Agenda
Public Policy Committee
June 6, 2018 – 3:00 p.m.
Teleconference Only – Please Call
1.877.352.9775, passcode 6516204165#.

Public Policy Committee……Jennifer M. Grieco, Chairperson

A. Reports
1. Approval of April 20, 2018 minutes
2. Public Policy Report

B. Court Rules
1. ADM File No. 2018-03: Proposed Amendments of Rules 3.201, 3.210, and 3.211 and Proposed Addition of Rule 3.222 and 3.223 of the Michigan Court Rules
The proposed amendments of MCR 3.201, 3.210, and 3.211 and proposed addition of MCR 3.222 and 3.223 would integrate the collaborate law process designed under the Uniform Collaborate Law Act (159 PA 2014; MCL 691.1331-691.1354) into the state's trial court system for practical use, and would add a similar process for parties not represented by counsel who seek to submit a consent judgment.

Status:	07/01/18 Comment Period Expires.
Referrals:	03/22/18 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Alternative Dispute Resolution Section; Family Law Section.
Comments:	Access to Justice Policy Committee; Alternative Dispute Resolution Section.
Liaison:	Victoria A. Radke

2. ADM File No. 2017-26: Proposed Amendments of Canon 3 and Canon 7 of the Judicial Code of Conduct
The proposed amendments of Canon 3 and Canon 7 of the Code of Judicial Conduct would incorporate the ABA Model Code of Judicial Conduct 2.10 language and clarify its application to public comments made by judges.

Status:	07/01/18 Comment Period Expires.
Referrals:	03/22/18 Judicial Ethics Committee; Professional Ethics Committee
Comments:	Judicial Ethics Committee; Professional Ethics Committee. Comment submitted to the Supreme Court included in materials.
Liaison:	Judge Michael J. Riordan

C. Legislation
1. Juvenile Mental Health Courts
HB 5806 (Calley) Courts; other; juvenile mental health courts; establish. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding ch. 10C.
HB 5807 (Calley) Courts; other; references to juveniles in mental health court in revised judicature act; remove to reflect creation of juvenile mental health court. Amends secs. 1088, 1091, 1093, 1094, 1095 & 1098 of 1961 PA 236 (MCL 600.1088 et seq.).
HB 5808 (Calley) Courts; other; reference to chapter of revised judicature act in the probate code; modify. Amends sec. 6, ch. XIIA of 1939 PA 288 (MCL 712A.6).

Status:	04/12/18 Referred to the House Committee on Judiciary.
Referrals:	05/01/18 Access to Justice Policy; Criminal Jurisprudence & Practice Committee; Criminal Law Section; Children's Law Section; Elder Law & Disability Rights Section; Health Care Law Section; Probate & Estate Planning Section.
Comments:	Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.
Liaison:	James W. Heath

2. HB 5820 (Kesto) Mental health; code; procedure for involuntary mental health treatment and judicial admissions; revise. Amends subheading of ch. 5 & secs. 500, 501, 502, 503, 504, 505, 508, 509, 510, 511, 512, 515, 516, 517, 518, 519, 520, 521, 525, 526, 527, 528, 531, 532, 536, 537, 540 & 541 of 1974 PA 258 (MCL 330.1500 et seq.).

Status: 05/29/18 Placed on Third Reading in the House.

Referrals: 05/01/18 Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section; Elder Law & Disability Rights Section; Health Care Law Section.

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

Liaison: Shauna D. Dunnings

D. Young Lawyers Section

1. "A Way Forward: Transparency in 2018" by Law School Transparency (Iowa State Bar Association Young Lawyers Division)

The report recommends that the American Bar Association and law schools take steps to improve legal education: (a) young lawyer representation in accreditation; (b) increased data transparency; (c) user-friendly data presentation; (d) disclosures at time of admission; and (e) voluntary disclosures by law school.

Comments: Young Lawyers Section

Liaison: Daniel D. Quick

E. Consent Agenda

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

Model Criminal Jury Instructions

1. M Crim JI 7.16a

The Committee proposes amending M Crim JI 7.16a, the instruction that applies to the rebuttal presumption regarding self-defense found in MCL 780.951, to clarify that the presumption is rebuttable, and to make the instruction easier to understand and in accord with the statutory language. Deletions are in strike-through, and additions are underlined.

2. M Crim JI 11.37a and 11.37b

The Committee proposes amending, M Crim JI 11.37a and 11.37b, the instructions that apply to discharging a firearm at or in a building, contrary to MCL 750.234b. The current instructions incorrectly require that the prosecutor prove an element of "physical injury" to establish the underlying crime, whereas "physical injury" is an aggravating element in both cases. Deletions are in strike-through, and additions are underlined.

3. M Crim JI 11.43 and 11.43a

The Committee proposes new instructions, M Crim JI 11.43 and 11.43a, where violations of MCL 750.210 and 750.209a are charged and the penalty may be enhanced under MCL 750.212a, involving the crimes of carrying or possessing explosive or combustible substances or compounds with intent to frighten, injure or kill, or carrying explosives in a public place.

4. M Crim JI 11.44 and 11.44a

The Committee proposes new instructions, M Crim JI 11.44 and 11.44a, where violations of MCL 750.211a are charged, and the penalty may be enhanced under MCL 750.212a, involving the crimes of making, selling, buying, or possessing Molotov cocktails, or of making, selling, buying, or possessing incendiary explosive devices with intent to frighten, injure or kill, or carrying explosives in a public place.

Minutes
Public Policy Committee
April 20, 2018 – 8:00 am - State Bar of Michigan, Room 2

Committee Members: Jennifer M. Grieco, Joseph J. Baumann, Shauna L. Dunnings, Kim Warren Eddie, James W. Heath, Richard D. McLellan, Jules B. Olsman, Daniel D. Quick, Victoria A. Radke, Brian D. Shekell, Erane C. Washington
Commissioner Guest: Donald G. Rockwell
GCSI: Marcia Hune
SBM Staff: Janet K. Welch, Peter Cunningham, Kathryn L. Hennessey, Carrie Sharlow

A. Reports

1. Approval of Meeting Minutes

The January 26, 2018 minutes, February 12, 2018 minutes, and March 12, 2018 minutes were unanimously approved.

2. Public Policy Report

Governmental Relations staff provided a written report.
Peter Cunningham also offered a verbal report on the ABA Day events.

3. Committee Annual Reports

B. Court Rules

1. ADM File No. 2017-12: Proposed Addition of Rule 2.228 of the Michigan Court Rules

MCL 600.6404(3) allows defendant to transfer a case to the Court of Claims. This proposed rule would require such a transfer to be made at or before the time the defendant files an answer, which is the same period mandated for change of venue under MCR 2.221. This proposal arose from the Court's consideration of *Baynesan v Wayne State University* (docket 154435), in which defendant waited until just a month before trial before transferring a case he could have transferred nearly a year sooner.
The Civil Procedure & Courts Committee recommended supporting the proposal with amendments.
The committee voted unanimously (10) to support the proposed addition of Rule 2.228 with the amendments proposed by the Civil Procedure & Courts Committee with an additional amendment as noted below:

MCR 2.228 Transfer to Court of Claims
(A) A notice of transfer to the Court of Claims must be provided before or at the time the defendant files an answer. ~~After that time, the defendant may seek a transfer to the Court of Claims by motion under MCR 2.221.~~
(B) After the time provided in subrule (A)—
(1) If the court in which a civil action is pending has concurrent jurisdiction with the Court of Claims, the defendant must seek leave to file a notice of transfer and the court may grant leave if it is satisfied that the facts on which the motion is based were not and could not with reasonable diligence have been known to the moving party more than 14 days before the motion was filed.
(2) If the court in which a civil action is pending does not have subject matter jurisdiction because the case is within the exclusive jurisdiction of the Court of Claims, ~~a party may proceed under MCR 2.227~~ **MCR 2.227 governs.**

2. ADM File No. 2017-10 - Proposed Addition of Rule 6.417 of the Michigan Court Rules

This proposed new rule, based on FR Crim P 26.3, would require a trial court to provide parties an opportunity to comment on a proposed order of mistrial, to state their consent or objection, or suggest alternatives. The proposal was pursued following the Court's consideration of *People v Howard,* docket 153651.

The Access to Justice Policy Committee and Criminal Jurisprudence & Practice Committee recommended supporting the proposal with amendments.

The committee voted unanimously (11) to support the addition of Rule 6.417 with the amendment below:

> **Before ordering a mistrial, the court must give each defendant and the ~~government~~ prosecutor an opportunity to comment on the record regarding the propriety of the order, to state whether that party consents or objects, and to suggest alternatives.**

3. ADM File No. 2015-04 - Proposed Amendment of Rule 6.429 of the Michigan Court Rules

This proposed amendment is intended to provide trial courts with broader authority to *sua sponte* address erroneous judgments of sentence, following the Court's recent consideration of the issue in *People v Comer*, 500 Mich 278 (2017).

For purposes of publication, the Court included a six-month time period in which such a correction must be made *sua sponte*, and the Court is especially interested in input related to this aspect of the proposed amendments. In balancing the interest in correcting a sentence at any time against the interest in promoting finality and definiteness, adoption of a prescribed time period seems appropriate. Parties have six months to file such a motion under MCR 6.429(B)(3), and a good argument can be made that if the Court adopted a different time period for *sua sponte* corrections, the six-month period for parties would be irrelevant, as a party could simply ask the court to do *sua sponte* what the party could not do by motion. But there may be good reason to adopt a time period longer than that allowed for parties, or to consider a more flexible provision that does not include a specific time period but focuses on application of a standard such as "reasonableness," "good cause," or other language that leaves the determination to the trial court. Therefore, the Court is particularly interested in comments that address this issue.

The Access to Justice Policy Committee recommended supporting the proposal with amendments. The Criminal Jurisprudence & Practice Committee opposed amending Rule 6.429 and support the addition of Rule 6.430.

The committee voted unanimously (11) to support the proposed amendments recommended by Timothy A. Baughman which differentiates between an invalid and an illegal sentence. Rule 6.429 Correction ~~and Appeal of Sentence~~ of an Illegal Sentence

(A) The court may correct an illegal sentence at any time, either on its own motion after a hearing, or on motion filed by either party.

(B) An illegal sentence is one the maximum or minimum of which does not conform to the applicable statutory provision, which omits a term required by law, or which includes a term unauthorized by law. The court may not modify a valid sentence after it has been imposed except as provided by law.

~~(B) Time For Filing Motion.~~

~~(1) A motion to correct an invalid sentence may be filed before the filing of a timely claim of appeal.~~

~~(2) If a claim of appeal has been filed, a motion to correct an invalid sentence may only be filed in accordance with the procedure set forth in MCR 7.208(B) or the remand procedure set forth in MCR 7.211(C)(1).~~

~~(3) If the defendant may only appeal by leave or fails to file a timely claim of appeal, a motion~~

~~to correct an invalid sentence may be filed within 6 months of entry of the judgment of conviction and sentence.~~

~~(4) If the defendant is no longer entitled to appeal by right or by leave, the defendant may seek relief pursuant to the procedure set forth in subchapter 6.500.~~

~~(C) Preservation of Issues Concerning Sentencing Guidelines Scoring and Information Considered in Sentencing. A party shall not raise on appeal an issue challenging the scoring of the sentencing guidelines or challenging the accuracy of information relied upon in determining a sentence that is within the appropriate guidelines sentence range unless the party has raised the issue at sentencing, in a proper motion for resentencing, or in a proper motion to remand filed in the court of appeals.~~

Rule 6.431 New Trial, Correction of Invalid Sentence

(A) Time for Making Motion.

(1) A motion for a new trial or correction of an invalid sentence may be filed before the filing of a timely claim of appeal.

(2) If a claim of appeal has been filed, ~~a motion for a new trial~~ the motion may only be filed in accordance with the procedure set forth in MCR 7.208(B) or the remand procedure set forth in MCR 7.211(C)(1).

(3) If the defendant may only appeal by leave or fails to file a timely claim of appeal, ~~a motion for a new trial~~ the motion may be filed within 6 months of entry of the judgment of conviction and sentence.

(4) If the defendant is no longer entitled to appeal by right or by leave, the defendant may seek relief pursuant to the procedure set forth in subchapter 6.500.

(B) Reasons for Granting New Trial. On the defendant's motion, the court may order a new trial on any ground that would support appellate reversal of the conviction or because it believes that the verdict has resulted in a miscarriage of justice. The court must state its reasons for granting or denying a new trial orally on the record or in a written ruling made a part of the record.

(C) – (D) [Unchanged]

(E) Preservation of Issues Concerning Sentencing Guidelines Scoring and Information Considered in Sentencing. A party shall not raise on appeal an issue challenging the scoring of the sentencing guidelines or challenging the accuracy of information relied upon in determining a sentence that is within the appropriate guidelines sentence range unless the party has raised the issue at sentencing, in a proper motion for resentencing, or in a proper motion to remand filed in the court of appeals.

4. ADM File No. 2017-14 - Proposed Adoption of Administrative Order 2018-XX

This administrative order would direct circuit courts in collaboration with county clerks to establish an agreed upon plan that outlines those duties not codified in statute or court rule that must be performed within the scope of the county clerk's role as clerk of the circuit court. The plan would be required to be approved by the Supreme Court.

The committee voted unanimously (11) to support the concept provided in ADM File No. 2017-14 compelling the administrator and the court to enter into an agreement. However, courts that already have an agreement in place should not be forced to renegotiate that agreement until and unless a dispute arises, and SCAO should also provide a model agreement as an example.

5. ADM File No. 2016-49 - Proposed Addition of Rule 1.18 and Proposed Amendment of Rule 7.3 of the Michigan Rules of Professional Conduct

The proposed addition of new rule MRPC 1.18 and amendment of MRPC 7.3 would clarify the ethical duties that lawyers owe to prospective clients and create consistency in the use of the term "prospective client." This proposal was submitted to the Court by the Representative Assembly of the State Bar of Michigan. The Professional Ethics Committee recommended supporting the proposal.

This ADM was approved by the RA with no changes made in the version published by the Court for comment.

The committee will take no position.

6. ADM File No. 2016-27 - Proposed Alternative Amendments of Rule 7.2 of the Michigan Rules of Professional Conduct

The first proposed amendment of Rule 7.2 of the Michigan Rules of Professional Conduct (Alternative A) would require certain lawyer advertisements to identify the lawyer or law firm providing services. This proposal was submitted by the State Bar of Michigan Representative Assembly. Alternative B is the model rule provision that relates to providing information about the lawyer or law firm responsible for the advertisement's content.

The Professional Ethics Committee recommended supporting Alternative A. The Alternative Dispute Resolution Section recommended supporting Alternative B. The Solo & Small Firm Section recommended supporting Alternative B with amendments.

The committee voted unanimously (11) to support Alternative A and adopt Norman Tucker's responses to Justice Bridge McCormack's questions.

C. <u>Legislation</u>

1. HB 5702 (Runestad) Criminal procedure; forfeiture; prosecutional review of civil asset forfeiture in controlled substances cases; require. Amends sec. 7523 of 1978 PA 368 (MCL 333.7523).

The Access to Justice Committee recommended supporting the legislation. The Criminal Jurisprudence & Practice Committee recommended that the legislation is not *Keller* permissible, but recommend that the Bar oppose it.

The committee voted 6 to 5 that the legislation is not *Keller* permissible.

However, should the Board vote that the legislation is *Keller* permissible, the committee voted 8 to 3 for taking no position.

2. Wrongful Imprisonment Compensation Legislation

SB 0895 (Bieda) Civil procedure; other; court of claims notification requirements and statute of limitations; exempt claims under the wrongful imprisonment compensation act. Amends secs. 6431 & 6452 of 1961 PA 236 (MCL 600.6431 & 600.6452).

SB 0896 (Jones) Civil procedure; other; wrongful imprisonment compensation act; extend the time for claims by individuals who were released before the effective date of the act. Amends sec. 7 of 2016 PA 343 (MCL 691.1757).

The Access to Justice Committee recommended supporting the legislation. The Criminal Jurisprudence & Practice Committee recommended that the legislation is not *Keller* permissible, but recommend that the Bar support it.

The committee voted unanimously (11) that the legislation is Keller permissible in the availability of legal services to society.

The committee voted unanimously (11) to support the legislation.

D. <u>Consent Agenda</u>

Model Criminal Jury Instructions

1. M Crim JI 11.40, 40a, and 40.b

The Committee proposes new instructions, M Crim JI 11.40, 11.40a and 11.40b, for the "harmful substances" offenses found at MCL 750.200i, 750.200*l*, and 750.200j(1)(c), respectively. (Definitions are found at MCL 750.200h, and a penalty enhancement at MCL 750.212a.)

2. M Crim JI 11.41

The Committee proposes a new instruction, M Crim JI 11.41, for the "chemical irritant" offenses found at MCL 750.200j. (Definitions are found at MCL 750.200h, and a penalty enhancement at MCL 750.212a.)

3. M Crim JI 11.42 and 11.42a

The Committee proposes new instructions, M Crim JI 11.42 and 11.42a, for the "offensive or injurious substances" crimes found at MCL 750.209. (A penalty enhancement is found at MCL 750.212a.)

The committee voted unanimously (11) to adopt the positions of the Criminal Jurisprudence & Practice Committee.

SBM STATE BAR OF MICHIGAN

p 517-346-6300
p 800-968-1442
f 517-482-6248
www.michbar.org

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

May 1, 2018

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

RE: ADM File No. 2017-12: Proposed Addition of Rule 2.228 of the Michigan Court Rules

Dear Clerk Royster:

At its April 20, 2018 meeting, the State Bar of Michigan Board of Commissioners (the Board) considered the above-referenced proposed rule addition published by the Court for comment. As part of its review, the Board considered a recommendation from the Civil Procedure & Courts Committee.

The Board voted unanimously to support the addition of MCR 2.228 with the following amendments to account both for cases in which the Court of Claims has exclusive jurisdiction and for cases in which the Court of Claims has concurrent jurisdiction:

MCR 2.228 Transfer to Court of Claims

(A) A notice of transfer to the Court of Claims must be provided before or at the time the defendant files an answer. ~~After that time, the defendant may seek a transfer to the Court of Claims by motion under MCR 2.221.~~

(B) After the time provided in subrule (A)—

(1) If the court in which a civil action is pending has concurrent jurisdiction with the Court of Claims, the defendant must seek leave to file a notice of transfer and the court may grant leave if it is satisfied that the facts on which the motion is based were not and could not with reasonable diligence have been known to the moving party more than 14 days before the motion was filed.

(2) If the court in which a civil action is pending does not have subject matter jurisdiction because the case is within the exclusive jurisdiction of the Court of Claims, MCR 2.227 governs.

As explained in the staff comment, this rule proposal arose from the Court's consideration of *Baynesan v Wayne State University* (MSC Docket 154435). In that case, the circuit court

and the Court of Claims had concurrent jurisdiction because the statute required trial in circuit court of a case in which there was a right to a jury trial and allowed joinder of a claim for equitable relief in the circuit court. The Court found that the defendant had agreed to that joinder by continuing to litigate the case in the circuit court for a year.

In a case like *Baynesan*, involving concurrent jurisdiction, it is appropriate to require the defendant to seek a transfer to the Court of Claims by motion under MCR 2.221, as provided in the rule proposal. MCR 2.221 governs motions for a change in venue and gives the court discretion in determining whether to grant or deny the motion.

When, however, a case is within the exclusive jurisdiction of the Court of Claims but is filed in the circuit court, the circuit court is limited to either transferring or dismissing the case. The circuit court cannot, for example, exercise any discretion in denying a motion because it was untimely. Instead of MCR 2.221 applying in this situation, the motion should be considered under MCR 2.227, which governs transfer of actions on finding of lack of jurisdiction, giving the court the option of transferring the case to the Court of Claims or dismissing it for lack of subject matter jurisdiction.

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
Donald G. Rockwell, President

SBM STATE BAR OF MICHIGAN

p 517-346-6300
p 800-968-1442
f 517-482-6248
www.michbar.org

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

May 1, 2018

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

RE: ADM File No. 2017-10 – Proposed Addition of Rule 6.417 of the Michigan Court Rules

Dear Clerk Royster:

At its April 20, 2018 meeting, the Board of Commissioners of the State Bar of Michigan (the Board) considered the above-referenced rule addition published for comment. In its review, the Board considered recommendations from the Access to Justice Policy Committee and the Criminal Jurisprudence and Practice Committee.

The Board voted unanimously to support the proposed rule with the following amendments:

> Before ordering a mistrial, the court must give each defendant and the ~~government~~ prosecutor an opportunity to comment on the record regarding the propriety of the order, to state whether that party consents or objects, and to suggest alternatives.

The rule proposal promotes just outcomes and judicial efficiency in criminal proceedings by allowing each party the opportunity comment on the record prior to the court entering an order for a mistrial. As noted by the Prosecuting Attorneys Association of Michigan, this rule will be particularly valuable to appellate courts in reviewing any error alleged in the grant or denial of a motion for a mistrial.

We thank the Court for the opportunity to comment on the proposed addition of MCR 6.417.

Sincerely,

Janet K. Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Donald G. Rockwell, President

SBM STATE BAR OF MICHIGAN

p 517-346-6300
p 800-968-1442
f 517-482-6248
www.michbar.org

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

May 1, 2018

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

RE: ADM File No. 2015-04 – Proposed Amendment of Rule 6.429 of the Michigan Court Rules

Dear Clerk Royster:

At its April 20, 2018 meeting, the Board of Commissioners of the State Bar of Michigan (the Board) considered the above-referenced rule amendment published for comment. In its review, the Board considered recommendations from the Access to Justice Policy and Criminal Jurisprudence & Practice committees, along with the public comments that have been submitted to the Court.

The Board voted unanimously to support the concept of judges being allowed to *sua sponte* correct certain sentencing errors, and the Board specifically supports the amendments to the rule proposal set forth by Mr. Timothy Baughman from the Wayne County Prosecutor's Office, which more clearly differentiates between an illegal and invalid sentence.

We thank the Court for the opportunity to comment on the proposed amendments.

Sincerely,

Janet K. Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Donald G. Rockwell, President

SBM STATE BAR OF MICHIGAN

p 517-346-6300
p 800-968-1442
f 517-482-6248
www.michbar.org

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

April 27, 2018

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

RE: ADM File No. 2017-14 – Proposed Adoption of Administrative Order 2018-XX

Dear Clerk Royster:

At its April 20, 2018 meeting, the Board of Commissioners of the State Bar of Michigan considered the above-referenced administrative order published for comment. The Board voted unanimously to support the general concept of requiring circuit courts and county clerks to enter into agreements about ministerial duties. The Board also urges that circuit courts with pre-existing agreements with their county clerks not be compelled to renegotiate those agreements unless a conflict arises, and recommends that the State Court Administrative Office (SCAO) provide a model agreement.

The Board recognizes that conflicts can arise between circuit courts and elected county clerks, and the Board strongly supports encouraging those parties to work together to enter into an agreement on how to handle daily ministerial duties. Certain courts, however, have already spent a great deal of time and resources negotiating these types of agreements and have an effective working relationship with their county clerks. While these pre-existing agreements may not contain all of the provisions set forth in the proposed administrative order, these courts should not be required to renegotiate these agreements unless a conflict arises between the court and the county clerk.

In addition, the Board recommends that SCAO provide a model agreement. This model agreement could serve as a starting point for circuit courts and county clerks to negotiate and may prove particularly beneficial in circuits where there are significant conflicts between the court and the county clerk.

We thank the Court for the opportunity to comment on the proposed administrative order.

Sincerely,

Janet K. Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Donald G. Rockwell, President

SBM STATE BAR OF MICHIGAN

p 517-346-6300
p 800-968-1442
f 517-482-6248
www.michbar.org

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

April 25, 2018

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

RE: ADM File No. 2016-27: Proposed Amendment of Rule 7.2 of the Michigan Rules of Professional Conduct

Dear Clerk Royster:

At its April 20, 2018 meeting, the State Bar of Michigan Board of Commissioners (the Board) considered the above-referenced proposed rule amendment published by the Court for comment. The Representative Assembly (RA) originally recommended amendments to Rule 7.2 of the Michigan Rules of Professional Conduct (MRPC) to protect consumers from potentially misleading attorney advertisements that fail to disclose the names of the attorneys or law firm providing the advertised services. The RA's proposed amendments are set forth in the Court's Order as Alternative A.

After considering recommendations from the Professional Ethics Committee, Alternative Dispute Resolution Section, and Solo & Small Firm Section, the Board voted unanimously to support Alternative A.

The MRPC commentary recognizes that attorney advertising serves the public, particularly "persons of modest means," by expanding public knowledge about the availability of legal services.[1] The benefits of attorney advertising, however, must be balanced against "the risk of practices that are misleading or overreaching."[2] Indeed, the United States Supreme Court has recognized the need for regulating legal advertising to ensure that consumers are not misled, noting the important role that state bar associations play in "assuring that advertising by attorneys flows both freely and cleanly."[3]

---

[1] MRPC Rule 7.2, Comment 1.

[2] *Id.*; see also ABA Model Rules of Professional Conduct Rule 7.2, Comment 1 ("[T]he public's need to know about legal services . . . is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of traditions. Nevertheless, advertising by lawyers entails the risk of practices that are misleading and overreaching.").

[3] *Bates v State Bar of Arizona*, 433 US 350, 383-384 (1977).

Although many states have adopted more expansive disclosure rules for attorney advertisements,[4] the State Bar has endorsed the more narrowly tailored Alternative A to focus on the truly problematic forms of legal service advertisements. Advertisements purporting to provide legal services under the heading of a telephone number, web address, image, or icon – without disclosing the attorney or law firm providing the service – have the unique potential to mislead and confuse consumers as to (1) the type of service being advertised, (2) who will perform the service, and (3) the geographic location of the lawyer or law firm.

Questions Posed by Justice McCormack

1. Is MPRC 7.1 already an adequate mechanism for protecting the public?

No. MRPC 7.1 prohibits a communication from an attorney that "contain[s] a material misrepresentation of fact or law, or omit[s] a fact necessary to make the statement considered as a whole not materially misleading." This prohibition does not adequately protect unsophisticated consumers of legal services to whom these types of vague advertisements are targeted. For example, consider a billboard advertisement simply setting forth a telephone number, such as 1-800-Law-Firm, or similar website address located by a Michigan highway. This advertisement, while vague, contains no material misrepresentations; however, such an advertisement may lead an unsophisticated legal consumer to assume that a law firm located in Michigan with attorneys licensed to practice in Michigan is offering its legal services, even if this is not actually the case. Without the proposed amendment, MRPC 7.1 would not bar such an advertisement, absent a showing

---

[4] *See, e.g.*, Fla Rules of Prof Conduct Rule 4-7.12(a)(1) (requiring all advertisements for legal employment to include "the name of at least 1 lawyer, the law firm, the lawyer referral service if the advertisements is for a lawyer referral service, or the lawyer direction if the advertisement is for a lawyer directory, responsible for the content of the advertisement[.]"); Fla Rules of Prof Conduct Rule 4-7.12(a)(2) (requiring all advertisements for legal employment to include "the city, town, or county of 1 or more bona fide office locations of the lawyer who will perform the services advertised"); NY Rules of Prof Conduct Rules 7.1(H) ("All advertisements shall include the name, principal law office address and telephone number of the lawyer or law firm whose services are being offered."); SD Rules of Prof Conduct Rule 7.1(c)(11) ("A communication is false or misleading if it . . . fails to contain the name and address by city or town of the lawyer whose services are described in the communication[.]"); Kentucky Supreme Court Rule 3.130(3) (requiring attorney advertising to include "the name and office address of at least 1 lawyer or the name of a law firm); La Rules of Prof Conduct Rule 7.2(a)(2) (requiring advertisements and unsolicited written communications to "disclose, by city or town, one or more bona fide office location(s) of the lawyer or lawyer who will actually perform the services advertised"); Pa Rules of Prof Conduct Rule 7.2(i) ("All advertisements and written communications shall disclose the geographic location by city or town, of the office in which the lawyer or lawyers who will actually perform the services advertised principally practice law."); SC Rules of Prof Conduct Rule 7.2(h) ("All advertisements shall disclose the geographic location, by city or town, of the office in which the lawyer or lawyers who will actually perform the services advertised principally practice law."); Tex Disciplinary Rules of Prof Conduct Rule 7.04(j) ("A lawyer or firm who advertises in the public media must disclose the geographic location, by city or town, of the lawyer's or firm's principal office.").

of a material misrepresentation. Therefore, to adequately protect legal consumers, the Board proposes amending the rule to require certain attorney advertisements to disclose the names of the attorneys or law firm that will be providing the services advertised.

2. **Should the proposal's first sentence be targeted only to advertisements that solely consist of a web address or a telephone number, which is how the proposal was described by the State Bar of Michigan in its submission letter, or should it apply to all advertisements, which is how the proposal is currently styled?**

The Board supports omitting "only" from the rule language. After considering the public comments that have been submitted to the Court, the Board agrees with Mr. Norman Tucker that limiting the rule to advertisements that only contain a phone number, web address, image, or icon could lead to gamesmanship to circumvent the intent and effectiveness of the rule.

3. **Will the proposal affect law offices that self-identify by solely listing their telephone number on their physical building or road sign, such as 1-800-Law-Firm?**

Yes. Signage, even if it is in front of or attached to a building, still advertises the services of a lawyer or law firm. Alternative A applies to "[s]ervices of a lawyer or law firm that are advertised under the heading of a phone number . . ." Similarly, Alternative B applies to "[a]ny communication made pursuant to [Rule 7.2] . . ." Rule 7.2 specifically governs the ability of attorneys to advertise. The term "advertise" as used in both alternative rule language, is defined as "to announce or praise (a produce, service, etc.) in some public medium of communication in order to induce people to buy or use it." In this example, a sign with 1-800-Law-Firm, not only announces the attorney's or law firm's physical office location, but it also publicly announces legal services to induce people to use them.

4. **What is the scope of website advertising that would fall within this rule?**

For website advertisements, the language in Alternative A was intended to require the names of the attorneys or law firm providing the services on that attorney's or law firm's website. For third party advertisements – such as Craigslist, Facebook, or Google – the advertisement could simply provide a link to the attorney's or law firm's website instead of explicitly disclosing that information in the third party advertisement as long as the linked website contained the information required by the rule.

5. **What are the proper definitions of "image" or "icon" as used in the proposal?**

The Merriam-Webster Dictionary defines "image" in relevant part as "a tangible or visual representation." "Icon" is defined in relevant part as "a usually pictorial representation" or "a sign (such as a word or graphic symbol) whose form suggests its meaning."

Advertisements using an image or icon as a heading have the potential to mislead legal consumers because they can be so vague that the consumer is unable to ascertain the lawyer or law firm that will be providing the service.

6. **Will this rule regulate online advertising differently than the current rules regulate billboard, transit bus, television/cable, radio, and smartphone pop-up ads? If so, is that appropriate? If not, why not?**

Alternative A would regulate non-website advertising differently from website advertising. For print, radio, and television advertisements, under Alternative A, advertisements that fall within the regulated categories would be required to explicitly disclose the name of the attorney or law firm providing the service to allow legal consumers to further inquire as to the professionals offering the advertised services.

Alternative A would regulate website advertisements differently, requiring "[a]ny website advertising the services of a lawyer or law firm [to] contain the name(s) of the attorney(s) providing the service." As discussed above, Alternative A was intended to require the names of the attorneys or law firm to be disclosed on the company's website, but would only require third party web advertisements, including smart phone pop-up ads, to include a link to the company's website that contains the names of the attorneys providing the services advertised.

This distinction of categories is appropriate. Website advertisements are unique in that the consumer can interact with the advertisement by clicking its links to find out more information, which is why a third party web advertisement would only need to contain a link to the attorney's or law firm's website as long as that website contained the names of the attorneys providing the service. Print, television, and radio advertisements, however, are static, which is why they need to disclose the identity of the law firm or attorneys providing the services in the actual advertisement.

Alternative B appears to apply equally to non-website and website advertising, requiring the communication to disclosure "the name and address of at least one lawyer or law firm responsible for its content."

Conclusion

At its core, this rule proposal was intended to protect consumers by providing them with more information about advertised legal services to allow them to ascertain the attorney or law firm providing the service, the location of the lawyer, and whether that lawyer is in good standing with the State Bar. While the State Bar endorses the more narrowly tailored Alternative A, it would not object to the broader version proposed in Alternative B. Both alternatives would be a positive step forward in protecting Michigan legal consumers.

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
Donald G. Rockwell, President, State Bar of Michigan

Order

Michigan Supreme Court
Lansing, Michigan

March 14, 2018

Stephen J. Markman,
Chief Justice

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

ADM File No. 2018-03

Proposed Amendments of Rules 3.201, 3.210, and 3.211, and Proposed Addition of Rules 3.222 and 3.223 of the Michigan Court Rules.

On order of the Court, this is to advise that the Court is considering amendments of MCR 3.201, 3.210, and 3.211, and proposed addition of MCR 3.222 and 3.223 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 3.201 Applicability of Rules

(A)-(C) [Unchanged.]

(D) When used in this subchapter, unless the context otherwise indicates:

(1) "Case" means an action ~~initiated~~commenced in the family division of the circuit court by:

(a) ~~submission of~~filing an original complaint~~, petition, or citation~~;

(b) ~~acceptance of~~accepting transfer of an action from another court or tribunal; ~~or~~

(c) filing or ~~registration of~~registering a foreign judgment or order~~.~~;

(d) filing a petition under MCR 3.222(C); or

(e) filing a consent judgment under MCR 3.223.

(2)-(3) [Unchanged.]

Rule 3.210 Hearings and Trials

(A) In General.

(1) [Unchanged.]

(2) In cases of unusual hardship or compelling necessity, the court may, upon motion and proper showing, take testimony and render judgment at any time 60 days after ~~the filing of the complaint~~commencing a case regardless of any stay.

(3)-(4) [Unchanged.]

(B)-(E) [Unchanged.]

Rule 3.211 Judgments and Orders

(A)-(F) [Unchanged.]

(G) Friend of the Court Review. ~~For all judgments and orders containing provisions identified in subrules (C), (D), (E), and (F), t~~The court may require that the judgment or order be submitted to the friend of the court for review to determine that it contains the provisions required by subrules (C), (D), (E), and (F).

(H) Service of Judgment or Order.

(1) When a judgment or order is obtained for temporary or permanent spousal support, child support, or separate maintenance, the prevailing party must immediately deliver one copy to the court clerk. The court clerk must ~~write or stamp "true copy" on the order or judgment and~~ file it with the friend of the court.

(2)-(3) [Unchanged.]

[NEW] Rule 3.222 Uniform Collaborative Law Act Process and Agreements

(A) Scope and Applicability of Rules. This rule and MCL 691.1331 *et seq*., the Uniform Collaborative Law Act, govern collaborative law practice in domestic relations cases.

