committee: Judiciary

Revised 3-12-20

SUMMARY:

House Bill 5442 would amend the Revised Judicature Act to increase the compensation of district court judges. Currently, district court judges are paid a salary that is equal to 84% of the salary of a justice of the Supreme Court as of December 31, 2015. Probate and circuit court judges are paid a salary that is equal to 85% of the salary of a Supreme Court justice as of that date. Salaries of district, probate, and circuit court judges are also adjusted based on any wage increases approved by the Civil Service Commission for nonexclusively represented employees (state workers not eligible for union representation). Currently, the salary of a probate or circuit court judge is \$151,438, and the salary of a district court judge is \$149,655.

The bill would increase the salary of a district court judge to 85% of the salary of a Supreme Court justice beginning October 1, 2020. The bill would also provide for payment of the difference in the amounts paid to district court judges and probate court judges that was due to increases for nonexclusively represented employees between January 1, 2016, and September 30, 2020.

The bill would take effect 90 days after its enactment.

MCL 600.8202

FISCAL IMPACT:

House Bill 5442 would have a fiscal impact on the state, but not on local units of government. District judges' salaries are paid by the state in two stages. The first is the largest portion, or state portion, in which a warrant is provided by the state directly to the judge. The remaining portion of the salary is paid by the court funding unit, which is then reimbursed for the entire amount by the state. Currently, there are 235 district court judges in the state. Increasing the salary of a district court judge according to provisions of the bill would cost the state an additional \$418,908.65. In addition, costs for retirement and FICA would increase slightly, roughly \$35,000, based on the higher salary level.

Legislative Analyst: Rick Yuille

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 5442**

Support

Explanation:

Given the use of blanket cross assignments and the assignment of circuit/family division work to District Judges, the Council supports pay parity for District Court judges.

Position Vote:

Voted For position: 15

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 12

Keller Permissible:

The Section found this *Keller* permissible in affecting the improvement of the functioning of the courts.

Contact Person: Lisa Sullivan

Email: sullivanl@clinton-county.org

To: Members of the Public Policy Committee
Board of Commissioners

From: Government Relations Team

Date: April 17, 2020

Re: HB 5464 - Pretrial Risk Assessment Tools

Background

HB 5454 sets forth the requirements for courts to utilize a pretrial risk assessment (PRA) tool. These tools are used to provide courts with information about the risk posed by releasing criminal defendants prior to trial, such as flight risks and their threat to community safety. The bill provides, as threshold matter, that the PRA tool must “be shown to be valid after peer testing and be free from biases.” The PRA tools must then meet additional requirements concerning the transparency of and access to data, records, and information.

***Keller* Considerations**

The Access to Justice Policy (ATJ Policy) Committee and the Criminal Jurisprudence & Practice (CJAP) Committee both determined that HB 5464 was *Keller*-permissible, given the role of pretrial risk assessment in the functioning of the courts.¹ The ATJ Policy Committee determined that the bill would “improve the functioning of the courts by requiring any pretrial risk assessment used to be both peer validated and free from bias . . . [and] ensure[] the integrity of the court by ensuring criminal case parties are able to review the score of the pretrial risk assessment as well as providing for transparency.” Likewise, the CJAP Committee found that the bill would affect the functioning of the court, as it “revises the requirements of an assessment tool used by the court in assessing pretrial risk.”

***Keller* Quick Guide**

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

Staff Recommendation

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

¹ The Criminal Law Section also submitted a position on this bill but did not consider *Keller*-permissibility.

House Bill 5464 (2020)  rss?Friendly Link: <http://legislature.mi.gov/doc.aspx?2020-HB-5464>**Sponsors**

Sarah Lightner (district 65)

Douglas Wozniak

(click name to see bills sponsored by that person)

Categories

Criminal procedure: bail; Criminal procedure: pretrial procedure; Criminal procedure: sentencing;

Criminal procedure; bail; requirements for the use of a pretrial risk assessment tool by a court making bail decision; create. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 6e to ch. V.

Bill Documents

Bill Document Formatting Information

[X]

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- Language to be removed will be ~~stricken~~.
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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
2/5/2020	HJ 13 Pg. 189	introduced by Representative Sarah Lightner
2/5/2020	HJ 13 Pg. 189	read a first time
2/5/2020	HJ 13 Pg. 189	referred to Committee on Judiciary
2/6/2020	HJ 14 Pg. 204	bill electronically reproduced 02/06/2020

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HOUSE BILL NO. 5464

February 05, 2020, Introduced by Reps. Lightner and Wozniak 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:

CHAPTER V

Sec. 6e. (1) If the court in making a determination regarding admission to bail and any necessary protective conditions for admission to bail under this chapter uses a pretrial risk assessment tool, the tool must be shown to be valid after peer testing and to be free of biases. If the pretrial risk assessment tool meets the aforementioned requirements, it still may not be utilized unless all of the following apply to the use of the tool:

(a) All documents, data, records, and information used by the builder to build or validate the pretrial risk assessment tool and ongoing documents, data, records, and written policies outlining the usage and validation of the pretrial risk assessment tool are open to public inspection, auditing, and testing.

(b) A party to a criminal case in which a court has considered, or an expert witness has relied upon, a pretrial risk assessment tool is entitled to review all calculations and data used to calculate the defendant's own risk score.

(c) No builder or user of a pretrial risk assessment tool may assert trade secret or other intellectual property protections in order to quash discovery of the materials described in subdivision (a) in a criminal case.

(2) For purposes of this section, "pretrial risk assessment tool" means a pretrial process that creates or scores particular factors in order to estimate a defendant's level of risk to fail to appear in court, risk to commit a new crime, or risk posed to the community in order to make recommendations as to bail or conditions of release based on such risk, whether made on an individualized basis or based on a grid or schedule.

**Public Policy Position
HB 5464****Support with Amendments****Explanation**

The committee voted unanimously to support HB 5464 with amendments.

The committee supports HB 5464 as the bill does not recommend the use or the establishment of a system of use of pretrial risk assessment tools. Rather, the bill provides necessary safeguards only *if* a jurisdiction chooses to utilize such tools. The legislation would require that risk assessment tools be peer validated and free from bias.

The committee recommends that the bill be amended to include additional language specifically stating that pre-trial detention determinations should never be based on a pretrial risk assessment tool score alone. Furthermore, the committee recommends that the bill specify the frequency at which the tool is peer reviewed and tested for bias.

The committee is concerned that it may be difficult to determine that a pre-trial risk assessment tool is free from bias. The committee notes that data points relied upon in existing pre-trial risk assessment instruments, including age at first arrest and prior justice system involvement, represent particularly strong proxies for race. The committee is skeptical that tools are capable of being bias free and notes that there is the associated risk that “tech-wash” may be utilized as a method to seemingly validate otherwise biased tools.

Keller Permissibility:

The committee agreed the legislation is *Keller*-permissible. The proposed legislation will improve the functioning of the courts by requiring any pretrial risk assessment used to be both peer validated and free from bias. The bill also ensures the integrity of the court by ensuring criminal case parties are able to review the score of the pretrial risk assessment as well as making providing for transparency.

Position Vote:

Voted for position: 19

Voted against position: 0

Abstained from vote: 0

Did not vote (due to absence): 8

Contact Persons:

Lorray S.C. Brown lorryb@mplp.org

Valerie R. Newman vnewman@waynecounty.com

**Public Policy Position
HB 5464**

Oppose

Explanation

The committee voted to oppose HB 5464. The committee is concerned that it is difficult to determine that a pre-trial risk assessment tool is free from bias. This difficulty is compounded by the fact the bill does not adequately define the term “bias.”

Concerns with the scientific validity of pre-trial risk assessment tools means that they may yield data that is erroneous, racially biased, and harmful to the defendant – results contrary to the goals of improving uniformity and consistency in bail and bond decisions. Furthermore, the committee supports the notion of judicial discretion. The use of pre-trial risk assessment tools may work to decrease a judge’s ability to decide each case on its own merits, and the corresponding trend is to reduce the use of such tools.

Position Vote:

Voted For position: 9

Voted against position: 3

Abstained from vote: 1

Did not vote (absent): 8

Keller Permissibility

The committee agreed that the legislation is *Keller* permissible in affecting the functioning of the courts. The legislation revises the requirements of an assessment tool used by the court in assessing pretrial risk.

Contact Persons:

Mark A. Holsomback mahols@kalcounty.com

Sofia V. Nelson snelson@sado.org



**Public Policy Position
HB 5464**

Support

Position Vote:

Voted For position: 16

Voted against position: 1

Abstained from vote: 1

Did not vote (absent): 8

Contact Person: Christina B. Hines

Email: chines@waynecounty.com



To: Members of the Public Policy Committee
Board of Commissioners

From: Government Relations Team

Date: April 17, 2020

Re: SB 0724 – Appointment & Compensation of Defense Attorneys for Indigent Defendants

Background

SB 0724 bill would amend section 11(2) (MCL 780.991) of the “Michigan Indigent Defense Commission [MIDC] Act,” which provides that “the MIDC shall implement minimum standards, rules, and procedures to guarantee the right of indigent defendants to the assistance of counsel . . .” This bill adds three new principles the MIDC must adhere to in establishing minimum standards:

- (g) Defense counsel must personally appear at every court event throughout the pendency of the case, including, but not limited to, arraignment, probable cause conference, preliminary examination, trial, and any other critical event.
- (h) Defense counsel must be appointed to an indigent defendant for an appeal after a guilty plea has been entered or the defendant has been convicted after a trial, or for an interlocutory appeal while a case is pending, including, but not limited to, an appeal of the court's decision regarding pretrial release on bond.
- (i) Defense counsel must be compensated during the pendency of an appeal of the court's decision regarding pretrial release on bond.

***Keller* Considerations**

The bill is *Keller*-permissible. Historically, the Board has found legislation and standards related to the MIDC to be *Keller*-permissible, as they impact the availability and quality of legal services to criminal defendants. The bill would also impact the functioning of the courts, as it defines the judicial events in which a lawyer would be present and the process for appointment of appellate counsel. The bill’s subject matter also implicates lawyer competency, and conduct related to lawyer ethics.


The Access to Justice Policy Committee and the Criminal Jurisprudence & Practice Committee both determined that the bill was *Keller*-permissible explaining that “[t]his legislation would theoretically improve the availability of legal services to society by giving a lawyer to all indigent convicted defendants and by (unintentionally) folding MAACS appointments under the MIDC mandate.”

Keller Quick Guide

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

Staff Recommendation

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

Senate Bill 0724 (2020)  rss?Friendly Link: <http://legislature.mi.gov/doc.aspx?2020-SB-0724>**Sponsor**

Peter Lucido (district 8)

(click name to see bills sponsored by that person)

Categories

Criminal procedure: indigent defense; Criminal procedure: appeals; Criminal procedure: pretrial procedure; Criminal procedure: trial;

Criminal procedure; indigent defense; appointment and compensation of defense attorneys for indigent defendants during certain stages of criminal cases; require. Amends sec. 11 of 2013 PA 93 (MCL 780.991).

Bill Documents

Bill Document Formatting Information

[X]

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(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**

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
1/16/2020	SJ 5 Pg. 50	INTRODUCED BY SENATOR PETER J. LUCIDO
1/16/2020	SJ 5 Pg. 50	REFERRED TO COMMITTEE ON JUDICIARY AND PUBLIC SAFETY

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SENATE BILL NO. 724

January 16, 2020, Introduced by Senator LUCIDO and referred to the Committee on Judiciary and Public Safety.

A bill to amend 2013 PA 93, entitled
"Michigan indigent defense commission act,"

by amending section 11 (MCL 780.991), as amended by 2018 PA 214.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 11. (1) The MIDC shall establish minimum standards, rules, and procedures to effectuate the following:

(a) The delivery of indigent criminal defense services must be independent of the judiciary but ensure that the judges of this state are permitted and encouraged to contribute information and advice concerning that delivery of indigent criminal defense services.

(b) If the caseload is sufficiently high, indigent criminal defense services may consist of both an indigent criminal defender office and the active participation of other members of the state bar.

(c) Trial courts shall assure that each criminal defendant is advised of his or her right to counsel. All adults, except those appearing with retained counsel or those who have made an informed waiver of counsel, must be screened for eligibility under this act, and counsel must be assigned as soon as an indigent adult is determined to be eligible for indigent criminal defense services.

(2) The MIDC shall implement minimum standards, rules, and procedures to guarantee the right of indigent defendants to the assistance of counsel as provided under amendment VI of the Constitution of the United States and section 20 of article I of the state constitution of 1963. In establishing minimum standards, rules, and procedures, the MIDC shall adhere to the following principles:

(a) Defense counsel is provided sufficient time and a space where attorney-client confidentiality is safeguarded for meetings with defense counsel's client.

(b) Defense counsel's workload is controlled to permit effective representation. Economic disincentives or incentives that impair defense counsel's ability to provide effective representation must be avoided. The MIDC may develop workload controls to enhance defense counsel's ability to provide effective representation.

(c) Defense counsel's ability, training, and experience match the nature and complexity of the case to which he or she is appointed.

(d) The same defense counsel continuously represents and personally appears at every court appearance throughout the pendency of the case. However, indigent criminal defense systems may exempt ministerial, nonsubstantive tasks, and hearings from this prescription.

(e) Indigent criminal defense systems employ only defense counsel who have attended continuing legal education relevant to counsels' indigent defense clients.

(f) Indigent criminal defense systems systematically review defense counsel at the local level for efficiency and for effective representation according to MIDC standards.

(g) Defense counsel must personally appear at every court event throughout the pendency of the case, including, but not limited to, arraignment, probable cause conference, preliminary examination, trial, and any other critical event.

(h) Defense counsel must be appointed to an indigent defendant for an appeal after a guilty plea has been entered or the defendant has been convicted after a trial, or for an interlocutory appeal while a case is pending, including, but not limited to, an appeal of the court's decision regarding pretrial release on bond.

(i) Defense counsel must be compensated during the pendency of an appeal of the court's decision regarding pretrial release on bond.

(3) The following requirements apply to the application for, and appointment of, indigent criminal defense services under this act:

(a) A preliminary inquiry regarding, and the determination of, the indigency of any defendant, including a determination regarding whether a defendant is partially indigent, for purposes of this act must be made as determined by the indigent criminal defense system not later than at the defendant's first appearance in court. The determination may be reviewed by the indigent criminal defense system at any other stage of the proceedings. In determining whether a defendant is entitled to the appointment of counsel, the indigent criminal defense system shall consider whether the defendant is indigent and the extent of his or her ability to pay. Factors to be considered include, but are not limited to, income or funds from employment or any other source, including personal public assistance, to which the defendant is entitled, property owned by the defendant or in which he or she has an economic interest, outstanding obligations, the number and ages of the defendant's dependents, employment and job training history, and his or her level of education. A trial court may play a role in this determination as part of any indigent criminal defense system's compliance plan under the direction and supervision of the supreme court, consistent with section 4 of article VI of the state constitution of 1963. If an indigent criminal defense system determines that a defendant is partially indigent, the indigent criminal defense system shall determine the amount of money the defendant must contribute to his or her defense. An indigent criminal defense system's determination regarding the amount of money a partially indigent defendant must contribute to his or her defense is subject to judicial review. Nothing in this act prevents a court from making a determination of indigency for any purpose consistent with article VI of the state constitution of 1963.

(b) A defendant is considered to be indigent if he or she is unable, without substantial financial hardship to himself or herself or to his or her dependents, to obtain competent, qualified legal representation on his or her own. Substantial financial hardship is rebuttably presumed if the defendant receives personal public assistance, including under the food assistance program, temporary assistance for needy families, Medicaid, or disability insurance, resides in public housing, or earns an income less than 140% of the federal poverty guideline. A defendant is also rebuttably presumed to have a substantial financial hardship if he or she is currently serving a sentence in a correctional institution or is receiving residential treatment in a mental health or substance abuse facility.

(c) A defendant not falling below the presumptive thresholds described in subdivision (b) must be subjected to a more rigorous screening process to determine if his or her particular circumstances, including the seriousness of the charges being faced, his or her monthly expenses, and local private counsel rates would result in a substantial hardship if he or she were required to retain private counsel.

(d) A determination that a defendant is partially indigent may only be made if the indigent criminal defense system determines that a defendant is not fully indigent. An indigent criminal defense system that determines a defendant is not fully indigent but may be partially indigent must utilize the screening process under subdivision (c). The provisions of subdivision (e) apply to a partially indigent defendant.

(e) The MIDC shall promulgate objective standards for indigent criminal defense systems to

determine whether a defendant is indigent or partially indigent. These standards must include availability of prompt judicial review, under the direction and supervision of the supreme court, if the indigent criminal defense system is making the determination regarding a defendant's indigency or partial indigency.

(f) The MIDC shall promulgate objective standards for indigent criminal defense systems to determine the amount a partially indigent defendant must contribute to his or her defense. The standards must include availability of prompt judicial review, under the direction and supervision of the supreme court, if the indigent criminal defense system is making the determination regarding how much a partially indigent defendant must contribute to his or her defense.

(g) A defendant is responsible for applying for indigent defense counsel and for establishing his or her indigency and eligibility for appointed counsel under this act. Any oral or written statements made by the defendant in or for use in the criminal proceeding and material to the issue of his or her indigency must be made under oath or an equivalent affirmation.

(4) The MIDC shall establish standards for trainers and organizations conducting training that receive MIDC funds for training and education. The standards established under this subsection must require that the MIDC analyze the quality of the training, and must require that the effectiveness of the training be capable of being measured and validated.

(5) An indigent criminal defense system may include in its compliance plan a request that the MIDC serve as a clearinghouse for experts and investigators. If an indigent criminal defense system makes a request under this subsection, the MIDC may develop and operate a system for determining the need and availability for an expert or investigator in individual cases.

**Public Policy Position
SB 0724**

Oppose

Explanation

The committee voted unanimously to oppose SB 0724 as drafted.

The bill would amend section 11(2) (MCL 780.991) of the “Michigan Indigent Defense Commission [MIDC] Act,” which sets forth that “[T]he MIDC shall implement minimum standards, rules, and procedures to guarantee the right of indigent defendants to the assistance of counsel . . .” This bill adds three new principles the MIDC must adhere to in establishing minimum standards:

(g) Defense counsel must personally appear at every court event throughout the pendency of the case, including, but not limited to, arraignment, probable cause conference, preliminary examination, trial, and any other critical event.

(h) Defense counsel must be appointed to an indigent defendant for an appeal after a guilty plea has been entered or the defendant has been convicted after a trial, or for an interlocutory appeal while a case is pending, including, but not limited to, an appeal of the court's decision regarding pretrial release on bond.

(i) Defense counsel must be compensated during the pendency of an appeal of the court's decision regarding pretrial release on bond.

The bill is presumably motivated by concerns over the ability of a defendant to appeal a significant bond decision. The bill is not effectively drafted and raises policy and funding concerns. SB 0724 would require that a lawyer be appointed to any indigent defendant who is convicted (including by plea), regardless of whether the individual requested a lawyer. The committee is concerned that the system could not accommodate the volume of mandatory appointments. Furthermore, the bill appears to unintentionally fold the Michigan Appellate Assigned Counsel System (MAACS) appointed attorneys under the MIDC mandate, creating potential funding issues for the MAAC roster. Payments to MAAC attorneys through an MIDC process is something that should perhaps be considered, but not through this scheme.

Position Vote:

Voted For position: 20

Voted against position: 0

Abstained from vote: 0

Did not vote (due to absence): 7

Keller Permissibility:

This legislation would theoretically improve the availability of legal services to society by giving a lawyer to all indigent convicted defendants and by (unintentionally) folding MAACS appointments under the MIDC mandate.



ACCESS TO JUSTICE POLICY COMMITTEE

Contact Persons:

Lorray S.C. Brown

[lorrayb@mplp.org](mailto:lorryb@mplp.org)

Valerie R. Newman

vnewman@waynecounty.com

**Public Policy Position
SB 0724**

Oppose

Explanation

The committee voted unanimously to oppose SB 0724 as drafted.

The bill would amend section 11(2) (MCL 780.991) of the “Michigan Indigent Defense Commission [MIDC] Act,” which sets forth that “[T]he MIDC shall implement minimum standards, rules, and procedures to guarantee the right of indigent defendants to the assistance of counsel . . .” This bill adds three new principles the MIDC must adhere to in establishing minimum standards:

(g) Defense counsel must personally appear at every court event throughout the pendency of the case, including, but not limited to, arraignment, probable cause conference, preliminary examination, trial, and any other critical event.

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(i) Defense counsel must be compensated during the pendency of an appeal of the court's decision regarding pretrial release on bond.

The bill is not effectively drafted and raises policy and funding concerns. SB 0724 would require that a lawyer be appointed to any indigent defendant who is convicted (including by plea), regardless of whether the individual requested a lawyer. The committee is concerned that the system could not accommodate the volume of mandatory appointments. Furthermore, the bill appears to unintentionally fold the Michigan Appellate Assigned Counsel System (MAACS) appointed attorneys under the MIDC mandate, creating potential funding issues for the MAAC roster. Payments to MAAC attorneys through an MIDC process is something that should perhaps be considered, but not through this scheme.

Position Vote:

Voted For position: 13

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 8

Keller Permissibility:

This legislation would theoretically improve the availability of legal services to society by giving a lawyer to all indigent convicted defendants and by (unintentionally) folding MAACS appointments under the MIDC mandate.



CRIMINAL JURISPRUDENCE & PRACTICE COMMITTEE

Contact Persons:

Mark A. Holsomback mahols@kalcouny.com

Sofia V. Nelson snelson@sado.org



**Public Policy Position
SB 0724**

Oppose

Position Vote:

Voted For position: 15

Voted against position: 1

Abstained from vote: 1

Did not vote (absent): 9

Contact Person: Christina B. Hines

Email: chines@waynecounty.com

To: Members of the Public Policy Committee
Board of Commissioners

From: Government Relations Team

Date: April 17, 2020

Re: SB 790 – Video Recordings of Court Proceedings

Background

SB 790 would make video recordings of public court proceedings available for public access. The purported goal of the legislation is to increase the transparency of court proceedings and improve the public’s access to recordings generally. Subsection (2) broadly requires that “[a] video recording that is made available for public access under subsection (1) must be the complete recording of all public portions of the court proceeding and not edited to remove any portion of the recording that was viewable to any individual that was physically present at the proceeding.” The bill provides for the time and manner in which videos are to be made available to the public. For example, section 4(d) requires the court to provide only the portion of the video requested and not the entire proceeding. Section 7 states that “[a] video recording is not the official record of the court proceeding.” The bill neither requires courts to make video recordings of court proceedings nor to provide recordings of closed or restricted-access court proceedings. *See* Sections 8 & 9.

***Keller* Considerations**

The Criminal Jurisprudence & Practice Committee, Civil Procedure & Courts Committee, and Family Law Section all determined that this bill was *Keller*-permissible, as it affects the functioning of the courts. Not only does the bill potentially affect the operations of the court by imposing requirements on courts concerning public access to recordings of court proceedings, it also potentially impacts court rules that already govern access to court records, protection of jurors, and protection of sensitive information disclosed during court proceedings.

***Keller* Quick Guide**

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

Staff Recommendation

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

Senate Bill 0790 (2020)  rss?Friendly Link: <http://legislature.mi.gov/doc.aspx?2020-SB-0790>**Sponsor**

Jim Runestad (district 15)

(click name to see bills sponsored by that person)

Categories

Civil procedure: other; Courts: other;

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

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**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
2/11/2020	SJ 15 Pg. 172	INTRODUCED BY SENATOR JIM RUNESTAD
2/11/2020	SJ 15 Pg. 172	REFERRED TO COMMITTEE ON JUDICIARY AND PUBLIC SAFETY

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SENATE BILL NO. 790

February 11, 2020, Introduced by Senator RUNESTAD and referred to the Committee on Judiciary and Public Safety.

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

(MCL 600.101 to 600.9947) by adding section 1429.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

(2) A video recording that is made available for public access under subsection (1) must be a complete recording of all public portions of the court proceeding and not be edited to remove any portion of the recording that was viewable to any individual who was physically present at the proceeding.

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

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

- (a) Making the recording accessible from a public website.
- (b) Making the recording accessible from a link provided by electronic mail on request.
- (c) Providing a physical copy of the recording.
- (d) Making the recording available for viewing at the courthouse.

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

- (a) The case name and number.
- (b) The date, time, and location of and the name of the judge who presided over the court proceeding.
- (c) If less than the entire proceeding is requested, the portion requested.
- (d) An acknowledgment that the recording is not the official record of the proceeding.
- (e) The requesting person's agreement that it will comply with all laws regarding privacy of the information contained in the recording and will not publish or disseminate any content that may be protected from disclosure.

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

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

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

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

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

**Public Policy Position
SB 790****Oppose****Explanation**

The Civil Procedure & Courts Committee opposes SB 790 as the bill is not sufficiently tailored to achieve the purported goal of greater judicial transparency. The committee questions the value of requiring video recordings to be made public when such recordings are not official court records. Moreover, the committee questions how this bill may affect the protection of jurors. Lastly, the committee notes that the meaning of the term “public proceedings” is unclear.

Position Vote:

Voted For position: 19

Voted against position: 1

Abstained from vote: 0

Did not vote (due to absence): 7

Keller Explanation:

SB 790 is *Keller* permissible because it affects the functioning of the courts.

Contact Person: Randy J. Wallace

Email: rwallace@olsmanlaw.com

**Public Policy Position
SB 0790**

Oppose as Drafted

Explanation

The committee opposes SB 790 as the bill raises significant privacy and administrative concerns. The committee questions how this bill would affect the sharing of sensitive or confidential information during courtroom proceedings. Publicly available courtroom video would capture an entire courtroom proceeding, and in so doing, risk disclosing sensitive information such as health determinations or the content of bench conferences to the public and/or jurors. The committee is concerned that the bill would require courts to bear significant administrative and financial burdens in the effort to redact recordings that contained such sensitive content. Moreover, the committee raises practical concerns such as the challenge in identifying which out of any number of courtroom cameras would be the camera from which official recordings were made.

Position Vote:

Voted For position: 13

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 8

Keller Permissibility

The legislation is *Keller* permissible in affecting the functioning of the courts.

Contact Persons:

Mark A. Holsomback mahols@kalcounty.com

Sofia V. Nelson snelson@sado.org



**Public Policy Position
SB 0790**

Support

Position Vote:

Voted For position: 12

Voted against position: 7

Abstained from vote: 0

Did not vote (absent): 7

Contact Person: Christina B. Hines

Email: chines@waynecounty.com

**Public Policy Position
SB 0790**

Oppose

Explanation

Opposition to this bill stems largely from the viewpoint that the legislature is seeking to regulate the operation of state courts, which is more appropriately done through court rules, as opposed to legislation. There already exist court rules, including, but not limited to MCR 8.119, which provides for public access to court records. The effort to legislatively impose rules and regulations on courts regarding availability of videos of court proceedings is a legislative overreach on the judicial branch.

Position Vote:

Voted For position: 11
Voted against position: 6
Abstained from vote: 1
Did not vote (absent): 3

Keller Permissibility:

The improvement of the functioning of the courts
The availability of legal services to society
The regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession.
Legislatively requiring video-enabled courtrooms to make videos available to the public is an effort to purportedly improve the functioning of the court and allow greater and easier access to justice.

List any arguments against the position:

The argument was made that SB 790 merely attempts to promote greater transparency and access to justice to the public. The bill to allow the public access to videos of proceedings that are open to the public seemed to some to create no new significant changes, as most state courts, if not all, already make such videos available to the public for viewing for video-enabled courtrooms.

Contact Person: James Chryssikos

Email: jwc@chryssikoslaw.com

To: Members of the Public Policy Committee
Board of Commissioners

From: Government Relations Team

Date: April 17, 2020

Re: SB 0792

Background

Historically, local governmental units administer judges’ retirement savings and benefits leading to a lack of uniformity in the type and amount of benefits judges receive. Senate Bill 0792 would allow judges to buy into the state’s defined contribution plans and receive state matching dollars, thereby assuming parity with other state employees.

***Keller* Considerations**


The Judicial Section determined that this bill was *Keller*-permissible in that it affects the functioning of the courts. Historically, the Board has found judicial compensation bills to be *Keller*-permissible. For example, in 2015, the Board supported SB 56 which introduced overarching reforms to the judicial compensation system. The bill at issue here – SB 0792 – will allow judges to assume parity with other state employees for the level of matching contributions to their Defined Contribution plans. This will help maintain the stability of the judiciary and attract well-qualified candidates to serve as district court judges. Keeping experienced judges on the bench helps improve the functioning of the courts.

***Keller* Quick Guide**

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

Staff Recommendation

The bill satisfies the requirements of *Keller* and can be considered on its merits.

Senate Bill 0792 (2020)  rss?Friendly Link: <http://legislature.mi.gov/doc.aspx?2020-SB-0792>**Sponsor**

Tom Barrett (district 24)

(click name to see bills sponsored by that person)

Categories

Retirement: judges; Retirement: health benefits; Retirement: defined contribution;

Retirement; judges; contributions to tax-deferred accounts instead of retiree health benefits for certain employees; provide for, and establish auto enrollment feature for defined contribution plan. Amends secs. 301 & 604 of 1992 PA 234 (MCL 38.2301 & 38.2604) & adds secs. 509a & 714a.

Bill Documents

Bill Document Formatting Information

[X]

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Documents**Senate Introduced Bill**

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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
2/13/2020	SJ 16 Pg. 191	INTRODUCED BY SENATOR TOM BARRETT
2/13/2020	SJ 16 Pg. 191	REFERRED TO COMMITTEE ON APPROPRIATIONS

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SENATE BILL NO. 792

February 13, 2020, Introduced by Senator BARRETT and referred to the Committee on Appropriations.

