

**Agenda**  
**Public Policy Committee**  
**September 25, 2019 – 12 p.m.**

**Suburban Collection Showplace – Coral Room**

*For those joining by phone, the conference call number is  
1.877.352.9775, passcode 6516204165#.*

*Public Policy Committee.....Dennis M. Barnes, Chairperson*

**A. Reports**

1. Approval July 26, 2019 Minutes
2. Public Policy Report

**B. Court Rules**

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

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

Status: 10/01/19 Comment Period Expires.  
Referrals: 06/24/19 Children's Law Section; Family Law Section.  
Comments: None at this time.  
Liaison: Victoria A. Radke

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

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

Status: 10/01/19 Comment Period Expires.  
Referrals: 06/19/19 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Appellate Practice Section; Children's Law Section; Family Law Section.  
Comments: Access to Justice Policy Committee; Appellate Practice Section.  
Comments submitted to the Court is included in materials.  
Liaison: Judge Shauna L. Dunnings

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

The proposed alternative amendments of MCR 6.610 would allow discovery in misdemeanor proceedings in the district court. Alternative A would create a structure similar to the federal rules (FR Crim P 16[b]) in which a defendant’s duty to provide certain discovery would be triggered only if defense counsel first requested discovery from the prosecution, and the prosecution complied. Alternative B is a proposal recommended by the Prosecuting Attorneys Association of Michigan in its comment on the original proposal published for comment in this file.

Status: 10/01/19 Comment Period Expires.  
Referrals: 06/10/19: Criminal Jurisprudence & Practice Committee; Criminal Law Section.  
Comments: Criminal Jurisprudence & Practice Committee.  
Comments submitted to the Court is included in materials.  
Liaison: Kim Warren Eddie

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

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

Status: 10/01/19 Comment Period Expires.  
Referrals: 06/24/19 Professional Ethics Committee.  
Comments: None at this time.  
Liaison: Andrew F. Fink, III

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

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

Status: 10/01/19 Comment Period Expires.  
Referrals: Not referred at this time.  
Comments: None at this time.  
Liaison: Joseph J. Baumann

### C. Legislation

#### 1. Bail Bond Procedures

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

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

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

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

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

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

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

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

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

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

Status: 03/13/19 Referred to House Committee on Justice.  
Referrals: 04/22/19 Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.  
Comments: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee.  
Liaison: Valerie R. Newman

## **D. Consent Agenda**

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

### **Model Criminal Jury Instructions**

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

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

#### **2. M Crim JI 7.17**

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

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

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

#### **4. M Crim JI 35.11**

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

**Minutes  
Public Policy Committee  
July 26, 2019**

Committee Members: Dennis M. Barnes, Hon. Shauna L. Dunning, Kim Warren Eddie, Andrew F. Fink, III, E. Thomas McCarthy, Jr., Valerie R. Newman, Daniel D. Quick, Victoria A. Radke, Hon. Cynthia D. Stephens  
Commissioner Guest: Jennifer M. Grieco  
SBM Staff: Janet Welch, Peter Cunningham, Kathryn Hennessey, Carrie Sharlow  
GCSI Staff: Marcia Hune

**A. Reports**

1. Approval June 10, 2019 Minutes

**The minutes were unanimously approved.**

2. Public Policy Report

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

**B. Court Rules**

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

The proposed amendments of MCR 1.109, 2.107, 2.113, 2.116, 2.119, 2.222, 2.223, 2.225, 2.227, 3.206, 3.211, 3.212, 3.214, 3.303, 3.903, 3.921, 3.925, 3.926, 3.931, 3.933, 3.942, 3.950, 3.961, 3.971, 3.972, 4.002, 4.101, 4.201, 4.202, 4.302, 5.128, 5.302, 5.731, 6.101, 6.615, 8.105, and 8.119 and proposed rescission of MCR 2.226 and 8.125 would continue the process for design and implementation of the statewide electronic-filing system.

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

**The committee voted unanimously (9) to support the court's continued efforts to implement a statewide e-filing system and submit to the Court the comments provided by Access to Justice Policy Committee, Civil Procedure & Courts Committee, Criminal Jurisprudence & Practice Committee, and Family Law Section.**

**2. ADM File No. 2018-12: Proposed Amendment of MCR 2.612**

The proposed amendment of MCR 2.612 would clarify that writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished. This language was previously included in the court rules before they were rewritten in 1985.

The following committees and sections offered recommendations: Civil Procedure & Courts Committee; Family Law Section.

**The committee voted unanimously (9) to support the proposed amendment with the amendment proposed by the Civil Procedure & Courts Committee, changing "are abolished" to "remain abolished."**

### **3. ADM File No. 2018-18: Proposed Amendment of MCR 3.106**

The proposed amendment of MCR 3.106 would require trial courts to provide a copy of each court officer's bond to SCAO along with the list of court officers.

The following committees offered recommendations: Access to Justice Policy Committee; Civil Procedure & Courts Committee.

**The committee voted unanimously (9) to support the proposed amendment.**

### **4. ADM File No. 2018-16: Proposed Amendment of MCR 3.201 and Proposed Addition of MCR 3.230**

The proposed amendment of MCR 3.201 and proposed addition of MCR 3.230 would provide procedural rules to incorporate the Summary Support and Paternity Act (366 PA 2014; MCL 722.1491, et seq.) to establish a parent's paternity or support obligation through a summary action.

The following committees and sections offered recommendations: Access to Justice Policy Committee; Family Law Section.

**The committee voted unanimously (9) to support the proposed amendments to Rule 3.201 and the proposed addition of Rule 3.230 with amendments proposed by the Access to Justice Policy Committee, requiring that**

**(1) the agency file a domestic violence screening tool completed by each party and that the court be required to hold a hearing if domestic violence is indicated, and**

**(2) the IV-D agency must file a waiver signed by each party that they were informed of their right to opt out of the process.**

### **5. ADM File No. 2018-02: Proposed Amendment of MCR 3.501**

The proposed amendment of MCR 3.501 would require 50 percent of unclaimed class action funds be disbursed to the Michigan State Bar Foundation or other distribution as deemed appropriate by the court. This proposal is a slightly modified version of a proposal submitted to the Court by the Michigan State Planning Body and Legal Services Association of Michigan.

The following committees offered recommendations: Access to Justice Policy Committee; Civil Procedure & Courts Committee.

**The committee voted 8 to 1 to not take a position on the policy presented in the Rule, but recommend the language presented by the Civil Procedure & Courts Committee, clarifying the language in the proposed Rule 3.501, while not responding to Justice Markman's questions.**

### **6. ADM File No. 2017-02: Proposed Amendment of MCR 6.508**

The proposed amendment of MCR 6.508 would enable a defendant to show actual prejudice in a motion for relief for judgment where defendant rejected a plea based on incorrect information from the trial court or ineffective assistance of counsel, and it was reasonably likely the defendant and court would have accepted the plea (which would have been less severe than the judgment or sentence issued after trial) but for the improper advice.

The following committees and sections offered recommendations: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.

**The committee voted unanimously (9) to support the proposed amendment to Rule 6.508.**

### **7. ADM File No. 2019-03: Proposed Amendment of MCR 8.110**

The proposed amendment of MCR 8.110 would provide additional opportunity for input by judges in the process for chief judge selection in courts, would clarify that vacation leave time may be taken

by notifying the chief judge, and would make vacation leave policies more uniform from one court to another. Under the proposed amendment, a chief judge could require a judge to forego vacation, judicial, or education, or professional leave to ensure docket coordination and coverage.

**The committee voted 8 to 1 to table the proposed amendment.**

#### **8. ADM File No. 2018-30: Proposed Amendment of MCR 8.115**

The proposed amendment of MCR 8.115, submitted by the Michigan State Planning Body, would explicitly allow the use of cellular phones (as well as prohibit certain uses) in a courthouse. The proposal is intended to make cell phone and electronic device use policies more consistent from one court to another, and broaden the ability of litigants to use their devices in support of their court cases when possible.

The following committees and sections offered recommendations: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Family Law Section; Probate & Estate Planning Section.

**The committee voted 8 to 1 to support the proposed amendment of Rule 8.115.**

#### **9. ADM File No. 2018-28: Proposed Amendment of Court of Claims LCR 2.119**

The proposed amendment of LCR 2.119 for the Court of Claims would require a moving party to affirmatively state that he or she has sought concurrence in the relief sought on a specific date, and opposing counsel denied concurrence in the relief sought.

The Civil Procedure & Courts Committee offered recommendations.

**The committee voted unanimously (9) to support the proposed amendment of Local Court Rule 2.119.**

### **C. Legislation**

**1. HB 4378** (Pagan) Civil rights; public records; identity of parties proceeding anonymously in civil actions alleging sexual misconduct; exempt from disclosure under freedom of information act. Amends sec. 13 of 1976 PA 442 (MCL 15.243).

The following committees offered recommendations: Access to Justice Policy Committee; Civil Procedure & Courts Committee.

**The committee voted unanimously (9) that the bill is *Keller* permissible in affecting the improvement of the functioning of the court and the availability of the legal services to society.**

**The committee voted unanimously (7) with two abstentions to support HB 4378 with an amendment that the bill also apply to survivors of human trafficking.**

**2. HB 4535** (Berman) Law enforcement; law enforcement information network (LEIN); access to law enforcement information network (LEIN); allow for defense attorneys under certain circumstances. Amends sec. 4 of 1974 PA 163 (MCL 28.214) & adds sec. 4a.

The following committees offered recommendations: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee.

**The committee voted unanimously (9) that the bill is *Keller* permissible in affecting the improvement of the functioning of the court.**

**The committee voted unanimously (9) to support HB 4535 in concept of defense attorneys having access to LEIN information, with one possible solution to just amend “may” to “shall” in Section 4.**

**3. SB 0231** (Runestad) Civil procedure; service of process; proof of service; provide for verification of service. Amends sec. 1910 of 1961 PA 236 (MCL 600.1910).

The Civil Procedure & Courts Committee offered recommendations.

**The committee voted unanimously (9) that the bill is *Keller* permissible in affecting the improvement of the functioning of the court.**

**The committee voted unanimously (9) to support SB 0231.**

#### **D. Model Criminal Jury Instructions**

##### **1. M Crim JI 3.8**

The Committee proposes amending the language of M Crim JI 3.8 to make it easier to read and understand, and proposes adding a footnote to clarify its use in light of many instructions that contain lesser-included offenses in the instruction itself.

##### **2. M Crim JI 10.10, 10.10a, 10.10b, and 10.10c**

The Committee proposes new instructions, M Crim JI 10.10, 10.10a, 10.10b and 10.10c, for use where gang-related crimes found in MCL 750.411u and 750.411v have been charged.

