



To: Board of Commissioners
From: Governmental Relations Staff
Date: April 27, 2023
Re: Additional Materials for the April 27, 2023 Public Policy Committee Agenda

B.1. HB 4173

Keller Permissibility Memo

B.2. SB 73

Keller Permissibility Memo

B.3. Interlock Devices and Specialty Court Authorization

Keller Permissibility Memo

B.4. SB 150

Keller Permissibility Memo

B.5. Bill Package Implementing the Task Force on Juvenile Justice Reform Recommendations

Keller Permissibility Memo

B.6. Revised Pretrial Reform Bill Package

Keller Permissibility Memo

B.7. Executive Budgets

Keller Permissibility Memo

Legislative Fiscal Analyses

C.2. ADM File No. 2022-13: Proposed Amendment of MCR 9.123

Additional Comment Posted on the Court Website

C.3. ADM File No. 2021-30: Proposed Amendments of MCR 9.220, 9.221, 9.223, 9.232, and 9.261

Additional Comments Posted on the Court Website

C.4. ADM File No. 2022-03: Proposed Amendment of MCR 1.109

Diversity & Inclusion Advisory Committee Comment

SBM Member Comment

Additional Comments Posted on the Court Website



To: Members of the Public Policy Committee
Board of Commissioners

From: Nathan A. Triplett, Director of Governmental Relations

Date: April 24, 2023

Re: HB 4173 – Criminal Justice Policy Commission (Sentencing Commission)

Background

In 1984, the Michigan Supreme Court adopted an administrative order requiring all judges to use judicially imposed sentencing guidelines developed by an advisory committee to the Court. These guidelines were subsequently updated in 1988. The Michigan Sentencing Commission was created by the Legislature via Public Act 445 of 1994 to, among other things, address widespread sentencing disparities that persisted under the Court’s guidelines. **The State Bar of Michigan supported the creation of the Sentencing Commission.** The guidelines developed and recommended by the Sentencing Commission were subsequently enacted into law via Public Act 317 of 1998. In the years that followed, the Commission did not meet, no new appointments were made as members’ terms expired, appropriations to support the Commission were reduced, and the Commission was ultimately disbanded in 2002 via Public Act 31.

With no centralized, systematized mechanism in place for reviewing sentencing data and making guideline recommendations to the Legislature (or the Court), concerns about disparities once again began to grow. In 2014, the Legislature responded by creating the Criminal Justice Policy Commission (“CJPC”) via Public Act 465. **The State Bar determined that this legislation was *Keller*-permissible and adopted a position of support.** The Act created a 16-member Commission, prescribed its duties, and required the Commission to submit any recommended modifications to the sentencing guidelines or other criminal legal system policies, administrative rules, or laws to the Legislature and the Governor. PA 465 also included a sunset provision that repealed the statutory language creating the Commission four years after its effective date (i.e., January 12, 2019). As the sunset date approached, legislation was introduced (2018 SB 844) to extend the date until January 12, 2023. But, when that bill reached the Governor’s desk and was signed into law, the extension had been cut back to only the last day of the state’s fiscal year (i.e., September 30, 2019).

With the Criminal Justice Policy Commission disbanded in 2019, Michigan has once again been without a central means of reviewing sentencing (or broader criminal legal system) data and making recommendations for policy or guideline change based on that data. HB 4173 was introduced to reestablish the Criminal Justice Policy Commission in perpetuity. A hearing was held in the House Criminal Justice Committee on April 11, 2023 on HB 4173 at which time the following stakeholders indicated their support: Hope Network, Council of State Governments Justice Center, MI-CURE, Grand Rapids Chamber of Commerce, Detroit Regional Chamber of Commerce, Criminal Defense

Attorneys of Michigan, Safe and Just Michigan, MI-CEMI, and Michigan League for Public Policy. The Michigan Sheriffs' Association indicated their opposition. A substitute (H-1) was also circulated, but not adopted, at the hearing. Both the bill as introduced and the (H-1) are provided to the Board in the public policy materials for your review.

While there are several differences between the 2014 CJPC enabling legislation, HB 4173 as introduced, and HB 4173 (H-1), perhaps the most important is the variation in the membership of the Commission itself:

2014 CJPC (17 members):

- (A) Two individuals who are members of the Senate submitted by the Senate Majority Leader, one individual from each caucus.
- (B) Two individuals who are members of the House of Representatives submitted by the Speaker, one individual from each caucus.
- (C) The Attorney General or designee.
- (D) One individual who is a circuit court judge, appointed from a list of three names submitted by the Michigan Judges Association.
- (E) One individual who is a district court judge, appointed from a list of three names submitted by the Michigan District Judges Association.
- (F) One individual who represents the prosecuting attorneys of this state, appointed from a list of three names submitted by the Prosecuting Attorneys Association of Michigan.
- (G) One individual who represents criminal defense attorneys, appointed from a list of three names submitted by the Criminal Defense Attorneys of Michigan.
- (H) One individual appointed from a list of three names submitted by the Michigan Sheriff's Association.
- (I) One individual appointed from a list of three names submitted by the Director of the Michigan Department of Corrections.
- (J) One individual who represents advocates of alternatives to incarceration.
- (K) One individual who works in the mental or behavioral health care field.
- (L) One individual appointed from a list of three names submitted by the Michigan Association of Counties.
- (M) One individual who represents the Michigan Association of Community Corrections Advisory Boards.
- (N) One individual appointed from a list of three names submitted by the Michigan Coalition to End Domestic and Sexual Violence.
- (O) One member of the public who is neither affiliated with nor employed by a department, office, or entity listed above, by the CJPC, or by any entity hired by the CJPC. This "independent" appointee was designated by the statute to serve as Chairperson of the CJPC.

HB 4173 (16 members¹):

- (A) Two individuals who are members of the Senate, consisting of the Chairperson and Minority Vice-Chairperson of the Senate Judiciary² Committee of the Chairperson's or Minority Vice-Chairperson's designee, who must be members of that Committee.
- (B) Two individuals who are members of the House of Representatives, consisting of the Chairperson and Minority Vice-Chairperson of the House Judiciary Committee of the Chairperson's or Minority Vice-Chairperson's designee, who must be members of that Committee.
- (C) The Attorney General, or the Attorney General's designee, representing crime victims.
- (D) One individual who is a circuit court judge, appointed from a list of three names submitted by the Michigan Judges Association.
- (E) One individual who is a district court judge, appointed from a list of three names submitted by the Michigan District Judges Association.
- (F) One individual who represents the prosecuting attorneys of this state, appointed from a list of three names submitted by the Prosecuting Attorneys Association of Michigan.
- (G) One individual who represents criminal defense attorneys, appointed from a list of three names submitted by the Criminal Defense Attorneys of Michigan.
- (H) One individual appointed from a list of three names submitted by the Michigan Sheriff's Association.
- (I) One individual appointed from a list of three names submitted by the Director of the Michigan Department of Corrections.
- (J) One individual who was previously incarcerated.
- (K) Two individuals who are criminologists.
- (L) One individual appointed from a list of three names submitted by the Michigan Association of Counties.
- (M) One individual who represents community corrections agencies.

HB 4173 (H-1) (19 members³):

- (A) Two individuals who are members of the Senate, consisting of the Chairperson and Minority Vice-Chairperson of the Senate Judiciary¹ Committee of the Chairperson's or Minority Vice-Chairperson's designee, who must be members of that Committee.
- (B) Two individuals who are members of the House of Representatives, consisting of the Chairperson and Minority Vice-Chairperson of the House Judiciary Committee of the Chairperson's or Minority Vice-Chairperson's designee, who must be members of that Committee.
- (C) The Attorney General or designee.⁴
- (D) One individual who is a circuit court judge, *serving in a county other than Wayne County*, appointed from a list of three names submitted by the Michigan Judges Association.

¹ HB 4173, as introduced, charges the Governor with designating one member of the CJPC as Chairperson.

² In the present legislative session, this is the Senate Civil Rights, Judiciary, and Public Safety Committee.

³ The changes in the (H-1) from the bill as introduced are indicated below in italics. In addition, the one individual appointed from a list of three names submitted by the Michigan Association of Counties has been deleted.

⁴ The (H-1) deletes language designating the Attorney General as representing crime victims.

- (E) One individual who is a circuit court judge, *serving in Wayne County*, appointed from a list of three names submitted by the Michigan Judges Association.
- (F) One individual who is a district court judge, appointed from a list of three names submitted by the Michigan District Judges Association.
- (G) One individual who represents the prosecuting attorneys of this state, appointed from a list of three names submitted by the Prosecuting Attorneys Association of Michigan.
- (H) One individual who represents criminal defense attorneys, appointed from a list of three names submitted by the Criminal Defense Attorneys of Michigan.
- (I) One individual appointed from a list of three names submitted by the Michigan Sheriff's Association.
- (J) *One individual representing police chiefs, appointed from a list of three names submitted by the Michigan Association of Police Chiefs currently serving as a police chief in a locality with a population of more than 50,000.*
- (K) One individual appointed from a list of three names submitted by the Director of the Michigan Department of Corrections.
- (L) One individual who was previously incarcerated.
- (M) *One individual who is a criminologist.*
- (N) One individual who represents community corrections agencies.
- (O) *One individual who works in the mental or behavioral health field.*
- (P) *One individual who is a member of an advocacy group focused on victim needs.*
- (Q) *One additional member who must serve as Chairperson. This individual must have "a professional background in criminal law and experience with the legislative process."*

In addition to the Commission's membership, the Criminal Jurisprudence & Practice Committee found the designation of the Commission's Chairperson as a paid "chief of staff," the absence/removal of language referencing habitual offenders, and the absence/removal of language directing the Commission to determine which guidelines should apply to probation violations or be modified if applied to probation violations of note.

***Keller* Considerations**

The Board of Commissioners has considered legislation creating a Sentencing/Criminal Justice Policy Commission twice before (1994 and 2014). As noted above, in both instances, the Board voted to support the legislation. In 2014, after the SBM's current *Keller* review process was implemented, the Board determined that legislation creating a commission charged with conducting research and analysis related to sentencing in Michigan and making research-based recommendations regarding state sentencing policy writ large, was reasonably related to the functioning of Michigan courts and therefore *Keller*-permissible. Sentencing guidelines provide parameters for judicial discretion and have a significant impact on way criminal cases proceed through the criminal legal system. While the creation of discrete substantive criminal offenses and their associated sentences does not fall within the permissible subject areas under *Keller*, the establishment of an institution/process to guide and inform criminal legal system policy development in Michigan does.

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

House Bill 4173 is reasonably related to improvement in the functioning of the courts and is therefore *Keller*-permissible. The bill may be considered on its merits.



To: Members of the Public Policy Committee
Board of Commissioners

From: Nathan A. Triplett, Director of Governmental Relations

Date: April 24, 2023

Re: SB 73 – Identity of Parties Proceeding Anonymously in Civil Actions

Background

Senate Bill 73 would amend the Freedom of Information Act (“FOIA”) to exempt investigating records compiled for law enforcement purposes from disclosure, if the records would reveal the identity of an anonymous party in a civil action in which the party alleges that they were the victim of sexual misconduct. The bill would require that the party or their designee provide written notification of the civil action and the party’s wish to remain anonymous to any law enforcement agency that has such investigating records. The bill also defines the offenses constituting “sexual misconduct” for its purposes.

SB 73 is part of a package of bills originally introduced in 2018 in the wake of the Nassar sexual abuse scandal at Michigan State University. The bill has passed the House overwhelmingly¹ in the last three legislative sessions but was never taken up by the Senate.

The Senate Committee on Civil Rights, Judiciary, and Public Safety held hearings on SB 73 on April 13 and 20, 2023. The State Public Affairs Committee of the Michigan Junior Leagues and the Michigan Domestic & Sexual Violence Prevention & Treatment Board submitted positions of support. The bill was reported with recommendation by a unanimous vote of the Committee on April 20 and referred to Senate Committee of the Whole.

***Keller* Considerations**

Generally speaking, amendments to Michigan’s FOIA statute will only rarely fall into the subject areas permissible under *Keller*. Senate Bill 73 presents just such a case for the Board’s consideration. The bill proposes to amend FOIA but does so only to preserve a party’s ability to proceed anonymously in a civil action in the narrow circumstance of the party alleging that they were the victim of sexual misconduct. A court’s ability to permit anonymous proceedings is undermined when the identity of that party can be easily obtained via a FOIA public records request to an investigating law enforcement agency. Permitting a public body to exempt such investigating records from disclosure preserves the anonymous nature of the civil proceeding and its integrity. On the other hand, the absence of reasonable assurances that the anonymity of a court proceeding under these circumstances can be

¹ See 2018 HB 5797 (passed 106-3); 2019 HB 4378 (passed 109-0); 2021 HB 4856 (passed 96-6).

maintained is a significant barrier to some parties seeking redress through the courts. As such, SB 73 is reasonably related to both the functioning of the courts and access to legal services.

Keller Quick Guide

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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

Senate Bill 73 is reasonably related to both the functioning of the courts and access to legal services. As such, the bill may be considered on its merits.



To: Members of the Public Policy Committee
Board of Commissioners

From: Nathan A. Triplett, Director of Governmental Relations

Date: April 24, 2023

Re: SB 134 & SB 135 – Issuance of a Restricted License

Background

Senate Bills 134 and 135 are intended to expand the state's existing ignition interlock program to Mental Health Courts and Veterans Treatment Courts.

Prior to the creation of the ignition interlock program in 2010, the Secretary of State was required to suspend or revoke a driver's license for various offenses, including drunk driving. In 2010, Public Act 154 was enacted to create a three-year DWI/sobriety court interlock pilot project, which would allow a DWI/sobriety court judge to certify to the Secretary of State that an individual has been admitted into the DWI/sobriety court program and that an interlock device has been placed on each motor vehicle owned or operated, or both, by the individual. Upon such certification, the Secretary of State could issue a restricted license to a program participant that would enable them to continue to drive to and from home, work, school, and/or alcohol or drug education or treatment programs. As the three-year pilot drew to a close, the Michigan Association of Drug Court Professionals released a program evaluation that showed ignition interlock program participants had lower drug and alcohol use than nonparticipants and lower recidivism rates than for other criminal offenses. The Legislature responded by converting the pilot into a permanent program via Public Act 227 of 2013. Around the same time, in large part based on the success of drug treatment courts in Michigan and other problem-solving courts around the United States, the Legislature passed bills to create Veterans Treatment Courts (2012 PA 335) and Mental Health Courts (2013 PA 274). In 2017, legislation was enacted that required drug treatment and DWI/sobriety courts, mental health courts, and veterans' treatment courts to be certified by the State Court Administrative Office and to prohibit such courts from performing certain functions or receiving funding unless they were certified, including administering an ignition interlock program.

Senate Bills 134 would amend the Revised Judicature Act of 1961, 1961 PA 236, to expand the existing DWI/sobriety court interlock program into a specialty court interlock program, with "specialty court" encompassing (1) drug treatment courts, (2) DWI/sobriety courts, (3) mental health courts, and (4) veterans treatment courts. Senate Bill 135 would make corresponding amendments to the Michigan Vehicle Code, 1949 PA 300, to reflect the expanded specialty court interlock program. The bills are tie-barred to each other.

***Keller* Considerations**

The State Bar of Michigan has long supported the expansion of problem-solving courts—as well as legislation to increase the effectiveness of these courts—and deemed such legislation *Keller*-permissible based on a reasonable relationship between the legislation and both improvement in functioning of the courts and availability of legal services.

In that vein, Senate Bill 134 is reasonably related to improvement in the functioning of the courts—and will promote judicial efficacy and efficiency—because it expands the tools available to problem-solving court judges to craft interventions that will achieve the objectives of their specialty courts and improve participant outcomes. In particular, ignition interlocks and restricted licenses facilitate specialty court participant compliance with required court appearances and programming, while reducing recidivism and the associated strain on court dockets. By allowing participants to drive to and from such court appearances and programming, the legislation could also be considered reasonably related to the availability of legal services, which participants might otherwise be unable to access.

While an amendment to the Michigan Vehicle Code standing alone would be unlikely to satisfy *Keller* in most circumstances, SB 135 is a tie-barred technical trailer that is necessary to effectuate the substantive provisions of SB 134 implementing the specialty court interlock program. Therefore, taken together with its companion legislation, SB 135 is also reasonably related to improvement in the functioning of the courts and therefore *Keller*-permissible.

***Keller* Quick Guide**

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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

Senate Bills 134 and 135 are, taken together, reasonably related to both improvement in functioning of the courts and availability of legal services. The bills are therefore *Keller*-permissible and may be considered on their merits.



To: Members of the Public Policy Committee
Board of Commissioners

From: Nathan A. Triplett, Director of Governmental Relations

Date: April 24, 2023

Re: SB 150 – Virtual Proceedings of Tax Tribunal Small Claims Division

Background

Senate Bill 150 would amend the Tax Tribunal Act, 1973 PA 186, to allow the Residential Property and Small Claims Division (“Division”) of the Michigan Tax Tribunal to conduct hearings and rehearings telephonically, by videoconferencing, or in person.

Under existing law, the default rule is that the Division must meet in-person in the county in which the property at issue is located or in a county contiguous to that county. By leave of the Tribunal, with the consent of all parties, a Division hearing or rehearing may take place at a location mutually agreed upon or may take place by the use of amplified telephonic or video conferencing equipment. Under SB 150, upon request of one of the parties, an in-person proceeding may take place at a location mutually agreed upon by all parties or the hearing/rehearing may be conducted telephonically or by videoconferencing.

The bill was introduced in the last legislative session (2021 SB 272) and passed 37-0 by the State Senate. It was discharged from the House Committee on Tax Policy in the waning days of the 101st Legislature, but never voted on by the full House. The bill is scheduled to be heard by the Senate Finance, Insurance, and Consumer Protection Committee on Wednesday, April 26, 2023.

***Keller* Considerations**

While the Michigan Tax Tribunal is not a court, it does have exclusive and original jurisdiction over those tax-related matters assigned to it by statute and functions in a quasi-judicial manner. Parties before the Tribunal—including its Residential Property and Small Claims Division—are entitled to be represented by counsel. Therefore, the State Bar of Michigan has historically treated Tribunal proceedings as akin to court proceedings for *Keller* purposes. As such, the question of by what means parties are permitted to access Tribunal/Division proceedings (and under what conditions/procedures) are necessarily related to the functioning of the Tribunal. Thought of as akin to legislation surrounding virtual court proceedings, Senate Bill 150 is therefore *Keller*-permissible.

Keller Quick Guide

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Staff Recommendation

Senate Bill 150 is necessarily related to the functioning of the Tribunal and is therefore *Keller*-permissible. The bill may be considered on its merits.



To: Members of the Public Policy Committee
Board of Commissioners

From: Nathan A. Triplett, Director of Governmental Relations

Date: April 24, 2023

Re: Legislation Implementing Task Force on Juvenile Justice Reform Recommendations

Background

In June 2021, Governor Whitmer issued an executive order creating a Task Force on Juvenile Justice Reform with the charge of “developing [an] ambitious, innovative, and thorough analysis of Michigan's juvenile justice system, complete with recommendations for changes in state law, policy, and appropriations to improve youth outcomes.” Over the course of nine months, the Task Force, with staff support from the Council of State Governments Justice Center, conducted a comprehensive review of Michigan’s juvenile justice system, including extensive consultation with relevant stakeholders. That process resulted in a [report](#) containing 32 recommendations across six subject areas, each of which were debated and voted on individually by members of the Task Force. All but one of the recommendations were approved unanimously by the Task Force, with the single exception having been approved by a “two-thirds consensus.”

The Access to Justice Policy Committee, Criminal Jurisprudence & Practice Committee, and Civil Procedure & Courts Committee reviewed the Task Force report and adopted positions as to both the *Keller*-permissibility and substance of each recommendation, which the Board of Commissioners reviewed at its January 19, 2023 meeting. Based on that review, the Board determined that 20 of the 32 Task Force Recommendations were *Keller*-permissible and adopted public policy positions on each.¹ While these positions on the Task Force recommendations allowed SBM staff to participate in stakeholder discussions concerning the development of legislation consistent with the Board’s direction, Administrative Order 2004-1 requires that the Board adopt a position, if any, on the legislation itself once it is introduced, which is why this bill package is before the Board at this time.