(1) Definitions. For purposes of this rule:

(a) "Collaborative matter" means a dispute, transaction, claim, problem, or issue for resolution, including a dispute, claim, or issue in a proceeding, that is described in a collaborative law participation agreement and arises under the family or domestic relations law of this state.

(b) "Collaborative law participation agreement" means an agreement by persons to participate in a collaborative law process.

(c) "Collaborative law process" means a procedure intended to resolve a collaborative matter without intervention by a court in which persons sign a collaborative law participation agreement and are represented by collaborative lawyers.

(d) "Party A" is the equivalent of a plaintiff and means the party responsible for filing and service requirements.

(e) "Party B" is the equivalent of a defendant and means the non-filing party.

(B) Commencing an Action Involving Parties in a Collaborative Law Process.

(1) Where the parties have entered into a collaborative law participation agreement and do not already have a pending domestic relations case, the parties shall proceed under subrule (C).

(2) Where a party has filed a domestic relations case with the court under MCR 2.102 and the parties subsequently sign a collaborative law participation agreement, the parties shall file notice of the signed agreement and a motion to stay proceedings on a form approved by the State Court Administrative Office.

(a) The court shall either stay the proceedings without a hearing or schedule a hearing on the notice within 28 days after the motion is filed. An initial order granting a stay shall be effective for 364 days

from the date of filing of the motion. Upon stipulation of the parties, the court may extend the stay period.

(b) The court may require the parties and collaborative lawyers to file a status report on the collaborative law process. The status report shall be on a form approved by the State Court Administrative Office and shall include only information on whether the process is ongoing, concluded, or terminated. It shall not include a report, assessment, evaluation, recommendation, finding, or other communication regarding the matter.

(c) The parties shall promptly file notice with the court when a collaborative law process concludes or terminates. The notice shall be on a form approved by the State Court Administrative Office.

(i) The stay of the proceeding is lifted when the notice is filed. If the parties reached an agreement, they shall proceed under MCR 3.222(D).

(ii) If the parties have not filed notice before the stay expires, the court shall provide notice of intent to dismiss the case for lack of progress as prescribed by subrule (E). Before dismissing the proceeding, the court shall provide parties an opportunity to be heard.

(C) Establishing Jurisdiction and Starting the Statutory Waiting Period. At any time after a collaborative law participation agreement is signed, if the parties are not already under the court's jurisdiction, the parties may commence an action to submit to the court's jurisdiction.

(1) When the parties have concluded a collaborative law process and are requesting entry of a final judgment or final order, the parties shall file a petition to submit to court jurisdiction and request for entry of a final judgment or final order on a form approved by the State Court Administrative Office.

(a) The petition shall be brought "In the Matter of" the names of Party A and Party B and the subject matter of the collaborative law agreement using the case type codes under MCR 8.117. The petition shall:

(i) contain, at a minimum, the grounds for jurisdiction, the statutory grounds to enter the judgment or order, and a request to enter the judgment or order;

(ii) comply with the provisions of MCR 2.113 and MCR 3.206(A);

(iii) be signed by both parties;

(iv) be accompanied by the proposed final judgment or proposed final order, that complies with MCR 3.211 and is signed by both parties;

(v) be accompanied by a verified statement if required by MCR 3.206(B) and judgment information form if required by MCR 3.211(F); and

(vi) under MCL 691.1345, 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.

The petition may also contain a request to waive the six-month statutory waiting period under MCL 552.9f.

(b) On the filing of the petition and request for entry of final judgment or final order and payment of the filing fees, the court clerk shall assign a case number and judge. The requirement to issue a summons under MCR 2.102(A) is not applicable. Unless requested by the parties on filing of a motion, the court clerk shall not schedule the matter until either the lifting of a stay granted under subrule (B)(2) or the conclusion of the statutory waiting period, whichever occurs first. The petition under this subrule serves as a complaint and answer and as an appearance of both attorneys, and starts the statutory waiting period(s) under MCL 552.9f.

(2) To commence an action at any time before the conclusion of the collaborative law process, the parties shall file a petition for court jurisdiction and declaration of intent to file a proposed final judgment or

proposed final order on a form approved by the State Court Administrative Office.

(a) The petition shall be brought "In the Matter of" the names of Party A and Party B and shall state the type of action corresponding to the assigned case type code in MCR 8.117(A)(6). The petition shall:

(i) contain, at a minimum, the grounds for jurisdiction, the statutory grounds to enter the judgment or order, and a request to enter the judgment or order;

(ii) comply with the provisions of MCR 2.113 and MCR 3.206(A);

(iii) be signed by both parties;

(iv) be accompanied by a verified statement if required by MCR 3.206(B), and

(v) under MCL 691.1345, 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.

The petition may also contain a request to waive the six-month statutory waiting period under MCL 552.9f.

(b) On the filing of the petition and payment of the filing fees, the court clerk shall assign a case number and judge. The requirement to issue a summons under MCR 2.102(A) is not applicable. Unless requested by the parties on filing of a motion, the court clerk shall not schedule the matter for a pretrial or settlement conference. The petition under this subrule serves as a complaint and answer and as an appearance of both attorneys and starts the statutory waiting period(s) under MCL 552.9f.

(c) At any time during the collaborative law process, the parties may request the court to issue, in addition to a final judgment or final order, any other order approving an agreement resulting from the process.

(d) Unless the collaborative law process has concluded, the parties shall file a status report with the court within 182 days of the filing date of the petition and again at 364 days. The status report shall be on a form approved by the State Court Administrative Office and shall include only information on whether the process is ongoing or concluded. It may not include a report, assessment, evaluation, recommendation, finding, or other communication regarding the matter.

(e) At the conclusion of the collaborative law process, the parties shall file a proposed final judgment or proposed final order that complies with MCR 3.211 and a judgment information form if required by MCR 3.211(F).

(D) Entry of Final Judgment or Final Order.

(1) At its discretion, the court may conduct a hearing before entering the final judgment or final order.

(2) The final judgment or final order shall be served in accordance with MCR 2.602(D).

(3) Nothing in this rule precludes the court from waiving the six-month statutory waiting period in accordance with MCL 552.9f.

(E) Dismissal.

(1) Lack of Progress. The clerk shall provide notice of intent to dismiss the case for lack of progress if:

(a) the parties have not filed a notice that a collaborative law process has concluded or terminated before the expiration of a stay under subrule (B)(2)(a), or

(b) the parties have not filed a proposed final judgment or proposed final order within 28 days after the statutory waiting period has expired.

(2) Notice of Intent to Dismiss. A notice of intent to dismiss the case for lack of progress shall be given in the manner provided in MCR 2.501(C) for notice of trial. The notice shall state that the case will be dismissed no sooner than 28 days after the date of the notice unless the parties do one of the following:

(a) file a proposed final judgment or proposed final order under this rule,

(b) file a complaint under MCR 2.101, or

(c) request a hearing.

(3) Other Dismissal. A party may dismiss a collaborative law matter commenced under this rule at any time under MCR 2.504.

(F) Terminating the Collaborative Law Process. If a party files a complaint under MCL 691.1335(4)(b)(i), the clerk shall proceed on the complaint in accordance with MCR 2.102(A). The court shall dismiss the petition filed under subrule (C)(1) or (C)(2). Pursuant to MCL 691.1339, the attorneys in the collaborative law agreement are disqualified from representing either party in the new action.

[NEW] Rule 3.223 Summary Proceeding for Entry of Consent Judgment or Order

(A) Scope and Applicability of Rules. This rule governs practice and procedure for entering a consent judgment or consent order as an original action.

(B) Definitions. For purposes of this rule:

(1) "Party A" is the equivalent of a plaintiff and means the party responsible for filing and service requirements.

(2) "Party B" is the equivalent of a defendant and means the non-filing party.

(C) Commencing an Action.

(1) The parties shall file a petition to submit to court jurisdiction and request for entry of a proposed consent judgment or proposed consent order on a form approved by the State Court Administrative Office.

(a) The petition shall be brought "In the Matter of" the names of Party A and Party B and the subject matter of the proposed consent judgment or proposed consent order using the case type codes under MCR 8.117. The petition shall:

(i) contain, at a minimum, the grounds for jurisdiction, the statutory grounds to enter the judgment or order, and a request to enter the judgment or order;

(ii) comply with the provisions of MCR 2.113 and MCR 3.206(A);

(iii) be signed by both parties;

(iv) be accompanied by the proposed consent judgment or consent order, that complies with MCR 3.211 and is signed by both parties;

(v) be accompanied by a verified statement if required by MCR 3.206(B) and a judgment information form if required by MCR 3.211(F); and

(vi) under MCL 691.1345, 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.

(b) The petition may contain a request to waive the six-month statutory waiting period under MCL 552.9f.

(2) The petition filed under subrule (1)(a) serves as a complaint and answer unless a party files an objection under subrule (5). It also serves as an appearance of the attorney who signs the petition.

(3) On the filing of the petition and request for entry of consent judgment or consent order and payment of the filing fees, the court clerk shall:

(a) assign a case number and judge, and shall issue a notice of the filing on a form approved by the State Court Administrative Office to be served by Party A as provided in MCR 2.103 and 2.105. The court clerk shall not issue a summons under MCR 2.102(A), and

(b) schedule a hearing date on the proposed consent judgment or consent order but shall not schedule the matter for any pretrial proceedings unless requested by the parties on filing of a motion. The hearing date may not be scheduled sooner than 60 days after the date of the notice of filing. Nothing in this rule precludes the court

from waiving the six-month statutory waiting period in accordance with MCL 552.9f.

(4) The notice of the filing must be issued "In the name of the people of the State of Michigan," under the seal of the court that issued it. It must be directed to both parties and include:

(a) the name and address of the court,

(b) the names of the parties,

(c) the case number and name of assigned judge,

(d) the names, addresses, and bar numbers of any attorneys representing the parties,

(e) the date on which the notice of filing was issued,

(f) the date on which the proposed consent judgment or order will be heard by the court,

(g) a statement that if either party objects to this summary proceeding at any time before entry of the proposed consent judgment or consent order, the case will be dismissed, and

(h) a statement that the hearing on the proposed consent judgment or consent order will be held under MCR 3.210 at the conclusion of any applicable statutory waiting period.

(5) If either party objects to this summary proceeding any time before entry of the proposed consent judgment or proposed consent order, the court shall dismiss the case.

(6) At any time after the filing of the proposed consent judgment or proposed consent order, the parties may file stipulations and motions and the court may enter temporary orders.

(D) Entry of Final Consent Judgment or Consent Order. The court shall conduct a hearing on the proposed consent judgment or proposed consent order in accordance with MCR
3.210. The final consent judgment or final consent order shall be served in accordance with MCR 2.602(D).

(E) Dismissal. A party may dismiss a matter commenced under this rule at any time under MCR 2.504 or as provided under subrule (C)(5).

Staff Comment: The proposed amendments of MCR 3.201, 3.210, and 3.211 and proposed addition of MCR 3.222 and 3.223 would integrate the collaborate law process designed under the Uniform Collaborate Law Act (159 PA 2014; MCL 691.1331-691.1354) into the state's trial court system for practical use, and would add a similar process for parties not represented by counsel who seek to submit a consent judgment.

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 July 1, 2018, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2018-03. 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.

March 14, 2018

Clerk

Public Policy Position
ADM File No. 2018-03

SUPPORT MCR 3.222 WITH AMENDMENT

OPPOSE MCR 3.223

Explanation

MCR 3.222

The proposed amendments would integrate the collaborative law process designed under the Uniform Collaborative Law Section, MCL 691.1331-1354, into the state's trial court system.

Research suggests that collaborative processes are often manipulated where there is an unequal balance of power between the parties, which is particularly concerning in cases of domestic violence. That is why MCL 691.1345 was designed to ensure that the collaborative process is not used in inappropriate cases. The proposed rules are unclear because they suggest that the "domestic violence screening forms" be included at various junctures of the proceedings, but go on to say that the screening should only report personal protection orders, domestic violence criminal actions, and child protective actions. But MCL 691.1345 requires that collaborative lawyers use the SCAO protocol for domestic violence screenings in mediation, a form that includes much more information than just these public records pinpointed by the proposed court rule. This lack of clarity will lead to confusion.

Further, many individuals who cope with violent or coercive relationships are not able to access personal protection orders and domestic violence remains one of the least reported, prosecuted, and convicted offenses. Impoverished individuals are also more likely to have contact with child protective service processes over the course of their lifetimes, which may be prejudicial and not relate directly to the instant matter subject to collaboration. It is also a common abuser tactic to make child protective reports, seek a protective order, or make a criminal report against the primary victim of violence or coercive control in a relationship. Accordingly, protective order, criminal, and child protective proceedings would not paint a very accurate picture for the court of the relations between the parties. The court rule as written does not effectively enforce the intent of MCL 691.1345.

For these reasons, the Access to Justice Policy Committee supports the addition of MCR 3.222 with the following amendments to more effectively enforce the intent of MCL 691.1345:

> MCR 3.222(C)(1)(a)(vi):
> Under MCL 691.1345, be accompanied by a sworn statement for each party, signed by the collaborative lawyer and party, verifying compliance with MCL 691.1345, stating that the collaborative lawyer made reasonable inquiry whether the parties have a history of a coercive or violent relationship and either that the lawyer has no reasonable belief that coercion or violence has occurred between the parties or that the lawyer has a reasonable belief that there was a history of coercive or violent behavior between the parties but the lawyer reasonably believes that the safety of the party can be protected during the process and that the party wants to proceed with the collaborative law process. ~~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.~~

MCR 3.222(C)(2)(a)(v):
Under MCL 691.1345, be accompanied by a sworn statement for each party, signed by the collaborative lawyer and party, verifying compliance with MCL 691.1345, stating that the collaborative lawyer made reasonable inquiry whether the parties have a history of a coercive or violent relationship, that the lawyer continuously assessed for coercive or violent behavior throughout the process, and either that the lawyer has no reasonable belief that coercion or violence has occurred between the parties or that the lawyer has a reasonable belief that there was a history of coercive or violent behavior between the parties but the lawyer reasonably believes that the safety of the party was protected during the process and that the party agreed to proceed with the collaborative law process. ~~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.~~

MCR 3.223
The Committee opposes MCR 3.223. This rule is unrelated to the Collaborative Law Act and fails to include adequate protections for vulnerable and unrepresented parties. Although subsection (C)(1)(vi) requires parties to submit domestic violence screening forms, the rule fails to address the impact of such forms on the consent judgment process.

Number who voted in favor and opposed to the position:
Voted For position: 16
Voted against position: 3
Abstained from vote: 1
Did not vote: 6

Contact Persons:
Lorray S.C. Brown lorrayb@mplp.org
Valerie R. Newman vnewman@waynecounty.com

Public Policy Position
ADM File No. 2018-03

SUPPORT

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

Contact Person: Lee Hornberger
Email: leehornberger@leehornberger.com

Order

Michigan Supreme Court
Lansing, Michigan

March 14, 2018

Stephen J. Markman,
Chief Justice

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

ADM File No. 2017-26

Proposed Amendments of Canon 3 and
Canon 7 of the Code of Judicial Conduct

On order of the Court, this is to advise that the Court is considering amendments of Canon 3 and Canon 7 of the Code of Judicial Conduct. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also 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.]

Canon 3. A Judge Should Perform the Duties of Office Impartially and Diligently

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1)-(5) [Unchanged.]

(6) ~~A judge should abstain from public comment about a pending or impending proceeding any court, and should require a similar abstention on the part of court personnel subject to the judge's direction and control. This subsection does not prohibit a judge from making public statements in the course of official duties or from explaining for public information the procedures of the court or the judge's holdings or actions.~~A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

(7) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

(8) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (6) and (7).

(9) Notwithstanding the restrictions in paragraph (6), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.

(10) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.

(7)-(10) [Unchanged, but renumbered (11)-(14)].

B.-D. [Unchanged.]

Canon 7. A Judge or a Candidate for Judicial Office Should Refrain From Political Activity Inappropriate to Judicial Office

A. [Unchanged.]

B. Campaign Conduct:

(1) A candidate, including an incumbent judge, for a judicial office:

(a)-(b) [Unchanged.]

(c) ~~should~~shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, ~~or~~ promises, or commitments of conduct in office ~~other than the faithful and~~ that are inconsistent with the impartial performance of the adjudicative duties of ~~the~~judicial office.

(d) [Unchanged.]

(2)-(3) [Unchanged.]

C. [Unchanged.]

Staff Comment: The proposed amendments of Canon 3 and Canon 7 of the Code of Judicial Conduct would incorporate the ABA Model Code of Judicial Conduct 2.10 language and clarify its application to public comments made by judges.

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 July 1, 2018, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2017-26. 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.

March 14, 2018

Clerk

Public Policy Position
ADM File No. 2017-26

SUPPORT WITH RECOMMENDED AMENDMENTS

Explanation

The Judicial Ethics Committee (JEC) reviewed the proposed amendments to Canon 3 and Canon 7 and recommends support, subject to the amendments noted below, for the following reasons:

1. The amendments provide more guidance about the ethical obligations of judicial officers and candidates regarding public statements.

2. With one exception, they do not add new ethical obligations regarding judicial conduct.

3. They offer greater alignment with the ABA Model Code of Judicial Code, consistent with the national effort for uniformity of ethical conduct rules for judicial officers and candidates.

Summary of Specific Amendments Proposed by the Judicial Ethics Committee

- Modify the proposed amendment of Canon 3A, paragraph (6) to delete the language precluding any nonpublic statement as vague, having the potential to interfere with protected private speech, and requiring judicial officers to be responsible for the private speech of staff and others under their supervision based on the cross reference in paragraph (8).

- Revised paragraph (6) would read as follows: "A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court."

- Modify the proposed amendment of Canon 3A, paragraph (10) to correct a typographical error by referencing paragraph (6) instead of paragraph (A).

- Replace the word "elsewhere" in proposed Canon 3A, paragraph (10) with "other forms of communication" to improve the clarity of the provision.

- For amended Canon 3, include the comments of Rule 2.10 of the ABA Model Code of Judicial Conduct to provide further guidance.

- Modify the amendment to Canon 7B(1)(c) to change "of conduct" to "about conduct" to provide greater clarity.

- For amended Canon 7, include the comments of Rule 4.1 of the ABA Model Code of Judicial Conduct to provide further guidance.

- A memo with the Judicial Ethics Committee full recommendations and analysis will be provided by email, along with the referenced rules and comments of the ABA Code of Judicial Conduct.

List any arguments against the position

The JEC members who were present for the meeting offered unanimous support of the proposed amendments to Canons 3 and 7. However, participating JEC members were also unanimously opposed to specific language included the amendments to Canon, paragraph 6 as presented below.

The language proposed for paragraph A(6) also adds new language and arguably a new ethical duty regarding nonpublic statements and appears to prohibit a judicial officer from making certain statements in private conversations by precluding "any nonpublic statement that might substantially interfere with a fair trial or hearing." "Nonpublic statement" is not defined and the overall intent of this provision is unclear as is its application. The addition of the provision does not add certainty to the impermissible conduct the Canon seeks to prohibit. In addition, it raises the specter of constitutional challenges based on infringement of protected speech. Moreover, based on the cross reference in paragraph A(8) to paragraph A(6), judicial officers are accountable for the "nonpublic statement" of court staff, court officials, and other subject to their direction and control.

The JEC discussed a number possible nonpublic statements that could come within this provision. For example, it is not uncommon for judicial officers and their staff to confer with other judicial officers and their staff about pending cases that may have overlapping concerns. A juvenile case pending in probate court and a divorce case pending in circuit may present jurisdictional or other concerns that may affect the outcome of the case. Judicial officers sometimes participate in a judicial listserv to exchange ideas on how to handle a tricky matter. These types of exchanges should be encouraged to permit the sharing of knowledge and expertise among colleagues. For these reasons, the JEC objects to the addition of this language to Canon 3. It recommends modification of paragraph A(6) to delete the objectionable language as shown in its marked version above. Subject to these modifications, the JEC supports the amendment.

Position Vote:

Voted For position: 5
Voted against position: 0
Abstained from vote: 3
Did not vote: 0

Contact Persons:

Danon Goodrum-Garland dgarland@michbar.org
Judge Terry L. Clark d70-6@saginawcounty.com

MEMORANDUM

TO: Public Policy Committee

FROM: Judicial Ethics Committee

DATE: May 24, 2018

RE: Proposed Amendments of MCJC 3(A)(6) and 7(B)(1)(c) - Order on ADM File No. 2017-26

Overview of General Recommendations

The Judicial Ethics Committee (JEC) reviewed the proposed amendments to Canon 3 and Canon 7 and recommends support, ***subject to*** the amendments noted below, for the following reasons:

1. The amendments provide more guidance about the ethical obligations of judicial officers and candidates regarding public statements.
2. With one exception, they do not add new ethical obligations regarding judicial conduct.
3. They offer greater alignment with the ABA Model Code of Judicial Code, consistent with the national effort for uniformity of ethical conduct rules for judicial officers and candidates.

Construct of the Proposed Amendments

The proposed amendment to Canon 3 would delete paragraph (A)(6) and replace it with the text of Rule 2.10 of the ABA Model Code of Judicial Conduct (see attached), numbering the new inserted paragraphs, (6) through (10). The current paragraphs A(7)-(10) would be renumbered to (11)-(14), but would otherwise remain unchanged.

The proposed amendment to Canon 7, would amend paragraph (B)(1)(c) to incorporate the language of Rule 4.1(A)(13) of the ABA Model Code of Judicial Conduct (see attached).

Summary of Specific Amendments Proposed by JEC

- Modify the proposed amendment of Canon 3A, paragraph (6) to delete the language precluding any nonpublic statement as vague, having the potential to interfere with protected private speech, and requiring judicial officers to be responsible for the private speech of staff and others under their supervision based on the cross reference in paragraph (8).

  Revised paragraph (6) would read as follows: “A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court.”

- Modify the proposed amendment of Canon 3A, paragraph (10) to correct a typographical error by referencing paragraph (6) instead of paragraph (A).

- Replace the word "elsewhere" in proposed Canon 3A, paragraph (10) with "other forms of communication" to improve the clarity of the provision.

- For amended Canon 3, include the comments of Rule 2.10 of the ABA Model Code of Judicial Conduct to provide further guidance.

- Modify the amendment to Canon 7B(1)(c) to change "of conduct" to "about conduct" to provide greater clarity.

- For amended Canon 7, include the comments of Rule 4.1 of the ABA Model Code of Judicial Conduct to provide further guidance.

Marked-up Canon 3 and Canon 7 with Amendments Proposed by JEC

[Additions to the text proposed by JEC are indicated by underlining and shading and deleted text is shown by double strikeover and shading.]

Canon 3. A Judge Should Perform the Duties of Office Impartially and Diligently

A. Adjudicative Responsibilities.

(1)-(5)[Unchanged.]

(6) ~~A judge should abstain from public comment about a pending or impending proceeding any court, and should require a similar abstention on the part of court personnel subject to the judge's direction and control. This subsection does not prohibit a judge from making public statements in the course of official duties or from explaining for public information the procedures of the court or the judge's holdings or actions.~~ A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court~~, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.~~

(7) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

(8) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (6) and (7).

(9) Notwithstanding the restrictions in paragraph (6), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.

(10) Subject to the requirements of paragraph (6~~A~~), a judge may respond directly or through a third party to allegations in the media or ~~elsewhere~~ other forms of communication concerning the judge's conduct in a matter.

(7)-(10) [Unchanged, but renumbered (11)-(14)].

Comments

This Canon's restrictions on judicial speech, as provide in paragraphs A(6) – (10) are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.

This Canon does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, or represents a client as permitted by Canon 4H or otherwise provided by law. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.

Depending upon the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the judge's conduct in a matter.

Canon 7. A Judge or a Candidate for Judicial Office Should Refrain From Political Activity Inappropriate to Judicial Office

A. [Unchanged.]

B. Campaign Conduct:

(1) A candidate, including an incumbent judge, for a judicial office:

(a)-(b) [Unchanged.]

(c) ~~should~~shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, ~~or~~ promises, or commitments ~~of~~about conduct in office ~~other than~~ ~~the faithful and~~ that are inconsistent with the impartial performance of the adjudicative duties of ~~the~~judicial office.

(d) [Unchanged.]

(2)-(3) [Unchanged.]

C. [Unchanged.]

Comments

General conditions. Even when subject to public election, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. This Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates, taking into account the various methods of selecting judges.

When a person becomes a judicial candidate, this Canon becomes applicable to judicial officer's conduct.

Participation in political activities. Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence. Although judges and judicial candidates may register to vote as members of a political party, they are prohibited by paragraph A(1) from assuming leadership roles in political organizations.

Paragraphs A (2)-(3) prohibit judges and judicial candidates from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from abusing the prestige of judicial office to advance the interests of others. See Canon 2, paragraph C. This Canon does not prohibit candidates from campaigning

on their own behalf, or from endorsing or opposing candidates for the same judicial office for which they are running.

Although members of the families of judges and judicial candidates are free to engage in their own political activity, including running for public office, there is no "family exception" to the prohibitions in paragraph A(1) against a judge or candidate publicly endorsing candidates for public office. A judge or judicial candidate must not become involved in, or publicly associate with, a family member's political activity or campaign for public office. To avoid public misunderstanding, judges and judicial candidates should take, and should urge members of their families to take, reasonable steps to avoid any implication that they endorse any family member's candidacy or other political activity.

Judges and judicial candidates retain the right to participate in the political process as voters in both primary and general elections. For purposes of this Canon, participation in a caucus type election procedure does not constitute public support for or endorsement of a political organization or candidate, and is not prohibited by paragraph A(1).

Statements and comments made during a campaign for judicial office. Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Paragraph B(1)(d) obligates candidates and their committees to refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading.

Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does not violate paragraph B(1)(d), the candidate may make a factually accurate public response. In addition, when an independent third party has made unwarranted attacks on a candidate's opponent, the candidate may disavow the attacks, and request the third party to cease and desist.

Subject to the other applicable Canons, a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against the judicial candidate during a campaign, although it is preferable for someone else to respond if the allegations relate to a pending case.

Judicial candidates should refrain from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.

Pledges, promises, or commitments inconsistent, with impartial performance of the adjudicative duties of judicial office. The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. Campaigns for

judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.

Paragraph B(1)(c) makes applicable to both judges and judicial candidates the prohibition that applies to judges in Canon 3, paragraph A(7), relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

A judicial candidate may make campaign promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A candidate may also pledge to take action outside the courtroom, such as working toward an improved jury selection system, or advocating for more funds to improve the physical plant and amenities of the courthouse.

Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Paragraph B does not specifically address judicial responses to such inquiries. Depending upon the wording and format of such questionnaires, the candidates' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating paragraph B, therefore, candidates who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially if elected. Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence or impartiality, or that it might lead to frequent disqualification.

Detailed Comments on Specific Amendments to Canon 3(A)

The language proposed for paragraph A (6) of Canon 3 is the same as ABA Rule 2.10(A) and pertains to the statement about public comment in the first sentence of MCJC 3(A)(6).

The proposed language changes "should not" to "shall not." The Committee favors the use of shall as providing more definite guidance of impermissible conduct.

The proposed language adds a "reasonable" standard with regard to whether the public statement may be expected to affect the outcome of a pending or impending case or the potential of the public statement to impair the fairness of a pending or impending case.

The language proposed for paragraph A(6) also adds new language and arguably a new ethical duty regarding nonpublic statements and appears to prohibit a judicial officer from making certain statements in private conversations by precluding "any nonpublic statement that might substantially interfere with a fair trial or hearing." "Nonpublic statement" is not defined and the overall intent of this provision is unclear as is its application. The addition of the provision does not add certainty to the impermissible conduct the Canon seeks to prohibit. In addition, it raises the specter of constitutional challenges based on infringement of protected speech. Moreover, based on the cross reference in paragraph A(8) to paragraph A(6), judicial officers are accountable for the "nonpublic statement" of court staff, court officials, and other subject to their direction and control.

The JEC discussed a number possible nonpublic statements that could come within this provision. For example, it is not uncommon for judicial officers and their staff to confer with other judicial officers and their staff about pending cases that may have overlapping concerns. A juvenile case pending in probate court and a divorce case pending in circuit may present jurisdictional or other concerns that may affect the outcome of the case. Judicial officers sometimes participate in a judicial listserv to exchange ideas on how to handle a tricky matter. These types of exchanges should be encouraged to permit the sharing of knowledge and expertise among colleagues. For these reasons, the JEC objects to the addition of this language to Canon 3. It recommends modification of paragraph A(6) to delete the objectionable language as shown in its marked version above. Subject to these modifications, the JEC supports the amendment.

The language proposed for paragraph A(7) is the same as ABA Rule 2.10(B). It is consistent with a judicial officer's overall impartiality obligation. The JEC supports this amendment.

The language proposed for paragraph A(8) is the same as ABA Rule 2.10(C). It is consistent with a judicial officer's overall obligation to ensure court staff and others under the supervision of the judicial officer adhere to the required judicial conduct code regarding communications and tracks the current language of the first sentence in MCJC 3(A)(6). However, it would expand judicial oversight to nonpublic statements made by judicial staffers and others under the judicial officer's direction and control. Subject to the modifications proposed by the JEC to paragraph A(6) as indicated above, the JEC supports this amendment.

The language proposed for paragraph A(9) is the same as ABA Rule 2.10(D). It is similar to the language in the second sentence of MCJC 3, paragraph A(6), but adds language to specifically permit communication by a judicial officer regarding a "proceeding" in which the judicial officer "is a litigant in a personal capacity." The JEC supports this amendment.

The language proposed for paragraph A(10) is the same as ABA Rule 2.10(E). It specifically permits judicial officers to respond to allegations regarding their own conduct either directly or through a third-party. This paragraph requires a slight modification. The reference to "paragraph (A) needs to be corrected to refer to "paragraph (6)," consistent with the numbering format of the proposed amendment. Also, the JEC proposes more clarity for this paragraph by replacing "elsewhere" with "other forms of communications." With these minor modifications, the JEC favors this amendment.

The Committee may also recommends that the "Comment on ABA Rule 2.10," be included in the amended to Canon 3 and modified as applicable to conform to Michigan's comment format and Canon provisions to provide guidance for compliance with the Canon. See marked up version of Canon 3 with comments above.

Detailed Comments on Specific Amendment of Canon 7, paragraph B(1)(c)

The proposed amendment to the existing language of Canon 7, paragraph B(1)(c) incorporates language found in other parts of MCJC to strengthen the existing provision. See for example Canon 4, paragraph E(1) regarding financial activities. Also, the proposed language changes "should not" to "shall not." JEC favors the use of shall as providing more definite guidance of impermissible conduct. JEC supports the amendments to paragraph B(1)(c).

JEC recommends that the "Comment on ABA Rule 4.1," be included in the amended to Canon 7 and modified as applicable to conform to Michigan's comment format and Canon provisions to provide guidance for compliance with the Canon. See marked up version of Canon 3 with comments above.

Rule 2.10: Judicial Statements on Pending and Impending Cases

(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending* or impending* in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

(B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial* performance of the adjudicative duties of judicial office.

(C) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).

(D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.

(E) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.

Comment | Back to homepage | Next Rule

Comment on Rule 2.10

[1] This Rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.

[2] This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, or represents a client as permitted by these Rules. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.

[3] Depending upon the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the judge's conduct in a matter.

Rule 4.1: Political and Campaign Activities of Judges and Judicial Candidates in General

(A) Except as permitted by law,* or by Rules 4.2, 4.3, and 4.4, a judge or a judicial candidate* shall not:

(1) act as a leader in, or hold an office in, a political organization;*

(2) make speeches on behalf of a political organization;

(3) publicly endorse or oppose a candidate for any public office;

(4) solicit funds for, pay an assessment to, or make a contribution* to a political organization or a candidate for public office;

(5) attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;

(6) publicly identify himself or herself as a candidate of a political organization;

(7) seek, accept, or use endorsements from a political organization;

(8) personally solicit* or accept campaign contributions other than through a campaign committee authorized by Rule 4.4;

(9) use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others;

(10) use court staff, facilities, or other court resources in a campaign for judicial office;

(11) knowingly,* or with reckless disregard for the truth, make any false or misleading statement;

(12) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending* or impending* in any court; or

(13) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial* performance of the adjudicative duties of judicial office.

(B) A judge or judicial candidate shall take reasonable measures to ensure that other persons do not undertake, on behalf of the

judge or judicial candidate, any activities prohibited under paragraph (A). candidate, any activities prohibited under paragraph (A).

Comment | Back to Home | Next Rule

Comment on Rule 4.1

General Conditions

[1] Even when subject to public election, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. This Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates, taking into account the various methods of selecting judges.

[2] When a person becomes a judicial candidate, this Canon becomes applicable to his or her conduct.

PARTICIPATION IN POLITICAL ACTIVITIES

[3] Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence. Although judges and judicial candidates may register to vote as members of a political party, they are prohibited by paragraph (A)(1) from assuming leadership roles in political organizations.

[4] Paragraphs (A)(2) and (A)(3) prohibit judges and judicial candidates from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from abusing the prestige of judicial office to advance the interests of others. See Rule 1.3. These Rules do not prohibit candidates from campaigning on their own behalf, or from endorsing or opposing candidates for the same judicial office for which they are running. See Rules 4.2(B)(2) and 4.2(B)(3).

[5] Although members of the families of judges and judicial candidates are free to engage in their own political activity, including running for public office, there is no "family exception" to the prohibition in paragraph (A)(3) against a judge or candidate publicly endorsing candidates for public office. A judge or judicial candidate must not become involved in, or publicly associated with,

a family member's political activity or campaign for public office. To avoid public misunderstanding, judges and judicial candidates should take, and should urge members of their families to take, reasonable steps to avoid any implication that they endorse any family member's candidacy or other political activity.

[6] Judges and judicial candidates retain the right to participate in the political process as voters in both primary and general elections. For purposes of this Canon, participation in a caucus-type election procedure does not constitute public support for or endorsement of a political organization or candidate, and is not prohibited by paragraphs (A)(2) or (A)(3).

STATEMENTS AND COMMENTS MADE DURING A CAMPAIGN FOR JUDICIAL OFFICE

[7] Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Paragraph (A)(11) obligates candidates and their committees to refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading.

[8] Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does not violate paragraphs (A)(11), (A)(12), or (A)(13), the candidate may make a factually accurate public response. In addition, when an independent third party has made unwarranted attacks on a candidate's opponent, the candidate may disavow the attacks, and request the third party to cease and desist.

[9] Subject to paragraph (A)(12), a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her during a campaign, although it is preferable for someone else to respond if the allegations relate to a pending case.

[10] Paragraph (A)(12) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.