##### **3. M Crim JI 7.15, 7.16, 7.21, and 7.22**

The Committee proposes amending components of the self-defense instructions found in M Crim JI 7.15, 7.16, 7.21, and 7.22 to correct and clarify amendments to the instructions adopted by the State Bar of Michigan Standing Committee on Criminal Jury Instructions in response to the enactment of the Self-Defense Act, MCL 780.971 et seq. The self-defense instructions were amended in 2007 pursuant to language in MCL 780.972(1) regarding a person “not engaged in the commission of a crime at the time” when deadly force was used. They direct that self-defense is only available where the defendant was not committing a crime. MCL 780.972(1) actually addresses the duty to retreat before using deadly force. MCL 780.974 states that the common law right to self-defense was not diminished by the Act. *People v Townes*, 391 Mich 578, 593; 218 NW2d 136 (1974), states that a defendant does not necessarily lose the right to self-defense while committing another offense if that other offense was not likely to lead to the other person’s assaultive behavior. The current instructions state that self-defense is barred if the defendant is committing any crime, even one not likely to lead to assaultive behaviors, and would also appear to bar self-defense when the defendant is charged with, *inter alia*, being a felon in possession of a firearm, contrary to holdings in *People v Dupree*, 486 Mich 693 (2010), and *People v Guajardo*, 300 Mich App 26 (2013). The proposal amends the Use Note to M Crim JI 7.15, eliminates language in M Crim JI 7.21 and 7.22 that bars self-defense when the defendant is engaged in a criminal act, and combines acts using deadly and non-deadly force in M Crim JI 7.16.

**The consent agenda was adopted.**



p 517-346-6300

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August 28, 2019

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

**RE: ADM File No. 2002-37: Proposed Amendment of Rules 1.109, 2.107, 2.113, 2.116, 2.119, 2.222, 2.223, 2.225, 2.227, 3.206, 3.211, 3.212, 3.214, 3.303, 3.903, 3.921, 3.925, 3.926, 3.931, 3.933, 3.942, 3.950, 3.961, 3.971, 3.972, 4.002, 4.101, 4.201, 4.202, 4.302, 5.128, 5.302, 5.731, 6.101, 6.615, 8.105, and 8.119 and proposed rescission of Rules 2.226 and 8.125 of the Michigan Court Rules**

Dear Clerk Royster:

At its July 26, 2019 meeting, the State Bar of Michigan Board of Commissioners (Board) considered the above-referenced proposed rule amendments published by the Court for comment. As part of its review, the Board considered recommendations from the Access to Justice Policy, Civil Procedure & Courts, and Criminal Jurisprudence & Practice committees, and the Family Law Section.

After this review, the Board voted unanimously to support the Court's ongoing efforts to implement a state-wide electronic filing system. To assist with this effort, the State Bar is enclosing the recommendations from its committees and section for the Court's consideration.

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

Sincerely,

Janet K. Welch  
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court  
Jennifer Grieco, President, State Bar of Michigan



**Public Policy Position  
ADM File No. 2002-37**

The Access to Justice Policy Committee is comprised of members appointed by the President of the State Bar of Michigan. The position expressed is that of the Access to Justice Policy Committee only and is not an official position of the State Bar of Michigan, nor does it necessarily reflect the views of all members of the State Bar of Michigan. The State Bar's position in this matter is to support the Court's ongoing efforts to implement a state-wide electronic filing system and submit to the Court the recommendations from its committees and section for the Court's consideration.

The Access to Justice Policy Committee has a public policy decision-making body with 23 members. On July 12, 2019, the Committee adopted its position after a discussion and vote at a scheduled meeting and a further electronic discussion and vote. 19 members voted in favor of the Committee's position on ADM File No. 2002-37, 0 members voted against this position, 0 members abstained, 4 members did not vote.

**Support with Amendments**

**Explanation:**

The Committee supports the proposed rule changes with the following amendments (proposed changes are capitalized and in bold):

**1. Prohibit judges from requesting judge's copies of motions (p 3, 4)**

Rule 2.116(G)(1)(c):

Except where electronic filing has been implemented, a~~A~~ copy of a motion, response (including brief and any affidavits), or reply brief filed under this rule must be provided by counsel to the office of the judge hearing the motion. The judge's copy must be clearly marked JUDGE'S COPY on the cover sheet; that notation may be handwritten. Where electronic filing has been implemented, a judge's copy ~~may~~ **SHALL** not be required.

Same change to Rule 2.119(A)(2)(d)

Rationale: The purpose of this amendment is to make the filing process consistent statewide, to eliminate the practice of courts enforcing rules without providing notice to the public, and to eliminate the need for attorneys or self-represented parties to make and deliver (by mail or in person)

a paper copy to specific judges. Such a prohibition is not a hardship to the court because, where electronic filing has been implemented, a judge can print a paper copy from the electronic file.

**2. Clarify that a fee waiver continues after transfer of a case (p 4)**

Rule 2.222(D)(1):

The transferring court must enter all necessary orders pertaining to the certification and transfer of the action to the receiving court. The court must order the party that moved for change of venue to pay the applicable statutory filing fee to the receiving court **UNLESS FEES HAVE BEEN WAIVED IN ACCORDANCE WITH MCR 2.002.**

Same change to the following sections:

2.223(B)(1)

2.225(B)(1)

2.227(B)(1)

4.002(C)(1)

Rationale: If a party has had his or her fees waived and the case is subsequently transferred because of change of venue, lack of jurisdiction or from district to circuit court, that waiver should continue in the new court. The additional language is already included in the rules regarding post-judgment transfer of a domestic relations cases (see p. 12).

**3. Expand the definition of alternate mailing address to be provided to the Friend of the Court (p 10)**

Rule 3.206(C)(1):

The information in the verified statement is confidential, and is not to be released other than to the court, the parties, or the attorneys for the parties, except on court order. For good cause, the addresses of a party and minors may be omitted from the copy of the statement that is served on the other party. If the party submitting the verified statement excludes an address for good cause, that party shall provide an alternate address where mail can be received. **AN ALTERNATE ADDRESS MAY INCLUDE AN ELECTRONIC OR EMAIL ADDRESS.**

Rationale: This section is problematic for domestic violence survivors attempting to maintain a confidential address, low income or homeless parties who cannot afford the cost of a post office box or lack a reliable address available from third parties. We understand the need for Friend of the Court to be able to send notices to parties – and the importance of parties receiving court notices – but with e-filing and the wide availability of email addresses and public places with internet access, we think an email alternative serves the needs of the court and parties.

**4. Clarify that jury demand is filed with the complaint in summary proceedings (p 24)**

Rule 4.201(B)(2):

Jury Demand. If the plaintiff wishes a jury trial, the demand must be made on a form approved by the State Court Administrative Office. The jury trial fee must be paid when the demand is made. **THE JURY DEMAND MUST BE FILED WITH THE COMPLAINT.**

Rationale: Although it’s implied by the placement of this new section that a jury demand is filed with the complaint, it should be stated specifically for clarity and to reduce any confusion among parties or the court.

**5. Increase time to file original will with the court (p 26)**

Rule 5.302(A)(2):

Where electronic filing is implemented, if the application or petition to commence a decedent estate indicates that there is a will, it is available, and that it is not already in the court’s possession, an exact copy of the will and any codicils must be attached to the application or petition. Within 14 days of the filing of the application or petition, the original will and any codicils must be filed with the court or the case will be dismissed without notice and hearing. Notice of a dismissal for failure to file the original will and any codicils shall be served on the petitioner and any interested persons in a manner provided under MCR 5.105(B).

Rationale: Seven days is not sufficient time for an attorney or party to mail or hand-deliver the original will to the court; 14 days is a more reasonable deadline.

**6. Require clerks to continue to deliver judgments or orders to both parties (p 28)**

Rule 8.105(C)

Notice of Judgments, Orders, and Opinions. ~~Notice of a judgment, final order, written opinion or findings filed or entered in a civil action in a court of record must be given forthwith in writing by the court clerk~~ **must deliver, in the manner provided in MCR 2.107, a copy of the judgment, final order, written opinion, or findings entered in a civil action to the ~~attorneys~~ ATTORNEYS OF RECORD IN THE CASE or THE party PARTIES IF UNREPRESENTED. Who sought the order, judgment, opinion or findings. Except where e-Filing is implemented, if the attorney or party does not provide at least one copy when filing a proposed order or judgment, the clerk, when complying with this subrule, may charge the reproduction fee authorized by the court’s local administrative order under MCR 8.119(H)(2).** of record in the case, in the manner provided in MCR 2.107.

Rationale: Particularly where the court issues the order, judgment, or opinion in a case, the clerk should serve both parties with a copy. Otherwise, one party is at the mercy of the party who receives the order to timely serve, which could impact the rights of the other party, including the right to appeal. Additionally, it’s not always easy to determine which party is the “party who sought the order, judgment, opinion or findings,” as required by the current proposal. For example, in a divorce action

where a counter complaint is filed, either party may be the moving party.

**Position Vote:**

Voted For position: 19

Voted against position: 0

Abstained from vote: 0

Did not vote: 4

**Contact Persons:**

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

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

**Public Policy Position  
ADM File No. 2002-37**

The Civil Procedure & Courts Committee is comprised of members appointed by the President of the State Bar of Michigan. The position expressed is that of the Civil Procedure & Courts Committee only and is not an official position of the State Bar of Michigan, nor does it necessarily reflect the views of all members of the State Bar of Michigan. The State Bar's position in this matter is to support the Court's ongoing efforts to implement a state-wide electronic filing system and submit to the Court the recommendations from its committees and section for the Court's consideration.

The Civil Procedure & Courts Committee has a public policy decision-making body with 26 members. On June 8, 2019, the Committee adopted its position after a discussion and vote at a scheduled meeting. 18 members voted in favor of the Committee's position on ADM File No. 2002-37, 0 members voted against this position, 0 members abstained, 8 members did not vote.

**Support with Amendments**

**Explanation**

The Civil Procedure & Courts Committee continues to support the Michigan Supreme Court's ongoing efforts to implement a statewide electronic filing system.

The committee, however, recommends that the language in MCR 2.222(E)(1) be clarified as follows (proposed changes shown in bold and underline):

The party that moved for change of venue must pay to the receiving court within 28 days of the date **of service** of the transfer order the applicable filing fee as ordered by the transferring court. No further action may be had in the case until payment is made. If the fee is not paid to the receiving court within 28 days of the date **of service** of the order, the reviewing court must order the case transferred back to the transferring court.

The committee recommends that the same change be made to similar language contained in proposed MCR 2.223(C)(1), 2.225(C)(1), 2.227(C)(1), 4.002(D)(1), and 4.002(D)(3).