Procedural Challenges

We expect that the first package of bills implementing the Task Force recommendations will be introduced yet in April 2023 and there is some indication that the package may move through at least one legislative chamber before the Legislature recesses for the summer at the end of June. Unfortunately, introducing this legislation in late April creates unique procedural challenges for the State Bar of Michigan. Administrative Order 2004-1 requires SBM to provide a notice that includes

¹ A compilation of the Board’s positions on each of the 20 recommendations determined to be *Keller*-permissible may be found in the document entitled “SBM Positions on JJ Task Force Recommendations,” which is appended to this memorandum.

“a link to the text and status of the pending legislation on the Michigan Legislature website” at least two weeks in advance of a vote by the Board of Commissioners on legislation. As the bill package is finalized, but not yet to be introduced, it was impossible to comply with this notice requirement prior to the Board’s April 28 meeting. At the same time, if SBM waits until the June Board meeting to consider this legislation, it is likely the Bar will be prevented from participating in important stages of the legislative process on this bill package. Given the importance and complexity of the issues involved, it also seemed inappropriate to conduct an electronic vote on this legislation—even if the Board had discussed the underlying Task Force recommendations at length—without an opportunity for the Public Policy Committee and Board to discuss the bills themselves. Under the circumstances, staff referred the finalized drafts to SBM committees for review and would suggest that the Public Policy Committee and Board discuss the finalized drafts and committee recommendations and then conduct an electronic vote on the bills once they are introduced and the Bar can comply with the Court’s notice requirement.

SBM Committee Review of Task Force Recommendations

The Access to Justice Policy Committee (“ATJ Policy”) and Criminal Jurisprudence & Practice Committee (“CJAP”) were asked to review and make a recommendation on each of the 17 bill drafts.² As with their prior review of the Task Force recommendations, there was broad agreement between the committees, which is summarized below. The few instances of disagreement are addressed individually.

Keller-Permissibility

As to Keller-permissibility, after aligning each bill with its underlying Task Force recommendation and reviewing the Board’s *Keller* determinations as to the recommendations, both committees recommend that the Board adopt the same position on the finalized draft bills that it previously adopted on the associated Task Force recommendations. Namely, that **#8 (Per Diem Rates, #608’23) and #10 (Children’s Ombudsman, #1940’23) are not *Keller*-permissible** and that the remaining bills are *Keller*-permissible, as each is reasonably related to the functioning of the courts, while some are also reasonably related to the availability of legal services.

ATJ Policy & CJAP Areas of Agreement

ATJ Policy and CJAP adopted the same position on nine of the finalized draft bills—six as drafted and two with agreed upon amendment.

Both committees voted to support the following finalized bills as drafted:

- **#1 (Child Care Fund, #605’23)**
- **#2 (Diversion Act, #610’23)**
- **#3 (Validated Risk & Needs Assessment (disposition), #609’23)**
- **#4 (Validated Risk & Mental Health Screening Tools, #611’23)**
- **#6 (MIDC, #1330’23)**
- **#9 (Fines & Fees, #1332’23, 1332’23a, 1332’23b, and 1332’23c)**

² Owing to the Committee’s relative lack of expertise and experience in this area of the law, the Chair of the Civil Procedure & Courts Committee opted not to have the bill drafts referred to that committee for review.

Both committees voted to support **#5 (Validated Detention Screening Tool, #612'23)** with an amendment consistent with the Board's position on the underlying Task Force recommendation, that: "Any statements, admissions, confessions, or incriminating evidence obtained from a minor in the course of a screening under this section are not admissible into evidence in any adjudicatory hearing in which the minor is accused and are not subject to subpoena or any other court purpose for use in any other proceeding or for any other purpose." Note that ATJ Policy also recommended that tribal courts be exempted from assessment tool requirements, as there are presently no assessments validated for tribal populations.

Both committees voted to support **#7 (SADO, #1329'23)** with two amendments identified by the State Appellate Defender Office: (1) Add subsection (d) to Section 1a, to define and incorporate "local contribution" consistent with the new language proposed in the MIDC Act that addresses the process for accounting for annual inflationary increases to local costs related to indigent defense; and (2) Revise section 8a to incorporate the newly defined "local contribution." The exact language of the proposed amendments can be found in the ATJ Public Policy Position on this item, which is contained in the meeting materials.

Both committees voted to support **#12 (Pre-Court Diversion & Consent Calendar, #606'23)** with amendments to eliminate the possibility that restitution can be used to exclude eligibility for diversion and the consent calendar, consistent with the recommendations of the Task Force.

ATJ Policy & CJAP Areas of Disagreement

The committees disagreed as to only two of the finalized bill drafts: **#11 (Competency Evaluations, #1594'23 and 1594'23a)** and **#13 (Traditional Waivers, #607'23)**.

CJAP voted to support **#11 (Competency Evaluations, #1594'23 and 1594'23a)** with amendments to specifically state that the presumed age of competence will align with the age of jurisdiction and to refine the definition of a restoration service provider. By comparison, ATJ Policy voted to oppose this legislation, as they believed that the bills only partially accomplished the associated Task Force recommendations and were otherwise convoluted and difficult to follow. In January, the Board adopted a position supporting Task Force Recommendation 12 (that the age of presumed competence should align with the minimum age of jurisdiction) but determined that Recommendation 6 (that thirteen should be established as the minimum age for juvenile court jurisdiction) was not *Keller*-permissible. Under current law, Michigan has no minimum age of jurisdiction. It is not anticipated that legislation to establish a minimum age of jurisdiction will be part of this initial bill package.

CJAP voted to support **#13 (Traditional Waivers, #607'23)**. ATJ Policy voted to oppose this legislation because the creation of, and recommendations made by, a statewide study committee on juvenile waivers should precede any amendments to the statute. Task Force Recommendation 13, which was supported by the Board of Commissioners, recommends that a statewide study committee on juvenile waivers be established to review available data on the use of juvenile waivers and designations, identify challenges and barriers with current policies and practices, examine national research and best practices, and develop a final report that includes recommendations for

improvement. The Task Force recommended that this report then be submitted to the Governor, SCAO, and Legislature for consideration.

Staff Recommendation

Staff concurs with the recommendation made by ATJ Policy and CJAP that #8 (Per Diem Rates, #608'23) and #10 (Children's Ombudsman, #1940'23) are not *Keller*-permissible and that the remaining finalized bill drafts are *Keller*-permissible, as each is reasonably related to the functioning of the courts, while some are also reasonably related to the availability of legal services.

As such, #1 (Child Care Fund, #605'23), #2 (Diversion Act, #610'23), #3 (Validated Risk & Needs Assessment (disposition), #609'23), #4 (Validated Risk & Mental Health Screening Tools, #611'23), #5 (Validated Detention Screening Tool, #612'23), #6 (MIDC, #1330'23), #7 (SADO, #1329'23), #9 (Fines & Fees, #1332'23, 1332'23a, 1332'23b, and 1332'23c), #11 (Competency Evaluations, #1594'23 and 1594'23a), #12 (Pre-Court Diversion & Consent Calendar, #606'23), and #13 (Traditional Waivers, #607'23) are *Keller*-permissible and may be considered on their merits.

#8 (Per Diem Rates, #608'23) and #10 (Children's Ombudsman, #1940'23) are not *Keller*-permissible and therefore should not be considered by the Board.



POSITIONS ON JUVENILE JUSTICE TASK FORCE RECOMMENDATIONS, 01/20/23

<u>Recommendation</u>	<u>Keller-Permissibility</u>	<u>Position Taken by Board on 01/20/23</u>
<p><i>Recommendation 1</i> - Enhance the Child Care Fund (CCF) to focus on establishing a minimum framework of juvenile justice best practices statewide. These best practices will be supported by an increase in the community-based services/supervision reimbursement rate for counties and tribes in order to incentivize and support the development, expansion, and strengthening of community-based services and formal alternatives to detention and incarceration.</p>	<p>The Board of Commissioners voted unanimously that the recommendation is <i>Keller</i> permissible because it impacts the functioning of the courts and the availability of legal services.</p>	<p>The Board of Commissioners voted to support the recommendation as an increase in funding for services, alternatives to detention, and better practices will produce better outcomes for youth in the juvenile court system.</p>
<p><i>Recommendation 2</i> - Establish and fund a new Juvenile Justice Services Division within the State Court Administrative Office (SCAO).</p>	<p>The Board of Commissioners voted unanimously that the recommendation is <i>Keller</i> permissible because it impacts the functioning of the courts and the availability of legal services.</p>	<p>The Board of Commissioners voted to support the recommendation as there is very little state-level oversight of the juvenile justice system, and a dedicated division within SCAO can ensure more uniform practice and availability of resources to trial courts.</p>
<p><i>Recommendation 3</i> - Expand the Michigan Indigent Defense Commission (MIDC) to include development, oversight, and compliance with youth defense standards in local county defense systems.</p>	<p>The Board of Commissioners voted unanimously that the recommendation is <i>Keller</i> permissible because it impacts the functioning of the courts and the availability of legal services.</p>	<p>The Board of Commissioners voted to support the recommendation because the implementation of this recommendation could significantly increase the quality and availability of legal services for youth, at both the trial and appellate level. However, the Board of Commissioners recommends that training for all the attorneys be required as part of this.</p>
<p><i>Recommendation 7</i> - Require the use of a validated risk screening tool and a validated mental health screening tool to inform diversion and consent calendar decisions. Expand the Diversion Act so that all offenses— except for the most serious ones, which shall be enumerated—are eligible for pre-court diversion based on established local criteria and the use of a risk screening tool.</p>	<p>The Board of Commissioners voted that this recommendation is <i>Keller</i> permissible because it impacts the functioning of the courts.</p>	<p>The Board of Commissioners voted to support the recommendation with an additional amendment that any statements made during an assessment must not be admitted as evidence at an adjudicative hearing. Additionally, risk assessment tools must be peer validated and free from bias. Any information, written policies, data, etc. used to develop or validate such tools must be open to public inspection, auditing, and testing. Any case party to review the calculations and data of the pretrial risk assessment.</p>



POSITIONS ON JUVENILE JUSTICE TASK FORCE RECOMMENDATIONS, 01/20/23

<p>Recommendation 8 - All youth who commit status offenses shall be referred to a court officer, or another party designated by the local court, pre-petition, to conduct a validated risk screening. Youth screened as low risk are diverted to collaborative community programs or other services that are evidence based or culturally approved by a Tribe if the youth is American Indian.</p>	<p>The Board of Commissioners voted that this recommendation is <i>Keller</i> permissible because it impacts the functioning of the courts.</p>	<p>The Board of Commissioners voted to support the recommendation with an additional amendment that any statements made during an assessment must not be admitted as evidence at an adjudicative hearing. Additionally, risk assessment tools must be peer validated and free from bias. Any information, written policies, data, etc. used to develop or validate such tools must be open to public inspection, auditing, and testing. Any case party to review the calculations and data of the pretrial risk assessment.</p>
<p>Recommendation 9 - Align pre-court diversion and consent calendar conditions with research and developmental science.</p>	<p>The Board of Commissioners voted that this recommendation is <i>Keller</i> permissible because it impacts the functioning of the courts.</p>	<p>The Board of Commissioners voted to support this recommendation as greater research and application of that research will lead to better outcomes for youth.</p>
<p>Recommendation 10 - Require a validated risk and needs assessment to be conducted for all youth prior to disposition, and the results of the validated risk and needs assessment to be used by prosecutors, defense attorneys, the court, and other parties to the case to determine the most appropriate disposition commensurate with public safety, victim interests, rehabilitation, and improved youth outcomes including but not limited to educational advancement.</p>	<p>The Board of Commissioners voted that this recommendation is <i>Keller</i> permissible because it impacts the functioning of the courts.</p>	<p>The Board of Commissioners voted to support the recommendation with an additional amendment that any statements made during an assessment must not be admitted as evidence at an adjudicative hearing. Additionally, risk assessment tools must be peer validated and free from bias. Any information, written policies, data, etc. used to develop or validate such tools must be open to public inspection, auditing, and testing. Any case party to review the calculations and data of the pretrial risk assessment.</p>
<p>Recommendation 11 - SCAO, with proper funding and in partnership with local probation departments and other stakeholders, shall establish statewide, research-based, juvenile specific probation standards and guidelines.</p>	<p>The Board of Commissioners voted that this recommendation is <i>Keller</i> permissible because it impacts the functioning of the courts.</p>	<p>The Board of Commissioners voted to support this recommendation as proper funding and youth-specific standards will assist in decriminalizing youth in the juvenile court system and lead to better outcomes for them.</p>
<p>Recommendation 12 - The age of presumed competence will align with the minimum age of jurisdiction.</p>	<p>The Board of Commissioners voted that the recommendation is <i>Keller</i> permissible because it impacts the functioning of the courts and the availability of legal services.</p>	<p>The Board of Commissioners voted to support this recommendation as the current system of competency determination for youth does not provide positive outcomes for youth.</p>

<p>Recommendation 13 - Establish a statewide study committee on juvenile waivers that will be charged with reviewing available data on the use of juvenile waivers and designations, identifying challenges and barriers with current policies and practices, examining national research and best practices, and developing a final report that includes recommendations for improvement, which shall be submitted to the governor, SCAO, and legislature.</p>	<p>The Board of Commissioners voted that the recommendation is <i>Keller</i> permissible because it impacts the functioning of the courts and the availability of legal services.</p>	<p>The Board of Commissioners voted to support this recommendation. The current data on waivers and designations is sparse, and the application is not uniform between counties. With implementation of Raise the Age in late 2021, it appears that there is also an increase in waiver cases. Better data is needed to determine the effectiveness of Michigan’s current waiver and designation statutes.</p>
<p>Recommendation 14 - Ensure that factors considered by the court for traditional waivers and designations account for youth’s developmental maturity and emotional and mental health, and their ability to get more treatment and rehabilitation for these needs in juvenile court.</p>	<p>The Board of Commissioners voted that the recommendation is <i>Keller</i> permissible because it impacts the functioning of the courts and the availability of legal services.</p>	<p>The Board of Commissioners voted to support this recommendation as the current criteria for deciding whether to waive/designate a case are not reflective of many aspects of who the youth is and what impact their mental/emotional health, upbringing, and culture can have on their decision making and amenability to rehabilitation.</p>
<p>Recommendation 15 - Eliminate most non-restitution fees and costs associated with juvenile justice system involvement.</p>	<p>The Board of Commissioners voted that the recommendation is <i>Keller</i> permissible because it impacts the functioning of the courts and the availability of legal services.</p>	<p>The Board of Commissioners voted to support this recommendation as these fees and costs can be onerous on youth and their families, often leading to extended time on probation while draining financial resources which could be better used to benefit the youth rather than the courts, and because the threat of being assessed attorney fees can result in youth waiving their right to an attorney or pleading their cases quickly.</p>
<p>Recommendation 16 - Restrict the ability to extend consent calendar and probation supervision solely for the purpose of collecting restitution. Restitution orders will still be maintained through the show cause process if probation supervision is terminated.</p>	<p>The Board of Commissioners voted that this recommendation is <i>Keller</i> permissible because it impacts the functioning of the courts.</p>	<p>The Board of Commissioners voted to support this recommendation. The purpose of the juvenile justice system to help rehabilitate and support youth, and extended terms of probation for no reason other than collecting money are unrelated to that purpose. It is effectively punishing a youth for indigency.</p>
<p>Recommendation 17 - Require a validated detention screening tool to be used statewide, prior to detention decisions, as a guide for detention placement decisions and establish clear statutory legal authority for what entities can make detention decisions.</p>	<p>The Board of Commissioners voted that this recommendation is <i>Keller</i> permissible because it impacts the functioning of the courts.</p>	<p>The Board of Commissioners voted to support the recommendation with an additional amendment that any statements made during an assessment must not be admitted as evidence at an adjudicative hearing. Additionally, risk assessment tools must be peer validated and free from bias. Any information, written policies, data, etc. used to develop or validate such</p>

		tools must be open to public inspection, auditing, and testing. Any case party to review the calculations and data of the pretrial risk assessment.
Recommendation 18 - Restrict the use of pre-adjudication detention for non-public safety reasons.	The Board of Commissioners voted that this recommendation is <i>Keller</i> permissible because it impacts the functioning of the courts.	The Board of Commissioners voted to support this recommendation with an amendment to restrict detention for imminent threat but not a flight risk.
Recommendation 19 - Restrict the use of detention for violations of a court’s orders that is not an independent delinquent (as opposed to status) offense.	The Board of Commissioners voted that this recommendation is <i>Keller</i> permissible because it impacts the functioning of the courts.	The Board of Commissioners voted to support this recommendation with an amendment to restrict detention for imminent threat but not a flight risk.
Recommendation 29 - SCAO should develop data standardization protocols and procedures for the collection and sharing of data by local courts that can be used to inform decision making and drive system improvement efforts.	The Board of Commissioners voted that this recommendation is <i>Keller</i> permissible because it impacts the functioning of the courts.	The Board of Commissioners voted to support this recommendation.
Recommendation 30 - SCAO should establish robust quality assurance procedures to assess and address data quality issues and ensure data integrity, including conducting regular data reviews and developing resources and providing training for local courts.	The Board of Commissioners voted that this recommendation is <i>Keller</i> permissible because it impacts the functioning of the courts.	The Board of Commissioners voted to support this recommendation.
Recommendation 31 - Establish statewide definitions and protocols for capturing race, ethnicity, and tribal data across data systems, and create a public equity data dashboard to establish a baseline and track progress on key measures of statewide disparities and improvements.	The Board of Commissioners voted that this recommendation is <i>Keller</i> permissible because it impacts the functioning of the courts.	The Board of Commissioners voted to support this recommendation.
Recommendation 32 - Establish a statewide youth and family juvenile justice advisory group to inform resource allocation decisions and ensure that policy adoption and implementation are vetted and supported by authentic youth and family participation, to include but not be limited to educational advancement while youth are in the juvenile justice system.	The Board of Commissioners voted that the recommendation is <i>Keller</i> permissible because it impacts the functioning of the courts and the availability of legal services.	The Board of Commissioners voted to support this recommendation.



To: Members of the Public Policy Committee
Board of Commissioners

From: Nathan A. Triplett, Director of Governmental Relations

Date: April 24, 2023

Re: Reintroduction of Revised Legislation in Pretrial Reform Bill Package

Background

During the last legislative session, the Board of Commissioners considered an eight-bill package of bills based on the report and recommendations of the Michigan Joint Task Force on Jail and Pretrial Incarceration. Commissioner Nyamfukudza served as a member of the Joint Task Force. The Board ultimately adopted a public policy position supporting seven of the bills in that package (2021 HB 5436-HB 5439 and 2021 HB 5441-HB 5443), as they aligned with the recommendations of the Joint Task Force. The Board opposed 2021 HB 5440, as it was not based on any Joint Task Force recommendation. The bill package was never reported from the House Judiciary Committee and died when the 101st Legislature adjourned *sine die* in December 2022.

Procedural Challenges

We expect that a revised pretrial reform bill package will be introduced yet in April 2023 and there is some indication that the package may move through at least one legislative chamber before the Legislature recesses for the summer at the end of June. Former 2021 HB 5440, which the Board opposed, is being dropped from the package. Four of the bills which the Board supported in the package—former 2021 HB 5439, 5441, 5442, and 5443—are being reintroduced without any revisions. When the Board has adopted a public policy position on legislation in one legislative session that is then reintroduced in an identical form in a subsequent legislative session, staff applies the Board’s prior position to the new bills. However, when a bill is reintroduced with revisions, it is referred through the standard public policy review process and the Board must adopt a new position. Such is the case with three of the bills that the Board supported from last session’s pretrial reform package—former 2021 HB 5436, 5437, and 5438. These are the three bills that are now before the Board for consideration.