A bill to amend 1992 PA 234, entitled
"The judges retirement act of 1992,"

by amending sections 301 and 604 (MCL 38.2301 and 38.2604), section 604 as amended by 2018 PA 335, and by adding sections 509a and 714a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 301. (1) The retirement system shall direct the actuary to do all of the following:

(a) Determine the annual level percent of payroll contribution rate to finance the benefits provided under this act by actuarial valuation ~~pursuant to~~**under** subsections (2) and (3), and ~~upon~~**on** the basis of the risk assumptions that the retirement board and the department adopt after consultation with the state treasurer and the actuary.

(b) Make an annual actuarial valuation of the retirement system ~~in order to~~ determine the actuarial condition of the retirement system and the required contribution to the retirement system.

(c) Make an annual actuarial gain-loss experience study of the retirement system ~~in order to~~ determine the financial effect of variations of actual retirement system experience from projected experience.

(2) The actuary shall compute the contribution rate for monthly benefits payable in the event of death of a member before retirement or the disability of a member using ~~a terminal funding~~**an individual projected benefit entry age normal cost** method of actuarial valuation.

(3) The actuary shall compute the contribution rate for benefits other than those described in subsection (2) using an individual projected benefit entry age normal actuarial cost method. The contribution rate for service that may be rendered in the current year, known as the normal cost contribution rate, is equal to the aggregate amount of individual entry age normal costs divided by 1% of the aggregate amount of active members' valuation compensation. ~~The contribution rate for unfunded service rendered on or before the last day of the fiscal year, known as the unfunded actuarial accrued liability contribution rate, is equal to the aggregate amount of unfunded actuarial accrued liabilities divided by 1% of the actuarial present value over a period not to exceed 40 years of projected benefit compensation, where unfunded actuarial accrued liabilities are equal to the actuarial present value of benefits reduced by the actuarial present value of future normal costs and the actuarial value of assets on the last day of the fiscal year.~~**Beginning with the September 30, 2019 valuation, the contribution rate for health benefits provided under sections 509 and 719 must be computed using an individual projected benefit entry age normal cost method of valuation. The unfunded actuarial accrued liability must be equal to the actuarial present value of benefits reduced by the actuarial present value of future normal cost contributions and the actuarial value of assets on the valuation date. Except as otherwise provided in this subsection, the unfunded actuarial accrued liability must be amortized in accordance with generally accepted governmental**

accounting standards over a period equal to or less than 25 years, with the payment schedule for the employer being based on and applied to the combined payrolls of the employees who are Plan 1 members and Plan 2 members.

Sec. 509a. (1) For a member or qualified participant who is not a Plan 1 member or Plan 2 member and is not eligible for any future health insurance coverage premium from the retirement system, a member's or qualified participant's employer shall make a matching contribution up to 2% of the member's or qualified participant's compensation to Tier 2. A matching contribution under this subsection may not be used as the basis for a loan from that member or qualified participant's Tier 2 account.

(2) A member or qualified participant as described in subsection (1) may make a contribution up to 2% of the member's or qualified participant's compensation to a Tier 2 account. A member or qualified participant who makes a contribution under this subsection may make additional contributions to his or her Tier 2 account as permitted by the department and the internal revenue code.

(3) A member or qualified participant is vested in contributions made to his or her Tier 2 account under subsections (1) and (2) according to the vesting provisions under section 715.

(4) The contributions described in this section must begin with the first payroll date after the member or qualified participant is employed or after October 1, 2020, whichever is later, and end on his or her termination of employment.

(5) As used in this section, "employer" means that term as defined in section 705.

Sec. 604. (1) This section is enacted under section 401(a) of the internal revenue code, 26 USC 401, which imposes certain administrative requirements and benefit limitations for qualified governmental plans. This state intends that the retirement system be a qualified pension plan created in trust under section 401 of the internal revenue code, 26 USC 401, and that the trust be an organization exempt from taxation under section 501 of the internal revenue code, 26 USC 501. The department shall administer the retirement system to fulfill the intent of this subsection.

(2) The retirement system shall ~~shall~~ **must** be administered in compliance with the provisions of section 415 of the internal revenue code, 26 USC 415, and regulations under that section that are applicable to governmental plans and, beginning January 1, 2010, applicable provisions of the final regulations issued by the Internal Revenue Service on April 5, 2007. Employer-financed benefits provided by the retirement system under this act must not exceed the applicable limitations set forth in section 415 of the internal revenue code, 26 USC 415, as adjusted by the commissioner of internal revenue under section 415(d) of the internal revenue code, 26 USC 415, to reflect cost-of-living increases, and the retirement system shall adjust the benefits, including benefits payable to retirants and retirement allowance beneficiaries, subject to the limitation each calendar year to conform with the adjusted limitation. For purposes of section 415(b) of the internal revenue code, 26 USC 415, the applicable limitation applies to aggregated benefits received from all qualified pension plans for which the office of retirement services coordinates administration of that limitation. If there is a conflict between this section and another section of this act, this section prevails.

(3) The assets of the retirement system must be held in trust and invested for the sole purpose of meeting the legitimate obligations of the retirement system and must not be used for any other purpose. The assets must not be used for or diverted to a purpose other than for the exclusive benefit of the members, vested former members, retirants, and retirement allowance beneficiaries before satisfaction of all retirement system liabilities.

(4) The retirement system shall return post-tax member contributions made by a member and received by the retirement system to a member on retirement, under Internal Revenue Service regulations and approved Internal Revenue Service exclusion ratio tables.

(5) The required beginning date for retirement allowances and other distributions must not be later than April 1 of the calendar year following the calendar year in which the employee attains age 70-1/2 or April 1 of the calendar year following the calendar year in which the

employee retires. The required minimum distribution requirements imposed by section 401(a) (9) of the internal revenue code, 26 USC 401, apply to this act and must be administered in accordance with a reasonable and good faith interpretation of the required minimum distribution requirements for all years in which the required minimum distribution requirements apply to this act.

(6) If the retirement system is terminated, the interest of the members, vested former members, retirants, and retirement allowance beneficiaries in the retirement system is nonforfeitable to the extent funded as described in section 411(d) (3) of the internal revenue code, 26 USC 411, and related Internal Revenue Service regulations applicable to governmental plans.

(7) Notwithstanding any other provision of this act to the contrary that would limit a distributee's election under this act, a distributee may elect, at the time and in the manner prescribed by the retirement board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. This subsection applies to distributions made after December 31, 1992. **Beginning October 1, 2010, a nonspouse beneficiary may elect to have any portion of an amount payable under this act that is an eligible rollover distribution treated as a direct rollover that will be paid in a direct trustee-to-trustee transfer to an individual retirement account or individual retirement annuity described in section 408(a) or (b) of the internal revenue code, 26 USC 408, that is established for the purpose of receiving a distribution on behalf of the beneficiary and that will be treated as an inherited individual retirement account or individual retirement annuity pursuant to section 402(c) (11) of the internal revenue code, 26 USC 402.**

(8) For purposes of determining actuarial equivalent retirement allowances under sections 506(1) (a) and (b) and 602, the actuarially assumed interest rate must be determined by the director of the department and the retirement board in consultation with the actuary using the mortality tables adopted by the department and the retirement board.

(9) Notwithstanding any other provision of this act, the compensation of a member of the retirement system must be taken into account for any year under the retirement system only to the extent that it does not exceed the compensation limit established in section 401(a) (17) of the internal revenue code, 26 USC 401, as adjusted by the commissioner of internal revenue. This subsection applies to an individual who first becomes a member of the retirement system after September 30, 1996.

(10) Notwithstanding any other provision of this act, contributions, benefits, and service credit with respect to qualified military service will be provided under the retirement system in accordance with section 414(u) of the internal revenue code, 26 USC 414. This subsection applies to all qualified military service after December 11, 1994. Beginning on January 1, 2007, in accordance with section 401(a) (37) of the internal revenue code, 26 USC 401, if a member dies while performing qualified military service, for purposes of determining any death benefits payable under this act, the member is treated as having resumed and then terminated employment on account of death.

Sec. 714a. Tier 2 and tax-deferred accounts are subject to the following terms and conditions:

(a) Before April 2, 2020, the retirement system shall design an automatic enrollment feature that provides that unless a qualified participant who makes contributions under section 714(3) or who makes a contribution under section 509a(2) elects to contribute a lesser amount, the qualified participant shall contribute the amount required to qualify for all eligible matching contributions under this act. The retirement system shall implement this automatic enrollment feature as soon as administratively feasible, but no later than 12 months after the enactment of the amendatory act that added this section.

(b) In addition to elective employee contributions to Tier 2 or a tax-deferred account, this state may use elective employee contributions to the state 457 deferred compensation plan as a basis for making employer matching contributions to Tier 2 or a tax-deferred account.

(c) Employer matching contributions do not have to be made to the same plan or account to which the elective employee contributions were contributed as the basis for the matching contributions.

(d) Elective employee contributions may not be used as the basis for more than an equivalent amount of employer matching contributions.

(e) The retirement system shall design and implement a method to determine the proper allocation of employer matching contributions based on elective employee contributions as provided in this section.

**Public Policy Position
SB 5442**

Support

Explanation:

Judicial Council supports parity with other state employees for the level of matching contributions to their Defined Contribution plans.

Position Vote:

Voted For position: 15

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 12

Keller Permissible:

The Section found this *Keller* permissible in affecting the improvement of the functioning of the courts.

Contact Person: Lisa Sullivan

Email: sullivanl@clinton-county.org



To: Members of the Public Policy Committee
Board of Commissioners

From: Government Relations Team

Date: April 17, 2020

Re: FY 2021-2022 Judiciary Budget as contained in HB 5554, SB 802, and the Executive Budget Recommendation.

Background

The Judiciary Budget for FY 2021-2022 provides a total of \$314.80 million to fund the Michigan Supreme Court, Court of Appeals, Judicial compensation, the Judicial Tenure Commission, the State Appellate Defender Office (SADO), and various other programs and initiatives such as specialty courts, e-filing, and indigent civil legal assistance. \$111 million of the budget comes from restricted funds (mainly from court generated revenue) and the balance is from the state's general fund.

Highlights from the Executive Judiciary Budget Recommendation include:

- \$325,700 (general fund) increase in funding for pretrial improvements and jail reform. Pretrial improvements include: a pretrial risk assessment pilot program to support informed bond decisions focused on reducing incarceration rates for low-risk defendants; the MiCourt Court Date Reminder Study to implement and study the effectiveness of court date reminders on appearance rates; the expansion and auditing of pretrial data collection capabilities of the Judicial Data Warehouse (JDW); pretrial judicial trainings; and funds to support continued staffing needs of the Michigan Joint Task Force on Jail and Pretrial Incarceration.
- \$881,100 for SADO for continued funding for defense costs associated with re-sentencing of juveniles serving mandatory life without parole sentences.
- \$100,000 for Judicial Tenure Commission for funding outside counsel, which is now required when arguing cases before the Supreme Court.
- \$325,700 for a Pretrial Risk Assessment Tool (general fund) that will improve public safety, protect defendants' rights, and reduce incarceration of low-risk defendants through informed bond decisions.
- \$18.2 million (\$12.9 million general fund) for Michigan's problem-solving courts to support specialized courts that focus on rapid treatment and rehabilitation of underlying substance abuse and mental health issues as an alternative to incarceration.
- \$3.3 million (\$879,800 general fund) for Online Community Dispute Resolution Services which allows Michigan residents to resolve small claims, general civil, and landlord-tenant cases without appearing in court.

Chief Justice Bridget M. McCormack requested additional funding to address the following budgetary priorities not included in the Executive Judiciary Budget Recommendation:

- \$1,950,000 for Justice for All (ongoing funding) to create a JFA initiative in the SCOA; implementation of the JFA strategic plan; collaboration with Michigan Legal Help to significantly expand the number of self-help centers statewide; development of public-private partnerships to leverage additional funding for legal aid; and expansion of self-help tools and increased integration with the statewide e-filing platform.
- \$2,300,000 (ongoing funding) for Problem-Solving Courts to address and combat the opioid crisis by developing 15 new courts, expanding existing courts, and increasing access to the courts.

In addition, the State Appellate Defender Office requested additional funding to address the following budgetary priorities not included in the Executive Judiciary Budget Recommendations:

- \$824,900 to allow the hiring of additional attorneys. Specifically, this amount would cover the cost of five (5) additional attorneys, two (2) paralegals, and one (1) MAACS coordinator. This increase also funds an additional staffer necessary for an anticipated increase in appellate intake due to a court rule change by the Michigan Supreme Court (ADM File 2017-27, MCR 6.425).

***Keller* Considerations**

HB 5554, SB 802, and the Executive Judiciary Budget Recommendation meet the requirements of *Keller*. Adequate funding of the courts is essential to their functioning. Many of the programs funded by the Judiciary Budget, such as increasing caseloads for the State Appellate Defender Office, would improve the quality and increase the availability of legal services to society.

***Keller* Quick Guide**

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

Staff Recommendation

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

House Bill 5554 (2020)  rss?Friendly Link: <http://legislature.mi.gov/doc.aspx?2020-HB-5554>**Sponsor**

Jon Hoadley (district 60)

(click name to see bills sponsored by that person)

Categories

Appropriations: other;

Appropriations; other; executive recommendation; provide for omnibus bill. Creates appropriation act.

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/less 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**History**

(House actions in lowercase, Senate actions in UPPERCASE)

Date ▲	Journal	Action
2/26/2020	HJ 21 Pg. 377	introduced by Representative Jon Hoadley
2/26/2020	HJ 21 Pg. 377	read a first time
2/26/2020	HJ 21 Pg. 377	referred to Committee on Appropriations
2/27/2020	HJ 22 Pg. 379	bill electronically reproduced 02/27/2020

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HOUSE BILL NO. 5554

February 26, 2020, Introduced by Rep. Hoadley and referred to the Committee on Appropriations.

A bill to make appropriations for various state departments and agencies; the judicial branch, and the legislative branch for the fiscal years ending September 30, 2021; to provide anticipated appropriations for the fiscal year ending September 30, 2022; to provide for certain conditions on appropriations; to provide for the expenditure of the appropriations.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

	For Fiscal Year Ending Sept. 30, 2021	For Fiscal Year Ending Sept. 30, 2022
APPROPRIATION SUMMARY		
GROSS APPROPRIATION	\$ 61,897,828,800	\$ 61,592,195,500
Total interdepartmental grants and interdepartmental transfers.....	1,190,124,700	1,190,124,700
ADJUSTED GROSS APPROPRIATION	\$ 60,707,704,100	\$ 60,402,070,800
Total federal revenues.....	23,866,378,100	23,796,199,400
Total local revenues.....	265,437,200	265,437,200
Total private revenues.....	197,628,900	197,228,900
Total other state restricted revenues.....	25,397,844,500	25,422,433,300
State general fund/general purpose.....	\$ 10,980,415,400	\$ 10,720,772,000

Judiciary Budget for 2020-2021 Fiscal Year

Article 10

JUDICIARY

PART 1

LINE-ITEM APPROPRIATIONS AND ANTICIPATED APPROPRIATIONS

Sec. 10-101. Subject to the conditions set forth in this article, the amounts listed in this part for the judiciary are appropriated for the fiscal year ending September 30, 2021, and are anticipated to be appropriated for the fiscal year ending September 30, 2022, from the funds indicated in this part. The following is a summary of the appropriations and anticipated appropriations in this part:

JUDICIARY

APPROPRIATION SUMMARY

Full-time equated exempted positions.....	512.0	512.0
GROSS APPROPRIATION.....	\$ 314,761,800	\$ 314,761,800
Total interdepartmental grants and interdepartmental		

Judiciary Budget for 2020-2021 Fiscal Year

transfers.....	1,552,800	1,552,800
ADJUSTED GROSS APPROPRIATION.....	\$ 313,209,000	\$ 313,209,000
Total federal revenues.....	5,826,000	5,826,000
Total local revenues.....	7,654,500	7,654,500
Total private revenues.....	1,016,600	1,016,600
Total other state restricted revenues.....	94,877,600	94,877,600
State general fund/general purpose.....	\$ 203,834,300	\$ 203,834,300
<i>State general fund/general purpose schedule:</i>		
<i>Ongoing state general fund/general purpose.....</i>	<i>203,834,300</i>	<i>203,834,300</i>
<i>One-time state general fund/general purpose.....</i>	<i>0</i>	<i>0</i>
Sec. 10-102. SUPREME COURT		
Full-time equated exempted positions.....	250.0	250.0
Community dispute resolution-3.0 FTE positions.....	\$ 3,285,200	\$ 3,285,200
Direct trial court automation support-44.0 FTE		
positions.....	7,654,500	7,654,500
Drug treatment courts.....	11,833,000	11,833,000
Foster care review board-10.0 FTE positions.....	1,365,500	1,365,500
Judicial information systems-24.0 FTE positions.....	5,066,100	5,066,100
Judicial institute-13.0 FTE positions.....	1,926,900	1,926,900
Kalamazoo County trauma court.....	250,000	250,000
Mental health courts and diversion services-1.0 FTE		
position.....	5,472,500	5,472,500
Next generation Michigan court system.....	4,116,000	4,116,000
Other federal grants.....	275,100	275,100
State court administrative office-63.0 FTE positions....	11,830,500	11,830,500
Supreme court administration-92.0 FTE positions.....	14,802,200	14,802,200
Swift and sure sanctions program.....	3,600,000	3,600,000
Veterans courts.....	<u>936,400</u>	<u>936,400</u>
GROSS APPROPRIATION.....	\$ 72,413,900	\$ 72,413,900
Appropriated from:		
Interdepartmental grant revenues:		
IDG from department of corrections.....	52,800	52,800
IDG from department of state police.....	1,500,000	1,500,000
Federal revenues:		
Other federal revenues.....	5,470,400	5,470,400
Special revenue funds:		
Local revenues.....	7,654,500	7,654,500
Private revenues.....	927,700	927,700
Other state restricted revenues.....	7,803,600	7,803,600
State general fund/general purpose.....	\$ 49,004,900	\$ 49,004,900
Sec. 10-103. COURT OF APPEALS		
Full-time equated exempted positions.....	175.0	175.0
Court of appeals operations-175.0 FTE positions.....	\$ <u>25,800,400</u>	\$ <u>25,800,400</u>
GROSS APPROPRIATION.....	\$ 25,800,400	\$ 25,800,400
Appropriated from:		

Judiciary Budget for 2020-2021 Fiscal Year

Special revenue funds:

State general fund/general purpose..... \$ 25,800,400 \$ 25,800,400

Sec. 10-104. BRANCHWIDE APPROPRIATIONS

Full-time equated exempted positions..... 4.0 4.0

Branchwide appropriations-4.0 FTE positions..... \$ 8,853,300 \$ 8,853,300

GROSS APPROPRIATION..... \$ 8,853,300 \$ 8,853,300

Appropriated from:

Special revenue funds:

State general fund/general purpose..... \$ 8,853,300 \$ 8,853,300

Sec. 10-105. JUSTICES' AND JUDGES' COMPENSATION

Full-time judges positions..... 587.0 587.0

Supreme court justices' salaries-7.0 justices..... \$ 1,210,400 \$ 1,210,400

Circuit court judges' state base salaries-217.0 judges.. 23,761,500 23,761,500

Circuit court judicial salary standardization..... 9,922,100 9,922,100

Court of appeals judges' salaries-25.0 judges..... 4,200,200 4,200,200

District court judges' state base salaries-235.0 judges..... 25,303,300 25,303,300

District court judicial salary standardization..... 10,745,200 10,745,200

Probate court judges' state base salaries-103.0 judges.. 11,189,800 11,189,800

Probate court judicial salary standardization..... 4,669,600 4,669,600

Judges' retirement system defined contributions..... 5,173,200 5,173,200

OASI, social security..... 6,494,300 6,494,300

GROSS APPROPRIATION..... \$ 102,669,600 \$ 102,669,600

Appropriated from:

Special revenue funds:

Other state restricted revenues..... 3,329,400 3,329,400

State general fund/general purpose..... \$ 99,340,200 \$ 99,340,200

Sec. 10-106. JUDICIAL AGENCIES

Full-time equated exempted positions..... 7.0 7.0

Judicial tenure commission-7.0 FTE positions..... \$ 1,408,700 \$ 1,408,700

GROSS APPROPRIATION..... \$ 1,408,700 \$ 1,408,700

Appropriated from:

Special revenue funds:

State general fund/general purpose..... \$ 1,408,700 \$ 1,408,700

Sec. 10-107. INDIGENT DEFENSE - CRIMINAL

Full-time equated exempted positions..... 63.0 63.0

Appellate public defender program-63.0 FTE positions.... \$ 9,668,700 \$ 9,668,700

GROSS APPROPRIATION..... \$ 9,668,700 \$ 9,668,700

Appropriated from:

Federal revenues:

Other federal revenues..... 355,600 355,600

Special revenue funds:

Private revenues..... 88,900 88,900

Other state restricted revenues..... 173,100 173,100

State general fund/general purpose..... \$ 9,051,100 \$ 9,051,100

Judiciary Budget for 2020-2021 Fiscal Year

Sec. 10-108. INDIGENT CIVIL LEGAL ASSISTANCE

Indigent civil legal assistance.....	\$	<u>7,937,000</u>	\$	<u>7,937,000</u>
GROSS APPROPRIATION.....	\$	7,937,000	\$	7,937,000

Appropriated from:

Special revenue funds:

Other state restricted revenues.....	7,937,000	7,937,000
State general fund/general purpose.....	\$ 0	\$ 0

Sec. 10-109. TRIAL COURT OPERATIONS

Full-time equated exempted positions.....	13.0	13.0
Court equity fund reimbursements.....	\$ 60,815,700	\$ 60,815,700
Drug case-flow program.....	250,000	250,000
Drunk driving case-flow program.....	3,300,000	3,300,000
Judicial technology improvement fund.....	4,815,000	4,815,000
Juror compensation reimbursement-1.0 FTE position.....	6,608,900	6,608,900
Statewide e-file system-12.0 FTE positions.....	<u>10,220,600</u>	<u>10,220,600</u>
GROSS APPROPRIATION.....	\$ 86,010,200	\$ 86,010,200

Appropriated from:

Special revenue funds:

Other state restricted revenues.....	75,634,500	75,634,500
State general fund/general purpose.....	\$ 10,375,700	\$ 10,375,700

PART 2

PROVISIONS CONCERNING APPROPRIATIONS

FISCAL YEAR 2021

GENERAL SECTIONS

Sec. 10-201. Pursuant to section 30 of article IX of the state constitution of 1963, total state spending from state resources under part 1 for fiscal year 2021 is \$298,711,900.00 and state spending from state resources to be paid to local units of government for fiscal year 2021 is \$146,684,400.00. The itemized statement below identifies appropriations from which spending to local units of government will occur:

JUDICIARY

Drug treatment courts.....	\$	8,438,000
Kalamazoo County trauma court.....		250,000
Mental health courts and diversion services.....		5,472,500
Next generation Michigan court system.....		4,116,000
Swift and sure sanctions program.....		3,600,000
Veterans courts.....		936,400
Court of appeals operations.....		200,000
Circuit court judicial salary standardization.....		9,922,100
District court judicial salary standardization.....		10,745,200
Probate court judges' state base salaries.....		11,189,800
Probate court judicial salary standardization.....		4,669,600
OASI, social security.....		1,134,600
Court equity fund reimbursements.....		60,815,700
Drug case-flow program.....		250,000

Judiciary Budget for 2020-2021 Fiscal Year

Drunk driving case-flow program.....	3,300,000
Judicial technology improvement fund.....	4,815,000
Juror compensation reimbursement.....	6,608,900
Statewide e-file system.....	<u>10,220,600</u>
TOTAL.....	\$ 146,684,400

Sec. 10-202. (1) The appropriations authorized under this article are subject to the management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594.

(2) Funds appropriated in part 1 to an entity within the judicial branch shall not be expended or transferred to another account without written approval of the authorized agent of the judicial entity. If the authorized agent of the judicial entity notifies the state budget director of its approval of an expenditure or transfer, the state budget director shall immediately make the expenditure or transfer. The authorized judicial entity agent shall be designated by the chief justice of the supreme court.

Sec. 10-203. As used in this part and part 1:

- (a) "FTE" means full-time equated.
- (b) "IDG" means interdepartmental grant.
- (c) "OASI" means old age survivor's insurance.

Sec. 10-204. The reporting requirements of this part shall be completed with the approval of, and at the direction of, the supreme court, except as otherwise provided in this part. The judicial branch shall use the internet to fulfill the reporting requirements of this part. This may include transmission of reports via electronic mail to the recipients identified for each reporting requirement, or it may include placement of reports on an internet or intranet site.

Sec. 10-205. Funds appropriated in part 1 shall not be used for the purchase of foreign goods or services, or both, if competitively priced and of comparable quality American goods or services, or both, are available. Preference shall be given to goods or services, or both, manufactured or provided by Michigan businesses, if they are competitively priced and of comparable quality. In addition, preference should be given to goods or services, or both, that are manufactured or provided by Michigan businesses owned and operated by veterans, if they are competitively priced and of comparable quality.

Sec. 10-207. Not later than January 1 of each year, the state court administrative office shall prepare a report on out-of-state travel listing all travel by judicial branch employees outside this state in the immediately preceding fiscal year that was funded in whole or in part with funds appropriated in the budget for the judicial branch. The report shall be submitted to the senate and house appropriations committees, the senate and house fiscal agencies, and the state budget office. The report shall include the following information:

- (a) The dates of each travel occurrence.
- (b) The transportation and related costs of each travel occurrence, including the proportion funded with state general fund/general purpose revenues, the proportion funded with state restricted revenues, the proportion funded with federal revenues, and the proportion funded with other revenues.

Sec. 10-209. Not later than November 30, the state budget office shall prepare and transmit a report that provides for estimates of the total general fund/general purpose appropriation lapses at the close of the prior fiscal year. This report shall summarize the projected year-end general fund/general purpose appropriation lapses by major departmental program or program areas. The report shall be transmitted to the chairpersons of the senate and house appropriations committees and the senate and house fiscal agencies.

Sec. 10-211. From the funds appropriated in part 1, the judicial branch shall maintain a searchable website accessible by the public at no cost that includes all expenditures made by the judicial branch within a fiscal year. The posting shall include the purpose for which each expenditure is made. The judicial branch shall not provide financial information on its website under this section if doing so would violate a federal or state law, rule, regulation, or guideline that establishes privacy or security standards applicable to that financial information.

Judiciary Budget for 2020-2021 Fiscal Year

Sec. 10-212. Within 14 days after the release of the executive budget recommendation, the judicial branch shall cooperate with the state budget office to provide the senate and house appropriations committee chairs, the senate and house appropriations subcommittee chairs, and the senate and house fiscal agencies with an annual report on estimated state restricted fund balances, state restricted fund projected revenues, and state restricted fund expenditures the fiscal years ending September 30, 2020 and September 30, 2021.

Sec. 10-213. The judiciary shall maintain, on a publicly assessable website, a scorecard that identifies, tracks, and regularly updates key metrics that are used to monitor and improve the judiciary's performances.

Sec. 10-214. Total authorized appropriations from all sources under part 1 for legacy costs for the fiscal year ending September 30, 2021 are estimated at \$15,249,300.00. From this amount, total judiciary appropriations for pension-related legacy costs are estimated at \$7,316,800.00. Total judiciary appropriations for retiree health care legacy costs are estimated at \$7,932,500.00.

JUDICIAL BRANCH

Sec. 10-301. From the funds appropriated in part 1, the direct trial court automation support program of the state court administrative office shall recover direct and overhead costs from trial courts by charging for services rendered. The fee shall cover the actual costs incurred to the direct trial court automation support program in providing the service, including development of future versions of case management systems.

Sec. 10-302. Funds appropriated within the judicial branch shall not be expended by any component within the judicial branch without the approval of the supreme court.

Sec. 10-303. Of the amount appropriated in part 1 for the judicial branch, \$711,900.00 is allocated for circuit court reimbursement under section 3 of 1978 PA 16, MCL 800.453, and for costs associated with the court of claims.

Sec. 10-304. A member of the legislature may request a report or data from the data collected in the judicial data warehouse. The report shall be made available to the public upon request, unless disclosure is prohibited by court order or state or federal law. Any data provided under this section shall be public and non-identifying information.

Sec. 10-305. From the funds appropriated in part 1 for community dispute resolution, community dispute resolution centers shall provide dispute resolution services specified in the community dispute resolution act, 1988 PA 260, MCL 691.1551 to 691.1564, and shall help to reduce suspensions and truancy, and improve school climate. Funding appropriated in part 1 for community dispute resolution may be used to develop or expand juvenile diversion services in cooperation with local prosecutors. Participation in the dispute resolution processes is voluntary for all parties.

Sec. 10-307. From the funds appropriated in part 1 for mental health courts and diversion services, \$1,730,000.00 is intended to address the recommendations of the mental health diversion council.

Sec. 10-308. If sufficient funds are not available from the court fee fund to pay judges' compensation, the difference between the appropriated amount from that fund for judges' compensation and the actual amount available after the amount appropriated for trial court reimbursement is made shall be appropriated from the state general fund for judges' compensation. If an appropriation is made under this section, the state court administrative office shall notify, within 14 days of the appropriation, the senate and house standing committees on appropriations, the senate and house appropriations subcommittees on judiciary, the senate and house fiscal agencies, and the state budget office.

Sec. 10-309. By April 1, the state court administrative office shall provide a report on drug treatment, mental health, and veterans court programs in this state. The report shall include information on the number of each type of program that has been established, the number of program participants in each jurisdiction, and the impact of the programs on offender criminal involvement and recidivism. The report shall be submitted to the senate and house appropriations subcommittees on judiciary, the senate and house fiscal agencies, and the state budget office.