**Position Vote:**



## CIVIL PROCEDURE & COURTS COMMITTEE

Voted For position: 18  
Voted against position: 0  
Abstained from vote: 0  
Did not vote (absent): 8

**Contact Person:** Randy J. Wallace

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

**Public Policy Position**  
**ADM File No. 2002-37**

The Criminal Jurisprudence & Practice Committee is comprised of members appointed by the President of the State Bar of Michigan. The position expressed is that of the Criminal Jurisprudence & Practice Committee only and is not an official position of the State Bar of Michigan, nor does it necessarily reflect the views of all members of the State Bar of Michigan. The State Bar's position in this matter is to support the Court's ongoing efforts to implement a state-wide electronic filing system and submit to the Court the recommendations from its committees and section for the Court's consideration.

The Criminal Jurisprudence & Practice Committee has a public policy decision-making body with 17 members. On June 28, 2019, the Committee adopted its position after a discussion and vote at a scheduled meeting. 10 members voted in favor of the Committee's position on ADM File No. 2002-37, 0 members voted against this position, 0 members abstained, 7 members did not vote.

**Support**

The committee supports these proposed amendments of the rules to further the Court's efforts in implementing a statewide e-filing system.

**Position Vote:**

Voted For position: 10

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 7

**Contact Person:**

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

**Public Policy Position  
ADM File No. 2002-37**

The Family Law Section is a voluntary membership section of the State Bar of Michigan, comprised of 2,510 members. The Family Law Section is not the State Bar of Michigan and the position expressed herein is that of the Family Law Section only and not the State Bar of Michigan. The State Bar's position in this matter is to support the Court's ongoing efforts to implement a state-wide electronic filing system and submit to the Court the recommendations from its committees and section for the Court's consideration.

The Family Law Section has a public policy decision-making body with 21 members. On June 8, 2019, the Section adopted its position after a discussion and vote at a scheduled meeting. 18 members voted in favor of the Section's position on ADM File No. 2002-37, 8 members voted against this position, 1 members abstained, 0 members did not vote.

**Support with Recommended Amendments**

**Explanation:**

Council voted to support this ADM file with a friendly amendment to clarify that the Judge's copy "shall not be required to be provided unless specifically requested by the hearing officer."

**Position Vote:**

Voted For position: 12

Voted against position: 8

Abstained from vote: 1

Did not vote (absent): 0

**Contact Person:** Robert C. Treat, Jr.

**Email:** [bob.treat@qdroexpressllc.com](mailto:bob.treat@qdroexpressllc.com)





p 517-346-6300

p 800-968-1442

f 517-482-6248

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August 1, 2019

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

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

**RE: ADM File No. 2018-12: Proposed Amendment of Rule 2.612 of the Michigan Court Rules**

Dear Clerk Royster:

At its July 26, 2019 meeting, the State Bar of Michigan Board of Commissioners (Board) considered the above-referenced rule amendment published by the Court for comment. As part of its review, the Board considered a recommendation from the Civil Procedure & Courts Committee.

After this review, the Board voted to support the rule proposal with the following amendment:

(4) Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, ~~are~~ **remain** abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

This amendment would help clarify that these writs and bills continued to be abolished with the adoptions of the 1985 rule amendments.

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

Sincerely,

Janet K. Welch  
Executive Director

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



p 517-346-6300

August 23, 2019

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Lansing, MI 48909

306 Townsend Street

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Lansing, MI

48933-2012

**RE: ADM File No. 2018-18: Proposed Amendment of Rule 3.106 of the Michigan Court Rules**

Dear Clerk Royster:

At its July 26, 2019 meeting, the State Bar of Michigan Board of Commissioners (Board) considered the above-referenced proposed rule amendment published by the Court for comment. As part of its review, the Board considered recommendations from the Access to Justice Policy and Civil Procedure & Courts committees.

After this review, the Board voted unanimously to support the proposed rule amendment as it will help ensure that court officers have proper bonds.

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

Sincerely,



Janet K. Welch  
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court  
Jennifer Grieco, President, State Bar of Michigan



July 30, 2019

p 517-346-6300

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Lansing, MI

48933-2012

**RE:** ADM File No. 2018-16: Proposed Amendments of Rule 3.201 and Proposed Addition of 3.230 of the Michigan Court Rules

Dear Clerk Royster:

At its July 26, 2019 meeting, the State Bar of Michigan Board of Commissioners (Board) considered the above-referenced rule amendment and proposed new rule published by the Court for comment. As part of its review, the Board considered recommendations from the Access to Justice Policy Committee and Family Law Section.

After this review, the Board voted to support the rule proposal with the following amendments to address domestic violence concerns raised by the Access to Justice Policy Committee.

### **1. Add Domestic Violence Screening Requirements**

Because the Summary Support and Paternity Act provides for an expedited process with limited court involvement, adequate safeguards must be in place to screen for domestic violence. As currently proposed, the process does not require any domestic violence screening and permits the court to enter a consent order without a hearing, creating the possibility that an abuser may attempt to coerce the abused parent into signing a consent order. To address this concern, the Board recommends that MCR 3.230(H) require (1) at the commencement of the proceeding that both parties complete a domestic violence screening tool to be submitted to be filed with the court, and (2) that the court hold a hearing if domestic violence is indicated.

### **2. Require Agency to Inform Parties of Right to Opt Out of Process**

Under the Summary Support and Paternity Act, parties have the right to opt out of their obligation to cooperate with establishing paternity or support as a condition of receiving benefits. One basis to opt out is domestic violence. The IV-D agency should be required to inform the parties of the circumstances in which they can opt out and file a waiver with

the court signed by the parties indicating that they were informed of their right to opt out of the process.

### 3. Recommended Changes to Proposed MCR 3.230

To address these two concerns, MCR 3.230 should be amended as follows (added language shown in bold and underline and deletions shown in strikethrough):

[NEW] Rule 3.230 Actions Under the Summary Support and Paternity Act

(A) [No change.]

(B)(1) [No change.]

(2) **A IV-D agency shall also file a waiver signed by the parent receiving benefits for the child that the parent was advised of his/her obligation to comply with all requests for action and information and the right to submit a claim of good cause for not cooperating and that the parent has been advised of the process for submitting a good-cause claim.**

[Subsections 2-6 renumbered to 3-7, otherwise no changes.]

~~(7)~~(8) Request to Enter Consent Agreement. A request for entry of a consent judgment or order to initiate an expedited paternity or expedited support action shall:

(a) state the following:

- (i) the name and address of the court;
- (ii) the names and addresses of the parties;
- (iii) the name, address, and phone number of the IV-D agency filing the action; and
- (iv) the name and address of any attorney appearing in the matter.

(b) contain the grounds for jurisdiction, the statutory grounds to enter the judgment or order, and a request for entry of the judgment or order without further notice; and

(c) be accompanied by domestic violence screening forms. The domestic violence screening form shall be limited to reporting personal protection actions, domestic violence criminal actions, and child protective actions involving the parties and shall be on a form approved by the State Court Administrative Office. Each party must complete a separate form; and ~~(e)~~

(d) be signed by the parties and the IV-D agency.

[No changes to sections (C)-(G).]

(H) Judgements and Orders.

(1) [No change.]

(2) Entering Orders. The court may enter a proposed judgment or order submitted by the IV-D agency without hearing if the court is satisfied of all of the following:

- (a) that the parties were given proper notice and opportunity to file a response,
- (b) the statutory and rule requirements were met, ~~and~~
- (c) the terms of the judgment or order are in accordance with the law, and.

(d) Neither domestic violence screening forms identify domestic violence between the parties.

(3) The IV-D agency seeking entry of a proposed judgment or order must schedule a hearing and serve the motion, notice of hearing, and a copy of the proposed judgment or orders upon the parties at least 14 days before the hearing, and promptly file a proof of service when:

- (a) the proposed judgment involves a request for relief that is different from the relief requested in the complaint; ~~or~~
- (b) the IV-D agency does not have sufficient facts to complete the judgment or order without a judicial determination of the relief to which the party is entitled; ~~or~~

(c) a domestic violence screening form identifies domestic violence between the parties.

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

Sincerely,



Janet K. Welch  
Executive Director

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



p 517-346-6300

August 23, 2019

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Lansing, MI

48933-2012

**RE: ADM File No. 2018-02: Proposed Amendment of Rule 3.501 of the Michigan Court Rules**

Dear Clerk Royster:

At its July 26, 2019 meeting, the State Bar of Michigan Board of Commissioners (Board) considered the above-referenced proposed rule amendment published by the Court for comment. As part of its review, the Board considered recommendations from the Access to Justice Policy and Civil Procedure & Courts committees.

After this review, the Board voted to take no position on the policy underlying the rule proposal, but if the Court supports the policy, then the Board recommends that it adopt the following amendments to clarify the rule:

Rule 3.501 Class Actions

(A)– (C) [ Unchanged]

(D) Judgment.

(1)-(5) [Unchanged]

(6)

(a) “Residual Funds” are funds that remain after the payment of approved class member claims, expenses, litigation costs, attorney’s fees, and other court-approved disbursements made to implement the relief granted in the order entering judgment or approving a proposed settlement of a class action.

(b) Nothing in this rule is intended to limit the parties to a class action from proposing a settlement, or the court from entering a judgment or approving a settlement, that does not create Residual Funds.

(c) Any order entering a judgment or approving a proposed settlement of a class action certified under this rule that may result in the existence of Residual Funds shall provide for the disbursement of any such Residual

Funds. In matters where the claims process has been exhausted and Residual Funds remain, not less than fifty percent (50%) of the Residual Funds shall be disbursed to the Michigan State Bar Foundation to support activities and programs that promote access to the civil justice system for low income residents of Michigan, unless the court otherwise determines to disburse all Residual Funds to a foundation or not for profit organization that has a direct or indirect relationship to the underlying litigation or otherwise promotes the interests of the members of the certified class.

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

Sincerely,



Janet K. Welch  
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court  
Jennifer Grieco, President, State Bar of Michigan





p 517-346-6300

August 28, 2019

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Michigan Supreme Court  
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Lansing, MI

48933-2012

**RE: ADM File No. 2017-02: Proposed Amendment of Rule 6.508 of the Michigan Court Rules**

Dear Clerk Royster:

At its July 26, 2019 meeting, the State Bar of Michigan Board of Commissioners (Board) considered the above-referenced proposed rule amendment published by the Court for comment. As part of its review, the Board considered recommendations from the Access to Justice Policy Committee, Criminal Jurisprudence & Practice Committee, and Criminal Law Section, all of which supported the rule change.

After this review, the Board voted unanimously to support the rule amendment. The rule is consistent with a central tenet of our criminal justice system – that officers of court should provide accurate information upon which criminal defendants should be able to rely. When attorneys or judges fail to live up to this expectation, criminal defendants should have the opportunity to challenge the rejection of pleas based on incorrect information given to them. This rule amendment codifies what is already the current practice of many courts; however, for courts where this is not the practice, the rule amendment provides needed clarity.