PLEDGES, PROMISES, OR COMMITMENTS INCONSISTENT WITH IMPARTIAL PERFORMANCE OF THE ADJUDICATIVE DUTIES OF JUDICIAL OFFICE

[11] The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.

[12] Paragraph (A)(13) makes applicable to both judges and judicial candidates the prohibition that applies to judges in Rule 2.10(B), relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

[13] The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

[14] A judicial candidate may make campaign promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A candidate may also pledge to take action outside the courtroom, such as working toward an improved jury selection system, or advocating for more funds to improve the physical plant and amenities of the courthouse.

[15] Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Paragraph (A)(13) does not specifically address judicial responses to such inquiries. Depending upon the wording and format of such questionnaires, candidates' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other

than in an impartial way. To avoid violating paragraph (A)(13), therefore, candidates who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially if elected. Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence or impartiality, or that it might lead to frequent disqualification. See Rule 2.11.

Public Policy Position
ADM File No. 2017-26

SUPPORT WITH RECOMMMENDED AMENDMENTS

Explanation

A Subcommittee was formed to review the proposed amendments. The Subcommittee conferred via conference call with the Judicial Ethics Committee and then finalized its recommendation to the Professional Ethics Committee via a subsequent conference call for an electronic vote by the Committee.

The Professional Ethics Committee supports in full the recommendations of the Judicial Ethics Committee as follows:

- Support the proposed amendments to Canon 3 and Canon 7, subject to, the amendments noted below because (1) the amendments provide more guidance about the ethical obligations of judicial officers and candidates regarding public statements; (2) with one exception, they do not add new ethical obligations regarding judicial conduct; and (3) they offer greater alignment with the ABA Model Code of Judicial Code, consistent with the national effort for uniformity of ethical conduct rules for judicial officers and candidates.

- Modify the proposed amendment of Canon 3A, paragraph (6) to delete the language precluding any nonpublic statement as vague, having the potential to interfere with protected private speech, and requiring judicial officers to be responsible for the private speech of staff and others under their supervision based on the cross reference in paragraph (8). Revised paragraph (6) would read as follows: "A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court."

- Modify the proposed amendment of Canon 3A, paragraph (10) to correct a typographical error by referencing paragraph (6) instead of paragraph (A).

- Replace the word "elsewhere" in proposed Canon 3A, paragraph (10) with "other forms of communication" to improve the clarity of the provision.

- For amended Canon 3, include the comments of Rule 2.10 of the ABA Model Code of Judicial Conduct to provide further guidance.

- Modify the amendment to Canon 7B(1)(c) to change "of conduct" to "about conduct" to provide greater clarity.

- For amended Canon 7, include the comments of Rule 4.1 of the ABA Model Code of Judicial Conduct to provide further guidance.

The Professional Ethics Committee incorporates by reference the Judicial Ethics Committee memo with attachments that it submitted to the Board.

Position Vote:
Voted For position: 10
Voted against position: 5
Abstained from vote: 0
Did not vote: 4

List any arguments against the position
The opposition to the amendments were as follows: (1) The current language of Michigan's Canon 3, paragraph 6 and Michigan Canon 7, paragraph B(1)(c) is sufficient and reasonably clear, so the proposed change is unnecessary; (2) the language of Canon 3, paragraph 7 and Canon 7, paragraph B(1)(c) is too general, over broad, vague, and ambiguous such that it captures protected speech and the changes make these provisions of the Canon less understandable; and (3) the amendments appear to be an attempt to bolster the Judicial Tenure Commission's ability to go after negative campaign speech that has already been found constitutionally-protected speech in the Chmura cases, In re Chmura, 464 Mich. 58 (2001) and In re Chmura, 461 Mich. 517 (2000) and Republican Party of Minn. v White, 536 US 765 (2002).

Contact Persons:
Danon Goodrum-Garland dgarland@michbar.org
Stephanie J. LaRose slarose@law.msu.edu

Michigan District Judges Association

May 21, 2018

Ms. Anne Boomer
Administrative Counsel
State Court Administrative Office
P.O. Box 30052
Lansing, MI 48909

Re: Proposed amendments to Canons 3 and 7 of the Code of Judicial Conduct

Dear Ms. Boomer:

The Michigan District Judges Association has reviewed the proposed amendments to Canons 3 and 7 of the Code of Judicial Conduct. We have the following comments:

Under Canon 3(A):

(6) We believe the existing wording is preferable to the suggested amendment. The amendment says that we should not make a public statement on an "impending" matter. "Impending" implies that something hasn't happened yet. How are we to avoid making a statement about something of which we are not yet aware? The amendment also directs us not to make a non-public statement that might substantially interfere with a fair trial or hearing. How could it interfere if we are speaking privately? We often speak non-publicly with colleagues and staff about matters pending before the court and issues related to our work.

(7) We find this amendment acceptable.

(8) This is unenforceable. How would we show that we required or mandated our staff not to speak? Moreover, the list of statements that we are prohibited from making is very broad. How could our staff be advised and know of each unadvisable comment they might make?

(9) We find this amendment acceptable.

(10) We find this amendment acceptable.

Under Canon 7 (B)(1)(c):

We find this amendment acceptable.

Thank you for your publishing our opinion.

Sincerely,

Shelia R. Johnson

Shelia R. Johnson
President

cc: Allison Hayes

SBM STATE BAR OF MICHIGAN

To: Members of the Public Policy Committee
Board of Commissioners

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

Date: May 29, 2018

Re: Juvenile Mental Health Courts (HB 5806 – HB 5808)

Background

As a package, House Bills 5806, 5807, and 5808 would establish juvenile mental health courts under the Revised Judicature Act. Specifically, the bills would create a separate chapter for provisions pertaining to juvenile mental health courts. The new chapter contains provisions similar to those that currently apply to mental health courts in general, revising or adding new language as appropriate to tailor the mental health code provisions to the juvenile justice system and juvenile offenders. (A juvenile, as defined in the Juvenile Code portion of the Probate Code as a person less than 17 years of age who is delinquent or commits a criminal offense, is typically adjudicated in the Family Division of Circuit Court.)

At the May 22 House Judiciary Committee meeting the following groups/individuals submitted testimony cards in support of the legislation:

- State Court Administrative Office;
- Prosecuting Attorneys Association of Michigan;
- Michigan Council on Crime and Delinquency;
- American Civil Liberties Union of Michigan; and
- Lt. Governor Brian Calley.

***Keller* Considerations**

Previously, legislation that creates specialty courts has been considered *Keller* permissible because specialty courts are designed to provide better legal services to those who use them while improving the functioning of the courts. In creating a new specialty court system for juveniles with mental health issues, HB 5806 – HB 5808 are *Keller* permissible as they would expand and improve the availability of mental health courts to juveniles.

***Keller* Quick Guide**

THE TWO PERMISSIBLE SUBJECT-AREAS UNDER *KELLER*:		
	Regulation of Legal Profession	**Improvement in Quality of Legal Services**
As interpreted by AO 2004-1	• Regulation and discipline of attorneys • Ethics • Lawyer competency • Integrity of the Legal Profession • Regulation of attorney trust accounts	✓ Improvement in functioning of the courts ✓ Availability of legal services to society

Staff Recommendation

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

MICHIGAN LEGISLATURE(www.legislature.mi.gov)
Printed on Wednesday, May 23, 2018
Michigan Compiled Laws Complete Through PA 115 of 2018

House Bill 5806 (2018) rss?

Friendly Link: http://legislature.mi.gov/doc.aspx?2018-HB-5806

Sponsors

Julie Calley (district 87)
David LaGrand
(click name to see bills sponsored by that person)

Categories

Courts: other; Mental health: other;

Courts; other; juvenile mental health courts; establish. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding ch. 10C. TIE BAR WITH: HB 5807'18

Bill Documents

Bill Document Formatting Information
[x]
The following bill formatting applies to the 2017-2018 session:
- New language in an amendatory bill will be shown in **BOLD AND UPPERCASE.**
- Language to be removed will be ~~stricken~~.
- Amendments made by the House will be blue with square brackets, such as: [House amended text].
- Amendments made by the Senate will be red with double greater/lesser than symbols, such as: <<Senate amended text>>.

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

Documents

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

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

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

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

Bill Analysis

House Fiscal Agency Analysis

Summary As Introduced (5/21/2018)
This document analyzes: HB5806, HB5807, HB5808

History

(House actions in lowercase, Senate actions in UPPERCASE)

Date	Journal	Action
4/12/2018	HJ 35 Pg. 648	introduced by Representative Julie Calley
4/12/2018	HJ 35 Pg. 648	read a first time

4/12/2018	HJ 35 Pg. 648	referred to Committee on Judiciary
4/17/2018	HJ 36 Pg. 652	bill electronically reproduced 04/12/2018

HOUSE BILL No. 5806

April 12, 2018, Introduced by Reps. Calley and LaGrand and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled

"Revised judicature act of 1961,"

(MCL 600.101 to 600.9947) by adding chapter 10C.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER 10C

SEC. 1099B. AS USED IN THIS CHAPTER:

(A) "CO-OCCURRING DISORDER" MEANS HAVING 1 OR MORE DISORDERS RELATING TO THE USE OF ALCOHOL OR OTHER CONTROLLED SUBSTANCES OF ABUSE AS WELL AS ANY SERIOUS MENTAL ILLNESS, SERIOUS EMOTIONAL DISTURBANCE, OR DEVELOPMENTAL DISABILITY. A DIAGNOSIS OF CO-OCCURRING DISORDERS OCCURS WHEN AT LEAST 1 DISORDER OF EACH TYPE CAN BE ESTABLISHED INDEPENDENT OF THE OTHER AND IS NOT SIMPLY A CLUSTER OF SYMPTOMS RESULTING FROM 1 DISORDER.

(B) "COURT FUNDING UNIT" MEANS THAT TERM AS DEFINED IN SECTION

HOUSE BILL No. 5806

151E.

(C) "DEVELOPMENTAL DISABILITY" MEANS THAT TERM AS DEFINED IN SECTION 100A OF THE MENTAL HEALTH CODE, 1974 PA 258, MCL 330.1100A.

(D) "DOMESTIC VIOLENCE OFFENSE" MEANS ANY CRIME ALLEGED TO HAVE BEEN COMMITTED BY A JUVENILE AGAINST A FAMILY MEMBER, AN INDIVIDUAL WITH WHOM THE JUVENILE HAS A CHILD IN COMMON, AN INDIVIDUAL WITH WHOM THE JUVENILE HAS HAD A DATING RELATIONSHIP, OR AN INDIVIDUAL WHO RESIDES OR HAS RESIDED IN THE SAME HOUSEHOLD AS THE JUVENILE.

(E) "JUVENILE MENTAL HEALTH COURT" MEANS ALL OF THE FOLLOWING:

(*i*) A COURT-SUPERVISED TREATMENT PROGRAM FOR JUVENILES WHO ARE DIAGNOSED BY A MENTAL HEALTH PROFESSIONAL WITH HAVING A SERIOUS EMOTIONAL DISTURBANCE, CO-OCCURRING DISORDER, OR DEVELOPMENTAL DISABILITY.

(*ii*) PROGRAMS DESIGNED TO ADHERE TO THE 7 COMMON CHARACTERISTICS OF A JUVENILE MENTAL HEALTH COURT AS DESCRIBED UNDER SECTION 1099C(3).

(*iii*) PROGRAMS DESIGNED TO ADHERE TO THE 10 ESSENTIAL ELEMENTS OF A MENTAL HEALTH COURT PROMULGATED BY THE BUREAU OF JUSTICE ASSISTANCE, OR AMENDED, THAT INCLUDE ALL OF THE FOLLOWING CHARACTERISTICS:

(A) A BROAD-BASED GROUP OF STAKEHOLDERS REPRESENTING THE CRIMINAL JUSTICE SYSTEM, THE JUVENILE JUSTICE SYSTEM, THE MENTAL HEALTH SYSTEM, THE SUBSTANCE ABUSE TREATMENT SYSTEM, ANY RELATED SYSTEMS, AND THE COMMUNITY GUIDE THE PLANNING AND ADMINISTRATION OF THE COURT.

(B) ELIGIBILITY CRITERIA THAT ADDRESS PUBLIC SAFETY AND A

COMMUNITY'S TREATMENT CAPACITY, IN ADDITION TO THE AVAILABILITY OF ALTERNATIVES TO PRETRIAL DETENTION FOR JUVENILES WITH MENTAL ILLNESSES, AND THAT TAKE INTO ACCOUNT THE RELATIONSHIP BETWEEN MENTAL ILLNESS AND A JUVENILE'S OFFENSES, WHILE ALLOWING THE INDIVIDUAL CIRCUMSTANCES OF EACH CASE TO BE CONSIDERED.

(C) PARTICIPANTS ARE IDENTIFIED, REFERRED, AND ACCEPTED INTO MENTAL HEALTH COURTS, AND THEN LINKED TO COMMUNITY-BASED SERVICE PROVIDERS AS QUICKLY AS POSSIBLE.

(D) TERMS OF PARTICIPATION ARE CLEAR, PROMOTE PUBLIC SAFETY, FACILITATE THE JUVENILE'S ENGAGEMENT IN TREATMENT, ARE INDIVIDUALIZED TO CORRESPOND TO THE LEVEL OF RISK THAT EACH JUVENILE PRESENTS TO THE COMMUNITY, AND PROVIDE FOR POSITIVE LEGAL OUTCOMES FOR THOSE INDIVIDUALS WHO SUCCESSFULLY COMPLETE THE PROGRAM.

(E) IN ACCORDANCE WITH THE MICHIGAN INDIGENT DEFENSE COMMISSION ACT, 2013 PA 93, MCL 780.981 TO 780.1003, PROVIDE LEGAL COUNSEL TO JUVENILE RESPONDENTS TO EXPLAIN PROGRAM REQUIREMENTS, INCLUDING VOLUNTARY PARTICIPATION, AND GUIDE JUVENILES IN DECISIONS ABOUT PROGRAM INVOLVEMENT. PROCEDURES EXIST IN THE JUVENILE MENTAL HEALTH COURT TO ADDRESS, IN A TIMELY FASHION, CONCERNS ABOUT A JUVENILE'S COMPETENCY WHENEVER THEY ARISE.

(F) CONNECT PARTICIPANTS TO COMPREHENSIVE AND INDIVIDUALIZED TREATMENT SUPPORTS AND SERVICES IN THE COMMUNITY AND STRIVE TO USE, AND INCREASE THE AVAILABILITY OF, TREATMENT AND SERVICES THAT ARE EVIDENCE BASED.

(G) HEALTH AND LEGAL INFORMATION ARE SHARED IN A MANNER THAT PROTECTS POTENTIAL PARTICIPANTS' CONFIDENTIALITY RIGHTS AS MENTAL

HEALTH CONSUMERS AND THEIR CONSTITUTIONAL RIGHTS. INFORMATION GATHERED AS PART OF THE PARTICIPANTS' COURT-ORDERED TREATMENT PROGRAM OR SERVICES ARE SAFEGUARDED FROM PUBLIC DISCLOSURE IN THE EVENT THAT PARTICIPANTS ARE RETURNED TO TRADITIONAL COURT PROCESSING.

(H) A TEAM OF CRIMINAL JUSTICE, IF APPLICABLE, JUVENILE JUSTICE, AND MENTAL HEALTH STAFF AND TREATMENT PROVIDERS RECEIVES SPECIAL, ONGOING TRAINING AND ASSISTS MENTAL HEALTH COURT PARTICIPANTS TO ACHIEVE TREATMENT AND CRIMINAL AND JUVENILE JUSTICE GOALS BY REGULARLY REVIEWING AND REVISING THE COURT PROCESS.

(I) CRIMINAL AND JUVENILE JUSTICE AND MENTAL HEALTH STAFF COLLABORATIVELY MONITOR PARTICIPANTS' ADHERENCE TO COURT CONDITIONS, OFFER INDIVIDUALIZED GRADUATED INCENTIVES AND SANCTIONS, AND MODIFY TREATMENT AS NECESSARY TO PROMOTE PUBLIC SAFETY AND PARTICIPANTS' RECOVERY.

(J) DATA ARE COLLECTED AND ANALYZED TO DEMONSTRATE THE IMPACT OF THE JUVENILE MENTAL HEALTH COURT, ITS PERFORMANCE IS ASSESSED PERIODICALLY, PROCEDURES ARE MODIFIED ACCORDINGLY, COURT PROCESSES ARE INSTITUTIONALIZED, AND SUPPORT FOR THE COURT IN THE COMMUNITY IS CULTIVATED AND EXPANDED.

(F) "MENTAL HEALTH PROFESSIONAL" MEANS AN INDIVIDUAL WHO IS TRAINED AND EXPERIENCED IN THE AREA OF MENTAL ILLNESS OR DEVELOPMENTAL DISABILITIES AND WHO IS 1 OF THE FOLLOWING:

(*i*) A PHYSICIAN.

(*ii*) A PSYCHOLOGIST.

(*iii*) A REGISTERED PROFESSIONAL NURSE LICENSED OR OTHERWISE AUTHORIZED TO ENGAGE IN THE PRACTICE OF NURSING UNDER PART 172 OF

THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.17201 TO 333.17242.

(*iv*) A LICENSED MASTER'S SOCIAL WORKER LICENSED OR OTHERWISE AUTHORIZED TO ENGAGE IN THE PRACTICE OF SOCIAL WORK AT THE MASTER'S LEVEL UNDER PART 185 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.18501 TO 333.18518.

(*v*) A LICENSED PROFESSIONAL COUNSELOR LICENSED OR OTHERWISE AUTHORIZED TO ENGAGE IN THE PRACTICE OF COUNSELING UNDER PART 181 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.18101 TO 333.18117.

(*vi*) A MARRIAGE AND FAMILY THERAPIST LICENSED OR OTHERWISE AUTHORIZED TO ENGAGE IN THE PRACTICE OF MARRIAGE AND FAMILY THERAPY UNDER PART 169 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.16901 TO 333.16915.

(G) "PARTICIPANT" MEANS A JUVENILE WHO IS ADMITTED INTO A JUVENILE MENTAL HEALTH COURT.

(H) "SERIOUS EMOTIONAL DISTURBANCE" MEANS THAT TERM AS DEFINED IN SECTION 100D OF THE MENTAL HEALTH CODE, 1974 PA 258, MCL 330.1100D.

(I) "SERIOUS MENTAL ILLNESS" MEANS THAT TERM AS DEFINED IN SECTION 100D OF THE MENTAL HEALTH CODE, 1974 PA 258, MCL 330.1100D.

(J) "VIOLENT OFFENDER" MEANS A JUVENILE WHO IS CURRENTLY CHARGED OR PETITIONED WITH, OR HAS BEEN CONVICTED OF OR ADJUDICATED ON AN OFFENSE INVOLVING THE DEATH OF, OR A SERIOUS BODILY INJURY TO, ANY INDIVIDUAL, WHETHER OR NOT ANY OF THESE CIRCUMSTANCES ARE AN ELEMENT OF THE OFFENSE, OR WITH CRIMINAL SEXUAL CONDUCT IN ANY DEGREE.

SEC. 1099C. (1) A FAMILY DIVISION OF CIRCUIT COURT IN ANY JUDICIAL CIRCUIT MAY ADOPT OR INSTITUTE A JUVENILE MENTAL HEALTH

COURT PURSUANT TO STATUTE OR COURT RULES. THE CREATION OR EXISTENCE OF A JUVENILE MENTAL HEALTH COURT DOES NOT ALTER OR AFFECT THE LAW OR COURT RULES CONCERNING DISCHARGE OR DISMISSAL OF AN OFFENSE, OR ADJUDICATION. A FAMILY DIVISION OF CIRCUIT COURT ADOPTING OR INSTITUTING A JUVENILE MENTAL HEALTH COURT SHALL ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH ALL PARTICIPATING PROSECUTING AUTHORITIES IN THE CIRCUIT, A REPRESENTATIVE OR REPRESENTATIVES OF THE COMMUNITY MENTAL HEALTH SERVICES PROGRAM, A REPRESENTATIVE OF THE BAR SPECIALIZING IN JUVENILE LAW, AND A REPRESENTATIVE OR REPRESENTATIVES OF COMMUNITY TREATMENT PROVIDERS THAT DESCRIBES THE ROLES AND RESPONSIBILITIES OF EACH PARTY TO THE MEMORANDUM OF UNDERSTANDING. THE MEMORANDUM OF UNDERSTANDING ALSO MAY INCLUDE OTHER PARTIES CONSIDERED NECESSARY, INCLUDING, BUT NOT LIMITED TO, A REPRESENTATIVE OR REPRESENTATIVES OF THE LOCAL COURT FUNDING UNIT OR A DOMESTIC VIOLENCE SERVICE PROVIDER PROGRAM THAT RECEIVES FUNDING FROM THE MICHIGAN DOMESTIC AND SEXUAL VIOLENCE PREVENTION AND TREATMENT BOARD.

(2) A COURT THAT HAS ADOPTED A JUVENILE MENTAL HEALTH COURT UNDER THIS SECTION MAY ACCEPT PARTICIPANTS FROM ANY OTHER JURISDICTION IN THIS STATE BASED UPON THE RESIDENCE OF THE PARTICIPANT IN THE RECEIVING JURISDICTION. A JUVENILE MENTAL HEALTH COURT MAY REFUSE TO ACCEPT PARTICIPANTS FROM OTHER JURISDICTIONS.

(3) A COURT THAT HAS ADOPTED A JUVENILE MENTAL HEALTH COURT UNDER THIS SECTION SHALL COMPLY WITH THE 7 COMMON CHARACTERISTICS OF A JUVENILE MENTAL HEALTH COURT PUBLISHED BY POLICY RESEARCH ASSOCIATES, INCLUDING ALL OF THE FOLLOWING:

(A) REGULARLY SCHEDULED SPECIAL DOCKET.

(B) LESS FORMAL STYLE OF INTERACTION AMONG COURT OFFICIALS AND PARTICIPANTS.

(C) AGE-APPROPRIATE SCREENING AND ASSESSMENT FOR TRAUMA, SUBSTANCE USE, AND MENTAL DISORDER.

(D) TEAM MANAGEMENT OF JUVENILE MENTAL HEALTH COURT PARTICIPANT'S TREATMENT AND SUPERVISION.

(E) SYSTEM-WIDE ACCOUNTABILITY ENFORCED BY THE JUVENILE MENTAL HEALTH COURT.

(F) USE OF GRADUATED INCENTIVES AND SANCTIONS.

(G) DEFINED CRITERIA FOR PROGRAM SUCCESS.

(4) BEGINNING JANUARY 1, 2019, A JUVENILE MENTAL HEALTH COURT OPERATING IN THIS STATE, OR A CIRCUIT COURT IN ANY JUDICIAL CIRCUIT OR THE DISTRICT COURT IN ANY JUDICIAL DISTRICT SEEKING TO ADOPT OR INSTITUTE A JUVENILE MENTAL HEALTH COURT, MUST BE CERTIFIED BY THE STATE COURT ADMINISTRATIVE OFFICE. THE STATE COURT ADMINISTRATIVE OFFICE SHALL ESTABLISH THE PROCEDURE FOR CERTIFICATION. APPROVAL AND CERTIFICATION UNDER THIS SUBSECTION OF A JUVENILE MENTAL HEALTH COURT IS REQUIRED TO BEGIN OR TO CONTINUE THE OPERATION OF A JUVENILE MENTAL HEALTH COURT UNDER THIS CHAPTER. THE STATE COURT ADMINISTRATIVE OFFICE SHALL NOT RECOGNIZE AND INCLUDE A JUVENILE MENTAL HEALTH COURT THAT IS NOT CERTIFIED UNDER THIS SUBSECTION ON THE STATEWIDE OFFICIAL LIST OF JUVENILE MENTAL HEALTH COURTS. THE STATE COURT ADMINISTRATIVE OFFICE SHALL INCLUDE A JUVENILE MENTAL HEALTH COURT CERTIFIED UNDER THIS SUBSECTION ON THE STATEWIDE OFFICIAL LIST OF JUVENILE MENTAL HEALTH COURTS. A JUVENILE MENTAL HEALTH COURT THAT IS NOT CERTIFIED UNDER THIS SUBSECTION SHALL NOT PERFORM ANY OF THE FUNCTIONS OF A JUVENILE MENTAL HEALTH COURT,

INCLUDING, BUT NOT LIMITED TO, ANY OF THE FOLLOWING FUNCTIONS:

(A) CHARGING A FEE UNDER SECTION 1099H

(B) DISCHARGING AND DISMISSING A CASE AS PROVIDED IN SECTION 1099K.

(C) RECEIVING FUNDING UNDER SECTION 1099M.

SEC. 1099D. A JUVENILE MENTAL HEALTH COURT SHALL HIRE, CONTRACT, OR WORK IN CONJUNCTION WITH MENTAL HEALTH PROFESSIONALS, IN CONSULTATION WITH THE LOCAL COMMUNITY MENTAL HEALTH SERVICE PROVIDER, AND OTHER SUCH APPROPRIATE PERSONS TO ASSIST THE JUVENILE MENTAL HEALTH COURT IN FULFILLING ITS REQUIREMENTS UNDER THIS CHAPTER.

SEC. 1099E. (1) EACH JUVENILE MENTAL HEALTH COURT SHALL DETERMINE WHETHER A JUVENILE MAY BE ADMITTED. NO JUVENILE HAS A RIGHT TO BE ADMITTED INTO A JUVENILE MENTAL HEALTH COURT. ADMISSION INTO A JUVENILE MENTAL HEALTH COURT PROGRAM IS AT THE DISCRETION OF THE COURT BASED ON THE JUVENILE'S LEGAL AND CLINICAL ELIGIBILITY. A JUVENILE MAY BE ADMITTED TO JUVENILE MENTAL HEALTH COURT, REGARDLESS OF PRIOR PARTICIPATION OR PRIOR COMPLETION STATUS. HOWEVER, UNLESS THE JUVENILE MENTAL HEALTH COURT JUDGE AND THE PROSECUTING ATTORNEY IN CONSULTATION WITH ANY KNOWN VICTIM IN THE INSTANT CASE CONSENT, A VIOLENT OFFENDER MUST NOT BE ADMITTED INTO MENTAL HEALTH COURT.

(2) ADMISSION TO A JUVENILE MENTAL HEALTH COURT DOES NOT DISQUALIFY A JUVENILE FOR ANY OTHER DISPOSITIONAL OPTIONS AVAILABLE UNDER STATE LAW OR COURT RULE.

(3) TO BE ADMITTED TO A JUVENILE MENTAL HEALTH COURT, A JUVENILE SHALL COOPERATE WITH AND COMPLETE A PREADMISSION SCREENING

AND ASSESSMENT AND SHALL SUBMIT TO ANY FUTURE ASSESSMENT AS DIRECTED BY THE JUVENILE MENTAL HEALTH COURT. A PREADMISSION SCREENING AND ASSESSMENT MUST INCLUDE ALL OF THE FOLLOWING:

(A) A REVIEW OF THE JUVENILE'S DELINQUENCY HISTORY. A REVIEW OF THE LAW ENFORCEMENT INFORMATION NETWORK MAY BE CONSIDERED SUFFICIENT FOR PURPOSES OF THIS SUBDIVISION UNLESS A FURTHER REVIEW IS WARRANTED. THE COURT MAY ACCEPT OTHER VERIFIABLE AND RELIABLE INFORMATION FROM THE PROSECUTION OR DEFENSE TO COMPLETE ITS REVIEW AND MAY REQUIRE THE JUVENILE TO SUBMIT A STATEMENT AS TO WHETHER OR NOT HE OR SHE HAS PREVIOUSLY BEEN ADMITTED TO A JUVENILE MENTAL HEALTH COURT AND THE RESULTS OF HIS OR HER PARTICIPATION IN THE PRIOR PROGRAM OR PROGRAMS.

(B) AN ASSESSMENT OF THE RISK OF DANGER OR HARM TO THE JUVENILE, OTHERS, AND THE COMMUNITY USING STANDARDIZED INSTRUMENTS THAT HAVE ACCEPTABLE RELIABILITY AND VALIDITY.

(C) A MENTAL HEALTH ASSESSMENT, PERFORMED BY A MENTAL HEALTH PROFESSIONAL, FOR AN EVALUATION OF A SERIOUS EMOTIONAL DISTURBANCE, CO-OCCURRING DISORDER, OR DEVELOPMENTAL DISABILITY.

(D) A REVIEW OF THE JUVENILE'S FAMILY SITUATION, SPECIAL NEEDS, OR CIRCUMSTANCES THAT MAY POTENTIALLY AFFECT THE JUVENILE'S ABILITY TO RECEIVE MENTAL HEALTH OR SUBSTANCE ABUSE TREATMENT AND FOLLOW THE COURT'S ORDERS, INCLUDING INPUT FROM FAMILY, CAREGIVERS, OR OTHER COLLATERAL SUPPORTS.

(4) EXCEPT AS OTHERWISE PERMITTED IN THIS CHAPTER, ANY STATEMENT OR OTHER INFORMATION OBTAINED AS A RESULT OF PARTICIPATING IN A PREADMISSION SCREENING AND ASSESSMENT UNDER SUBSECTION (3) IS CONFIDENTIAL AND IS EXEMPT FROM DISCLOSURE UNDER

THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246, AND SHALL NOT BE USED IN ANY FUTURE JUVENILE DELINQUENCY PROCEEDING.

(5) THE COURT MAY REQUEST THAT THE DEPARTMENT OF STATE POLICE PROVIDE TO THE COURT INFORMATION CONTAINED IN THE LAW ENFORCEMENT INFORMATION NETWORK PERTAINING TO A JUVENILE CRIMINAL HISTORY FOR THE PURPOSES OF DETERMINING A JUVENILE'S ELIGIBILITY FOR ADMISSION INTO THE JUVENILE MENTAL HEALTH COURT.

SEC. 1099F. (1) IF THE JUVENILE IS ALLEGED TO HAVE ENGAGED IN ACTIVITY THAT WOULD CONSTITUTE A CRIMINAL ACT IF COMMITTED BY AN ADULT, HIS OR HER ADMISSION TO JUVENILE MENTAL HEALTH COURT IS SUBJECT TO ALL OF THE FOLLOWING CONDITIONS:

(A) THE JUVENILE ADMITS RESPONSIBILITY FOR THE VIOLATION OR VIOLATIONS THAT HE OR SHE IS ACCUSED OF HAVING COMMITTED.

(B) THE PARENT, LEGAL GUARDIAN, OR LEGAL CUSTODIAN, AND JUVENILE ARE REQUIRED TO SIGN ALL DOCUMENTS FOR THE JUVENILE'S ADMISSION IN THE JUVENILE MENTAL HEALTH COURT, INCLUDING A WRITTEN AGREEMENT TO PARTICIPATE IN THE JUVENILE MENTAL HEALTH COURT.

(2) NOTHING IN THIS CHAPTER SHALL BE CONSTRUED TO PRECLUDE A COURT FROM PROVIDING MENTAL HEALTH SERVICES TO A JUVENILE BEFORE HE OR SHE ADMITS RESPONSIBILITY AND IS ACCEPTED INTO THE JUVENILE MENTAL HEALTH COURT.

(3) NOTHING IN THIS CHAPTER SHALL BE CONSTRUED TO PRECLUDE A COURT FROM PROVIDING MENTAL HEALTH SERVICES TO A JUVENILE BEFORE HE OR SHE ADMITS RESPONSIBILITY AND IS ACCEPTED INTO THE JUVENILE MENTAL HEALTH COURT.

(4) A JUVENILE WHO HAS ADMITTED RESPONSIBILITY, AS PART OF HIS

OR HER REFERRAL PROCESS TO A JUVENILE MENTAL HEALTH COURT, AND WHO IS SUBSEQUENTLY NOT ADMITTED TO A JUVENILE MENTAL HEALTH COURT MAY WITHDRAW HIS OR HER ADMISSION OF RESPONSIBILITY.

(5) THIS SECTION DOES NOT APPLY TO STATUS OFFENSES.

SEC. 1099G. IN ADDITION TO RIGHTS ACCORDED A VICTIM UNDER THE WILLIAM VAN REGENMORTER CRIME VICTIM'S RIGHTS ACT, 1985 PA 87, MCL 780.751 TO 780.834, THE JUVENILE MENTAL HEALTH COURT SHALL PERMIT ANY VICTIM OF THE OFFENSE OR OFFENSES FOR WHICH THE JUVENILE HAS BEEN PETITIONED TO SUBMIT A WRITTEN STATEMENT TO THE COURT REGARDING THE ADVISABILITY OF ADMITTING THE JUVENILE INTO THE JUVENILE MENTAL HEALTH COURT.

SEC. 1099H. UPON ADMITTING A JUVENILE INTO A JUVENILE MENTAL HEALTH COURT, ALL OF THE FOLLOWING APPLY:

(A) THE COURT SHALL ENTER AN ADJUDICATION UPON ACCEPTANCE OF A JUVENILE'S ADMITTANCE OF RESPONSIBILITY TO THE OFFENSE.

(B) UNLESS A MEMORANDUM OF UNDERSTANDING MADE PURSUANT TO SECTION 1088 BETWEEN A RECEIVING JUVENILE MENTAL HEALTH COURT AND THE COURT OF ORIGINAL JURISDICTION PROVIDES OTHERWISE, THE ORIGINAL COURT OF JURISDICTION MAINTAINS JURISDICTION OVER THE JUVENILE MENTAL HEALTH COURT PARTICIPANT AS PROVIDED IN THIS CHAPTER UNTIL FINAL DISPOSITION OF THE CASE. THE COURT MAY RECEIVE JURISDICTION OVER THE JUVENILE'S PARENTS OR GUARDIANS UNDER SECTION 6 OF CHAPTER XIIA OF THE PROBATE CODE OF 1939, 1939 PA 288, MCL 712A.6, IN ORDER TO ASSIST IN ENSURING THE JUVENILE'S CONTINUED PARTICIPATION AND SUCCESSFUL COMPLETION OF THE JUVENILE MENTAL HEALTH COURT AND MAY ISSUE AND ENFORCE ANY APPROPRIATE AND NECESSARY ORDER REGARDING THE PARENT OR GUARDIAN.

(C) THE JUVENILE MENTAL HEALTH COURT MAY REQUIRE A JUVENILE AND HIS OR HER PARENT, LEGAL GUARDIAN, OR LEGAL CUSTODIAN ADMITTED INTO THE COURT TO PAY A REASONABLE JUVENILE MENTAL HEALTH COURT FEE THAT IS REASONABLY RELATED TO THE COST TO THE COURT FOR ADMINISTERING THE JUVENILE MENTAL HEALTH COURT PROGRAM AS PROVIDED IN THE MEMORANDUM OF UNDERSTANDING. THE JUVENILE MENTAL HEALTH COURT SHALL TRANSMIT THE FEES COLLECTED TO THE TREASURER OF THE LOCAL FUNDING UNIT AT THE END OF EACH MONTH.