Sec. 10-311. (1) The funds appropriated in part 1 for drug treatment courts as that term is defined in section 1060 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060, shall be administered by the state court administrative office to operate drug treatment court programs. A drug treatment court shall be responsible for handling cases involving

Judiciary Budget for 2020-2021 Fiscal Year

substance abusing nonviolent offenders through comprehensive supervision, testing, treatment services, and immediate sanctions and incentives. A drug treatment court shall use all available county and state personnel involved in the disposition of cases including, but not limited to, parole and probation agents, prosecuting attorneys, defense attorneys, and community corrections providers. The funds may be used in connection with other federal, state, and local funding sources.

(2) From the funds appropriated in part 1, the chief justice shall allocate sufficient funds for the Michigan judicial institute to provide in-state training for those identified in subsection (1), including training for new drug treatment court judges.

(3) For drug treatment court grants, consideration for priority may be given to those courts where higher instances of substance abuse cases are filed.

(4) The judiciary shall receive \$1,500,000.00 in Byrne formula grant funding as an interdepartmental grant from the department of state police to be used for expansion of drug treatment courts, to assist in avoiding prison bed space growth for nonviolent offenders in collaboration with the department of corrections.

Sec. 10-316. (1) From the funds appropriated in part 1 for pretrial risk assessment, the state court administrative office shall pilot a pretrial risk assessment tool in an effort to provide relevant information to judges so they can make evidence-based bond decisions that will increase public safety and reduce costs associated with unnecessary pretrial detention.

(2) The state court administrative office shall submit a status report by February 1 to the senate and house appropriations subcommittees on judiciary, the senate and house fiscal agencies, and the state budget office on progress made toward implementing the pretrial risk assessment tool and associated costs.

Sec. 10-317. Funds appropriated in part 1 shall not be used for the permanent assignment of state-owned vehicles to justices or judges or any other judicial branch employee. This section does not preclude the use of state-owned motor pool vehicles for state business in accordance with approved guidelines.

Sec. 10-320. (1) From the funds appropriated in part 1 for the swift and sure sanctions program, created under section 3 of chapter XIA of the code of criminal procedure, 1927 PA 175, MCL 771A.3, the state court administrative office shall administer a program to distribute grants to qualifying courts in accordance with the objectives and requirements of the probation swift and sure sanctions act, chapter XIA of the code of criminal procedure, 1927 PA 175, MCL 771A.1 to 771A.8. Of the funds designated for the program, not more than \$100,000.00 shall be available to the state court administrative office to pay for employee costs associated with the administration of the program funds. Of the funds designated for the program, \$500,000.00 is reserved for programs in counties that had more than 325 individuals sentenced to prison in the previous calendar year. Courts interested in participating in the swift and sure sanctions program may apply to the state court administrative office for a portion of the funds appropriated in part 1 under this section.

(2) By April 1, the state court administrative office, in cooperation with the department of corrections, shall provide a report on the courts that receive funding under the swift and sure sanctions program described in subsection (1) to the senate and house appropriations subcommittees on judiciary, the senate and house fiscal agencies, and the state budget office. The report shall include all of the following:

(a) The number of offenders who participate in the program.

(b) The criminal history of offenders who participate in the program.

(c) The recidivism rate of offenders who participate in the program, including the rate of return to jail, prison, or both.

(d) A detailed description of the establishment and parameters of the program.

(3) As used in this section, "program" means a swift and sure sanctions program described in subsection (1).

Sec. 10-321. From the funds appropriated in part 1, the judicial branch shall support a statewide legal self-help internet website and local nonprofit self-help centers that use the statewide website to provide assistance to individuals representing themselves in civil legal proceedings. The state court administrative office shall summarize the costs of

Judiciary Budget for 2020-2021 Fiscal Year

maintaining the website, provide statistics on the number of people visiting the website, and provide information on content usage, form completion, and user feedback. By March 1, the state court administrative office shall report this information for the preceding fiscal year to the senate and house appropriations subcommittees on judiciary, the senate and house fiscal agencies, and the state budget office.

Sec. 10-322. If Byrne formula grant funding is awarded to the state appellate defender, the state appellate defender office may receive and expend Byrne formula grant funds in an amount not to exceed \$250,000.00 as an interdepartmental grant from the department of state police. If the appellate defender appointed under section 3 of the appellate defender act, 1978 PA 620, MCL 780.713, receives federal grant funding from the United States Department of Justice in excess of the amount appropriated in part 1, the office of appellate defender may receive and expend grant funds in an amount not to exceed \$300,000.00 as other federal grants.

Sec. 10-324. From the funds appropriated in part 1 for the medication-assisted treatment program, the judiciary shall maintain a medication-assisted treatment program to provide treatment for opioid-addicted and alcohol-addicted individuals who are referred to and voluntarily participate in the medication-assisted treatment program.

Sec. 10-325. (1) From the funds appropriated in part 1 for Kalamazoo County trauma court, the county office of the prosecuting attorney shall hire an assistant prosecutor who specializes in trauma for prosecution of offenders and for providing intervention and treatment services to offenders and referral services for victims. The court shall focus on deterrence of offenders by reducing incidence and recidivism. Intervention services shall be supplemented by trauma treatment and addiction services. The prosecutor shall collaborate with the trauma and resiliency team to review the progress of program participants, and to assure offender accountability and victim safety. Treatment providers shall specialize in substance abuse addiction and trauma treatment services for adolescents and adults.

(2) The county office of the prosecuting attorney, together with the intervention and treatment providers, shall submit a report, by September 30, to the state court administrative office, the senate and house of representatives subcommittees on judiciary, the senate and house fiscal agencies, and the state budget office on the outcomes of the trauma court. The report shall include program performance measures, the number of individuals served, the outcomes of participants who complete the program, recommendations on how the state can hold offenders accountable while rehabilitating them with treatment, community-based resources and support, and restorative justice approaches to conflict resolution, with the goal of being a more effective and less costly alternative to incarceration.

Senate Bill 0802 (2020)  rss?Friendly Link: <http://legislature.mi.gov/doc.aspx?2020-SB-0802>**Sponsors**

Curtis Hertel (district 23)

Paul Wojno, Erika Geiss, Marshall Bullock, Rosemary Bayer, Stephanie Chang, Sean McCann

(click name to see bills sponsored by that person)

Categories

Appropriations: other;

Appropriations; other; executive recommendation; provide for omnibus bill. Creates appropriation act.

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**Senate Fiscal Analysis****GOVERNOR'S RECOMMENDATION (Date Completed: 3-11-20)**

This document analyzes: SB0802

History

(House actions in lowercase, Senate actions in UPPERCASE)

Date	Journal	Action
2/26/2020	SJ 21 Pg. 273	INTRODUCED BY SENATOR CURTIS HERTEL, JR.
2/26/2020	SJ 21 Pg. 273	REFERRED TO COMMITTEE ON APPROPRIATIONS

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SENATE BILL NO. 802

February 26, 2020, Introduced by Senators HERTEL, WOJNO, GEISS, BULLOCK, BAYER, CHANG and MCCANN and referred to the Committee on Appropriations.

A bill to make appropriations for various state departments and agencies; the judicial branch, and the legislative branch for the fiscal years ending September 30, 2021; to provide anticipated appropriations for the fiscal year ending September 30, 2022; to provide for certain conditions on appropriations; to provide for the expenditure of the appropriations.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

	For Fiscal	For Fiscal
	Year Ending	Year Ending
	Sept. 30, 2021	Sept. 30, 2022
APPROPRIATION SUMMARY		
GROSS APPROPRIATION	\$ 61,897,828,800	\$ 61,592,195,500
Total interdepartmental grants and interdepartmental transfers.....	1,190,124,700	1,190,124,700
ADJUSTED GROSS APPROPRIATION	\$ 60,707,704,100	\$ 60,402,070,800
Total federal revenues.....	23,866,378,100	23,796,199,400
Total local revenues.....	265,437,200	265,437,200
Total private revenues.....	197,628,900	197,228,900
Total other state restricted revenues.....	25,397,844,500	25,422,433,300
State general fund/general purpose.....	\$ 10,980,415,400	\$ 10,720,772,000

Judiciary Budget for 2020-2021 Fiscal Year

Article 10

JUDICIARY

PART 1

LINE-ITEM APPROPRIATIONS AND ANTICIPATED APPROPRIATIONS

Sec. 10-101. Subject to the conditions set forth in this article, the amounts listed in this part for the judiciary are appropriated for the fiscal year ending September 30, 2021, and are anticipated to be appropriated for the fiscal year ending September 30, 2022, from the funds indicated in this part. The following is a summary of the appropriations and anticipated appropriations in this part:

JUDICIARY

APPROPRIATION SUMMARY

Full-time equated exempted positions.....	512.0	512.0
GROSS APPROPRIATION.....	\$ 314,761,800	\$ 314,761,800

Judiciary Budget for 2020-2021 Fiscal Year

Total interdepartmental grants and interdepartmental transfers.....	1,552,800	1,552,800
ADJUSTED GROSS APPROPRIATION..... \$	313,209,000	\$ 313,209,000
Total federal revenues.....	5,826,000	5,826,000
Total local revenues.....	7,654,500	7,654,500
Total private revenues.....	1,016,600	1,016,600
Total other state restricted revenues.....	94,877,600	94,877,600
State general fund/general purpose..... \$	203,834,300	\$ 203,834,300
<i>State general fund/general purpose schedule:</i>		
<i>Ongoing state general fund/general purpose.....</i>	<i>203,834,300</i>	<i>203,834,300</i>
<i>One-time state general fund/general purpose.....</i>	<i>0</i>	<i>0</i>
Sec. 10-102. SUPREME COURT		
Full-time equated exempted positions.....	250.0	250.0
Community dispute resolution-3.0 FTE positions..... \$	3,285,200	\$ 3,285,200
Direct trial court automation support-44.0 FTE positions.....	7,654,500	7,654,500
Drug treatment courts.....	11,833,000	11,833,000
Foster care review board-10.0 FTE positions.....	1,365,500	1,365,500
Judicial information systems-24.0 FTE positions.....	5,066,100	5,066,100
Judicial institute-13.0 FTE positions.....	1,926,900	1,926,900
Kalamazoo County trauma court.....	250,000	250,000
Mental health courts and diversion services-1.0 FTE position.....	5,472,500	5,472,500
Next generation Michigan court system.....	4,116,000	4,116,000
Other federal grants.....	275,100	275,100
State court administrative office-63.0 FTE positions....	11,830,500	11,830,500
Supreme court administration-92.0 FTE positions.....	14,802,200	14,802,200
Swift and sure sanctions program.....	3,600,000	3,600,000
Veterans courts.....	<u>936,400</u>	<u>936,400</u>
GROSS APPROPRIATION..... \$	72,413,900	\$ 72,413,900
Appropriated from:		
Interdepartmental grant revenues:		
IDG from department of corrections.....	52,800	52,800
IDG from department of state police.....	1,500,000	1,500,000
Federal revenues:		
Other federal revenues.....	5,470,400	5,470,400
Special revenue funds:		
Local revenues.....	7,654,500	7,654,500
Private revenues.....	927,700	927,700
Other state restricted revenues.....	7,803,600	7,803,600
State general fund/general purpose..... \$	49,004,900	\$ 49,004,900
Sec. 10-103. COURT OF APPEALS		
Full-time equated exempted positions.....	175.0	175.0
Court of appeals operations-175.0 FTE positions..... \$	<u>25,800,400</u>	<u>\$ 25,800,400</u>
GROSS APPROPRIATION..... \$	25,800,400	\$ 25,800,400

Judiciary Budget for 2020-2021 Fiscal Year

Appropriated from:

Special revenue funds:

State general fund/general purpose..... \$ 25,800,400 \$ 25,800,400

Sec. 10-104. BRANCHWIDE APPROPRIATIONS

Full-time equated exempted positions..... 4.0 4.0

Branchwide appropriations-4.0 FTE positions..... \$ 8,853,300 \$ 8,853,300

GROSS APPROPRIATION..... \$ 8,853,300 \$ 8,853,300

Appropriated from:

Special revenue funds:

State general fund/general purpose..... \$ 8,853,300 \$ 8,853,300

Sec. 10-105. JUSTICES' AND JUDGES' COMPENSATION

Full-time judges positions..... 587.0 587.0

Supreme court justices' salaries-7.0 justices..... \$ 1,210,400 \$ 1,210,400

Circuit court judges' state base salaries-217.0 judges.. 23,761,500 23,761,500

Circuit court judicial salary standardization..... 9,922,100 9,922,100

Court of appeals judges' salaries-25.0 judges..... 4,200,200 4,200,200

District court judges' state base salaries-235.0 judges..... 25,303,300 25,303,300

District court judicial salary standardization..... 10,745,200 10,745,200

Probate court judges' state base salaries-103.0 judges.. 11,189,800 11,189,800

Probate court judicial salary standardization..... 4,669,600 4,669,600

Judges' retirement system defined contributions..... 5,173,200 5,173,200

OASI, social security..... 6,494,300 6,494,300

GROSS APPROPRIATION..... \$ 102,669,600 \$ 102,669,600

Appropriated from:

Special revenue funds:

Other state restricted revenues..... 3,329,400 3,329,400

State general fund/general purpose..... \$ 99,340,200 \$ 99,340,200

Sec. 10-106. JUDICIAL AGENCIES

Full-time equated exempted positions..... 7.0 7.0

Judicial tenure commission-7.0 FTE positions..... \$ 1,408,700 \$ 1,408,700

GROSS APPROPRIATION..... \$ 1,408,700 \$ 1,408,700

Appropriated from:

Special revenue funds:

State general fund/general purpose..... \$ 1,408,700 \$ 1,408,700

Sec. 10-107. INDIGENT DEFENSE - CRIMINAL

Full-time equated exempted positions..... 63.0 63.0

Appellate public defender program-63.0 FTE positions.... \$ 9,668,700 \$ 9,668,700

GROSS APPROPRIATION..... \$ 9,668,700 \$ 9,668,700

Appropriated from:

Federal revenues:

Other federal revenues..... 355,600 355,600

Special revenue funds:

Private revenues..... 88,900 88,900

Other state restricted revenues..... 173,100 173,100

Judiciary Budget for 2020-2021 Fiscal Year

State general fund/general purpose.....	\$	9,051,100	\$	9,051,100
Sec. 10-108. INDIGENT CIVIL LEGAL ASSISTANCE				
Indigent civil legal assistance.....	\$	<u>7,937,000</u>	\$	<u>7,937,000</u>
GROSS APPROPRIATION.....	\$	7,937,000	\$	7,937,000

Appropriated from:

Special revenue funds:

Other state restricted revenues.....		7,937,000		7,937,000
State general fund/general purpose.....	\$	0	\$	0

Sec. 10-109. TRIAL COURT OPERATIONS

Full-time equated exempted positions.....		13.0		13.0
Court equity fund reimbursements.....	\$	60,815,700	\$	60,815,700
Drug case-flow program.....		250,000		250,000
Drunk driving case-flow program.....		3,300,000		3,300,000
Judicial technology improvement fund.....		4,815,000		4,815,000
Juror compensation reimbursement-1.0 FTE position.....		6,608,900		6,608,900
Statewide e-file system-12.0 FTE positions.....		<u>10,220,600</u>		<u>10,220,600</u>
GROSS APPROPRIATION.....	\$	86,010,200	\$	86,010,200

Appropriated from:

Special revenue funds:

Other state restricted revenues.....		75,634,500		75,634,500
State general fund/general purpose.....	\$	10,375,700	\$	10,375,700

PART 2

PROVISIONS CONCERNING APPROPRIATIONS

FISCAL YEAR 2021

GENERAL SECTIONS

Sec. 10-201. Pursuant to section 30 of article IX of the state constitution of 1963, total state spending from state resources under part 1 for fiscal year 2021 is \$298,711,900.00 and state spending from state resources to be paid to local units of government for fiscal year 2021 is \$146,684,400.00. The itemized statement below identifies appropriations from which spending to local units of government will occur:

JUDICIARY

Drug treatment courts.....	\$	8,438,000
Kalamazoo County trauma court.....		250,000
Mental health courts and diversion services.....		5,472,500
Next generation Michigan court system.....		4,116,000
Swift and sure sanctions program.....		3,600,000
Veterans courts.....		936,400
Court of appeals operations.....		200,000
Circuit court judicial salary standardization.....		9,922,100
District court judicial salary standardization.....		10,745,200
Probate court judges' state base salaries.....		11,189,800
Probate court judicial salary standardization.....		4,669,600
OASI, social security.....		1,134,600
Court equity fund reimbursements.....		60,815,700

Judiciary Budget for 2020-2021 Fiscal Year

Drug case-flow program.....	250,000
Drunk driving case-flow program.....	3,300,000
Judicial technology improvement fund.....	4,815,000
Juror compensation reimbursement.....	6,608,900
Statewide e-file system.....	<u>10,220,600</u>
TOTAL.....	\$ 146,684,400

Sec. 10-202. (1) The appropriations authorized under this article are subject to the management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594.

(2) Funds appropriated in part 1 to an entity within the judicial branch shall not be expended or transferred to another account without written approval of the authorized agent of the judicial entity. If the authorized agent of the judicial entity notifies the state budget director of its approval of an expenditure or transfer, the state budget director shall immediately make the expenditure or transfer. The authorized judicial entity agent shall be designated by the chief justice of the supreme court.

Sec. 10-203. As used in this part and part 1:

- (a) "FTE" means full-time equated.
- (b) "IDG" means interdepartmental grant.
- (c) "OASI" means old age survivor's insurance.

Sec. 10-204. The reporting requirements of this part shall be completed with the approval of, and at the direction of, the supreme court, except as otherwise provided in this part. The judicial branch shall use the internet to fulfill the reporting requirements of this part. This may include transmission of reports via electronic mail to the recipients identified for each reporting requirement, or it may include placement of reports on an internet or intranet site.

Sec. 10-205. Funds appropriated in part 1 shall not be used for the purchase of foreign goods or services, or both, if competitively priced and of comparable quality American goods or services, or both, are available. Preference shall be given to goods or services, or both, manufactured or provided by Michigan businesses, if they are competitively priced and of comparable quality. In addition, preference should be given to goods or services, or both, that are manufactured or provided by Michigan businesses owned and operated by veterans, if they are competitively priced and of comparable quality.

Sec. 10-207. Not later than January 1 of each year, the state court administrative office shall prepare a report on out-of-state travel listing all travel by judicial branch employees outside this state in the immediately preceding fiscal year that was funded in whole or in part with funds appropriated in the budget for the judicial branch. The report shall be submitted to the senate and house appropriations committees, the senate and house fiscal agencies, and the state budget office. The report shall include the following information:

- (a) The dates of each travel occurrence.
- (b) The transportation and related costs of each travel occurrence, including the proportion funded with state general fund/general purpose revenues, the proportion funded with state restricted revenues, the proportion funded with federal revenues, and the proportion funded with other revenues.

Sec. 10-209. Not later than November 30, the state budget office shall prepare and transmit a report that provides for estimates of the total general fund/general purpose appropriation lapses at the close of the prior fiscal year. This report shall summarize the projected year-end general fund/general purpose appropriation lapses by major departmental program or program areas. The report shall be transmitted to the chairpersons of the senate and house appropriations committees and the senate and house fiscal agencies.

Sec. 10-211. From the funds appropriated in part 1, the judicial branch shall maintain a searchable website accessible by the public at no cost that includes all expenditures made by the judicial branch within a fiscal year. The posting shall include the purpose for which each expenditure is made. The judicial branch shall not provide financial information on its website under this section if doing so would violate a federal or state law, rule, regulation, or

Judiciary Budget for 2020-2021 Fiscal Year

guideline that establishes privacy or security standards applicable to that financial information.

Sec. 10-212. Within 14 days after the release of the executive budget recommendation, the judicial branch shall cooperate with the state budget office to provide the senate and house appropriations committee chairs, the senate and house appropriations subcommittee chairs, and the senate and house fiscal agencies with an annual report on estimated state restricted fund balances, state restricted fund projected revenues, and state restricted fund expenditures the fiscal years ending September 30, 2020 and September 30, 2021.

Sec. 10-213. The judiciary shall maintain, on a publicly assessable website, a scorecard that identifies, tracks, and regularly updates key metrics that are used to monitor and improve the judiciary's performances.

Sec. 10-214. Total authorized appropriations from all sources under part 1 for legacy costs for the fiscal year ending September 30, 2021 are estimated at \$15,249,300.00. From this amount, total judiciary appropriations for pension-related legacy costs are estimated at \$7,316,800.00. Total judiciary appropriations for retiree health care legacy costs are estimated at \$7,932,500.00.

JUDICIAL BRANCH

Sec. 10-301. From the funds appropriated in part 1, the direct trial court automation support program of the state court administrative office shall recover direct and overhead costs from trial courts by charging for services rendered. The fee shall cover the actual costs incurred to the direct trial court automation support program in providing the service, including development of future versions of case management systems.

Sec. 10-302. Funds appropriated within the judicial branch shall not be expended by any component within the judicial branch without the approval of the supreme court.

Sec. 10-303. Of the amount appropriated in part 1 for the judicial branch, \$711,900.00 is allocated for circuit court reimbursement under section 3 of 1978 PA 16, MCL 800.453, and for costs associated with the court of claims.

Sec. 10-304. A member of the legislature may request a report or data from the data collected in the judicial data warehouse. The report shall be made available to the public upon request, unless disclosure is prohibited by court order or state or federal law. Any data provided under this section shall be public and non-identifying information.

Sec. 10-305. From the funds appropriated in part 1 for community dispute resolution, community dispute resolution centers shall provide dispute resolution services specified in the community dispute resolution act, 1988 PA 260, MCL 691.1551 to 691.1564, and shall help to reduce suspensions and truancy, and improve school climate. Funding appropriated in part 1 for community dispute resolution may be used to develop or expand juvenile diversion services in cooperation with local prosecutors. Participation in the dispute resolution processes is voluntary for all parties.

Sec. 10-307. From the funds appropriated in part 1 for mental health courts and diversion services, \$1,730,000.00 is intended to address the recommendations of the mental health diversion council.

Sec. 10-308. If sufficient funds are not available from the court fee fund to pay judges' compensation, the difference between the appropriated amount from that fund for judges' compensation and the actual amount available after the amount appropriated for trial court reimbursement is made shall be appropriated from the state general fund for judges' compensation. If an appropriation is made under this section, the state court administrative office shall notify, within 14 days of the appropriation, the senate and house standing committees on appropriations, the senate and house appropriations subcommittees on judiciary, the senate and house fiscal agencies, and the state budget office.

Sec. 10-309. By April 1, the state court administrative office shall provide a report on drug treatment, mental health, and veterans court programs in this state. The report shall include information on the number of each type of program that has been established, the number of program participants in each jurisdiction, and the impact of the programs on offender criminal involvement and recidivism. The report shall be submitted to the senate and house appropriations subcommittees on judiciary, the senate and house fiscal agencies, and the state budget office.

Sec. 10-311. (1) The funds appropriated in part 1 for drug treatment courts as that term is defined in section 1060 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060, shall be administered by the state court administrative

Judiciary Budget for 2020-2021 Fiscal Year

office to operate drug treatment court programs. A drug treatment court shall be responsible for handling cases involving substance abusing nonviolent offenders through comprehensive supervision, testing, treatment services, and immediate sanctions and incentives. A drug treatment court shall use all available county and state personnel involved in the disposition of cases including, but not limited to, parole and probation agents, prosecuting attorneys, defense attorneys, and community corrections providers. The funds may be used in connection with other federal, state, and local funding sources.

(2) From the funds appropriated in part 1, the chief justice shall allocate sufficient funds for the Michigan judicial institute to provide in-state training for those identified in subsection (1), including training for new drug treatment court judges.

(3) For drug treatment court grants, consideration for priority may be given to those courts where higher instances of substance abuse cases are filed.

(4) The judiciary shall receive \$1,500,000.00 in Byrne formula grant funding as an interdepartmental grant from the department of state police to be used for expansion of drug treatment courts, to assist in avoiding prison bed space growth for nonviolent offenders in collaboration with the department of corrections.

Sec. 10-316. (1) From the funds appropriated in part 1 for pretrial risk assessment, the state court administrative office shall pilot a pretrial risk assessment tool in an effort to provide relevant information to judges so they can make evidence-based bond decisions that will increase public safety and reduce costs associated with unnecessary pretrial detention.

(2) The state court administrative office shall submit a status report by February 1 to the senate and house appropriations subcommittees on judiciary, the senate and house fiscal agencies, and the state budget office on progress made toward implementing the pretrial risk assessment tool and associated costs.

Sec. 10-317. Funds appropriated in part 1 shall not be used for the permanent assignment of state-owned vehicles to justices or judges or any other judicial branch employee. This section does not preclude the use of state-owned motor pool vehicles for state business in accordance with approved guidelines.

Sec. 10-320. (1) From the funds appropriated in part 1 for the swift and sure sanctions program, created under section 3 of chapter XIA of the code of criminal procedure, 1927 PA 175, MCL 771A.3, the state court administrative office shall administer a program to distribute grants to qualifying courts in accordance with the objectives and requirements of the probation swift and sure sanctions act, chapter XIA of the code of criminal procedure, 1927 PA 175, MCL 771A.1 to 771A.8. Of the funds designated for the program, not more than \$100,000.00 shall be available to the state court administrative office to pay for employee costs associated with the administration of the program funds. Of the funds designated for the program, \$500,000.00 is reserved for programs in counties that had more than 325 individuals sentenced to prison in the previous calendar year. Courts interested in participating in the swift and sure sanctions program may apply to the state court administrative office for a portion of the funds appropriated in part 1 under this section.

(2) By April 1, the state court administrative office, in cooperation with the department of corrections, shall provide a report on the courts that receive funding under the swift and sure sanctions program described in subsection (1) to the senate and house appropriations subcommittees on judiciary, the senate and house fiscal agencies, and the state budget office. The report shall include all of the following:

(a) The number of offenders who participate in the program.

(b) The criminal history of offenders who participate in the program.

(c) The recidivism rate of offenders who participate in the program, including the rate of return to jail, prison, or both.

(d) A detailed description of the establishment and parameters of the program.

(3) As used in this section, "program" means a swift and sure sanctions program described in subsection (1).

Sec. 10-321. From the funds appropriated in part 1, the judicial branch shall support a statewide legal self-help internet website and local nonprofit self-help centers that use the statewide website to provide assistance to individuals

Judiciary Budget for 2020-2021 Fiscal Year

representing themselves in civil legal proceedings. The state court administrative office shall summarize the costs of maintaining the website, provide statistics on the number of people visiting the website, and provide information on content usage, form completion, and user feedback. By March 1, the state court administrative office shall report this information for the preceding fiscal year to the senate and house appropriations subcommittees on judiciary, the senate and house fiscal agencies, and the state budget office.

Sec. 10-322. If Byrne formula grant funding is awarded to the state appellate defender, the state appellate defender office may receive and expend Byrne formula grant funds in an amount not to exceed \$250,000.00 as an interdepartmental grant from the department of state police. If the appellate defender appointed under section 3 of the appellate defender act, 1978 PA 620, MCL 780.713, receives federal grant funding from the United States Department of Justice in excess of the amount appropriated in part 1, the office of appellate defender may receive and expend grant funds in an amount not to exceed \$300,000.00 as other federal grants.

Sec. 10-324. From the funds appropriated in part 1 for the medication-assisted treatment program, the judiciary shall maintain a medication-assisted treatment program to provide treatment for opioid-addicted and alcohol-addicted individuals who are referred to and voluntarily participate in the medication-assisted treatment program.

Sec. 10-325. (1) From the funds appropriated in part 1 for Kalamazoo County trauma court, the county office of the prosecuting attorney shall hire an assistant prosecutor who specializes in trauma for prosecution of offenders and for providing intervention and treatment services to offenders and referral services for victims. The court shall focus on deterrence of offenders by reducing incidence and recidivism. Intervention services shall be supplemented by trauma treatment and addiction services. The prosecutor shall collaborate with the trauma and resiliency team to review the progress of program participants, and to assure offender accountability and victim safety. Treatment providers shall specialize in substance abuse addiction and trauma treatment services for adolescents and adults.

(2) The county office of the prosecuting attorney, together with the intervention and treatment providers, shall submit a report, by September 30, to the state court administrative office, the senate and house of representatives subcommittees on judiciary, the senate and house fiscal agencies, and the state budget office on the outcomes of the trauma court. The report shall include program performance measures, the number of individuals served, the outcomes of participants who complete the program, recommendations on how the state can hold offenders accountable while rehabilitating them with treatment, community-based resources and support, and restorative justice approaches to conflict resolution, with the goal of being a more effective and less costly alternative to incarceration.



State Appellate Defender Office

645 Griswold, Ste. 3300, Detroit, MI 48226
(Phone) 313.256.9833 (Fax) 313.965.0372
(Client calls) 313.256.9822 www.sado.org

Jonathan Sacks
Director

Marilena David-Martin
Deputy Director

Michael L. Mittlestat
Deputy Director

Bradley R. Hall
MAACS Administrator

Kathryn R. Swedlow
MAACS Deputy Administrator

Michigan Appellate Assigned
Counsel System (MAACS)
200 N. Washington Sq., Ste. 250, Lansing, MI 48913
(Phone) 517.334.1200 (Fax) 517.334.1228

The State Appellate Defender Office (SADO) is tasked with meeting the statutory and constitutional requirements to represent poor people appealing their criminal convictions.

SADO consists of three divisions: The public defender division, the Michigan Appellate Assigned Counsel System (MAACS), and the Criminal Defense Resource Center (CDRC). The state-funded public defender is charged with handling at least 25% of Michigan's pending criminal appellate caseload. The remainder of the state's criminal appeals are assigned to county-funded private attorneys, administered and overseen by MAACS. The CDRC provides training to the state's court-appointed trial and appellate counsel.