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

Sincerely,

Janet K. Welch  
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court  
Jennifer Grieco, President, State Bar of Michigan



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48933-2012

August 23, 2019

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

**RE: ADM File No. 2018-30: Proposed Amendment of Rule 8.115 of the Michigan Court Rules**

Dear Clerk Royster:

At its July 26, 2019 meeting, the State Bar of Michigan Board of Commissioners (Board) considered the above-referenced proposed rule amendment published by the Court for comment. As part of its review, the Board considered recommendations from the Access to Justice Policy Committee, Civil Procedure & Courts Committee, Family Law Section, and Probate & Estate Planning Section.

After this review, the Board voted to support the rule amendment, which would provide a consistent portable electronic device policy across courts and allow non-attorneys access to such devices. While the Board recognizes that some of the provisions in the rule may be difficult to enforce, the benefits of the rule to the public far outweigh these concerns. Members of the public rely on their electronic devices to communicate and store vital information, such as documents they may need in court, calendar and contact information, and texts that are relevant to their cases. The rule will increase access to justice for all litigants, including self-represented litigants, and will also make it easier for other people to use the courts and participate as witnesses and jurors.

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

Sincerely,

Janet K. Welch  
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court  
Jennifer Grieco, President, State Bar of Michigan



p 517-346-6300

August 23, 2019

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Lansing, MI

48933-2012

**RE: ADM File No. 2018-28: Proposed Amendment of Local Court Rule 2.119 for the Court of Claims**

Dear Clerk Royster:

At its July 26, 2019 meeting, the State Bar of Michigan Board of Commissioners (Board) considered the above-referenced proposed rule amendment published by the Court for comment. As part of its review, the Board considered a recommendation from the Civil Procedure & Courts Committee.

After this review, the Board voted to unanimously support the rule amendment, as it would encourage cooperation between parties in Court of Claims proceedings by requiring the moving party to seek the concurrence of the opposing party in the relief sought prior to filing a motion.

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

Sincerely,

Janet K. Welch  
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court  
Jennifer Grieco, President, State Bar of Michigan



p 517-346-6300

p 800-968-1442

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48933-2012

August 23, 2019

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

**RE: M Crim JI 3.8  
M Crim JI 7.15, 7.16, 7.21, and 7.22  
M Crim JI 10.10, 10.10a, 10.10n, and 10.10c**

Dear Mr. Smith:

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

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

Sincerely,

Janet K. Welch  
Executive Director

cc: Jennifer M. Grieco, President



To: Board of Commissioners  
From: Governmental Relations Division Staff  
Date: September 16, 2019  
Re: Governmental Relations Update

---

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

### **COURT RULES**

**ADM 2018-13:** [Addition of MCR 3.224](#) (to make the ADR processes used by Friend of the Court offices more uniform)

This new rule involves alternative dispute resolution (ADR) procedures for friend of the court (FOC) proceedings. When the rule was published by the Court for comment, the State Bar supported the rule in principle, but [opposed the rule as drafted](#).

On July 24, 2019, the Court adopted a revised version of the new rule, MCR 3.224, that addresses several of the State Bar’s concerns.

- MCR 3.224(A)(8): The State Bar expressed concern about attorneys being able to attend and participate in the process. The Court revised subsection (A)(8) to explicitly provide that Court ADR Plans provide “that attorneys of record will be allowed to attend and participate in all friend of the court ADR process, or elect not to attend upon mutual agreement with opposing counsel and their client.”
- MCR 3.224(F)(1)(a), (G)(1)(a), and (H)(1)(a): The State Bar expressed concern that the proposed rules allowed ADR facilitators had too much discretion in screening for domestic violence by allowing facilitators to conduct a “reasonable inquiry” which could include the State Court Administrative Office domestic violence screening protocol. The rules as adopted take away this discretion and require ADR facilitators to use the SCAO domestic violence screening protocol.
- MCR 3.224(D)(1): In the adopted rules, the Court accepted the State Bar’s recommendation to expand the scope of situations that may not be referred to friend of court ADR without a hearing to include parties who are, *or have been*, subject to a personal protection order or other protective order . . .”

The new rule is effective on January 1, 2020.

### **Civil Discovery Resource Center**

As part of the State Bar’s efforts to prepare attorneys for the upcoming civil discovery rule changes, effective January 1, 2020, the State Bar has launched the [Civil Discovery Resource Center](#), which contains resources and events about the new civil discovery rules.

The State Bar is proud to be partnering with ICLE to film a webinar on the new civil discovery rules, featuring Dan Quick and Judge Christopher Yates, which will be available for free to all members in October 2019. The State Bar is also proud to be partnering with the Detroit Chapter of the Association of Certified e-Discovery Specialist (ACEDS) and attorneys from Dickinson Wright and Warner Norcross + Judd to provide members with the Civil Discovery Guidebook, which includes a foreword from Chief Justice Bridget M. McCormack. The Guidebook will be unveiled on September 27, 2019 at the ACEDS Symposium in Detroit.

The State Bar is also utilizing the *Michigan Bar Journal* (MBJ) to inform members about the new rules. For its September issue, MBJ published an [overview article](#) on the new rules, authored by Dan Quick. In the October issue, MBJ will publish short articles focusing on the changes to domestic relations and probate practice. In the November Children's Law themed issue, MBJ will publish an article about the changes to delinquency and child abuse & neglect proceedings.

## **LEGISLATION**

### **[HB 4378](#)** – Freedom of Information Act, Identity of Parties Proceeding Anonymously in Civil Actions

The State Bar supports the bill with an amendment that the exemptions set forth in the bill also apply to survivors of human trafficking.

On September 4, 2019, the bill passed out of the House (109-0) without an amendment to include human trafficking victims. The bill has moved to the Senate where it has been referred to the Committee on Government Operations.

### **[SB 76](#)** – Exception to Jury Service for Address Confidentiality Program Participants

The State Bar opposed the bill because it creates an addition exemption to jury service which courts already have the ability to address by excusing these individuals from jury service on a case-by-case basis.

On September 5, 2019, the Committee on Judiciary and Public Safety held a hearing on the bill, which had widespread support. The State Bar expressed its opposition to the jury exemption provision.

### **Trial Court Funding Commission**

On September 6, 2019, the Trial Court Funding Commission held its final meeting and issued its final report.

# Order

Michigan Supreme Court  
Lansing, Michigan

June 19, 2019

Bridget M. McCormack,  
Chief Justice

ADM File No. 2018-36

David F. Viviano,  
Chief Justice Pro Tem

Proposed Amendment of  
Rule 3.802 of the Michigan  
Court Rules

---

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

On order of the Court, this is to advise that the Court is considering an amendment of Rule 3.802 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at [Administrative Matters & Court Rules page](#).

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

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

## Rule 3.802 Manner and Method of Service

### (A) Service of Documents.

(1) [Unchanged.]

(2) Notice of a petition to identify a putative father and to determine or terminate his rights, or a petition to terminate the rights of a ~~noncustodial~~ parent under MCL 710.51(6), must be served on the individual or the individual's attorney in the manner provided in:

(a)-(b) [Unchanged.]

(3)-(4) [Unchanged.]

(B) Service When Identity or Whereabouts of Father ~~are~~ Unascertainable

(1)-(2) [Unchanged.]

(C) Service When Whereabouts of ~~Noncustodial~~ Parent ~~are~~ Unascertainable. If service of a petition to terminate the parental rights of a ~~noncustodial~~ parent pursuant to MCL 710.51(6) cannot be made under subrule (A)(2) because the whereabouts of ~~that the noncustodial~~ parent ~~have~~ has not been ascertained after diligent inquiry, the petitioner must file proof of the efforts made to locate ~~that the noncustodial~~ parent in a statement made under MCR 1.109(D)(3). If the court finds, on reviewing the statement, that service cannot be made because the whereabouts of the person ~~have~~ has not been determined after reasonable efforts, the court may direct any manner of substituted service of the notice of hearing, including service by publication.

(D) [Unchanged.]

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

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

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by October 1, 2019, at P.O. Box 30052, Lansing, MI 48909, or [ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov). When filing a comment, please refer to ADM File No. 2018-36. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



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

June 19, 2019

Clerk



# Order

Michigan Supreme Court  
Lansing, Michigan

June 12, 2019

Bridget M. McCormack,  
Chief Justice

ADM File No. 2015-21

David F. Viviano,  
Chief Justice Pro Tem

Amendments of Rules 3.965,  
3.971, 3.972, 3.973, and 3.993  
of the Michigan Court Rules

---

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

On order of the Court, this is to advise that the amendments of Rules 3.965, 3.971, 3.972, 3.973, and 3.993 of the Michigan Court Rules are adopted, effectively immediately. This notice is given to afford interested persons the opportunity to comment on the form or the merits of the amendments. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at [Administrative Matters & Court Rules page](#).

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

## Rule 3.965 Preliminary Hearing

(A) [Unchanged.]

(B) Procedure.

(1)-(14) [Unchanged.]

(15) If the court orders removal of the child from a parent's care or custody, the court shall advise the parent, guardian, or legal custodian of the right to appeal that action.

(C)-(D) [Unchanged.]

## Rule 3.971 Pleas of Admission or No Contest

(A) [Unchanged.]

(B) Advice of Rights and Possible Disposition. Before accepting a plea of admission or plea of no contest, the court must advise the respondent on the record or in a writing that is made a part of the file:

(1)-(4) [Unchanged.]

- (5) if parental rights are subsequently terminated, the obligation to support the child will continue until a court of competent jurisdiction modifies or terminates the obligation, an order of adoption is entered, or the child is emancipated by operation of law. Failure to provide required notice under this subsection does not affect the obligation imposed by law or otherwise establish a remedy or cause of action on behalf of the parent;
- (6) that appellate review is available to challenge a court's initial order of disposition following adjudication, and such a challenge can include any issues leading to the disposition, including any errors in the adjudicatory process;
- (7) that an indigent respondent is entitled to appointment of an attorney to represent the respondent on appeal of the initial dispositional order and to preparation of relevant transcripts; and
- (8) the respondent may be barred from challenging the assumption of jurisdiction in an appeal from the order terminating parental rights if they do not timely file an appeal of the initial dispositional order under MCR 3.993(A)(1), 3.993(A)(2), or a delayed appeal under MCR 3.993(C).
- (C) Right to Appellate Review. The respondent may challenge the assumption of jurisdiction in an appeal from the order terminating respondent's parental rights if the respondent's parental rights are terminated at the initial dispositional hearing pursuant to MCR 3.977(E). In addition, the respondent may challenge the assumption of jurisdiction in an appeal from the order terminating respondent's parental rights if the court fails to properly advise the respondent of their right to appeal pursuant to subrule (B)(6)-(8).
- (D) [Relettered but otherwise unchanged.]