Unfortunately, reintroducing this legislation in late April creates unique procedural challenges for the State Bar of Michigan. Administrative Order 2004-1 requires SBM to provide a notice that includes “a link to the text and status of the pending legislation on the Michigan Legislature website” at least two weeks in advance of a vote by the Board of Commissioners on legislation. As the revised pretrial reform package is yet to be introduced, it was impossible to comply with this notice requirement prior to the Board’s April 28 meeting. At the same time, if SBM waits until the June Board meeting to consider this legislation, it is likely the Bar will be prevented from participating in important stages of

the legislative process on this bill package. Given the importance and complexity of the issues involved, it also seemed inappropriate to conduct an electronic vote on this legislation—even if the Board had discussed its prior iteration at length—without an opportunity for the Public Policy Committee and Board to discuss the bills. Under the circumstances, staff referred the finalized drafts to SBM committees for review and would suggest that the Public Policy Committee and Board discuss the finalized drafts and committee recommendations and then conduct an electronic vote on the bills once they are introduced and the Bar can comply with the Court’s notice requirement.

Revised Bill Summaries

Former HB 5436 (Establishing a Uniform Pretrial Decision-making Framework)

In order to impose money bail, this bill would require a judge to find clear and convincing evidence that a defendant poses a risk to another person or the community at large, that there is a risk that the defendant will abscond, and that any of following circumstances apply:

- The defendant is charged with an assaultive crime.
- The defendant is charged with a listed offense (i.e., a sex offense).
- The defendant is charged with a serious misdemeanor.
- The defendant is charged with DUI.
- The defendant is charged with a felony that is punishable by imprisonment for 5 or more years.
- The defendant is arrested and charged with a new offense that involves harm to person or property that is substantially similar to an offense for which they are awaiting trial and which was allegedly committed while on pretrial release.
- The defendant absconds in the present case while on any form of pretrial release.

Consistent with the Michigan Constitution, judges may also detain certain defendants without setting money bail if they are charged with certain serious violent offenses. Specifically:

- A defendant charged with a violent felony who has been convicted of two prior violent felonies within the prior 15 years;
- A defendant charged with murder or treason;
- A defendant charged with sexual conduct in the first degree, armed robbery, or kidnapping;
- A defendant charged with a violent felony while the defendant was released pretrial for another violent felony or was on probation or parole for a violent felony.

Judges may require a defendant to abide by non-monetary release conditions. In addition, the bill differentiates between “non-appearance” and “absconding.” Under the bill, “abscond” means failure to appear with the willful intent to avoid or delay adjudication and a rebuttable presumption of absconding is established if more than thirty days have elapsed since the defendant's missed court appearance. By contrast, “nonappearance” means a failure to appear without the intent to avoid or delay adjudication.

The bill also creates a requirement that defendants receive court date reminders ahead of their court date via text or mail.

Former HB 5437 (Due Process Protections for Pretrial Decisions)

Under the bill, judges may require pretrial release conditions meant to reasonably ensure the protection of the public and that a defendant will return to court. The conditions imposed must be the least restrictive necessary to achieve those objectives.

If a defendant remains detained 48 hours after their first appearance, they are entitled under the bill to a new hearing where defense counsel can present evidence for why a judge should reconsider the initial bail determination.

If a judge imposes a pretrial release condition that is a “significant liberty restraint” – such as GPS monitoring or drug testing, the defendant may request a hearing as to whether those conditions remain necessary after 60 days of compliance with the conditions. For most alleged offenses, the bill establishes a rebuttable presumption that the condition should be removed if the person has been in compliance. However, the presumption does not apply when defendants are charged with a domestic violence offense, an assaultive crime, or a listed offense (i.e., sex offense). Under the bill, judges may only impose GPS monitoring on a person when they are charged with a domestic violence offense, an assaultive crime, or a listed offense and the person poses a risk of harm to a person or the community at large, or they pose a risk of absconding.

Former HB 5438 (Statutory Right to Speedy Trial Within 18 Months)

This bill would create a statutory speedy trial time limit of 18 months with several exceptions, including, but not limited to:

- The defendant waives the time period.
- The delay is attributable to the defendant.
- The delay is necessary to accommodate the request of any victim or victims in the case, if the court finds on the record that exceptional circumstances justify granting the request.
- The delay is attributable to an act of God.
- The delay is otherwise justified by good cause found on the record (not including docket congestion).

Under the bill, if a defendant is not tried or a final determination on the charge or charges is not made within 18 months after arrest or the issuance of an appearance ticket, then the charge against the defendant must be dismissed with prejudice. Any of the aforementioned circumstances toll the 18-month limitation.

The Access to Justice Policy Committee and Criminal Jurisprudence & Practice Committee both reviewed each of these finalized drafts and voted to support the three bills.

***Keller* Considerations**

As noted with the Board considered this package last session, and determined that it was *Keller*-permissible, the criminal legal system is premised on a presumption that defendants are innocent until proven guilty. Liberty, due process, and equal protection rights limit the use of pretrial detention, and the severity of release conditions, except when the defendant poses a threat of harm to others or when there is a significant risk that a defendant will not appear to answer a criminal charge. The bail/pretrial release system was intended to help courts ensure that defendants will return to court while their case is being adjudicated. Legislation proposing significant changes to the bail/pretrial release system is *Keller*-permissible to the extent that one of the rationales of pretrial detention/release decisions is to

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

Therefore, the Board previously determined that this bill package, taken as a whole, is *Keller*-permissible because it significantly affects and is necessarily related to 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
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 revised bills in this legislative package would have a significant impact on pretrial court procedures and implicate issues that are central to the functioning of the courts. Like their predecessors, they are therefore *Keller*-permissible and may be considered on their merits.



To: Members of the Public Policy Committee
Board of Commissioners

From: Nathan A. Triplett, Director of Governmental Relations

Date: April 24, 2023

Re: Executive Budget Recommendation for the Judiciary for FY 2023-2024

Background

The FY 2023-2024 Executive Budget Recommendation for the Judiciary proposes a total gross appropriation of \$354,734,800 for the operations of the Michigan Supreme Court, the Court of Appeals, and related judicial agencies, including the Judicial Tenure Commission, the State Appellate Defender Office, and the Justice for All Commission. This appropriation would also fund the salaries of the justices of the Supreme Court and judges of the Court of Appeals, circuit, probate, and district courts, as prescribed by statutory and constitutional requirements. \$249,404,700 of the proposed appropriation is GF/GP.

Notable items from the FY 2023-2024 Executive Budget recommendation for the judiciary include:

- \$12.5 million to support the ongoing implementation of the statewide judicial case management system;
- \$4.5 million to continue a statewide court data transparency project;
- \$3.2 million for grants to counties for Michigan Appellate Assigned Counsel System roster attorneys;
- \$2.5 million for the State Appellate Defender's Office to support the resentencing of juvenile offenders serving a life sentence;
- \$2.0 million to establish a Juvenile Justice Services Division; and
- \$556,900 to create a juvenile justice unit within the State Appellate Defender's Office.

On April 19, the House Appropriations Subcommittee on Judiciary adopted the Chair's Recommendation (2023 HB 4245) for the FY 2023-2024 Judiciary budget. It included several notable changes from the Executive Budget Recommendation:

- It includes only a \$100 placeholder for the statewide case management system. The executive had recommended \$12.5 million.
- It includes only a \$100 placeholder for the statewide court data transparency project. The executive had recommended \$4.5 million.
- It concurred with the executive recommendation of \$3.2 million for grants to support compensation for appellate counsel for indigent defendants on par with rates adopted by the Michigan Indigent Defense Commission under Standard 8. This is notable because the

implementation of Standard 8 was **not** fully funded at the executive recommendation level in the corresponding Chair's Recommendation for the FY 2023-2024 LARA budget (which administratively includes MIDC).

- It funds the proposed Juvenile Justice Services Division at \$1.924 million, while the executive had recommended \$2 million.
- It also proposed several items that were not included in the Executive Budget Recommendation:
 - \$10.7 million for security and other improvement projects at the district court in Washtenaw County.
 - \$422,600 to support additional staff to assist the Judicial Tenure Commission with eliminating case backlogs and investigating claims in a “timelier manner.” This was requested by the JTC, but not included in the Executive Budget Recommendation.
 - \$292,200 to support two full-time law clerks to assist Court of Claims judges. This item was requested by Chief Judge Elizabeth Gleicher after the submission of the Executive Budget Recommendation.
 - \$1 million for the expansion of mental health courts and \$1 million for the expansion of problem-solving courts generally.

The Subcommittee then referred the Chair's Recommendation to the full House Appropriations Committee, which is scheduled to take up the bill on Wednesday, April 26.

On April 20, the Senate Appropriations Subcommittee on Corrections and Judiciary adopted the Chair's Recommendation (2023 SB 192) for the FY 2023-2024 Judiciary budget. It also included several notable changes from the Executive Budget Recommendation:

- It included only \$1,012,500 for the proposed Juvenile Justice Services Division, while the executive had recommended \$2 million.
- It included a \$100 placeholder for two full-time law clerks to assist Court of Claims judges. As noted above, these clerks were not included in the Executive Budget Recommendation.
- It included only \$2,249,900 for the statewide court data transparency project. The executive had recommended \$4.5 million.
- It included a \$100 placeholder for the \$442,600 requested by the JTC to reduce base backlogs. This was not included in the Executive Budget Recommendation.

The Subcommittee then referred the Chair's Recommendation to the full Senate Appropriations Committee, which is scheduled to take up the bill on Wednesday, April 26.

***Keller* Considerations**

Adequate funding of the courts and related judicial agencies (e.g., SADO) is essential to—and therefore necessarily related to—their proper functioning and to the availability of legal services across Michigan. As such, the FY 2023-2024 Executive Budget Recommendation for the Judiciary satisfies the requirements of *Keller*.

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 FY 2023-2024 Executive Budget Recommendation for the Judiciary satisfies the requirements of *Keller* and may be considered on its merits.



To: Members of the Public Policy Committee
Board of Commissioners

From: Nathan A. Triplett, Director of Governmental Relations

Date: April 24, 2023

Re: Executive Budget Recommendation for the MIDC for FY 2023-2024

Background

Public Act 93 of 2013 created the Michigan Indigent Defense Commission (“MIDC”) and required the MIDC to develop standards for local indigent defense systems. The State Bar of Michigan strongly supported the enactment of PA 93 and has supported the MIDC in a number of respects since its inception. Under the Act, once standards are approved by MIDC, the local indigent defense systems are required to develop compliance plans that include anticipated costs, and the state is obligated to fund any increased costs required to meet the new standards. FY 2018-19 was the first budget year in which the state provided funding to local indigent defense systems. SBM supported the executive budget recommendation for MIDC in FY 2018-19 and has supported every subsequent MIDC recommendation in FYs 2019-2020, 2020-2021, 2021-2022, and 2022-2023. As MIDC is housed administratively within the Department of Licensing and Regulatory Affairs (“LARA”), its budget is found within LARA’s.

For FY 2023-2024, the MIDC Executive Budget recommends \$220,900,000 for indigent criminal defense (\$220.6 million from the GF) for 120 trial court funding units to meet their ongoing constitutional and statutory obligation to provide effective assistance of counsel for indigent criminal defendants, as established by MIDC standards. This is an increase of \$72 million dollars from the last fiscal year. Of the \$72 million recommended by the Governor in her Executive Budget, \$29.8 million was included for compliance with MIDC Standards 1-5. \$42.2 million was included for costs incurred for compliance with MIDC’s new Standard 8, which concerns economic disincentives and incentives, including rates of payment for salaried public defenders, and compensation and expenses for assigned counsel.

On April 18, the House Appropriations Subcommittee on Licensing and Regulatory Affairs & Insurance and Financial Services adopted the Chair’s Recommendation (2023 HB 4280) for the FY 2023-2024 LARA budget, which funded MIDC at **\$14.8 million below the Governor’s Executive Budget Recommendation** citing the Chair’s desire to “encourage efficiencies in the court system, including virtual options” and his provide “prudent and sustainable funding” for MIDC. The Subcommittee then referred the Chair’s Recommendation to the full House Appropriations Committee, which is scheduled to take up the bill on Wednesday, April 26.

On April 20, the Senate Appropriations Subcommittee on Licensing and Regulatory Affairs & Insurance and Financial Services adopted the Chair’s Recommendation (2023 SB 195) for the FY 2023-2024 LARA budget, which funded MIDC at **\$12.2 million below the Governor’s Executive Budget Recommendation**. The Subcommittee then referred the Chair’s Recommendation to the full Senate Appropriations Committee, which is scheduled to take up the bill on Wednesday, April 26.

***Keller* Considerations**

SBM has a long, consistent history of supporting improvements to, and investments in, Michigan’s indigent defense system. As noted above, SBM supported MIDC’s enabling legislation and subsequent appropriations to support the implementation of local indigent defense systems. The FY 2023-2024 Executive Budget recommendation would provide significant funding that is essential to improving the quality and availability of legal services for indigent criminal defendants. The Executive Budget’s \$220.9 million recommended appropriation will allow trial court funding units to meet their obligations under PA 93 and the standards adopted by the MIDC, while the House and Senate’s respective Chair’s Recommendations will leave MIDC with funds insufficient to implement, among other things, Standard 8. It should also be noted that neither the Executive Budget Recommendation nor the Chair’s Recommendations account for the possibility that the MIDC’s mandate may be expanded to encompass juvenile defense. Adequate funding for MIDC is necessarily related to both the availability of legal services across Michigan and to the improvement in the functioning of the courts. It therefore meets the requirements of *Keller*.

***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 FY 2023-2024 Executive Budget recommendation for the MIDC satisfies the requirements of *Keller* and may be considered on its merits.

FY 2023-24 JUDICIARY BUDGET

S.B. 192 (S-1): SENATE SUBCOMMITTEE REC.

(as reported)

Committee: Appropriations



Throughout this document Senate means Subcommittee Recommendation

FULL-TIME EQUATED (FTE) CLASSIFIED POSITIONS/FUNDING SOURCE	FY 2022-23 YEAR-TO-DATE*	FY 2023-24 SENATE SUBCOMMITTEE REC.	CHANGES FROM FY 2022-23 YEAR-TO-DATE	
			AMOUNT	PERCENT
FTE Positions	537.0	594.0	57.0	10.6
GROSS	483,505,700	351,472,300	(132,033,400)	(27.3)
Less:				
Interdepartmental Grants Received	1,902,300	1,902,300	0	0.0
ADJUSTED GROSS	481,603,400	349,570,000	(132,033,400)	(27.4)
Less:				
Federal Funds	6,340,300	6,751,300	411,000	6.5
Local and Private.....	9,306,800	1,523,900	(7,782,900)	(83.6)
TOTAL STATE SPENDING.....	465,956,300	341,294,800	(124,661,500)	(26.8)
Less:				
Other State Restricted Funds.....	95,181,400	95,152,600	(28,800)	(0.0)
GENERAL FUND/GENERAL PURPOSE	370,774,900	246,142,200	(124,632,700)	(33.6)
PAYMENTS TO LOCALS	150,357,800	150,611,100	253,300	0.2

*As of February 7, 2023.

Major Boilerplate Changes from FY 2022-23 Year-to-Date:

- 1. Deletions.** The Subcommittee removed several sections, including sections on retirement costs, user fee recovery that will no longer be collected, an oral fluid testing pilot that has been completed, parental consent waiver reporting, a medication assisted treatment pilot program that has been completed, and prior year one-time language.
- 2. Contingency Fund Authorization.** New language was added to provide contingency fund authorization from federal, restricted, local, and private sources should they become available. (Sec. 212)
- 3. Montgomery v Louisiana Compliance Moved to Ongoing.** Funding and boilerplate for SADO's work on resentencing hearings was moved from one-time to ongoing. (Sec. 316)
- 4. Michigan Assigned Appellate Counsel System (MAACS).** New language was added to provide direction for the MAACS grant program. (Sec. 317)
- 5. One-Time Work Projects.** New sections were added to provide direction for 2 one-time work projects: one for the Statewide Court Data Transparency Project and one for the Court Administration Bench Book Project. (Sections 401 & 402)

FY 2023-24 JUDICIARY BUDGET
S.B. 192 (S-1): SENATE SUBCOMMITTEE REC.

FY 2022-23 Year-to-Date Appropriation	\$483,505,700	\$370,774,900		
	CHANGE FROM FY 2022-23 Y-T-D		FY 2023-24 RECOMMENDED APPROPRIATION	
	Gross	GF/GP	Gross	GF/GP
<u>Baseline Adjustments</u>				
1. <i>Montgomery v Louisiana</i> Compliance. The Governor moved this line from one-time to the ongoing section. Youthful offenders requiring resentencing are represented by the State Appellate Defender Office (SADO). The Subcommittee concurred.	958,100	958,100	958,100	958,100
2. Statutory Judicial Salary Increase. The Governor increased funding for District judge salary increases required by 2022 PA 177. The Subcommittee concurred.	504,900	504,900	29,200,900	29,200,900
3. Law Exam Fee Backfill with GF/GP. Reduced law exam fee revenue contributing to the Supreme Court Administration line item was replaced with GF/GP. The Subcommittee concurred.	162,000	162,000	15,632,000	14,814,600
4. Building Security Contractual Increase. Increased for contracted building security services within the Branchwide Appropriations line item. The Subcommittee concurred.	105,400	105,400	9,803,700	9,803,700
5. Statutory Judgeship Eliminations. Reduced total salary appropriations due to statutory judgeship reductions from four separate PAs. The Subcommittee concurred.	(134,600)	(134,600)	29,200,900	29,200,900
6. Economic Adjustments. Includes \$2,716,800 Gross and \$2,784,600 GF/GP for total economic adjustments. The Subcommittee concurred.	2,716,700	2,784,500		
<u>New Programs/Program Increases</u>				
7. Statewide Case Management System Implementation. Rolled the Direct Trial court Automation Support line item into the Judicial Information Systems line item and offset \$7.5 million in user fees paid by courts currently in the system. The Subcommittee concurred.	4,747,600	12,500,500	18,231,600	17,947,400
8. Michigan Appellate Assigned Counsel System (MAACS) Compensation Grants. Recommended a grant program to increase the lagging pay rate of assigned appellate counsel in the MAACS system. The Subcommittee concurred.	3,160,700	3,160,700	3,160,700	3,160,700

FY 2023-24 JUDICIARY BUDGET
S.B. 192 (S-1): SENATE SUBCOMMITTEE REC.

	CHANGE FROM FY 2022-23 Y-T-D		FY 2023-24 RECOMMENDED APPROPRIATION	
	Gross	GF/GP	Gross	GF/GP
9. SADO Juvenile Life Resentencing. Added staffing (11.0 FTES) and funding to support additional resentencing hearings following State Supreme Court Decisions in <i>People v Parks</i> and <i>People v Stovall</i> . The Subcommittee concurred.	1,571,500	1,571,500	1,571,500	1,571,500
10. Juvenile Justice Services Division. Recommended a new division within the State Court Administrative Office (SCAO) to implement the recommendations of the Juvenile Justice Task Force. The Subcommittee reduced funding for the new unit.	1,012,500	1,012,500	1,012,500	1,012,500
11. SADO Youth Defense. Recommended 3.0 FTEs and funding to form a youth defense unit within SADO following a recommendation by the Juvenile Justice Task Force. The Subcommittee concurred.	556,900	556,900	556,900	556,90
12. Justice for All Continuing Support. Recommends continuing the work of the Justice for All Initiative, including pilot programs, training, and community outreach. The Subcommittee concurred.	475,000	475,000		
13. Federal Grant for Friend of the Court. Recommended authorizing increased Federal spending through the Safe Access for Victims Economic Security (SAVES) grant program from Federal HHS Office of Child Support Services. The Subcommittee concurred.	420,000	0		
14. Security Detail for Justices. Recommended increasing the security detail for State Supreme Court Justices. The Subcommittee concurred.	415,000	415,000		
15. Judicial Institute - Curriculum Development. Recommended expanded online training and an attendance/participation tracking system for Judicial CE. The Subcommittee concurred.	182,000	182,000	2,695,300	2,307,100
16. Court of Appeals Law Clerks Investment. The Subcommittee included a placeholder for a request from the Court of Appeals for \$292,300 and 2.0 FTES. The placeholder includes the FTES and \$100 deducted from the Court of Appeals - Economics.	100	100	100	100
<u>Eliminations/Reductions - NONE</u>				

FY 2023-24 JUDICIARY BUDGET
 S.B. 192 (S-1): SENATE SUBCOMMITTEE REC.