SADO's budget of approximately \$8.8 million funds a staff of 60, including attorneys, support staff, investigation and mitigation professionals, and MAACS roster administration. This budget includes repeated one-time funding, set now at \$841,900, which has covered a special unit for representation of clients serving unconstitutional life without parole sentences for offenses committed as youth. The Executive Budget recommendation places this funding in the baseline budget.

The public defender division of SADO is a model office, achieving outstanding results for clients by relying on a holistic and client-centered approach to appellate advocacy. In contrast, MAACS roster attorneys face ongoing challenges to secure even minimal funding and resources from counties, and despite extensive improvements achieved in recent years, continue to suffer from many of the same structural impediments as trial-level indigent defense counsel in Michigan.

The FY 2019 and FY 2020 budgets each included over \$80 million to implement county and municipal compliance plans for improving trial level indigent defense and meeting minimum standards established by the Michigan Indigent Defense Commission (MIDC). SADO's Director, Jonathan Sacks served as the first Executive Director at the MIDC, and played an instrumental role in the compliance plan and standard setting process. **The FY 2021 Budget is an opportunity for a much more modest investment to also ensure effective representation of counsel on appeal, as required by the United States and Michigan Constitutions.**

I. State Appellate Defender Office – Public Defender Division

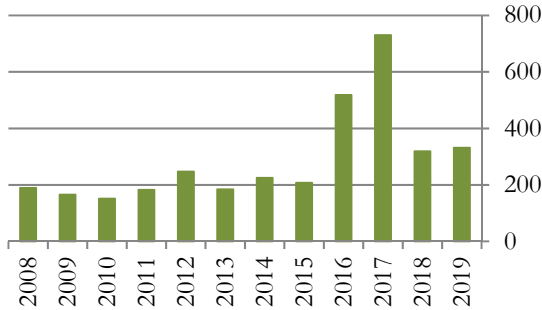
The public defender division of SADO has a staff of trained appellate defenders, investigators, and mitigation specialists, who achieve success for their clients:

- SADO’s post-conviction investigation and litigation has helped exonerate at least twenty wrongfully imprisoned clients in recent years, including:
 - *James Grissom*: Sexual assault conviction vacated after investigation revealed a pattern of fabricated allegations.
 - *Derrick Bunkley*: Attempted murder conviction vacated where investigation of alibi on social media and cell phone evidence showed his innocence.
 - *Konrad Montgomery*: Attempted murder conviction vacated when investigation revealed cell-tower evidence had been misrepresented and inadequately challenged at trial.
 - *Gregory Fisher*: Sexual assault conviction vacated based on DNA exclusion.
- SADO’s success in correcting sentencing errors has resulted in a reduction in prison terms by nearly 331 years statewide for 2019. 132 of those years are the result of SADO’s work handling the new sentencing hearings of ten people originally sentenced to life without parole as youth, and 199 years for other SADO clients.
- SADO regularly pursues successful and innovative grant-funded projects, such as a social worker sentencing project, an expansion of reentry assistance to formerly incarcerated individuals, and special units to review cases involving the now closed Detroit Police Crime Lab and the discovery of untested Sexual Assault Kits.

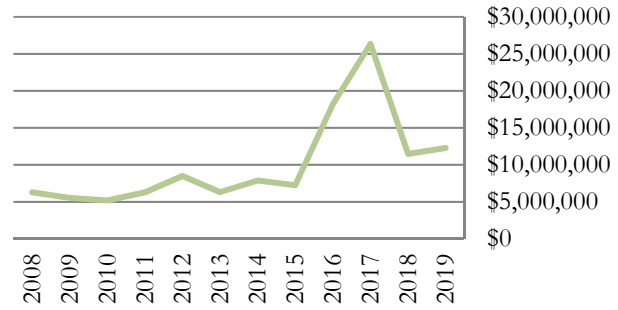
The work of SADO’s public defenders and staff provide taxpayers with excellent return on investment.

- SADO’s work obtaining sentencing relief and correcting trial errors historically has reduced statewide prison costs by over \$5 million each year, about \$300,000 per staff attorney.
- SADO attorneys saved the state approximately \$12.3 million in prison costs for 2019, \$4.5 million for reduced sentences for juvenile lifer clients, and \$7.8 million for reduced sentences from error correction for clients appealing their convictions or sentences. To date in 2020, SADO has seen sentencing reductions of 41 years for juvenile lifer clients, a savings of \$1.4 million.

Total Years Reduced from Minimum Prison Sentence Terms



Estimated Savings to State of Michigan through Prison Sentence Reductions



* This chart reflects relief for both direct appeal clients and juvenile lifer clients. In 2018 and 2019, there were far fewer sentencing hearings for juvenile lifers because of a wait for Michigan Supreme Court guidance and the shift to contested hearings, where prosecutors seek life without parole sentences after the Supreme Court rulings in June 2018.

An essential part of SADO’s mission is to provide resources through support services and training to assigned criminal defense attorneys. This is especially important with training requirements linked to trial indigent defense reform.

- **Resources:** CDRC produces numerous resources for criminal justice professionals, all of which are accessible on SADO’s website. Some of the most popular resources include: defender books and manuals, appellate summaries, a brief bank, the Criminal Defense Newsletter, an online criminal defense attorney forum, databases containing expert witness transcripts, and reentry service providers, and self-help resources covering child support, expungement, collateral consequences, pro per manuals, and sample pleadings.
- **Trainings:** CDRC’s primary focus is to provide high-quality training to attorneys handling indigent appeals at SADO and MAACS. In addition to that target group, CDRC hosts dozens of free trainings at various locations throughout the state and via online webinars for trial-level practitioners and other criminal justice stakeholders. Trainings are recorded and archived on the website for later viewing.
- Recognizing the training success and reputation of the CDRC, many of compliance plans submitted by local funding units to the Michigan Indigent Defense Commission request CDRC membership and services to meet new training requirements for attorneys.

II. Juvenile Lifer Unit

Since FY 2016, SADO has received funding to build an in-house unit of lawyers and mitigation specialists to represent clients serving Life Without Parole sentences for offenses committed as youth. These clients require new sentencing hearings because they are serving mandatory life sentences in violation of the constitutional prohibition against cruel and unusual punishment.

- A United States Supreme Court decision required new sentencing hearings for all people serving unconstitutional mandatory sentences of Life Without Parole for offenses committed as youth. SADO's Juvenile Lifer Unit represents 193 of Michigan's 364 juvenile lifers and 101 of these clients have now received new sentences. Almost all are no longer serving Life without Parole.
- These clients received new sentences with an average length of 31.3 years. 54 clients have been released on parole or discharged from MDOC. 89 clients now await new sentencing hearings, with the rest in other procedural postures.
- **Savings to the state:**
 - Estimated cumulative number of reduced sentences for clients no longer serving life sentences: 1,290 years
 - Estimated savings in incarceration costs for three years of Juvenile Lifer Unit operations: \$45,184,350
 - **Return on Investment:** 17.7:1 (1768%)
- The most contested, intricate and time-consuming sentencing hearings for juvenile lifers have now started, where clients face the longest possible penalty in Michigan: Life Without Parole in prison for an offense committed as a child. There have been twenty such hearings for SADO clients. Fifteen have resulted in term of years sentences, two await decisions, and three ended in Life Without Parole sentences. SADO attorneys also successfully negotiated term of years sentences for twenty-four clients, where prosecutors initially filed for Life Without Parole.
- In contrast, non-SADO clients, often without specially trained attorneys and resources, have had at least eight Life Without Parole sentences. SADO hearings have by and large avoided costly appeals and realized significant savings for MDOC and the State of Michigan. SADO already represents many of these non-SADO clients on appeal, and three who received Life Without Parole sentences, will now have costly new sentencing hearings due to legal error.
- SADO's Juvenile Lifer Unit includes a reentry coordinator, who works with social work student interns to develop reentry plans to show that clients can be safely released and to assist clients for their return to the community. Michael Eagan, the Chair of the Michigan Parole Board has called the work of SADO's Juvenile Lifer Unit an "asset" to their work.

III. Michigan Appellate Assigned Counsel System

MAACS, the system for appointing criminal appellate counsel in all Michigan circuit courts merged with SADO in 2014. Approximately 75% of indigent felony appeals are assigned to the MAACS roster of 150 lawyers.

- **Reforms to benefit trial courts and assigned counsel:** In 2015, after decades of operating under an inefficient assignment model and inadequate resources, MAACS launched a regional assignment process to encourage the trial courts' voluntary adoption of a standardized attorney fee policy. After beginning with 14 trial courts, the pilot grew to include 46 out of 58 trial courts statewide. In 2017, the Supreme Court approved these reforms permanently, and MAACS continues to grow the project to the benefit of trial courts, appointed counsel, and indigent criminal defendants.
- **Roster oversight and training:** MAACS personnel maintain oversight of the quality of the roster, conducting thorough and regular reviews of attorney work product. Since the merger with SADO, failing MAACS roster attorneys have been removed. Partnering with CDRC, MAACS also conducts three regular annual trainings, as well as other trainings on specific topics.
- **Litigation support:** MAACS staff provide regular litigation support to roster attorneys and allow greater access to investigators and expert witnesses.
- **Despite these reforms, the MAACS roster still struggles:**
 - Attorney incentives and funding. Counties that have adopted uniform fee schedules compensate attorneys at a rate of \$50 or \$75 per hour, depending on the type and severity of the appeal. This amount falls far below new Michigan Indigent Defense Commission proposed rates of \$100 to \$120 per hour, which have been implemented for certain trial level indigent defense systems. Counties that have not adopted uniform fee schedules pay even less. Some pay flat fees of less than \$500 or hourly rates of only \$40. In the past year, the MAACS roster has lost eight attorneys to new trial public defender offices due to these problematic incentives.
 - Workloads. The Michigan Indigent Defense Commission has proposed workload controls for trial level indigent defense. Although there is a clear need to remove or limit the caseloads of some roster attorneys, caseload and staffing concerns prevent action. Twenty roster attorneys handled more than the maximum caseload of a SADO attorney, based on nationally-recognized standards. MAACS cannot address these concerns until SADO has the capacity to absorb additional cases.
 - Quality. With some exceptions, the quality of representation provided by MAACS roster attorneys does not keep pace with SADO attorneys.

IV. FY 2021 budget request: Maintain the Juvenile Lifer Unit and enhance the quality of indigent defense representation on appeal.

- **Continuation of funding for the Juvenile Lifer Unit, with the adjusted amount of \$881,100 in the Governor’s Recommendation.** The FY 2020 budget set continued funding for the Juvenile Lifer Unit at \$841,900. The Governor’s recommendation adjusted SADO’s baseline with a slight increase in this amount to \$881,100 for necessary changes for retirement costs and salary step increases.

With 89 of the most complex hearings remaining, and county prosecutors pushing for Life Without Parole sentences, Juvenile Lifer Unit funding is again needed for FY 2021 to comply with constitutional and statutory requirements. The most contested, intricate and time-consuming sentencing hearings for juvenile lifers have now started.

- **SADO also seeks an increase of \$824,900 to allow hiring of attorneys to fix the inequality in the appellate public defense system.** This amount builds on the additional \$228,600 for two attorney positions in the FY 2020 budget, allowing SADO’s public defender division to represent more clients appealing convictions. The increase pays for five attorneys, two paralegals, and one MAACS case coordinator.

Counties would fund fewer expensive and unpredictable trial appeals, saving over \$530,000 per MAACS calculations. These funding units could then afford to increase appellate counsel reimbursement to approach recommended MIDC hourly rates of \$100 to \$120 per hour for attorney payments. This increased rate would mean MAACS could recruit and retain roster attorneys with the resources necessary to provide the same high-quality representation as SADO’s public defender office.

This amount represents a fraction of what has been recently committed to trial-level indigent defense and is comparable to the amount counties have already committed to adopt the uniform fee pilot project for MAACS roster attorneys, approximately \$500,000.

- This increase also funds an additional staffer necessary for an anticipated increase in appellate intake due to a court rule change by the Michigan Supreme Court (ADM File 2017-27, MCR 6.425).
- At a minimum, shifting the Juvenile Lifer Unit to the SADO baseline, as per the Governor’s recommendation allows for spending beyond the life of the Juvenile Lifer Unit to correct the imbalance in representation of poor people appealing criminal convictions.

**Contact: Jonathan Sacks, Director, State Appellate Defender Office
313-420-2901, jsacks@sado.org**

Judiciary

Governor's Recommended Budget for Fiscal Years 2021 and 2022

Michigan's Constitution vests the state's judicial power in "One Court of Justice" composed of the Supreme Court, the Court of Appeals, the Circuit Court, the Probate Court, and courts of limited jurisdiction such as the district courts and municipal courts.

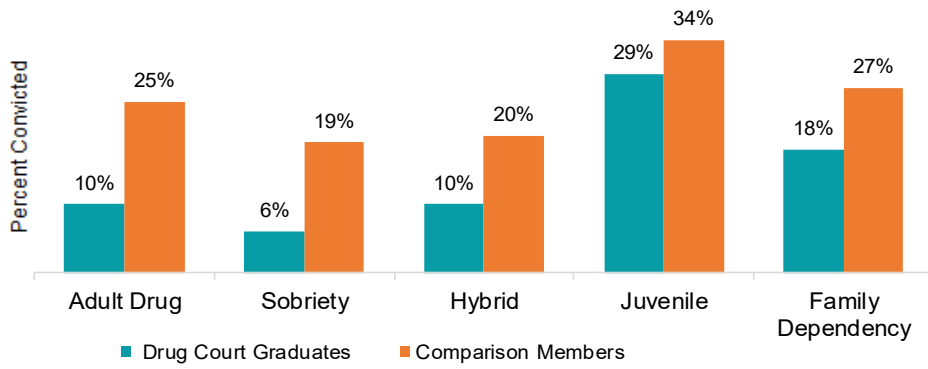
The Governor's recommended budget for fiscal years 2021 and 2022 includes total ongoing funding of \$314.8 million, of which \$203.8 million comes from the state's general fund.

Highlights

The Governor's recommended budget provides for the following key programs:

- ♦ **\$325,700 increase for pretrial risk assessments** (general fund) to support enlightened pretrial bail practices focused on reducing incarceration rates of low-risk defendants, protecting the general public, and controlling county public safety expenditures. With evaluation and analysis by independent academic investigators, the results of this pilot project are expected in the fall of 2020.
 - ♦ **\$18.2 million for Michigan's problem-solving courts** (\$12.9 million general fund) to support specialized courts that focus on rapid treatment and rehabilitation of underlying substance abuse and mental health issues as an alternative to incarceration.
 - ♦ **\$3.3 million for community dispute resolution services** (\$879,800 general fund) which allows Michigan residents to resolve small claims, general civil, and landlord-tenant cases without appearing in court.
-

**Problem-Solving Courts Successfully Reduce Recidivism.
Graduates Commit Far Fewer Crimes.**



Graduates: Any new Conviction Within Three Years of Admission

Judiciary
Governor's Recommended Budget for Fiscal Years 2021 and 2022
 \$ in Thousands

FY 2021 Adjustments

	<u>GF/GP</u>	<u>GROSS</u>
FY 2020 Current Law	\$201,443.6	\$311,113.5
Removal of FY 2020 One-Time Funding	(\$3,142.6)	(\$3,142.6)
FY 2021 Ongoing Investments		
Pretrial Risk Assessment - Funding will enable informed bond decisions, improve public safety, and reduce incarceration of low-risk defendants.	\$325.7	\$325.7
FY 2021 Reductions		
None	\$0.0	\$0.0
FY 2021 Baseline Adjustments		
State Appellate Defender Office - Continued funding for defense costs associated with resentencing of juveniles serving mandatory life without parole sentences.	\$881.1	\$881.1
Judicial Tenure Commission - Funding for outside counsel, which is now required when arguing cases before Supreme Court. <i>Michigan Court Rule 9.201(G)</i>	\$100.0	\$100.0
Employee-Related Payroll Adjustments	\$4,226.5	\$4,563.6
Other Technical Adjustments	\$0.0	\$920.5
FY 2021 Total Executive Recommendation - Ongoing Funding	\$203,834.3	\$314,761.8
FY 2021 One-Time Investments		
None	\$0.0	\$0.0
FY 2021 Total Executive Recommendation - One-Time Funding	\$0.0	\$0.0
FY 2021 Total Executive Recommendation - Ongoing and One-Time	\$203,834.3	\$314,761.8
\$ Change from FY 2020 - Total Funding	\$2,390.7	\$3,648.3
% Change from FY 2020 - Total Funding	1.2%	1.2%

FY 2022 Planning Adjustments

	<u>GF/GP</u>	<u>GROSS</u>
FY 2021 Total Executive Recommendation	\$203,834.3	\$314,761.8
Removal of FY 2021 One-Time Funding	\$0.0	\$0.0
FY 2022 Total Executive Recommendation	\$203,834.3	\$314,761.8
\$ Change from FY 2021 - Total Funding	\$0.0	\$0.0
% Change from FY 2021 - Total Funding	0.0%	0.0%

JUSTICE FOR ALL INITIATIVE Program Breakdown

Expansion of Self-Help Centers

- Collaborate with Michigan Legal Help to significantly expand legal self-help centers throughout the state.
- Staffing and equipment needs for the self-help centers.
- Development of practices and standards for each self-help center.

Analysts – Justice for All Initiative (2 FTE's)

- Administration for the Justice for All Task Force – includes regular meetings, tracking strategic plan activities, and implementation of strategic plan goals.
- Develop and administer public forums and focus groups to provide input on court forms, court process, and court resources available to the public. Including preparing reports to provide to the Justice for All Task Force and the Michigan Supreme Court.
- Establish court rule simplification work groups to systematically review the court rules to simplify the process and the language
- Create step-by-step resources and videos for the most common types of cases to help people understand their case and the process from start to finish.
- Review and update current resources into plain language – review SCAO products and resources offered by all divisions.
- Integrate remote-access opportunities into the court system where appropriate.
- Provide trainings for judges and court staff on improving access to justice.
- Increase public awareness of improvements to access. Work with the Public Information Office to have an access to justice media campaign.
- Set up framework for courts to establish effective community relationships for dealing with common issues, communication, problem solving, and maximizing the use of current resources. Determine performance metrics for access to justice through evaluation of currently available data and a determination of what key data points are missing.
- Create training materials for courts to show them how to establish their own self-help centers, include guides or videos to train volunteers.
- Work with law schools, colleges, and universities to establish partnerships with courts and other community members to provide assistance.

Judicial Training

- Provide training for judges, court staff, and self-help center staff on improving access to justice.

Modification of Forms

- Simplify, automate, and translate legal forms into plain language.

Michigan Legal Help Program

- Additional funding for the Michigan Legal Help Program which promotes coordinated and quality assistance for persons representing themselves in civil legal matters.

\$1,950,000 **Total Amount Requested for the Justice for All Initiative**



Michigan Supreme Court
Chief Justice Bridget M. McCormack

February 27, 2020

***“One Court of Justice: Michigan Supreme Court
Accomplishments and Priorities for FY 2021”***



MSC Achievements and Priorities



Key Themes

Pretrial Improvement and Jail reform

- Pretrial risk assessment pilot
- Jail and Pretrial Task Force

Access to Justice

- Michigan Legal Help
- Online Dispute Resolution
- Project Access (Expungement)
- Justice for All Task Force

Courts as Resources

- Problem-solving courts
- Addressing the opioids crisis

More efficient courts

- Implementing technology to improve service
- Statewide e-filing



Key Themes



INDEPENDENCE – The people want an independent judiciary, free from political pressure, making decisions that are transparent, accountable, and based on the law.

ACCESSIBILITY – Our court system must be accessible to every Michigan citizen, whether or not they can afford a lawyer.

ENGAGEMENT – Michigan judges should be engaged and responsive to the problems and concerns of local communities.

EFFICIENCY – Our branch of government must be efficient and prudent with public resources and focused on providing the best possible customer service to individuals, families, businesses, and governments alike.



What we do.



Pretrial Improvement and Jail Reform



What's next?



Pretrial Improvements (\$325,700 ongoing funding)

- MiCOURT Court Date Reminder Study: Implementing and studying the effectiveness of court date reminders on appearance rates.
- JDW Bond Expansion Project: Expanding and auditing the pretrial data collection capabilities of the Judicial Data Warehouse (JDW).
- Pretrial Judicial Trainings: Educating the judiciary and stakeholders on topics from constitutional jurisprudence to the effectiveness of pretrial release conditions.
- Michigan Joint Task Force on Jail and Pretrial Incarceration: Continued staffing.



Pretrial Risk Assessment Pilot



Isabella County Trial Court
Mt. Pleasant

RISK FACTORS

1	Age at Current Arrest:	23 or older
2	Current Violent Offense:	No
2a	Current Violent Offense and 20 yrs Old or Younger:	No
3	Pending Charge at the Time of Offense	No
4	Prior Misdemeanor Conviction:	Yes
5	Prior Felony Conviction:	No
5a	Prior Conviction:	Yes
6	Prior Violent Conviction:	1
7	Prior Failure to Appear in Past 2 Years:	0
8	Prior Failure to Appear Older than 2 Years:	Yes
9	Prior Sentence to Incarceration:	No

APPEAR				
2	3	4	5	6
CRIMINAL ACTIVITY				
2		4	5	6
TOTAL CRIMINAL ACTIVITY FLAG: No				

Age at Arrest:	23 or older
Current Violent Offense:	No
Current Violent Offense and 20 or Younger:	No
Pending Charge at the Time of Offense:	No
Prior Misdemeanor Conviction:	Yes
Prior Felony Conviction:	No
Prior Conviction:	1
Prior Failure to Appear in Past 2 Years:	0
Prior Failure to Appear Older than 2 Years:	Yes
Prior Sentence to Incarceration:	No

Presumptive Release Level

Based on the Release Conditions Matrix, the defendant's presumptive release level is:	2
Appearance rate for defendants with similar scores:	80%
Percentage of defendants with similar scores who remained crime-free:	85%



Pretrial Risk Assessment Pilot



Current highlights:

- Stakeholder engagement – engaging and informing law enforcement, civil legal aid, and other stakeholders to raise awareness and make sure assessment is transparent, unbiased, and validated.
- Assessment is a beginning, not an end – the assessment tells us about risk but risk must still be managed with help of diversion programs, substance abuse and mental health treatment, etc.
- Pilot program results – expected in Fall of 2020 since defendants must be monitored for the pendency of their cases.



Joint Jail and Pretrial Incarceration Task Force



Gretchen Whitmer
Governor, State of Michigan

Bridget McCormack
Chief Justice, Michigan Supreme Court

Mike Shirkey
Majority Leader, Michigan Senate

Lee Chatfield
Speaker, Michigan House

Stephan Currie
Executive Director,
Michigan Association of Counties

Blaine Koops
Executive Director,
Michigan Sheriffs Association



Report presented to legislative leaders

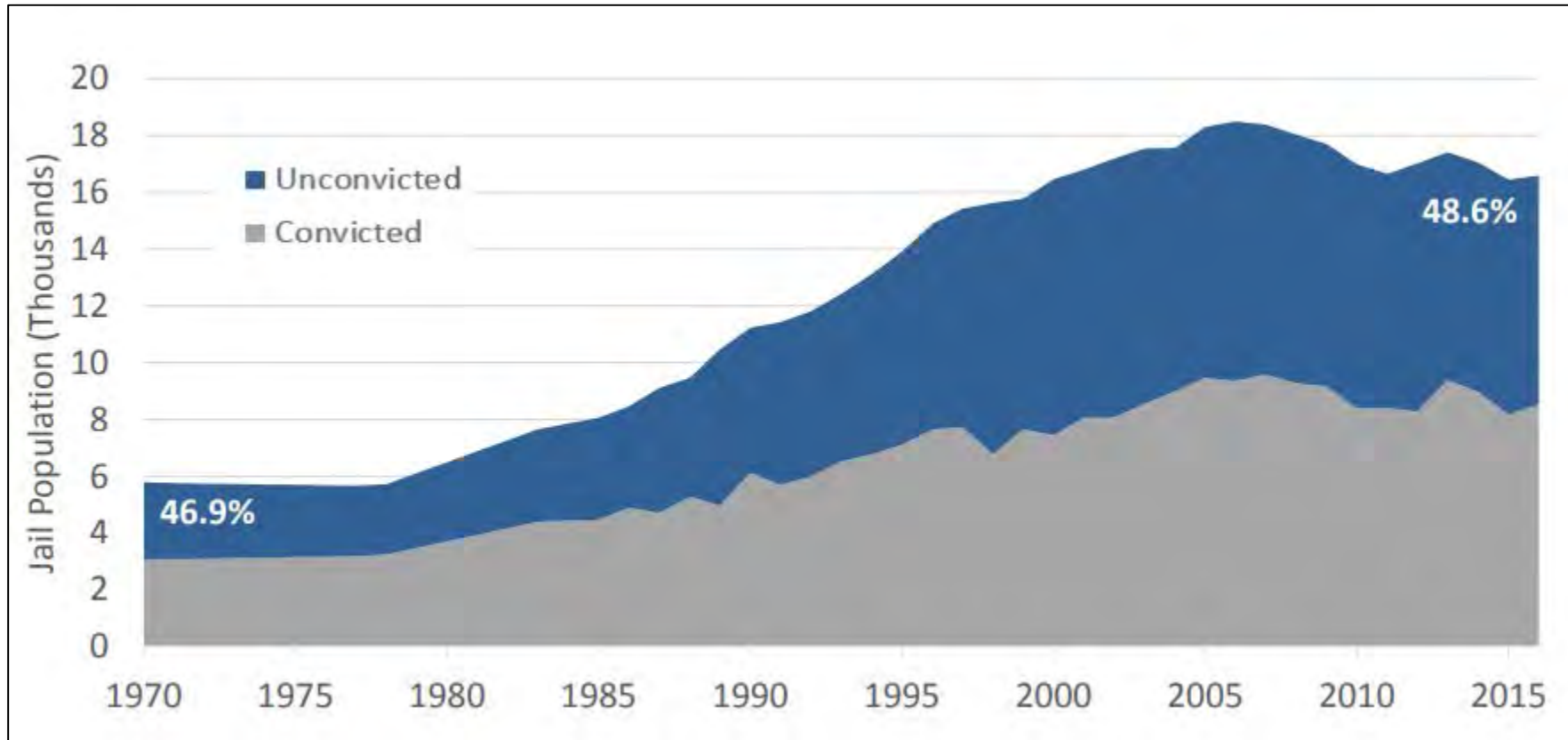


Michigan Joint Task Force on Jail
and Pretrial Incarceration

Report and Recommendations



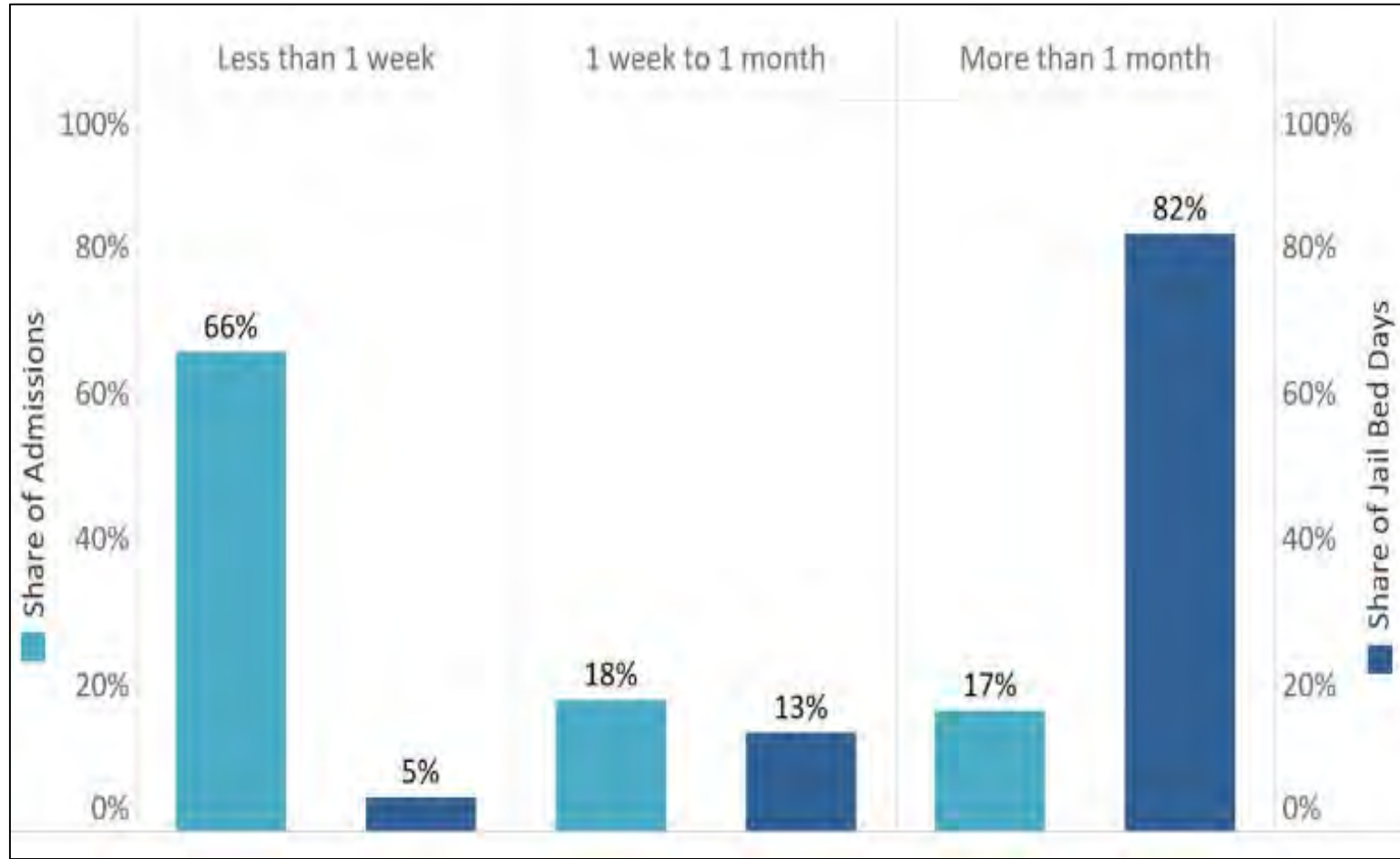
Jail and Pretrial Task Force Findings



About half of Michigan's jail population is unconvicted.