#### Rule 3.972 Trial

(A)-(E) [Unchanged.]

- (F) Respondent's Rights Following Trial and Possible Disposition. If the trial results in a verdict that one or more statutory grounds for jurisdiction has been proven, the court shall advise the respondent orally or in writing that:
- (1) appellate review is available to challenge a court's assumption of jurisdiction in an appeal of the initial order of disposition,
- (2) that an indigent respondent is entitled to appointment of an attorney to

represent the respondent on appeal and to preparation of relevant transcripts, and

(3) the respondent may be barred from challenging the assumption of jurisdiction if they do not timely file an appeal under MCR 3.993(A)(1), 3.993(A)(2), or a delayed appeal under MCR 3.993(C).

(G) Right to Appellate Review. The respondent may challenge the assumption of jurisdiction in an appeal from the order terminating respondent's parental rights if the respondent's parental rights are terminated at the initial dispositional hearing pursuant to MCR 3.977(E). In addition, the respondent may challenge the assumption of jurisdiction in an appeal from the order terminating respondent's parental rights if the court fails to properly advise the respondent of their right to appeal pursuant to subrule (F)(1)-(3).

#### Rule 3.973 Dispositional Hearing

(A)-(F) [Unchanged.]

(G) Respondent's Rights Upon Entry of Dispositional Order. When the court enters an initial order of disposition following adjudication the court shall advise the respondent orally or in writing:

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

(2) that appellate review is available to challenge both an initial order of disposition following adjudication and any order removing a child from a parent's care and custody,

(3) that an indigent respondent is entitled to appointment of an attorney to represent the respondent on any appeal as of right and to preparation of relevant transcripts, and

(4) the respondent may be barred from challenging the assumption of jurisdiction or the removal of the minor from a parent's care and custody in an appeal from the order terminating parental rights if they do not timely file an appeal under MCR 3.993(A)(1), 3.993(A)(2), or a delayed appeal under MCR 3.993(C).

(H) Right to Appellate Review. The respondent may challenge the assumption of jurisdiction in an appeal from the order terminating respondent's parental rights if the respondent's parental rights are terminated at the initial dispositional hearing pursuant to MCR 3.977(E). In addition, the respondent may challenge the assumption of jurisdiction in an appeal from the order terminating respondent's parental rights if the court fails to properly advise the respondent of their right to appeal pursuant to subrule (G)(2)-(4).

(G)-(H) [Relettered (I)-(J) but otherwise unchanged.]

### Rule 3.993 Appeals

(A) The following orders are appealable to the Court of Appeals by right:

- (1) any order removing a child from a parent's care and custody,
- (2) an initial order of disposition following adjudication in a child protective proceeding,
- (34) an order of disposition placing a minor under the supervision of the court in a delinquency proceeding~~or removing the minor from the home,~~

(2)-(5) [Renumbered (4)-(7) but otherwise unchanged.]

In any appeal as of right, an indigent respondent is entitled to appointment of an attorney to represent the respondent on appeal and to preparation of relevant transcripts.

(B)-(C) [Unchanged.]

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

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

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the amendment may be sent to the Supreme Court Clerk in writing or electronically by October 1, 2019, at P.O. Box 30052, Lansing, MI 48909, or [ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov). When filing a comment, please refer to ADM File No. 2015-21. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#)



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

June 12, 2019

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

Clerk

**Public Policy Position**  
**ADM File No. 2015-21 – Amendments of MCR 3.965, 3.971, 3.972, 3.973, and**  
**3.993**

**Support**

**Explanation**

The court rule amendments provide explicit notice to parents about the right to appeal decisions related to removal or termination of rights. These rights to appeal were the subject of a recent Michigan Supreme Court decision, *In re Ferranti*. Such notices will assist in ensuring more meaningful access to justice. The committee voted unanimously to support these amendments.

These court amendments further access to justice by filling gaps in due process for respondents who have barriers to the legal system. Due process prevents the erroneous deprivation of “the fundamental right of parents to make decisions concerning the care, custody, and control of their children.” *Troxel v. Granville*, 530 U.S. 57 (2000). The statements required by the court further due process by guaranteeing actual notice for all litigants, which is especially important for populations that face barriers to the legal system. The explicit notice of the right to an appointed attorney allows an indigent respondent the opportunity to correct any error left unaddressed by the barriers. Parents involved in child welfare proceedings who experience poverty, disability, or health challenges can feel overwhelmed and lost in the systemic structure. These rules will ensure that these litigants are not left in the dark about critical deadlines that can permanently alter their ability to parent their children.

As these changes are put into practice, courts should take special care to ensure that these advisories are understood by stating them clearly, asking follow-up questions, and ensuring that interpreters and hearing support services are provided when needed.

**Position Vote:**

Voted for position: 16

Voted against position: 0

Abstained from vote: 2

Did not vote (absent): 5

**Contact Persons:**

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

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

**Public Policy Position  
ADM File No. 2015-21**

**Support**

**Explanation**

The Appellate Practice Section of the State Bar of Michigan strongly supports ADM No. 2015-21. As the staff comment recognizes, it is critical that parties facing the potential termination of their parental rights be advised of their right to appeal a child's removal from the home, the assumption of jurisdiction over the child, and the court's initial dispositional order—including their right to the assistance of counsel in doing so—and that failing to file an immediate appeal may preclude them from later challenging the court's assumption of jurisdiction over the child.

**Position Vote:**

Voted For position: 21

Voted against position: 0

Abstained from vote: 1

Did not vote (absent): 1

**Contact Person:** Bridget Brown Powers

**Email:** [bbrownpowers@brownpowers.com](mailto:bbrownpowers@brownpowers.com)

**From:** [Hamilton, Scott T](#)  
**To:** [ADMcomment](#)  
**Subject:** 2015-21: New court rules based on In re Ferranti  
**Date:** Thursday, June 20, 2019 9:50:05 AM

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To whom it may concern:

QUESTION #1: The new rules establish an appeal as of right from “any order removing a child from a parent’s care and custody.” New rule 3.965(B)(15) requires a court to advise parents of this right if the court removes a child at a preliminary hearing. There is no similar provision in 3.974(C)(3)(b). Or, for that matter, MCR 3.963(B). Why not?

QUESTION #2: New rule 3.965(B)(15) only requires that the court advise the parent that the parent, guardian or legal custodian has a right to appeal an order of removal. There is no requirement that the court notify the parent of anything else, such as the rights the court must read in new rule 3.971(B)(7) and (8), and new rule 3.973(G)(3) and (4). Why not?

QUESTION #3: Let’s say a parent went through an adjudication trial and all sorts of evidentiary errors occurred over the respondent’s attorney’s objections. After the verdict (jury trial) or judgment (bench trial) of “responsible for child abuse or neglect under MCL 712A.2(b)”, the court reads the respondent their rights to appeal the adjudication just like the new court rules require. The respondent chooses not to appeal, and goes ahead with disposition. Again, at initial disposition, the court follows the new advice of rights rules. Ultimately, subsequent hearings lead to a supplemental petition for termination, and the court does terminate rights in a later proceeding. The parent appeals the termination order and, in that appeal, challenges the court’s assumption of jurisdiction over the children in the original 712A.2(b) trial, citing all those evidentiary errors the court made. Under *Hatcher*, that challenge is defeated by the “no collateral attack” rule. Under these new court rules, can the parent win that appeal if the errors were significant enough not to be harmless? Or, would new rule 3.971(B)(8) and/or 3.972(H) prevent them from winning that appeal (they didn’t appeal “timely”, or, the appeal isn’t based on a “fail[ure] to properly advise the respondent of their right to appeal”)?

QUESTION #4: Does the new MCR 3.993(A)(1-3) remove an appeal of right? New section (A)(1) applies only to an order removing a “child” (NA cases), not a “juvenile” (DL cases) or a “minor” (both NA and DL cases). Old section (A)(1) allowed appeals of right for a disposition order and a removal order for “minors”. It now appears that a juvenile has no right to appeal an order removing him or her from home in a DL case.

Thank you,

**Scott T. Hamilton**

Manager, Judicial Support/Judicial Assistant  
6<sup>th</sup> Judicial Circuit Court – Family Division  
1200 N. Telegraph Road  
Pontiac, Michigan 48341  
(248) 858-0977



**From:** [Brown, Peter](#)  
**To:** [ADMcomment](#)  
**Subject:** Amendments of MCR 3.965, 3.971, 3.972, 3.973, and 3.993  
**Date:** Wednesday, September 11, 2019 4:58:00 PM

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MCR 3.977(J)(2) (Appointment of Attorney) gives clear guidance on how a Court must process an appeal after a termination of parental rights. MCR 3.977(J)(2)(b) provides that the entry of the order (Claim of Appeal and Order Appointing Counsel – JC84) by the trial court constitutes a timely filed claim of appeal under MCR 7.204. The JC 84 used in a termination of parental rights case appoints the attorney, orders the transcripts and perfects the appeal of right.

There is no corresponding court rule and court form for any other appeal as of right under the new appellate court rules. This creates confusion with court appointed appellate lawyers, court reporters and court clerks because the process is different than a termination.

In the hanging paragraph that sits between MCR 7.204 (A)(1)(d) and 7.204(A)(2), which we affectionately refer to as the “hanging paragraph rule,” forces the court appointed appellate attorney to perfect the appeal rather than the Court.. If this was in fact the intended process then we need a corresponding court form that makes it simple for the court appointed appellate attorney to perfect the other appeals as of right.

From an administrative point of view in handling indigent appeals, we suggest a corresponding rule to make the process the same as a termination appeal and an accompanying court form similar to the JC 84. In the alternative, create a new court form to fit the hanging paragraph rule similar to the MC 55.

R. Porter and P. Brown  
Attorney Referees  
Ingham County Circuit Court-Family Division

# Order

Michigan Supreme Court  
Lansing, Michigan

June 5, 2019

Bridget M. McCormack,  
Chief Justice

ADM File No. 2018-23

David F. Viviano,  
Chief Justice Pro Tem

Proposed Alternative  
Amendments of Rule  
6.610 of the Michigan  
Court Rules

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

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

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

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

## **ALTERNATIVE A**

Rule 6.610 Criminal Procedure Generally

(A)-(D) [Unchanged.]

(E) Discovery in Misdemeanor Proceedings.

- (1) The provisions of MCR 6.201, except for MCR 6.201(A), apply in all misdemeanor proceedings.
- (2) MCR 6.201(A) only applies in misdemeanor proceedings, as set forth in this subrule, if a defendant elects to request discovery pursuant to MCR 6.201(A). If a defendant requests discovery pursuant to MCR 6.201(A) and the prosecuting attorney complies, then the defendant must also comply with MCR 6.201(A).

(E)-(H) [Relettered (F)-(I) but otherwise unchanged.]