	CHANGE FROM FY 2022-23 Y-T-D		FY 2023-24 RECOMMENDED APPROPRIATION	
	Gross	GF/GP	Gross	GF/GP
<u>One-Time Appropriations</u>				
17. Statewide Court Data Transparency Project. The Governor recommended a project to include data collection, quality assessment, and reporting and analysis of court data through a public portal at a cost of \$4.5 million. The Subcommittee included ½ funding.	2,249,900	2,249,900	2,249,900	2,249,900
18. Judicial Institute - Bench Book. The Governor recommended funding for the 3-year costs needed for the development of a court administration bench book. The Subcommittee concurred.	300,000	300,000	300,000	300,000
19. Judicial Tenure Commission. The Subcommittee included a placeholder for a one-time request for 2.0 FTEs and \$422,600 from the JTC.	100	100	100	100
20. FY 2022-23 One-Time Funding Removal. Prior year one-time line items were removed, including: statewide case management system ((\$150.0 million), <i>Montgomery v Louisiana</i> compliance (\$962,900)(moved to ongoing for FY 2023-24), judicial tenure commission contract funding (\$249,300), and judicial workload assessment (\$225,000). The Subcommittee concurred.	(151,437,200)	(151,437,200)	0	0
<u>Other</u>				
21. FTE Alignment and Authorization. The Governor recommended adding 2.0 FTEs for Judicial CE program that began in FY 2022-23 and adding 2.0 FTEs for the Drug Treatment Courts line item. No funding was added for these FTEs. The Subcommittee concurred.	0	0	0	0
Total Changes.....	(\$132,033,400)	(\$124,632,700)		
FY 2023-24 SENATE SUBCOMMITTEE REC.....	\$351,472,300	\$246,142,200		

Date Completed: 4-20-23

Fiscal Analyst: Michael Siracuse

FY 2023-24: JUDICIARY
Summary: As Reported by the House Subcommittee
House Bill 4245 (H-2)



Analyst: Robin R. Risko

IDG/IDT	FY 2022-23 YTD as of 2/8/23	FY 2023-24 Executive	FY 2023-24 House	FY 2023-24 Senate	FY 2023-24 Conference	Difference: House From FY 2022-23 YTD	
						Amount	%
	\$1,902,300	\$1,902,300	\$1,902,300	\$	\$	\$0	0.0
Federal	6,340,300	6,751,300	6,751,300			411,000	6.5
Local	7,782,600	0	0			(7,782,600)	(100.0)
Private	1,524,200	1,523,900	1,703,900			179,700	11.8
Restricted	95,181,400	95,152,600	95,152,600			(28,800)	0.0
GF/GP	370,774,900	249,404,700	245,718,100			(125,056,800)	(33.7)
Gross	\$483,505,700	\$354,734,800	\$351,228,200	\$	\$	(\$132,277,500)	(27.4)
FTEs	537.0	588.0	594.0			57.0	10.6

Notes: (1) FY 2022-23 year-to-date figures include mid-year budget adjustments through February 8, 2023. (2) Appropriation figures for all years include all proposed appropriation amounts, including amounts designated as "one-time."

Overview

Article VI of the State Constitution of 1963 forms the basis for Michigan's judicial branch of government. The Judiciary budget provides operational funding for the Michigan Supreme Court, the Court of Appeals, and related judicial agencies. The budget funds the salaries of justices of the Supreme Court and judges of the appeals, circuit, probate, and district courts according to constitutional and statutory requirements. Funding assistance for local trial court operations is provided through a variety of grant programs. The largest of these, the Court Equity Fund Reimbursement program, reimburses counties for trial court operations based on a statutory formula that recognizes circuit and probate caseloads and the number of judgeships.

Budget Changes from FY 2022-23 YTD Appropriations

1. Statewide Judicial Case Management System

Executive includes a total of \$12.5 million GF/GP and authorization for 16.0 new FTE positions for continued support of the statewide judicial case management system. Of the total, \$6.0 million would be used to support staff and other operating costs as trial courts transition to the system, and \$6.5 million would be used to offset local user fee revenue that was previously paid by trial courts that have already transitioned to the system. (A total of 60.0 FTE positions are reflected; that figure includes the 44.0 FTE positions transferred from the Direct Trial Court Automation Support line item. See #2 below.) House includes additional FTE positions and a \$100 placeholder for this item.

	FY 2022-23 Year-to-Date (as of 2/8/23)	FY 2023-24 House Change
FTE	NA	60.0
Gross	NA	\$100
GF/GP	NA	\$100

2. Consolidate Direct Trial Court Automation Support

Executive consolidates the Direct Trial Court Automation Support line item with the Judicial Information Systems line item as a part of implementing the statewide judicial case management system. Consolidating reflects elimination of the cost to trial courts for providing online court services and resource sharing. House concurs with executive.

FTE	44.0	(44.0)
Gross	\$7,752,900	(\$7,752,900)
Local	7,752,900	(7,752,900)
GF/GP	\$0	\$0

3. Statewide Court Data Transparency Project

Executive includes \$4.5 million in one-time GF/GP to support costs of improving data collection, reporting and analysis, and publication of court data through a public portal. House includes a \$100 placeholder for this project.

Gross	NA	\$100
GF/GP	NA	\$100

<u>Budget Changes from FY 2022-23 YTD Appropriations</u>		FY 2022-23 Year-to-Date (as of 2/8/23)	FY 2023-24 House Change
4. SADO MAACS Roster Attorney Compensation Grants	FTE	NA	1.0
<u>Executive</u> includes \$3.2 million GF/GP and authorization for 1.0 FTE position to create a cost-share grant program to support counties that increase pay rates for appellate counsel for indigent offenders that are assigned through the Michigan Appellate Assigned Counsel System (MAACS). New rates would be consistent with rates adopted under Michigan Indigent Defense Commission standards. <u>House</u> concurs with executive.	Gross	NA	\$3,160,700
	GF/GP	NA	\$3,160,700
5. Juvenile Justice Task Force Recommendation #2	FTE	NA	13.0
<u>Executive</u> includes \$2.0 million GF/GP and authorization for 13.0 FTE positions to support recommendation #2 made by the Task Force on Juvenile Justice Reform. The recommendation was to create and support a Juvenile Justice Services Division within the State Court Administrative Office. <u>House</u> includes additional FTE positions and \$1.9 million GF/GP for this purpose.	Gross	NA	\$1,924,000
	GF/GP	NA	\$1,924,000
6. Juvenile Justice Task Force Recommendation #3	FTE	NA	3.0
<u>Executive</u> includes \$556,900 GF/GP and authorization for 3.0 FTE positions to support recommendation #3 made by the Task Force on Juvenile Justice Reform. The recommendation was to expand the role of the State Appellate Defender's Office to include appellate defense for juvenile justice cases. <u>House</u> concurs with executive.	Gross	NA	\$556,900
	GF/GP	NA	\$556,900
7. Resentencing of Youth Serving Life Sentences	FTE	NA	18.0
<u>Executive</u> includes a total of \$2.5 million GF/GP and authorization for 18.0 FTE positions for the State Appellate Defender Office to ensure continued compliance with the U.S. Supreme Court ruling on the <i>Montgomery v. Louisiana</i> case (\$958,100 GF/GP and 7.0 FTE positions) and the Michigan Supreme Court rulings on the <i>People v. Parks</i> , <i>People v. Poole</i> , and <i>People v. Stovall</i> cases (\$1.6 million GF/GP and 11.0 FTE positions). Because mandatory life sentences without the possibility of parole for most juveniles, including 18-year-olds, convicted of certain offenses were ruled to be unconstitutional and life sentences for juveniles convicted of second-degree murder were ruled to be unconstitutional, resentencing of offenders is required. Resentencing hearings are required to take place before a judge, not a jury, and the appellate court is required to review trial court decisions in these cases for potential abuse of discretion. There are over 30 inmates still waiting for resentencing hearings under the U.S. Supreme Court ruling and roughly 350 inmates eligible for resentencing hearings under the Michigan Supreme Court rulings. <u>House</u> concurs with executive.	Gross	NA	\$2,529,600
	GF/GP	NA	\$2,529,600
8. District Court Judges' Salary Adjustments	Gross	\$38,690,200	\$504,900
<u>Executive</u> includes \$504,900 GF/GP to cover costs of increased salaries for district court judges as required by 2022 PA 177. Public Act 177 requires an increase in compensation for district court judges to equal the compensation of probate court judges, effective October 1, 2022. Funding would also cover associated retirement and social security costs. <u>House</u> concurs with executive.	GF/GP	\$38,690,200	\$504,900
9. Judicial Institute Curriculum and Bench Book Development	FTE	NA	1.0
<u>Executive</u> includes \$482,000 GF/GP (\$182,000 ongoing; \$300,000 one-time) and authorization for 1.0 FTE position for curriculum and bench book development. Ongoing funding would be used for curriculum development, including expanded online training modules, virtual training, and implementation of an attendance/participation tracking system for the mandatory continuing judicial education requirement. One-time funding would support costs of developing a court administration bench book. <u>House</u> concurs with executive.	Gross	NA	\$482,000
	GF/GP	NA	\$482,000

<u>Budget Changes from FY 2022-23 YTD Appropriations</u>	<u>FY 2022-23 Year-to-Date (as of 2/8/23)</u>	<u>FY 2023-24 House Change</u>	
10. Justice for All Initiative	Gross	NA	\$475,000
<u>Executive</u> includes \$475,000 GF/GP for continuing the Justice for All initiative implemented in the FY 2021-22 budget. The Justice for All initiative aims to simplify the court system, court rules, processes, and forms in order to increase court and community engagement and access to justice. Funding would be used for process improvements, pilot programs, training court personnel, and community outreach. <u>House</u> concurs with executive.	GF/GP	NA	\$475,000
11. Federal Grant for Friend of the Court Bureau	Gross	NA	\$420,000
<u>Executive</u> includes authorization for SCAO to receive \$420,000 in federal Safe Access for Victims Economic Security (SAVES) grant funding made available by the U.S. Department of Human Services, Office of Child Support Enforcement. Funding would be used to increase safe access to child support services for domestic violence victims/survivors who currently are not receiving the services. <u>House</u> concurs with executive.	Federal GF/GP	NA NA	420,000 \$0
12. Supreme Court Security	FTE	NA	2.0
<u>Executive</u> includes \$415,000 GF/GP and authorization for 2.0 FTE positions to support costs of providing additional security for supreme court justices, including home security systems and protection while traveling. <u>House</u> concurs with executive.	Gross GF/GP	NA NA	\$415,000 \$415,000
13. Board of Law Examiners Funding Adjustment	Gross	NA	\$162,000
<u>Executive</u> includes \$162,000 GF/GP to offset a shortfall of state restricted Law Exam Fee revenue that supports the Board of Law Examiners within the Supreme Court. Fees are collected from applicants for admission to the bar. There has been a decrease in the amount of fee revenue collected. <u>House</u> concurs with executive.	GF/GP	NA	\$162,000
14. Increased Costs for Facility Security	Gross	NA	\$105,400
<u>Executive</u> includes \$105,400 GF/GP to cover increased costs of security staff provided through a contract with DK Security. Hourly minimum wage for security staff was increased. <u>House</u> concurs with executive.	GF/GP	NA	\$105,400
15. Judgeship Changes	Gross	NA	(\$134,600)
<u>Executive</u> reflects a net savings of \$134,600 GF/GP from the following statutory changes: eliminating one district court judgeship in Alger/Schoolcraft County under 2012 PA 34; eliminating one district court judgeship in Huron County under 2012 PA 36; and annualizing costs for circuit court judgeships added in Marquette County under 2021 PA 74, Wayne, Muskegon, and Ottawa Counties under 2022 PA 8, and a probate court judgeship in Kent County under 2022 PA 8. <u>House</u> concurs with executive.	GF/GP	NA	(\$134,600)
16. Additional FTE Position Authorization	FTE	NA	4.0
<u>Executive</u> includes authorization for an additional 4.0 FTE positions. Of the 4.0 positions, 2.0 would be allocated for implementing the Judicial Institute mandatory continuing judicial education program and 2.0 would be allocated for the Drug Treatment Courts program. Funding for these positions has already been appropriated. <u>House</u> concurs with executive.	Gross GF/GP	NA NA	\$0 \$0
17. Eliminate Current-Year One-Time Funding	FTE	7.0	(7.0)
<u>Executive</u> reduces the budget by \$151.4 million GF/GP and 7.0 FTE positions to reflect elimination of one-time funding included in the FY 2022-23 budget. Eliminated funding includes: \$150.0 million for the Statewide Judicial Case Management System, \$962,900 (7.0 FTE positions) for SADO, \$249,300 for the Judicial Tenure Commission, and \$225,000 for judicial workload assessment. <u>House</u> concurs with executive.	Gross GF/GP	\$151,437,200 \$151,437,200	(\$151,437,200) (\$151,437,200)

<u>Budget Changes from FY 2022-23 YTD Appropriations</u>		<u>FY 2022-23 Year-to-Date (as of 2/8/23)</u>	<u>FY 2023-24 House Change</u>
18. Economic Adjustments	Gross	NA	\$2,716,800
<u>Executive</u> reflects increased costs of \$2.7 million Gross (\$2.8 million GF/GP) for negotiated salary and wage increases (2.0% on October 1, 2023), actuarially required retirement contributions, worker's compensation, building occupancy charges, rent, and other economic adjustments. <u>House</u> concurs with executive.	Federal	NA	(9,000)
	Local	NA	(29,700)
	Private	NA	(300)
	Restricted	NA	(28,800)
	GF/GP	NA	\$2,784,600
19. Court Improvement Project	Gross	NA	\$10,699,900
<u>House</u> includes \$10.7 million to support costs of security and other improvement projects at the district court in Washtenaw County.	GF/GP	NA	\$10,699,900
20. Judicial Tenure Commission	FTE	NA	4.0
<u>House</u> includes \$422,600 GF/GP and authorization for 4.0 FTE positions to support additional staff that would assist with eliminating case backlog and investigating misconduct claims in a timelier manner.	Gross	NA	\$422,600
	GF/GP	NA	\$422,600
21. Michigan Court of Appeals Law Clerks	FTE	NA	2.0
<u>House</u> includes \$292,200 GF/GP and authorization for 2.0 FTE positions to support 2 full-time law clerks to assist Court of Claims judges. Currently, 4 judges share 1 law clerk.	Gross	NA	\$292,200
	GF/GP	NA	\$292,200
22. Expansion of Mental Health Courts	Gross	NA	\$1,000,000
<u>House</u> includes \$1.0 million GF/GP for expansion of mental health treatment courts.	GF/GP	NA	\$1,000,000
23. Expansion of Problem-Solving Courts	Gross	NA	\$1,000,000
<u>House</u> includes \$1.0 million GF/GP for expansion of problem-solving courts.	GF/GP	NA	\$1,000,000
24. Michigan Justice Fund for SADO	Gross	NA	\$180,000
<u>House</u> includes authorization for SADO's Project Reentry to receive \$180,000 in private grant funding from the Michigan Justice Fund, a new philanthropic initiative aimed at criminal justice reform initiatives. Funding would be used to increase opportunities for formerly incarcerated individuals to achieve increased economic mobility.	Private	NA	180,000
	GF/GP	NA	\$0

Major Boilerplate Changes from FY 2022-23

Sec. 202. Appropriations Subject to the Management and Budget Act and Transfer Authority – RETAINED

Subjects appropriations to the Management and Budget Act, 1984 PA 431; describes the appropriations transfer process for entities in the judicial branch. Executive revises to delete transfer process language. House retains current law.

Sec. 209. Transparency Website – RETAINED

Requires judicial branch to maintain a searchable website accessible by the public at no cost that includes all expenditures made by the judicial branch within the fiscal year, including purposes for which the expenditures were made. Executive deletes. House retains current law.

Sec. 210. Report on State Restricted Funds – RETAINED

Requires judicial branch to work with SBO to report annually on estimated state restricted fund balances, state restricted fund projected revenues, and state restricted fund expenditures. Executive deletes. House retains current law.

Sec. 211. Website for Performance Scorecard – RETAINED

Requires judiciary to maintain, on a publicly accessible website, a scorecard that identifies, tracks, and regularly updates key metrics used to monitor and improve judiciary's performance. Executive deletes. House retains current law.

Sec. 212. Legacy Costs – DELETED

States that the total amount of funding estimated to be expended on legacy costs in FY 2022-23 is \$13.8 million (\$8.4 million on pension-related legacy costs; \$5.4 million on health care-related legacy costs). Executive deletes. House deletes.

Major Boilerplate Changes from FY 2022-23

Sec. 212. Appropriation of Additional Federal and Private Revenues – NEW

Appropriates additional \$1.0 million in federal revenue and \$500,000 in private revenue should revenue become available; requires report within 14 days of revenue being appropriated. Executive does not include. House includes new language.

Sec. 213. Disciplinary Action Against State Employees – RETAINED

Prohibits judicial branch from taking disciplinary action against employees for communicating with legislators or their staff unless the communication is prohibited by law and the judicial branch is exercising its authority. (*Governor deemed this section unenforceable in FY 2022-23.*) Executive deletes. House retains current law.

Sec. 214. Linking Swift and Sure Sanctions Program to DHHS, LEO, and MDOC Programming – DELETED

Requires SCAO to identify programs within the Departments of Health and Human Services, Labor and Economic Opportunity, and Corrections that have programmatic connections with Swift and Sure Sanctions program participants for the purpose of leveraging collaborations and determining avenues of success for offenders who are eligible for state-provided programs; requires SCAO to provide guidance to courts participating in the Swift and Sure Sanctions program of available DHHS, LEO, and MDOC programming. Executive deletes. House deletes.

Sec. 215. Receipt and Retention of Required Reports – RETAINED

Requires judicial branch to receive and retain copies of all required reports; requires federal and state guidelines to be followed for short- and long-term retention of records; authorizes judicial branch to electronically retain copies of reports unless otherwise required by federal and state guidelines. Executive deletes. House retains current law.

Sec. 301. Direct Trial Court Automation Support – DELETED

Requires Direct Trial Court Automation Support program to recover direct and overhead costs from trial courts by charging fees for services rendered; requires fees to cover actual costs incurred in providing services. Executive deletes. House deletes.

Sec. 309. Oral Fluid Testing Program – REVISED

Requires SCAO to allocate \$100,000 for a program in a veterans treatment court, mental health treatment court, or both, that investigates the effectiveness of oral fluid testing to determine compliance with required mental health medications or requirements; requires SCAO to report on oral fluid testing programs established in the state, number of program participants in each jurisdiction, and rearrest rate of participants while participating in the program. Executive deletes. House revises to require SCAO to continue the program and to also include program testing and results, program treatment, and program outcomes in the report.

Sec. 310. Statewide Judicial Case Management System – NEW

Requires SCAO to report on the statewide judicial case management system, including a status update on development and implementation of the system and an accounting of all appropriations and expenditures for the previous and current fiscal years. Executive does not include. House includes new language.

Sec. 311. Parental Rights Restoration Act – DELETED

Requires SCAO to report on the total number of petitions filed by minors seeking court-issued waivers of parental consent under the Parental Rights Restoration Act, and the total number of petitions granted. Executive deletes. House deletes.

Sec. 312. Medication-Assisted Treatment Program – REVISED

Requires judiciary to maintain a medication-assisted treatment program to provide treatment for opioid- and alcohol-addicted individuals who are referred to and who voluntarily participate in the program; requires judiciary to report on the program, including itemized spending by court, number of participants, and statistics that indicate average program participation duration and success rates; specifies that the goal of the program is for participants to be free of narcotic addiction prior to ending participation in the program. Executive deletes. House retains current law, but revises report date.

Sec. 314. MAACS Roster Attorney Compensation Grants – NEW

Requires MAACS to administer and provide grants to counties as reimbursement for approximately one-half of the compensation provided to public defenders appointed as appellate defense counsel; requires counties to pay appellate counsel consistent with rates established by the Michigan Indigent Defense Commission. Executive includes new language. House includes new language.

Sec. 401. Court Improvement Project – NEW

Requires funding to be used for new construction or renovation of existing structures to facilitate security enhancements, public safety, accessibility, and efficiency of court operations; itemizes improvement projects; designates unexpended funding as a work project appropriation; Executive does not include. House includes new language.

Sec. 402. Judicial Institute – NEW

Designates unexpended funding as a work project appropriation; states purpose of the project is to develop and maintain a court administration bench book. Executive includes new language. House includes new language.