Jail and Pretrial Task Force Findings



17% of jail admissions account for 82% of bed space.



Highlights of Recommendations



- Stop suspending and revoking licenses for actions unrelated to safe driving
- Reclassify most traffic offenses as civil rather than criminal
- Expand officer discretion to use appearance tickets as an alternative to arrest and jail
- Provide crisis response training for law enforcement and encourage diversion of people with behavioral health needs
- Strengthening the presumption of release on personal recognizance and set higher thresholds for imposing other conditions (financial and nonfinancial)
- Presumptively impose sentences other than jail for non-serious misdemeanors
- Reduce fine amounts for civil infractions and require courts to determine ability to pay at sentencing and to modify unaffordable obligations.
- Invest significant resources in victim services and strengthen protection order practices
- Standardize data collection and reporting statewide



What's Next



- Jails Task Force Funding Recommendations
 - Crisis Intervention Training (MSP budget) ←
 - Behavioral health diversion resources
 - Drug Treatment
 - Mental Health Treatment
 - Removing financial barriers to compliance
 - Investment in victim services
 - Standardizing data collection and reporting



Reform has economic benefits too



Published in **Economic Development**

Criminal justice reform can help address workforce development, biz group says

In September, the Grand Rapids Chamber submitted testimony to the task force that was co-signed by executives from 11 area businesses, including Wolverine Building Group, RoMan Manufacturing, Mercy Health Saint Mary's and Cascade Engineering.

- Jailing people before trial because they can't pay bail or for other administrative violations negatively affects the workforce, businesses say.
- The letter includes four "shared principles"
 - "The fastest route out of a crime is a job"
 - "jail is not a one-size-fits-all solution"
 - "use data and evidence-based solutions" and
 - "no one should ever be in jail because they are poor."

"These practices unnecessarily disrupt our businesses, destabilizing the individual's productivity and the productivity of their employer," the companies wrote in the letter.



What we do.



Access to Justice

- Expanding self-help resources
- Online dispute resolution
- Making expungement easier
- Allow cell phones in courts
- Reducing the civil justice gap



Michigan is a National Legal Self Help Leader



MICHIGAN LEGAL HELP

Helping Michigan residents solve their legal problems

English

Español

Please Tell Us What You Think

Make a Donation

 [Welcome](#)

 [Self-Help Tools](#)

 [Organizations & Courts](#)

 [Guide to Legal Help](#)

www.michiganlegalhelp.org



Michigan Legal Help



- www.michiganlegalhelp.org is a national leader in providing legal self-help resources to residents.
- Site has been accessed nearly 8 million times since 2012.
- Nearly 45,000 visitors each week.
- With the help of easy tool kits, users complete 325 legal forms each day.
- 19 self-help centers statewide.

The most popular self-help topic?

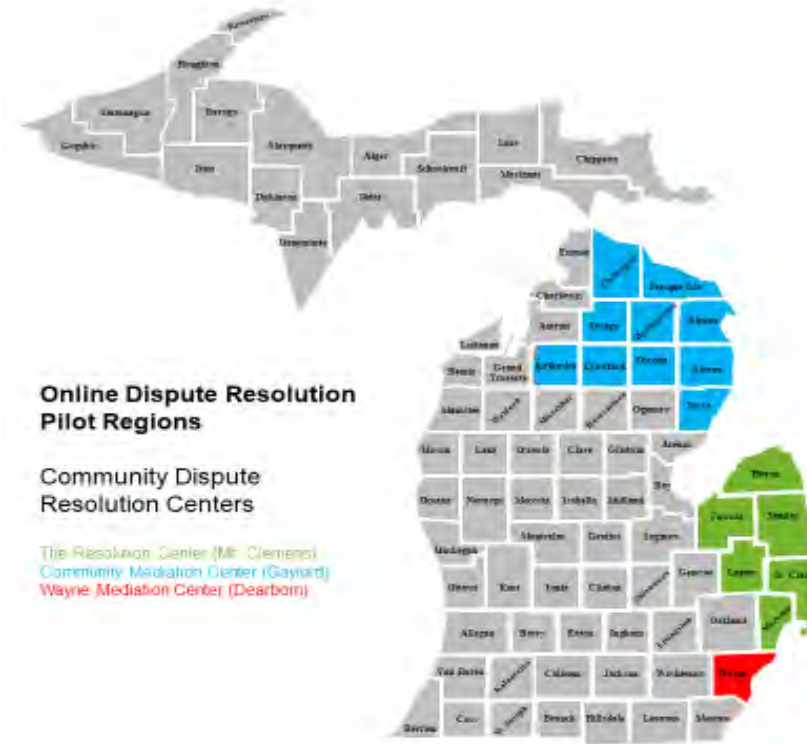
Divorce, with more than 750,000 visits to the do-it-yourself divorce tools.



Online Dispute Resolution



- Traditional court processes can be costly and inconvenient
 - At least one party is self-represented in 76 percent of civil cases.
 - Average billing rate in Michigan is \$250/hour, making legal representation difficult for people filing or responding to claims, such as landlord-tenant disputes.
 - In-person court appearances require participants to miss work and arrange child care.
 - Mediation in small claims results in much higher payment rates.



Online Dispute Resolution



Types of Cases

- Vehicles and personal loans
- Car accident (to attempt to get the deductible)
- Landlord/Tenant (return of security deposit or disputes over the amount of security deposit withheld)
- Return of private property between parties who had a previous domestic relationship

User Comments:

- Party was looking for a reasonable solution that would preserve the relationship, felt this would help instead of going to court which would likely damage relationship.
- Parties were thankful for the additional opportunity to try something different to resolve the issue.
- Party didn't have transportation so this was a good option.
- Saved me time and quickly resolved it before it escalated further.
- Described the experience as easy, convenient and quick.

Dispute Resolution Center comments:

- Mediation and ODR is viewed as an integral component of access to justice.
- Breaking through to communities in rural areas, making it more convenient for rural residents.
- Courts are beginning to use the brochures and posters and to place the URLs on their websites, notices of hearing, and ordering cases.



Project Access - Traveling Expungement Clinics



Allow Cell Phones in Courts



Lansing State Journal

OPINION

Editorial: Move to allow cellphone use in court is a positive step for equal access

LSJ Editorial Board | Published 7:56 p.m. ET Jan. 8, 2020 | Updated 8:45 p.m. ET Jan. 8, 2020

The Michigan Supreme Court should be applauded for its decision that [cellphones and other electronic devices must be explicitly allowed in courthouses and courtrooms starting May 1](#), on the basis of equal access. As it currently stands, courthouses across Michigan have different standards and varying levels of access. Implementing uniformity levels the playing field.



Justice for All Taskforce



Center on Court Access
to Justice for All

...promoting access-friendly courts

a project of
NCSC
National Center for State Courts

Closing the “Justice Gap”

- More than 7 out of 10 low-income households reported at least one civil legal problem in the last year.
- In nearly 9 out of 10 legal problems reported, low-income Americans received inadequate or no legal help.
- In 3 out of 4 civil cases, at least one party is self-represented.
- In Detroit, only 4 percent of tenants in 32,000 eviction cases filed in 2017 had an attorney.



Justice for All Task Force



Bringing together stakeholders to:

- Inventory resources and identify gaps.
- Develop a creative strategic plan.

GOAL: 100 percent access to the civil justice system

- Recently received \$100,000 one-time grant to develop strategic plan.
- Focus on building partnerships with business community and highlighting the economic benefits of opening the doors of our justice system to all.
- For example, small businesses will benefit from access to legal resources.



Nearly 100 people attended town hall meeting in Grand Rapids on February 14.

More than 175 people attended town hall meeting in Detroit on February 24.



What's next?



Justice for All Budget Priority

- \$1,950,000 ongoing funding
- Create Justice for All Initiative in SCAO
- Implement JFA strategic plan
- Collaborate with Michigan Legal Help to significantly expand number of self-help centers statewide
- Develop public-private partnerships to leverage additional funding for legal aid (i.e. Detroit eviction right to counsel program)
- Expansion of self-help tools and integration with statewide e-filing platform



What we do.



Courts as Resources

- Problem-solving courts
- Partnering to fight opioid abuse

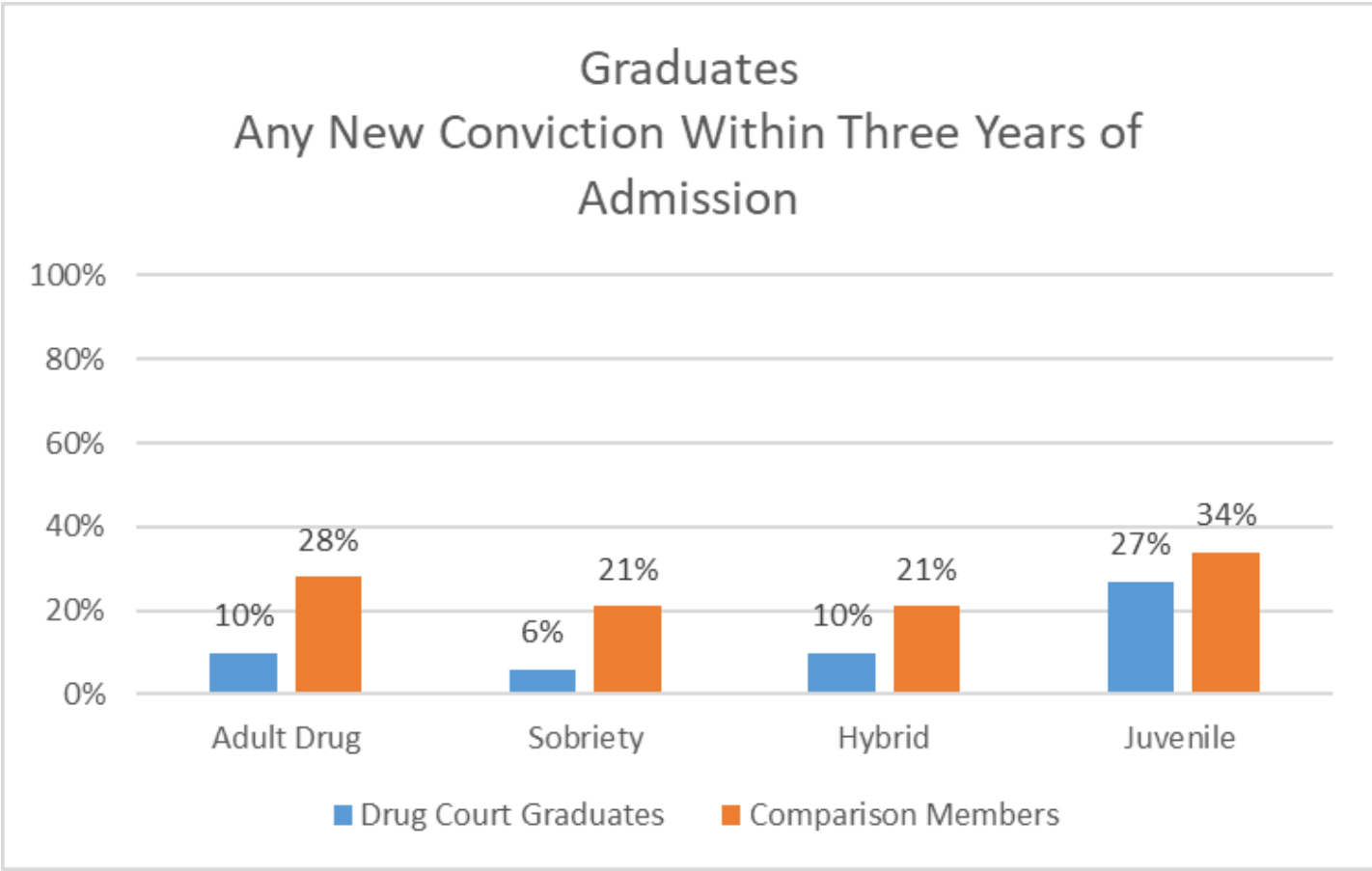


Treatment Courts Solve Problems, Save Lives



- Currently, 194 problem-solving courts statewide, including:

- 132 drug treatment/DWI sobriety courts
- 35 mental health courts
 - 29 adult
 - 6 juvenile
- 27 veterans treatment courts



Drug and Sobriety Court graduates are much less likely to commit another crime.



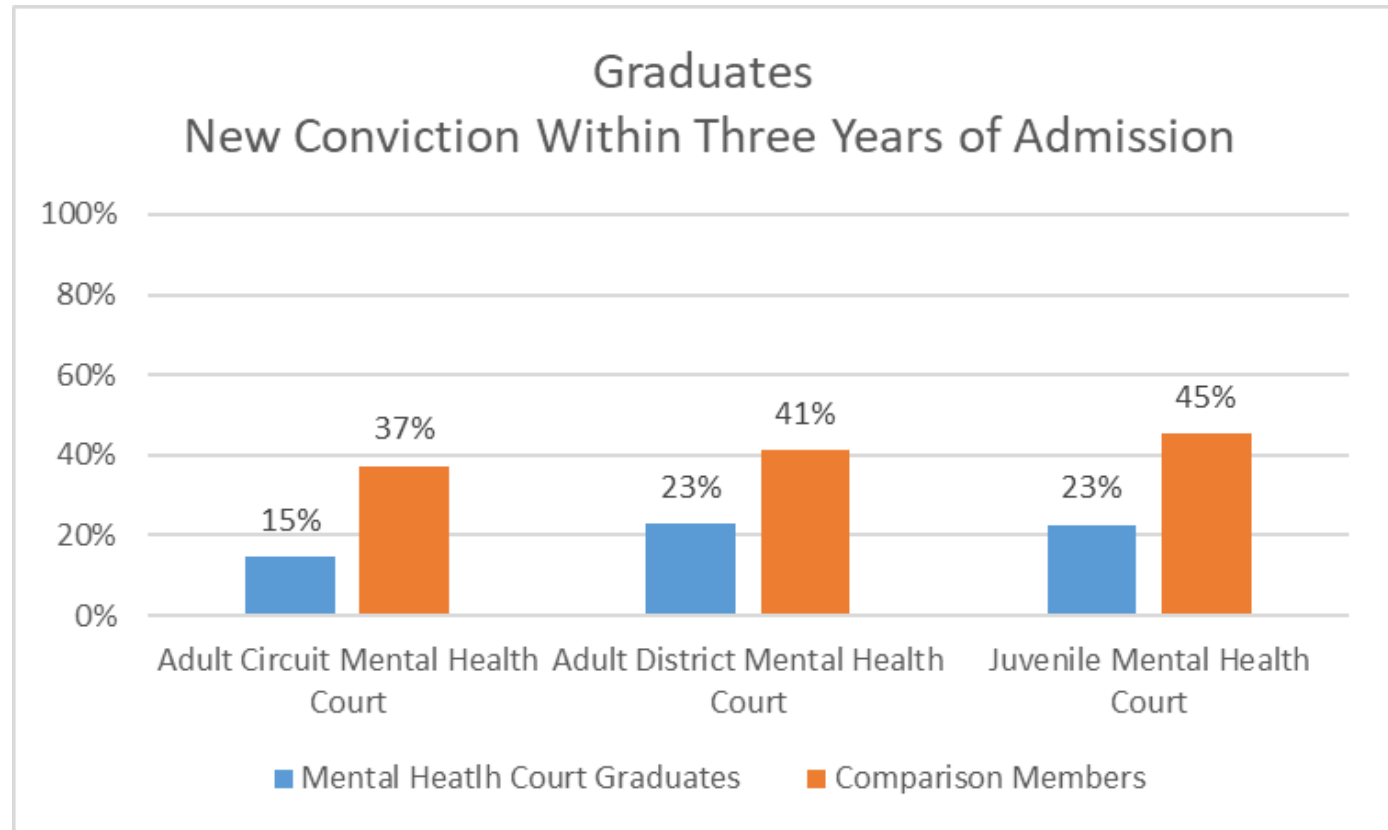
What's next?



Problem-Solving Court Budget Priority

- \$2.3 million in ongoing funding
- Support development of 15 new problem-solving courts
- Expand existing courts
- Demand from courts for funding exceeds supply
- Increase access to these life-saving courts
- Key factor in addressing opioids crisis

Mental health court drastically reduces recidivism.



Courts playing key role in fighting opioids

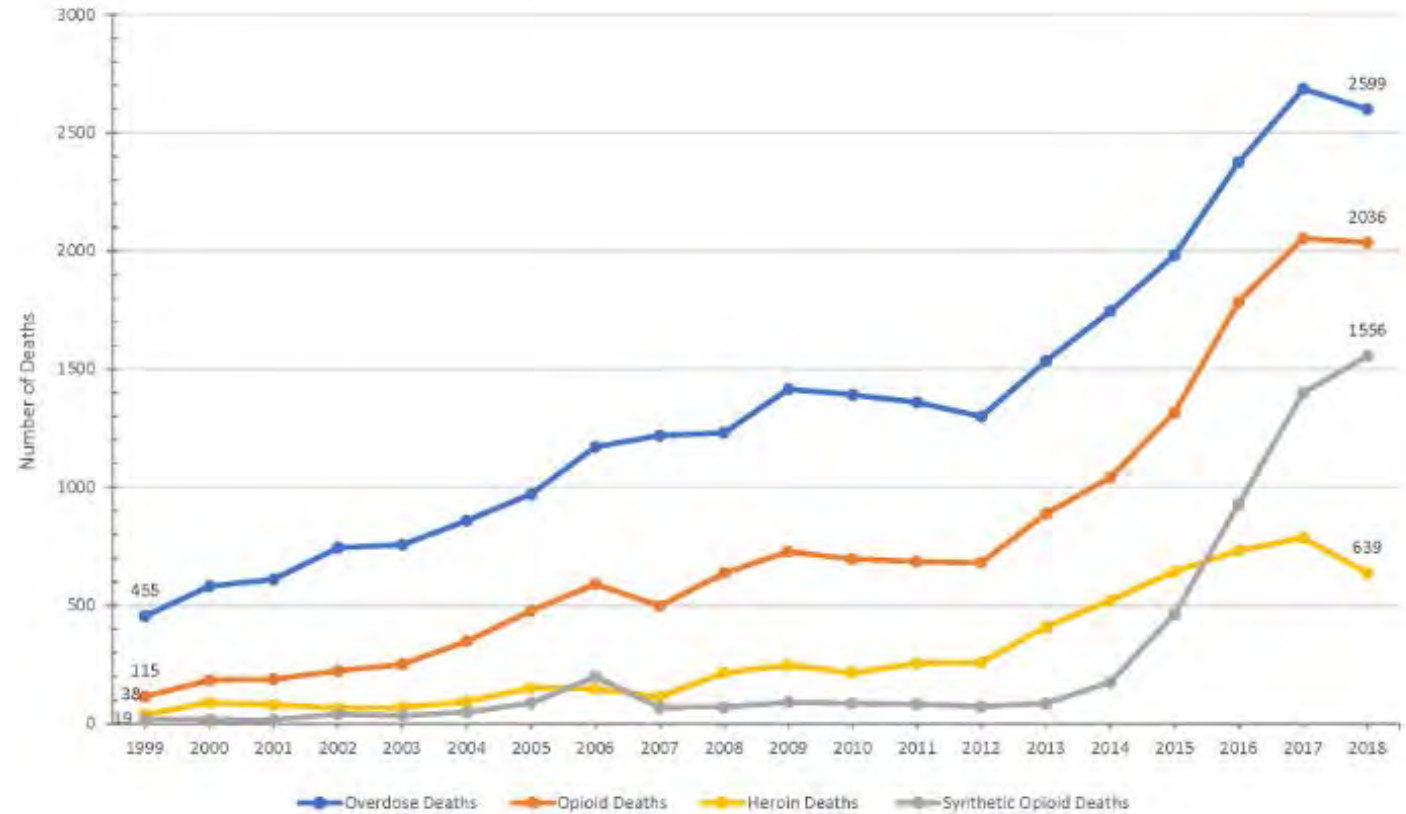


18x

Increase in Opioid Overdose Deaths

in Michigan from the span of 1999-2018, from 115 deaths to 2,036 deaths.

- ❑ **GOAL: Making sure Michigan judges have the training and tools to get people into treatment.**



www.courts.mi.gov/opioids





More Efficient Courts

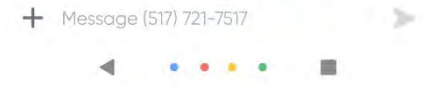
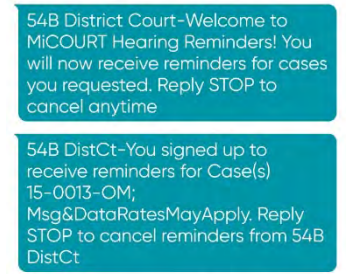
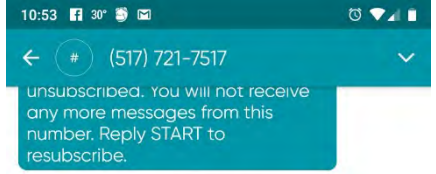
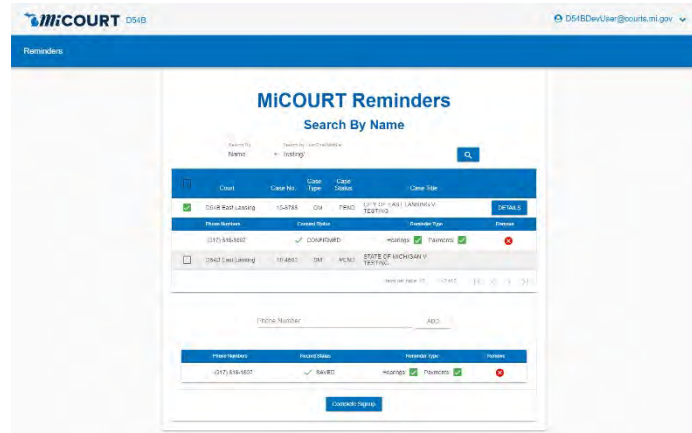
- Implementing technology to improve service and save money
- Statewide e-filing



IT Solutions for More Efficient Courts



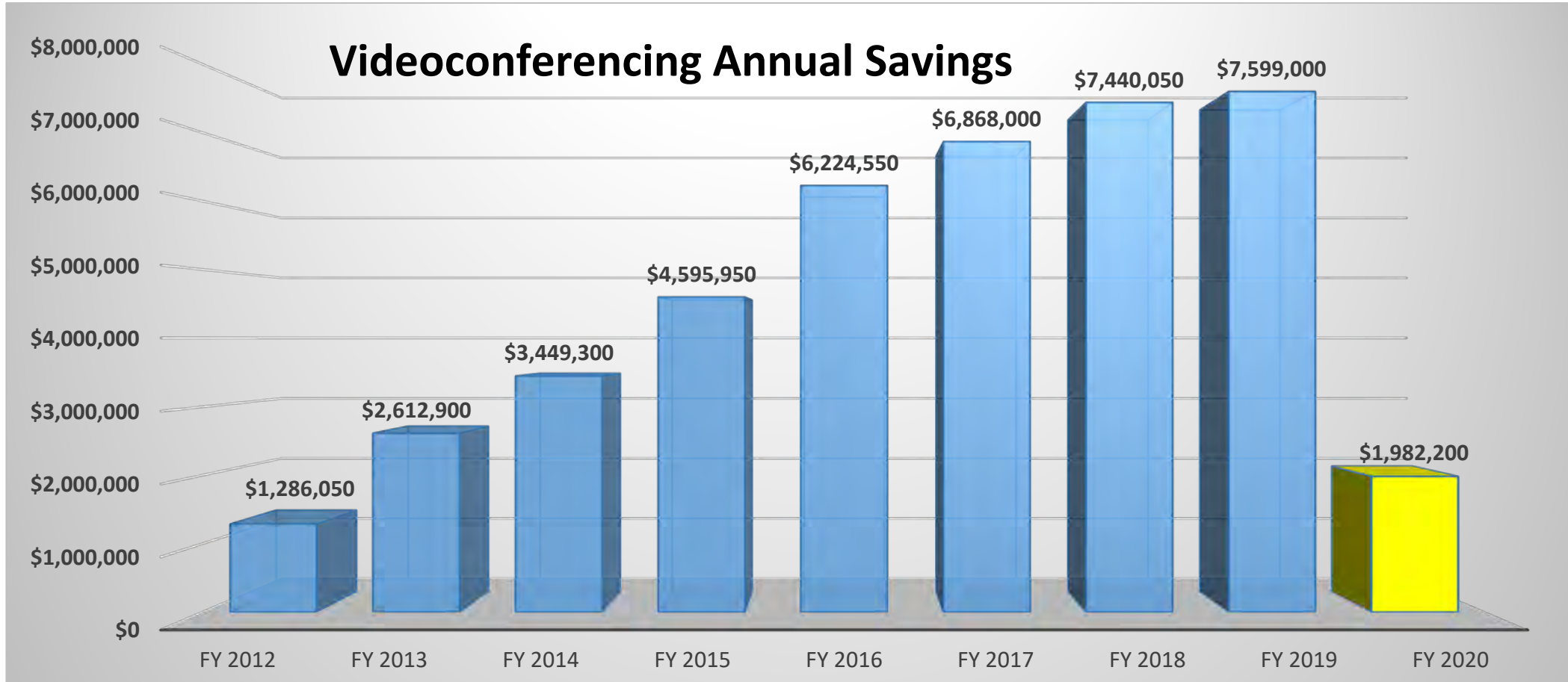
Text reminders increase appearance rates and boost payments.



Docket Display Boards help litigants navigate the courthouse



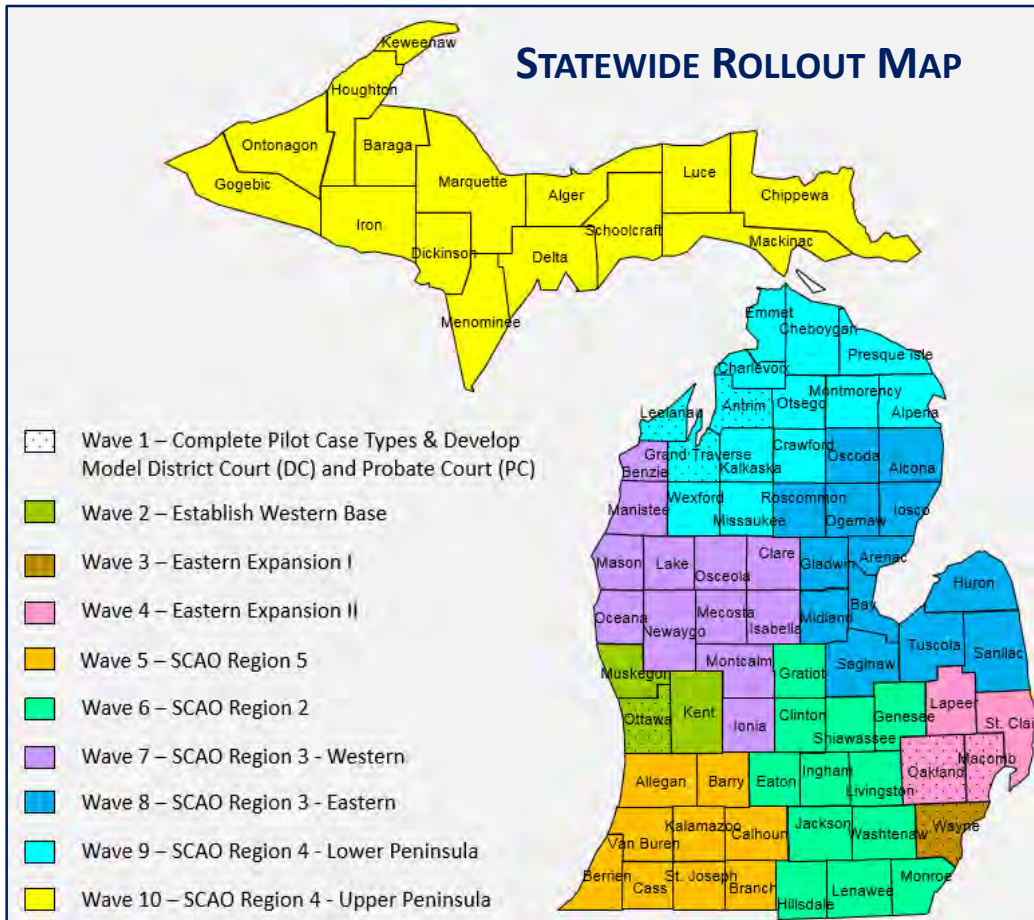
Videoconferencing Cumulative Savings \$42.7 million (FY 2011 – FY 2020)



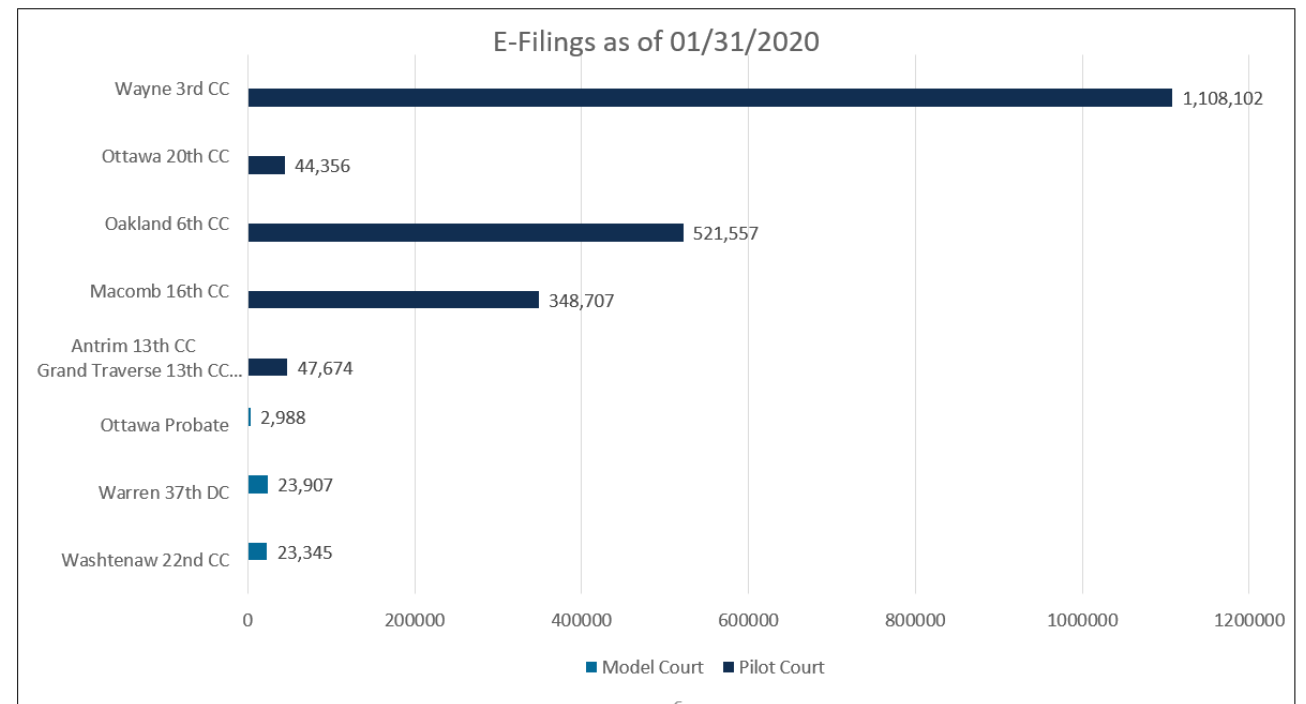
Virtual Transports Generate Savings for the Department of Corrections and Enhance Security



More than 2.1 Million E-filings



From January 2018 through January 2020, a total of 2,120,636 documents have been e-Filed across the five pilot courts and three model courts.