**ALTERNATIVE B**

## Rule 6.610 Criminal Procedure Generally

(A)-(E) [Unchanged.]

(F) Discovery

- (1) At any time before trial the prosecutor must, on request:
  - (a) permit the defendant or defense counsel to inspect the police investigatory reports; and
  - (b) provide the defendant or defense counsel any exculpatory information or evidence known to the prosecuting attorney.
- (2) Once a case is set for trial, the prosecutor must, on request, provide to defendant or defense counsel:
  - (a) a copy of the police investigatory reports, as well as copies of any dashcam, bodycam, or other video the prosecution intends to use at trial;
  - (b) any written or recorded statements by a defendant, codefendant, or accomplice pertaining to the case, even if that person is not a prospective witness at trial; and
  - (c) any affidavit, warrant, and return pertaining to a search or seizure in connection with the case.
- (3) Each party must, on request, provide the names and addresses of all lay and expert witnesses whom the party may call at trial; in the alternative, a party may provide the name of the witness and make the witness available to the other party for interview.
- (4) Any other discovery must be by consent of the parties or by motion to the court on good cause shown.
- (5) This rule is applicable only to proceedings under this subchapter.

(F)-(H) [Relettered (G)-(I) but otherwise unchanged.]

*Staff Comment:* The proposed alternative amendments of MCR 6.610 would allow discovery in misdemeanor proceedings in the district court. Alternative A would create a structure similar to the federal rules (FR Crim P 16[b]) in which a defendant's duty to provide certain discovery would be triggered only if defense counsel first requested discovery from the prosecution, and the prosecution complied. Alternative B is a proposal recommended by the Prosecuting Attorneys Association of Michigan in its comment on the original proposal published for comment in this file.

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

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by October 1, 2019, at P.O. Box 30052, Lansing, MI 48909, or [ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov). When filing a comment, please refer to ADM File No. 2018-23. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



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

June 5, 2019

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

Clerk

**Public Policy Position  
ADM File No. 2018-23**

**Support Alternative A**

**Explanation**

The committee supports Alternative A as the cleaner option that will facilitate discovery in a manner that can help expedite cases in district courts. Alternative B creates two different classes of defendants and opens the door to defendants not receiving discovery. It should be the assumption and practice that discovery is shared between prosecutors and defense attorneys.

**Position Vote:**

Voted For position: 9

Voted against position: 1

Abstained from vote: 0

Did not vote (absent): 7

**Contact Person:**

Sofia V. Nelson

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

**From:** [Andrew Stacer](#)  
**To:** [ADMcomment](#)  
**Subject:** Misdemeanor Discovery Rules  
**Date:** Monday, June 24, 2019 3:40:57 PM

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I would like to encourage the MSC to adopt Proposal A, Proposal B is to convoluted.

Thank you.

Andrew D. Stacer  
Stacer, PLC  
472 Starkweather St.  
Plymouth, MI 48170 USA

**THIS IS A NEW ADDRESS AS OF March 26, 2018**  
**Prior address of 352 N Main, Ste 4 is no longer any good.**

Phone 734-453-7878

Fax 734-468-1515

[www.stacerplc.com](http://www.stacerplc.com)



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**From:** [Joanne Adam](#)  
**To:** [ADMcomment](#)  
**Subject:** Discovery Rule  
**Date:** Friday, June 7, 2019 7:34:51 PM

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I believe the current rule is sufficient and none should be added or changed.

Joanne V Adam

Attorney at Law

[jvadamlaw@gmail.com](mailto:jvadamlaw@gmail.com)   [joanneva@icloud.com](mailto:joanneva@icloud.com)

Mailing only: 5859 W Saginaw, #117, Lansing, MI, 48917

(517) 886-3600

Sent from iCloud

**From:** [paul.attorneyhughes.com](http://paul.attorneyhughes.com)  
**To:** [ADMcomment](#)  
**Subject:** Misdemeanor Discovery  
**Date:** Wednesday, June 5, 2019 3:04:43 PM

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Please note that I support Alternative "A". Discovery is crucial for expediting cases in District Court.

Paul M. Hughes, Esq.  
P 36421



# Order

Michigan Supreme Court  
Lansing, Michigan

November 28, 2018

Stephen J. Markman,  
Chief Justice

ADM File No. 2018-23

Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano  
Richard H. Bernstein  
Kurtis T. Wilder  
Elizabeth T. Clement,  
Justices

Proposed Amendment of Rule 6.001  
of the Michigan Court Rules

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On order of the Court, this is to advise that the Court is considering amendment of MCR 6.001. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at [Administrative Matters & Court Rules page](#).

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

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

Rule 6.001 Scope; Applicability of Civil Rules; Superseded Rules and Statutes

(A) [Unchanged.]

(B) Misdemeanor Cases. MCR 6.001-6.004, 6.005(B) and (C), 6.006, 6.101, 6.102(D) and (F), 6.103, 6.104(A), 6.106, 6.125, 6.201, 6.202, 6.425(E)(3), 6.427, 6.435, 6.440, 6.445(A)-(G), and the rules in subchapter 6.600 govern matters of procedure in criminal cases cognizable in the district courts.

(C)-(E)[Unchanged.]

*Staff Comment:* The proposed amendment of MCR 6.001 would allow for discovery in criminal cases heard in district court to the same extent that it is available for criminal cases heard in circuit court. The proposal was submitted by the Michigan District Judges Association. The MDJA noted that although many prosecutors provide

discovery, there is no rule mandating it. The MDJA also noted that if the general discovery rule (MCR 6.201) is made applicable to district court criminal cases, subsection (I) could be used to limit its application where full-blown discovery may not be appropriate.

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

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by March 1, 2019, at P.O. Box 30052, Lansing, MI 48909, or [ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov). When filing a comment, please refer to ADM File No. 2018-23. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



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

November 28, 2018

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

Clerk

p 517-346-6300

March 12, 2019

p 800-968-1442

f 517-482-6248

www.michbar.org

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

306 Townsend Street

Michael Franck Building

Lansing, MI

48933-2012

**RE: ADM File No. 2018-23: Proposed Amendment of Rule 6.001 of the Michigan Court Rules**

Dear Clerk Royster:

At its March 8, 2019 meeting, the State Bar of Michigan Board of Commissioners (Board) considered the above-referenced proposed rule amendments published by the Court for comment. As part of its review, the Board considered recommendations from the Criminal Jurisprudence & Practice Committee, the Criminal Law Section, and the numerous other comments that have been submitted to the Court.

After this review, the Board voted unanimously to support in principle expanding access to discovery in criminal cases pending in district court. The Board, however, encourages the Court to reconsider this proposal in light of the numerous thoughtful comments that have been submitted to the Court by both prosecutors and criminal defense attorneys. While some comments have raised concerns about the increased burden on prosecutors in providing discovery in district court cases, the Board notes that the expanded use of electronic discovery may lessen this burden.

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

Sincerely,



Janet K. Welch  
Executive Director

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

# Order

Michigan Supreme Court  
Lansing, Michigan

June 19, 2019

Bridget M. McCormack,  
Chief Justice

ADM File No. 2019-02

David F. Viviano,  
Chief Justice Pro Tem

Proposed Amendment of  
Rule 9.123 of the Michigan  
Court Rules

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

On order of the Court, this is to advise that the Court is considering an amendment of Rule 9.123 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at [Administrative Matters & Court Rules page](#).

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

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

## Rule 9.123 Eligibility for Reinstatement

- (A) Suspension, 179 Days or Less. An attorney whose license has been suspended for 179 days or less pursuant to disciplinary proceedings may be~~is~~ automatically reinstated in accordance with this rule. The attorney may file, not sooner than 7 days before the last day of the suspension, with the board and serve on the administrator by filing with the Supreme Court clerk, the board, and the administrator~~an affidavit showing that the attorney has fully complied with all requirements~~the terms and conditions of the suspension order. The affidavit must contain a statement that the attorney will continue to comply with the suspension order until the attorney is reinstated. A materially false statement contained in the affidavit is~~ground for disbarment~~a basis for an action by the administrator and additional discipline. Within 7 days after the filing of the affidavit, the administrator may file with the board and serve on the attorney an objection to reinstatement based on the attorney's failure to demonstrate compliance with the suspension order. If the administrator files an objection, an order of reinstatement will be issued only

after the board makes a determination that the attorney has complied with the suspension order. If the administrator does not file an objection and the board is not otherwise apprised of a basis to conclude that the attorney has failed to comply with the suspension order, the board must promptly issue an order of reinstatement. The order must be filed and served under MCR 9.118(F).

(B)-(D) [Unchanged.]

(E) Abatement or Modification of Conditions of Discipline or Reinstatement. When a condition has been imposed in an order of discipline or in an order of reinstatement, the attorney may request an order of abatement discharging the lawyer from the obligation to comply with the condition, or an order modifying the condition. The attorney may so request either before or with the attorney's affidavit of compliance under MCR 9.123(A) or petition for reinstatement under MCR 9.123(B). The request may be granted only if the attorney shows by clear and convincing evidence that a timely, good-faith effort has been made to meet the condition but it is impractical to fulfill the condition.

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

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

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by October 1, 2019, at P.O. Box 30052, Lansing, MI 48909, or [ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov). When filing a comment, please refer to ADM File No. 2019-02. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



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

June 19, 2019

Clerk



To: Members of the Public Policy Committee  
Board of Commissioners

From: Kathryn L. Hennessey, Public Policy Counsel

Date: September 13, 2019

Re: Background on ADM 2018-31 (Proposed Amendments to State Bar Rule 2)

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Rule 2 of the Rules Concerning the State Bar of Michigan (SBR 2) governs membership in the State Bar of Michigan.

The Michigan Supreme Court is transitioning to rely more heavily on electronic, rather than paper, information, including implementing a statewide e-filing system. To assist with these efforts, the Court has proposed amendments to SBR 2 to require attorney members to provide both a physical address and an email address where service can be effectuated. In addition, to assist the State Bar of Michigan's transition to its online dues payment system, the proposed amendments also allow email addresses to be used for the annual dues statement.

In an effort to update the rule, the proposed amendments also recognize the different types of memberships currently available through the State Bar pursuant to court rule – attorney, emeritus, law student, and affiliate – and begin to clarify the requirements that only apply to attorney members.

# Order

Michigan Supreme Court  
Lansing, Michigan

June 5, 2019

Bridget M. McCormack,  
Chief Justice

ADM File No. 2018-31

David F. Viviano,  
Chief Justice Pro Tem

Proposed Amendment of Rule  
2 of the Rules Concerning the  
State Bar of Michigan

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

On order of the Court, this is to advise that the Court is considering an amendment of Rule 2 of the Rules Concerning the State Bar of Michigan. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at [Administrative Matters & Court Rules page](#).