Major Boilerplate Changes from FY 2022-23

Sec. 403. Statewide Court Data Transparency Project – NEW

Designates unexpended funding as a work project appropriation; states purpose of the project is to collect and analyze court data, publish court data in a data portal, and develop data-driven criminal justice policies and goals. Executive includes new language. House includes new language, but revises appropriation amount.

Sec. 402. Statewide Judicial Case Management System – DELETED

Requires SCAO to establish a system that demonstrates the ability to integrate criminal justice data across the state and local units; prohibits funds from being used to supplant current user fee systems and administrative purposes unrelated to the system; requires system to comply with all security measures and restrictions and to be hosted in a secure cloud by an experienced vendor; requires implementation status report; designates unexpended funding as a work project appropriation. Executive deletes. House deletes.

FY 2023-24 LICENSING AND REGULATORY AFFAIRS BUDGET

S.B. 195 (S-1): SENATE SUBCOMMITTEE REC.

(as reported)

Committee: Appropriations



Throughout this document Senate means Subcommittee Recommendation

FULL-TIME EQUATED (FTE) CLASSIFIED POSITIONS/FUNDING SOURCE	FY 2022-23 YEAR-TO-DATE*	FY 2023-24 SENATE SUBCOMMITTEE REC.	CHANGES FROM FY 2022-23 YEAR-TO-DATE	
			AMOUNT	PERCENT
FTE Positions	1,849.9	1,861.9	12.0	0.6
GROSS	539,834,400	591,815,700	51,981,300	9.6
Less:				
Interdepartmental Grants Received	47,026,900	46,897,200	(129,700)	(0.3)
ADJUSTED GROSS	492,807,500	544,918,500	52,111,000	10.6
Less:				
Federal Funds	29,659,200	30,004,200	345,000	1.2
Local and Private.....	0	0	0	0.0
TOTAL STATE SPENDING.....	463,148,300	514,914,300	51,766,000	11.2
Less:				
Other State Restricted Funds.....	249,325,900	256,838,700	7,512,800	3.0
GENERAL FUND/GENERAL PURPOSE	213,822,400	258,075,600	44,253,200	20.7
PAYMENTS TO LOCALS	169,417,400	230,761,900	61,344,500	36.2

*As of February 7, 2023.

Major Boilerplate Changes from FY 2022-23 Year-to-Date:

- Deleted Sections.** The Senate deleted a number of sections, which include: 214 (Legacy Cost Estimates), 218 (Intertransfer of Funds), 222 (COVID -19 Vaccine Passport), 229 (Regulatory Activity and Complaints Reporting), 230 (Employee Performance Monitoring), 233 (Pending Litigation), 234 (Posting of Training Materials), 235 (Customer Service and Business Ethics Training), 302 (Low Carbon Energy Infrastructure Enhancement Program), 505 (Report on Fireworks Inspection Reimbursements), 601 (CRA Report), 602 (Law enforcement referrals posting), 604 (On-site Distillate Inspections), 1001 (BFS - Smoke Detectors), and 1002 (Cannabis Market Taxation Pilot Program).
- NEW Language.** The Senate included new language regarding diversity, equity and inclusion (DEI) (Sec. 214) and new language regarding the CRA Social Equity Program (Sec. 1002).
- Michigan Liquor Control Commission.** The Senate removed language prioritizing investigation and auditing of unlicensed out-of-state retailers and third-party marketers. Removed requirements for unlicensed out-of-state retailers and third-party marketers to be referred to the Attorney General. (Sec. 401)
- Adjustment and Removal of Funding Limits.** The Senate amended or removed language within several sections which limit the appropriation that is allowed within the department. These sections include: 210 (Contingency Funds), 225 (Expenditure from Private Grants), 226 (Program Registration Fees), 510 (Ski and Amusement Parks), 512 (Public Assembly Inspections), 801 (Byrne Formula Grant Funding), and 1001 (Michigan Saves)

FY 2023-24 LICENSING AND REGULATORY AFFAIRS BUDGET
S.B. 195 (S-1): SENATE SUBCOMMITTEE REC.

FY 2022-23 Year-to-Date Appropriation	\$539,834,400	\$213,822,400		
	CHANGE FROM FY 2022-23 Y-T-D		FY 2023-24 RECOMMENDED APPROPRIATION	
	Gross	GF/GP	Gross	GF/GP
<u>Baseline Adjustments</u>				
1. Michigan Indigent Defense Commission (MIDC) Grants. The Senate increased MIDC grants to reflect implementation of existing minimum standards #1-5 and the indigency standard.	29,844,500	29,844,500	220,917,400	220,617,400
2. Michigan Liquor Control Commission (MLCC) Law Enforcement Grants. The Senate included increased authorization to reflect the projected increase in statutorily required grant payments.	1,500,000	0	9,900,000	9,900,000
3. Corporations Online Filing System Maintenance. The Senate included increased authorization to support ongoing maintenance costs.	1,000,000	0	22,354,500	1,860,600
4. MLCC SIPS Licensing and maintenance. The Senate increased authorization to support the licensing and maintenance costs associated with the new Sales, Inventor, Purchasing and Licensing System (SIPS).	900,000	0	17,761,100	0
5. Child Care Licensing Bureau. The Senate increased authorization to support ongoing licensing and maintenance costs for the new licensing system.	600,000	600,000	23,677,800	3,100,000
6. Industrial Hemp Shift from MDARD (ERO 2022-1). The Senate increased authorization in the Cannabis Regulatory Agency (CRA) to reflect the transfer of industrial hemp licensing and regulation responsibilities to LARA from MDARD.	300,000	0	28,004,600	0
7. MILogin Rate Increase. The Senate increased authorization to support increased costs associated with the MILogin system.	100,000	0	22,354,500	18,630,600
8. Bureau of Fire Services Aboveground Storage Tank Fees. The Senate increased authorization to reflect increased revenue collections.	100,000	0	14,028,700	5,369,600
9. Public Service Commission - Underground Natural Gas Storage Inspection Program. The Senate increased authorization to reflect increased inspection and enforcement activities required by the program.	73,900	0	34,168,900	0
10. Low Carbon Grant Program Removal. The Senate removed funding for the Low Carbon Energy Infrastructure Enhancement and Development Program.	(25,000,000)	(25,000,000)	0	0

FY 2023-24 LICENSING AND REGULATORY AFFAIRS BUDGET
S.B. 195 (S-1): SENATE SUBCOMMITTEE REC.

	CHANGE FROM FY 2022-23 Y-T-D		FY 2023-24 RECOMMENDED APPROPRIATION	
	Gross	GF/GP	Gross	GF/GP
11. Technical Adjustments. The Senate included adjustments to reflect revenue estimates.	1,900	0	N/A	N/A
12. Economic Adjustments. Includes a negative \$1,311,400 Gross and a negative \$104,300 GF/GP for total economic adjustments.	(1,311,400)	(104,300)	N/A	N/A
<u>New Programs/Program Increases</u>				
13. MIDC Grants. The Senate included \$30.0 million for increased MIDC grants to reflect implementation of the newly approved minimum standard #8, attorney compensation.	30,000,000	30,000,000	208,761,900	208,461,900
14. Child Care Licensing Bureau Background Check Authorization. The Senate included \$2.0 million in funding for 6.0 FTEs shifted from within the department to support increased costs associated with background check and related staffing costs.	2,000,000	2,000,000	23,677,800	3,100,000
15. CRA Reference Laboratory. The Senate included \$1.6 million in state restricted funding for 5.0 FTEs to establish the CRA reference laboratory.	1,600,000	0	29,004,600	1,000,000
16. Child Care Licensing Bureau Staffing Increase. The Senate included \$1.1 million and 7.0 FTEs to support operations in the child care licensing bureau.	1,100,000	1,100,000	23,677,800	3,100,000
17. Public Service Commission - Gas Safety and Operations. The Senate included \$813,400 to support increased staffing of 5.0 FTEs shifted from within the department. Of the total, \$349,900 is federal funding and the remaining \$463,500 is state restricted funding.	813,400	0	34,168,900	0
18. MLCC Staffing. The Senate included \$514,600 in state restricted funding to support 3.0 FTEs shifted from within the department.	514,600	0	17,761,100	0
19. MIDC Operations Increase. The Senate included \$413,000 to support staff costs for 2.0 FTEs shifted within the department to ensure proper financial oversight of the grants to locals.	413,000	413,000	3,167,400	3,167,400
<u>Eliminations/Reductions - NONE</u>				
<u>One-Time Appropriations</u>				
20. FY 2022-23 One-Time Appropriations Removal. The Senate removed FY 2022-23 One-Time Appropriations, which included: \$2.5 million for Michigan Saves, \$2.3 million in State Restricted Funding for Corporations	(8,343,600)	(4,500,000)	0	0

FY 2023-24 LICENSING AND REGULATORY AFFAIRS BUDGET
S.B. 195 (S-1): SENATE SUBCOMMITTEE REC.

	CHANGE FROM FY 2022-23 Y-T-D		FY 2023-24 RECOMMENDED APPROPRIATION	
	Gross	GF/GP	Gross	GF/GP
Online Filing Modernization, \$1.0 million in State Restricted Funding for the Michigan Task Force on Foreign-Trained Medical Professionals, \$1.0 million for Urban Search and Rescue, \$1.0 million for BFS Smoke Detectors, and \$500,000 in State Restricted Funding for the Cannabis Market Taxation and Regulatory Compliance Analysis Pilot Program.				
21. Michigan Saves. The Senate included one-time funding for Michigan Saves to leverage private loan investments in clean energy improvements.	5,000,000	5,000,000	5,000,000	5,000,000
22. Utility Consumer Representation. The Senate included \$2.5 million for increased grant funding associated with Utility Consumer Representation.	2,500,000	2,500,000	3,350,000	2,500,000
23. Bureau of Survey and Certification. The Senate included one-time funding to support additional federal inspections of over 20 health care provider types.	1,200,000	1,200,000	1,200,000	1,200,000
24. CRA Social Equity Program. The Senate included \$1.0 million to support the Social Equity Program within the CRA.	1,000,000	1,000,000	29,004,600	1,000,000
25. Child Care Licensing Bureau Background Check Authorization. The Senate included one-time funding to support programming upgrades to the workforce background check IT system.	200,000	200,000	200,000	200,000
26. Cannabis Regulatory Agency Reference Laboratory Buildout. The Senate included one-time funding to support the buildout of the new Reference Laboratory.	2,800,000	0	2,800,000	0
27. Corporations, Securities, and Commercial Licensing. Senate included one-time funding for the remaining project costs associated with the Corporation Online Filing System Modernization.	2,700,000	0	2,700,000	0
Other				
28. Shift Property Management Savings to Corporations, Securities and Commercial Licensing. The Senate shifted \$375,000 gross savings from the property management line to Corporations, Securities and Commercial Licensing Bureau	375,000	0	N/A	N/A
Total Changes	\$51,981,300	\$44,253,200		
FY 2023-24 SENATE SUBCOMMITTEE REC	\$591,815,700	\$258,075,600		

Date Completed: 4-20-23

Fiscal Analyst: Jonah Houtz

FY 2023-24: LICENSING AND REGULATORY AFFAIRS
Summary: As Reported by the House Subcommittee
House Bill 4280 (H-2)



Analyst: Marcus Coffin

IDG/IDT	FY 2022-23 YTD as of 2/8/23	FY 2023-24 Executive	FY 2023-24 House	FY 2023-24 Senate	FY 2023-24 Conference	Difference: House From FY 2022-23 YTD	
						Amount	%
	\$47,026,900	\$46,897,200	\$46,897,200	\$	\$	(\$129,700)	(0.3)
Federal	29,659,200	30,004,200	30,004,200			345,000	1.2
Local	0	0	0			0	--
Private	0	0	0			0	--
Restricted	249,325,900	256,838,700	258,438,700			9,112,800	3.7
GF/GP	213,822,400	266,731,100	289,731,100			75,908,700	35.5
Gross	\$539,834,400	\$600,471,200	\$625,071,200	\$	\$	\$85,236,800	15.8
FTEs	1,879.9	1,891.9	1,891.9			12.0	0.6

Notes: (1) FY 2022-23 year-to-date figures include mid-year budget adjustments through February 8, 2023. (2) Appropriation figures for all years include all proposed appropriation amounts, including amounts designated as "one-time."

Overview

The Department of Licensing and Regulatory Affairs (LARA) is the state's primary regulatory entity. The department oversees regulation across a variety of sectors, including commercial and occupational activities, construction and fire safety, health care and human services, public utilities, liquor control, and marihuana. Units within LARA also conduct and adjudicate administrative hearings, oversee rules promulgation, provide support for the Michigan Indigent Defense Commission and the Unarmed Combat Commission, and administer multiple grant programs, including Michigan Indigent Defense Commission grants.

Major Budget Changes from FY 2022-23 YTD Appropriations

1. Michigan Indigent Defense Commission (MIDC) Grants

Executive includes \$72.0 million GF/GP to support grant distributions to district and circuit court funding units to fund the state's projected share of FY 2023-24 costs associated with MIDC standards 1, 2, 3, 4, 5, and 8. \$29.8 million is included for compliance with standards 1-5, which pertain to the education and training of defense counsel, timing and location of attorney-client interviews, defense investigations and experts, presence of counsel at first appearance and other critical stages, and the independence of indigent criminal defense services from the judiciary. \$42.2 million is included for costs incurred for compliance with MIDC Standard 8, which pertains to economic disincentives and incentives, including rates of payment for salaried public defenders, compensation and expenses for assigned counsel, contracting for indigent defense services, conflict counsel, reimbursements, and payments. House includes \$57.2 million for these purposes.

	FY 2022-23 Year-to-Date (as of 2/8/23)	FY 2023-24 House Change
Gross	\$148,917,400	\$57,155,500
Restricted	300,000	0
GF/GP	\$148,617,400	\$57,155,500

2. Renewable Energy and Electrification Infrastructure Enhancement and Development

House includes \$36.2 million GF/GP (\$11.7 million ongoing, \$24.5 million one-time) for grants to businesses, nonprofit organizations, and local government units for planning, developing, designing, acquiring, or constructing renewable energy and electrification infrastructure projects. These project could include electrification programs to allow solar arrays larger than 5 MW to connect to the grid, renewable natural gas facilities, and electric vehicle fast charging infrastructure upgrades within 1,000 feet of a U.S. highway or state trunkline roadway.

Gross	NA	\$36,244,500
GF/GP	NA	\$36,244,500

<u>Major Budget Changes from FY 2022-23 YTD Appropriations</u>		<u>FY 2022-23 Year-to-Date (as of 2/8/23)</u>	<u>FY 2023-24 House Change</u>
3. Low Carbon Energy Infrastructure Enhancement and Development		Gross	\$25,000,000
<u>Executive</u> removes \$25.0 million GF/GP that funded grants to businesses, nonprofit organizations, and local government units for planning, developing, designing, acquiring, or constructing low carbon energy facilities, which include natural gas facilities, combined heat and power facilities, and electrification programs. <u>House</u> concurs.		GF/GP	(\$25,000,000)
4. Michigan Saves Green Bank		Gross	NA
<u>Executive</u> includes \$5.0 million GF/GP (one-time) for Michigan Saves, a non-profit green bank. Funding would be used to offer credit enhancement tools intended to incentivize lending to residential and commercial borrowers at lower rates and under better terms for renewable energy and energy efficiency improvement loans. Such credit enhancement tools could include a loan loss reserve fund. <u>House</u> concurs.		GF/GP	\$5,000,000
5. Cannabis Regulatory Agency Reference Laboratory		FTE	NA
<u>Executive</u> includes \$4.4 million of state restricted funding authorization (\$1.6 million ongoing, \$2.8 million one-time) from the Marijuana Regulation Fund (adult-use) and authorization for 5.0 FTE positions to establish a reference laboratory for the CRA. The laboratory would perform testing in support of CRA investigations, ongoing proficiency testing, industry audits, and development and optimization of testing methods. The ongoing funding component would support staffing and operations costs, while the one-time funding component would be used for equipment purchases and any necessary construction. <u>House</u> concurs.		Gross	NA
		Restricted	5.0
		GF/GP	\$4,400,000
			4,400,000
			\$0
6. Corporations Online Filing Modernization		Gross	NA
<u>Executive</u> includes \$2.7 million of state restricted funding authorization from Corporation Fees (one-time) to continue modernization of the Corporations Online Filing System. The modernization project would improve system reliability and security, increase online functionality, and simplify the public portal. The system is used to process and store approximately 2.7 million records, of which 1.0 million are for active entities and 1.6 million are for inactive entities. <u>House</u> concurs.		Restricted	NA
		GF/GP	2,700,000
			\$0
7. Child Care Licensing Background Checks		Gross	NA
<u>Executive</u> includes \$2.2 million GF/GP (\$2.0 million ongoing, \$200,000 one-time) to support costs associated with background checks in the child care sector. The funding would offset costs associated with federally required criminal background checks for new providers and staff and federally required 5-year rechecks; it would also support staffing to implement statutory background check requirements. Specifically, the funding would support staffing costs and offset costs associated with new provider and staff fingerprinting and existing provider reprinting. <u>House</u> concurs.		GF/GP	NA
			\$2,200,000
			\$2,200,000
8. Bureau of Fire Services – Smoke Detectors		Gross	NA
<u>House</u> includes \$1.6 million GF/GP (one-time) for the Bureau of Fire Services to purchase and distribute sealed-battery smoke detectors to Michigan residents		GF/GP	NA
			\$1,600,000

		FY 2022-23 Year-to-Date (as of 2/8/23)	FY 2023-24 House Change
Major Budget Changes from FY 2022-23 YTD Appropriations			
9. Liquor Law Enforcement Grants			
<u>Executive</u> provides an increase of \$1.5 million of state restricted funding authorization to the amount available for Liquor Law Enforcement Grants. Funding for the grants is supported by retailers' liquor license fees and license renewal fees. Statutorily, 55% of the revenue from these license fees is to be distributed in the jurisdiction in which they were collected for enforcement of the Liquor Control Code and associated administrative rules. Increased license and permit renewals and spirit sales have caused the revenue collected from retailers' liquor license fees and renewal fees to increase, as well. <u>House</u> concurs.	Gross	\$8,400,000	\$1,500,000
	Restricted	8,400,000	1,500,000
	GF/GP	\$0	\$0
10. Bureau of Survey and Certification			
<u>Executive</u> includes \$1.2 million GF/GP (one-time) to support the Bureau of Survey and Certification's health care provider survey and investigation activities (done on behalf of the federal government) and compliance with statutory changes to the Michigan Public Health Code. The statutory changes require the implementation of a quality assurance monitoring process and ongoing quality reviews and education. <u>House</u> concurs.	Gross	NA	\$1,200,000
	GF/GP	NA	\$1,200,000
11. Child Care Licensing Bureau Staffing			
<u>Executive</u> includes \$1.1 million GF/GP and authorization for 7.0 FTE positions to onboard additional staff in the Child Care Licensing Bureau. The positions that would be filled include 1 resource development coordinator, 3 departmental analysts, and 3 child day care consultants. Activities that would be performed by the new staff include, but are not limited to, organizing mandated requirements, ensuring compliance with relevant trainings and health and safety requirements, monitoring corrective action plans, coordinating the development of the bureau's informational resources, and conducting special investigations. <u>House</u> concurs.	FTE	127.0	7.0
	Gross	\$20,648,400	\$1,100,000
	IDG/IDT	20,146,700	0
	Restricted	501,700	0
	GF/GP	\$0	\$1,100,000
12. Corporations Online Filing System Ongoing Maintenance			
<u>Executive</u> includes \$1.0 million of state restricted funding authorization from Corporation Fees to support ongoing maintenance costs for the Corporations Online Filing System. <u>House</u> concurs.	Gross	NA	\$1,000,000
	Restricted	NA	1,000,000
	GF/GP	NA	\$0
13. Elevator Inspector Pay Rate Increase			
<u>House</u> includes \$900,000 in state restricted funding authorization from the Construction Code Fund to allow LARA to cooperate with the Office of the State Employer and the relevant collective bargaining unit to increase the pay rate for elevator inspectors employed by LARA.	Gross	NA	\$900,000
	Restricted	NA	900,000
	GF/GP	NA	\$0
14. Michigan Liquor Control Commission SIPS Maintenance and Licensing			
<u>Executive</u> includes \$900,000 in state restricted funding authorization to support maintenance and licensing costs associated with the MLCC's Sales, Inventory, Purchasing, and Licensing system. <u>House</u> concurs.	Gross	NA	\$900,000
	Restricted	NA	900,000
	GF/GP	NA	\$0
15. Michigan Public Service Commission Staff			
<u>Executive</u> includes \$813,400 Gross (\$0 GF/GP) to support the onboarding of additional staff for the Gas Safety and Operations Division within the MPSC (the authorization for the FTEs is from the internal transfer detailed in item 22). The 5 additional positions would support the gas safety, infrastructure, and damage prevention programs by performing inspections and enforcement activities. Additional inspections have been necessitated by higher levels of infrastructure projects and to achieve compliance with federal regulations. <u>House</u> concurs.	FTE	190.0	0.0
	Gross	\$34,168,900	\$813,400
	Federal	2,665,000	349,900
	Restricted	31,503,900	463,500
	GF/GP	\$0	\$0