New "One Court of Justice" website



MICHIGAN COURTS
One Court of Justice

INFORMATION FOR...
GENERAL PUBLIC
MEDIA & NEWS
LEGAL COMMUNITY
JUDGES & COURT STAFF

COURTS | CASES, OPINIONS & ORDERS | ADMINISTRATION | EDUCATION & REFERENCES | NEWS & EVENTS | SELF HELP

WELCOME TO THE
Michigan One Court of Justice Website

GENERAL PUBLIC | LEGAL COMMUNITY | MEDIA & NEWS | JUDGES & COURT STAFF

Quick Links

- Task Forces**
 - Michigan Joint Task Force on Jail and Pretrial Incarceration
 - Michigan Opioids Task Force
 - Justice for All Task Force
 - Project Access Expungement Clinics
- mFILE**
 - E-Filing (trial court filers and clerks)
 - E-filing (Supreme Court & Court of Appeals)
- LIVE ORAL ARGUMENTS**
 - Watch oral arguments in-progress
- Michigan Legal Help
- Adoption Month in Michigan
- Chief Judge Appointments
- Accessibility to Courts - ADA

News

- FEB 06** Michigan Supreme Court Chief Justice Bridget M. McCormack statement on \$7.2M State Budget Proposal to Support Recommendations of MI Joint Task Force on Jail & Pretrial Incarceration
- JAN 23** Chief Justice McCormack, Justice Zahra to Lead Task Force 'Town Hall' Meetings to Address the Civil Justice Gap
- JAN 14** Speaker and Majority Leader Receive Bipartisan Criminal Justice Reform Report

Events

- MAR 04** Oral Arguments Time: 9:30 AM
- MAR 05** Oral Arguments Time: 9:30 AM
- APR 01** Oral Arguments Time: 9:30 AM
- APR 02** Oral Arguments Time: 9:30 AM
- APR 22** Court Community Connection - Hillsdale College Time: 9:30 AM

By the end of 2020, we expect to launch a new website that more user friendly, easier to navigate, faster, and more accessible.

www.courts.mi.gov



Funding request summary



- **\$325,700 – Pretrial Risk Assessment ongoing funding**
 - Included in Governor’s proposed budget
- **\$1,950,000 – Justice for All ongoing funding**
- **\$2,300,000 – Problem-Solving Courts ongoing funding**



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To: Members of the Public Policy Committee
Board of Commissioners

From: Government Relations Team

Date: April 17, 2020

Re: FY 2020-2021 Budget for the Michigan Indigent Defense Commission as contained in HB 5554, SB 802, and the Executive Budget Recommendation.

Background

In 2013, the Michigan Indigent Defense Commission Act (Act) was enacted as Public Act 93. That Act, supported by the State Bar of Michigan (SBM), created the Michigan Indigent Defense Commission (MIDC) and required the MIDC to develop standards for local indigent defense systems. Once those standards are approved, the local systems are required to develop compliance plans that include costs, and the state is obligated to fund any increased costs required to meet the new standards.

After the MIDC adopted the first four standards,¹ local systems developed and submitted compliance plans for MIDC approval, and now the state is required to fund the increased costs of implementing those compliance plans. FY 2018-19 was the first year that the state has provided funding to local indigent defense systems. SBM supported the Executive Budget Recommendation for FY 2019-20 which was fully funded by the legislature.

For FY 2020-21, the Executive Budget Recommendation includes \$117.5 million for indigent criminal defense (\$117.3 million general fund) for 134 trial court funding units to meet the ongoing requirement for the effective assistance of counsel for indigent criminal defendants. This represents a \$36.5 million

¹ SBM supported the first four minimum standards, which are:

1. Education and Training of Defense Counsel - Requires defense counsel to know certain areas of the law including forensic and scientific issues, use applicable technologies, and annually complete continuing legal education courses.
2. Initial Review - Directs defense counsel to be prepared to interview and to evaluate client capability to participate in their representation after appointment of the counsel and before any court proceeding in a confidential setting.
3. Investigation and Experts - Obligates defense counsel to perform investigations, request funds when appropriate to retain a professional defense investigator, and to seek the assistance of experts if necessary.
4. Counsel at First Appearance and Other Critical Stages - Mandates that a defense counsel be assigned to a defendant as soon as the individual is determined to be indigent. Furthermore, counsel must also be provided to defendants at pretrial appearances and for other critical stages at all criminal proceedings.

increase from the fiscal year 2020 levels as more trial courts will be incurring full year implementation costs for their compliance plans to meet standards #1-4, as approved by the Michigan Indigent Defense Commission. These first four standards cover training and education of counsel, the initial client interview, use of investigation and experts, and counsel at first appearance and other critical stages.

***Keller* Considerations**

SBM has a long history of supporting improvements to Michigan’s indigent defense system, including supporting the initial four minimum standards for indigent defense systems as well as the underlying legislation and the most recent amendments to the statute. The Executive Budget Recommendation would directly provide funding to improve the quality and availability of legal services for indigent criminal defendants. The \$117.5 million Executive Budget Recommendation for indigent criminal defense will allow trial court funding units to meet the ongoing requirements for the effective assistance of counsel and will address the costs incurred by courts as they implement compliance plans to train and educate counsel in accordance with standards approved by the Michigan Indigent Defense Council.

***Keller* Quick Guide**

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

Staff Recommendation

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

House Bill 5554 (2020) rss?

Friendly Link: <http://legislature.mi.gov/doc.aspx?2020-HB-5554>

Sponsor

Jon Hoadley (district 60)
(click name to see bills sponsored by that person)

Categories

Appropriations: other;

Appropriations; other; executive recommendation; provide for omnibus bill. Creates appropriation act.

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/less 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

History

(House actions in lowercase, Senate actions in UPPERCASE)

Date ▲	Journal	Action
2/26/2020	HJ 21 Pg. 377	introduced by Representative Jon Hoadley
2/26/2020	HJ 21 Pg. 377	read a first time
2/26/2020	HJ 21 Pg. 377	referred to Committee on Appropriations
2/27/2020	HJ 22 Pg. 379	bill electronically reproduced 02/27/2020

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Licensing & Regulatory Department Budget for 2020-2021 - Michigan Indigent Defense Commission

Article 13

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

PART 1

LINE-ITEM APPROPRIATIONS AND ANTICIPATED APPROPRIATIONS

Sec. 13-101. Subject to the conditions set forth in this article, the amounts listed in this part for the department of licensing and regulatory affairs are appropriated for the fiscal year ending September 30, 2021, and are anticipated to be appropriated for the fiscal year ending September 30, 2022, from the funds indicated in this part. The following is a summary of the appropriations and anticipated appropriations in this part:

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

APPROPRIATION SUMMARY

Full-time equated unclassified positions.....	30.0	30.0
Full-time equated classified positions.....	1,827.9	1,827.9
GROSS APPROPRIATION.....	\$ 487,589,600	\$ 462,589,600
Total interdepartmental grants and interdepartmental transfers.....	46,664,600	46,664,600
ADJUSTED GROSS APPROPRIATION.....	\$ 440,925,000	\$ 415,925,000
Total federal revenues.....	28,823,700	28,823,700
Total local revenues.....	0	0
Total private revenues.....	0	0
Total other state restricted revenues.....	258,945,700	238,945,700
State general fund/general purpose.....	\$ 153,155,600	\$ 148,155,600
<i>State general fund/general purpose schedule:</i>		
Ongoing state general fund/general purpose.....	148,155,600	148,155,600
One-time state general fund/general purpose.....	5,000,000	0

Sec. 13-102. DEPARTMENTAL ADMINISTRATION AND SUPPORT

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Full-time equated unclassified positions.....	30.0	30.0
Full-time equated classified positions.....	100.0	100.0
Unclassified salaries-30.0 FTE positions..... \$	2,572,400	\$ 2,572,400
Administrative services-73.0 FTE positions.....	8,644,800	8,644,800
Executive director programs-24.0 FTE positions.....	2,916,600	2,916,600
FOIA coordination-3.0 FTE positions.....	331,900	331,900
Property management.....	8,418,600	8,418,600
Worker's compensation.....	<u>304,300</u>	<u>304,300</u>
GROSS APPROPRIATION..... \$	\$ 23,188,600	\$ 23,188,600

Appropriated from:

Interdepartmental grant revenues:

IDG from department of insurance and financial services.....	150,000	150,000
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Federal revenues:

Other federal revenues.....	1,065,900	1,065,900
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Special revenue funds:

Other state restricted revenues.....	21,737,200	21,737,200
State general fund/general purpose..... \$	235,500	\$ 235,500

Sec. 13-103. PUBLIC SERVICE COMMISSION

Full-time equated classified positions.....	188.0	188.0
Public service commission-188.0 FTE positions..... \$	<u>33,014,200</u>	<u>\$ 33,014,200</u>
GROSS APPROPRIATION..... \$	\$ 33,014,200	\$ 33,014,200

Appropriated from:

Federal revenues:

Other federal revenues.....	2,273,300	2,273,300
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Special revenue funds:

Other state restricted revenues.....	30,740,900	30,740,900
State general fund/general purpose..... \$	0	\$ 0

Sec. 13-104. LIQUOR CONTROL COMMISSION

Full-time equated classified positions.....	145.0	145.0
Liquor licensing and enforcement-116.0 FTE positions.... \$	16,579,200	\$ 16,579,200
Management support services-29.0 FTE positions.....	<u>4,710,600</u>	<u>4,710,600</u>
GROSS APPROPRIATION..... \$	\$ 21,289,800	\$ 21,289,800

Appropriated from:

Special revenue funds:

Other state restricted revenues.....	21,289,800	21,289,800
State general fund/general purpose..... \$	0	\$ 0

Sec. 13-105. OCCUPATIONAL REGULATION

Full-time equated classified positions.....	1,166.9	1,166.9
Bureau of community and health systems administration-433.9 FTE positions..... \$	69,051,500	\$ 69,051,500
Bureau of construction codes-182.0 FTE positions.....	23,980,600	23,980,600
Bureau of fire services-79.0 FTE positions.....	12,552,700	12,552,700
Bureau of professional licensing-205.0 FTE positions....	40,873,400	40,873,400
Corporations, securities, and commercial licensing		

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bureau-109.0 FTE positions.....	15,275,400	15,275,400
Marihuana treatment research.....	20,000,000	0
Medical marihuana facilities licensing and tracking-		
99.0 FTE positions.....	11,682,200	11,682,200
Medical marihuana program-25.0 FTE positions.....	5,162,500	5,162,500
Recreational marihuana regulation-34.0 FTE positions....	<u>6,736,200</u>	<u>6,736,200</u>
GROSS APPROPRIATION.....	\$ 205,314,500	\$ 185,314,500

Appropriated from:

Interdepartmental grant revenues:

IDG from department of education.....	19,833,800	19,833,800
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Federal revenues:

Other federal revenues.....	24,297,200	24,297,200
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Special revenue funds:

Other state restricted revenues.....	135,189,600	115,189,600
State general fund/general purpose.....	\$ 25,993,900	\$ 25,993,900

Sec. 13-106. MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

Full-time equated classified positions.....	212.0	212.0
Michigan office of administrative hearings and rules-		
212.0 FTE positions.....	\$ <u>38,834,800</u>	\$ <u>38,834,800</u>
GROSS APPROPRIATION.....	\$ 38,834,800	\$ 38,834,800

Appropriated from:

Interdepartmental grant revenues:

IDG from other restricted funding.....	26,680,800	26,680,800
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Special revenue funds:

Other state restricted revenues.....	11,468,400	11,468,400
State general fund/general purpose.....	\$ 685,600	\$ 685,600

Sec. 13-107. COMMISSIONS

Full-time equated classified positions.....	16.0	16.0
Michigan indigent defense commission-16.0 FTE		
positions.....	\$ 2,714,000	\$ 2,714,000
Michigan unarmed combat commission.....	<u>126,200</u>	<u>126,200</u>
GROSS APPROPRIATION.....	\$ 2,840,200	\$ 2,840,200

Appropriated from:

Special revenue funds:

Other state restricted revenues.....	126,200	126,200
State general fund/general purpose.....	\$ 2,714,000	\$ 2,714,000

Sec. 13-108. GRANTS

Firefighter training grants.....	\$ 2,300,000	\$ 2,300,000
Liquor law enforcement grants.....	8,400,000	8,400,000
Medical marihuana operation and oversight grants.....	3,000,000	3,000,000
Michigan indigent defense commission grants.....	117,467,400	117,467,400
Remonumentation grants.....	6,800,000	6,800,000
Utility consumer representation.....	<u>750,000</u>	<u>750,000</u>
GROSS APPROPRIATION.....	\$ 138,717,400	\$ 138,717,400

Appropriated from:

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Special revenue funds:

Other state restricted revenues.....	21,450,000	21,450,000
State general fund/general purpose.....	\$ 117,267,400	\$ 117,267,400

Sec. 13-109. INFORMATION TECHNOLOGY

Information technology services and projects.....	\$ 19,390,100	\$ 19,390,100
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GROSS APPROPRIATION.....	\$ 19,390,100	\$ 19,390,100
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Appropriated from:

Federal revenues:

Other federal revenues.....	1,187,300	1,187,300
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Special revenue funds:

Other state restricted revenues.....	16,943,600	16,943,600
State general fund/general purpose.....	\$ 1,259,200	\$ 1,259,200

Sec. 13-110. ONE-TIME APPROPRIATIONS

Michigan saves.....	\$ 5,000,000	\$ 0
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GROSS APPROPRIATION.....	\$ 5,000,000	\$ 0
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Appropriated from:

Special revenue funds:

State general fund/general purpose.....	\$ 5,000,000	\$ 0
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PART 2

PROVISIONS CONCERNING APPROPRIATIONS

FISCAL YEAR 2021

GENERAL SECTIONS

Sec. 13-201. Pursuant to section 30 of article IX of the state constitution of 1963, total state spending from state resources under part 1 for fiscal year 2021 is \$412,101,300.00 and state spending from state resources to be paid to local units of government for fiscal year 2021 is \$137,967,400.00. The itemized statement below identifies appropriations from which spending to local units of government will occur:

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

Firefighter training grants.....	\$ 2,300,000
Liquor law enforcement grants.....	8,400,000
Medical marihuana operation and oversight grants.....	3,000,000
Michigan indigent defense commission grants.....	117,467,400
Re monumentation grants.....	<u>6,800,000</u>
TOTAL.....	\$ 137,967,400

Sec. 13-202. The appropriations authorized under this article are subject to the management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594.

Sec. 13-203. As used in this article:

- (a) "Department" means the department of licensing and regulatory affairs.
- (b) "Director" means the director of the department.
- (c) "FOIA" means the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.
- (d) "FTE" means full-time equated.
- (e) "IDG" means interdepartmental grant.

Sec. 13-204. The departments and agencies receiving appropriations in part 1 shall use the Internet to fulfill the reporting requirements of this article. This requirement may include transmission of reports via electronic mail to the

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recipients identified for each reporting requirement, or it may include placement of reports on an Internet or Intranet site.

Sec. 13-205. To the extent permissible under MCL 18.1261:

(a) Funds appropriated in part 1 shall not be used for the purchase of foreign goods or services, or both, if competitively priced and of comparable quality American goods or services, or both, are available.

(b) Preference shall be given to goods or services, or both, manufactured or provided by Michigan businesses, if they are competitively priced and of comparable quality.

(c) In addition, preference should be given to goods or services, or both, that are manufactured or provided by Michigan businesses owned and operated by veterans, if they are competitively priced and of comparable quality.

Sec. 13-206. To the extent permissible under the management and budget act, the director shall take all reasonable steps to ensure businesses in deprived and depressed communities compete for and perform contracts to provide services or supplies, or both. Each director shall strongly encourage firms with which the department contracts to subcontract with certified businesses in depressed and deprived communities for services, supplies, or both.

Sec. 13-207. For purposes of implementing MCL 18.1217, the departments and agencies receiving appropriations in part 1 shall prepare a report on out-of-state travel expenses not later than January 1 of each year. The travel report shall be a listing of all travel by classified and unclassified employees outside this state in the immediately preceding fiscal year that was funded in whole or in part with funds appropriated in the department's budget. The report shall be submitted to the senate and house appropriations committees, the house and senate fiscal agencies, and the state budget director. The report shall include the following information:

(a) The dates of each travel occurrence.

(b) The transportation and related costs of each travel occurrence, including the proportion funded with state general fund/general purpose revenues, the proportion funded with state restricted revenues, the proportion funded with federal revenues, and the proportion funded with other revenues.

Sec. 13-208. Funds appropriated in part 1 shall not be used by a principal executive department, state agency, or authority to hire a person to provide legal services that are the responsibility of the attorney general. This prohibition does not apply to legal services for bonding activities and for those outside services that the attorney general authorizes.

Sec. 13-209. Not later than November 30, the state budget office shall prepare and transmit a report that provides for estimates of the total general fund/general purpose appropriation lapses at the close of the prior fiscal year. This report shall summarize the projected year-end general fund/general purpose appropriation lapses by major departmental program or program areas. The report shall be transmitted to the chairpersons of the senate and house appropriations committees and the senate and house fiscal agencies.

Sec. 13-210. (1) In addition to the funds appropriated in part 1, there is appropriated an amount not to exceed \$10,000,000.00 for federal contingency funds. These funds are not available for expenditure until they have been transferred to another line item in this article under section 393(2) of the management and budget act, 1984 PA 431, MCL 18.1393.

(2) In addition to the funds appropriated in part 1, there is appropriated an amount not to exceed \$25,000,000.00 for state restricted contingency funds. These funds are not available for expenditure until they have been transferred to another line item in this article under section 393(2) of the management and budget act, 1984 PA 431, MCL 18.1393.

(3) In addition to the funds appropriated in part 1, there is appropriated an amount not to exceed \$1,000,000.00 for local contingency funds. These funds are not available for expenditure until they have been transferred to another line item in this article under section 393(2) of the management and budget act, 1984 PA 431, MCL 18.1393.

(4) In addition to the funds appropriated in part 1, there is appropriated an amount not to exceed \$500,000.00 for private contingency funds. These funds are not available for expenditure until they have been transferred to another line item in this article under section 393(2) of the management and budget act, 1984 PA 431, MCL 18.1393.

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Sec. 13-211. From the funds appropriated in part 1, the department shall provide to the department of technology, management and budget information sufficient to maintain a searchable website accessible by the public at no cost that includes, but is not limited to, all of the following for each department or agency:

(a) Fiscal year-to-date expenditures by category.

(b) Fiscal year-to-date expenditures by appropriation unit.

(c) Fiscal year-to-date payments to a selected vendor, including the vendor name, payment date, payment amount, and payment description.

(d) The number of active department employees by job classification.

(e) Job specifications and wage rates.

Sec. 13-212. Within 14 days after the release of the executive budget recommendation, the department shall provide to the state budget office information sufficient to provide the senate and house appropriations chairs, the senate and house appropriations subcommittees chairs, and the senate and house fiscal agencies with an annual report on estimated state restricted fund balances, state restricted fund projected revenues, and state restricted fund expenditures for the fiscal years ending September 30, 2020 and September 30, 2021.

Sec. 13-213. The department shall maintain, on a publicly accessible website, a department scorecard that identifies, tracks, and regularly updates key metrics that are used to monitor and improve the department's performance.

Sec. 13-214. Total authorized appropriations from all sources under part 1 for legacy costs for the fiscal year ending September 30, 2021 are estimated at \$47,354,500.00. From this amount, total agency appropriations for pension-related legacy costs are estimated at \$22,721,300.00. Total agency appropriations for retiree health care legacy costs are estimated at \$24,633,200.00.

Sec. 13-215. Unless prohibited by law, the department may accept credit card or other electronic means of payment for licenses, fees, or permits.

Sec. 13-221. The department may carry into the succeeding fiscal year unexpended federal pass-through funds to local institutions and governments that do not require additional state matching funds. Federal pass-through funds to local institutions and governments that are received in amounts in addition to those included in part 1 and that do not require additional state matching funds are appropriated for the purposes intended. Within 14 days after the receipt of federal pass-through funds, the department shall notify the house and senate chairpersons of the subcommittees, the senate and house fiscal agencies, and the state budget director of pass-through funds appropriated under this section.

Sec. 13-222. (1) Grants supported with private revenues received by the department are appropriated upon receipt and are available for expenditure by the department, subject to subsection (3), for purposes specified within the grant agreement and as permitted under state and federal law.

(2) Within 10 days after the receipt of a private grant appropriated in subsection (1), the department shall notify the house and senate chairpersons of the subcommittees, the senate and house fiscal agencies, and the state budget director of the receipt of the grant, including the fund source, purpose, and amount of the grant.

(3) The amount appropriated under subsection (1) shall not exceed \$1,500,000.00.

Sec. 13-223. (1) The department may charge registration fees to attendees of informational, training, or special events sponsored by the department, and related to activities that are under the department's purview.

(2) These fees shall reflect the costs for the department to sponsor the informational, training, or special events.

(3) Revenue generated by the registration fees is appropriated upon receipt and available for expenditure to cover the department's costs of sponsoring informational, training, or special events.

(4) Revenue generated by registration fees in excess of the department's costs of sponsoring informational, training, or special events shall carry forward to the subsequent fiscal year and not lapse to the general fund.

(5) The amount appropriated under subsection (3) shall not exceed \$500,000.00.

Sec. 13-224. The department may make available to interested entities otherwise unavailable customized listings of

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nonconfidential information in its possession, such as names and addresses of licensees. The department may establish and collect a reasonable charge to provide this service. The revenue received from this service is appropriated when received and shall be used to offset expenses to provide the service. Any balance of this revenue collected and unexpended at the end of the fiscal year shall lapse to the appropriate restricted fund.

Sec. 13-225. (1) The department shall sell documents at a price not to exceed the cost of production and distribution. Money received from the sale of these documents shall revert to the department. In addition to the funds appropriated in part 1, these funds are available for expenditure when they are received by the department of treasury. This subsection applies only for the following documents:

(a) Corporation and securities division documents, reports, and papers required or permitted by law pursuant to section 1060(6) of the business corporation act, 1972 PA 284, MCL 450.2060.

(b) The Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1101 to 436.2303.

(c) The mobile home commission act, 1987 PA 96, MCL 125.2301 to 125.2350; the business corporation act, 1972 PA 284, MCL 450.1101 to 450.2098; the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192; and the uniform securities act (2002), 2008 PA 551, MCL 451.2101 to 451.2703.

(d) Construction code manuals.

(e) Copies of transcripts from administrative law hearings.

(2) In addition to the funds appropriated in part 1, funds appropriated for the department under sections 57, 58, and 59 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.257, 24.258, and 24.259, and section 203 of the legislative council act, 1986 PA 268, MCL 4.1203, are appropriated for all expenses necessary to provide for the cost of publication and distribution.

(3) Unexpended funds at the end of the fiscal year shall carry forward to the subsequent fiscal year and not lapse to the general fund.

PUBLIC SERVICE COMMISSION

Sec. 13-301. The public service commission administers the low-income energy assistance grant program on behalf of the Michigan department of health and human services via an interagency agreement. Funds supporting the grant program are appropriated in the department upon awarding of grants and may be expended for grant payments and administrative related expenses incurred in the operation of the program.

LIQUOR CONTROL COMMISSION

Sec. 13-401. (1) From the appropriations in part 1 from the direct shipper enforcement fund, the liquor control commission shall expend these funds as required under section 203(11) of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1203, to investigate and audit unlawful direct shipments of wine by unlicensed wineries and retailers. In addition to other investigative methods, the commission shall use shipping records available to it under section 203(21) of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1203, to assist with this effort.

(2) By February 1, the liquor control commission shall provide a report to the legislature, the subcommittees, and the state budget director detailing the commission's activities to investigate and audit the illegal shipping of wine and the results of these activities. The report shall include the following:

(a) Work hours spent, specific actions undertaken, and the number of FTEs dedicated to identifying and stopping unlicensed out-of-state retailers, third-party marketers, and wineries that ship illegally in Michigan.

(b) General overview of expenditures associated with efforts to identify and stop unlicensed out-of-state retailers, third-party marketers, and wineries that ship illegally in Michigan.

(c) Number of out-of-state entities found to have illegally shipped wine into Michigan and total number of bottles (750 ml), number of cases with 750 ml bottles, number of liters, number of gallons, or weight of illegally shipped wine. These items must be broken down by total number of retailers and total number of wineries.

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(d) Suggested areas of focus on how to address direct shipper enforcement and illegal importation in the future.

OCCUPATIONAL REGULATION

Sec. 13-501. Money appropriated under this part and part 1 for the bureau of fire services shall not be expended unless, in accordance with section 2c of the fire prevention code, 1941 PA 207, MCL 29.2c, inspection and plan review fees will be charged according to the following schedule:

<u>Facility type</u>	<u>Facility size</u>	<u>Fee</u>
Hospitals	Any	\$8.00 per bed
<u>Plan review and construction inspection fees for hospitals and schools</u>		
<u>Project cost range</u>	<u>FeeMMMM</u>	
\$101,000.00 or less	minimum fee of \$155.00	
\$101,001.00 to \$1,500,000.00	\$1.60 per \$1,000.00	
\$1,500,001.00 to \$10,000,000.00	\$1.30 per \$1,000.00	
\$10,000,001.00 or more	\$1.10 per \$1,000.00	
or a maximum fee of \$60,000.00.		

Sec. 13-502. The funds collected by the department for licenses, permits, and other elevator regulation fees set forth in the Michigan Administrative Code and as determined under section 8 of 1976 PA 333, MCL 338.2158, and section 16 of 1967 PA 227, MCL 408.816, that are unexpended at the end of the fiscal year shall carry forward to the subsequent fiscal year.

Sec. 13-503. Not later than February 15, the department shall submit a report to the subcommittees, the senate and house fiscal agencies, and the state budget director providing the following information:

(a) The number of veterans who were separated from service in the Armed Forces of the United States with an honorable character of service or under honorable conditions (general) character of service, individually or if a majority interest of a corporation or limited liability company, that were exempted from paying licensure, registration, filing, or any other fees collected under each licensure or regulatory program administered by the bureau of construction codes, the bureau of professional licensing, and the corporations, securities, and commercial licensing bureau during the preceding fiscal year.

(b) The specific fees and total amount of revenue exempted under each licensure or regulatory program administered by the bureau of construction codes, the bureau of professional licensing, and the corporations, securities, and commercial licensing bureau during the preceding fiscal year.

(c) The actual costs of providing licensing and other regulatory services to veterans exempted from paying licensure, registration, filing, or any other fees during the preceding fiscal year and a description of how these costs were calculated.

(d) The estimated amount of revenue that will be exempted under each licensure or regulatory program administered by the bureau of construction codes, the bureau of professional licensing, and the corporations, securities, and commercial licensing bureau in both the current and subsequent fiscal years and a description of how the exempted revenue was estimated.

Sec. 13-504. Funds remaining in the homeowner construction lien recovery fund are appropriated to the department for payment of court-ordered homeowner construction lien recovery fund judgments entered prior to August 23, 2010. Pursuant to available funds, the payment of final judgments shall be made in the order in which the final judgments were entered and began accruing interest.