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

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

## Rule 2 Membership

Subject to the provisions of these rules,~~Those persons who are licensed to practice law in this state shall constitute~~ the membership of the State Bar of Michigan shall include active, inactive, law student, affiliate, and emeritus members as defined by Rule 3,~~subject to the provisions of these rules. Law students may become law student section members of the State Bar.~~ None other than a member's correct name shall be entered upon the official register of attorneys of this state. Each attorney member, upon admission to the State Bar and in the annual dues notice statement, must provide the State Bar with the member's correct name, physical address, and email address(es), that can be used, among other things, for the annual dues notice and to effectuate electronic service as authorized by court rule, and such additional information as may be required. If the physical address provided is a mailing address only, the attorney member also must provide a street or building address for the member's business or residence. No attorney member shall practice law in this state until thesuch information required in this Rule has been provided. Members shall ~~notify the State Bar promptly~~ update the State Bar within writing of any change of name,

physical address, or email address. The State Bar shall be entitled to due notice of, and to intervene and be heard in, any proceeding by a member to alter or change the member's name. The name and address on file with the State Bar at the time shall control in any matter arising under these rules involving the sufficiency of notice to a member or the propriety of the name used by the member in the practice of law or in a judicial election or in an election for any other public office. Every active member shall annually provide a certification as to whether the member or the member's law firm has a policy to maintain interest-bearing trust accounts for deposit of client and third-party funds. The certification shall be ~~included~~ placed on the face of the annual dues notice and shall require the member's signature or electronic signature.

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

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

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by October 1, 2019, at P.O. Box 30052, Lansing, MI 48909, or [ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov). When filing a comment, please refer to ADM File No. 2018-31. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



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

June 5, 2019

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

Clerk





To: Members of the Public Policy Committee  
Board of Commissioners

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

Date: September 19, 2019

Re: HB 4351 – HB 4360: Pretrial Detention Legislation

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### **Background**

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **HB 4352**

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

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

#### **HB 4353**

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

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

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

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

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

#### **HB 4354**

Discussed with HB 4351 above.

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

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

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

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

#### **HB 4357**

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

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

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

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

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

#### **HB 4360**

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

*Keller* Quick Guide

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

**Staff Recommendation**

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

## House Bill 4351 (2019) rss?

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

### Sponsors

David LaGrand (district 75)

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

### Categories

Criminal procedure: bail;

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

### Bill Documents

Bill Document Formatting Information

[x]

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

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

### Documents



#### House Introduced Bill

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



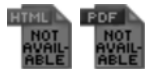
#### As Passed by the House

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



#### As Passed by the Senate

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



#### House Enrolled Bill

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

### Bill Analysis

### History

(House actions in lowercase, Senate actions in UPPERCASE)

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

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

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# HOUSE BILL No. 4351

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

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

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

CHAPTER V

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## House Bill 4352 (2019) rss?

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

### Sponsors

Ronnie Peterson (district 54)

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

### Categories

Criminal procedure: bail;

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

### Bill Documents

Bill Document Formatting Information

[x]

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

### Documents



#### House Introduced Bill

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#### As Passed by the House

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#### As Passed by the Senate

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#### House Enrolled Bill

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

### Bill Analysis

### History

(House actions in lowercase, Senate actions in UPPERCASE)

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

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

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# HOUSE BILL No. 4352

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

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

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

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CHAPTER V

**SEC. 6F. (1) WHEN FIXING THE AMOUNT OF BAIL UNDER THIS  
CHAPTER, THE COURT SHALL NOT SET A FINANCIAL CONDITION OF RELEASE  
BASED ON A PREESTABLISHED BAIL SCHEDULE, SUCH AS A SCHEDULE OF BOND  
AMOUNTS FIXED ACCORDING TO THE NATURE OF THE CHARGE.**

**(2) IF THE COURT DETERMINES THAT A DEFENDANT WILL BE RELEASED  
OTHER THAN ON A PERSONAL RECOGNIZANCE OR UNSECURED BOND WITHOUT  
SPECIAL CONDITIONS, THE COURT SHALL IMPOSE ON THE DEFENDANT THE  
LEAST ONEROUS CONDITION OR COMBINATION OF CONDITIONS OF RELEASE**

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

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

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

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

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

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

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

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

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

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



## House Bill 4353 (2019) rss?

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

### Sponsors

Gary Howell (district 82)

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

### Categories

Crimes: penalties; Criminal procedure: bail;

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

### Bill Documents

Bill Document Formatting Information

[x]

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

### Documents



#### House Introduced Bill

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#### As Passed by the House

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



#### As Passed by the Senate

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



#### House Enrolled Bill

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

### Bill Analysis

### History

(House actions in lowercase, Senate actions in UPPERCASE)

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

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

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# HOUSE BILL No. 4353

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

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

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

CHAPTER V

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

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

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

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

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

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

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

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

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

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

## House Bill 4354 (2019) rss?

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

### Sponsors

Scott VanSingel (district 100)

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

### Categories

Criminal procedure: bail;

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

### Bill Documents

Bill Document Formatting Information

[x]

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### Documents



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#### As Passed by the Senate

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



#### House Enrolled Bill

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

### Bill Analysis

### History

(House actions in lowercase, Senate actions in UPPERCASE)

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

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

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# HOUSE BILL No. 4354

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

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

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

CHAPTER V

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

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

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

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

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

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

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



## House Bill 4355 (2019) rss?

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

### Sponsors

Sheldon Neeley (district 34)

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

### Categories

Criminal procedure: bail;

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

### Bill Documents

Bill Document Formatting Information

[x]

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

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

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

### Documents



#### House Introduced Bill

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



#### As Passed by the House

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



#### As Passed by the Senate

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



#### House Enrolled Bill

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

### Bill Analysis

### History

(House actions in lowercase, Senate actions in UPPERCASE)

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

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# HOUSE BILL No. 4355

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

A bill to amend 1961 PA 44, entitled

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

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

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

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

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

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

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

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

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

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

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

## House Bill 4356 (2019) rss?

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

### Sponsors

Steven Johnson (district 72)

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

(click name to see bills sponsored by that person)

### Categories

Criminal procedure: bail; Criminal procedure: other;

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

### Bill Documents

Bill Document Formatting Information

[x]

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

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

### Documents



#### House Introduced Bill

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



#### As Passed by the House

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



#### As Passed by the Senate

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



#### House Enrolled Bill

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

### Bill Analysis

### History

(House actions in lowercase, Senate actions in UPPERCASE)

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

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

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# HOUSE BILL No. 4356

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

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

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

CHAPTER IV

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



1 custody.

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

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

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

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

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

1 bond or other condition of release.

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

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

## House Bill 4357 (2019) rss?

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

### Sponsors

Tommy Brann (district 77)

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

### Categories

Criminal procedure: bail; Family law: child support;

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

### Bill Documents

Bill Document Formatting Information

[x]

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

- New language in an amendatory bill will be shown in **BOLD AND UPPERCASE**.
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### Documents



#### House Introduced Bill

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



#### As Passed by the House

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



#### As Passed by the Senate

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



#### House Enrolled Bill

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

### Bill Analysis

### History

(House actions in lowercase, Senate actions in UPPERCASE)

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

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

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# HOUSE BILL No. 4357

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

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

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

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

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

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

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

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

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

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

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

## House Bill 4358 (2019) rss?

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

### Sponsors

LaTanya Garrett (district 7)

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

### Categories

Criminal procedure: bail; Courts: circuit court;

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

### Bill Documents

Bill Document Formatting Information

[x]

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

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

### Documents



#### House Introduced Bill

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



#### As Passed by the House

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



#### As Passed by the Senate

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



#### House Enrolled Bill

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

### Bill Analysis

### History

(House actions in lowercase, Senate actions in UPPERCASE)

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



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

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# HOUSE BILL No. 4358

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

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

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

CHAPTER V

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

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

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

## House Bill 4359 (2019) rss?

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

### Sponsors

Tenisha Yancey (district 1)

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

### Categories

Criminal procedure: bail; Courts: circuit court;

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

### Bill Documents

Bill Document Formatting Information

[x]

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

### Documents



#### House Introduced Bill

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



#### As Passed by the House

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



#### As Passed by the Senate

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



#### House Enrolled Bill

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

### Bill Analysis

### History

(House actions in lowercase, Senate actions in UPPERCASE)

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

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

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# HOUSE BILL No. 4359

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

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

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

CHAPTER V

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

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

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

## House Bill 4360 (2019) rss?

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

### Sponsors

Beau LaFave (district 108)

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

### Categories

Traffic control: driver license; Criminal procedure: bail;

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

### Bill Documents

Bill Document Formatting Information

[x]

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

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

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

### Documents



#### House Introduced Bill

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



#### As Passed by the House

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



#### As Passed by the Senate

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



#### House Enrolled Bill

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

### Bill Analysis

### History

(House actions in lowercase, Senate actions in UPPERCASE)

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



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

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# HOUSE BILL No. 4360

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

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

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

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

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

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

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

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

**Support**

**Explanation**

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

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

**Position Vote:**

Voted for position: 16

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 7

**Keller Permissibility:**

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

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

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

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

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

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

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

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

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

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

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

**Contact Persons:**

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

**Explanation**

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

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

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

**Position Vote:**

Voted For position: 8

Voted against position: 4

Abstained from vote: 0

Did not vote (absent): 5

**Keller Explanation:**

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

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**FROM THE COMMITTEE  
ON MODEL CRIMINAL  
JURY INSTRUCTIONS**

=====

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by October 1, 2019. Comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to [MCrimJI@courts.mi.gov](mailto:MCrimJI@courts.mi.gov) .

=====

**PROPOSED**

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

**[NEW] M Crim JI 3.33 Verdict Form (Open Murder)**

Defendant: \_\_\_\_\_

Count No. \_\_\_ Charging open murder involving the death of [*name decedent*]

**POSSIBLE VERDICTS:**

You may return only one verdict on this count. Mark only one line on this sheet.

[*Select from the options provided to the jury*]

- Not guilty
- Guilty of first-degree premeditated murder
- Guilty of first-degree felony murder

\_\_\_ Guilty of first-degree premeditated murder and first-degree felony murder

\_\_\_ Guilty of the lesser offense of second-degree murder

\_\_\_ Guilty of the lesser offense of [manslaughter / voluntary manslaughter / involuntary manslaughter]

**~~M Crim JI 16.24 Degrees of Murder~~**

~~If you find the defendant guilty of murder, you must state in your verdict whether it is murder in the first degree or murder in the second degree.~~



**Public Policy Position**  
**M Crim JI 3.33**

**Explanation**

The committee supports the model criminal jury instructions as drafted.

**Position Vote:**

Voted for position: 11

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 7

**Contact Persons:**

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**FROM THE COMMITTEE  
ON MODEL CRIMINAL  
JURY INSTRUCTIONS**

=====

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by December 1, 2019. Comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to [MCrimJI@courts.mi.gov](mailto:MCrimJI@courts.mi.gov) .