SEC. 1099I. (1) A JUVENILE MENTAL HEALTH COURT SHALL PROVIDE A JUVENILE MENTAL HEALTH COURT PARTICIPANT WITH ALL OF THE FOLLOWING:

(A) CONSISTENT AND CLOSE MONITORING OF THE JUVENILE'S TREATMENT AND RECOVERY.

(B) IF FOUND NECESSARY OR APPROPRIATE, PERIODIC AND RANDOM TESTING FOR THE PRESENCE OF ANY NONPRESCRIBED CONTROLLED SUBSTANCE OR ALCOHOL AS WELL AS COMPLIANCE WITH OR EFFECTIVENESS OF PRESCRIBED MEDICATION USING TO THE EXTENT PRACTICABLE THE BEST AVAILABLE, ACCEPTED, AND SCIENTIFICALLY VALID METHODS.

(C) PERIODIC JUDICIAL REVIEWS OF THE PARTICIPANT'S CIRCUMSTANCES AND PROGRESS IN THE PROGRAM.

(D) A REGIMEN OR STRATEGY OF INDIVIDUALIZED AND GRADUATED BUT IMMEDIATE REWARDS FOR COMPLIANCE AND SANCTIONS FOR NONCOMPLIANCE, INCLUDING, BUT NOT LIMITED TO, THE POSSIBILITY OF DETAINMENT.

(E) MENTAL HEALTH SERVICES, SUBSTANCE USE DISORDER SERVICES, EDUCATION, AND VOCATIONAL OPPORTUNITIES AS APPROPRIATE AND PRACTICAL.

(2) UPON A JUVENILE'S COMPLETION OF THE REQUIRED JUVENILE MENTAL HEALTH COURT PROGRAM PARTICIPATION, AN EXIT EVALUATION

SHOULD BE CONDUCTED IN ORDER TO ASSESS THE JUVENILE'S CONTINUING NEED FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITY, OR SUBSTANCE ABUSE SERVICES.

(3) ANY STATEMENT OR OTHER INFORMATION OBTAINED AS A RESULT OF PARTICIPATING IN ASSESSMENT, TREATMENT, OR TESTING WHILE IN A JUVENILE MENTAL HEALTH COURT IS CONFIDENTIAL AND IS EXEMPT FROM DISCLOSURE UNDER THE UNITED STATES CONSTITUTION AND STATE CONSTITUTION OF 1963 AND THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246, AND MUST NOT BE USED IN A CRIMINAL PROSECUTION, UNLESS IT REVEALS CRIMINAL ACTS OTHER THAN, OR INCONSISTENT WITH, PERSONAL CONTROLLED SUBSTANCE USE.

SEC. 1099J. (1) IN ORDER TO CONTINUE TO PARTICIPATE IN AND SUCCESSFULLY COMPLETE A JUVENILE MENTAL HEALTH COURT PROGRAM, A JUVENILE SHALL COMPLY WITH ALL COURT ORDERS, VIOLATIONS OF WHICH MAY BE SANCTIONED AT THE COURT'S DISCRETION.

(2) IF THE JUVENILE IS ACCUSED OF A NEW OFFENSE, THE JUDGE HAS THE DISCRETION TO TERMINATE THE JUVENILE'S PARTICIPATION IN THE JUVENILE MENTAL HEALTH COURT PROGRAM.

(3) THE COURT SHALL REQUIRE THAT A JUVENILE PAY ALL COURT FINES, COSTS, COURT FEES, RESTITUTION, AND ASSESSMENTS. HOWEVER, EXCEPT AS OTHERWISE PROVIDED BY LAW, IF THE COURT DETERMINES THAT THE PAYMENT OF COURT FINES, COURT FEES, OR DRUG OR ALCOHOL TESTING EXPENSES UNDER THIS SUBSECTION WOULD BE A SUBSTANTIAL HARDSHIP FOR THE JUVENILE AND THE JUVENILE'S FAMILY OR WOULD INTERFERE WITH THE JUVENILE'S TREATMENT, THE COURT MAY WAIVE ALL OR PART OF THOSE COURT FINES, COURT FEES, OR DRUG OR ALCOHOL TESTING EXPENSES EXCEPT THOSE REQUIRED BY STATUTE.

(4) THE RESPONSIBLE MENTAL HEALTH PROVIDER SHALL NOTIFY THE COURT OF A PARTICIPANT'S FORMAL OBJECTION TO HIS OR HER WRITTEN INDIVIDUAL PLAN OF SERVICES DEVELOPED UNDER SECTION 712(2) OF THE MENTAL HEALTH CODE, 1974 PA 258, MCL 330.1712. HOWEVER, THE COURT IS NOT OBLIGATED TO TAKE ANY ACTION IN RESPONSE TO A NOTICE RECEIVED UNDER THIS SUBSECTION.

SEC. 1099K. (1) UPON A PARTICIPANT'S COMPLETION OR TERMINATION OF THE JUVENILE MENTAL HEALTH COURT PROGRAM, THE COURT SHALL FIND ON THE RECORD OR PLACE A WRITTEN STATEMENT IN THE COURT FILE INDICATING WHETHER THE PARTICIPANT COMPLETED THE PROGRAM SUCCESSFULLY OR WHETHER THE JUVENILE'S PARTICIPATION IN THE PROGRAM WAS TERMINATED AND, IF IT WAS TERMINATED, THE REASON FOR THE TERMINATION.

(2) THE COURT, WITH THE AGREEMENT OF THE PROSECUTOR AND IN CONFORMITY WITH THE TERMS AND CONDITIONS OF THE MEMORANDUM OF UNDERSTANDING UNDER SECTION 1099B, MAY DISCHARGE AND DISMISS THE PROCEEDINGS.

(3) EXCEPT AS PROVIDED IN SUBSECTION (2), IF A JUVENILE HAS SUCCESSFULLY COMPLETED PROBATION OR OTHER COURT SUPERVISION, THE COURT SHALL DO THE FOLLOWING:

(A) IF THE COURT HAS NOT ALREADY DISPOSED OF THE JUVENILE, PROCEED TO DISPOSITION PURSUANT TO THE AGREEMENT UNDER WHICH THE JUVENILE WAS ADMITTED INTO JUVENILE MENTAL HEALTH COURT.

(B) SEND A RECORD OF ADJUDICATION OF RESPONSIBILITY AND DISPOSITION TO THE DEPARTMENT OF STATE POLICE AND SECRETARY OF STATE, AS APPLICABLE.

(4) EXCEPT FOR PROGRAM TERMINATION DUE TO THE COMMISSION OF A

NEW OFFENSE, FAILURE TO COMPLETE A JUVENILE MENTAL HEALTH COURT PROGRAM MUST NOT BE A PREJUDICIAL FACTOR IN DISPOSITION. ALL RECORDS OF THE PROCEEDINGS REGARDING THE PARTICIPATION OF THE JUVENILE IN THE JUVENILE MENTAL HEALTH COURT MUST REMAIN CLOSED TO PUBLIC INSPECTION AND ARE EXEMPT FROM PUBLIC DISCLOSURE, INCLUDING DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT, 1976 PA 492, MCL 15.231 TO 15.246.

SEC. 1099*l*. (1) EACH JUVENILE MENTAL HEALTH COURT SHALL COLLECT AND PROVIDE DATA ON EACH INDIVIDUAL APPLICANT AND PARTICIPANT AND THE ENTIRE PROGRAM AS REQUIRED BY THE STATE COURT ADMINISTRATIVE OFFICE. THE STATE COURT ADMINISTRATIVE OFFICE SHALL PROVIDE APPROPRIATE TRAINING TO ALL COURTS ENTERING DATA, AS DIRECTED BY THE SUPREME COURT.

(2) EACH JUVENILE MENTAL HEALTH COURT SHALL MAINTAIN FILES OR DATABASES ON EACH INDIVIDUAL PARTICIPANT IN THE PROGRAM FOR REVIEW AND EVALUATION AS WELL AS TREATMENT, AS DIRECTED BY THE STATE COURT ADMINISTRATIVE OFFICE. THE INFORMATION COLLECTED FOR EVALUATION PURPOSES MUST INCLUDE A MINIMUM STANDARD DATA SET DEVELOPED AND SPECIFIED BY THE STATE COURT ADMINISTRATIVE OFFICE.

(3) AS DIRECTED BY THE SUPREME COURT, THE STATE COURT ADMINISTRATIVE OFFICE SHALL PROVIDE STANDARDS FOR JUVENILE MENTAL HEALTH COURTS IN THIS STATE, INCLUDING, BUT NOT LIMITED TO, DEVELOPING A LIST OF APPROVED MEASUREMENT INSTRUMENTS AND INDICATORS FOR DATA COLLECTION AND EVALUATION. THESE STANDARDS MUST PROVIDE COMPARABILITY BETWEEN PROGRAMS AND THEIR OUTCOMES.

(4) THE INFORMATION COLLECTED UNDER THIS SECTION REGARDING INDIVIDUAL APPLICANTS TO JUVENILE MENTAL HEALTH COURT PROGRAMS FOR

THE PURPOSE OF APPLICATION TO THAT PROGRAM AND PARTICIPANTS WHO HAVE SUCCESSFULLY COMPLETED JUVENILE MENTAL HEALTH COURTS IS EXEMPT FROM DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246.

SEC. 1099M. (1) THE SUPREME COURT IS RESPONSIBLE FOR THE EXPENDITURE OF STATE FUNDS FOR THE ESTABLISHMENT AND OPERATION OF JUVENILE MENTAL HEALTH COURTS.

(2) EACH JUVENILE MENTAL HEALTH COURT SHALL REPORT QUARTERLY TO THE STATE COURT ADMINISTRATIVE OFFICE IN A MANNER PRESCRIBED BY THE STATE COURT ADMINISTRATIVE OFFICE ON THE STATE FUNDS RECEIVED AND EXPENDED BY THAT JUVENILE MENTAL HEALTH COURT.

(3) THE STATE COURT ADMINISTRATIVE OFFICE MAY ESTABLISH AN ADVISORY COMMITTEE. IF ESTABLISHED, THIS COMMITTEE MUST BE SEPARATE FROM AND INDEPENDENT OF THE STATE'S DRUG TREATMENT COURT ADVISORY COMMITTEE.

(4) AS DIRECTED BY THE SUPREME COURT, THE STATE COURT ADMINISTRATIVE OFFICE SHALL, IN CONJUNCTION WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, ASSURE THAT TRAINING AND TECHNICAL ASSISTANCE ARE AVAILABLE AND PROVIDED TO ALL JUVENILE MENTAL HEALTH COURTS.

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

Enacting section 2. This amendatory act does not take effect unless Senate Bill No.____ or House Bill No. 5807 (request no. 05304'18) of the 99th Legislature is enacted into law.

MICHIGAN LEGISLATURE(www.legislature.mi.gov)
Printed on Wednesday, May 23, 2018
Michigan Compiled Laws Complete Through PA 115 of 2018

House Bill 5807 (2018) rss?

Friendly Link: http://legislature.mi.gov/doc.aspx?2018-HB-5807

Sponsors

Julie Calley (district 87)
David LaGrand
(click name to see bills sponsored by that person)

Categories

Courts: other; Mental health: other;

Courts; other; references to juveniles in mental health court in revised judicature act; remove to reflect creation of juvenile mental health court. Amends secs. 1088, 1091, 1093, 1094, 1095 & 1098 of 1961 PA 236 (MCL 600.1088 et seq.). TIE BAR WITH: HB 5806'18

Bill Documents

Bill Document Formatting Information
[x]
The following bill formatting applies to the 2017-2018 session:
- New language in an amendatory bill will be shown in **BOLD AND UPPERCASE.**
- Language to be removed will be ~~stricken~~.
- Amendments made by the House will be blue with square brackets, such as: [House amended text].
- Amendments made by the Senate will be red with double greater/lesser than symbols, such as: <<Senate amended text>>.

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

Documents

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

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

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

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

Bill Analysis

House Fiscal Agency Analysis

Summary As Introduced (5/21/2018)
This document analyzes: HB5806, HB5807, HB5808

History

(House actions in lowercase, Senate actions in UPPERCASE)

Date	Journal	Action
4/12/2018	HJ 35 Pg. 648	introduced by Representative Julie Calley

4/12/2018	HJ 35 Pg. 648	read a first time
4/12/2018	HJ 35 Pg. 648	referred to Committee on Judiciary
4/17/2018	HJ 36 Pg. 652	bill electronically reproduced 04/12/2018

HOUSE BILL No. 5807

April 12, 2018, Introduced by Reps. Calley and LaGrand and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled

"Revised judicature act of 1961,"

by amending sections 1088, 1091, 1093, 1094, 1095, and 1098 (MCL 600.1088, 600.1091, 600.1093, 600.1094, 600.1095, and 600.1098), section 1088 as added and section 1095 as amended by 2017 PA 161, section 1091 as amended by 2017 PA 163, section 1093 as added by 2013 PA 274, section 1094 as added by 2013 PA 276, and section 1098 as added by 2013 PA 275.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1088. (1) Beginning January 1, 2018, a case may be transferred totally from 1 court to another court for the defendant's participation in a state-certified treatment court. A total transfer may occur prior to or after adjudication, but must not be consummated until the completion and execution of a

HOUSE BILL No. 5807

memorandum of understanding that must include, but need not be limited to, all of the following:

(a) A detailed statement of how all funds assessed to defendant will be accounted for, including, but not necessarily limited to, the need for a receiving state-certified treatment court to collect funds and remit them to the court of original jurisdiction.

(b) A statement providing which court is responsible for providing information to the department of state police, as required under section 3 of 1925 PA 289, MCL 28.243, and forwarding an abstract to the secretary of state for inclusion on the defendant's driving record.

(c) A statement providing where jail sanctions or incarceration sentences would be served, as applicable.

(d) A statement that the defendant has been determined eligible by and will be accepted into the state-certified treatment court upon transfer.

(e) The approval of all of the following:

(*i*) The chief judge and assigned judge of the receiving state-certified treatment court and the court of original jurisdiction.

(*ii*) A prosecuting attorney from the receiving state-certified treatment court and the court of original jurisdiction.

(*iii*) The defendant.

(2) As used in this section, "state-certified treatment court" includes the treatment courts certified by the state court administrative office as provided in section 1062, 1084, 1091, **1099C**, or 1201.

Sec. 1091. (1) The circuit court or the district court in any judicial circuit or a district court in any judicial district may adopt or institute a mental health court pursuant to statute or court rules. However, if the mental health court will include in its program individuals who may be eligible for discharge and dismissal of an offense, delayed sentence, or deviation from the sentencing guidelines, the circuit or district court shall not adopt or institute the mental health court unless the circuit or district court enters into a memorandum of understanding with each participating prosecuting attorney in the circuit or district court district, a representative or representatives of the community mental health services programs, a representative of the criminal defense bar, and a representative or representatives of community treatment providers. The memorandum of understanding also may include other parties considered necessary, including, but not limited to, a representative or representatives of the local court funding unit or a domestic violence service provider program that receives funding from the ~~state~~ **MICHIGAN** domestic **AND SEXUAL** violence prevention and treatment board. The memorandum of understanding must describe the role of each party.

~~(2) A family division of circuit court in any judicial circuit may adopt or institute a juvenile mental health court pursuant to statute or court rules. The creation or existence of a mental health court does not change the statutes or court rules concerning discharge or dismissal of an offense, or a delayed sentence or deferred entry of judgment. A family division of circuit court adopting or instituting a juvenile mental health court shall enter~~

~~into a memorandum of understanding with all participating prosecuting authorities in the circuit or district court, a representative or representatives of the community mental health services program, a representative of the criminal defense bar specializing in juvenile law, and a representative or representatives of community treatment providers that describes the roles and responsibilities of each party to the memorandum of understanding. The memorandum of understanding also may include other parties considered necessary, including, but not limited to, a representative or representatives of the local court funding unit or a domestic violence service provider program that receives funding from the state domestic violence prevention and treatment board. The memorandum of understanding must describe the role of each party. A juvenile mental health court is subject to the same procedures and requirements provided in this chapter for a mental health court created under subsection (1), except as specifically provided otherwise in this chapter.~~

(2) ~~(3)~~ A court that has adopted a mental health court under this section may accept participants from any other jurisdiction in this state based upon the residence of the participant in the receiving jurisdiction, the nonavailability of a mental health court in the jurisdiction where the participant is charged, and the availability of financial resources for both operations of the mental health court program and treatment services. A mental health court may refuse to accept participants from other jurisdictions.

(3) ~~(4)~~ Beginning January 1, 2018, a mental health court operating in this state, or a circuit court in any judicial circuit

or the district court in any judicial district seeking to adopt or institute a mental health court, must be certified by the state court administrative office. The state court administrative office shall establish the procedure for certification. Approval and certification under this subsection of a mental health court is required to begin or to continue the operation of a mental health court under this chapter. The state court administrative office shall not recognize and include a mental health court that is not certified under this subsection on the statewide official list of mental health courts. The state court administrative office shall include a mental health court certified under this subsection on the statewide official list of mental health courts. A mental health court that is not certified under this subsection shall not perform any of the functions of a mental health court, including, but not limited to, any of the following functions:

(a) Charging a fee under section 1095.

(b) Discharging and dismissing a case as provided in section 1098.

(c) Receiving funding under section 1099a.

Sec. 1093. (1) Each mental health court shall determine whether an individual may be admitted to the mental health court. No individual has a right to be admitted into a mental health court. Admission into a mental health court program is at the discretion of the court based on the individual's legal or clinical eligibility. An individual may be admitted to mental health court regardless of prior participation or prior completion status. However, in no case shall a violent offender be admitted into

mental health court.

(2) In addition to admission to a mental health court under this chapter, an individual who is eligible for admission under this chapter may also be admitted to a mental health court under any of the following circumstances:

(a) The individual has been assigned the status of youthful trainee under section 11 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11.

(b) The individual has had criminal proceedings against him or her deferred and has been placed on probation under any of the following:

(*i*) Section 7411 of the public health code, 1978 PA 368, MCL 333.7411.

(*ii*) Section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a.

(*iii*) Section 350a or 430 of the Michigan penal code, 1931 PA 328, MCL 750.350a and 750.430.

(3) To be admitted to a mental health court, an individual shall cooperate with and complete a preadmission screening and evaluation assessment and shall submit to any future evaluation assessment as directed by the mental health court. A preadmission screening and evaluation assessment ~~shall~~ **MUST** include all of the following:

(a) A review of the individual's criminal history. A review of the law enforcement information network may be considered sufficient for purposes of this subdivision unless a further review is warranted. The court may accept other verifiable and reliable

information from the prosecution or defense to complete its review and may require the individual to submit a statement as to whether or not he or she has previously been admitted to a mental health court and the results of his or her participation in the prior program or programs.

(b) An assessment of the risk of danger or harm to the individual, others, or the community.

(c) A mental health assessment, clinical in nature, and using standardized instruments that have acceptable reliability and validity, meeting diagnostic criteria for a serious mental illness, serious emotional disturbance, co-occurring disorder, or developmental disability.

(d) A review of any special needs or circumstances of the individual that may potentially affect the individual's ability to receive mental health or substance abuse treatment and follow the court's orders.

~~(e) For a juvenile, an assessment of the juvenile's family situation, including, to the extent practicable, a comparable review of any guardians or parents.~~

(4) Except as otherwise permitted in this chapter, any statement or other information obtained as a result of participating in a preadmission screening and evaluation assessment under subsection (3) is confidential and is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and ~~shall~~ **MUST** not be used in a criminal prosecution, unless it reveals criminal acts other than, or inconsistent with, personal drug use.

(5) The court may request that the department of state police provide to the court information contained in the law enforcement information network pertaining to an individual applicant's criminal history for the purposes of determining an individual's eligibility for admission into the mental health court and general criminal history review.

Sec. 1094. (1) If the individual is charged in a criminal case ~~or, in the case of a juvenile, is alleged to have engaged in activity that would constitute a criminal act if committed by an adult,~~ his or her admission to mental health court is subject to all of the following conditions:

(a) The individual ~~, if an adult,~~ pleads guilty, no contest, or be convicted of any criminal charge on the record. ~~The individual, if a juvenile, admits responsibility for the violation or violations that he or she is accused of having committed.~~

(b) The individual waives, in writing, the right to a speedy trial and, with the agreement of the prosecutor, the right to a preliminary examination.

(c) The individual signs a written agreement to participate in the mental health court. If the individual is ~~a juvenile or~~ an individual who has been assigned a guardian, the ~~parent or~~ legal guardian is required to sign all documents for the individual's admission in the mental health court.

(2) Nothing in this chapter shall be construed to preclude a court from providing mental health services to an individual before he or she enters a plea and is accepted into the mental health court.

(3) An individual who has waived his or her right to a preliminary examination, who has pled guilty or no contest ~~or, in the case of a juvenile, has admitted responsibility, as part of his or her referral process to a mental health court,~~ and who is subsequently not admitted to a mental health court may withdraw his or her plea and is entitled to a preliminary examination. ~~or, in the case of a juvenile, may withdraw his or her admission of responsibility.~~

(4) In addition to rights accorded a victim under the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, the mental health court shall permit any victim of the offense or offenses of which the individual is charged ~~or, in the case of a juvenile, any victim of the activity that the individual is alleged to have committed and that would constitute a criminal act if committed by an adult,~~ as well as any victim of a prior offense of which that individual was convicted ~~or, in the case of a juvenile, a prior offense for which the individual has been found responsible,~~ to submit a written statement to the court regarding the advisability of admitting the individual into the mental health court.

Sec. 1095. (1) Upon admitting an individual into a mental health court, all of the following apply:

(a) For an individual who is admitted to a mental health court based upon having criminal charges currently filed against him or her and who has not already pled guilty or no contest ~~or, in the case of a juvenile, has not admitted responsibility,~~ the court shall accept the plea of guilty or no contest. ~~or, in the case of a~~

~~juvenile, the admission of responsibility.~~

(b) For an individual who pled guilty or no contest to ~~, or admitted responsibility for,~~ criminal charges for which he or she was admitted into the mental health court, the court shall do either of the following:

(*i*) In the case of an individual who pled guilty or no contest to criminal offenses that are not traffic offenses and who may be eligible for discharge and dismissal under the agreement for which he or she was admitted into mental health court upon successful completion of the mental health court program, the court shall not enter a judgment of guilt. ~~or, in the case of a juvenile, shall not enter an adjudication of responsibility.~~

(*ii*) In the case of an individual who pled guilty to a traffic offense or who pled guilty to an offense but may not be eligible for discharge and dismissal pursuant to the agreement with the court and prosecutor upon successful completion of the mental health court program, the court shall enter a judgment of guilt. ~~or, in the case of a juvenile, shall enter an adjudication of responsibility.~~

(*iii*) Pursuant to the agreement with the individual and the prosecutor, the court may either delay further proceedings as provided in section 1 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.1, or proceed to sentencing, as applicable, and place the individual on probation or other court supervision in the mental health court program with terms and conditions according to the agreement and as considered necessary by the court.

(2) Unless a memorandum of understanding made pursuant to section 1088 between a receiving mental health court and the court of original jurisdiction provides otherwise, the original court of jurisdiction maintains jurisdiction over the mental health court participant as provided in this chapter until final disposition of the case, but not longer than the probation period fixed under section 2 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.2. ~~In the case of a juvenile participant, the court may obtain jurisdiction over the juvenile's parents or guardians in order to assist in ensuring the juvenile's continued participation and successful completion of the mental health court and may issue and enforce any appropriate and necessary order regarding the parent or guardian.~~

(3) The mental health court may require an individual admitted into the court to pay a reasonable mental health court fee that is reasonably related to the cost to the court for administering the mental health court program as provided in the memorandum of understanding. The clerk of the mental health court shall transmit the fees collected to the treasurer of the local funding unit at the end of each month.

Sec. 1098. (1) Upon completion or termination of the mental health court program, the court shall find on the record or place a written statement in the court file indicating whether the participant completed the program successfully or whether the individual's participation in the program was terminated and, if it was terminated, the reason for the termination.

(2) If an individual is participating in a mental health court

under section 11 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11, section 7411 of the public health code, 1978 PA 368, MCL 333.7411, section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a, or section 350a or 430 of the Michigan penal code, 1931 PA 328, MCL 750.350a and 750.430, the court shall proceed under the applicable section of law. There may only be 1 discharge or dismissal under this subsection.

(3) Except as provided in subsection (4), the court, with the agreement of the prosecutor and in conformity with the terms and conditions of the memorandum of understanding under section 1091, may discharge and dismiss the proceedings against an individual who meets all of the following criteria:

(a) The individual has participated in a mental health court for the first time.

(b) The individual has successfully completed the terms and conditions of the mental health court program.

(c) The individual is not required by law to be sentenced to a correctional facility for the crimes to which he or she has pled guilty.

(d) The individual has not previously been subject to more than 1 of the following:

(*i*) Assignment to the status of youthful trainee under section 11 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11.

(*ii*) The dismissal of criminal proceedings against the individual under section 7411 of the public health code, 1978 PA 368, MCL 333.7411, section 4a of chapter IX of the code of criminal

procedure, 1927 PA 175, MCL 769.4a, or section 350a or 430 of the Michigan penal code, 1931 PA 328, MCL 750.350a and 750.430.

(4) The court may order a discharge and dismissal of a domestic violence offense only if all of the following circumstances apply:

(a) The individual has not previously had proceedings dismissed under section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a.

(b) The domestic violence offense is eligible to be dismissed under section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a.

(c) The individual fulfills the terms and conditions imposed under section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a, and the discharge and dismissal of proceedings are processed and reported under section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a.

(5) A discharge and dismissal under subsection (3) ~~shall be~~ **IS** without adjudication of guilt ~~or, for a juvenile, without adjudication of responsibility and are~~ **AND IS** not a conviction ~~or a finding of responsibility~~ for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. ~~or, for a juvenile, a finding of responsibility.~~ There may only be 1 discharge and dismissal under subsection (3) for an individual. The court shall send a record of the discharge and dismissal to the criminal justice information center of the department of state police, and the department of state police shall enter that information into the law enforcement

information network with an indication of participation by the individual in a mental health court. All records of the proceedings regarding the participation of the individual in the mental health court under subsection (3) are closed to public inspection from the date of deferral and are exempt from public disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, but ~~shall~~ **MUST** be open to the courts of this state, another state, or the United States, the department of corrections, law enforcement personnel, and prosecutors only for use in the performance of their duties or to determine whether an employee of the court, department, law enforcement agency, or prosecutor's office has violated his or her conditions of employment or whether an applicant meets criteria for employment with the court, department, law enforcement agency, or prosecutor's office. The records and identifications division of the department of state police shall retain a nonpublic record of an arrest, court proceedings, and the discharge and dismissal under this subsection.

(6) Except as provided in subsection (2), (3), or (4), if an individual has successfully completed probation or other court supervision, the court shall do the following:

(a) If the court has not already entered an adjudication of guilt, ~~or responsibility,~~ enter an adjudication of guilt. ~~or, in the case of a juvenile, enter a finding or adjudication of responsibility.~~

(b) If the court has not already sentenced the individual, proceed to sentencing ~~or, in the case of a juvenile, disposition~~ pursuant to the agreement **UNDER WHICH THE INDIVIDUAL WAS ADMITTED**

INTO THE MENTAL HEALTH COURT.

(c) Send a record of the conviction, ~~and~~ sentence, ~~or the finding or adjudication of responsibility~~ and disposition to the criminal justice information center of the department of state police.

(7) For a participant whose participation is terminated or who fails to successfully complete the mental health court program, the court shall enter an adjudication of guilt, ~~or, in the case of a juvenile, a finding of responsibility,~~ if the entry of guilt ~~or adjudication of responsibility~~ was delayed or deferred under section 1094, and shall then proceed to sentencing ~~or disposition~~ of the individual for the original charges to which the individual pled guilty ~~or, in the case of a juvenile, to which the juvenile admitted responsibility~~ prior to admission to the mental health court. Except for program termination due to the commission of a new crime, failure to complete a mental health court program ~~shall~~ **MUST** not be a prejudicial factor in sentencing. All records of the proceedings regarding the participation of the individual in the mental health court ~~shall~~ **MUST** remain closed to public inspection and exempt from public disclosure as provided in subsection (5).

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

Enacting section 2. This amendatory act does not take effect unless Senate Bill No.____ or House Bill No. 5806 (request no. 05303'18) of the 99th Legislature is enacted into law.

MICHIGAN LEGISLATURE(www.legislature.mi.gov)
Printed on Wednesday, May 23, 2018
Michigan Compiled Laws Complete Through PA 115 of 2018

House Bill 5808 (2018) rss?

Friendly Link: http://legislature.mi.gov/doc.aspx?2018-HB-5808

Sponsors

Julie Calley (district 87)
David LaGrand
(click name to see bills sponsored by that person)

Categories

Courts: other; Juveniles: crimes; Mental health: other;

Courts; other; reference to chapter of revised judicature act in the probate code; modify.
Amends sec. 6, ch. XIIA of 1939 PA 288 (MCL 712A.6). TIE BAR WITH: HB 5806'18

Bill Documents

Bill Document Formatting Information
[x]
The following bill formatting applies to the 2017-2018 session:
- New language in an amendatory bill will be shown in **BOLD AND UPPERCASE.**
- Language to be removed will be ~~stricken~~.
- Amendments made by the House will be blue with square brackets, such as: [House amended text].
- Amendments made by the Senate will be red with double greater/lesser than symbols, such as: <<Senate amended text>>.

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

Documents

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

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

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

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

Bill Analysis

House Fiscal Agency Analysis

Summary As Introduced (5/21/2018)
This document analyzes: HB5806, HB5807, HB5808

History

(House actions in lowercase, Senate actions in UPPERCASE)

Date	Journal	Action
4/12/2018	HJ 35 Pg. 648	introduced by Representative Julie Calley
4/12/2018	HJ 35 Pg. 648	read a first time

4/12/2018	HJ 35 Pg. 648	referred to Committee on Judiciary
4/17/2018	HJ 36 Pg. 652	bill electronically reproduced 04/12/2018

HOUSE BILL No. 5808

April 12, 2018, Introduced by Reps. Calley and LaGrand and referred to the Committee on Judiciary.

A bill to amend 1939 PA 288, entitled

"Probate code of 1939,"

by amending section 6 of chapter XIIA (MCL 712A.6), as amended by 2004 PA 221.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XIIA

Sec. 6. The court has jurisdiction over adults as provided in this chapter and as provided in chapter 10A **AND CHAPTER 10C** of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082 **AND 600.1099B TO 600.1099M,** and may make orders affecting adults as in the opinion of the court are necessary for the physical, mental, or moral well-being of a particular juvenile or juveniles under its jurisdiction. However, those orders ~~shall~~ **MUST** be incidental to the jurisdiction of the court over the juvenile or

HOUSE BILL No. 5808

juveniles.

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

Enacting section 2. This amendatory act does not take effect unless Senate Bill No.____ or House Bill No. 5806 (request no. 05303'18) of the 99th Legislature is enacted into law.

Legislative Analysis

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

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

JUVENILE MENTAL HEALTH COURT

House Bills 5806, 5807, and 5808 as introduced
Sponsor: Rep. Julie Calley
Committee: Judiciary
Complete to 5-21-18

BRIEF SUMMARY:

House Bill 5806 would concentrate provisions pertaining to the establishment of juvenile mental health courts within a new Chapter 10C of the Revised Judicature Act (RJA).

House Bill 5807 would delete references and provisions pertaining only to juvenile mental health courts from Chapter 10B of the RJA.

House Bill 5808 would authorize the Family Division of Circuit Court to have jurisdiction over adults as provided in Chapter 10C of the RJA (proposed by HB 5806).

Each bill would take effect 90 days after its enactment.

House Bill 5806 is tie-barred to House Bill 5807, and House Bills 5807 and 5808 are tie-barred to House Bill 5806. A bill that is tie-barred to another cannot become law unless the bill to which it is tie-barred is also enacted.

DETAILED SUMMARY:

Currently, Chapter 10B of the Revised Judicature Act, entitled "Mental Health Court," provides for a circuit court or the district court in any judicial circuit or a district court in any judicial district to adopt or institute a mental health court under statute or court rules, including authorizing the family division of circuit court to adopt or institute a juvenile mental health court, and establishes the framework for mental health courts for adults and juveniles.

House Bill 5806 would create a separate chapter within the RJA for provisions pertaining to juvenile mental health courts. The new Chapter 10C would contain provisions simlari to those currently in Chapter 10B that apply to mental health courts in general as well as those that apply specifically to juvenile mental health courts (JMHCs), and also would revise or add new language as appropriate to tailor the provisions to the juvenile justice system and juvenile offenders. Defined in the Juvenile Code portion of the Probate Code as a person less than 17 years of age, a juvenile who is delinquent or commits a criminal offense is typically adjudicated in the Family Division of Circuit Court. (See **Background Information**, below, for more detail.)

Following are the substantive additions or deletions to provisions currently governing JMHCs under Chapter 10B as reproduced and relocated to Chapter 10C. The bill would:

- Continue to allow a JMHC to accept participants from any other jurisdiction based upon the residence of the participant in the receiving jurisdiction or refuse to accept participants from other jurisdictions. (However, basing acceptance of a participant on the nonavailability of a mental health court in the charging jurisdiction, or the availability of financial resources for the mental health court program and treatment services, would not apply to a JMHC but would still apply to adults under Chapter 10B.)

- Require a JMHC to comply with the Seven Common Characteristics of a Juvenile Mental Health Court, published by Policy Research Associates. This would include all of the following:
    - Regularly scheduled special docket.
    - Less formal style of interaction among court officials and participants.
    - Age-appropriate screening and assessment for trauma, substance use, and mental disorder.
    - Team management of juvenile mental health court participant's treatment and supervision.
    - System-wide accountability enforced by the JMHC.
    - Use of graduated incentives and sanctions.
    - Defined criteria for program success.

- Beginning January 1, 2019, require a JMHC operating in the state, or a circuit court or district court seeking to adopt or institute a JMHC, to be certified by the State Court Administrative Office (SCAO). [Note: Under the bill, only the Family Division of Circuit Court could institute a juvenile mental health court.]

- Require, rather than allow as under Chapter 10B, a JMHC to hire, contract, or work in conjunction with mental health professionals, in consultation with the local community mental health service provider, and other appropriate persons to assist the JMHC in fulfilling its requirements under Chapter 10C.

- Allow a juvenile who is a ***violent offender*** to be admitted into a JMHC <u>if</u> the judge and prosecuting attorney—in consultation with any known victim in the instant case—consent. ***Violent offender*** would mean a juvenile who is currently charged or petitioned with, or has been convicted of or adjudicated on an offense involving the death of, or a serious bodily injury to, any individual, whether or not these circumstances are an element of the offense, or with criminal sexual conduct in any degree.