Sec. 13-505. The department shall submit a comprehensive annual report for all programs administered by the marijuana regulatory agency by January 31 to the standing committees on appropriations of the senate and house of

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representatives, the senate and house fiscal agencies, and the state budget director. This report shall include, but is not limited to, all of the following information for the prior fiscal year regarding the medical marihuana program under the Michigan Medical Marihuana Act, 2008 IL 1, MCL 333.26421 to 333.26430; the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801, and the Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, MCL 333.27951 to 333.27967:

- (a) The number of initial applications received, by license category.
- (b) The number of initial applications approved, and the number of initial applications denied, by license category.
- (c) The average amount of time, from receipt to approval or denial, to process an initial application, by license category.
- (d) The number of license applications approved, by license category and by county.
- (e) The number of renewal applications received, by license category, if applicable.
- (f) The number of renewal applications approved, and the number of renewal applications denied, by license category, if applicable.
- (g) The average amount of time, from receipt to approval or denial, to process a renewal application, by license category, if applicable.
- (h) The percentage of initial applications not approved or denied within the time requirements established in the respective act, by license category.
- (i) The percentage of renewal applications not approved or denied within the time requirements established in the respective act, by license category.
- (j) The total amount collected from application fees or established regulatory assessment and the specific fund deposited into, by license category.
- (k) The costs of administering the licensing program under each of the above referenced acts.
- (l) The registered name and addresses of all facilities licensed under the above referenced acts, by license category and by county.

Sec. 13-506. If the revenue collected by the department for health systems administration from fees and collections exceeds the amount appropriated in part 1, the revenue may be carried forward into the subsequent fiscal year. The revenue carried forward under this section shall be used as the first source of funds in the subsequent fiscal year.

Sec. 13-507. Not later than February 1, the department shall submit a report to the subcommittees, the senate and house fiscal agencies, and state budget director providing the following information:

- (a) The total amount of reimbursements made to local units of government for delegated inspections of fireworks retail locations pursuant to section 11 of the Michigan fireworks safety act, 2011 PA 256, MCL 28.461, from the funds appropriated in part 1 for the bureau of fire services during the preceding fiscal year.
- (b) The amount of reimbursement for delegated inspections of fireworks retail locations for each local unit of government that received reimbursement from the funds appropriated in part 1 for the bureau of fire services during the preceding fiscal year.

Sec. 13-508. (1) Beginning October 1, for the purpose of defraying the costs associated with responding to false final inspection appointments and to discourage the practice of calling for final inspections when the project is incomplete or noncompliant with a plan of correction previously provided by the bureau of fire services, the bureau of fire services may assess a fee not to exceed \$200.00 for responding to a second or subsequent confirmed false inspection appointment. Fees collected under this section shall be deposited into the restricted account referenced by section 2c(2) of the fire prevention code, 1941 PA 207, MCL 29.2c, and explicitly identified within the statewide integrated governmental management applications system.

(2) Not later than September 30, the department shall prepare a report that provides the amount of the fee assessed under subsection (1), the number of fees assessed and issued per region, the cost allocation for the work performed and

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reduced as a result of this section, and any recommendations for consideration by the legislature. The department shall submit this information to the state budget director, the subcommittees, and the senate and house fiscal agencies.

Sec. 13-510. The department shall submit a report on the Michigan automated prescription system to the senate and house appropriations committees, the senate and house fiscal agencies, and the state budget director by November 30. The report shall include, but is not limited to, the following:

- (a) Total number of licensed health professionals registered to the Michigan automated prescription system.
- (b) Total number of dispensers registered to the Michigan automated prescription system.
- (c) Total number of prescribers using the Michigan automated prescription system.
- (d) Total number of dispensers using the Michigan automated prescription system.
- (e) Number of cases related to overprescribing, overdispensing, and drug diversion where the department took administrative action as a result of information and data generated from the Michigan automated prescription system.
- (f) The number of hospitals, doctor's offices, pharmacies, and other health facilities that have integrated the Michigan automated prescription system into their electronic health records systems.
- (g) Total number of delegate users registered to the Michigan automated prescription system.

Sec. 13-514. From the appropriations in part 1, the bureau of community and health systems administration; bureau of construction codes; bureau of fire services; bureau of professional licensing; corporations, securities, and commercial licensing bureau; and the marijuana regulatory agency must submit reports to the subcommittees, senate and house fiscal agencies, and state budget director by December 31. The reports must include all of the following information for the prior fiscal year for each agency or bureau:

- (a) The number of complaints received, with the number of complaints specified for each profession or license type that the agency or bureau regulates.
- (b) A description of the process used to resolve complaints.
- (c) A description of the types of complaints received with total counts of the number of complaints of that type received.
- (d) The number of investigations initiated and the number of investigations closed.
- (e) Average amount of time needed to close investigations.
- (f) The number and type of enforcement actions taken against licensees and metrics regarding any adverse actions taken against licensees including license revocations, suspensions, and fines.

COMMISSIONS

Sec. 13-801. If Byrne formula grant funding is awarded to the Michigan indigent defense commission, the Michigan indigent defense commission may receive and expend Byrne formula grant funds in an amount not to exceed \$250,000.00 as an interdepartmental grant from the department of state police. The Michigan indigent defense commission, created under section 5 of the Michigan indigent defense commission act, 2013 PA 93, MCL 780.985, may receive and expend federal grant funding from the United States Department of Justice in an amount not to exceed \$300,000.00 as other federal grants.

Sec. 13-802. From the funds appropriated in part 1, the Michigan indigent defense commission shall submit a report by September 30 to the senate and house appropriations subcommittees on licensing and regulatory affairs, the senate and house fiscal agencies, and the state budget director on the incremental costs associated with the standard development process, the compliance plan process, and the collection of data from all indigent defense systems and attorneys providing indigent defense. Particular emphasis shall be placed on those costs that may be avoided after standards are developed and compliance plans are in place.

GRANTS

Sec. 13-901. (1) The department shall expend the funds appropriated in part 1 for medical marijuana operation and oversight grants for grants to counties for education and outreach programs relating to the Michigan medical marijuana

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program pursuant to section 6(1) of the Michigan Medical Marihuana Act, 2008 IL 1, MCL 333.26426. These grants shall be distributed proportionately based on the number of registry identification cards issued to or renewed for the residents of each county that applied for a grant under subsection (2). For the purposes of this subsection, operation and oversight grants are for education, communication, and outreach regarding the Michigan Medical Marihuana Act, 2008 IL 1, MCL 333.26421 to 333.26430. Grants provided under this section must not be used for law enforcement purposes.

(2) Not later than December 1, the department shall post a listing of potential grant money available to each county on its website. In addition, the department shall work collaboratively with counties regarding the availability of these grant funds. A county requesting a grant shall apply on a form developed by the department and available on its website. The form shall contain the county's specific projected plan for use of the money and its agreement to maintain all records and to submit documentation to the department to support the use of the grant money.

(3) In order to be eligible to receive a grant under subsection (1), a county shall apply not later than January 1 and agree to report how the grant was expended and to provide that report to the department not later than September 15. The department shall submit a report not later than October 15 of the subsequent fiscal year to the state budget director, the subcommittees, and the senate and house fiscal agencies detailing the grant amounts by recipient and the reported uses of the grants in the preceding fiscal year.

Sec. 13-902. (1) The amount appropriated in part 1 for firefighter training grants shall only be expended for payments to counties to reimburse organized fire departments for firefighter training and other activities required under the firefighters training council act, 1966 PA 291, MCL 29.361 to 29.377.

(2) If the amount appropriated in part 1 for firefighter training grants is expended by the firefighters training council, established in section 3 of the firefighters training council act, 1966 PA 291, MCL 29.363, for payments to counties under section 14 of the firefighters training council act, 1966 PA 291, MCL 29.374, in compliance with statute, the following subsections apply:

(a) The amount appropriated in part 1 for firefighter training grants shall be allocated pursuant to section 14(2) of the firefighters training council act, 1966 PA 291, MCL 29.374.

(b) If the amount allocated to any county under subdivision (a) is less than \$5,000.00, the amounts disbursed to each county under subdivision (a) shall be adjusted to provide for a minimum payment of \$5,000.00 to each county.

(3) Not later than February 1, the department shall submit a financial report to the subcommittees, the senate and house fiscal agencies, and the state budget director identifying the following information for the preceding fiscal year:

(a) The amount of the payments that would be made to each county if the distribution formula described by the first sentence of section 14(2) of the firefighters training council act, 1966 PA 291, MCL 29.374, would have been utilized to allocate the total amount appropriated in part 1 for firefighter training grants.

(b) The amount of the payments approved by the firefighters training council for allocation to each county.

(c) The amount of the payments actually expended or encumbered within each county.

(d) A description of any other payments or expenditures made under the authority of the firefighters training council.

(e) The amount of payments approved for allocations to counties that was not expended or encumbered and lapsed back to the fireworks safety fund.

ONE-TIME APPROPRIATIONS

Sec. 13-1002. From the funds appropriated in part 1 for Michigan Saves, the Michigan public service commission may award a \$5,000,000.00 grant to a nonprofit green bank with experience in leveraging energy-efficiency and renewable energy improvements, for the purpose of making such loans more affordable for Michigan families, businesses, and public entities. Grant funds may be used to support a loan loss reserve fund or other comparable financial instrument to further leverage private investment in clean energy improvements.

Senate Bill 0802 (2020)  rss?Friendly Link: <http://legislature.mi.gov/doc.aspx?2020-SB-0802>**Sponsors**

Curtis Hertel (district 23)

Paul Wojno, Erika Geiss, Marshall Bullock, Rosemary Bayer, Stephanie Chang, Sean McCann

(click name to see bills sponsored by that person)

Categories

Appropriations: other;

Appropriations; other; executive recommendation; provide for omnibus bill. Creates appropriation act.

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/less 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****GOVERNOR'S RECOMMENDATION (Date Completed: 3-11-20)**

This document analyzes: SB0802

History

(House actions in lowercase, Senate actions in UPPERCASE)

Date	Journal	Action
2/26/2020	SJ 21 Pg. 273	INTRODUCED BY SENATOR CURTIS HERTEL, JR.
2/26/2020	SJ 21 Pg. 273	REFERRED TO COMMITTEE ON APPROPRIATIONS

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Article 13

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

PART 1

LINE-ITEM APPROPRIATIONS AND ANTICIPATED APPROPRIATIONS

Sec. 13-101. Subject to the conditions set forth in this article, the amounts listed in this part for the department of licensing and regulatory affairs are appropriated for the fiscal year ending September 30, 2021, and are anticipated to be appropriated for the fiscal year ending September 30, 2022, from the funds indicated in this part. The following is a summary of the appropriations and anticipated appropriations in this part:

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

APPROPRIATION SUMMARY

Full-time equated unclassified positions.....	30.0	30.0
Full-time equated classified positions.....	1,827.9	1,827.9
GROSS APPROPRIATION.....	\$ 487,589,600	\$ 462,589,600
Total interdepartmental grants and interdepartmental transfers.....	46,664,600	46,664,600
ADJUSTED GROSS APPROPRIATION.....	\$ 440,925,000	\$ 415,925,000
Total federal revenues.....	28,823,700	28,823,700
Total local revenues.....	0	0
Total private revenues.....	0	0
Total other state restricted revenues.....	258,945,700	238,945,700
State general fund/general purpose.....	\$ 153,155,600	\$ 148,155,600
<i>State general fund/general purpose schedule:</i>		
Ongoing state general fund/general purpose.....	148,155,600	148,155,600
One-time state general fund/general purpose.....	5,000,000	0

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Sec. 13-102. DEPARTMENTAL ADMINISTRATION AND SUPPORT

Full-time equated unclassified positions.....	30.0	30.0
Full-time equated classified positions.....	100.0	100.0
Unclassified salaries-30.0 FTE positions.....	\$ 2,572,400	\$ 2,572,400
Administrative services-73.0 FTE positions.....	8,644,800	8,644,800
Executive director programs-24.0 FTE positions.....	2,916,600	2,916,600
FOIA coordination-3.0 FTE positions.....	331,900	331,900
Property management.....	8,418,600	8,418,600
Worker's compensation.....	<u>304,300</u>	<u>304,300</u>
GROSS APPROPRIATION.....	\$ 23,188,600	\$ 23,188,600

Appropriated from:

Interdepartmental grant revenues:

IDG from department of insurance and financial services.....	150,000	150,000
Federal revenues:		
Other federal revenues.....	1,065,900	1,065,900
Special revenue funds:		
Other state restricted revenues.....	21,737,200	21,737,200
State general fund/general purpose.....	\$ 235,500	\$ 235,500

Sec. 13-103. PUBLIC SERVICE COMMISSION

Full-time equated classified positions.....	188.0	188.0
Public service commission-188.0 FTE positions.....	\$ <u>33,014,200</u>	\$ <u>33,014,200</u>
GROSS APPROPRIATION.....	\$ 33,014,200	\$ 33,014,200

Appropriated from:

Federal revenues:

Other federal revenues.....	2,273,300	2,273,300
Special revenue funds:		
Other state restricted revenues.....	30,740,900	30,740,900
State general fund/general purpose.....	\$ 0	\$ 0

Sec. 13-104. LIQUOR CONTROL COMMISSION

Full-time equated classified positions.....	145.0	145.0
Liquor licensing and enforcement-116.0 FTE positions....	\$ 16,579,200	\$ 16,579,200
Management support services-29.0 FTE positions.....	<u>4,710,600</u>	<u>4,710,600</u>
GROSS APPROPRIATION.....	\$ 21,289,800	\$ 21,289,800

Appropriated from:

Special revenue funds:

Other state restricted revenues.....	21,289,800	21,289,800
State general fund/general purpose.....	\$ 0	\$ 0

Sec. 13-105. OCCUPATIONAL REGULATION

Full-time equated classified positions.....	1,166.9	1,166.9
Bureau of community and health systems administration-433.9 FTE positions.....	\$ 69,051,500	\$ 69,051,500
Bureau of construction codes-182.0 FTE positions.....	23,980,600	23,980,600
Bureau of fire services-79.0 FTE positions.....	12,552,700	12,552,700
Bureau of professional licensing-205.0 FTE positions....	40,873,400	40,873,400

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Corporations, securities, and commercial licensing		
bureau-109.0 FTE positions.....	15,275,400	15,275,400
Marihuana treatment research.....	20,000,000	0
Medical marihuana facilities licensing and tracking-		
99.0 FTE positions.....	11,682,200	11,682,200
Medical marihuana program-25.0 FTE positions.....	5,162,500	5,162,500
Recreational marihuana regulation-34.0 FTE positions....	<u>6,736,200</u>	<u>6,736,200</u>
GROSS APPROPRIATION.....	\$ 205,314,500	\$ 185,314,500
Appropriated from:		
Interdepartmental grant revenues:		
IDG from department of education.....	19,833,800	19,833,800
Federal revenues:		
Other federal revenues.....	24,297,200	24,297,200
Special revenue funds:		
Other state restricted revenues.....	135,189,600	115,189,600
State general fund/general purpose.....	\$ 25,993,900	\$ 25,993,900
Sec. 13-106. MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES		
Full-time equated classified positions.....	212.0	212.0
Michigan office of administrative hearings and rules-		
212.0 FTE positions.....	\$ <u>38,834,800</u>	\$ <u>38,834,800</u>
GROSS APPROPRIATION.....	\$ 38,834,800	\$ 38,834,800
Appropriated from:		
Interdepartmental grant revenues:		
IDG from other restricted funding.....	26,680,800	26,680,800
Special revenue funds:		
Other state restricted revenues.....	11,468,400	11,468,400
State general fund/general purpose.....	\$ 685,600	\$ 685,600
Sec. 13-107. COMMISSIONS		
Full-time equated classified positions.....	16.0	16.0
Michigan indigent defense commission-16.0 FTE		
positions.....	\$ 2,714,000	\$ 2,714,000
Michigan unarmed combat commission.....	<u>126,200</u>	<u>126,200</u>
GROSS APPROPRIATION.....	\$ 2,840,200	\$ 2,840,200
Appropriated from:		
Special revenue funds:		
Other state restricted revenues.....	126,200	126,200
State general fund/general purpose.....	\$ 2,714,000	\$ 2,714,000
Sec. 13-108. GRANTS		
Firefighter training grants.....	\$ 2,300,000	\$ 2,300,000
Liquor law enforcement grants.....	8,400,000	8,400,000
Medical marihuana operation and oversight grants.....	3,000,000	3,000,000
Michigan indigent defense commission grants.....	117,467,400	117,467,400
Remonumentation grants.....	6,800,000	6,800,000
Utility consumer representation.....	<u>750,000</u>	<u>750,000</u>
GROSS APPROPRIATION.....	\$ 138,717,400	\$ 138,717,400

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Appropriated from:

Special revenue funds:

Other state restricted revenues.....	21,450,000	21,450,000
State general fund/general purpose.....	\$ 117,267,400	\$ 117,267,400

Sec. 13-109. INFORMATION TECHNOLOGY

Information technology services and projects.....	\$ 19,390,100	\$ 19,390,100
GROSS APPROPRIATION.....	\$ 19,390,100	\$ 19,390,100

Appropriated from:

Federal revenues:

Other federal revenues.....	1,187,300	1,187,300
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Special revenue funds:

Other state restricted revenues.....	16,943,600	16,943,600
State general fund/general purpose.....	\$ 1,259,200	\$ 1,259,200

Sec. 13-110. ONE-TIME APPROPRIATIONS

Michigan saves.....	\$ 5,000,000	\$ 0
GROSS APPROPRIATION.....	\$ 5,000,000	\$ 0

Appropriated from:

Special revenue funds:

State general fund/general purpose.....	\$ 5,000,000	\$ 0
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PART 2

PROVISIONS CONCERNING APPROPRIATIONS

FISCAL YEAR 2021

GENERAL SECTIONS

Sec. 13-201. Pursuant to section 30 of article IX of the state constitution of 1963, total state spending from state resources under part 1 for fiscal year 2021 is \$412,101,300.00 and state spending from state resources to be paid to local units of government for fiscal year 2021 is \$137,967,400.00. The itemized statement below identifies appropriations from which spending to local units of government will occur:

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

Firefighter training grants.....	\$ 2,300,000
Liquor law enforcement grants.....	8,400,000
Medical marihuana operation and oversight grants.....	3,000,000
Michigan indigent defense commission grants.....	117,467,400
Re monumentation grants.....	<u>6,800,000</u>
TOTAL.....	\$ 137,967,400

Sec. 13-202. The appropriations authorized under this article are subject to the management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594.

Sec. 13-203. As used in this article:

- (a) "Department" means the department of licensing and regulatory affairs.
- (b) "Director" means the director of the department.
- (c) "FOIA" means the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.
- (d) "FTE" means full-time equated.
- (e) "IDG" means interdepartmental grant.

Sec. 13-204. The departments and agencies receiving appropriations in part 1 shall use the Internet to fulfill the

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reporting requirements of this article. This requirement may include transmission of reports via electronic mail to the recipients identified for each reporting requirement, or it may include placement of reports on an Internet or Intranet site.

Sec. 13-205. To the extent permissible under MCL 18.1261:

(a) Funds appropriated in part 1 shall not be used for the purchase of foreign goods or services, or both, if competitively priced and of comparable quality American goods or services, or both, are available.

(b) Preference shall be given to goods or services, or both, manufactured or provided by Michigan businesses, if they are competitively priced and of comparable quality.

(c) In addition, preference should be given to goods or services, or both, that are manufactured or provided by Michigan businesses owned and operated by veterans, if they are competitively priced and of comparable quality.

Sec. 13-206. To the extent permissible under the management and budget act, the director shall take all reasonable steps to ensure businesses in deprived and depressed communities compete for and perform contracts to provide services or supplies, or both. Each director shall strongly encourage firms with which the department contracts to subcontract with certified businesses in depressed and deprived communities for services, supplies, or both.

Sec. 13-207. For purposes of implementing MCL 18.1217, the departments and agencies receiving appropriations in part 1 shall prepare a report on out-of-state travel expenses not later than January 1 of each year. The travel report shall be a listing of all travel by classified and unclassified employees outside this state in the immediately preceding fiscal year that was funded in whole or in part with funds appropriated in the department's budget. The report shall be submitted to the senate and house appropriations committees, the house and senate fiscal agencies, and the state budget director. The report shall include the following information:

(a) The dates of each travel occurrence.

(b) The transportation and related costs of each travel occurrence, including the proportion funded with state general fund/general purpose revenues, the proportion funded with state restricted revenues, the proportion funded with federal revenues, and the proportion funded with other revenues.

Sec. 13-208. Funds appropriated in part 1 shall not be used by a principal executive department, state agency, or authority to hire a person to provide legal services that are the responsibility of the attorney general. This prohibition does not apply to legal services for bonding activities and for those outside services that the attorney general authorizes.

Sec. 13-209. Not later than November 30, the state budget office shall prepare and transmit a report that provides for estimates of the total general fund/general purpose appropriation lapses at the close of the prior fiscal year. This report shall summarize the projected year-end general fund/general purpose appropriation lapses by major departmental program or program areas. The report shall be transmitted to the chairpersons of the senate and house appropriations committees and the senate and house fiscal agencies.

Sec. 13-210. (1) In addition to the funds appropriated in part 1, there is appropriated an amount not to exceed \$10,000,000.00 for federal contingency funds. These funds are not available for expenditure until they have been transferred to another line item in this article under section 393(2) of the management and budget act, 1984 PA 431, MCL 18.1393.

(2) In addition to the funds appropriated in part 1, there is appropriated an amount not to exceed \$25,000,000.00 for state restricted contingency funds. These funds are not available for expenditure until they have been transferred to another line item in this article under section 393(2) of the management and budget act, 1984 PA 431, MCL 18.1393.

(3) In addition to the funds appropriated in part 1, there is appropriated an amount not to exceed \$1,000,000.00 for local contingency funds. These funds are not available for expenditure until they have been transferred to another line item in this article under section 393(2) of the management and budget act, 1984 PA 431, MCL 18.1393.

(4) In addition to the funds appropriated in part 1, there is appropriated an amount not to exceed \$500,000.00 for private contingency funds. These funds are not available for expenditure until they have been transferred to another line

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item in this article under section 393(2) of the management and budget act, 1984 PA 431, MCL 18.1393.

Sec. 13-211. From the funds appropriated in part 1, the department shall provide to the department of technology, management and budget information sufficient to maintain a searchable website accessible by the public at no cost that includes, but is not limited to, all of the following for each department or agency:

(a) Fiscal year-to-date expenditures by category.

(b) Fiscal year-to-date expenditures by appropriation unit.

(c) Fiscal year-to-date payments to a selected vendor, including the vendor name, payment date, payment amount, and payment description.

(d) The number of active department employees by job classification.

(e) Job specifications and wage rates.

Sec. 13-212. Within 14 days after the release of the executive budget recommendation, the department shall provide to the state budget office information sufficient to provide the senate and house appropriations chairs, the senate and house appropriations subcommittees chairs, and the senate and house fiscal agencies with an annual report on estimated state restricted fund balances, state restricted fund projected revenues, and state restricted fund expenditures for the fiscal years ending September 30, 2020 and September 30, 2021.

Sec. 13-213. The department shall maintain, on a publicly accessible website, a department scorecard that identifies, tracks, and regularly updates key metrics that are used to monitor and improve the department's performance.

Sec. 13-214. Total authorized appropriations from all sources under part 1 for legacy costs for the fiscal year ending September 30, 2021 are estimated at \$47,354,500.00. From this amount, total agency appropriations for pension-related legacy costs are estimated at \$22,721,300.00. Total agency appropriations for retiree health care legacy costs are estimated at \$24,633,200.00.

Sec. 13-215. Unless prohibited by law, the department may accept credit card or other electronic means of payment for licenses, fees, or permits.

Sec. 13-221. The department may carry into the succeeding fiscal year unexpended federal pass-through funds to local institutions and governments that do not require additional state matching funds. Federal pass-through funds to local institutions and governments that are received in amounts in addition to those included in part 1 and that do not require additional state matching funds are appropriated for the purposes intended. Within 14 days after the receipt of federal pass-through funds, the department shall notify the house and senate chairpersons of the subcommittees, the senate and house fiscal agencies, and the state budget director of pass-through funds appropriated under this section.

Sec. 13-222. (1) Grants supported with private revenues received by the department are appropriated upon receipt and are available for expenditure by the department, subject to subsection (3), for purposes specified within the grant agreement and as permitted under state and federal law.

(2) Within 10 days after the receipt of a private grant appropriated in subsection (1), the department shall notify the house and senate chairpersons of the subcommittees, the senate and house fiscal agencies, and the state budget director of the receipt of the grant, including the fund source, purpose, and amount of the grant.

(3) The amount appropriated under subsection (1) shall not exceed \$1,500,000.00.

Sec. 13-223. (1) The department may charge registration fees to attendees of informational, training, or special events sponsored by the department, and related to activities that are under the department's purview.

(2) These fees shall reflect the costs for the department to sponsor the informational, training, or special events.

(3) Revenue generated by the registration fees is appropriated upon receipt and available for expenditure to cover the department's costs of sponsoring informational, training, or special events.

(4) Revenue generated by registration fees in excess of the department's costs of sponsoring informational, training, or special events shall carry forward to the subsequent fiscal year and not lapse to the general fund.

(5) The amount appropriated under subsection (3) shall not exceed \$500,000.00.

Licensing & Regulatory Department Budget for 2020-2021 - Michigan Indigent Defense Commission

Sec. 13-224. The department may make available to interested entities otherwise unavailable customized listings of nonconfidential information in its possession, such as names and addresses of licensees. The department may establish and collect a reasonable charge to provide this service. The revenue received from this service is appropriated when received and shall be used to offset expenses to provide the service. Any balance of this revenue collected and unexpended at the end of the fiscal year shall lapse to the appropriate restricted fund.

Sec. 13-225. (1) The department shall sell documents at a price not to exceed the cost of production and distribution. Money received from the sale of these documents shall revert to the department. In addition to the funds appropriated in part 1, these funds are available for expenditure when they are received by the department of treasury. This subsection applies only for the following documents:

(a) Corporation and securities division documents, reports, and papers required or permitted by law pursuant to section 1060(6) of the business corporation act, 1972 PA 284, MCL 450.2060.

(b) The Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1101 to 436.2303.

(c) The mobile home commission act, 1987 PA 96, MCL 125.2301 to 125.2350; the business corporation act, 1972 PA 284, MCL 450.1101 to 450.2098; the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192; and the uniform securities act (2002), 2008 PA 551, MCL 451.2101 to 451.2703.

(d) Construction code manuals.

(e) Copies of transcripts from administrative law hearings.

(2) In addition to the funds appropriated in part 1, funds appropriated for the department under sections 57, 58, and 59 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.257, 24.258, and 24.259, and section 203 of the legislative council act, 1986 PA 268, MCL 4.1203, are appropriated for all expenses necessary to provide for the cost of publication and distribution.

(3) Unexpended funds at the end of the fiscal year shall carry forward to the subsequent fiscal year and not lapse to the general fund.

PUBLIC SERVICE COMMISSION

Sec. 13-301. The public service commission administers the low-income energy assistance grant program on behalf of the Michigan department of health and human services via an interagency agreement. Funds supporting the grant program are appropriated in the department upon awarding of grants and may be expended for grant payments and administrative related expenses incurred in the operation of the program.

LIQUOR CONTROL COMMISSION

Sec. 13-401. (1) From the appropriations in part 1 from the direct shipper enforcement fund, the liquor control commission shall expend these funds as required under section 203(11) of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1203, to investigate and audit unlawful direct shipments of wine by unlicensed wineries and retailers. In addition to other investigative methods, the commission shall use shipping records available to it under section 203(21) of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1203, to assist with this effort.

(2) By February 1, the liquor control commission shall provide a report to the legislature, the subcommittees, and the state budget director detailing the commission's activities to investigate and audit the illegal shipping of wine and the results of these activities. The report shall include the following:

(a) Work hours spent, specific actions undertaken, and the number of FTEs dedicated to identifying and stopping unlicensed out-of-state retailers, third-party marketers, and wineries that ship illegally in Michigan.

(b) General overview of expenditures associated with efforts to identify and stop unlicensed out-of-state retailers, third-party marketers, and wineries that ship illegally in Michigan.

(c) Number of out-of-state entities found to have illegally shipped wine into Michigan and total number of bottles (750 ml), number of cases with 750 ml bottles, number of liters, number of gallons, or weight of illegally shipped wine.

Licensing & Regulatory Department Budget for 2020-2021 - Michigan Indigent Defense Commission

These items must be broken down by total number of retailers and total number of wineries.

(d) Suggested areas of focus on how to address direct shipper enforcement and illegal importation in the future.

OCCUPATIONAL REGULATION

Sec. 13-501. Money appropriated under this part and part 1 for the bureau of fire services shall not be expended unless, in accordance with section 2c of the fire prevention code, 1941 PA 207, MCL 29.2c, inspection and plan review fees will be charged according to the following schedule:

<u>Operation and maintenance inspection fee</u>		
<u>Facility type</u>	<u>Facility size</u>	<u>Fee</u>
Hospitals	Any	\$8.00 per bed
<u>Plan review and construction inspection fees for hospitals and schools</u>		
<u>Project cost range</u>	<u>FeeMMMM</u>	
\$101,000.00 or less	minimum fee of \$155.00	
\$101,001.00 to \$1,500,000.00	\$1.60 per \$1,000.00	
\$1,500,001.00 to \$10,000,000.00	\$1.30 per \$1,000.00	
\$10,000,001.00 or more	\$1.10 per \$1,000.00	

or a maximum fee of \$60,000.00.