<u>Major Budget Changes from FY 2022-23 YTD Appropriations</u>		FY 2022-23 Year-to-Date (as of 2/8/23)	FY 2023-24 House Change
16. Premanufactured Unit Plan Review Upgrades	Gross	NA	\$700,000
<u>House</u> includes \$700,000 GF/GP (one-time) to allow the Bureau of Construction Codes to implement changes to decrease the average length of time that it takes to process and review premanufactured unit plan submissions (modular homes).	GF/GP	NA	\$700,000
17. Child Care Licensing System Maintenance and Licensing	Gross	NA	\$600,000
<u>Executive</u> includes \$600,000 GF/GP to support ongoing maintenance and licensing costs for the child care licensing system. <u>House</u> concurs.	GF/GP	NA	\$600,000
18. Michigan Liquor Control Commission Staffing	FTE	145.0	0.0
<u>Executive</u> includes \$514,600 in state restricted funding authorization to hire a department specialist, a department manager, and a finance position for auditing/product pricing (the authorization for these FTEs is from the internal transfer detailed in item 22). There has been appreciable growth in the number of products that the MLCC oversees and sales volumes. <u>House</u> concurs.	Gross	\$22,201,500	\$514,600
	Restricted	22,201,500	514,600
	GF/GP	\$0	\$0
19. Michigan Indigent Defense Commission Staffing	FTE	16.0	0.0
<u>Executive</u> includes \$413,000 GF/GP to onboard 2 staff members for financial oversight of MIDC grants and to satisfy a statutory requirement for the MIDC to serve as a clearinghouse for experts and investigators in indigent defense cases. The authorization for these FTEs is from the internal transfer detailed in item 22. <u>House</u> concurs.	Gross	\$2,763,000	\$413,000
	GF/GP	\$2,763,000	\$413,000
20. Industrial Hemp Processor-Handler Regulation	Gross	NA	\$300,000
<u>Executive</u> includes \$300,000 in state restricted funding authorization from the Industrial Hemp Licensing and Registration Fund to support staffing and ancillary costs for licensing industrial hemp-process handlers, intaking and responding to complaints, and conducting necessary investigations. <u>House</u> concurs.	Restricted	NA	300,000
	GF/GP	NA	\$0
21. Bureau of Fire Services Aboveground Storage Tank Fees	Gross	NA	\$100,000
<u>Executive</u> includes an additional \$100,000 in state restricted funding authorization from Aboveground Storage Tank Fees. The additional authorization would support Aboveground Storage Tank Program activities, which pertain to the regulation of storage for a variety of flammable liquids. <u>House</u> concurs.	Restricted	NA	100,000
	GF/GP	NA	\$0
22. MiLogin Rate Increase	Gross	NA	\$100,000
<u>Executive</u> includes \$100,000 in state restricted funding authorization for an increase in the rate that the Department of Technology, Management, and Budget assesses for the MiLogin System, which is the State of Michigan's identity management solution. <u>House</u> concurs.	Restricted	NA	100,000
	GF/GP	NA	\$0
23. Michigan Public Service Commission Gas Inspections	FTE	190.0	0.0
<u>Executive</u> includes \$73,900 Gross (\$0 GF/GP) to support increased inspection and enforcement activities of the Underground Natural Gas Storage Program within the MPSC. Additional activities have been necessitated by higher levels of infrastructure projects and to achieve compliance with federal regulations. <u>House</u> concurs.	Gross	\$34,168,900	\$73,900
	Federal	2,665,000	69,500
	Restricted	31,503,900	4,400
	GF/GP	\$0	\$0

<u>Major Budget Changes from FY 2022-23 YTD Appropriations</u>		<u>FY 2022-23 Year-to-Date (as of 2/8/23)</u>	<u>FY 2023-24 House Change</u>	
24. Removal of FY 2022-23 One-Time Appropriations		Gross	\$8,343,600	(\$8,343,600)
<u>Executive</u> removes \$8.3 million Gross (\$4.5 million GF/GP) of one-time funding that was included in the FY 2022-23 budget to support the following:		Restricted	3,843,600	(3,843,600)
		GF/GP	\$4,500,000	(\$4,500,000)

- BFS – Smoke Detectors (\$1.0 million GF/GP)
- Cannabis Market Taxation and Regulatory Compliance Analysis Pilot Program (\$500,000 state restricted funding authorization)
- Corporations Online Filing Modernization (\$2.3 million state restricted funding authorization)
- Michigan Saves (\$2.5 million GF/GP)
- Michigan Task Force on Foreign Trained Medical Professional Licensing (\$1.0 million state restricted funding authorization)
- Urban Search and Rescue (\$1.0 million GF/GP)

House concurs.

25. Internal FTE Authorization Alignment

Executive includes an internal net to zero realignment of FTE authorizations for 8 line items to align authorization with current department needs. Line items that would be impacted include the following:

- Public Service Commission – increase of 5.0 FTEs
- Liquor Licensing and Enforcement – increase of 3.0 FTEs
- Management Support Services – increase of 2.0 FTEs
- Bureau of Construction Codes – decrease of 10.0 FTEs
- Bureau of Professional Licensing – decrease of 3.0 FTEs
- Child Care Licensing and Regulation – increase of 6.0 FTEs
- Michigan Office of Administrative Hearings and Rules – decrease of 8.0 FTEs
- Michigan Indigent Defense Commission – increase of 5.0 FTEs

House concurs and includes an additional transfer of 1.0 FTE position from the Bureau of Fire Services line item to the Renewable Energy and Electrification Infrastructure Enhancement and Development, Ongoing line item.

FTE	NA	0.0
Gross	NA	\$0
GF/GP	NA	\$0

<u>Major Budget Changes from FY 2022-23 YTD Appropriations</u>	<u>FY 2022-23 Year-to-Date (as of 2/8/23)</u>	<u>FY 2023-24 House Change</u>	
26. Technical Adjustments	Gross	NA	\$1,900
<u>Executive</u> includes \$1,900 Gross (\$0 GF/GP) to increase state restricted funding authorization from the Marihuana Regulatory Fund (medical marihuana) to align with projected revenues. Additional internal net to zero adjustments include the following:	Restricted	NA	701,900
	GF/GP	NA	(\$700,000)

- Creates a new Bureau of Survey and Certification line item with authorization currently in the Bureau of Community and Health Systems Administration and Health Facilities Regulation line items.
- Rolls the Adult Foster Care and Camps Licensing and Regulation, Bureau of Community and Health Systems Administration, Health Facilities Regulation, and Nurse Aide Program line items into a single line item for the Bureau of Community and Health Systems.
- Rolls the Medical Marihuana Facilities Licensing and Tracking, Medical Marihuana Program, and Recreational Marihuana Regulation line items into a single Cannabis Regulatory Agency line item.
- Internally shifts \$375,000 in state restricted funding authorization from the Property Management line item to the Corporations, Securities, and Commercial Licensing Bureau line item.
- Adjusts marihuana state restricted funding authorizations to increase authorization from the Marihuana Regulation Fund (adult-use) by \$2.9 million, decrease authorization from the Marihuana Registry Fund (medical marihuana card program) by \$2.3 million, and decrease authorization from the Marihuana Regulatory Fund (medical marihuana) by \$588,200.
- Replaces \$1.0 million in state restricted funding authorization from the Licensing and Regulation Fund with authorization from the Health Professions Regulatory Fund.
- Replaces \$642,500 in state restricted funding authorization from Restructuring Mechanism Assessments to authorization from Public Utility Assessments, to reflect the elimination of restructuring mechanism assessments in September 2022.

House concurs and includes an additional net to zero adjustment for the Bureau of Professional Licensing line item, replacing \$700,000 GF/GP with state restricted funding authorization from the Health Professions Regulatory Fund.

27. Economic Adjustments	Gross	NA	(\$936,400)
<u>Executive</u> reflects decreased net costs of \$936,400 Gross (\$104,300 GF/GP) for negotiated salary and wage increases (2.0% on October 1, 2023), overtime, longevity, actuarially required retirement contributions, other employee retirement costs, worker's compensation, building occupancy charges, rent, and other economic adjustments. <u>House</u> concurs.	IDG/IDT	NA	(129,700)
	Federal	NA	(74,400)
	Restricted	NA	(628,000)
	GF/GP	NA	(\$104,300)

Major Boilerplate Changes from FY 2022-23

Sec. 205. Standard List of Report Recipients – NEW

Requires submission of all reports to the subcommittees, the senate and house fiscal agencies, the senate and house policy offices, and the state budget office. Executive does not include. House includes new language.

Sec. 207. Communication with the Legislature – RETAINED

Prohibits LARA from taking disciplinary action against employees for communicating with legislators or their staff, unless the communication is prohibited by law. Executive deletes. House retains.

Major Boilerplate Changes from FY 2022-23

Sec. 211. Legislative Contingency Transfer Authorization – REVISED

Allows for the legislative transfer process to increase federal authorization by up to \$1.0 million, state restricted authorization by up to \$1.5 million, local authorization by up to \$200,000, and private authorization by up to \$100,000. Executive revises to increase maximum amounts of contingency authorizations to increase federal authorization by up to \$10.0 million, state restricted authorization by up to \$25.0 million, local authorization by up to \$1.0 million, and private authorization by up to \$500,000. House concurs.

Sec. 212. Transparency Website – RETAINED

Requires LARA, in cooperation with DTMB, to maintain a searchable website accessible by the public at no cost that includes information on expenditures, vendor payments, number of active employees, job specifications, and wage rates. Executive deletes. House retains.

Sec. 213. Restricted Fund Report – REVISED

Requires LARA to work with SBO to report on estimated restricted fund revenues, expenditures, and balances for the prior two fiscal years. Executive deletes. House revises to align report recipients with section 205.

Sec. 214. Legacy Costs – DELETED

Identifies total funding estimated to be expended on legacy costs in FY 2022-23, \$40.4 million (\$24.5 million on pension-related legacy costs and \$15.9 million on health care legacy costs). Executive deletes. House concurs.

Sec. 214. Department Scorecard Website – RETAINED

Requires LARA to maintain, on a publicly accessible website, a scorecard that identifies, tracks, and regularly updates key metrics used to monitor and improve department performance. Executive deletes. House retains.

Sec. 216. FTE Vacancies and Remote Work Reports – REVISED

Requires LARA to submit quarterly reports containing FTE volumes and a comparison of actual and authorized FTE position counts; requires an annual report on the number of employees engaged in remote work in 2022, number of employees authorized to work remotely and the actual number working remotely, and estimated net cost savings and reduced use of office space achieved by remote work. Executive revises to delete all reporting requirements except for quarterly comparison of actual and authorized FTEs. House concurs.

Sec. 217. Work Project Usage – RETAINED

Stipulates that appropriations are not to be expended, if possible, until all existing work project authorization for the same purpose is exhausted. Executive deletes. House retains.

Sec. 218. State Administrative Board Transfers – DELETED

Stipulates that the legislature may intertransfer funds via concurrent resolution if the State Administrative Board transfers funds. Executive deletes. House concurs.

Sec. 218. Retention of Reports – RETAINED

Requires LARA to receive and retain copies of all reports funded by the department's budget, while complying with federal and state guidelines for records retention. Executive deletes. House retains.

Sec. 219. Report on Policy Changes for Public Act Implementation – REVISED

Requires LARA to report on policy changes made to implement public acts that took effect during the prior calendar year. Executive deletes. House revises to align report recipients with section 205.

Sec. 220. Severance Pay Reporting – REVISED

Requires LARA to report any severance pay for a director or other high-ranking official not later than 14 days after a severance agreement is signed; maintain an internet site posting any severance pay in excess of 6 weeks of wages; report the total amount of severance pay remitted and the number of LARA employees receiving severance pay in FY 2021-22. Executive deletes. House revises to align report recipients with section 205, delete the requirement to maintain an internet site posting any severance pay in excess of 6 weeks of wages, and update fiscal year references.

Sec. 221. In-Person Work – RETAINED

Expresses legislative intent that LARA maximize the efficiency of the state workforce and prioritize in-person work where possible; requires LARA to post its in-person, remote, or hybrid work policy on its website. Executive deletes. House retains. Executive deletes. House retains.

Major Boilerplate Changes from FY 2022-23

Sec. 222. COVID-19 Vaccine Stipulations – DELETED

Prohibits requiring proof of having received a COVID-19 vaccine as a condition of accessing any facility or services, except as required by federal law; prohibits producing, developing, issuing, or requiring a COVID-19 vaccine passport; prohibits developing a database or making an existing database publicly available to access an individual's COVID-19 vaccine status; prohibits requiring proof of having received a COVID-19 vaccine as a condition of employment, with exceptions for hospitals and medical facilities; prohibits adverse employment consequences due to an individual's COVID-19 vaccination status; requires that exemptions be created for individuals who medically cannot receive the vaccine or who have religious or consistently held objections to vaccination if a federal mandate requires establishment of a COVID-19 vaccine policy. Executive deletes. House concurs.

Sec. 222. Access to State and Local Services – NEW

Prohibits appropriations from being used to restrict or interfere with actions related to diversity, equity, and inclusion; to restrict or impede community access to government programs; or restrict an individual's ability to exercise the right to reproductive freedom; requires local governments to report on actions that attempt to restrict duties of local health officers. Executive includes new language. House concurs.

Sec. 224. Private Grant Funded Projects – REVISED

Authorizes appropriation of private grant revenues, subject to a limitation of \$1.5 million; requires report to subcommittees chairs within 10 days of receiving grants from private entities. Executive revises to eliminate the \$1.5 million cap. House revises to increase the cap to \$2.0 million.

Sec. 225. Informational, Training, and Special Events Revenue and Expenditures – RETAINED

Authorizes LARA to charge registration fees for events sponsored by LARA; requires fees to reflect costs of sponsoring events; appropriates revenue generated by fees for sponsorship costs; authorizes excess revenue to be carried forward; limits appropriation to \$500,000. Executive revises to eliminate the \$500,000 cap. House retains.

Sec. 228. Regulatory Statistical Report – REVISED

Requires LARA to submit an annual report specifying and summarizing statistical information pertaining to fees, revenues, expenditures, application determinations, timeliness, examinations, complaints, investigations, enforcement actions, administrative hearings, and adjudications for regulatory products administered by specified agencies within LARA. Executive deletes. House revises to align report recipients with section 205 and to eliminate a requirement for the data to include the 3 previous fiscal years.

Sec. 229. Employee Performance Monitoring Process – REVISED

Expresses legislative intent that LARA establish a consistent employee performance monitoring process and requires quarterly reports on planned or implemented changes to that process and the number of evaluations performed. Executive deletes. House revises to align report recipients with section 205 and to reduce reporting frequency from quarterly to annually.

Sec. 232. Television and Radio Production Expenditure Report – DELETED

Requires LARA to report any expenditure of funds to a third-party vendor for television or radio productions; delineates information to be included. Executive deletes. House concurs.

Sec. 233. Pending Litigation – DELETED

Stipulates that pending litigation related to a licensee must not delay LARA investigations and licensing actions, unless prohibited by law. Executive deletes. House concurs.

Sec. 234. Training Materials Reporting – DELETED

Requires LARA to report on materials that employees and contractors are required to review or complete for mandatory training; requires materials be made available to subcommittee members or their designees for review. Executive deletes. House concurs.

Sec. 235. Customer Service and Business Ethics Training – DELETED

Requires all LARA employees to participate in 2 hours of customer service and business ethics training; stipulates topics that must be included in the training; requires a report on the training. Executive deletes. House concurs.

Major Boilerplate Changes from FY 2022-23

Sec. 302. Low Carbon Energy Infrastructure Enhancement and Development – DELETED

(1) Requires funding to be used only for grants to businesses, nonprofit organizations, and local government units for planning, developing, designing, acquiring, or constructing low carbon energy facilities, which may include natural gas and combined heat and power facilities and electrification programs; (2) requires PSC to develop and implement a grant application process within 6 months and establishes prioritization criteria for grant approvals; (3) establishes requirements for grant applicants, including submission of an impact study and proposal with a cost-benefit analysis and emissions details; (4) establishes further requirements for grant applicants for renewable natural gas infrastructure projects; (5) provides a 45-day review period for affected entities to review and comment on an application and a 15- day period for an applicant to modify their initial proposal; (6) requires PSC award grants to applicants who have met the grant criteria; (7) requires grant recipients to report to PSC on how the money was used within 30 days after a project's completion; (8) defines "renewable natural gas"; (9) designates unexpended funding as a work project appropriation. Executive deletes. House concurs.

Sec. 302. Renewable Energy and Electrification Infrastructure Enhancement and Development – NEW

(1) Requires funding to be used only for grants to businesses, nonprofit organizations, and local government units for planning, developing, designing, acquiring, or constructing renewable energy and electrification infrastructure projects, which includes electrification programs to connect solar arrays larger than 5 MW to the grid, renewable natural gas facilities, and EV fast charging infrastructure upgrades within 1,000 feet of a U.S. highway or state trunkline roadway; (2) requires PSC to develop and implement a grant application process within 6 months and prioritizes grant approvals that meet the goals of the MI Healthy Climate Plan; (3) establishes requirements for grant applicants, including submission of an impact study; (4) establishes further requirements for grant applicants for renewable natural gas infrastructure projects; (5) provides a 45-day review period for affected entities to review and comment on an application and a 15- day period for an applicant to modify their initial proposal; (6) requires PSC award grants to applicants who have met the grant criteria; (7) requires grant recipients to report to PSC on how the money was used within 30 days after a project's completion; (8) defines "renewable natural gas"; (9) and (10) designate unexpended funding as work project appropriations; (11) explicitly prohibits funds from being used for expansion of conventional natural gas. Executive does not include. House includes new language.

Sec. 401. Investigation of Direct Shipments of Wine and Report – REVISED

Requires MLCC to use funds appropriated from Direct Shipper Enforcement Fund, as required under Section 203(11) of the Michigan Liquor Control Code, 1998 PA 58, to investigate illegal direct shipments of wine; requires notice to be sent to entities found to have illegally shipped wine into the state; requires MLCC to submit report detailing activities to investigate illegal shipping of wine. Executive revises to delete language prioritizing enforcement on unlicensed out of state retailers and third-party marketers, to delete requirement for referral of unlicensed out of state retailers and third-party marketers to the attorney general, to delete items in the report, and to delete language requiring notice to out of state entities that illegally shipped wine into Michigan. House revises to align report recipients with section 205 and to delete language prioritizing enforcement on unlicensed out of state retailers and third-party marketers.

Sec. 505. Fireworks Safety Inspection Reimbursement Report – DELETED

Requires LARA to submit report providing information on amount of reimbursements to local units of government for delegated inspections of fireworks retail locations pursuant to Michigan Fireworks Safety Act. Executive deletes. House concurs.

Sec. 505. Fees for False Final Inspections by the Bureau of Fire Services – REVISED

Authorizes BFS to assess a fee not to exceed \$200 if BFS responds to multiple confirmed false inspection appointments; requires LARA to identify revenue generated by the fee within the state's accounting system; requires a report pertaining to fee, its effect on BFS costs, and recommendations to legislature. Executive retains. House revises to align report recipients with section 205 and to increase the fee amount to \$1,000.

Sec. 507. Notice of AFC, HFA, and LTC Facility Closure – RETAINED

Requires LARA to serve a facility and notify offices of representing legislators and the subcommittees on MDHHS when an order of suspension is received for a licensed adult foster care home, home for the aged, or nursing home. Executive deletes. House retains.