- Specify that admission to a JMHC does not disqualify a juvenile for any other dispositional options available under state law or court rule.

- Require the preadmission screening and assessment for admittance to a JMHC to also include:
    - A review of the juvenile's delinquency history.
    - The mental health assessment to be performed by a mental health professional, for an evaluation of a serious emotional disturbance, co-occurring disorder, or development disability. [Note: A reference to "serious mental illness" is not made here, though it is included in the similar provision contained in Chapter 10B.]
    - A review of the juvenile's family situation, special needs, or circumstances with a potential to affect the juvenile's ability to receive mental health or substance abuse treatment and follow the court's orders, including input form family, caregivers, or other collateral supports.

- Specify that the process for admission to juvenile mental court for a juvenile alleged to have engaged in activity that would constitute a criminal act if committed by an adult, which entails admitting responsibility and signing a written agreement, would not apply to status offenses (e.g., running away from home).

- Allow a JMHC to require a juvenile's parent, legal guardian, or legal custodian, in addition to the juvenile, to pay a reasonable JMHC fee reasonably related to the cost to the court for administering the JMHC program.

- Require a JMHC to provide a participant with periodic *judicial reviews* of his or her circumstances and progress in the program as well as *individualized* and graduated individual rewards for compliance and sanctions for noncompliance, including the possibility of *detainment*.

- Include in the definition of "domestic violence offense" any crime alleged to have been committed by a juvenile against a *family member*, rather than a *spouse or former spouse.*

- Include in the definition of "juvenile mental health court" programs designed to adhere to the 7 common characteristics of a juvenile mental health court and include references to "juvenile justice" where appropriate.

House Bill 5807 would amend numerous provisions within Chapter 10B of the RJA to delete references pertaining to juveniles and juvenile mental health courts. The bill would also include a reference to the new Chapter 10C created by House Bill 5806 in the definition of "state-certified treatment court" in Chapter 10A (Drug Treatment Courts).

MCL 600.1088 et al.

House Bill 5808 would amend the juvenile code within the Probate Code to include a reference to the new Chapter 10C created by House Bill 5806 in a provision granting jurisdiction of the Family Division of Circuit Court over adults to make orders necessary

for the physical, mental, or moral well-being of a particular juvenile or juveniles under the court's jurisdiction.

MCL 712A.6

BACKGROUND INFORMATION:

The juvenile court process is quite different from the process in place for adults. If the juvenile committed a felony, depending on the nature or seriousness of the offense, the juvenile may receive a typical juvenile disposition in Family Division (referred to as a delinquency proceeding), receive an adult sentence in Family Division, or may be waived to adult criminal court and tried and sentenced as an adult.

Delinquency proceeding: An adjudication in the Family Division of Circuit Court, also referred to as a *delinquency proceeding*, is not considered to be criminal, and the philosophy of the court is rehabilitation and treatment for the delinquent youth rather than punishment. The judge has wide discretion and can dismiss the petition against the juvenile, refer the juvenile for counseling, place the juvenile on probation (diversion), or place the case on the court's formal calendar or docket and allow charges to go forward. If the juvenile admits responsibility or is found responsible (as opposed to "guilty") for committing the offense, the terms of *disposition* (similar to "sentencing" for adults) may include, among other things, probation, counseling, participation in programs such as drug or alcohol treatment, placement in a juvenile boot camp, restitution to victims, community service, placement in foster care, and/or payment of a crime victim rights assessment fee and reimbursement of court appointed attorney fees and other court services expenses.

A juvenile being adjudicated in a delinquency proceeding is often made a temporary ward of the county and supervised by the court's probation department. A juvenile needing more intensive services may be made a ward of the state and supervised by the Michigan Department of Health and Human Services; known as an "Act 150" case, the juvenile may be placed in a residential treatment program. Upon completion of the term of residential care, the juvenile is often placed on "aftercare," where his or her progress and behavior can be monitored by the juvenile corrections department for a period of time similar to the role parole plays for an adult offender.

Juvenile charged as adult: A juvenile who is charged with a felony may be treated and sentenced as an adult. This happens in three ways:

Traditional waiver: Applies to a juvenile 14 to 16 years of age who is charged with any felony. The prosecuting attorney may petition the Family Division asking that the court waive its delinquency jurisdiction and allow the child to be tried as an adult in a court of general criminal jurisdiction (adult criminal court). The Family Division retains discretion to waive the case to adult court or to proceed as a delinquency proceeding. If waived to adult court and convicted, the juvenile must be sentenced as an adult.

Designated proceedings: Some more serious offenses are known as "specified juvenile violations" and include such crimes as arson, rape, assault with attempt to commit murder, and armed robbery. If a juvenile is charged with a specified juvenile violation, the prosecutor has the authority to designate the case to be tried in the Family Division but in the same manner as for an adult (this includes sentencing the juvenile as an adult).

The prosecutor can also ask the Family Division to designate a case that does not involve a specified juvenile violation for trial in the Family Division; this requires the juvenile to be tried in the same manner as an adult, and a guilty plea or verdict results in a criminal conviction. However, the court retains discretion to issue a typical juvenile disposition order, impose any sentence that could be imposed on an adult if convicted of the same offense, or delay sentencing and place the juvenile on probation.

Automatic waiver: If a juvenile who is 14 to 16 years old commits a specified juvenile violation, the prosecutor has the discretion to initiate automatic waiver proceedings to waive the juvenile to adult criminal court by filing a complaint and warrant in District Court, rather than petitioning the Family Division. A preliminary hearing must be held to determine probable cause that the juvenile committed the offense or offenses; if so, the case is bound over to adult criminal court. If the juvenile is convicted of one or more very serious specified juvenile violations, the juvenile must be sentenced in the same manner as an adult; if the juvenile is convicted of an offense that does not require an adult sentence, the court must hold a juvenile sentencing hearing to determine whether to impose an adult sentence or to place the juvenile on probation and make the juvenile an Act 150 ward of the state.

[Information derived from the *Juvenile Justice Benchbook*, 3rd Edition, Michigan Judicial Institute, and information on juvenile delinquency available on the Clare County Prosecuting Attorney's Office website.]

FISCAL IMPACT:

The bills would have no fiscal impact on the state or on local units of government.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

Public Policy Position
HB 5806 – HB 5808

SUPPORT

Explanation
The committee voted overwhelmingly to support HB 5806 – HB 5808, while recommending that the legislature review the reference to the Michigan Indigent Defense Commission in Section 1009B(E)(iii)(E).

Position Vote:
Voted For position: 18
Voted against position: 0
Abstained from vote: 2
Did not vote: 6

***Keller* Explanation**
The legislation is Keller permissible because it improves the functioning of the courts and the availability of legal services in creating a new specialty court for better care of juveniles with mental health issues.

Contact Persons:
Lorray S.C. Brown lorrayb@mplp.org
Valerie R. Newman vnewman@waynecounty.com

Public Policy Position
HB 5806 – HB 5808

SUPPORT

Explanation
The committee voted unanimously to support the concept of juvenile mental health courts as presented in the legislation, but express concerns over the question of funding, the inclusion of the Michigan Indigent Defense Commission (MIDC), and other various drafting concerns in the legislation.

Regarding funding, Section 1099M(1) as drafted seems to require state funding of these specialty courts: "The supreme court is responsible for the expenditure of state funds for establishment and operation of juvenile mental health courts." Specialty courts are generally funded by grants or local entities.

Regarding the inclusion of the MIDC, in Section 1099B(E)(iii)(E), the Commission is required to provide "legal counsel to juvenile respondents." However, MCL 780.983 Sec. 3(a) only concerns adults or juveniles "to be tried in the same manner as an adult."

Finally, there are a number of concerns with drafting. For example, Section 1099K(3)(A), reads "if the court has not already disposed of the juvenile." The committee agreed that "disposed" may not be the best term to use.

The concept of juvenile mental health courts is an excellent idea and these specialty courts should be put into place, but clarity is necessary in the legislation establishing them.

Position Vote:
Voted For position: 11
Voted against position: 0
Abstained from vote: 0
Did not vote: 6

***Keller* Explanation**
The committee voted unanimously that the legislation is Keller permissibly in affecting the functioning of the courts.

Contact Person: Nimish R. Ganatra
Email: ganatran@ewashtenaw.org

Public Policy Position
HB 5806 – HB 5808

SUPPORT

Explanation
The Criminal Law Council, in relation to its votes to support all three (3) bills, expressed reservations regarding the need for the MSC to include proper funding.

Position Vote:
Voted For position: 15
Voted against position: 0
Abstained from vote: 2
Did not vote: 8

Contact Person: Michael Marutiak
Email: marutiakm@michigan.gov

SBM STATE BAR OF MICHIGAN

To: Members of the Public Policy Committee
Board of Commissioners

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

Date: May 29, 2018

Re: HB 5820

Background
House Bill 5820 would amend several sections of the Mental Health Code to account for court-ordered appropriate outpatient treatment as an alternative to court-ordered admission.

Instead of requiring that the Michigan Supreme Court approve forms used under the Code's Chapter 5 (Civil Admission and Discharge Procedures: Developmental Disabilities), the bill would provide that the State Court Administrative Office (SCAO) prescribe the forms at the direction of the Supreme Court.

Currently, a court may order admission for a person who has been diagnosed with an intellectual disability and who can reasonably be expected to seriously or physically injure himself or herself or another person, and whose actions have supported that expectation. The bill would retain that ability, but would allow the court to order appropriate outpatient treatment as an alternative to admission in an appropriate treatment facility. Also, it would allow the court to order admission or treatment if the individual had been arrested and charged with an offense that was a result of the intellectual disability.

At a committee hearings in the House on May 2 and May 16, the following organizations indicated support for the bill:

- State Court Administrative Office
- Prosecuting Attorneys Association of Michigan
- Michigan Probate Judges Association
- Michigan Protection and Advocacy Service

***Keller* Considerations**
Both the Criminal Jurisprudence and Practice Committee (CJAP) and the Access to Justice Policy Committee (ATJ Policy) voted that the legislation was *Keller* permissible. Although the committees took opposing positions, both thought that the legislation would affect the functioning of the courts.

CJAP thought that the bill would improve the functioning of the courts by providing courts with more options on dealing with individuals with mental health issues, and this would expand the legal resources available to those individuals.

ATJ Policy thought the legislation would impact the functioning of the court (negatively) by substituting newly-defined terms and amending the criteria for judicial admission resulting in potential for confusion and misinterpretation, as well as limiting the legal effect of the amendments.

***Keller* Quick Guide**

THE TWO PERMISSIBLE SUBJECT-AREAS UNDER *KELLER*:	Regulation of Legal Profession	Improvement in Quality of Legal Services
As interpreted by AO 2004-1	• Regulation and discipline of attorneys • Ethics • Lawyer competency • Integrity of the Legal Profession • Regulation of attorney trust accounts	✓ Improvement in functioning of the courts ✓ Availability of legal services to society

Staff Recommendation

The bill in effect aims to modernize court-related procedures for dealing with mental illness to reflect new treatment options and improve timely access to them, but break no new ideological ground in terms of expanding or contracting the rights of persons manifesting mental illness. For that reason the legislation is *Keller*-permissible.

MICHIGAN LEGISLATURE(www.legislature.mi.gov)
Printed on Wednesday, May 30, 2018
Michigan Compiled Laws Complete Through PA 137 of 2018

House Bill 5820 (2018) rss?

Friendly Link: http://legislature.mi.gov/doc.aspx?2018-HB-5820

Sponsors

Klint Kesto (district 39)
Hank Vaupel
(click name to see bills sponsored by that person)

Categories

Mental health: code; Mental health: hospitalization; Mental health: other;

Mental health; code; procedure for involuntary mental health treatment and judicial admissions; revise. Amends subheading of ch. 5 & secs. 500, 501, 502, 503, 504, 505, 508, 509, 510, 511, 512, 515, 516, 517, 518, 519, 520, 521, 525, 526, 527, 528, 531, 532, 536, 537, 540 & 541 of 1974 PA 258 (MCL 330.1500 et seq.).

Bill Documents

Bill Document Formatting Information
[x]
The following bill formatting applies to the 2017-2018 session:
- New language in an amendatory bill will be shown in **BOLD AND UPPERCASE.**
- Language to be removed will be ~~stricken~~.
- Amendments made by the House will be blue with square brackets, such as: [House amended text].
- Amendments made by the Senate will be red with double greater/lesser than symbols, such as: <<Senate amended text>>.

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

Documents

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

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

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

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

Bill Analysis

House Fiscal Agency Analysis

Summary As Introduced (5/1/2018)
This document analyzes: HB5818, HB5819, HB5820

Summary as Reported From Committee (5/29/2018)
This document analyzes: HB5818, HB5819, HB5820

History

(House actions in lowercase, Senate actions in UPPERCASE)

Date ▲	Journal	Action
4/17/2018	HJ 36 Pg. 662	introduced by Representative Klint Kesto
4/17/2018	HJ 36 Pg. 662	read a first time
4/17/2018	HJ 36 Pg. 662	referred to Committee on Health Policy
4/18/2018	HJ 37 Pg. 670	bill electronically reproduced 04/17/2018
5/16/2018	HJ 49 Pg. 943	reported with recommendation without amendment
5/16/2018	HJ 49 Pg. 943	referred to second reading
5/29/2018	Expected in HJ 54	read a second time
5/29/2018	Expected in HJ 54	placed on third reading

HOUSE BILL No. 5820

April 17, 2018, Introduced by Reps. Kesto and Vaupel and referred to the Committee on Health Policy.

A bill to amend 1974 PA 258, entitled

"Mental health code,"

by amending a subheading of chapter 5 and sections 500, 501, 502, 503, 504, 505, 508, 509, 510, 511, 512, 515, 516, 517, 518, 519, 520, 521, 525, 526, 527, 528, 531, 532, 536, 537, 540, and 541 (MCL 330.1500, 330.1501, 330.1502, 330.1503, 330.1504, 330.1505, 330.1508, 330.1509, 330.1510, 330.1511, 330.1512, 330.1515, 330.1516, 330.1517, 330.1518, 330.1519, 330.1520, 330.1521, 330.1525, 330.1526, 330.1527, 330.1528, 330.1531, 330.1532, 330.1536, 330.1537, 330.1540, and 330.1541), sections 500, 502, 503, 505, 508, 509, 510, 511, 512, 516, 517, 518, 519, 520, 521, 527, 528, 531, 532, 536, 537, 540, and 541 as amended by 1995 PA 290, sections 504 and 515 as amended by 2014 PA 72, and section 525 as amended by 1998 PA 382.

HOUSE BILL No. 5820

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 500. As used in this chapter, unless the context requires otherwise:

(a) "Administrative admission" means the admission of an individual with a developmental disability to a ~~center pursuant to~~ **FACILITY UNDER** section 509.

(B) "ALTERNATIVE PROGRAM OF CARE AND TREATMENT" MEANS AN OUTPATIENT PROGRAM OF CARE AND TREATMENT SUITABLE TO THE INDIVIDUAL'S NEEDS UNDER THE SUPERVISION OF A PSYCHIATRIST THAT IS DEVELOPED IN ACCORDANCE WITH PERSON-CENTERED PLANNING UNDER SECTION 712.

(C) ~~(b)~~ "Court" means the probate court or the court with responsibility with regard to mental health matters for the county in which an individual with a developmental disability resides or was found.

(D) ~~(c)~~ "Criteria for ~~judicial admission"~~ **TREATMENT"** means the criteria specified in section 515 for admission of an adult with ~~a developmental~~ **AN INTELLECTUAL** disability to a ~~center,~~ **FACILITY,** private facility, or alternative program of care and treatment under section 518.

(E) ~~(d)~~ "Private facility" means an adult foster care facility operated under contract with a community mental health services program or on a private pay basis that agrees to do both of the following:

(*i*) Accept the ~~judicial~~ admission of an individual with developmental disability.

(*ii*) Fulfill the duties of a ~~center~~ **FACILITY** as described in

this chapter.

(F) "TREATMENT" MEANS ADMISSION INTO AN APPROPRIATE TREATMENT FACILITY OR AN OUTPATIENT PROGRAM OF CARE AND TREATMENT SUITABLE TO THE INDIVIDUAL'S NEEDS UNDER THE SUPERVISION OF A PSYCHIATRIST THAT IS DEVELOPED IN ACCORDANCE WITH PERSON-CENTERED PLANNING UNDER SECTION 712.

Sec. 501. The department shall prescribe the forms to be used under this chapter, and all facilities shall use department forms. ~~Forms that may be used in court proceedings under this chapter shall be subject to the approval of the supreme court.~~**AT THE DIRECTION OF THE SUPREME COURT, THE STATE COURT ADMINISTRATIVE OFFICE SHALL PRESCRIBE THE FORMS USED FOR COURT PROCEEDINGS UNDER THIS CHAPTER.**

Sec. 502. An individual shall be admitted to a ~~center~~ **FACILITY** only ~~pursuant~~ **ACCORDING** to the provisions of this act.

Sec. 503. (1) An individual under 18 years of age shall not be judicially admitted to a ~~center,~~ facility, private facility, or other residential program.

(2) Administrative admission under section 509 is the preferred form of admission for individuals 18 years of age or older.

Sec. 504. An individual with a developmental disability other than an intellectual disability is eligible for temporary and administrative admission under sections 508 and 509. ~~, but is not eligible for judicial admission.~~

Sec. 505. (1) Six months ~~prior to~~ **BEFORE** the eighteenth birthday of each resident in a ~~center,~~ **FACILITY**, the resident shall

be evaluated by the center for the purpose of determining whether he or she is competent to execute an application for administrative admission.

(2) If it is determined by the ~~center~~ **FACILITY** that the resident is not competent to execute an application for administrative admission, or otherwise requires the protective services of a guardian, a parent, or if none, another interested person or entity, the parent, guardian, or interested party shall be notified and requested to file a petition for the appointment of a plenary or partial guardian. If a petition is not filed, the ~~center~~ **FACILITY** may, but need not, file a petition.

Sec. 508. (1) An individual with a developmental disability referred by a community mental health services program may be temporarily admitted to a ~~center~~ **FACILITY** for appropriate clinical services if an application for temporary admission is executed by a person legally empowered to make the application and if it is determined that the individual is suitable for admission. The services to be provided to the individual shall be determined by mutual agreement between the community mental health services program, the ~~center,~~ **FACILITY**, and the person making the application, except that no individual may be temporarily admitted for more than 30 days.

(2) An application for temporary admission shall contain the substance of subsection (1).

Sec. 509. (1) An individual with a developmental disability under 18 years of age shall be referred by a community mental health services program before being considered for administrative

admission to a ~~center.~~ **FACILITY.** An application for the individual's admission shall be executed by a parent, guardian, or, in the absence of a parent or guardian, a person in loco parentis if it is determined that the minor is suitable for admission.

(2) An individual with a developmental disability who is 18 years of age or older and is referred by a community mental health services program may be admitted to a ~~center~~ **FACILITY** on an administrative admission basis if an application for the individual's admission is executed by the individual if competent to do so, or by a guardian if the individual is not competent to do so, and if it is determined that the individual is suitable for admission.

(3) An application for administrative admission shall contain in large type and simple language the substance of sections 510, 511, and 512. At the time of admission, the rights set forth in the application shall be explained to the resident and to the person who executed the application for admission. In addition, a copy of the application shall be given to the resident, the person who executed the application, and to 1 other person designated by the resident.

Sec. 510. (1) ~~Prior to~~ **BEFORE** the administrative admission of any individual, the individual may be received by the ~~center~~ **FACILITY** designated and approved by the community mental health services program for up to 10 days in order for a preadmission examination to be conducted. No individual may be administratively admitted unless the individual was referred by the community mental health services program and was given a preadmission examination by

the ~~center~~ **FACILITY** for the purpose of determining the individual's suitability for admission.

(2) The preadmission examination shall include mental, physical, social, and educational evaluations, and shall be conducted under the supervision of a registered nurse or other mental health professional possessing at least a master's degree. The results of the examination shall be contained in a report to be made part of the individual's record, and the report shall also contain a statement indicating the most appropriate living arrangement that is necessary to meet the individual's treatment needs.

(3) At least once annually each administratively admitted resident shall be reexamined for the purpose of determining whether he or she continues to be suitable for admission.

Sec. 511. (1) Objection may be made to the admission of any administratively admitted resident. ~~Objections~~ **AN OBJECTION** may be filed with the court by a person found suitable by the court or by the resident himself or herself if he or she is at least 13 years of age. An objection may be made not more than 30 days after admission of the resident, and may be made subsequently at any 6-month interval following the date of the original objection or, if an original objection was not made, at any 6-month interval following the date of admission.

(2) An objection shall be made in writing, except that if made by the resident, an objection to admission may be communicated to the court or judge of probate and the executive director of the community mental health services program by any means, including

but not limited to oral communication or informal letter. If the resident informs the ~~center~~ **FACILITY** that he or she desires to object to the admission, the ~~center~~ **FACILITY** shall assist the resident in submitting his or her objection to the court.

(3) Upon receiving notice of an objection, the court shall schedule a hearing to be held within 7 days, excluding Sundays and holidays. The court shall notify the person who objected, the resident, the person who executed the application, the executive director, and the director of the ~~center~~ **FACILITY** of the time and place of the hearing.

(4) The hearing ~~shall be~~ **IS** governed by ~~those provisions of~~ sections 517 to 522, including the appointment of counsel and an independent medical or psychological evaluation, that the court ~~deems~~ **CONSIDERS** necessary to ensure that all relevant information is brought to ~~its~~ **THE COURT'S** attention, and by ~~the provisions of~~ this section.

(5) The court shall sustain the objection and order the discharge of the resident if the resident is not in need of the care and treatment that is available at the ~~center~~ **FACILITY** or if an alternative to the care and treatment provided in a ~~center~~ **FACILITY** is available and adequate to meet the resident's needs.

(6) Unless the court sustains the objection and orders the discharge of the resident, the ~~center~~ **FACILITY** may continue to provide residential and other services to the resident.

(7) Unwillingness or inability of the parent, guardian, or person in loco parentis to provide for the resident's management, care, or residence ~~shall~~ **IS** not ~~be~~ grounds for refusing to sustain

the objection and order discharge, but in that event the objecting person may, or a person authorized by the court shall, promptly file a petition under section 637 or, if the resident is a juvenile, under section 2 of chapter XIIA of ~~Act No. 288 of the Public Acts of 1939, being section 712A.2 of the Michigan Compiled Laws,~~ **THE PROBATE CODE OF 1939, 1939 PA 288, MCL 712A.2,** to ensure that suitable management, care, or residence is provided.

Sec. 512. (1) A ~~center~~ **FACILITY** may detain an administratively admitted resident for a period not exceeding 3 days from the time that the person who executed the application for the resident's admission gives written notice to the ~~center~~ **FACILITY** of his or her intention that the resident leave the ~~center.~~**FACILITY.**

(2) When a ~~center~~ **FACILITY** is notified of a resident's intention to leave the ~~center,~~ **FACILITY,** it shall promptly supply an appropriate form to the person who made the notification and notify the appropriate community mental health services program.

~~JUDICIAL ADMISSION~~**INTELLECTUAL DISABILITY TREATMENT**

Sec. 515. A court may order ~~the admission~~ **APPROPRIATE OUTPATIENT TREATMENT OR ADMISSION INTO AN APPROPRIATE TREATMENT FACILITY** of an individual 18 years of age or older ~~who meets both of the following requirements:~~**IF THE INDIVIDUAL HAS BEEN DIAGNOSED AS AN INDIVIDUAL WITH AN INTELLECTUAL DISABILITY AND EITHER OF THE FOLLOWING APPLIES:**

~~(a) Has been diagnosed as an individual with an intellectual disability.~~

(A) ~~(b) Can~~ **THE INDIVIDUAL CAN** be reasonably expected within the near future to intentionally or unintentionally seriously

physically injure himself, ~~or~~ herself, or another person, and has overtly acted in a manner substantially supportive of that expectation.

(B) THE INDIVIDUAL HAS BEEN ARRESTED AND CHARGED WITH AN OFFENSE THAT WAS A RESULT OF THE INTELLECTUAL DISABILITY.

Sec. 516. (1) Any person found suitable by the court may file with the court a petition that asserts that an individual meets the criteria for ~~judicial admission~~ **TREATMENT** specified in section 515.

(2) The petition shall contain the alleged facts that are the basis for the assertion, the names and addresses, if known, of any witnesses to alleged and relevant facts, and if known the name and address of the nearest relative or guardian of the individual.

(3) If the petition appears on its face to be sufficient, the court shall order that the individual be examined and a report be prepared. To this end, the court shall appoint a qualified person who may but need not be an employee of the community mental health services program or the court to arrange for the examination, to prepare the report, and to file it with the court.

(4) If it appears to the court that the individual will not comply with an order of examination under subsection (3), the court may order a peace officer to take the individual into protective custody and transport him or her immediately to a ~~center~~ **FACILITY** recommended by the community mental health services program or other suitable place designated by the community mental health services program for up to 48 hours for the ordered examination.

(5) After examination, the individual shall be allowed to return home unless it appears to the court that he or she requires

immediate admission to the community mental health services program's recommended ~~center~~ **FACILITY** in order to prevent physical harm to himself, ~~or~~ herself, or others pending a hearing, in which case the court shall enter an order to that effect. If an individual is ordered admitted under this subsection, not later than 12 hours after he or she is admitted the ~~center~~ **FACILITY** shall provide him or her with a copy of the petition, a copy of the report, and a written statement in simple terms explaining the individual's rights to a hearing under section 517, to be present at the hearing and to be represented by legal counsel, if 1 physician and 1 licensed psychologist or 2 physicians conclude that the individual meets the criteria for ~~judicial admission.~~**TREATMENT.**

(6) The report required by subsection (3) shall contain all of the following:

(a) Evaluations of the individual's mental, physical, social, and educational condition.

(b) A conclusion as to whether the individual meets the criteria for ~~judicial admission~~ **TREATMENT** specified in section 515.

(c) A list of available forms of care and treatment that may serve as an alternative to admission to a ~~center.~~**FACILITY.**

(d) A recommendation as to the most appropriate living arrangement for the individual in terms of type and location of living arrangement and the availability of requisite support services.

(e) The signatures of 1 physician and 1 licensed psychologist or 2 physicians who performed examinations serving in part as the basis of the report.

(7) A copy of the report required under subsection (3) shall be sent to the court immediately upon completion.

(8) The petition shall be dismissed by the court unless 1 physician and 1 licensed psychologist or 2 physicians conclude, and that conclusion is stated in the report, that the individual meets the criteria for ~~judicial admission.~~**TREATMENT.**

(9) An individual whose admission was ordered under subsection (5) is entitled to a hearing in accordance with section 517.

Sec. 517. (1) ~~Hearings~~ **A HEARING** convened to determine whether an individual meets the criteria for ~~judicial admission shall be~~ **TREATMENT IS** governed by sections 517 to 522. Sections 517 to 522 do not apply to ~~the~~ **A** hearing provided for in section 511 concerning an objection to an administrative admission.

(2) Upon receipt of a petition and a report as provided for in section 516 or 532, or receipt of a petition as provided for in section 531, the court shall do all of the following:

(a) Fix a date for a hearing to be held within 7 days, excluding Sundays or holidays, after the court's receipt of the documents or document.

(b) Fix a place for a hearing, either at a ~~center~~ **FACILITY** or other convenient place, within or outside of the county.

(c) Cause notice of a petition and of the time and place of any hearing to be given to the individual asserted to meet the criteria for ~~judicial admission,~~ **TREATMENT**, his or her attorney, the petitioner, the prosecuting or other attorney specified in subsection (4), the community mental health services program, the director of ~~any center~~ **A FACILITY** to which the individual is

admitted, the individual's spouse if his or her whereabouts are known, the guardian, if any, of the individual, and other relatives or persons as the court may determine. The notice shall be given at the earliest practicable time and sufficiently in advance of the hearing date to permit preparation for the hearing.

(d) Cause the individual to be given within 4 days of the court's receipt of the documents described in section 516 a copy of the petition, a copy of the report, unless the individual has previously been given a copy of the petition and the report, notice of the right to a full court hearing, notice of the right to be present at the hearing, notice of the right to be represented by legal counsel, notice of the right to demand a jury trial, and notice of the right to an independent clinical or psychological evaluation.

(e) Subsequently give copies of all orders to the persons identified in subdivision (c).

(3) The individual asserted to meet the criteria for ~~judicial admission~~ **TREATMENT** is entitled to be represented by legal counsel in the same manner as counsel is provided under section 454, and is entitled to all of the following:

(a) To be present at the hearing.

(b) To have upon demand a trial by jury of 6.

(c) To obtain a continuance for any reasonable time for good cause.

(d) To present documents and witnesses.

(e) To cross-examine witnesses.

(f) To require testimony in court in person from 1 physician

or 1 licensed psychologist who has personally examined the individual.

(g) To receive an independent examination by a physician or licensed psychologist of his or her choice on the issue of whether he or she meets the criteria for ~~judicial admission.~~**TREATMENT.**

(4) The prosecuting attorney of the county in which a court has its principal office shall participate, either in person or by assistant, in hearings convened by the court of his or her county under this chapter, except that a prosecutor need not participate in or be present at a hearing whenever a petitioner or some other appropriate person has retained private counsel who will be present in court and will present to the court the case for a finding that the individual meets the criteria for ~~judicial admission.~~**TREATMENT.**

(5) Unless the individual or his or her attorney objects, the failure to timely notify a spouse, guardian, or other person determined by the court to be entitled to notice is not cause to adjourn or continue any hearing.

(6) The individual, any interested person, or the court on its own motion may request a change of venue because of residence; convenience to parties, witnesses, or the court; or the individual's mental or physical condition.

Sec. 518. (1) If the court finds that an individual does not meet the criteria for ~~judicial admission,~~ **TREATMENT**, the court shall enter a finding to that effect, shall dismiss the petition, and shall direct that the individual be discharged if he or she has been admitted to a ~~center~~ **FACILITY** prior to the hearing.

(2) If the individual is found to meet the criteria for

~~judicial admission,~~ **TREATMENT**, the court shall do 1 **OR A COMBINATION** of the following:

(a) Order the individual to be admitted to a ~~center~~ **FACILITY** designated by the department and recommended by the community mental health services program.

(b) Order the individual to be admitted to a licensed hospital at the request of the individual or his or her family member, if private funds are to be utilized and the private facility complies with all of the admission, continuing care, and discharge duties and requirements described in this chapter for ~~centers.~~**FACILITIES.**

(c) Order the individual to undergo ~~a~~ **AN OUTPATIENT** program for 1 year of care and treatment recommended by the community mental health services program as an alternative to being admitted to a ~~center.~~**FACILITY.**

Sec. 519. (1) ~~Prior to~~ **BEFORE** making an order of disposition ~~pursuant to~~ **UNDER** section 518(2), the court shall consider ordering a course of care and treatment that is an alternative to admission to a ~~center.~~ **FACILITY.** To that end, the court shall review the report submitted to ~~it pursuant to~~ **THE COURT UNDER** section **516(3), SPECIFICALLY REVIEWING ALTERNATIVES AND RECOMMENDATIONS AS PROVIDED UNDER SECTION** 516(6)(c) and (d).

(2) If the court finds that a program of care and treatment other than admission to a ~~center~~ **FACILITY** is adequate to meet the individual's care and treatment needs and is sufficient to prevent harm or injury ~~which~~ **THAT** the individual may inflict upon himself, ~~or~~ herself, or others, the court shall order the individual to receive whatever care and treatment is appropriate under section

518(2)(c).

(3) If at the end of ~~one~~ **1** year it is believed that the individual continues to meet the criteria for ~~judicial admission,~~ **TREATMENT,** a new petition may be filed under section 516.

(4) If at any time during the 1-year period it comes to the attention of the court either that an individual ordered to undergo a program of alternative care and treatment is not complying with the order or that the alternative care and treatment has not been sufficient to prevent harm or injuries ~~which~~ **THAT** the individual may be inflicting upon himself, ~~or~~ herself, or others, the court may without a hearing and based upon the record and other available information do either of the following:

(a) Consider other alternatives to admission to a ~~center,~~ **FACILITY,** modify its original order, and direct the individual to undergo another **OUTPATIENT** program of alternative care and treatment for the remainder of the 1-year period.

(b) Enter a new order ~~pursuant to~~ **UNDER** section 518(2)(a) or (b) directing that the individual be admitted to a ~~center~~ **FACILITY** recommended by the community mental health services program. If the individual refuses to comply with this order, the court may direct a peace officer to take the individual into protective custody and transport him or her to the ~~center~~ **FACILITY** recommended by the community mental health services program.

Sec. 520. ~~Prior to~~ **BEFORE** ordering the admission of an individual, the court shall inquire into the adequacy of care and treatment to be provided to the individual by the designated ~~center.~~ **FACILITY.** Admission shall not be ordered unless the

recommended ~~center~~ **FACILITY** to which the individual is to be admitted can provide the individual with care and treatment that is adequate and appropriate to his or her condition.

Sec. 521. Preference between the ~~center~~ **FACILITY** recommended by the community mental health services program and other available facilities under contract with the community mental health services program shall be given to the facility that can appropriately meet the individual's needs in the least restrictive environment and that is located nearest to the individual's residence. If the individual requests it or there are other compelling reasons for an order reversing the preference, the community mental health services program may place the individual in a facility that is not the nearest to the individual's residence.

Sec. 525. (1) The director of a ~~center~~ **FACILITY** may at any time discharge an administratively ~~or judicially~~ admitted resident **OR A RESIDENT ADMITTED BY COURT ORDER** whom the director considers suitable for discharge.

(2) The director of a ~~center~~ **FACILITY** shall discharge a resident admitted by court order when the resident no longer meets the criteria for ~~judicial admission.~~**TREATMENT.**

(3) If a resident discharged under subsection (1) or (2) has been admitted to a ~~center~~ **FACILITY** by court order, or if court proceedings are pending, both the court and the community mental health services program shall be notified of the discharge by the ~~center.~~**FACILITY. IF A RESIDENT MET THE CRITERIA FOR TREATMENT UNDER SECTION 515(B), THE PROSECUTING ATTORNEY MUST ALSO BE NOTIFIED OF THE DISCHARGE BY A FACILITY.**

(4) If the court orders a person to be ~~judicially~~ admitted under section 515 subsequent to dismissal of felony charges under section 1044(1)(b), the court shall include both of the following statements in the order unless the time for petitioning to refile charges under section 1044 has elapsed:

(a) A requirement that not less than 30 days before the resident's scheduled release or discharge, the director of the treating facility shall notify the prosecutor's office in the county in which charges against the resident were originally brought that the resident's release or discharge is pending.