Sec. 13-502. The funds collected by the department for licenses, permits, and other elevator regulation fees set forth in the Michigan Administrative Code and as determined under section 8 of 1976 PA 333, MCL 338.2158, and section 16 of 1967 PA 227, MCL 408.816, that are unexpended at the end of the fiscal year shall carry forward to the subsequent fiscal year.

Sec. 13-503. Not later than February 15, the department shall submit a report to the subcommittees, the senate and house fiscal agencies, and the state budget director providing the following information:

(a) The number of veterans who were separated from service in the Armed Forces of the United States with an honorable character of service or under honorable conditions (general) character of service, individually or if a majority interest of a corporation or limited liability company, that were exempted from paying licensure, registration, filing, or any other fees collected under each licensure or regulatory program administered by the bureau of construction codes, the bureau of professional licensing, and the corporations, securities, and commercial licensing bureau during the preceding fiscal year.

(b) The specific fees and total amount of revenue exempted under each licensure or regulatory program administered by the bureau of construction codes, the bureau of professional licensing, and the corporations, securities, and commercial licensing bureau during the preceding fiscal year.

(c) The actual costs of providing licensing and other regulatory services to veterans exempted from paying licensure, registration, filing, or any other fees during the preceding fiscal year and a description of how these costs were calculated.

(d) The estimated amount of revenue that will be exempted under each licensure or regulatory program administered by the bureau of construction codes, the bureau of professional licensing, and the corporations, securities, and commercial licensing bureau in both the current and subsequent fiscal years and a description of how the exempted revenue was estimated.

Sec. 13-504. Funds remaining in the homeowner construction lien recovery fund are appropriated to the department for payment of court-ordered homeowner construction lien recovery fund judgments entered prior to August 23, 2010. Pursuant to available funds, the payment of final judgments shall be made in the order in which the final judgments were entered and began accruing interest.

Sec. 13-505. The department shall submit a comprehensive annual report for all programs administered by the

Licensing & Regulatory Department Budget for 2020-2021 - Michigan Indigent Defense Commission

marijuana regulatory agency by January 31 to the standing committees on appropriations of the senate and house of representatives, the senate and house fiscal agencies, and the state budget director. This report shall include, but is not limited to, all of the following information for the prior fiscal year regarding the medical marihuana program under the Michigan Medical Marihuana Act, 2008 IL 1, MCL 333.26421 to 333.26430; the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801, and the Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, MCL 333.27951 to 333.27967:

- (a) The number of initial applications received, by license category.
- (b) The number of initial applications approved, and the number of initial applications denied, by license category.
- (c) The average amount of time, from receipt to approval or denial, to process an initial application, by license category.
- (d) The number of license applications approved, by license category and by county.
- (e) The number of renewal applications received, by license category, if applicable.
- (f) The number of renewal applications approved, and the number of renewal applications denied, by license category, if applicable.
- (g) The average amount of time, from receipt to approval or denial, to process a renewal application, by license category, if applicable.
- (h) The percentage of initial applications not approved or denied within the time requirements established in the respective act, by license category.
- (i) The percentage of renewal applications not approved or denied within the time requirements established in the respective act, by license category.
- (j) The total amount collected from application fees or established regulatory assessment and the specific fund deposited into, by license category.
- (k) The costs of administering the licensing program under each of the above referenced acts.
- (l) The registered name and addresses of all facilities licensed under the above referenced acts, by license category and by county.

Sec. 13-506. If the revenue collected by the department for health systems administration from fees and collections exceeds the amount appropriated in part 1, the revenue may be carried forward into the subsequent fiscal year. The revenue carried forward under this section shall be used as the first source of funds in the subsequent fiscal year.

Sec. 13-507. Not later than February 1, the department shall submit a report to the subcommittees, the senate and house fiscal agencies, and state budget director providing the following information:

- (a) The total amount of reimbursements made to local units of government for delegated inspections of fireworks retail locations pursuant to section 11 of the Michigan fireworks safety act, 2011 PA 256, MCL 28.461, from the funds appropriated in part 1 for the bureau of fire services during the preceding fiscal year.
- (b) The amount of reimbursement for delegated inspections of fireworks retail locations for each local unit of government that received reimbursement from the funds appropriated in part 1 for the bureau of fire services during the preceding fiscal year.

Sec. 13-508. (1) Beginning October 1, for the purpose of defraying the costs associated with responding to false final inspection appointments and to discourage the practice of calling for final inspections when the project is incomplete or noncompliant with a plan of correction previously provided by the bureau of fire services, the bureau of fire services may assess a fee not to exceed \$200.00 for responding to a second or subsequent confirmed false inspection appointment. Fees collected under this section shall be deposited into the restricted account referenced by section 2c(2) of the fire prevention code, 1941 PA 207, MCL 29.2c, and explicitly identified within the statewide integrated governmental management applications system.

- (2) Not later than September 30, the department shall prepare a report that provides the amount of the fee assessed

Licensing & Regulatory Department Budget for 2020-2021 - Michigan Indigent Defense Commission

under subsection (1), the number of fees assessed and issued per region, the cost allocation for the work performed and reduced as a result of this section, and any recommendations for consideration by the legislature. The department shall submit this information to the state budget director, the subcommittees, and the senate and house fiscal agencies.

Sec. 13-510. The department shall submit a report on the Michigan automated prescription system to the senate and house appropriations committees, the senate and house fiscal agencies, and the state budget director by November 30. The report shall include, but is not limited to, the following:

- (a) Total number of licensed health professionals registered to the Michigan automated prescription system.
- (b) Total number of dispensers registered to the Michigan automated prescription system.
- (c) Total number of prescribers using the Michigan automated prescription system.
- (d) Total number of dispensers using the Michigan automated prescription system.
- (e) Number of cases related to overprescribing, overdispensing, and drug diversion where the department took administrative action as a result of information and data generated from the Michigan automated prescription system.
- (f) The number of hospitals, doctor's offices, pharmacies, and other health facilities that have integrated the Michigan automated prescription system into their electronic health records systems.
- (g) Total number of delegate users registered to the Michigan automated prescription system.

Sec. 13-514. From the appropriations in part 1, the bureau of community and health systems administration; bureau of construction codes; bureau of fire services; bureau of professional licensing; corporations, securities, and commercial licensing bureau; and the marijuana regulatory agency must submit reports to the subcommittees, senate and house fiscal agencies, and state budget director by December 31. The reports must include all of the following information for the prior fiscal year for each agency or bureau:

- (a) The number of complaints received, with the number of complaints specified for each profession or license type that the agency or bureau regulates.
- (b) A description of the process used to resolve complaints.
- (c) A description of the types of complaints received with total counts of the number of complaints of that type received.
- (d) The number of investigations initiated and the number of investigations closed.
- (e) Average amount of time needed to close investigations.
- (f) The number and type of enforcement actions taken against licensees and metrics regarding any adverse actions taken against licensees including license revocations, suspensions, and fines.

COMMISSIONS

Sec. 13-801. If Byrne formula grant funding is awarded to the Michigan indigent defense commission, the Michigan indigent defense commission may receive and expend Byrne formula grant funds in an amount not to exceed \$250,000.00 as an interdepartmental grant from the department of state police. The Michigan indigent defense commission, created under section 5 of the Michigan indigent defense commission act, 2013 PA 93, MCL 780.985, may receive and expend federal grant funding from the United States Department of Justice in an amount not to exceed \$300,000.00 as other federal grants.

Sec. 13-802. From the funds appropriated in part 1, the Michigan indigent defense commission shall submit a report by September 30 to the senate and house appropriations subcommittees on licensing and regulatory affairs, the senate and house fiscal agencies, and the state budget director on the incremental costs associated with the standard development process, the compliance plan process, and the collection of data from all indigent defense systems and attorneys providing indigent defense. Particular emphasis shall be placed on those costs that may be avoided after standards are developed and compliance plans are in place.

GRANTS

Sec. 13-901. (1) The department shall expend the funds appropriated in part 1 for medical marijuana operation and

Licensing & Regulatory Department Budget for 2020-2021 - Michigan Indigent Defense Commission

oversight grants for grants to counties for education and outreach programs relating to the Michigan medical marihuana program pursuant to section 6(1) of the Michigan Medical Marihuana Act, 2008 IL 1, MCL 333.26426. These grants shall be distributed proportionately based on the number of registry identification cards issued to or renewed for the residents of each county that applied for a grant under subsection (2). For the purposes of this subsection, operation and oversight grants are for education, communication, and outreach regarding the Michigan Medical Marihuana Act, 2008 IL 1, MCL 333.26421 to 333.26430. Grants provided under this section must not be used for law enforcement purposes.

(2) Not later than December 1, the department shall post a listing of potential grant money available to each county on its website. In addition, the department shall work collaboratively with counties regarding the availability of these grant funds. A county requesting a grant shall apply on a form developed by the department and available on its website. The form shall contain the county's specific projected plan for use of the money and its agreement to maintain all records and to submit documentation to the department to support the use of the grant money.

(3) In order to be eligible to receive a grant under subsection (1), a county shall apply not later than January 1 and agree to report how the grant was expended and to provide that report to the department not later than September 15. The department shall submit a report not later than October 15 of the subsequent fiscal year to the state budget director, the subcommittees, and the senate and house fiscal agencies detailing the grant amounts by recipient and the reported uses of the grants in the preceding fiscal year.

Sec. 13-902. (1) The amount appropriated in part 1 for firefighter training grants shall only be expended for payments to counties to reimburse organized fire departments for firefighter training and other activities required under the firefighters training council act, 1966 PA 291, MCL 29.361 to 29.377.

(2) If the amount appropriated in part 1 for firefighter training grants is expended by the firefighters training council, established in section 3 of the firefighters training council act, 1966 PA 291, MCL 29.363, for payments to counties under section 14 of the firefighters training council act, 1966 PA 291, MCL 29.374, in compliance with statute, the following subsections apply:

(a) The amount appropriated in part 1 for firefighter training grants shall be allocated pursuant to section 14(2) of the firefighters training council act, 1966 PA 291, MCL 29.374.

(b) If the amount allocated to any county under subdivision (a) is less than \$5,000.00, the amounts disbursed to each county under subdivision (a) shall be adjusted to provide for a minimum payment of \$5,000.00 to each county.

(3) Not later than February 1, the department shall submit a financial report to the subcommittees, the senate and house fiscal agencies, and the state budget director identifying the following information for the preceding fiscal year:

(a) The amount of the payments that would be made to each county if the distribution formula described by the first sentence of section 14(2) of the firefighters training council act, 1966 PA 291, MCL 29.374, would have been utilized to allocate the total amount appropriated in part 1 for firefighter training grants.

(b) The amount of the payments approved by the firefighters training council for allocation to each county.

(c) The amount of the payments actually expended or encumbered within each county.

(d) A description of any other payments or expenditures made under the authority of the firefighters training council.

(e) The amount of payments approved for allocations to counties that was not expended or encumbered and lapsed back to the fireworks safety fund.

ONE-TIME APPROPRIATIONS

Sec. 13-1002. From the funds appropriated in part 1 for Michigan Saves, the Michigan public service commission may award a \$5,000,000.00 grant to a nonprofit green bank with experience in leveraging energy-efficiency and renewable energy improvements, for the purpose of making such loans more affordable for Michigan families, businesses, and public entities. Grant funds may be used to support a loan loss reserve fund or other comparable financial instrument to further leverage private investment in clean energy improvements.

Department of Licensing and Regulatory Affairs

Governor's Recommended Budget for Fiscal Years 2021 and 2022

The Department of Licensing and Regulatory Affairs (LARA) serves as the state's primary regulatory agency, providing oversight for a wide range of program areas, including health and childcare, business, construction, marijuana, indigent criminal defense, liquor, and professional occupations.

The Governor's recommended budget for fiscal years 2021 and 2022 includes total ongoing funding of \$482.6 million, of which \$148.2 million is from the state's general fund. An additional \$5 million is recommended as one-time funding from the general fund.

Highlights

The Governor's recommended budget provides:

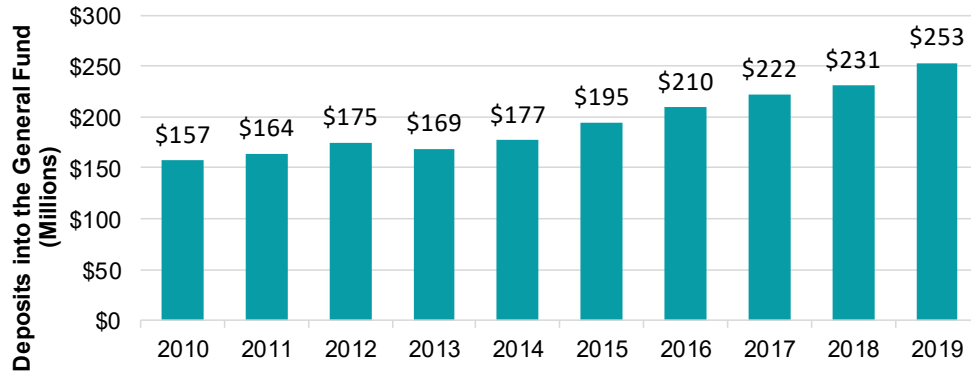
- ♦ **\$117.5 million for Indigent Criminal Defense** (\$117.3 million general fund) for 134 trial court funding units to meet the ongoing requirements for the effective assistance of counsel for indigent criminal defendants. This is a \$36.5 million increase from the fiscal year 2020 level as more trial courts will be incurring full year implementation costs for their compliance plans to meet standards #1-4, as approved by the Michigan Indigent Defense Commission.
- ♦ **\$50.3 million for Marijuana Regulation** (all restricted funds) to administer the state's medical and recreational marijuana industry, which includes \$20 million allocated to support research for veteran medical conditions and preventing veteran suicide, in accordance with Initiated Law 1 of 2018. Across the full state budget, excise tax collections from recreational marijuana sales are forecast to result in the following fiscal year 2021 distributions: \$36.9 million to qualifying local counties and cities, \$43.1 million to the school aid fund for K-12 education, and \$43.1 million for road and bridge repair and maintenance.
- ♦ **\$5.8 million to replace Michigan's Liquor Sales, Purchasing and Inventory IT system** (to be funded from the Information Technology Investment Fund). As a control state, the Michigan Liquor Control Commission is responsible for regulating the sales and distribution of all distilled spirits across Michigan, an industry that exceeds \$1.4 billion in annual sales. Net profits are returned to the state.

Replacing this 40-year old IT system will increase efficiency, improve fraud detection, provide for more accurate reporting, and enhance the overall user experience for over 13,000 retail users of the system. This project will be completed over two years, with an additional \$1.1 million needed to complete the project in year two.

- ♦ **\$5 million for the Michigan Saves green bank** (all general fund), to leverage private investment in clean energy improvements for Michigan's residents and businesses. By providing a credit enhancement to lenders, the green bank incentivizes lenders to provide

more favorable rates and terms for renewable energy improvements benefitting property owners and the environment.

Since 2010, over \$1.9 billion in net profits from liquor sales have been deposited to the general fund.



Reductions

The recommended budget reduces funding for the following programs:

- ♦ A cumulative **\$810,300 reduction in Liquor Purchase Revolving Fund** appropriations, of which \$400,000 is replaced with other restricted funds. An additional \$100,000 fund shift in the Bureau of Construction Codes achieves \$100,000 in general fund savings.
- ♦ Funding for **Urban Search and Rescue** is not included in the Governor's recommended budget. This is a \$600,000 general fund decrease in recognition of the one-time nature of the funding.

Department of Licensing and Regulatory Affairs
Governor's Recommended Budget for Fiscal Years 2021 and 2022
 \$ in Thousands

FY 2021 Adjustments		
	GF/GP	GROSS
FY 2020 Current Law	\$124,630.7	\$566,894.0
Removal of FY 2020 One-Time Funding	\$0.0	(\$530.0)
FY 2021 Ongoing Investments		
None	\$0.0	\$0.0
FY 2021 Reductions		
Urban Search and Rescue - Removal of earmark	(\$600.0)	(\$600.1)
Bureau of Construction Codes General Fund Shift to Restricted Funds	(\$100.0)	\$0.0
Property Management Liquor Purchase Revolving Fund Reduction	\$0.0	(\$410.3)
Restricted Fund Shifts to Reduce Liquor Purchase Revolving Fund Appropriations	\$0.0	\$0.0
FY 2021 Baseline Adjustments		
Michigan Indigent Defense Commission - Full implementation of Standards #1-4	\$36,539.8	\$36,539.8
Marihuana Regulatory Agency Staffing Increase and Funding Alignment	\$0.0	\$1,948.8
Childcare Licensing - Supports ongoing costs of background checks	\$0.0	\$1,300.0
Restricted Fund Authorization Alignments	\$0.0	\$1,205.1
Technical Adjustments to Effectuate Executive Order 2019-13 Creating LEO	(\$13,165.8)	(\$132,705.1)
Employee-Related Payroll Adjustments	\$850.9	\$9,154.7
Other Technical Adjustments	\$0.0	(\$207.3)
FY 2021 Total Executive Recommendation - Ongoing Funding	\$148,155.6	\$482,589.6
FY 2021 One-Time Investments		
Michigan Saves Green Bank	\$5,000.0	\$5,000.0
FY 2021 Total Executive Recommendation - One-Time Funding	\$5,000.0	\$5,000.0
FY 2021 Total Executive Recommendation - Ongoing and One-Time	\$153,155.6	\$487,589.6
\$ Change from FY 2020 - Total Funding	\$28,524.9	(\$79,304.4)
% Change from FY 2020 - Total Funding	22.9%	(14.0%)
FY 2022 Planning Adjustments		
	GF/GP	GROSS
FY 2021 Total Executive Recommendation	\$153,155.6	\$487,589.6
Removal of FY 2021 One-Time Funding	(\$5,000.0)	(\$5,000.0)
FY 2022 Baseline Adjustment - Removal of Marihuana Treatment Research	\$0.0	(\$20,000.0)
FY 2022 Total Executive Recommendation	\$148,155.6	\$462,589.6
\$ Change from FY 2021 - Total Funding	(\$5,000.0)	(\$25,000.0)
% Change from FY 2021 - Total Funding	(3.3%)	(5.1%)



**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

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The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by May 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 .

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PROPOSED

The Committee proposes an instruction, M Crim JI 17.37, where the prosecutor has charged an offense found in MCL 750.411t involving the crime of “hazing.” The instruction is entirely new.

[NEW] M Crim JI 17.37 Hazing

(1) [The defendant is charged with / You may also consider the lesser offense of¹] hazing [causing physical injury / causing serious impairment of a body function / causing death]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [attended / was an employee of / was a volunteer with] [*identify educational institution*].

(3) Second, that [*name complainant*] was [pledging / being initiated into / affiliating with / participating in / holding office in / maintaining membership in] [*identify organization*] or attempting to [pledge / initiate into / affiliate with / participate in / hold office in / maintain membership in] [*identify organization*].

(4) Third, that when the defendant [attended / was an employee of / was a volunteer with] [*identify educational institution*], [he / she] engaged in or participated in an act of hazing [*name complainant*].

Hazing is an intentional, knowing or reckless act that the defendant knew or should have known would endanger the physical health or safety of [*name complainant*]. It does not matter whether the defendant acted alone or with others, and does not matter whether [*name complainant*] consented to or allowed the defendant to engage in or participate in the act.

Hazing includes² [physical brutality, such as whipping, beating, striking, branding, electronic shocking, placing of a harmful substance on the body, or similar activity / physical activity, such as sleep deprivation, exposure to the elements, confinement in a small space, or calisthenics, that would place another person at an unreasonable risk of harm or would adversely affect his or her physical health or safety / activity involving consumption of a food, liquid, alcoholic beverage, liquor, drug, or other substance that would place another person at an unreasonable risk of harm or would adversely affect his or her physical health or safety / activity that induces, causes, or requires an individual to perform a duty or task that involves committing a crime or an act of hazing].

Hazing does not include activity that is normal and customary in an athletic program, a physical education program, military training, or a similar program that is sanctioned by [*identify educational institution*].

(5) Fourth, the defendant must have committed the act of hazing for the purpose of pledging or initiating [*name complainant*] into [*identify organization*], or so that [*name complainant*] could be affiliated with, participate in, hold office in, or maintain membership in [*identify organization*].³

(6) Fifth, that the defendant's act of hazing caused [physical injury / serious impairment of body function / death] to [*name complainant*].

Serious impairment of a body function includes, but is not limited to, one or more of the following:⁴

- (a) Loss of a limb or loss of use of a limb.
- (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
- (c) Loss of an eye or ear or loss of use of an eye or ear.
- (d) Loss or substantial impairment of a bodily function.
- (e) Serious visible disfigurement.
- (f) A comatose state that lasts for more than 3 days.
- (g) Measurable brain or mental impairment.
- (h) A skull fracture or other serious bone fracture.
- (i) Subdural hemorrhage or subdural hematoma.
- (j) Loss of an organ.

Use Note

The Committee believes that questions of whether the institution where the defendant is employed or volunteers is an “educational institution” and whether the organization where the complainant is pledging fits within the definition provided in MCL 750.411t(7)(a) and (c) are legal matters that are not determined by the jury.

1. Use the second alternative only where the defendant has been charged with hazing causing serious impairment and the court is instructing on the lesser included offense of hazing causing physical injury.
2. The court need only provide alternatives that apply according to the charges and evidence.
3. The court may provide all of the statutory options in this paragraph or only the options that apply according to the evidence.
4. The definition of *serious impairment of a body function* is found in MCL 257.58c. It should only be provided where the court is instructing the jury on the elements of hazing causing serious impairment of a body function under MCL 750.411t(2)(b).

**Public Policy Position
M Crim JI 17.37**

SUPPORT

Explanation

The committee voted unanimously (15) to support the model criminal jury instruction as drafted. The instructions would be utilized when prosecutors charge a defendant with hazing, as defined by MCL 750.411t.

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

Sofia V. Nelson snelson@sado.org



**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

=====

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by May 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.

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PROPOSED

The Committee proposes an instruction, M Crim JI 35.1a, where the prosecutor has charged an offense found in MCL 750.540e involving the crime of malicious use of a telecommunications service. The instruction is entirely new.

[NEW] M Crim JI 35.1a Malicious Use of Telecommunications Service

(1) The defendant is charged with the crime of malicious use of a telecommunications service. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant used [*identify service provider*] to communicate with [*identify complainant*].

(3) Second, that, when communicating with [*identify complainant*], the defendant [threatened physical harm or damage to any person or property / made a deliberately false report that a person had been injured, had suddenly taken ill, had died, or had been the victim of a crime or an accident / deliberately refused or failed to disengage a connection between telecommunications devices or between a telecommunications device and other equipment provided by a telecommunications service¹ or device / used vulgar, indecent, obscene, or offensive language or suggested any lewd or lascivious act in the course of the conversation or message / repeatedly initiated telephone calls and, without speaking, deliberately hung up or broke the telephone connection when or after the telephone call was answered / made an uninvited commercial telephone call soliciting business or contributions that was received between the hours of 9 p.m. and 9 a.m., whether the call was made by a person or recording device / deliberately engaged or caused to engage the use of (*identify complainant*)'s telecommunications service or device in a repetitive manner that

caused interruption in the telecommunications service or prevented (*identify complainant*) from using (his / her) telecommunications service or device].

(4) Third, that the defendant did so with the intent to terrorize, frighten, intimidate, threaten, harass, molest, annoy, or disturb the peace and quiet of [*identify complainant*].

Use Note

1. If the jury has not been provided with the definition of a “telecommunications service” and the court finds that it would be appropriate to do so, the following is suggested based on the wording of MCL 750.219a:

A “telecommunications service provider” is a person or organization providing a telecommunications service, such as a cellular, paging, or other wireless communications company, or a facility, cell site, mobile telephone switching office, or other equipment for a telecommunications service, including any fiber optic, cable television, satellite, Internet-based system, telephone, wireless, microwave, data transmission or radio distribution system, network, or facility, whether the service is provided directly by the provider or indirectly through any distribution system, network, or facility.

A “telecommunications service” is a system for transmitting information by any method, including electronic, electromagnetic, magnetic, optical, photo-optical, digital, or analog technologies.

A “telecommunications access device” is any instrument, including a computer circuit, a smart card, a computer chip, a pager, a cellular telephone, a personal communications device, a modem, or other component that can be used to receive or send information by any means through a telecommunications service.

**Public Policy Position
M Crim JI 35.1a**

SUPPORT

Explanation

The committee voted unanimously (15) to support the model criminal jury instruction as drafted. The jury instructions would be utilized in connection with charges under MCL 750.540e, the Malicious Use of Telecommunications Service. The proposed instruction would allow the court to provide the jury with a definition of “telecommunication services,” based on the wording of MCL 750.219a. The instructions would also clarify that in order to be charged with the crime, the defendant must have used a telecommunications provider to communicate directly with his or her intended target.

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

Sofia V. Nelson snelson@sado.org



**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

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The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by June 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.

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PROPOSED

The Committee proposes instructions M Crim JI 38.1, 38.4, and 38.4a where the prosecutor has charged an offense found in MCL 750.543f or 750.543m, which involve committing an act of terrorism, making a terrorist threat, or making a false report of terrorism. The instructions are entirely new.

[NEW] M Crim JI 38.1 Committing an Act of Terrorism

(1) The defendant is charged with the crime of committing a knowing and premeditated act of terrorism. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant committed the crime of [*state felony*].¹ For the crime of [*state felony*], the prosecutor must prove each of the following elements beyond a reasonable doubt: [*state elements of felony*].

(3) Second, that the defendant acted deliberately when committing the crime of [*state felony*], which means that the defendant considered the pros and cons of committing the crime and thought about it and chose [his / her] actions before [he / she] did it. There must have been real and substantial reflection for long enough to give a reasonable person a chance to think twice about committing the crime. The law does not say how much time is needed. It is for you to decide if enough time passed under the circumstances of this case, but committing the crime cannot have been the result of a sudden impulse without thought or reflection.

(4) Third, that the defendant knew or had reason to know that committing the felony was dangerous to human life, meaning that committing the felony would cause a substantial likelihood of death or serious injury, or that the felony involved a kidnapping.²

(5) Fourth, that, when committing the felony, the defendant intended to intimidate or coerce a civilian population, or influence or affect the conduct of government or a unit of government through intimidation or coercion.

[Use the following paragraph where it is charged that a death resulted from the defendant's actions]

(6) Fifth, that the commission of the felony caused the death of *[identify victim]*.

Use Note

1. Under MCL 750.543b(a)(i), an act of terrorism requires that the defendant must have committed a “violent felony.” The definitional statute provides in MCL 750.543b(h) that a “violent felony” is one that has an element of the use, attempted use, or threatened use of physical force against an individual, or of the use, attempted use, or threatened use of a harmful biological substance, a harmful biological device, a harmful chemical substance, a harmful chemical device, a harmful radioactive substance, a harmful radioactive device, an explosive device, or an incendiary device.

2. The definition of “dangerous to human life” is found at MCL 750.543b(b).

[NEW] M Crim JI 38.4 Making a Terrorist Threat

(1) The defendant is charged with the crime of making a threat to commit an act of terrorism. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant communicated with [*identify recipient(s) of communication*] by speech, writing, gestures, or conduct.

(3) Second, that during the course of the communication, the defendant threatened to commit an act of terrorism. A threat does not have to be stated in any particular terms but must express a warning of danger or harm.¹

To prove that the defendant threatened to commit an act of terrorism, the prosecutor must prove:

(A) that the defendant communicated that [he / she] would commit the felony crime of [*state felony*];²

(B) that the defendant knew or had reason to know that committing the felony would be dangerous to human life, meaning that committing the felony would cause a substantial likelihood of death or serious injury, or the felony involved a kidnapping;³

(C) that, by committing the felony, the defendant would intend to intimidate, frighten, or coerce a civilian population, or influence or affect the conduct of government or a unit of government through intimidation or coercion.

It does not matter whether the defendant actually could commit the felony or actually intended to commit the felony, but only whether the defendant threatened to commit the felony as an act of terrorism.

Use Note

1. Drawn from M Crim JI 21.3 and dictionary definitions.

2. Under MCL 750.543b(a)(i), an act of terrorism requires a “violent felony.” The definitional statute provides in MCL 750.543b(h) that a “violent felony” is one that has an element of the use, attempted use, or threatened use of physical force against an individual, or of the use, attempted use, or threatened use of a harmful biological substance, a harmful biological device, a harmful chemical substance, a harmful chemical device, a harmful radioactive substance, a harmful radioactive device, an explosive device, or an incendiary device.

3. The definition of “dangerous to human life” is found at MCL 750.543b(b).

[NEW] M Crim JI 38.4a Communicating a False Report of Terrorism

(1) The defendant is charged with the crime of communicating a false report of terrorism. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant communicated with [*identify recipient(s) of communication*] by speech, writing, gestures, or conduct.

(3) Second, that during the course of the communication, the defendant reported that an act of terrorism had occurred, was occurring, or would occur.

An act of terrorism means¹ committing the felony crime of [*state felony described in threat*], knowing that it would be dangerous to human life, with the intent to intimidate, frighten, or coerce a civilian population, or influence or affect the conduct of government or a unit of government through intimidation or coercion.

(4) Third, that the report was false.

(5) Fourth, that the defendant knew that it was false.

Use Note

1. The definition of an “act of terrorism” is found at MCL 750.543b(a).
2. The definition of “dangerous to human life” is found at MCL 750.543b(b).

**Public Policy Position
M Crim JI 38.1, 38.4, 38.4a**

SUPPORT

Explanation

The committee voted unanimously (15) to support the model criminal jury instructions to be utilized in connection with charges under MCL 750.543f or 750.543m (committing an act of terrorism, making a terrorist threat, or making a false report of terrorism).

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

Sofia V. Nelson snelson@sado.org