Sec. 509. Masking Requirement Prohibition – DELETED

Prohibits LARA from enforcing masking requirements for children under 5 years of age and from taking any licensing or administrative action against licensees for not enforcing such a requirement. Executive deletes. House concurs.

Sec. 509. Elevator Inspector Pay – NEW

Expresses legislative intent that at least \$900,000 be allocated for cooperating with the office of the state employer, the relevant collective bargaining unit, and any other stakeholders to increase the compensation rates for elevator inspectors employed by the department. Executive does not include. House includes new language.

Major Boilerplate Changes from FY 2022-23

Sec. 511. Inspections of Places of Public Assembly – REVISED

Requires BFS to allocate \$228,900 to increase the number of inspections conducted at places of public assembly. Executive revises to eliminate required allocation of \$228,900 and to include a requirement that the BFS cooperate with local governments to perform public assembly inspections at places with the highest risk. House concurs.

Sec. 601. Cannabis Regulatory Agency Programs Report – REVISED

Requires LARA to submit a report on all marijuana programs administered by the CRA, which must include information on application volumes and determinations, timeliness, revenues, expenditures, complaints, investigations, enforcement actions, and other topics. Executive deletes. House revises to align report recipients with section 205 and to strike a reporting requirement regarding the cost of administering each marijuana licensing program.

Sec. 602. Cannabis Regulatory Agency Investigative Reports – REVISED

Requires CRA to post quarterly reports on a publicly accessible website detailing the number of investigative reports identifying suspected illegal or irregular activity, number of reports that identify suspected product without required tracking numbers, number of public complaints regarding product without required tracking numbers, number of public complaints regarding unlicensed commercial production or sale of delta-8 THC, number and outcome of CRA disciplinary proceedings, and number and category of law enforcement agency referrals. Executive deletes. House revises reporting frequency from quarterly to annually.

Sec. 603. Hemp Programs Report – REVISED

Requires LARA to submit a report on all hemp programs administered by the CRA, which must include revenue collected from regulatory and licensing activities, total cost of administering hemp regulatory and licensing programs, number of hemp licensees by county, a description of any fees CRA assesses on hemp licensees, and a list and description of any personnel functions transferred to CRA under EO 2022-1. Executive deletes. House revises to align report recipients with section 205 and to delete reporting requirements related to EO 2022-1.

Sec. 604. CRA Inspection Activities – REVISED

Requires CRA to use at least 5.0 FTEs to conduct in-person no-notice inspections of licensed processors, with priority given to facilities that produce distillate or other concentrates and those producing the most product; requires quarterly reporting on inspection outcomes, public complaints, and disciplinary proceedings; requires a report regarding disciplinary proceedings initiated against a licensee stemming from reports resulting from activities undertaken under the section. Executive deletes. House revises reporting frequency from quarterly to annually.

Sec. 801. MIDC Receipt of Federal Funding – REVISED

Authorizes MIDC to receive and expend up to \$250,000 in federal Byrne grant funding and up to \$300,000 in other federal grant funding, if made available from U.S. Department of Justice. Executive revises to remove \$250,000 and \$300,000 caps. House concurs.

Sec. 803. MIDC Construction Expenses Prohibition – DELETED

Prohibits an MIDC grant from being used by a recipient to support construction expenses for new structures. Executive deletes. House concurs.

Sec. 1001. Bureau of Fire Services – Smoke Detectors – REVISED

Requires BFS to purchase and distribute sealed-battery smoke detectors to Michigan residents and allows BFS to purchase smoke detectors with additional capabilities for individuals with physical or psychological conditions that require an accommodative technology. Executive deletes. House revises to include a report detailing the number of smoke detectors purchased, cost per unit, and a list of the municipalities where the smoke detectors were distributed.

Sec. 1002. Cannabis Market Taxation and Regulatory Compliance Analysis Pilot Program – DELETED

Requires CRA to award a grant to conduct a pilot program to analyze tax reporting, collection, and regulatory compliance within the cannabis market; provides qualifications that must be considered when awarding the grant; requires a report regarding program findings and plans of action. Executive deletes. House concurs.

Sec. 1002. Michigan Saves – REVISED

Allows PSC to award a \$2.5 million grant to a nonprofit green bank to make loans more affordable for families, businesses, and public entities in Michigan; stipulates grant funds may be used for a loan loss reserve fund or similar financial instrument. Executive revises to reflect FY 2023-24 recommended appropriation of \$5.0 million. House concurs.

Sec. 1003. Premanufactured Unit Plan Review Upgrades – NEW

Requires the Bureau of Construction Codes to implement changes to expedite processing and reviews of premanufactured unit plan submissions; requires a report on the changes the BCC implements. Executive does not include. House includes new language.

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April 26, 2023

Michigan Supreme Court
Office of Administrative Counsel
PO Box 30052
Lansing, MI 48909

Re: Proposed Revision to MCR 9.123

Dear Office of Administrative Counsel:

The Attorney Grievance Commission supports adopting the proposed amendment to MCR 9.123, which would require an attorney whose license has been revoked for conviction of a felony, and who has been incarcerated, to wait six months after completion of the criminal sentence, including parole, to petition for reinstatement.

The amendment addresses an omission in the current rule, which requires a six-month waiting period for suspended lawyers who have been incarcerated but is silent with regard to disbarred or revoked lawyers who have been incarcerated. The current rule could be interpreted to allow a disbarred attorney to petition for reinstatement of his or her law license while still serving a sentence of house arrest or incarceration, as long as the five-year revocation period has expired. The Attorney Discipline Board has, in fact, received such petitions.

Reinstatement to the practice of law requires that an attorney can be safely recommended to the public, the courts, and the legal profession. At the very least, this means that the petitioner has been free of state supervision long enough to satisfy the public that he or she is a functioning member of society, has obtained housing, transportation, employment, etc. A former attorney who has been released from a correctional facility for the commission of a serious crime, while possibly a suitable candidate for reinstatement, should be required to establish a meaningful period of rehabilitation. The Commission believes that the proposed amendment serves the goal of helping to ensure that attorneys

STATE OF MICHIGAN
ATTORNEY GRIEVANCE COMMISSION

petitioning for reinstatement have the requisite character and fitness to serve the public.

Thank you for the opportunity to provide comment on this issue.

Sincerely,



Kimberly L. Uhuru
Deputy Administrator

Upper Peninsula Judges Association

Officers

Honorable Christopher S. Ninomiya, President
Honorable Jennifer A. Mazzuchi, Vice President
Honorable Janis M. Burgess, Secretary
Honorable Cheryl L. Hill, Treasurer

Members at Large

Honorable Steven C. Parks
Honorable Fraser T. Strome
Honorable Jocelyn K. Fabry

RE: ADM File No. 2021-30 proposing amendment of Michigan Court Rules 9.220, 9.221, 9.223, 9.232 and 9.261

Honorable Supreme Court Justices:

The Upper Peninsula Judges Association (with the exception of Tribal Judge Fabry, who is compelled to abstain from this vote) opposes the proposed amendments, set forth above, that would permit the Judicial Tenure Commission to withhold from respondent judges the identities of their grievant(s) in matters before the Commission.

At present, Judicial Tenure Commission [JTC] proceedings are generally confidential. Any formal proceedings are filed in the name of the Commission, not the grievant, providing ample protection against unwarranted publication of a grievant's identity. Keeping secret the identity of a complainant from the judicial officer against whom complaint is lodged, however, could greatly impair his or her ability to meaningfully respond to the allegations asserted. This serious detriment imposed on the respondent seems gravely disproportionate to any perceived benefit to be derived from it by a grievant. This proposal is both unnecessary and quite harmful.

Further cause for concern in these proposed amendments is the total lack of criteria provided for the JTC to use in determining whether to provide a grievant confidentiality. Given the serious nature of allegations of judicial misconduct, adding the possibility of confidential grievants and a totally arbitrary process by which that determination would be made should not be sanctioned by this court. We are unaware of incidents making such draconian measures necessary. Are these solutions in search of a problem?

Respectfully submitted:

UPPER PENINSULA JUDGES ASSOCIATION

By: Honorable Janis M. Burgess, Secretary
Submitted April 24, 2023

April 24, 2023

Honorable Elizabeth T. Clement
Chief Justice of the Michigan Supreme Court
925 W. Ottawa Street
Lansing, MI 48915

RE: Proposed Amendments of Rules 9.220, 9.221, 9.223, 9.232, and 9.261 of the Michigan Court Rules

Dear Chief Justice Clement and the Justices of the Michigan Supreme Court:

On behalf of the Association of Black Judges of Michigan, the Michigan Judge's Association and the Michigan Probate Judge's Association, it is respectfully requested that this Honorable Supreme Court deny the proposed amendments to the Michigan Court Rules referenced above. On the surface, these amendments present narrow changes. However, they harbor inescapable sweeping implications that synthesize inevitable consequences. These changes would impede respondent judges' access to discoverable documents in the possession of the Judicial Tenure Commission (JTC) and further obscure JTC procedures and investigations behind a cloak of confidentiality/secrecy. Immaterial to its intentions, history is clear that institutions operating under a veil of secrecy are predisposed to corruption and an appearance of impropriety. With the benefit of analysis through a lens comprising the nuance, history, and intentions of the JTC, it is clear that this amendment would orchestrate the disruption of a delicate balance; the balance between pursuing an investigation of alleged judicial misconduct and the most basic due process rights of the judge being investigated.

The Judicial Tenure Commission was established in 1968 with the passage of an amendment creating Article 6, §30 of the Michigan Constitution. It was further defined in the Michigan Court Rules of 1985, subchapter 9.200, and is regulated by the Michigan Supreme Court. Until 1968, Michigan Courts were self-regulated, subject only to the superintending control of the

Supreme Court up to, but short of the authority to remove a seated judge. The creation of the JTC expanded the authority of the Supreme Court by creating a procedure to remove judges. This change was done with the tactful purpose of judicial oversight. Augmentations through amendments and interpretations of subchapter 9.200 of the Michigan Court Rules have endeavored to hold our judiciary accountable for egregious conduct. In this pursuit, alleged egregious behavior is judged by the low standard of preponderance.

Prior to analyzing the anticipated effects of the proposed amendments to the Michigan Court Rules, the motivations for the proposed modifications must be firmly established. Superseding the specifics discussed in the individual provisions, the prima facie intention of the amendments is to protect grievants from potential retribution by withholding their identities at the discretion of the JTC. In a vacuum, preserving the confidentiality of a grievant's identity to protect against a perceived potential for retribution is inoffensive. However, to contextualize something in a vacuum is to neglect all other considerations for the benefit of just one. Thoughtful consideration will yield the conclusion that there is never a time when maintaining the grievant's confidentiality through the entirety of JTC proceedings is necessary.

Grievants can be divided into two categories: individuals with working relationships that could be affected by the discord of a grievance, and individuals without such a relationship. Grievants who have a relationship with a respondent could be, among other classifications: co-workers, staff, attorneys, or litigants. Individuals in this group may, under limited circumstances possess a legitimate claim to confidentiality, but in such circumstances, the relationship, testimony, and identity of the grievant would be exceedingly relevant throughout all JTC proceedings. While a need for confidentiality may be established, resolving that need through the proposed amendment would impermissibly prejudice a respondent by depriving her/him of due process.

In instances where privileges conflict with constitutional rights, the constitutional rights of an individual must be paramount. Even in cases where the identity of a complaining witness is highly sensitive, such as minors or sexual assault victims, our justice system regards their identity and testimony as critical parts of due process. This is not to say that grievants in similar scenarios should be left without protection; for existing court rules provide remedies for grievants who may be subject to retribution for filing a request for investigation. This court has already provided ample protections for attorneys, and litigants in Michigan Court Rule 2.003. With these safeguards, grievants who are attorneys or litigants may seek the disqualification of a respondent judge and

have the option to appeal the judge's decision on the matter to the Chief Judge of the relevant court. Moreover, any retribution would compound the allegations, proving detrimental to respondents and providing a clear cause of action for additional remedy through the JTC.

Alternatively, grievants who have no relevant relationship with a respondent judge possess no legitimate claim of needing the proposed confidentiality. As if no relationship exists between a grievant and respondent, such retribution would be conspicuous and easily addressed through general existing remedies.

Additionally, the requirement found in MCR 9.233 that the public hearing mirror civil action in the Circuit Court is instructive on the procedure that should be followed in JTC hearings. It extends the adversarial system of justice foundational to the U.S. justice system to JTC proceedings. Accordingly, because complaining witnesses are the fulcrum of this form of procedural justice, the JTC acts as a proxy for the grievant, filing complaints on their behalf. The proposed amendment opens channels for the JTC to obscure the grievant behind a cloak of confidentiality, extracting a critical element upon which the United States justice system relies. Under the existing rule, the grievant may be called during the hearing by either the Commission or a respondent. In withholding their identity, respondents are deprived of the opportunity to examine the bias and credibility of the witness, regardless of the nature of their allegations, unless the JTC chooses to call the grievant as a witness. The imbalanced access to vital information and access to witnesses imparts an endemic prejudice against respondent judges.

The discussion of a respondent's due process rights is incomplete without the inclusion of critical points of context. The capacity of the JTC is unique, existing in both investigatory and disciplinary roles. In the State of Michigan, there is no judicial or quasi-judicial system where a body with ex parte access to the judging tribunal is the potential grievant or proxy of a grievant, the investigator, and the prosecutor.

While the authority of the Michigan Supreme Court under article 6, §30 to implement rules providing confidentiality and privilege to JTC proceedings is recognized, the interpretations and implications of proposed provisions debilitate a respondent's procedural due process rights. Indeed, the proposed amendment establishes this premise in MCR 9.261:

“(a) If the commission grants the grievant’s request for confidentiality, the request for investigation shall not be disclosed to the respondent or other persons, either during or at

the conclusion of the investigation except as necessary to conduct the investigation, unless either

(ii) the commission has filed a public complaint against the respondent, and

(A) disclosure of the grievance is necessary to comply with MCR 9.232(A)(1)(b);

(B) the grievant is a witness in the proceeding and the request for investigation is material to the grievant's testimony, or

(C) as otherwise necessary to protect the respondent's due process interests at the hearing.

The requirements of subsection (A) mandate the disclosure of exculpatory material in the JTC's possession, and while subsection (C) recognizes the due process rights of respondent judges in part, it qualifies the statement. This qualification to the otherwise categorical protections of respondents' due process rights limits the scope of the protections only to the hearing. Interpretations of this provision could be construed to deprive respondent judges of due process rights during other stages of the JTC procedure, including the consequential period in which a respondent forms their defense to the allegations.

Although there are limited protections of due process rights in the proposed amendment, they are insufficient, failing to establish any remedy for inadequate interpretation or application. Because a respondent is precluded from accessing the request for investigation, they are powerless to contest the determinations of JTC staff. The combined investigatory and disciplinary roles entrusted to the JTC in tandem with the proposed amendments deprive respondents of access to the grievant's request for investigation, further empowering the JTC to its own self-oversight. While JTC proceedings are distinguished from civil and criminal proceedings, MCR 9.233 states:

"The public hearing must conform as nearly as possible to the rules of procedure and evidence governing the trial of civil actions in the circuit court."

Exculpatory evidence lacks foundation in civil law and is not defined in the Michigan Court Rules governing the JTC. While it has been established that the JTC must conform to the standards of civil law, the absence of such a standard necessitates the expansion of scope. The plain text of Michigan Court Rule 9.232 reads:

- (1) *At least 21 days before a scheduled public hearing,*
(b) *the disciplinary counsel or executive director shall provide to the respondent copies of all exculpatory material in its possession.*

In light of the absence of precedent in civil law, the explicit mention of exculpatory material necessitates the use of the criminal standard. Without such, this oversight delegates the initial decision of whether evidence is exculpatory to JTC staff, who may likely lack the motivation or context to appreciate the exculpatory nature of particular statements or materials. Further, requests for investigation that have been granted confidentiality would not be subject to review by a respondent, nor any other person, effectively making the decisions of JTC staff dispositive in determinations of exculpatory evidence.¹ From the perspective of a prosecutor, or in this case, JTC investigator and attorney, having the ability to decide what person or evidence is not relevant to a respondent would be ideal. This is the system used in many autocratic societies. However, our social contract and laws, require individuals to decide how they will adjudicate conflict, irrespective of the prosecutor's determination. The infirmity of provisions protecting a respondent's due process rights and the centralized authority to exclude evidence on grounds of confidentiality are an affront to the most basic principles of due process and a vehicle for the miscarriage of justice.

While the JTC has authority to investigate and make determinations on judicial misconduct, the JTC is not immune to the corruptive nature of excessive power. In *In re Servaas*, this Supreme Court identified that while serving a copy of the official complaint to Judge Servaas, a former JTC director threatened to “humiliate respondent and drag his name through the mud.” *In re Servaas*, 484 Mich. 634, 650, 774 N.W.2d 46, 54 (2009). In this instance, the Supreme Court recognized the limitations of its power and left the determination of whether the JTC Director's actions constituted misconduct to the Attorney Grievance Commission. The Commission later dismissed the complaint.

Irrespective of its conclusion, the altercation demonstrates one form of injustice that protections are in place to limit. While the event and actions were ultimately determined not to be

¹ Recent changes to the Judicial Tenure Commission's internal operating conditions have elucidated procedures for handling complaints against JTC staff members. IOP 9.202(G)-6 asserts that the Executive Director will be solely responsible for handling complaints against staff members. This unbridled self-oversight granted to the Executive Director of the JTC cultivates an environment ripe for internal exploitation.

misconduct, protections must be in place to secure respondents' due process rights under even the worst of conditions. Accordingly, it is improper to expect respondents to place an unproven trust in even the most mundane procedures and determinations of the JTC. The incontrovertible remedy to this issue is the fullest practicable transparency in the JTC and comprehensive protection of due process rights.

Indeed, the Judicial Tenure Commission has recognized and acted to remedy this dereliction of due process through the adoption of internal operating procedure 9.207(B)-15:

“It is in the Commission's interest that public charges against a respondent be resolved fairly and on the basis of all relevant evidence. To that end:

- *Unless there are circumstances that make it unreasonable to do so, disciplinary counsel will endeavor to provide discovery to a respondent as soon as reasonably feasible after the Commission files a public complaint, but no later than the time limit in MCR 9.232(A).*
- *Unless circumstances make it unreasonable to do so, disciplinary counsel will make available to respondent all witness statements, without regard to whether disciplinary counsel intends to call the witness, and all evidence that is a part of the investigation, without regard to whether disciplinary counsel intends to introduce the evidence. In that way, disciplinary counsel will not be in the position of having to speculate as to what a respondent may consider to be exculpatory.”*

This explicit recognition of the precise issues arising from increased confidentiality of JTC materials is indicative of conspicuous due process violations against respondent judges. While it remains true that respondents are currently protected by this rule, the internal operating procedures are subject to change without notice upon approval of this Honorable Supreme Court. Moreover, the proposed amendment would supersede the authority of this internal operating procedure and impede its stated goals, limiting access to relevant evidence and presenting a clear and intolerable risk of unfair resolution.

The JTC has previously argued the existence of blanket immunity from discovery of its investigative materials in *Lawrence v. Van Aken*, 316 F. Supp. 2d 547 W.D. Mich. (2004). This argument for evidentiary privilege was predicated upon the existence of the confidentiality

established in what is now MCR 9.261. Notwithstanding, the U.S. District Court was unconvinced, citing the conspicuous absence of privilege in the text and asserting:

“Certainly, such investigation files are entitled to confidential treatment, but such confidentiality cannot impede the legitimate needs of the judicial truth-seeking process.”
(Lawrence v. Van Aken, 316 F. Supp. 2d 547 W.D. Mich. 2004)

Adoption of the proposed amendment would bolster the JTC’s authority to deny discovery on the grounds of additional confidentiality requirements, thereby further limiting a respondent’s access throughout the truth-seeking process. In its current state, the proposed amendment to MCR 9.261 provides no remedy to obtain a confidential request for investigation outside the direct scope of the hearing. Accordingly, this narrow exception does not sufficiently accommodate the legitimate needs of the judicial truth-seeking process and thus explicitly contradicts the ruling of the U.S. District Court. This Honorable Court must ask what the purpose is in allowing the Judicial Tenure Commission to play “hide the ball”. The JTC process should be one of transparent truth-seeking. Whenever there is a misalignment of power and access, it is naive to expect a consistent fair outcome.