(b) A requirement that not less than 30 days before the resident's scheduled release or discharge, the resident undergo a competency examination as described in section 1026. A copy of the written report of the examination along with the notice required in subdivision (a) shall be submitted to the prosecutor's office in the county in which the charges against the resident were originally brought. The written report is admissible as provided in section 1030(3).

Sec. 526. (1) A person providing alternative care and treatment to an individual ~~pursuant to~~ **UNDER** section ~~518(2) (c)~~ **518(2)(C)** may terminate the alternative care and treatment to an individual whom the provider of alternative care and treatment ~~deems~~ **CONSIDERS** suitable for termination of care and treatment and shall terminate the alternative care and treatment when the individual no longer meets the criteria for ~~judicial~~ admission.

(2) Upon termination of alternative care and treatment, the ~~court shall be so notified by the~~ provider of the alternative care

and treatment **SHALL NOTIFY THE COURT.**

Sec. 527. If, upon the discharge of an individual admitted by court order or upon termination of alternative care and treatment to an individual receiving care and treatment under section 518(2), the community mental health services program determines that the individual would benefit from the receipt of further care and treatment, ~~it~~ **THE COMMUNITY MENTAL HEALTH SERVICES PROGRAM** shall make arrangements with the ~~center~~ **FACILITY** or provider of alternative care and treatment to continue to provide appropriate care and treatment to the individual on an administrative basis, or ~~it~~ **THE COMMUNITY MENTAL HEALTH SERVICES PROGRAM** shall assist the individual to obtain appropriate care and treatment from another source.

Sec. 528. (1) Except as provided in subsection (2), all leaves or absences from a ~~center~~ **FACILITY** other than release or discharge and all revocations of leaves and absences under section 537 ~~shall be~~ **ARE** governed in accordance with rules or procedures established by the department or, in the case of a private facility, in accordance with procedures of its governing board.

(2) A resident who has been admitted subject to a court order and who has been on an authorized leave or absence from the ~~center~~ **FACILITY** for a continuous period of 1 year shall be discharged. Upon the discharge, the court shall be notified by the ~~center.~~**FACILITY.**

Sec. 531. (1) Every resident admitted by court order has the right to regular, adequate, and prompt review of his or her current status as an individual meeting the criteria for ~~judicial~~

~~admission.~~ **TREATMENT.** Six months after the date of an order of ~~judicial admission,~~ **TREATMENT**, and every 6 months after that, the director of a ~~center~~ **FACILITY** to which a resident was admitted shall review the resident's status as an individual meeting the criteria for ~~judicial admission.~~**TREATMENT.**

(2) The results of each periodic review shall be made part of the resident's record, and shall be filed within 5 days of the review in the form of a written report with the court that ordered the resident's admission, and within the 5 days, notice of the results of the review shall be given by the facility to the resident, his or her attorney, and his or her nearest relative or guardian.

(3) If the report concludes that the resident continues to meet the criteria for ~~judicial admission,~~ **TREATMENT**, and the resident or someone on his or her behalf objects to that conclusion, the resident has the right to a hearing and all other rights expressed or implied in sections 517 to 522 and may petition the court for discharge. The petition shall be presented to the court or a representative of the ~~center~~ **FACILITY** within 7 days, excluding Sundays and holidays, after the report is received. If the petition is presented to a representative of the ~~center,~~ **FACILITY**, the representative shall transmit it to the court immediately.

Sec. 532. In addition to the right to a hearing under section 531, a resident admitted by court order has the right to a hearing and may petition the court for discharge without leave of court once within each 12-month period from the date of the original

order of admission. The petition shall be accompanied by a physician's or a licensed psychologist's report setting forth the reasons for the physician's or licensed psychologist's conclusion that the resident no longer meets the criteria for judicial ~~admission.~~ **TREATMENT.** If no report accompanies the petition because the resident is indigent or is unable for reasons satisfactory to the court to procure a report, the court shall appoint a physician or a licensed psychologist to examine the resident, and the physician or licensed psychologist shall furnish a report to the court. If the report concludes that the resident continues to meet the criteria for ~~judicial admission,~~ **TREATMENT**, the court shall so notify the resident and shall dismiss the petition for discharge. If the report concludes otherwise, a hearing shall be held ~~pursuant~~ **ACCORDING** to sections 517 to 522.

Sec. 536. (1) A resident in a ~~center~~ **FACILITY** may be transferred to any other ~~center,~~ **FACILITY**, or to a hospital operated by the department, if the transfer would not be detrimental to the resident and the responsible community mental health services program approves the transfer.

(2) The resident and his or her nearest relative or guardian shall be notified at least 7 days ~~prior to~~ **BEFORE** any transfer, except that a transfer may be effected earlier if necessitated by an emergency. In addition, the resident may designate 2 other persons to receive the notice. If the resident, his or her nearest relative, or guardian objects to the transfer, the department shall provide an opportunity to appeal the transfer.

(3) If a transfer is effected due to an emergency, the

required notices shall be given as soon as possible, but not later than 24 hours after the transfer.

Sec. 537. (1) An individual is subject to being returned to a ~~center~~ **FACILITY** if both of the following are true:

(a) The individual was admitted to a ~~center~~ **FACILITY** on an application executed by someone other than himself or herself or by judicial order.

(b) The individual has left the ~~center~~ **FACILITY** without authorization, or has refused a lawful request to return to the ~~center~~ **FACILITY** while on an authorized leave or other authorized absence from the ~~center.~~**FACILITY.**

(2) The ~~center~~ **FACILITY** may notify peace officers that an individual is subject to being returned to the ~~center.~~ **FACILITY.** Upon notification, a peace officer shall take the individual into protective custody and return him or her to the ~~center~~ **FACILITY** unless contrary directions have been given by the ~~center~~ **FACILITY** or the responsible community mental health services program.

(3) An opportunity for appeal shall be provided to any individual returned over his or her objection from any authorized leave in excess of 10 days, and the individual shall be notified of his or her right to appeal. In the case of a child less than 13 years of age, the appeal shall be made by his or her parent or guardian.

Sec. 540. (1) A determination that an individual meets the criteria for ~~judicial admission,~~ **TREATMENT**, a court order directing that an individual be admitted to a ~~center~~ **FACILITY** or receive alternative care and treatment, or any form of admission to a

private facility ~~shall~~ **DOES** not give rise to a presumption of, constitute a finding of, or operate as an adjudication of legal incompetence.

(2) An order of commitment under any previous statute of this state ~~shall~~ **DOES** not, in the absence of a concomitant appointment of a guardian, constitute a finding of or operate as an adjudication of legal incompetence.

Sec. 541. An individual admitted to a ~~center~~ **FACILITY** shall at the time of admission receive a copy of section 540. An individual discharged from a ~~center~~ **FACILITY** shall receive a copy of section 540 upon request.

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

Legislative Analysis

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

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

MENTAL HEALTH TREATMENT

House Bill 5818 as reported from committee w/o amendment
Sponsor: Rep. Vanessa Guerra

House Bills 5819 and 5820 as reported from committee w/o amendment
Sponsor: Rep. Klint Kesto

Committee: Health Policy
Complete to 5-29-18

SUMMARY:

House Bill 5818 would amend Section 5314 of the Estates and Protected Individuals Code (EPIC), which lists the powers and duties of a guardian over a legally incapacitated individual.

Currently, a guardian has the power to give consent and approval necessary for the ***ward*** (person for whom a guardian is appointed) to receive medical or other professional care, counsel, treatment, or service. The bill would add mental health to that provision, but would state that a guardian does not have and may not exercise the power to consent to or approve inpatient hospitalization unless the court expressly grants the power in its order. If the ward objected to or actively refused mental health treatment, the guardian or any other interested person would have to follow the procedures in Chapter 4 of the Mental Health Code to petition the court for an order to provide ***involuntary mental health treatment***.

> ***Involuntary mental health treatment*** means court-ordered hospitalization, alternative treatment, or combined hospitalization and alternative treatment. (The definition would be amended by HB 5819 to state that it would not include a full or limited guardian authorized under EPIC with the authority to consent to mental health treatment for an individual found to be a legally incapacitated individual under EPIC).

Additionally, a guardian currently has the duty to report the condition of the ward and ward's estate to the court at least annually. The bill would provide that, in addition to information on the ward's current condition, improvement or deterioration, and living arrangements, among other factors, the guardian would need to include mental health treatment received by the ward in the currently required medical treatment information.

MCL 700.5314

House Bill 5819 would amend various sections of the Mental Health Code concerning treatment and consent.

Currently, ***assisted outpatient treatment (AOT)*** includes the categories of outpatient services ordered by the court under Sections 468 and 469a of the Code. The bill would provide that, if AOT includes case management to provide care coordination, it must be under the supervision of a psychiatrist and developed in accordance with person-centered planning under Section 712 of the Code. (Section 712 requires that person-centered planning must be used to develop an

individual plan of services to address the recipient's need for food, shelter, clothing, health care, employment and educational opportunities, legal services, transportation, and recreation, as desired by the recipient.)

The bill would also amend the definition for ***consent*** to include a written agreement executed by a full or limited guardian authorized under EPIC, in addition to a recipient, minor recipient's parent, or recipient's legal representative with authority to execute a consent.

Currently, in order to be hospitalized as a voluntary patient, a person or his or her full or limited guardian or patient advocate may execute an application for hospitalization. The bill would allow a written consent for mental health treatment instead, and extend the provision to other treatment as well as hospitalization.

Under current statute, the application must state simply and in large type certain rights afforded to the patient under Sections 419 and 420 of the Code, including the right to terminate hospitalization. Those rights must be orally communicated to the patient when hospitalization begins. If a patient chooses to terminate hospitalization, he or she may not continue to be hospitalized for more than three days after notifying the hospital (excluding weekends), unless the hospital determines that the person should remain and files a petition with the court.

The bill would replace the application with a written consent, which need not state the rights afforded to the patient; however, those rights, including the right to object to the mental health treatment, would still need to be told to the patient upon commencement of mental health treatment. The bill would also extend the ability to notify of intent to terminate treatment to the full or limited guardian and patient advocate authorized under EPIC.

The bill would retain the patient's ability to terminate hospitalization within three days of giving notice (and extend it to mental health treatment), and extend the hospital's ability to petition the court if it determines that the person should continue to receive treatment to apply to a provider of mental health treatment.

MCL 330.1100a et al.

House Bill 5820 would amend several sections of the Mental Health Code to account for court-ordered appropriate outpatient treatment as an alternative to court-ordered admission.

Instead of requiring that the Michigan Supreme Court approve forms used under the Code's Chapter 5 (Civil Admission and Discharge Procedures: Developmental Disabilities), the bill would provide that the State Court Administrative Office (SCAO) prescribe the forms at the direction of the Supreme Court.

The bill would rename the division of Chapter 5 that currently concerns Judicial Admissions to apply to Intellectual Disability Treatment instead. It would substitute the word "treatment" for "judicial admission" throughout the division.

Currently, a court may order admission for a person who has been diagnosed with an intellectual disability and who can reasonably be expected to seriously or physically injure himself or herself or another person, and whose actions have supported that expectation. The bill would retain that ability, but would allow the court to order appropriate outpatient treatment

as an alternative to admission in an appropriate treatment facility. Also, it would allow the court to order admission or treatment if the individual had been arrested and charged with an offense that was a result of the intellectual disability.

If the court ordered admission or treatment for that reason, the director of a facility would be required to notify the prosecuting attorney when the resident is discharged from the facility. (Currently, the director must notify only the court and the community mental health service program if a resident admitted by court order is discharged.)

It would also introduce definitions for the following:

> ***Alternative program of care and treatment*** means an outpatient program of care and treatment suitable to the individual's needs under the supervision of a psychiatrist that is developed in accordance with person-centered planning under Section 712 of the Code.
>
> ***Treatment*** means admission into an appropriate treatment facility or an outpatient program of care and treatment suitable to the individual's needs under the supervision of a psychiatrist that is developed in accordance with person-centered planning under Section 712 of the Code.

MCL 330.1500 et al.

House Bills 5818 and 5819 are tie-barred together, which means that neither could take effect unless both were enacted. Each of the three bills would take effect 90 days after its enactment.

FISCAL IMPACT:

House Bills 5818, 5819, and 5820 would not have a fiscal impact on the state or local units of government.

POSITIONS:

A representative of the State Court Administrative Office testified in support of the bills. (5-16-18)

The Mental Health Association indicated support for the bills. (5-2-18)
The Michigan Protection and Advocacy Service indicated support for the bills. (5-2-18)
The Lieutenant Governor's office indicated support for the bills. (5-2-18)
The Michigan Probate Judges Association indicated support for the bills. (5-16-18)

The Prosecuting Attorneys Association of Michigan indicated support for HB 5820. (5-16-18)

Legislative Analyst: Jenny McInerney
Fiscal Analyst: Kevin Koorstra

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

Legislative Analysis

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

MENTAL HEALTH TREATMENT

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

House Bill 5818 as introduced
Sponsor: Rep. Vanessa Guerra

House Bills 5819 and 5820 as introduced
Sponsor: Rep. Klint Kesto

Committee: Health Policy
Complete to 5-1-18

SUMMARY:

House Bill 5818 would amend Section 5314 of the Estates and Protected Individuals Code (EPIC), which lists the powers and duties of a guardian over a legally incapacitated individual.

Currently, a guardian has the power to give consent and approval necessary for the ***ward*** (person for whom a guardian is appointed) to receive medical or other professional care, counsel, treatment, or service. The bill would add mental health to that provision, but would state that a guardian does not have and may not exercise the power to consent to or approve inpatient hospitalization unless the court expressly grants the power in its order. If the ward objected to or actively refused mental health treatment, the guardian or any other interested person would have to follow the procedures in Chapter 4 of the Mental Health Code to petition the court for an order to provide ***involuntary mental health treatment***.

> ***Involuntary mental health treatment*** means court-ordered hospitalization, alternative treatment, or combined hospitalization and alternative treatment. (The definition would be amended by HB 5819 to state that it would not include a full or limited guardian authorized under EPIC with the authority to consent to mental health treatment for an individual found to be a legally incapacitated individual under EPIC).

Additionally, a guardian currently has the duty to report the condition of the ward and ward's estate to the court at least annually. The bill would provide that, in addition to information on the ward's current condition, improvement or deterioration, and living arrangements, among other factors, the guardian would need to include mental health treatment received by the ward in the currently required medical treatment information.

MCL 700.5314

House Bill 5819 would amend various sections of the Mental Health Code concerning treatment and consent.

Currently, ***assisted outpatient treatment (AOT)*** includes the categories of outpatient services ordered by the court under Sections 468 and 469a of the Code. The bill would provide that, if AOT includes case management to provide care coordination, it must be under the supervision of a psychiatrist and developed in accordance with person-centered planning under Section 712 of the Code. (Section 712 requires that person-centered planning must be used to develop an

individual plan of services to address the recipient's need for food, shelter, clothing, health care, employment and educational opportunities, legal services, transportation, and recreation, as desired by the recipient.)

The bill would also amend the definition for ***consent*** to include a written agreement executed by a full or limited guardian authorized under EPIC, in addition to a recipient, minor recipient's parent, or recipient's legal representative with authority to execute a consent.

Currently, in order to be hospitalized as a voluntary patient, a person or his or her full or limited guardian or patient advocate may execute an application for hospitalization. The bill would allow a written consent for mental health treatment instead, and extend the provision to other treatment as well as hospitalization.

Under current statute, the application must state simply and in large type certain rights afforded to the patient under Sections 419 and 420 of the Code, including the right to terminate hospitalization. Those rights must be orally communicated to the patient when hospitalization begins. If a patient chooses to terminate hospitalization, he or she may not continue to be hospitalized for more than three days after notifying the hospital (excluding weekends), unless the hospital determines that the person should remain and files a petition with the court.

The bill would replace the application with a written consent, which need not state the rights afforded to the patient; however, those rights, including the right to object to the mental health treatment, would still need to be told to the patient upon commencement of mental health treatment. The bill would also extend the ability to notify of intent to terminate treatment to the full or limited guardian and patient advocate authorized under EPIC.

The bill would retain the patient's ability to terminate hospitalization within three days of giving notice (and extend it to mental health treatment), and extend the hospital's ability to petition the court if it determines that the person should continue to receive treatment to apply to a provider of mental health treatment.

MCL 330.1100a et al.

House Bill 5820 would amend several sections of the Mental Health Code to account for court-ordered appropriate outpatient treatment as an alternative to court-ordered admission.

Instead of requiring that the Michigan Supreme Court approve forms used under the Code's Chapter 5 (Civil Admission and Discharge Procedures: Developmental Disabilities), the bill would provide that the State Court Administrative Office (SCAO) prescribe the forms at the direction of the Supreme Court.

The bill would rename the division of Chapter 5 that currently concerns Judicial Admissions to apply to Intellectual Disability Treatment instead. It would substitute the word "treatment" for "judicial admission" throughout the division.

Currently, a court may order admission for a person who has been diagnosed with an intellectual disability and who can reasonably be expected to seriously or physically injure himself or herself or another person, and whose actions have supported that expectation. The bill would retain that ability, but would allow the court to order appropriate outpatient treatment

as an alternative to admission in an appropriate treatment facility. Also, it would allow the court to order admission or treatment if the individual had been arrested and charged with an offense that was a result of the intellectual disability.

If the court ordered admission or treatment for that reason, the director of a facility would be required to notify the prosecuting attorney when the resident is discharged from the facility. (Currently, the director must notify only the court and the community mental health service program if a resident admitted by court order is discharged.)

It would also introduce definitions for the following:

> ***Alternative program of care and treatment*** means an outpatient program of care and treatment suitable to the individual's needs under the supervision of a psychiatrist that is developed in accordance with person-centered planning under Section 712 of the Code.
>
> ***Treatment*** means admission into an appropriate treatment facility or an outpatient program of care and treatment suitable to the individual's needs under the supervision of a psychiatrist that is developed in accordance with person-centered planning under Section 712 of the Code.

MCL 330.1500 et al.

House Bills 5818 and 5819 are tie-barred together, which means that neither could take effect unless both were enacted. Each of the three bills would take effect 90 days after its enactment.

FISCAL IMPACT:

House Bills 5818, 5819, and 5820 would not have a fiscal impact on the state or local units of government.

Legislative Analyst: Jenny McInerney
Fiscal Analyst: Kevin Koorstra

Public Policy Position
HB 5820

OPPOSE

Explanation

The committee was conflicted over this bill. While the committee was in agreement that HB 5820 is *Keller* permissible, the position vote is less simple. Ten members voted to oppose HB 5820, three voted to support it, and seven members abstained from voting.

The ten in opposition agreed on the following:

> The peculiar rewording of existing definitions in the Mental Health Code (MHC), together with the newly-introduced definitions, raise questions as to whether the amended sections of Ch. 5 of the MHC actually accomplish this stated objective or, rather, result in unintended consequences. The proposed new definitions seem to not be harmonized or incorporated throughout Ch. 5, resulting in potential for confusion and misinterpretation, as well as limiting the legal effect of the amendments. Proposed amended language in Sec. 501 would mandate the use of SCAO forms for court proceedings under Ch. 5 "Civil Admission and Discharge Procedures: Developmental Disabilities." But, rather than clarifying the appropriate use of various official forms, the amended Sec. 501 potentially perpetuates confusion and conflict with the earlier statutory prescription that "all facilities shall use department (DHHS) forms."

Position Vote:

Voted For position: 10
Voted against position: 3*
Abstained from vote: 7
Did not vote: 6

***Keller* Explanation**

The proposed changes to Ch. 5 would affect the functioning of the courts by substituting newly-defined terms and amending the "criteria for judicial admission" of individuals with developmental disabilities, thereby broadening the available outpatient treatment options available to the courts and expanding the legal basis for involuntary commitments.

Contact Persons:

Lorray S.C. Brown lorrayb@mplp.org
Valerie R. Newman vnewman@waynecounty.com

*Three members voted to support the bill, noting that the intent of the bill is to provide mental health treatment services to those who need them most, and while the legislation has some drafting issues that need to be worked out, this is a good bill overall.

Public Policy Position
HB 5820

SUPPORT

Explanation
The committee voted to support HB 5820. This legislation will expand involuntary commitment, including outpatient services, to include anyone arrested and charged with an offense that was a result of an intellectual disability. This would provide courts with more options to provide people access to mental health resources.

Position Vote:
Voted For position: 8
Voted against position: 2
Abstained from vote: 1
Did not vote: 6

***Keller* Explanation**
The committee voted 8 to 3 that the legislation is *Keller* permissible in improving the functioning of the courts and providing access of legal services to society.

Contact Person: Nimish R. Ganatra
Email: ganatran@ewashtenaw.org

Public Policy Position
HB 5820

SUPPORT

Position Vote:
Voted For position: 12
Voted against position: 0
Abstained from vote: 3
Did not vote: 10

Contact Person: Michael Marutiak
Email: marutiakm@michigan.gov

SBM STATE BAR OF MICHIGAN

To: Members of the Public Policy Committee
Board of Commissioners

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

Date: May 29, 2018

Re: "A Way Forward: Transparency in 2018"

Background

As a section of the State Bar that is not funded by voluntary dues, the Young Lawyers Section's (YLS) public advocacy must be *Keller*-permissible and approved by the Board. The YLS is seeking approval by the Board to support a report by the Iowa State Bar Association's Young Lawyers Division, "A Way Forward: Transparency in 2018." The report makes a series of recommendations for the ABA and law schools designed to "improve legal education for the benefit of students, the legal profession, and the public."

The recommendations in the report are summarized as:

1. Young lawyer representation in ABA accreditation.
2. Increased data transparency requirements for law schools by the ABA including:
    - Disaggregated borrowing data, including subcategories by race and gender;
    - Disaggregated data on the amount of tuition paid by class year, race/ethnicity, and gender;
    - Data on applicants and scholarships by gender and race/ethnicity; and
    - Date on J.D. program completion and bar passage success.
3. The ABA should employ more user-friendly data presentation by simplifying and reorganizing the Employment Summary Report and the Standard 509 Information Report.
4. The ABA should require every law school to provide every admitted law student a copy of the Standard 509 Information Report and Employment Summary Report.
5. Every ABA-approved law school should voluntarily publish its school-specific National Association of Law Placement Report each year.

***Keller* Considerations**

The YLS's *Keller* explanation says that the report it seeks to endorse falls within legal profession regulation as it deals with ABA requirements, and Michigan generally conditions admission on graduation from an ABA-accredited law school. Every ABA law school is required to follow the rules and regulations mentioned in the report and in the ABA Standards.

***Keller* Quick Guide**

THE TWO PERMISSIBLE SUBJECT-AREAS UNDER *KELLER*:		
	Regulation of Legal Profession	**Improvement in Quality of Legal Services**
As interpreted by AO 2004-1	• Regulation and discipline of attorneys • Ethics • Lawyer competency ✓ Regulation of the Legal Profession • Regulation of attorney trust accounts	• Improvement in functioning of the courts • Availability of legal services to society

Staff Recommendation

The contents of the report are *Keller*-permissible and may be considered on their merits. AO 2004-1 allows the use of mandatory dues for "the regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession." As the YLS points out in their *Keller* explanation, because Michigan requires graduation from an ABA accredited law school for admission, ABA criteria for accreditation are permissible *Keller* subject matter.

LAW SCHOOL TRANSPARENCY

A Way Forward: Transparency in 2018

Law School Transparency

Kyle McEntee

Iowa State Bar Association Young Lawyers Division*

* Kyle Fry, Thomas Hillers, Abhay Nadipuram, Rob Poggenklass, and Maggie White contributed to this report on behalf of the Iowa YLD.

LAW SCHOOL TRANSPARENCY

Executive Summary

We recommend that the ABA and law schools take the following steps to improve legal education for the benefit of students, the legal profession, and the public.

1. Young Lawyer Representation in Accreditation

    - The ABA Section of Legal Education and Admissions to the Bar should add two young lawyers to its Council in 2018.
    - The ABA Section of Legal Education and Admissions to the Bar should change its bylaws to designate two of 15 at-large Council positions to young lawyers.

2. Increased Data Transparency

    - The ABA Section of Legal Education and Admissions to the Bar, using authority it already has under the ABA Standards and Rules of Procedure for Approval of Law Schools, should require schools to report as part of the Section's annual questionnaire, and for the Section and schools to provide on their websites, (1) disaggregated borrowing data, including subcategories by race and gender; (2) disaggregated data on the amount of tuition paid by class year (1L or upper-level), race/ethnicity, and gender; (3) data on applicants and scholarships by gender and, to the extent the Section does not do so already, by race/ethnicity; (4) data on J.D. program completion and bar passage success.

3. User-Friendly Data Presentation

    - The ABA Section of Legal Education and Admissions to the Bar should simplify the Employment Summary Report, which includes graduate employment data.
    - The ABA Section of Legal Education and Admissions to the Bar should simplify and reorganize the Standard 509 Information Report, which includes data related to admissions, attrition, bar passage, price, curricular offerings, diversity, faculty, refunds, and scholarships.

4. Disclosures at Time of Admission

    - The ABA Section of Legal Education and Admissions to the Bar should require law schools to provide every admitted law student a copy of the Standard 509 Information Report and Employment Summary Report as part of each student's admissions offer.

5. Voluntary Disclosures by Law School

    - Every ABA-approved law school should voluntarily publish its school-specific NALP Report each year.

LAW SCHOOL TRANSPARENCY

Introduction

The future of legal education—and by extension the legal profession—depends on the ability of law schools and the profession to attract prospective lawyers. Our profession must become a more welcoming place for an increasingly diverse population, as well as evolve to stay relevant in a changing legal services landscape. Law schools must adapt their business models to become more affordable because the price of legal education has and will threaten new lawyer recruitment. If Congress and the current presidential administration successfully eliminate federal student loan hardship programs and invite private, predatory lenders to supplant the federal government as the all-but-exclusive law student lender, the affordability challenges for law schools will amplify.[1] Potential changes to the student loan and repayment program only increase the import of addressing the price of legal education.

Over the past several decades, law school tuition has increased dramatically, well above inflation. Compared to tuition in 1985, private and public law school tuition is 2.7 and 5.8 times as expensive after accounting for inflation.[2] The average private law school tuition was $45,329 in 2017, with residents at public schools paying an average of $26,425 per year.[3] The range of tuition, however, demonstrates remarkable variability. At public schools, one year of resident tuition ranged from $7,383 to $58,300.[4] At private schools, the range was $16,418 to $67,564 per year.[5] While the average tuition at top performing law schools is much higher than the rest, prices do not scale with job outcomes elsewhere.[6] The average tuition at the lowest performing schools is similar to the average for mid-range schools.[7]

To pay these high tuition prices, three out of four law students borrow[8] at interest rates that are almost double the average home mortgage interest rate.[9] A first-year student this academic year will borrow their first $20,500 at 6% and all excess funds (up to $70,000 more) at 7% annual

---

1 *House GOP to Propose Sweeping Changes to Higher Education*, Wall Street Journal, Nov. 29, 2017, https://www.wsj.com/articles/house-gop-to-propose-sweeping-changes-to-higher-education-1511956800; *Reversal on Graduate Lending*, Inside Higher Ed, Dec. 11, 2017, https://www.insidehighered.com/news/2017/12/11/house-gop-higher-education-overhaul-would-cap-graduate-lending-and-end-loan.

2 LST Data Dashboard, https://www.data.lawschooltransparency.com/costs/tuition/?y1=1985&y2=2017.

3 *Id*.

4 *Id* at https://www.data.lawschooltransparency.com/costs/tuition/?y1=2016&y2=2017&scope=jobs.

5 *Id*.

6 *Id*.

7 *Id*.

8 *Id*. at https://data.lawschooltransparency.com/costs/debt/?scope=national.

9 *Mortgage Rate Volatility Expected in the Coming Month*, Washington Post, Dec. 7, 2017, https://www.washingtonpost.com/news/where-we-live/wp/2017/12/07/mortgage-rate-volatility-expected-in-the-coming-month/?utm_term=.1c00271fb04c.

interest.[10] The government does not subsidize law student interest payments during school, thus the cost of the first-year loan increases by 21% and 24.5%, respectively, while the student is studying and before a single loan payment is due.

The average graduate will borrow, exclusively for law school, $145,419 from a for-profit school, $134,497 from a private school, and $96,054 from a public school.[11] After accounting for accumulated interest during law school, even the average public law school graduate owes well into six-figures for law school alone when they make their first payment. Financial advisors typically recommend devoting no more than 10 or 15% of income to debt service.[12] A graduate who owes $125,000 at first payment has a monthly payment of about $1,400 on the standard ten-year plan. To remain in range of the recommendation, the graduate must make between $112,000 (for 15%) and $168,000 (for 10%). The median entry-level salary for the 2016 graduates in long-term, full-time law jobs was $66,499.[13]

Servicing these debts is increasingly challenging because any-level lawyer salaries are declining in real terms. In April 2017, Deborah Merritt, a law professor at The Ohio State University, analyzed the most recent U.S. Bureau of Labor Statistics data for salaried lawyers.[14] "At the high end, salaries are still increasing faster than inflation," according to Professor Merritt's analysis, "[b]ut for the majority of salaried lawyers (at least seventy-five percent), salaries are falling in constant dollars and earnings in other occupations are outpacing them."[15] Of course, these figures all presume a graduate gets and keeps a salaried lawyering job—law schools as a whole still enroll many more graduates than there are entry-level legal jobs.

The percentage of a graduating class employed in jobs that require a law license is sensitive to two distinct supply figures: total graduates and total available jobs. For example, if graduates increase and the number of jobs stays the same, the percentage will decline. The percentage of graduates obtaining full-time entry-level legal jobs was quite high in the 1980s, peaking at 84.5% in 1988.[16] The average rate in the mid to late 1980s was 82.9%.[17] The next two decades (90s and 00s) each had an average that was ten points lower, 73.7% in the 90s and 70.7% in the 00s.[18] This decade,

---

10 Federal Student Aid, U.S. Dept. of Education, https://studentaid.ed.gov/sa/about/announcements/interest-rate.

11 *Supra* LST Data Dashboard, note 2, https://data.lawschooltransparency.com/costs/federal-investment/.

12 Loan Debt and Repayment, College Board, https://bigfuture.collegeboard.org/pay-for-college/loans/loan-debt-and-repayment.

13 Class of 2016 NALP Summary Report, NALP, https://www.nalp.org/uploads/Classof2016_NationalSummaryReport.pdf. These salary numbers are not perfect, but they overstate rather than understate salaries.

14 *Jobs and Salaries for New Lawyers*, Law School Cafe, Apr. 30, 2017 https://www.lawschoolcafe.org/2017/04/30/jobs-and-salaries-for-new-lawyers/.

15 *Id*. Entry-level salaries are also declining in real terms in most categories. *Supra* LST Data Dashboard, note 2, at https://data.lawschooltransparency.com/jobs/salaries/.

16 *Supra* LST Data Dashboard, note 2, at https://data.lawschooltransparency.com/jobs/legal-jobs/.

17 *Id*.

18 *Id*.

so far, the average is 60.1%—an additional ten points lower.[19]

Strikingly, these shifts appear to reflect enrollment management decisions by law schools instead of demand for new lawyers. Between 1976 and 2000, law schools steadily enrolled between ~40,000 and ~44,000 new students each year.[20] From 1976 to 1987, the average was 40,973.[21] From 1988 to 2000, the average was 43,497—a little over 6% higher.[22] But between 2000 and 2002, law schools increased first-year enrollment 11.2%.[23] In subsequent years, enrollment steadily creeped up, with minor ebbs and flows, until peaking in 2010 at 52,404.[24] The number of jobs, on the other hand, has been far steadier. Between 1985, the first year for which we were able to analyze data, and 2010, the number of new full-time law jobs each year generally stayed between 27,000 and 30,000.[25] Increased enrollment and a steady number of jobs spell a lower employment rate for law school graduates.

As law schools were pressured to become more transparent about job outcomes beginning in 2010, the media and prospective law students took notice of inflated enrollment, inadequate job prospects, and high prices—and enrollment dropped.[26] After 1L enrollment peaked in 2010 at 52,404 new students, enrollment fell dramatically in each of the next three years, which was then followed by four years of even lower, but steady, enrollment between 37,000 and 38,000 new 1Ls.[27] Lower enrollment has created a difficult financial reality for law schools that depend on tuition revenue to keep the lights on.[28] While smaller class size certainly helps the percentage of the class who can get a lawyer job, the entry-level market remains structurally weak. Since 2013, fewer graduates obtained full-time lawyer jobs each year than the prior year.[29] Given the cost of obtaining a J.D. and current features of the entry-level job market, law schools are likely to continue to struggle to attract enough qualified students to maintain their business models—even with the "Trump Bump" in law school applicants.[30]

This poses enormous difficulty for an aging profession that needs a pipeline of law school

---

19 *Id*.
20 *Id*. at https://data.lawschooltransparency.com/enrollment/all/.
21 *Id*.
22 *Id*.
23 *Id*.
24 *Id*.
25 *Id*. at https://data.lawschooltransparency.com/jobs/legal-jobs/.
26 *Increasing Transparency in Employment Reporting by Law Schools: What Is To Be Done?*, Above the Law, Apr. 21, 2010, https://abovethelaw.com/2010/04/increasing-transparency-in-employment-reporting-by-law-schools-what-is-to-be-done/. *Supra* LST Data Dashboard, note 2, at https://data.lawschooltransparency.com/enrollment/all/.
27 *Id*.
28 2015 State of Legal Education, Law School Transparency, https://lawschooltransparency.com/reform/projects/investigations/2015/analysis/.
29 *Supra* LST Data Dashboard, note 2, at https://data.lawschooltransparency.com/jobs/legal-jobs/.
30 *Increase in LSAT test takers is seen as evidence of 'Trump bump'*, ABA Journal, Nov. 21, 2017, www.abajournal.com/news/article/increase_in_lsat_test_takers_is_seen_as_evidence_of_trump_bump.

graduates who will not only protect and improve the rule of law, but who will also reflect society's diverse population. While signs point to fewer lawyers working differently in the future, lawyers should remain an essential part of our system of justice and private ordering, as well as an essential line of defense for abuses of power of all kinds. But our legal education system, and thus lawyers' role in the rule of law, is vulnerable when we price future contributors out of our profession. We need a pipeline of students who want and can afford to join.

This report makes several basic recommendations aimed at strengthening this pipeline. We begin by urging that the law school accreditation process be infused with those who have experienced what dissuades so many people each year from attending law school. It continues with high-quality data that allows legal educators and policy-makers to confront difficult realities and to direct resources in directions that strengthen and stabilize the pipeline. Better consumer information will help students make sense of their choice, while also shedding light on our profession's way forward. Data may not be the solution to law school affordability, but it is a necessary first step to finding and implementing solutions. Informed policy choices require a diversity of information and voices.