=====

**PROPOSED**

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

**[NEW] M Crim JI 7.17 Use of Deadly Force in Defense of the Home**

- (1) The defendant claims that [he / she] acted in lawful defense of [his / her] home. A person has the right to use force or even take a life to defend [his / her] home under certain circumstances. If a person acts in lawful defense of [his / her] home, that person's actions are justified and [he / she] is not guilty of [*state crime*].
- (2) You should consider all the evidence and use the following rules to decide whether the defendant acted in lawful defense of [his/ her] home. Remember to judge the defendant's conduct according to how the circumstances appeared to the defendant at the time [he / she] acted.
- (3) A person may use deadly force to defend [his / her] home where both of the following conditions exist:
  - (a) First, at the time [he / she] acted, the defendant must have honestly and reasonably believed that the person whom [he / she] killed or injured used force to enter the defendant's home or was forcibly attempting to enter the defendant's home, and had no right to enter [his / her] home. The use of any force may be sufficient, including opening a door or raising a window.

(b) Second, at the time [he / she] acted, the defendant must have honestly and reasonably believed that the person whom [he / she] killed or injured intended to steal property from the home or do bodily injury to the defendant or someone else who was lawfully in the home, or intended to commit a sexual assault against the defendant or someone else who was lawfully in the home.

If the defendant honestly and reasonably believed that both of those conditions existed, [he / she] could act immediately to defend [his / her] home even if it turned out later that [he / she] was wrong about those conditions. In deciding if the defendant's belief was honest and reasonable, you should consider all the circumstances as they appeared to the defendant at the time.

(4) At the time [he / she] acted, the defendant must have honestly and reasonably believed that what [he / she] did was immediately necessary. Under the law, a person may only use as much force as [he / she] thinks is necessary at the time to defend [his / her] home. When you decide whether the amount of force used seemed to be necessary, you may consider whether the defendant knew about any other ways of defending [his / her] home, but you may also consider how the excitement of the moment affected the choice the defendant made.

(5) Where the defendant contends that [he / she] used deadly force to defend [his / her] home, the prosecutor must prove beyond a reasonable doubt that the defendant was not acting in defense of [his / her] home because [he / she] did not have a reasonable belief that [*name person killed or injured by defendant*] was forcibly entering the home and was going to steal or harm someone inside.

(6) When you decide whether the prosecutor proved that the defendant did not have a reasonable belief that [*name person killed or injured by defendant*] was forcibly entering the home and was going to steal or harm someone inside, you should consider all of the circumstances: [the condition of the people involved, including their relative strength / whether (*name person killed or injured by defendant*) was armed with a dangerous weapon or had some other means of injuring the defendant / the nature of any attack or threat by (*name person killed or injured by defendant*) / whether the defendant knew (*name person killed or injured by defendant*) and about any previous violent acts by (him / her) or threats (he / she) made / (*cite any other circumstance that may apply*)].<sup>1</sup>

*Use Note*

The Committee has prepared this instruction concerning the common-law defense of habitation, see *Pond v People*, 8 Mich 150, 176 (1860), but would note there exists a substantial question whether that defense survives the promulgation of the Presumption Regarding Self-Defense Act and the Self-Defense Act, particularly MCL 780.951. See also M Crim JI 7.16a. Resolution of that question is beyond the scope of the charge of the Committee.

1. The court may provide all of the circumstances listed, or eliminate those that are not pertinent according to the evidence.

**Public Policy Position**  
**M Crim JI 7.17**

**Explanation**

The committee supports the model criminal jury instructions as drafted.

**Position Vote:**

Voted for position: 10

Voted against position: 1

Abstained from vote: 0

Did not vote (absent): 7

**Contact Persons:**

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**FROM THE COMMITTEE  
ON MODEL CRIMINAL  
JURY INSTRUCTIONS**

=====

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=====

**PROPOSED**

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

**[NEW] M Crim JI 13.21 Bringing a Weapon into Jail**

(1) The defendant is charged with bringing a weapon into jail for a prisoner of the jail. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant possessed a weapon<sup>1</sup> or an item that could be used to injure another person, or used to assist an escape from a jail.

(3) Second, that the defendant brought the weapon or item into [*identify facility*] jail. This includes secondary buildings associated with the jail and the grounds around the jail that are used for jail purposes.

(4) Third, that the defendant brought the weapon into the jail for the use or benefit of a prisoner in the jail. It does not matter whether a prisoner actually obtained the weapon.

*Use Note*

1. If necessary, the jury could be provided an instruction on the definition of a weapon found in M Crim JI 11.19.

*Reference*

MCL 801.262(1)(a)

**[NEW] M Crim JI 13.22 Furnishing a Weapon to a Prisoner**

(1) The defendant is charged with providing a weapon to a prisoner or disposing of a weapon so that a prisoner could have access to it. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant possessed a weapon<sup>1</sup> or an item that could be used to injure another person, or used to assist an escape from a jail.

(3) Second, that the defendant sold or gave the weapon or item to [*identify prisoner*] when [he / she] was a prisoner in a jail, or the defendant disposed of the weapon or item in manner that allowed a prisoner to have access to the weapon or item.

*Use Note*

1. If necessary, the jury could be provided an instruction on the definition of a weapon found in M Crim JI 11.19.

*Reference*

MCL 801.262(1)(b)

**[NEW] M Crim JI 13.23 Possession of a Weapon by a Prisoner**

(1) The defendant is charged with possessing a weapon while a prisoner in jail. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was a prisoner in the [*identify facility*] jail.

(3) Second, that the defendant knowingly possessed a weapon<sup>1</sup> or an item that could be used to injure another person, or used to assist an escape from a jail.

*Use Note*

1. If necessary, the jury could be provided an instruction on the definition of a weapon found in M Crim JI 11.19.

*Reference*

MCL 801.262(2)

**[NEW] M Crim JI 13.24 Bringing Alcohol or a Controlled Substance into Jail**

(1) The defendant is charged with bringing [alcohol / a controlled substance] into jail. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant knowingly possessed [alcohol<sup>1</sup> / (*identify controlled substance*)], which is a controlled substance under Michigan law].

(3) Second, that the defendant brought the [alcohol / (*identify controlled substance*)] into [*identify facility*] jail, or provided the [alcohol / (*identify controlled substance*)] to [*identify prisoner*] when [he / she] was a prisoner in a jail, or the defendant disposed of the [alcohol / controlled substance] in manner that allowed a prisoner to have access to the [alcohol / controlled substance]. The jail includes secondary buildings associated with the jail and the grounds around the jail that are used for jail purposes.

*Use Note*

MCL 801.263 uses the term “alcoholic liquor.” That term is defined in MCL 801.261 as “any spiritous, vinous, malt, or fermented liquor, liquid, or compound whether or not medicated, containing 1/2 of 1% or more of alcohol by volume and which is or readily can be made suitable as a beverage.”

*Reference*

MCL 801.263(1).

**[NEW] M Crim JI 13.25 Possession of Alcohol or a Controlled Substance by a Prisoner**

(1) The defendant is charged with possessing [alcohol / a controlled substance] while a prisoner in jail. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was a prisoner in the [*identify facility*] jail.

(3) Second, that the defendant knowingly possessed [alcohol<sup>1</sup> / (*identify controlled substance*)], which is a controlled substance under Michigan law].

*Use Note*

MCL 801.263 uses the term “alcoholic liquor.” That term is defined in MCL 801.261 as “any spiritous, vinous, malt, or fermented liquor, liquid, or compound



whether or not medicated, containing 1/2 of 1% or more of alcohol by volume and which is or readily can be made suitable as a beverage.”

*Reference*

MCL 801.263(2).

**Public Policy Position**  
**M Crim JI 13.21, 13.22, 13.23, 13.24, and 13.25**

**Explanation**

The committee supports the model criminal jury instructions as drafted.

**Position Vote:**

Voted for position: 11

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 7

**Contact Persons:**

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**FROM THE COMMITTEE  
ON MODEL CRIMINAL  
JURY INSTRUCTIONS**

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=====

**PROPOSED**

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

**[NEW] M Crim JI 35.11 Sale, Purchase, Installation, Transfer, or Possession of Automated Sales Suppression Device or Zapper, Phantom-Ware, or Skimming Device**

- (1) The defendant is charged with the crime of selling, purchasing, installing, transferring, or possessing\* [an automated sales suppression device or zapper / phantom-ware / a skimming device]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:
- (2) First, that the defendant sold, purchased, installed, transferred, or possessed\* [an automated sales suppression device or zapper / phantom-ware / a skimming device].

*[Select from the following:]*

(a) An “automated sales suppression device” or “zapper”<sup>1</sup> is a software program carried on a memory stick or removable compact disc, accessed through an Internet link or any other way, that falsifies the electronic records of electronic cash registers<sup>2</sup> and other point-of-sale systems,

including falsifying information such as transaction data<sup>3</sup> and transaction reports.<sup>4</sup>

(b) “Phantom-ware”<sup>5</sup> is a hidden programming option embedded in the operating system of an electronic cash register<sup>2</sup> or hardwired into an electronic cash register that can be used to create a virtual second till or that could eliminate or manipulate transaction records that may or may not be preserved in digital formats to represent the record of transactions in the electronic cash register.

(c) A “skimming device”<sup>6</sup> is any combination of devices or methods that are designed or adapted to be placed on the physical property of another person and to obtain another person’s personal information or personal identifying information,<sup>7</sup> or to obtain any other information that allows access to a person’s financial accounts, from a financial transaction device<sup>8</sup> without the permission of the owner of the financial transaction device.

(3) Second, that the defendant knew that the device or program that [he / she] sold, purchased, installed, transferred, or possessed\* was [an automated sales suppression device or zapper / phantom-ware / a skimming device].

#### *Use Notes*

\* The Court may select the appropriate acts according to the charges and evidence rather than reciting all five acts.

1. “Automated sales suppression device” or “zapper” is defined in MCL 750.411w(5)(a).
2. “Electronic cash register” is defined in MCL 750.411w(5)(b).
3. “Transaction data” is defined in MCL 750.411w(5)(g).
4. “Transaction report” is defined in MCL 750.411w(5)(h).
5. “Phantom-ware” is defined in MCL 750.411w(5)(e).
6. “Skimming device” is defined in MCL 750.411w(5)(f).
7. “Personal identifying information” and “personal information” are defined in MCL 445.63(q) and (r).
8. “Financial transaction device” is defined in MCL 750.157m.

**Public Policy Position**  
**M Crim JI 35.11**

**Explanation**

The committee supports the model criminal jury instructions as drafted.

**Position Vote:**

Voted for position: 11

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 7

**Contact Persons:**

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