The amendments will serve not only to deny the judge access to information, but will most certainly diminish the functionality of the courthouse environment. Requiring a witness, who may be a clerk, a judicial aide, or a judicial colleague to maintain confidentiality, will sow suspicion and discord in the work environment. The judge will be unable to exercise his/her right to secure exculpatory information from those who may have spoken with the JTC and potentially others who have not. Employees and colleagues may very likely choose to alienate themselves from the judge being investigated in order to avoid any risk of sanctions by the JTC. The respondent judge would likely seek to restrict his/her contact with colleagues and others for fear of additional charges.

The Judicial Tenure Commission has a history of conflict with respondent judges arising from conduct after initiating an investigation. The origins and motivations for this tension are uncovered through thoughtful institutional analysis of the JTC. Heightened confidentiality and closely held access to JTC investigatory findings deploy unseen and unintended influences on respondents. Respondents without transparent access to JTC findings are suspended in darkness, uninformed of the JTC’s findings and determinations until as little as 21 days before their hearing.

The respondent's absence of knowledge concerning JTC materials is weaponized, even if inadvertently, by the JTC during the investigation.

Under existing rules, respondents may not knowingly make false statements to the JTC at any time lest they be subject to further charges of misrepresentation. However, this rule is not to be construed so as to deprive respondents of the right to deny the allegations and fight them within the bounds of the law, see *In re Simpson*, 500 Mich. 533, 902 N.W.2d 383. The delicate balance between these rules forces respondent judges to walk a tight line during all interactions with the JTC.

For a respondent judge, maintaining absolute and uncompromised integrity is made dramatically more difficult by the veil of ignorance cast upon them by the JTC's rules of confidentiality and disclosure. This is exemplified through the analysis of previous JTC complaints. Of the last five public complaints served to judges by the JTC, all of them included charges arising after the initiation of the investigation and resulting from the respondents' alleged failure to adhere to JTC rules. Those complaints being numbers 101, 103, 104, 105, and 106. Clearly, the pervasive occurrence of these violations is the direct result of systematic deficiencies in the JTC procedure. Procedures that draw undisclosed lines in the sand and then proceed with harsh and unrelenting enforcement. The unseen influences of institutional procedures permeate all interactions and shape the way individuals engage with organizations. And within the context of the JTC, the outcome is respondents who reciprocate institutional secrecy with reflective secrecy of their own.

Further concerns over the due process rights of respondent judges and how a grievant's confidentiality would be used, permeate the discussion on this amendment. The proposed amendments sow discord in the delicate balance of JTC procedures by seeking the implementation of overly-broad solutions to narrow problems, while failing to effectively uphold the due process rights of respondent judges. Grievants innately, by the nature of their participation, possess a vital role in the JTC process. And while grievants vary in their relationships with respondents, they are, in all cases, a victim, witness, or third-party discoverer of the alleged misconduct. Although a narrow set of facts may warrant additional protections for the grievant, in all scenarios, their identity and testimony are vital to the due process rights of a respondent judge. While the Supreme Court holds the authority to make these changes, centralizing and limiting access to documents and witnesses that provide context for the entire proceeding poses an intolerably high risk of

unfairness resulting from unnecessary secrecy and the potential omission of exculpatory evidence, whether deliberately or erroneously.

The answer to the question as to whether this Honorable Supreme Court should grant the request of the Judicial Tenure Commission to expand its discretion, increase its secrecy and ultimately provide it with more authority is clear. It should not. We would ask that the Judicial Tenure Commission be required to produce a study to investigate its claims. The study must be done through an outside organization, with the selection and method determined through collaboration between the Judicial Tenure Commission and various Judicial organizations.

Respectfully submitted by,



Honorable Kameshia D. Gant
President, ABJM



Honorable Michelle Rick
President, MJA



Honorable William M. Doherty
President, MPJA

cc: Associate Justices Michigan Supreme Court
Hon. Jon Hulsing, Chair Judicial Tenure Commission

Public Policy Position
ADM File No. 2022-03: Proposed Amendments of MCR 1.109

Support

Position Vote:

Voted For position: 13

Voted against position: 0

Abstained from vote: 3

Did not vote (absence): 0

Contact Persons:

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Hon. Michael Warren
Hon. Michael West
Hon. Tracey Yokich

Executive Director:

Tim Ward, MLC

April 18, 2023

ELECTRONICALLY SUBMITTED

Re: ADM File 2022-03: Proposed Amendments of Rule 1.109

The Michigan Judges Association

The Board voted unanimously to support the proposed amendments of Rules 1.109 with changes. The proposed changes are as follows:

ADM File No. 2022-03: Proposed Amendment of MCR 1.109(D)(1)(b)(ii) and (v):

(1) Form and Captions of Documents.

(a) [Unchanged.]

(b) The first part of every document must contain a caption

stating:

(i) [Unchanged.]

(ii) the names of the parties, the title of the action or proceeding subject to (c), **and if the party so elects, may also include personal pronouns [he/him, she/her, they/them] in the name section of the caption. Courts shall use the individual's name, the designated personal pronouns, or other respectful means of addressing the individual.**

(iii) [Unchanged.]

(iv) [Unchanged.]

(v) the name, business address, telephone number, and state bar number of each attorney appearing in the case; **and if the attorney so elects, may also include personal pronouns [he/him, she/her, they/them] of the attorney appearing in the case. Courts shall use the individual's name, the designated personal pronouns, or other respectful means of addressing the individual.**

(vi) [Unchanged.]

These changes support the intent of the rule to ensure procedural fairness by creating an environment where all participants feel they are treated with courtesy and respect, while protecting against potential abuses by persons wishing to cause disruption in court proceedings or those who would seek to confuse the record or jurors. Our proposed changes will preserve a judge's discretion to maintain the dignity of the courtroom while protecting the record.

Respectfully Submitted,



Honorable Michelle Rick
President, MJA

LAW OFFICES OF
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Kevin G. Klevorn

Robert C. Klevorn (1914-1987)

April 24, 2023

Via Email nickohanesian@yahoo.com

Nicholas M. Ohanesian
Administrative Law Judge
Social Security Administration, OHO
1925 Breton Rd SE Ste 200
Grand Rapids, MI 49506-4810

Dear Hon. Ohanesian,

Nick, first of all, I want to say thanks for your RA leadership and service. I still have some time to serve for the 33rd Circuit but I appreciated your humor and keeping the assembly on target.

From a variety of sources I have heard concerns with regard to the proposed revisions to Rule 1.109. Comment is open I think for a very short period but if I am not mistaken, I think you also serve on the public policy committee for the SBM. It would be my recommendation that the SBM take no position on this as I think there will be a number of sections that weigh in, probably both pro and con.

I don't often put my own two cents in but I probably am an old enough curmudgeon that the constraints on speech is a path not to be followed. I do not like the results at the end of the day, i.e., where it all ends.

Probably see you on zoom on the 29th this Saturday.

Very truly yours,



Kevin G. Klevorn

KGK/djm

From: Mike Ewing
To: ADMcomment
Subject: MCR 1.109
Date: Sunday, April 23, 2023 10:49:17 PM

The adoption should be rejected. If those with multiple pronouns want to play make believe that's their business. Their will or wish in this regard should not be imposed on the courts or anyone else. The business of the courts is at a minimum to interpret the law, not make people comfortable. Enough!
Sent from my iPhone

Name: Deborah Moore
Date: 04/23/2023
ADM File Number: 2022-03

Comment:

I do not agree with this ruling at all. God made man and he made women. Please refer to the book of Genesis for the creation story. In grammar we teach the he refers to a male and she refers to a female it is a thing or animal. These are facts. Scientific evidence proves you are born with a x or y chromosome to determine your sex. If you feel you identify any other way that is fine, but it doesn't belong in court. Our religious beliefs should not be compromised because a small population feels differently. No matter which way a person identifies the fact is they were born a male or female. Our laws should stay the way they are. Please do not change it!!!!

Name: Chuck Wood
Date: 04/23/2023
ADM File Number: 2022-03

Comment:

Hello.
I object to this proposal on many levels. Our state and country are trying to micromanage our lives and force us into accepting ideals and premises that we do not believe in. Judges should not be forced to use language that is against their belief system. First judges, then the lawyers, then the population in general. This proposal is contrary to our rights to freedom of religion and freedom of speech. I don't want to become like Canada, where the government dictates that there is speech that people are not allowed to use, and ideals that people are forced to accept. Please do not bend to the will of a small minority to the detriment of the majority.

Name: Maria
Date: 04/23/2023
ADM File Number: 2022-03

Comment:

I disagree with this ruling. Our religious rights are in jeopardy and we'll be forced to do and say things that are against what we believe. We must stand up for the truth before our amendment rights are also taken away.

Name: Lawrence Haggerty
Date: 04/23/2023
ADM File Number: 2022-03

Comment:

Personal name is one thing, gender is another. Keep it he/she.

Name: Thomas Oram
Date: 04/23/2023
ADM File Number: 2022-03

Comment:

Forcing people to call all squares circles does not, and cannot, make them circles in reality. All it does is make a mockery of the truth, which in turn undercuts the credibility of Michigan courts in particular, and the rule of law in general.

Name: Glenn Ingersoll
Date: 04/23/2023
ADM File Number: 2022-03

Comment:

No person should be compelled to use personal pronouns or other speech that is contrary to that person's religious beliefs or contrary to biological and scientific facts.

Name: Ed R
Date: 04/23/2023
ADM File Number: 2022-03

Comment:

I strongly disagree with this proposal. A possible solution (as suggested by another commentator): address the person as "Defendant", "Witness", or "Plaintiff" with their legal (last) name. No one, judge or otherwise, should be forced to go against their strongly held religious beliefs. To a non-lawyer such as myself, this proposal comes across as a solution in search of a problem.

Name: Marlene Dull
Date: 04/23/2023
ADM File Number: 2022-03

Comment:

When testifying in court, one is under oath to tell the truth. The option of being able to present oneself as another person is not the truth. If one can testify a lie in one way, then one can lie throughout the court proceedings. Stick to the truth in all court activities !

Name: Darryl Bryk
Date: 04/23/2023
ADM File Number: 2022-03

Comment:

As a Catholic I oppose this amendment. As the Bishops have stated: "The State cannot force individuals to deliver messages that they do not wish to make or to which they disagree... Gender identity preferences, enforced via censures and punishments, as here are unconstitutional compelled speech which forcibly collides with the protections of the First Amendment."

Name: Jacqueline Boyer**Date: 04/23/2023****ADM File Number: 2022-03****Comment:**

The personal pronoun issue does not make sense to me. There are two genders, male and female. The pronouns are he and she. "They" refers to more than one person. Unless someone has undergone actual gender transformation to change a "he" to a "she" and vice versa, it is all too confusing for a majority of the public. I can only see chaos and mistakes in jurors trying to keep up with such nonsense in a trial by jury case.

Name: Christy**Date: 04/23/2023****ADM File Number: 2022-03****Comment:**

Telling people what words they need to use is a violation of free speech. The court should not be putting words in people's mouths - literally. Please do not require anyone to use pronouns that they do not wish to use.

Name: Deborah Bloomfield**Date: 04/24/2023****ADM File Number: 2022-03****Comment:**

The court should be concerned with Truth. The proposal panders to people who attempt to thwart the truth or bend it to their own illusions. Discussion of pronouns is simply a means to change the focus of any action. Do not ratify this proposed amendment.

Name: MARIO SAID**Date: 04/24/2023****ADM File Number: 2022-03****Comment:**

The use of pronouns in a legal environment have no place. We were all born as a woman or a man. That is a fact. Let's deal with the facts.

Name: Jeremy Burns**Date: 04/24/2023****ADM File Number: 2022-03**

Comment:

I couldn't agree more with 20th Circuit Court, Judge Hulsing's or the Court of Appeals' position. This is an area that is already covered in the Canons and unnecessary to be included in court rule.

Name: Matt Carter**Date: 04/24/2023****ADM File Number: 2022-03****Comment:**

Strongly disagree with proposed amendment. A person should be referred to as "Defendant", "Witness", or "Plaintiff" with their legal (last) surname. Forcing judges (or anyone for that matter) to go against their religious beliefs is unconstitutional and should not be a part of our society.

Name: Bob Medici**Date: 04/24/2023****ADM File Number: 2022-03****Comment:**

I STRONGLY OPPOSE THIS RIDICULOUS AMENDMENT of MCR 1.109. In accord with the dictates of gender ideology—an ideology that has crept its way into this state and which the people of Michigan have never legislatively or otherwise adopted—the proposed rule would discard the standard of truthfulness and compel judges to adhere to a person’s subjective sense of gender identity. While we should certainly sympathize with anyone who is confused about his or her identity or feels uncomfortable regarding his or her biological sex, and while we should treat all persons with respect in accord with their dignity as a person created in the image and likeness of God, disregarding the truth of biological sex is no kindness.

Name: Daniel Lindecker**Date: 04/24/2023****ADM File Number: 2022-03****Comment:**

Stop this ludicrous proposed amendment. What a waste of tax payers money, jeez, just stop it lready.

Name: Tom Becker**Date: 04/24/2023****ADM File Number: 2022-03****Comment:**

Why are we even having this conversation? Have we collectively lost all common sense? Who are these people that MUST be addressed in a specific manner and do these few really even care? Is this just a political challenge brought up to measure the control-ability of the population - to test acquiescence? I'm pretty confident a proper survey would conclude in 95% of the people voting for common sense with a few percent not wanting to offend the one percent and acquiescing - but that'd be about it. WAKE UP to the destruction the enemy is doing to our nation and not take part in it. The “new normal” can just be normal.

Name: Jean

Date: 04/24/2023

ADM File Number: 2022-03

Comment:

This proposal, MCR 1.109, is a waste of time and money! Absolutely ridiculous. If you are born male, you are a man. If you are born female, you are a woman. Pronouns must be used accordingly. "Follow the science" and our God-given gender! Stop the madness!

Name: John Schneider

Date: 04/24/2023

ADM File Number: 2022-03

Comment:

I object to this ridiculous proposal.

Name: Mackenzie Marsh

Date: 04/25/2023

ADM File Number: 2022-03

Comment:

The use of preferred pronouns should not be a question. This is a question of why hasn't been set in place previously? Pronouns are used in everyday language. Using a persons preferred pronouns can ensure respect in and out of a courtroom. The persons rejecting this proposal seem to have no previous knowledge of the use of pronouns even though they use them in everyday life. This would not be a change for them in the slightest.

Name: Lisa

Date: 04/25/2023

ADM File Number: 2022-03

Comment:

I immigrated to the USA and took my time to become a legal immigrant from Canada. I researched and studied the US Constitution and Michigan State Constitution. After studying and realizing what a beautiful and unique experiment this beautiful is country with the protection of all the freedoms for all Americans. Life, Liberty and the Pursuit of Happiness is the Moto of this beautiful country, The State cannot force individuals to deliver messages that they do not wish to make or to which they disagree. Gender identity preferences, enforced via censures and punishments are unconstitutional compelled speech which forcibly collides with the protections of the First Amendment. This is not the America that I became an citizen of. When we start forcing judges to make ideological declarations insisted upon by the attorneys or litigants, we have overstepped and diminished the role of the judiciary. This adoption would infringe on judges' liberty and protected freedom of speech. If adopted, the proposed rule would force judges to either affirm an ideology that is directly contrary to their personal beliefs or risk judicial discipline proceedings, If this rule is adopted, we can expect that the requirement to use false pronouns will soon be extended to attorneys and others in the legal system, with consequences for anyone who does not agree with the

notion that human identity is subjective and malleable. This is not the free America that I immigrated to. There is a reason that we have the Statue of Liberty and we need to continue to be a beacon of Freedom and Hope with our beautiful Constitution by not accepting the Proposed Amendment MRC 9.123.

Thank you. God Bless America

Name: OCBA DEI Committee

Date: 04/25/2023

ADM File Number: 2022-03

Comment:

The Oakland County Bar Association (OCBA) DEI Committee strives to increase diversity in the legal field, improve opportunities for equity, and create inclusive spaces for all. The work of the Committee extends beyond legal personnel but works to advance these initiatives for all people. The proposed amendment for MCR 1.109, particularly, "Parties and attorneys may also include any personal pronouns in the name section of the caption, and courts are required to use those personal pronouns when referring to or identifying the party or attorney, either verbally or in writing," embodies the goals of the Committee. The proposed amendment creates more space and opportunity for inclusivity for all people that come to our courts. It also fosters greater respect and civility toward equity.

In sum, the proposed amendment acknowledges and educates, and is in furtherance for a better future for the legal profession by intentionally supporting diversity, equity, and inclusion. As such, the DEI Committee of the OCBA supports the amendment of MCR 1.109 as written.

Name: Lisa

Date: 04/25/2023

ADM File Number: 2022-03

Comment:

The State cannot force individuals to deliver messages that they do not wish to make or to which they disagree. Gender identity preferences, enforced via censures and punishments, as here are unconstitutional compelled speech which forcibly collides with the protections of the First Amendment. When we start forcing judges to make ideological declarations insisted upon by the attorneys or litigants, we have overstepped and diminished the role of the judiciary. If adopted, the proposed rule would force judges to either affirm an ideology that is directly contrary to their religious and/or personal beliefs or risk judicial discipline proceedings. If this rule is passed then the requirement to use pronouns will be forced upon attorneys and others in the legal system with consequences for anyone who does not agree with the notion that human identity is subjective and malleable.

Thank you.

Name: Justin

Date: 04/25/2023

ADM File Number: 2022-03

Comment:

This is a great idea and will be inclusive to people who are sometimes called the wrong pronouns.

Name: Marck Kiselevach**Date: 04/26/2023****ADM File Number: 2022-03****Comment:**

I support this amendment as it stands to create an environment where transgender and gender non-binary individuals are acknowledged and given the due respect of having their chosen pronouns utilized. To codify this is to ensure they are not facing a court system inherently biased toward them, and are treated fairly.

Name: Chelsea Hawkins**Date: 04/26/2023****ADM File Number: 2022-03****Comment:**

I am in support of this proposed amendment. The court system strives to exemplify professionalism and respect for the greater community. As someone who has worked in the criminal justice system for the last six years and has worked with clients of all gender identities, this step would allow dignity during a difficult season of our clients' lives. Honoring someone's identity by respecting their pronouns and honorifics is an essential step in the continued work of inclusion.

Name: Noah West**Date: 04/26/2023****ADM File Number: 2022-03****Comment:**

Oppose. The 6th Circuit's decision in Meriwether v. Hartop, for example, is an important step in protecting the

First and Fourteenth Amendment rights of individuals who refuse to accept the leftist groupthink of today's culture. The court clarified that the government may not force an individual to affirm a belief they disagree with. This decision serves as a reminder that there are no 'personal' truths, only truths that exist independently of our wishes. The case itself stemmed from an incident in which a professor at Shawnee State University was asked to refer to a transgender student by their preferred pronouns, which the professor refused to do. The university then launched a formal investigation and threatened to take corrective action against the professor. This is despite the fact that two years prior, the professor had expressed his concerns about the policy to his department chair, who was dismissive and hostile. This ruling is a victory for free speech, the rule of law and common sense, and other courts should follow suit in order to protect the rights of individuals to express their beliefs without fear of retribution. Gender ideology is a movement that seeks to replace the sexual binary of male and female with subjective notions of gender identity and sex assigned at birth. This has led to gender activists attempting to redefine sex in federal laws and regulations, such as Title IX, to include "gender identity." Some state legislators are proposing to define sex by tying it to biology, but without explaining the difference between males and females.

This is why it is important for states to define sex precisely. To do this, states must understand the confusion that gender ideology creates and how it seeks to detach gender identity from biological sex. A precise definition of sex should include biological indications of male and female, such as sex chromosomes, naturally occurring sex hormones, gonads, gametes (i.e. reproductive and endocrine systems oriented around production of said gametes), and nonambiguous internal and external genitalia present at birth. This will better help to ensure that sex remains a stable legal category and prevent legal chaos.

To further protect the rights of all individuals, states must take the necessary steps to define sex precisely and objectively.