Recommendations

1. Young Lawyer Representation in Accreditation

The ABA Section of Legal Education and Admissions to the Bar should add two young lawyers to its Council in 2018.

The ABA Section of Legal Education and Admissions to the Bar should change its bylaws to designate two of 15 at-large Council positions to young lawyers.

The American Bar Association ("ABA") Section of Legal Education and Admissions to the Bar is the nationally recognized accreditor of law schools, but its mission is broader.[31] Its mission is also "[t]o be a creative national force in providing leadership and services to those responsible for and those who benefit from a sound program of legal education and bar admissions."[32] Over the recent decades, legal education has become significantly more practical, service-oriented, and diverse. But the Section also oversaw legal education as costs spiraled out of control and schools adopted predatory admissions practices solely to ensure survival in a time of great tumult.[33]

Indeed, a Committee of the United States Department of Education recently recommended that the

---

31 *After Trump's election, more students consider law school, hoping to make a difference*, Chicago Tribune, Nov. 16, 2017, www.chicagotribune.com/business/ct-biz-lsat-registration-up-trump-bump-20171116-story.html.

32 *Id*.

33 *Supra* 2015 State of Legal Education, note 28.

Section's accreditation authority be suspended.[34] At the end of the hearing, Paul LeBlanc, a college president and member of the Education Department's National Advisory Committee on Institutional Quality and Integrity, summarized his view of the Section's conduct as follows:

> This feels like an agency that is out of step with a crisis in its profession, out of step with the changes in higher Ed, and out of step with the plight of the students that are going through the law schools.[35]

Several choices by the Section over the past few decades have negatively impacted legal education in the long term. In 1995, the Section reached a settlement with the Department of Justice after the DOJ's antitrust division contended that the accreditation process was used to inflate law school faculty salaries and benefits.[36] The beneficiaries of this abuse of accreditation are largely still on staff at law schools, thus the Section's actions continue to directly affect the cost of providing legal education because salary increases compound, working conditions tend to endure, and law faculty have tenure.

More recently, the Section was slow to act decisively to stop law schools from exploiting students, despite internal and external calls for accountability. In part, this was due to poorly-drafted accreditation standards. In 2008, after determining that a minimum bar passage standard would serve an important consumer protect function, the Section passed a standard so rife with loopholes that law schools with sub-30% bar passage rates have still not been found non-compliant.[37] The bar passage standard, now Standard 316 instead of Interpretation 301-6, remains on the books despite two separate attempts to address the standard's substantial flaws.[38]

Fortunately, Standard 316 is not the only tool at the Section's disposal to address predatory admissions and retention practices. The Section has had a standard for decades to prevent schools

---

34 Transcript Reveals Debate Over ABA's Accrediting Power, Bloomberg Big Law Business, Aug. 3, 2016, https://biglawbusiness.com/transcript-reveals-debate-over-abas-accrediting-power/.

35 June 22, 2016 Hearing on the American Bar Association Council of the Section of Legal Education and Admission to the Bar's Renewal of Recognition Petition for Accreditation Authority, 235:2-6.

36 Department of Justice Press Release, June 27, 1995, https://www.justice.gov/archive/atr/public/press_releases/1995/0257.htm.

37 ABA Standards Archives, https://www.americanbar.org/groups/legal_education/resources/standards/standards_archives.html (The ABA added Interpretation 301-6 for the 2008-2009 academic year; the ABA moved the interpretation to Standard 316 for the 2014-2015 academic year.) *What Will The ABA Do To Restore Trust In Law Schools?*, Above the Law, Dec. 2, 2015, https://abovethelaw.com/2015/12/what-will-the-aba-do-to-restore-trust-in-law-schools/ (outlining six loopholes in Standard 316, the bar passage standard).

38 *Supra* ABA Standards Archives, note 37; 2013 Congressional Black Caucus Review, pg 20, https://issuu.com/cbcaucus/docs/cbc_year_in_review_-_final_webversi_1743e0cbc454b2 (discussing the CBC's thwarting of the attempt to strengthen Standard 316 in 2013); *ABA House Rejects proposal to tighten bar-pass standards for law schools*, ABA Journal, Feb. 6, 2017, http://www.abajournal.com/news/article/aba_house_rejects_proposal_to_tighten_bar_pass_standards_for_law_schools (discussing the House of Delegates' rejection of the Council's approval of a stronger Standard 316 in 2016).

from enrolling students who do not appear capable of getting through school and the bar.[39] Yet the Section misapplied Standard 501—the prohibition of predatory admissions practices—by presuming compliance with Standard 501 if a school was compliant with the fatally flawed Standard 316.[40] This hampered the Section's ability to react quickly. The Section leadership determined it was not properly interpreting (and thus enforcing) Standard 501 in late 2015.[41] It subsequently refined its approach and added an additional enforcement layer to the text of the standard.[42] The Section has since found ten law schools out of compliance with Standard 501, with other schools likely to follow.[43]

The Section was also inattentive to problems related to transparency. In 2010, the Section and law schools first came under fire for misleading employment statistics.[44] The most flagrant statistics involved reporting an employment rate, often well above 90%, without indicating that the figure included part-time jobs, short-term jobs, jobs funded by the law school, and non-lawyer jobs. While law schools deserve responsibility for deceptive marketing practices that misled students and the public, the Section collected but did not disclose data from law schools that made these practices apparent. The Section's annual questionnaire that law schools must accurately complete to remain accredited asked schools for a breakdown of graduates by job types, including whether jobs required bar passage or were part time. However, the Section only published the top-line figure too, just as was common practice by law schools. This information asymmetry favored law schools and allowed them to grow enrollments well beyond reason. Between 2011 and 2012, the Section changed the ABA Standards to address misleading statistics and to force law schools to detail these misleading top-line numbers and disclose real employment statistics.[45] These changes contributed to demand for law school declining dramatically.[46]

The Section's efforts to make law school admissions fairer may have been a reaction to negative publicity, but for several years the Section's actions indicated to schools that it would embrace transparency and not tolerate deceptive marketing practices. Indeed, it was a model of transparency for the rest of higher education. The Section refined the public reports schools must publish, adjusted definitions, added an audit protocol, and provided guidance to schools about how not to

---

39 *Supra* ABA Standards Archives, note 37.

40 Memo on Standard 501 from Kyle McEntee to the Section of Legal Education leadership, http://lawschooltransparency.com/reform/projects/investigations/2015/documents/Memo_on_Standard_501.pdf.

41 *Id*.

42 *ABA House rejects proposal to tighten bar-pass standards for law schools*, ABA Journal, Feb. 6, 2017, http://www.abajournal.com/news/article/aba_house_rejects_proposal_to_tighten_bar_pass_standards_for_law_schools.

43 *10 Law Schools Sanctioned by ABA for Lax Admissions*, National Law Journal, Nov. 21, 2017, https://www.law.com/sites/almstaff/2017/11/21/10-law-schools-sanctioned-by-aba-for-lax-admissions-outcomes/. Supra LST Data Dashboard, note 2, at https://data.lawschooltransparency.com/transparency/aba-compliance/.

44 *Supra Increasing Transparency in Employment Reporting*, note 26.

45 *Law School Transparency Gets R-E-S-P-E-C-T*, The Careerist, June 14, 2011, https://thecareerist.typepad.com/thecareerist/2011/06/law-school-.html.

46 *Supra* notes 26-30 and accompanying text.

mislead students and the public. However, in just the past year, the Section's Council took actions that incensed transparency advocates and law schools alike.[47] Without public input, the Council changed the mandatory job statistics disclosures.[48] In October 2017, the Council reversed course, but not before losing credibility among various stakeholders.

Several of the Section's specific actions, along with a general inattention to fundamental problems in legal education, have sparked significant interest by young lawyers in the direction of legal education. Young lawyers are interested in the consumer protection aspects of accreditation, as well as in shaping the Council's perspective in an official capacity as it seeks to be a creative force for the betterment of legal education. All lawyers, but young lawyers in particular, have an interest in a strong profession that can attract qualified people to do the important work of lawyers throughout our democratic society. When legal education falters, the profession's reputation is harmed. More importantly, those who need high-quality legal services suffer.

Historically, the Section has not had young lawyers on its Council. The nomination rules for the Council are clear, but the process is uninviting and the practical criteria for membership go unstated. Recently, the Section's managing director shared a helpful hint with a journalist. He told the ABA Journal that he "encourage[s] the young lawyers, and all of us on staff, to try to figure out ways to get more folks who are closer to the beginning of their careers involved on site visit teams. That's a primary credential for service on the council."[49]

One way to encourage young lawyers would be to designate two spots on the Council that indicate that there is, in fact, a place for young lawyers in a space dominated by older lawyers and those whose primary professional employer is a law school. This would provide fresh perspectives to the Council. Currently, the Council consists of a single law student, who serves for one year, 15 at-large positions, and five executive officers.[50] While the ABA Young Lawyers Division has a liaison to the Council, that member does not have voting power and is not permitted in closed sessions.

The Council is currently comprised of members who, on average, graduated from law school 38 years ago. The greenest members graduated in 1990. Age and experience are not the problem, however. The problem is that tuition averaged $3,236 at public schools and $11,728 at private

---

47 *ABA Takes Giant Step Backwards On Transparency*, Above the Law, Aug. 3, 2017, https://abovethelaw.com/2017/08/aba-takes-giant-step-backwards-on-transparency/.

48 *Id*.

49 ABA Legal Ed council revisits admissions test requirement, tables bar exam standard, ABA Journal, Nov. 1, 2017, http://www.abajournal.com/news/article/aba_legal_ed_council_bar_pass_rate_standards_admissions_test/.

50 ABA Section of Legal Education Bylaws, https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2016_2017_section_bylaws.authcheckdam.pdf.

schools in 1990, and substantially less in prior years.[51] The deans and faculty on the Council know the cost of today's tuition only in the sense that they can recite the price. They do not understand the life impact of tuition prices of $40,000, $50,000, or even more than $60,000 *per year* have on decision-making. A student working for 15 weeks at an annualized salary of $180,000—New York City market rate for entry-level associates at large law firms—would not cover annual tuition at the average private school today, let alone books and living expenses. Not only is that job unavailable to the vast majority of students, but its term is three to five weeks longer than a typical summer associate works.

The continued increase of law school tuition compared to the relatively stagnant value of that education is an important consequence of a broken legal education system that proliferated under the Section's leadership. We can begin to understand the current, unfair state when we examine how schools and the ABA govern; how schools recruit new students and set prices; and how policymakers and their influencers fundamentally misunderstand what it means to provide "access to education." These factors enable and cause our broken system to endure.

Achieving a higher education should not hurt students—economically, socially, or personally. But our legal education system has hurt many. Countless well-meaning people defend the status quo reflexively, choosing to focus on theories of long-term return on investment or the J.D.'s intrinsic value to justify the current state of legal education. Enchanting as these arguments may sound, they are presently and justly overshadowed by crippling debt. Simply put, if you are a young college graduate or mid-career applicant right now, then you aren't buying the idea of a long-term return when the most certain thing about your future is your monthly loan obligation.

While the Council considers restructuring,[52] there is no guarantee or even indication that it would result in the addition of young attorneys to the Council. There are qualified young attorneys, with good ideas and great intentions, who feel that their voice has not been heard because of the assumption that the Council's interests are captured by law schools. While we appreciate the individual Council members' contribution to the advancement of the law and education as a whole, we also believe that young lawyers would offer keen and unique insight into recent changes in legal education and prospective changes in accreditation. Importantly, we are confident that these prospective members would join the Council with a goal of collaboration and with newly formed views that are not entwined with the entities the Council regulates. The renewed vigor and unique perspectives will propel legal education and the profession forward.

---

51 *Supra* LST Data Dashboard, note 2, at https://www.data.lawschooltransparency.com/costs/tuition/?y1=1985&y2=2017.

52 Memo on the Reorganization of the Structure of the Accreditation Project, https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/November2017CouncilOpenSession/17_nov_restructuring_project_cover_memo.authcheckdam.pdf.

2. Increased Data Transparency

The ABA Section of Legal Education and Admissions to the Bar, using authority it already has under the ABA Standards and Rules of Procedure for Approval of Law Schools, should require schools to report as part of the Section's annual questionnaire, and for the Section and schools to provide on their websites, (1) disaggregated borrowing data, including subcategories by race/ethnicity and gender; (2) disaggregated data on the amount of tuition paid by class year (1L or upper-level), race, and gender; (3) data on applicants and scholarships by gender and, to the extent the Section does not do so already, by race/ethnicity; (4) data on J.D. program completion and bar passage success.

For the better part of a decade, law schools have faced pressure to be more transparent, affordable, and fair. Concerned people inside and outside of the legal profession alike have objected to deceptive marketing, over-enrollment, and runaway tuition. In many ways, the Section of Legal Education has acknowledged and responded to the criticism. The ABA Standards and Rules of Procedure for Approval of Law Schools ("Standards") now expressly prohibit schools from providing false, incomplete, or misleading consumer information.[53] The Standards also require law schools to publish detailed employment data on their websites.[54] More recently, the Section convened a roundtable of legal education stakeholders to discuss how to modify the Standards to encourage innovation and address challenges related to cost, declining job opportunities, and declining bar passage rates. One theme that emerged from the roundtable is the necessity of more transparency.

We propose several recommendations for the Section that, if enacted, will shed light on law student debt, inequitable pricing practices, exploitative admissions and retention choices, and lasting inequality. The Council already has the authority to collect and require schools to publish all of the data described below. Standard 104 permits the Council to collect these data "in the form, manner, and time frame" it specifies each year.[55] Rule 54(b) permits the Council to publish these data when "authorized under Standard 509 or [when] … made public by the law school."[56] Standard 509 allows the Council to require schools to publish these data "in the form and manner and for the time frame designated by the Council."[57]

Transparency forces the public and school leaders to confront difficult realities, whether it's high prices, burdensome debt, low bar passage rates, or unfulfilled diversity promises. These recommendations will expand access to valuable data, helping consumers to make informed decisions, schools to change to meet evolving demands, and the Section to create and maintain an environment of accountability.

---

53 Standard 509, 2017-18 ABA Standards and Rules of Procedure for Approval of Law Schools.
54 *Id*.
55 *Id*.
56 *Id*.
57 *Id*.

Student Debt

In 2016, the average private law school graduate received $134,497 in student loan disbursements during law school.[58] The average public law school graduate received $96,054.[59] However, these figures do not reflect the amount of debt owed when repayment begins six months after graduation because they do not factor in interest, which the government does not subsidize for law students. This year, interest immediately began to accrue at 6% for Stafford Loans (up to $20,500 per year) or 7% for Graduate PLUS loans (up to the full cost of attendance) for students.[60]

These eye-popping numbers come from school-level borrowing averages. Each school's average includes any graduate who borrowed at least $1 during law school, whether they borrowed for just one semester—perhaps $5,000 to pay for a trip—or they borrowed the full cost of attendance. So while the average can tell us about the entire population, it tells us little about individual students. With cost of attendance in 2017-18 as high as $95,883 at Stanford Law School, student borrowing can vary wildly based on scholarships and ability to pay.[61] The latest available data show that 55% of Stanford Law students pay full price.[62] After accounting for interest, a Stanford Law graduate may owe over $300,000 when the first payment is due, even factoring in a 2L summer associate salary.

The public does not know how many (if any) graduates actually owe this much, just that 75% of Stanford Law graduates in 2016 borrowed at least $1 and that the average amount borrowed was $137,625.[63] Perhaps a debt load of $300,000 from one of the nation's elite law schools is not a matter of public interest or concern. But the debt loads at lesser-performing schools can reach this astronomical amount too—and it is at those schools that underlying borrowing data will serve the most important purpose.

Take, for example, Southwestern Law School. Its annual cost of attendance is $82,600.[64] Half of its students paid full price in 2016-17.[65] In 2016, only 38.9% of its 2016 graduates obtained a long-

---

58 *Supra* LST Data Dashboard, note 2, at https://data.lawschooltransparency.com/costs/debt/?scope=schools&y1=2016.

59 *Id*.

60 *2017-2018 Interest Rates Announced*, Access Lex, https://www.accesslex.org/xblog/2017-2018-interest-rates-announced (last visited Sept. 26, 2017).

61 Stanford Law School, LST Reports, https://www.lstreports.com/schools/stanford/costs/ (last visited Dec. 29, 2017).

62 *Id*. With 55% of students paying full price and 25% of the class not borrowing, at least 30% of those who paid full price borrowed at least $1—but probably much more.

63 *Supra* LST Data Dashboard, note 2, at https://data.lawschooltransparency.com/costs/debt/?scope=schools&y1=2016.

64 Southwestern Law School Costs, LST Reports, https://www.lstreports.com/schools/southwestern/costs/ (last visited Dec. 29, 2017).

65 *Id*.

term, full-time job that requires bar passage within ten months of graduation.[66] Only 38% of 2016 graduates passed the California bar exam on the first try.[67] The public does not know how many (if any) graduates *actually* owe upwards of $300,000 at this school. But unlike Stanford, the public does not know the average amount borrowed because Southwestern Law School has not disclosed graduate borrowing data since 2012, when the average amount borrowed for the 78.9% of graduates who borrowed was $147,976.[68] Since that time, tuition is up 23%; net tuition is up 8%; cost of living is up 12%; the median and 75th percentile scholarship has not changed; and the 25th percentile scholarship has declined by a third.[69]

The Section of Legal Education does not publish any school-level borrowing data, although the Section does collect the average amount borrowed and the percentage borrowing on its annual questionnaire.[70] Rather, borrowing data come from voluntary disclosures by law schools to *U.S. News & World Report*. Every year, more than a handful of schools make erroneous disclosures to *U.S. News*, which only occasionally get corrected. Every year, a dozen or so other schools decline to publish the average amount borrowed by graduates.

Consumers, schools, and researchers lose out because the only source for information that the Section possesses is a news magazine that muddies the decision-making process for consumers and schools alike. As the best source for borrowing data, the Section encourages people to visit the *U.S. News* website through its decision not to publish the borrowing data it possesses. That said, the average amount borrowed by graduates and the percentage borrowing are limited in utility, although there is value in confronting consumers with figures that account for several years of schooling instead of annual cost of attendance. The Section would do a great service to legal education if it enabled consumers and researchers to peer underneath the surface figures (average borrowed) to see the borrower makeup by amount borrowed. Shedding light on underlying borrowing data may stir policymakers, faculty, and administrators to think more clearly and realistically about the problem of student debt. One way to do this is through a frequency distribution, which "displays the frequency of various outcomes in a sample."[71]

In legal education, the most famous application of a frequency distribution is NALP's bi-modal salary distribution curve (shown below, Figure A). This curve continues to shape how

---

66 *Id*. at ABA Report, https://www.lstreports.com/schools/southwestern/aba/.

67 *California Bar Exam Results by School in 2016*, Above the Law, http://abovethelaw.com/2016/12/california-bar-exam-results-by-law-school-2016/.

68 *Supra* LST Data Dashboard, note 2, at https://data.lawschooltransparency.com/costs/debt/?scope=schools&y1=2012.

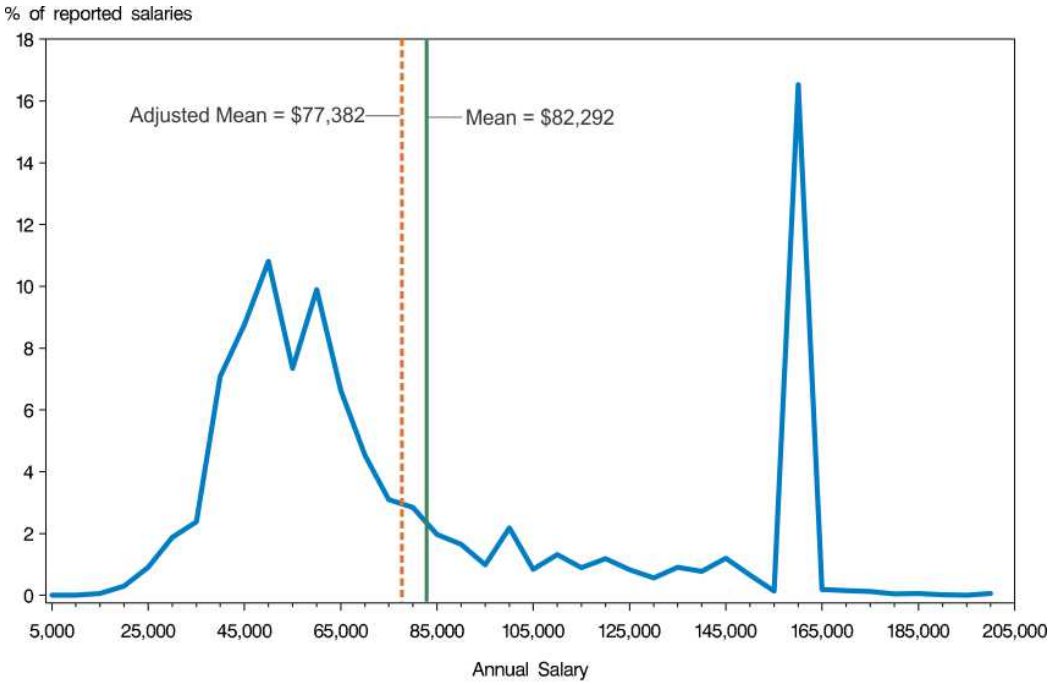
69 *See*, generally, ABA Required Disclosures for Southwestern Law School, http://abarequireddisclosures.org/. The net tuition estimates can be found on the LST Data Dashboard, *supra* note 2, at https://data.lawschooltransparency.com/costs/net-tuition/.

70 In the past, the Section collected graduate borrowing data, but currently only collects annual loan disbursements.

71 Frequency Distribution, Wikipedia https://en.wikipedia.org/wiki/Frequency_distribution.

policymakers, researchers, consumers, and the public understand entry-level salaries. The mean salary may have been $82,292 for 2014 graduates, but very few graduates made at or near that amount. Instead graduates fell into one of two "humps"—$160,000 on the one side and between $40,000 and $65,000 on the other.[72]

Figure A



As such, we ask the Section to collect data on student loan borrowing outcomes for graduates and to publish those outcomes using a frequency distribution table, including non-borrowers, using its authority under Standard 104 and Rule 54(b), as well as to require schools to publish these data on their websites using its authority under Standard 104 and Standard 509(b)(2).

Tuition Prices and Discounts

Since 1985, inflation has been a factor in rising law school prices, but legal education inflation far exceeds the inflation rate. In 1985, the average private school tuition was $7,526 (1985 dollars), which would now cost a student $17,118 (2017 dollars). [73] Instead the average tuition is $46,329 (2017 dollars). [74] In other words, private law school is now 2.7 times as expensive as it was in

[72] NALP Salary Distribution Curves, http://www.nalp.org/salarydistrib (last visited Sept. 22, 2017).
[73] *Supra* LST Data Dashboard, note 2, https://www.data.lawschooltransparency.com/costs/tuition/?y1=1985&y2=2017.
[74] *Id*.

1985 after adjusting for inflation. Public school (for residents) is now about 5.8 times as expensive. [75]

Since then, law schools have engaged in more tuition discounting through grants and scholarships. So although the nominal tuition price has increased, it does not tell the whole story. About 30% of students pay full price.[76] For the 70% receiving a discount, the discounts have shifted away from need-based discounts based on ability to pay towards merit-based discounts based on LSAT and undergraduate GPA. Those with the highest LSATs and GPAs receive the discounts. As such, the students who are least likely to complete school, pass the bar, and get a job subsidize the students who are more likely to succeed. These also tend to be the students the most disadvantaged.[77]

Currently, the Section requires schools to report and publish cost of attendance data and scholarship data about the 25th, 50th, and 75th percentiles for full-time and part-time students. It also requires schools to report and publish scholarship data by the percentage of tuition covered, e.g. what percentage of all students have a scholarship that covers up to 50% of tuition. Moreover, the Section requires schools to report and publish whether and how often they reduce or eliminate scholarships after poor academic performance.

The Section already recognizes the value of publicly available price information for consumers, researchers, and the public. But with increased discounting and the shift away from need-based aid, additional clarity would add additional value much in the way that more graduate borrowing data would. The Section should therefore further its efforts of helping people understand the cost of legal education. As such, we ask the Section to collect data on tuition paid for each enrolled individual and to publish up to four frequency distributions tables per law school—one for 1L tuition paid, one for upper-level tuition paid, and a distinction for part-time and full-time as necessary—using its authority under Standard 104 and Rule 54(b), as well as to require schools to publish these data on their websites using its authority under Standard 104 and Standard 509(b)(2).

Gender Diversity

In 1965, just 1 in 25 law students was a woman. That number steadily climbed to 1 in 4 in 1975; 1 in 3 in 1980; and since 2000, the proportions have been roughly equal—though slightly more men than women every year except last year. Parity in law school enrollment was an enormous milestone, but new research demonstrates that national parity masks lurking gender inequality.

---

75 *Id*.

76 *Id*. at https://data.lawschooltransparency.com/costs/net-tuition/.

77 *Law School Scholarship Policies, Engines of Inequity*, 2016, http://lssse.indiana.edu/wp-content/uploads/2015/12/LSSSE-2016-Annual-Report-1.pdf.

The research shows three significant "leaks" in the law school pipeline for women.[78] The first of these leaks involve women applying to law school. Even though women are 57% of college graduates, they account for only about 51% of the law school applicants. If women applied at the same rate as men to law school, applications would increase 16%. The second leak is that women who apply to law school are less likely than men to be admitted. For the class entering in 2015, law schools admitted about 80% of the men who applied, but just 76% of the women who applied. The third leak is that, even when women are admitted, they are not spread evenly across law schools. They instead cluster disproportionally in schools with the weakest employment outcomes and worst reputations.

The first and second leaks go back several decades. The third leak, however, is new and worsening. In 2001, when schools had just gotten to roughly 50/50 nationwide, women were evenly distributed amongst schools. But by 2006 the story had started to change. Although the pattern was not yet statistically significant, it had started to emerge. By 2015 the pattern was statistically significant and quite stark. Today the top 50 schools are the mirror opposite of the bottom 50 schools.

The emerging explanations mostly relate to the *U.S. News* law school rankings, with the most compelling relating to schools jockeying for higher LSAT scores to increase the median score, which is a considerable driver of ranking. Over the past 15 years, in their quest to secure or improve their *U.S. News* ranking, law schools have decided to emphasize LSAT scores more. Women actually do two points worse on average than men on the LSAT, and there are fewer higher scorers as well.[79] This is typical of standardized tests with predominately multiple choice questions, unlike writing examinations that tend to favor women.[80] Additional explanations may include an uneven distribution of applicants (perhaps increased median LSATs drive applicants away), uneven distribution of scholarship money (perhaps because schools overvalue the extra two points they get from men), and scholarship negotiation tendencies (perhaps because women are less likely to ask for more or any money). At this point, further research is not possible because school-level applicant and scholarship data are not available by gender.

Data on applicants and scholarships would also help consumers make informed choices. As outlined in the previous sections on tuition and debt, law school is expensive. Reducing the information asymmetry—allowing students to more clearly understand their bargaining position—will help them to pay less, which would reduce debt and/or enhance the school options.

---

78 *The Leaky Pipeline*, Deborah Merritt and Kyle McEntee, https://www.lstradio.com/women/?theme=lp1.

79 *LSAT Technical Report October 2012*, Law School Admissions Council, https://www.lsac.org/docs/default-source/research-(lsac-resources)/tr-12-03.pdf?sfvrsn=4 (Figure 10).

80 Performance of Men and Women on Multiple-Choice and Constructed-Response Tests for Beginning Teachers, Samuel A. Livingston and Stacie L. Rupp, ETS Research Report, https://files.eric.ed.gov/fulltext/EJ1110967.pdf; Fighting the Gender Gap: Standardized Tests Are Poor Indicators of Ability in Physics, Barrett H. Ripin APS News Letter, https://www.aps.org/publications/apsnews/199607/gender.cfm; *Standardized Tests Are a New Glass Ceiling*, Andrew Hacker, The Nation, https://www.thenation.com/article/standardized-tests-are-a-new-glass-ceiling/.

Additionally, these data will help the Section analyze compliance with Standard 206(a). Standard 206(a) provides that "a law school shall demonstrate by concrete action a commitment to diversity and inclusion by providing full opportunities for the study of law and entry into the profession by members of underrepresented groups, particularly racial and ethnic minorities, and a commitment to having a student body that is diverse with respect to gender, race, and ethnicity." If a school, even inadvertently, is biasing enrollment towards men because it's too concerned with chasing a higher ranking, then the school may be out of compliance with the ABA Standards.

As such, we ask the Section to collect and to publish data on applicants and scholarships by gender using its authority under Standard 104 and Rule 54(b), as well as to require schools to publish these data on their websites using its authority under Standard 509(b)(1) and Standard 509(b)(2).

Racial and Ethnic Diversity

Whereas tremendous progress has been made towards gender parity, even with the emerging trend of gender clustering at the most and least reputable schools, significant progress remains for enrollment by race and ethnicity.[81]

Table B

	Hispanic	NA	Asian	Black	Hawaiian	White	2+ Races
2016 1Ls	13.7%	0.5%	6.5%	9.6%	0.1%	65.2%	4.3%
US Population	17.8%	1.3%	5.7%	13.3%	0.2%	61.3%	2.6%

Aaron Taylor, the executive director of AccessLex's Center for Legal Education Excellence, observed similar trends with race and ethnicity as the previous section outlined about gender. Taylor found that Black and Hispanic students were more likely to attend schools with lower median LSAT scores, which tend to be less prestigious.[82] Whereas white and Asian students were more likely to attend more prestigious schools with higher LSAT median scores.[83] Taylor told the *National Jurist* that "[t]his affects long-term outcomes, career trajectories and payoffs from law school investments. There are many implications tied in large part to race and ethnicity."[84]

Even on the tuition and debt front, the implications are huge. According to the Law School Survey of Student Engagement (LSSSE), then-directed by Taylor, "[i]t seems apparent that increased costs

---

81 1L percentages come from the ABA, downloadable from the Section's statistics website. https://www.americanbar.org/groups/legal_education/resources/statistics.html (last visited Sept. 28, 2017). Excludes unknowns and non-resident 1Ls. U.S. Population percentages come from the U.S. Census. https://www.census.gov/quickfacts/fact/table/US/PST045216 (last visited Sept. 28, 2017).

82 *Diversity as a Law School Survival Strategy*, Aaron Taylor, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2569847 (last visited Sept. 28, 2017).

83 *Id*.

84 *Law schools enrolling more minorities to combat enrollment drop*, NATIONAL JURIST, Laira Martin, Feb. 17, 2015, http://www.nationaljurist.com/prelaw/law-schools-admitting-more-minorities-combat-enrollment-drop.

of attending law school have placed undue pressures on students from less affluent backgrounds to rely on student loans to finance their education. This burden falls disproportionately on Black and Hispanic students, who are more likely to come from low-wealth backgrounds."[85] The proportion of Black students expecting no debt was less than 5% in 2015 and less than 10% for Hispanic students.[86] For white students, it was about 20% and for Asian students about 25%.[87] On the high end, about 25% of white students expected debt in excess of $120,000, compared to almost 45% of Black students and about 40% of Hispanic students.[88]

Of course, these disparities relate to the "large racial and ethnic wealth disparities in the U.S."[89] But they also appear to relate to law school scholarship policies, because wealth explains part of the divergence in LSAT scores, which play an outsized role in determining the price a student pays to attend law school. According to LSSSE's 2016 report, 2 in 3 white students receive a merit scholarship, while just 1 in 2 Black and Hispanic students do.[90]

For the same reasons outlined above for gender, including adherence to and enforcement of Standard 206(a), we ask the Section to collect and to publish data on applicants and scholarships by race/ethnicity using its authority under Standard 104 and Rule 54(b), as well as to require schools to publish these data on their websites using its authority under Standard 509(b)(1) and Standard 509(b)(2).

Additional Diversity Data

For the foregoing reasons outlined in the sections on race/ethnicity and gender data, the public would also benefit if the data requested in the sections on tuition prices and student debt were publicly accessible by race/ethnicity and gender. The Section may do so under its current authority under Standard 104, Standard 509, and Rule 54(b).

Completion and Bar Success

Many law schools have enrolled students that face a significant risk of not completing school or passing the bar exam.[91] Despite a decrease in completion rates, bar passages rates have also

---

85 *Law School Survey of Student Engagement 2015 Report*, pg. 12, http://lssse.indiana.edu/wp-content/uploads/2016/01/LSSSE-Annual-Report-2015-Update-FINAL-revised-web.pdf.

86 *Id*.

87 *Id*.

88 *Id*.

89 *Id*.

90 *Law School Survey of Student Engagement 2016 Report*, pg. 9, http://lssse.indiana.edu/wp-content/uploads/2015/12/LSSSE-2016-Annual-Report-1.pdf.

91 *Study Cites Lower Standards in Law School Admissions*, New York Times, Elizabeth Olson, Oct. 26, 2015, https://www.nytimes.com/2015/10/27/business/dealbook/study-cites-lower-standards-in-law-school-admissions.html (reporting on Law School Transparency's *2015 State of Legal Education*, https://www.lawschooltransparency.com/reform/projects/investigations/2015/).

decreased. After years of steady bar passage rates, overall passage rates have fallen 10 points and first-time rates have fallen nine points between 2013 and 2016, although the declines have not been uniform across the country.[92] For example, first-time rates have fallen 36 points in South Dakota, 19 points in Iowa, 18 points in New Mexico, 16 points in Oregon, and 15 points in Arizona.[93] On the other hand, first-time rates increased in Nebraska, Louisiana, and Michigan.[94] Similarly, the declines have not been uniform across all law schools. Some schools have increased their bar passage rates, such as Florida International University College of Law.[95] Many others have seen dramatic declines.[96]

The declines were predictable based on lower Law School Admissions Test ("LSAT") scores and insufficient mitigation through, for example, higher grade point averages ("GPA") and more forced attrition.[97] Highlighting which schools, through their educational programs, help or do not help students outperform their predictors would help consumers make more informed choices about where to attend law school, while helping law schools compete on metrics other than the *U.S. News* law school rankings. Further, it would help the legal education community develop best practices for maximizing the success of students at higher risk of failure—an essential goal that will not only help legal educators get the most out of students, but also increase diversity in the profession by fortifying our leaky pipeline.

The Section has determined that completion rates based on available predictors are valuable in assessing compliance with the Standards, as well as the progress non-compliant schools are making towards coming back into compliance. Since August 2016, the Council for the Section has publicly sanctioned five law schools in relation to its admissions and retention choices.[98] Each sanction included remedial actions, including a requirement that each school provide current students bar passage rates for previous, similarly-situated students. While similarity was determined based on law school GPA, information fashioned for prospective law students would be valuable too. Prior to enrollment, there is not yet a better predictor of school completion and bar exam success than the LSAT. In fact, the Section's accreditation committee requested that at least one of the schools—Charlotte School of Law—report completion and bar passage rate

---

92 National Conference of Bar Examiners, 2016 Statistics, pg. 33, www.ncbex.org/pdfviewer/?file=%2Fdmsdocument%2F205.

93 *Id*.

94 *Id*.

95 Florida Bar Exam Statistics, https://www.floridabarexam.org/web/website.nsf/52286AE9AD5D845185257C07005C3FE1/660E3F5B6C35DE2585257C0B006AA3F4.

96 *Id*.

97 For example, law schools have not increased incoming undergraduate GPAs enough to outweigh lower LSAT scores. In fact, GPAs were down almost uniformly across the schools studied. *2015 State of Legal Education*, Law School Transparency, https://www.lawschooltransparency.com/reform/projects/investigations/2015/data/other-stats/?show=mbe.

98 ABA Section of Legal Education Announcements, https://www.americanbar.org/groups/legal_education.html (Arizona Summit Law School, Charlotte School of Law, Ave Maria School of Law, Texas Southern University Thurgood Marshal School of Law, Valparaiso University School of Law)

information for students with LSATs at or below the median in order to assess compliance with the ABA Standards.[99] As such, we ask the Section to collect and publish data on program completion and bar passage success by LSAT score using its authority under Standard 104 and Rule 54(b), as well as to require schools to publish these data on their websites using its authority under Standard 509(b)(4), and Standard 509(b)(8). We decline, at this time, to recommend a specific format for publishing these data. Instead, we recommend that the Section implement a tracking system, including admissions indicators and demographic status, for all new students that can track progress through bar passage and entry-level employment.

3. User-Friendly Data Presentation

The ABA Section of Legal Education and Admissions to the Bar, using authority it already has under the ABA Standards, should simplify the Employment Summary Report, which includes graduate employment data.

The ABA Section of Legal Education and Admissions to the Bar, using authority it already has under the ABA Standards, should simplify and reorganize the Standard 509 Information Report, which includes data related to admissions, attrition, bar passage, price, curricular offerings, diversity, faculty, refunds, and scholarships.

The recommendations in the previous section work without changes to the ABA Standards. Not only can the Council collect and publish a variety of data in the manner and form that the Council sees fit, it may require schools to make any of this information available to students and the public on their websites or via other means of communication. At the school level, the Section—at the direction of the Council—presents two sets of data available to the public directly: the Employment Summary Report and the Standard 509 Information Report. The Council also requires law schools to publish these reports prominently on their websites.

Employment Summary Report

The Employment Summary Report details post-graduation employment outcomes for a single graduating class. Employment status is measured as of March 15th the following year for the class of 2014 and later—about ten months after graduation. The report allows people to calculate important data points, such as unemployment rate, percentage in law firms (and by size), percentage in public sector jobs, and percentage in jobs that require bar passage. It also includes information about where the jobs are located, whether jobs are funded by the law school, and whether jobs are short or long term and part or full time. These disclosures have already reshaped

[99] *Denial of Recertification Application to Participate in the Federal Student Financial Assistance Programs – Charlotte School of Law*, U.S. Department of Education, https://studentaid.ed.gov/sa/sites/default/files/csl-recert-denial.pdf (pg. 4 - 5).

legal education, but students and the public would nevertheless be served by simplifying the Employment Summary Report.

We ask the Council to adopt the Proposed Employment Summary Report (Appendix A). The Proposed Employment Summary Report includes a complete changelog between report forms and addresses the concerns expressed by many members of the Council at the June 2017 Council meeting, as well as the concerns many stakeholders. Specifically, the Proposed Employment Summary Report reduces the number of cells by 56% without altering data collection. It maintains the status quo on treatment of school-funded jobs above the line, which provides an equal playing field for law schools. It does not unnecessarily collapse categories that demonstrate significant differentiation. It provides clearer and more consistent naming conventions. It maximizes visual cues that enhance consumer comprehension, including spacing, punctuation, and color. Altogether, the Proposed Employment Summary Report will help consumers make informed choices about whether and where to attend law school.

Standard 509 Information Report

The Standard 509 Information Report details a variety of statistics that help students figure out when to apply, whether they can get in, how much it costs, how diverse the student body is, and at what rate students complete school and pass the bar exam. This report is already a dense, though enormously helpful document. However, if the Council advances some or all of our data recommendations involving additional disclosure requirements and if the Council finds some or all of the new data important enough to earn a spot on the report, it will require simplification to ensure students and the public continue to make ample use of its contents. But even if the Council adopts none of the aforementioned data recommendations, there remains the opportunity to simplify the report and design it for maximum consumer comprehension. After all, the current report was originally designed two decades ago for print in the LSAC Official Guide. Today's Standard 509 Information Report is viewed online as a PDF.

Data presentation involves choices about how to organize and summarize datasets, translating data from its raw form into meaningful information. With any dataset, the data can be presented in various forms, including charts, graphs, and tables. The best method depends on the audience(s). Presentation choices must balance what the audience wants to know and what they should want to know, along with consideration to information overload, complexity, and utility. Importantly, these choices set the benchmark for what matters to the audience.

We do not ask the Council to adopt a specific, new format for the Standard 509 Information Report. The ideal format will depend on what data recommendations the Council adopts. In principle, the most serious flaw is that parts of the report amount to a data dump. While the Section should continue to make *all* data available on spreadsheets—an important practice of the Section that

benefits students, schools, researchers, policymakers, and journalists—the Standard 509 Information Report targets people who seek a valuable summary of individual law school offerings. The report should reflect this objective.

Consider the J.D. enrollment and ethnicity table (**Table C**, below) from the 2016 Standard 509 Information Report.

Table C

J.D. Enrollment and Ethnicity (academic year*)															
	Men		Women		Other		Full-Time		Part-Time		First - Year		Total		J.D. Deg Awd
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	
Hispanics of any race	23	5.7	23	6.6	0	0	46	6.1	0	0	19	7.9	46	6.1	12
American Indian or Alaska Native	2	0.5	0	0	0	0	2	0.3	0	0	0	0	2	0.3	1
Asian	42	10.4	53	15.3	0	0	95	12.7	0	0	27	11.2	95	12.7	33
Black or African American	25	6.2	26	7.5	0	0	51	6.8	0	0	17	7	51	6.8	17
Native Hawaiian or Other Pacific Islander	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Two or more races	12	3	10	2.9	0	0	22	2.9	0	0	10	4.1	22	2.9	6
Total Minority	104	25.8	112	32.4	0	0	216	28.8	0	0	73	30.2	216	28.8	69
White	230	57.1	187	54	0	0	417	55.7	0	0	143	59.1	417	55.7	159
Nonresident Alien	19	4.7	23	6.6	0	0	42	5.6	0	0	9	3.7	42	5.6	8
Race and Ethnicity Unknown	50	12.4	24	6.9	0	0	74	9.9	0	0	17	7	74	9.9	22
Total	403	53.8	346	46.2	0	0	749	100	0	0	242	32.3	749	100	258

Some rows (Total Minority and Total) reflect the sum of other rows, but there is no visual cue to distinguish rows with sums and other rows. The columns and data time period are also not clearly indicated. Most importantly, however, the raw data do not add value to the table commensurate with the costs to consumer experience. The columns labeled # add to information overload, which reduces comprehension and therefore decision quality.

Consider an alternative table (**Table D**, below) that conveys the same information.

Table D

Total Enrollment: 749 Total First-Years: 242 Total Graduates: 258	J.D. Enrollment and Ethnicity, 2016-17 Academic Year							
	Total Enrollment							
	Men	Women	Other	Full-Time	Part-time	Total	Graduates	First-Year
Total Minority	13.9%	15.0%	0%	28.8%	0%	28.8%	26.7%	30.2%
Hispanics of any race	3.1%	3.0%	0%	6.1%	0%	6.1%	8.9%	7.9%
American Indian or Alaska Native	0.3%	0.0%	0%	0.3%	0%	0.3%	0.4%	0%
Asian	5.6%	7.1%	0%	12.7%	0%	12.7%	12.8%	11.2%
Black or African American	3.3%	3.5%	0%	6.8%	0%	6.8%	6.6%	7.0%
Native Hawaiian or Other Pacific Islander	0%	0%	0%	0%	0%	0%	0%	0%
Two or more races	1.6%	1.3%	0%	2.9%	0%	2.9%	2.3%	4.1%
White	30.7%	24.9%	0%	55.7%	0%	55.7%	61.6%	59.1%
Nonresident Alien	2.5%	3.0%	0%	5.6%	0%	5.6%	3.1%	3.7%
Race and Ethnicity Unknown	6.7%	3.2%	0%	9.9%	0%	9.9%	8.5%	7.0%
Total	**53.8%**	**46.2%**	**0%**	**100%**	**0%**			

It shades rows that total other rows, indents the sub-totaled rows, bolds the overall total, and labels the academic year. It eliminates the raw data except for total enrollment, total first-year enrollment, and total graduates, which the layout emphasizes at the top. The layout also emphasizes two critically important figures: overall minority and gender percentages. The table also uses the percentage of the entire class for each row that shows the intersection of race and gender, rather than percentage of gender.

Again, the raw data must remain publicly available. But on a summary report such as the Standard 509 Information Report, the main takeaways of the table should not be dwarfed by a volume of data, as is the case with **Table C**.

For the 2017 Standard 509 Information Report, released on December 15, 2017, the Section made several changes to **Table C**. The table (**Table E**) now includes gender and race subcategories for each class cohort. While the table does remove redundant cells, the Section chose raw data over percentages, so the tables remains a data dump that undercuts its purpose of informing consumers.

Table E

J.D Enrollment as of October 5th 2017													
	1L				2L				3L				Total
	T	M	W	O	T	M	W	O	T	M	W	O	T
Hispanics of any race	11	7	4	0	4	3	1	0	4	3	1	0	19
American Indian or Alaska Native	0	0	0	0	0	0	0	0	0	0	0	0	0
Asian	2	0	2	0	1	1	0	0	4	2	2	0	7
Black or African American	12	8	4	0	5	2	3	0	12	7	5	0	29
Native Hawaiian or Other Pacific Islander	0	0	0	0	0	0	0	0	0	0	0	0	0
Two or More Races	6	3	3	0	4	1	3	0	1	1	0	0	11
Total Minority	31	18	13	0	14	7	7	0	21	13	8	0	66
White	145	77	68	0	134	62	72	0	86	49	37	0	365
Nonresident Alien	3	3	0	0	4	3	1	0	0	0	0	0	7
Race and Ethnicity Unknown	5	4	1	0	5	2	3	0	5	4	1	0	15
Total	184	102	82	0	157	74	83	0	112	66	46	0	453

The cost of attendance and scholarship information on the Standard 509 Information Report (collectively **Table F**, below) could also use improvement.

Table F

Tuition and Fees (academic year*)		
	Resident	Non-Resident
Full-Time	$ 47,125	$ 47,125
Part-Time	$ 32,715	$ 32,715
Tuition Guarantee Program		No

Living Expenses (academic year*)	
Estimated Living Expenses for singles	
Living on Campus	$ 0
Living Off Campus	$ 26,080
Living at Home	$ 26,080

Conditional Scholarships		
Students Matriculating in	# Entering with	# Reduced or Eliminated
2015-2016 Academic Year	182	70
2014-2015 Academic Year	214	81
2013-2014 Academic Year	176	90

Grants and Scholarships (prior academic year*)	Total		Full-Time		Part-Time	
	#	%	#	%	#	%
Total # of students	1,021	100	744	72.9	277	27.1
Total # receiving grants	569	55.7	463	62.2	106	38.3
Less than 1/2 tuition	372	36.4	305	41	67	24.2
Half to full tuition	131	12.8	104	14	27	9.7
Full tuition	25	2.4	22	3	3	1.1
More than full tuition	41	4	32	4.3	9	3.2
75th Percentile grant amount			$ 25,500		$ 15,619	
50th Percentile grant amount			$ 16,000		$ 8,500	
25th Percentile grant amount			$ 9,500		$ 3,937	

The report devotes an entire section for living expenses. Only 12 schools differentiated between living on or off campus for the 2016-17 academic year.[100] At more than half of those schools, the difference was less than $1200.[101] The report also includes a column on the "Grants and Scholarships" table for full- and part-time students combined. In that section, as well as the Conditional Scholarships section, consumers would benefit from percentages without raw data.

The table to the left (**Table G**) addresses these problems.

Table G

Cost of Attendance		
2016-17 Tuition	**Resident**	**Non-Resident**
Full Time	$47,125	$47,125
Part Time	$32,715	$32,715
Tuition Guarantee Program		No
Living Expenses	$26,080	

Tuition Discounts, 2015-16 Academic Year		
	Full Time	**Part Time**
Pay Full Price	37.8%	61.7%
Discount Percentage	62.2%	38.3%
< Half Tuition	41.0%	24.2%
Half to Full Tuition	14.0%	9.7%
Full Tuition	3.0%	1.1%
> Full Tuition	4.3%	3.2%
Discount Amount		
25th Percentile	$9,500	$3,937
50th Percentile	$16,000	$8,500
75th Percentile	$25,500	$15,619

Conditional Scholarships Award may be lost based on academic performance		
First-Year Students	**% Entering With**	**% Reduced/Eliminated**
2015 334 New 1Ls	54.5%	38.5%
2014 357 New 1Ls	59.9%	37.9%
2013 404 New 1Ls	43.6%	51.1%

A new Standard 509 Information Report should also consider data about transfers *out* instead of *in*. Comparing law school GPAs of transfers in is like comparing apples to oranges. Information about the law school GPAs of transfers out, on the other hand, actually provides actionable information for students.

The current Standard 509 Information Report needs additional changes that follow similar themes described in this section, regardless of whether the Council includes additional data on the summary. The choices made will balance various competing interests, but should ultimately advance the intended audience's comprehension of valuable information.

Additional Disclosures

Standard 509 also requires law schools to publish data on their websites beyond the Employment Summary Report and Standard 509 Information Report: tuition refund policies, articulation agreements, curricular offerings, faculty and staff information, and more. To the extent that the Council wants students to still have certain raw data, the mandated ABA Required Disclosures page, which is a clearinghouse for all Standard 509 disclosures, can be expanded. The same principles of useful organization apply to these pages, but there is more flexibility because everything disclosed does not need to appear on a relatively short PDF.

[100] *Supra* ABA Required Disclosures, note 69.
[101] *Id*.

4. Disclosures at Time of Admission

The ABA Section of Legal Education and Admissions to the Bar should require law schools to provide every admitted law student a copy of the Standard 509 Information Report and Employment Summary Report as part of each student's admissions offer.

Standard 509 requires that law schools publish a variety of information on their websites, but permits schools to publish information elsewhere as long as it is not false, incomplete, or misleading. Standard 509(d), however, requires law schools to distribute conditional scholarship data to all recipients of conditional scholarship offers as part of their offer letter—whether by email or post. A conditional scholarship is one where retention of the full amount depends on academic performance in law school. Data on conditional scholarships helps consumers assess their chances of keeping the scholarship so that they can make an informed decision about accepting it and attending the institution. Without it, the consumer may be misled about the true likely cost of the legal education.

Similar logic underlies the requirement that information be made available to the public on the school website via Standard 509, including the Standard 509 Information Report and Employment Summary Report. The information contained in those two reports in particular is essential to consumers making informed decisions. However, the Council determined that the conditional scholarship information is important enough to also be sent to every conditional scholarship offeree. We recommend extending this logic to the two reports. The Council should require schools to include the reports as part of every offer of admission.

Standard 509(a) already permits the Council to do this. The standard provides that any information a school distributes must be "complete, accurate and not misleading." The Section's managing director has this to say in the Section's Standard 509 Guidance Memo:

> The following guidance is offered regarding how the Council and the Accreditation Committee view this overriding requirement of publishing information that is complete, accurate, and not misleading. Wherever a school offers any analysis or elaboration of the information covered by Standard 509, the required disclosures must be repeated or there must be a link to those required disclosures that is sufficiently proximate and prominent to draw the reader's attention to the link. The disclosures or link to them must precede the analysis or explanation. Finally, the display of the analysis and elaboration of the data may not be more conspicuous or prominent than the display of the mandated disclosures or the link to them.[102]

[102] Managing Director's Guidance Memo on Standard 509 (revised July 2016), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2016_standard_509_guidance_memo_final.authcheckdam.pdf.

The memo's prescriptions apply to any analysis or elaboration of data specified in Standard 509(b) or Standard 509(c), such as information related to costs, scholarship, bar passage, and employment data, e.g. employment rate computations from employment data. The prescription means that anytime that information is relayed to a person or to the public, through the website or otherwise, the relevant required disclosures in Standard 509(b) or Standard 509(c) "must be repeated or there must be a link … that is sufficiently proximate and prominent." In other words, when a law school advertises its employment rate, the Council may prescribe how and what the school must provide in order to not provide incomplete, false, or misleading information.

Given the analyses schools include in their offer letters and accompanying materials such as viewbooks or marketing flyers, the Council can choose to require schools to attach the Standard 509 Information Report and the Employment Summary Report as the means for a school to satisfy Standard 509(a). At minimum this prescription would guarantee receipt of the relevant information to anyone who would actually have the opportunity to attend, even if no marketing materials are sent at the time. A school that never sends marketing materials to an admitted student with information covered by Standard 509 would be the first.

If the Section does not agree with the preceding analysis, Standard 509(d) allows the Council to mandate disclosure of at least the Standard 509 Information Report. Here's the relevant portion of the Standard 509 Guidance Memo:

> Law Schools that offer conditional scholarships must include the conditional scholarship information from the Standard 509 Information Report at the time that a conditional scholarship offer is extended. It is not sufficient to provide a link to the page on the ABA's website where the law school's 509 Information Report can be generated. The data itself must be posted.[103]

Instead the Council can choose to require the school to provide the Standard 509 Information Report instead of the above prescription. Indeed, this would help the recipient of the conditional scholarship offer put the scholarship offer in context because the report includes data about tuition, cost of living, and scholarship amounts. This method, unfortunately, only helps reach a subgroup of accepted students (those receiving conditional scholarships) at a subgroup of schools (those offering conditional scholarships).[104] But that subgroup includes about half of all schools and about half of those schools' students. That's worth doing.

To reach the remaining students (about 75% of accepted 1Ls), the Council would need to amend Standard 509 or find other justification under the ABA Standards. A change would also be necessary in the event that the Council believes it does not have *any* present authority to mandate

---

[103] *Id*.

[104] *Supra* LST Data Dashboard, note 2, https://data.lawschooltransparency.com/costs/conditional-scholarships/.

the inclusion of the Standard 509 Information Report and the Employment Summary Report with the offer of admission. Here, the ABA Law Students Division's recent letter to the Council is relevant:

> We call upon the Council to require all Standard 509 reports be provided with every admission letter. We affirm that Standard 509 reports are not readily known by potential law students and should be presented in an effort to increase consumer protection.[105]

Indeed, the information contained in the two reports is important enough that schools should send it as part of the admissions package.

5. Voluntary Disclosures by Law School

Every ABA-approved law school should voluntarily publish its school-specific NALP Report each year.

Since 1974, the National Association of Law Placement ("NALP") has processed annual graduate employment and salary data collected by individual law schools. All ABA-accredited law schools are surveyed by NALP, and the schools use NALP graduate survey forms or something similar to collect data from their graduates and then pass the data on to NALP. NALP checks the data for discrepancies or obvious questions, and returns analyses back to law schools in the form of a 25+ page report. NALP does not make individual school reports public, but individual law schools may voluntarily make their respective NALP reports public.

The NALP report is valuable to prospective law students because of information it contains. An individual school report has employment information that goes well beyond ABA-mandated disclosures and includes salary data (aggregated in categories, not individual salaries) and employment outcomes data about job source (e.g., OCI, networking, or direct mailings), job offer timing (before graduation, before bar results, after bar results), employed graduate search status (employed graduates who are either still seeking or not seeking), job region and job states, and job type breakdowns by employer type (e.g., Government–J.D. Advantage). When a school chooses to publish its NALP report and make it easily accessible, the school makes it easy to compare its graduates' outcomes with those from other schools that also choose to make the report public.

Starting with the class of 2010, LST requested that schools make these reports available to the public. At the time, no school made its report public even though the only costs associated with making it available were scanning the document and uploading it to their website. Today, about

[105] Unpublished Letter.

60% of schools make the report public. **Table G** (below) shows the status of NALP report disclosure as of January 10, 2018—and we expect reports to continue to trickle in.[106]

Table H

Year	Total Reports (%)	Full Reports	Partial Reports	Withheld Reports	No Reports Available
2016	**117** (58.5%)	106	11	83	3
2015	**118** (59%)	102	16	82	5
2014	**125** (62.8%)	112	13	74	4
2013	**115** (58.7%)	103	12	81	4
2012	**112** (57.1%)	97	15	84	4
2011	**97** (49.7%)	84	13	98	2
2010	**63** (32.8%)	63	0	129	8

As of January 24, 2018

While some schools have instituted a culture of transparency and go beyond the ABA standards without publishing the NALP report, it can still be difficult for prospective students to compare schools due to differences in terminology and presentation on school websites. NALP reports give students data in a uniform manner, helping them to compare schools based on the job metrics most important to them.

[106] *Supra* LST Data Dashboard, note 2, at https://data.lawschooltransparency.com/transparency/nalp-report-database/.

Next Steps

This report is the product of discussions with young lawyers, law students, legal academics, and leadership in various sections and divisions in the ABA. The process started immediately after the Standards Review Committee convened its roundtable in July 2017 to discuss how to encourage innovation and address challenges related to cost, declining job opportunities, and declining bar passage rates. Transparency emerged as an essential, immediate step.

The transparency measures outlined in this report have been designed to address the most pressing issues in legal education. Every suggestion from this report can be accomplished by the Section of Legal Education without additional authority from the ABA Standards. In many cases, the suggestions can be accomplished without additional reporting burdens for law schools. In other cases, schools already possess the data but are not required to report it as part of the annual questionnaire. On balance, the value of public data will outweigh the costs of reporting in these cases.

We do recognize that there are important, formal processes in place to add items to the Standard Review Committee's annual agenda. We nevertheless hope that when the Council for the Section of Legal Education next meets—in San Antonio on February 8-10, 2018—the Council will choose to encourage its Standards Review Committee and the Section staff to review this report's proposals related to data collection and data presentation and, as appropriate, add items to the agenda for the coming year.

In further pursuit of a better, more responsive legal education, we also hope the Council will consider adding two young lawyers to the Council in 2018 and guarantee two spots in the future. At minimum, we hope the Council will more broadly circulate notice of Council nominations to generate a more diverse slate of nominees.

Finally, every faculty member and administrator at a law school that does not annually publish its NALP Report should assess why this choice has been made. We hope the state bar associations, especially the young lawyer divisions and committees focused on professionalism, will impress upon schools within their jurisdictions the importance of taking a very basic step to improve transparency. Appendix B has a list of the latest non-participating schools by state. Schools of all types fall in either group.

Strengthening the pipeline from prelaw students to law students to young lawyers begins with addressing the price of legal education. Enacting the proposals from this report will help consumers make more informed decisions, exert downward pressure on law school tuition prices, advance legal education research of cost and diversity, and increase accountability. All together, these proposals help secure the legal profession's continued, important place in society.

Appendix A: Proposed Employment Summary Report

Some University School of Law

Section of Legal Education and Admissions to the Bar
AMERICAN BAR ASSOCIATION

EMPLOYMENT SUMMARY FOR 2017 GRADUATES

Employment Type	Full Time Long Term	Other	Total
Bar Passage Required	373	14	387
J.D. Advantage	61	11	72
Professional	4	2	6
Non-Professional	1	0	1
School Funded	9	24	33
Type Unknown	0	0	0
Employed Total	448	51	499
Non-Employed			
Pursuing Graduate Degree Full Time			10
Unemployed: Deferred Start Date			0
Unemployed: Not Seeking			6
Unemployed: Seeking			37
Status Unknown			3
Non-Employed Total			56
Total Graduates			555

Employer Type	Full Time Long Term	Other	Total
Law Firm			
Solo	0	0	0
2-10 Attorneys	32	10	42
11-25 Attorneys	16	1	17
26-50 Attorneys	7	0	7
51-100 Attorneys	14	2	16
101-250 Attorneys	15	0	15
251-500 Attorneys	31	0	31
501+ Attorneys	130	3	133
Size Unknown	0	0	0
Business & Industry	47	11	58
Government	84	0	84
Public Interest	20	0	20
Federal Clerkship	21	0	21
State, Local, & Other Clerkship	21	0	21
Education	1	0	1
School Funded	9	24	33
Employer Type Unknown	0	0	0
Employed Total	448	51	499
Non-Employed Total			56
Total Graduates			555

Employment Location	State	Total
Most Common Employment Destination	Washington D.C.	242
Second Most Common Employment Destination	New York	57
Third Most Common Employment Destination	Virginia	51

CHANGE LOG

* Simplified form header to remove extraneous information that is easy to find in many places
* Collapsed 3 columns involving short-term or part-time jobs into 1 "other" column
* Changed last column from "Number" to "Total"
* Altered headings: "Employment Status" became "Employment Type" (bar passage required is not a status but a type of employment) and "Employment Type" became "Employer Type" (law firm is an employer, regardless of what someone does for the firm; also makes for consistency with the "employer type unknown" subcategory of "employer type")
* Introduced new heading "Non-Employed" to reflect any category that does not reflect employed graduates. Purpose is to show context for employer type and employment status traunches, without repeating rows of data unnecessarily
* Separated Employed and Non-Employed tables
* Introduced sum rows for "Non-Employed" so "Employer Type" has clearer context
* Changed coloring (white to light yellow) on any row that is the sum of other rows
* Added "attorneys" to each row title under the "law firm" employer type category; switched "Unknown Size" to "Size Unknown" for consistency with other unknown subcategories; made "Law Firms" singular to be consistent with sibling categories, e.g. government.
* Changed "Pub. Int." to "Public Interest"
* Combined state & local clerkship row with other clerkships row into 1 row
* Added new row under employer type for school-funded jobs, which resulted in school-funded jobs (as defined above the line) in other categories, e.g. education or public interest, being removed from those categories
* Removed school-funded jobs table (BPR, JDA, etc), but this would still be available via spreadsheet
* Changed row titles for employment location for clearer statement of what's reflected
* Removed foreign employment row

KEY POINTS

* Accomplished without changing data collection process at all
* Maintains status quo on school-funded jobs, e.g. these jobs remain above the line, excluded from BPR, JDA, Pro, and NP categories
* Reduced cells from 155 to 87, 56% reduction
* Does not unnecessarily collapse categories that demonstrate significant differentiation
* Clearer and more consistent naming conventions
* Maximizes visual cues that enhance consumer comprehension, including spacing, punctuation, and color

Appendix B: Schools That Did Not Publish Their 2016 NALP Report, by State

Alabama	Faulkner University
	Samford University
	University of Alabama
Arizona	Arizona State University
	Arizona Summit Law School
Arkansas	University of Arkansas - Fayetteville
California	Chapman University
	Southwestern Law School
	Stanford University
	University of California - Davis
	University of La Verne
	Western State University
Connecticut	Quinnipiac University
	University of Connecticut
	Yale University
Delaware	Widener University - Delaware
Florida	Ave Maria School of Law
	Barry University
	Florida A&M University
	Florida Coastal School of Law
	Florida International University
Georgia	Emory University
	Mercer University
	John Marshall Law School - Atlanta
Hawaii	University of Hawaii
Idaho	Concordia University School of Law
	University of Idaho
Illinois	University of Chicago
Indiana	Indiana University - Indianapolis
	University of Notre Dame
	Valparaiso University
Iowa	Drake University
Kentucky	University of Kentucky
	University of Louisville
Louisiana	Southern University Law Center
	Tulane University
Massachusetts	Boston University
	Harvard University
	New England School of Law
	Northeastern University
	Suffolk University
Michigan	Thomas M Cooley Law School
Minnesota	Mitchell Hamline School of Law
Missouri	St. Louis University
	Washington University in St Louis
Nebraska	Creighton University

New York	Brooklyn Law School
	Hofstra University
	Touro College
	SUNY Buffalo
North Carolina	Campbell University
	Charlotte School of Law
	Duke University
	Elon Law School
	North Carolina Central University
	Wake Forest University
Ohio	Ohio Northern University
Oregon	Willamette University
Pennsylvania	Duquesne University
	Pennsylvania State University - Dickinson Law
	University of Pennsylvania
	University of Pittsburgh
	Villanova University
	Widener University - Pennsylvania
Rhode Island	Roger Williams University
South Carolina	Charleston School of Law
South Dakota	University of South Dakota
Tennessee	Belmont University
	Lincoln Memorial University
Texas	South Texas College of Law Houston
	Texas Southern University
Vermont	Vermont Law School
Virginia	Appalachian School of Law
	Liberty University
	Regent University
	University of Richmond
	University of Virginia
Washington	Gonzaga University
	University of Washington
Washington, D.C.	Catholic University of America
	George Washington University
	Howard University
Wyoming	University of Wyoming

Public Policy Position
"A Way Forward: Transparency in 2018"

SUPPORT

Explanation

The State Bar of Michigan Young Lawyers Section is asking the permission of the State Bar of Michigan's Board of Commissioners to publicly support the report entitled "A Way Forward: Transparency in 2018" and intended actions provided in the same. YLS has adopted this position due to the rising cost of legal education and the declining number of jobs available to law school graduates following successful completion of law school and/or the bar exam. YLS agrees with the recommendations of the Law School Transparency and Iowa State Bar Association Young Lawyers Division and that the proposals contained therein will help address the issues stated above.

The State Bar of Michigan Young Lawyers Section is not requesting that the State Bar of Michigan take any position, but that it permits the Young Lawyers Section to publicly support the report entitled "A Way Forward: Transparency in 2018". At the YLS meeting on April 20, there were no arguments against the proposed action from any of the members of the YLS Council.

Position Vote:

Voted For position: 14
Voted against position: 0
Abstained from vote: 0
Did not vote: 9

***Keller* Explanation**

The regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession.

The report entitled "A Way Forward: Transparency in 2018" directly effects the education of individuals who may enter the legal profession as most states, Michigan included, require that prospective lawyers attend an ABA-approved law school. Every ABA law school is required to follow the rules and regulations mentioned in the report and in the ABA Standards.

Contact Person: Amy Kreig
Email: akreig15@gmail.com

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

==========

The Committee solicits comment on the following proposal by July 1, 2018. 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 .

==========

PROPOSED

The Committee proposes amending M Crim JI 7.16a, the instruction that applies to the rebuttal presumption regarding self-defense found in MCL 780.951, to clarify that the presumption is rebuttable, and to make the instruction easier to understand and in accord with the statutory language. Deletions are in strike-through, and additions are underlined.

[AMENDED] M Crim JI 7.16a Rebuttable Presumption Regarding Fear of Death, Great Bodily Harm, or Sexual Assault

(1) If you find both that —

(a) the deceased was in the process of breaking and entering a business or dwelling~~,~~ or committing home invasion, or had broken into ~~and entered~~ a business or dwelling~~,~~ or committed home invasion and was still present in the business or dwelling, or ~~is~~ was unlawfully attempting to remove a person from a dwelling, business, or vehicle against the person's will,

and

(b) the defendant honestly and reasonably believed the deceased was engaged in any of the conduct just described

— ~~you must presume~~ it is presumed that the defendant had an honest and reasonable belief that imminent [death / great bodily harm / sexual assault] would occur. The prosecutor can overcome this presumption by proving beyond a reasonable doubt that the defendant did not have an honest and reasonable belief that [death / great bodily harm / sexual assault] was imminent.

(2) This presumption does not apply if—

[*Use the appropriate paragraph below based on the claims of the parties and the evidence admitted.*]

(a) the deceased has the legal right to be in the dwelling, business, or vehicle and there is not a "no contact" [court order / pretrial supervision order / probation order / parole order] against the deceased, or

(b) the individual being removed is a child or grandchild or otherwise in the lawful custody of the deceased victim, or

(c) the defendant was engaged in the commission of a crime or using the dwelling, business premises, or vehicle to further the commission of a crime, or

(d) the deceased was a peace officer who was entering or attempting to enter the premises or vehicle in the performance of his or her duties, or

(e) the deceased was [the spouse of the defendant / the former spouse of the defendant / a person with whom the defendant had or previously had a dating relationship / a person with whom the defendant had a child in common / a resident or former resident of the defendant's household], and the defendant had a prior history of domestic violence as the aggressor.

Public Policy Position
Model Criminal Jury Instructions 7.16a

SUPPORT AS WRITTEN

Number who voted in favor and opposed to the position:
Voted For position: 10
Voted against position: 0
Abstained from vote: 0
Did note vote: 7

Contact Person: Nimish R. Ganatra
Email: ganatran@ewashtenaw.org

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

==========

The Committee solicits comment on the following proposal by July 1, 2018. 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 .

==========

PROPOSED

The Committee proposes amending, M Crim JI 11.37a and 11.37b, the instructions that apply to discharging a firearm at or in a building, contrary to MCL 750.234b. The current instructions incorrectly require that the prosecutor prove an element of "physical injury" to establish the underlying crime, whereas "physical injury" is an aggravating element in both cases. Deletions are in strike-through, and additions are underlined.

[AMENDED] M Crim JI 11.37a Discharge of a Firearm at a Building

(1) The defendant is charged with intentionally discharging a firearm at a dwelling or potentially occupied structure. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant discharged a firearm.[1]

(3) Second, that [he / she] did so intentionally, that is, on purpose.

(4) Third, that [he / she] discharged the firearm at a building that [he / she] had reason to believe was either a dwelling or a potentially occupied structure.

A dwelling is a building where people usually live. It does not matter whether or not someone was actually in the building at the time.

A potentially occupied structure is a building that a reasonable person knows or should know was likely to be occupied by one or more persons due to its nature, function, or location. It does not matter whether a person was actually present in the structure.

~~(5) [Fourth, that when the defendant discharged the firearm, [he / she] caused physical injury to / caused serious body injury to / caused the death of] (*name complainant*)].~~

[*Select from paragraphs (5) through (7) where one of the following aggravating factors has been charged:*]

(5) Fourth, that when the defendant discharged the firearm [he / she] caused the death of [*name complainant*].

(6) Fourth, that when the defendant discharged the firearm [he / she] caused serious impairment of a body function to [*name complainant*].

~~*[Use (6) where it is alleged that the complainant suffered serious body injury]*~~[2]

~~(6)~~ Serious impairment[2] of a body function includes, but is not limited to, one or more of the following:

(a) Loss of a limb or loss of use of a limb.

(b) Loss of a foot, hand, finger, or thumb or loss of the use of a foot, hand, finger, or thumb.

(c) Loss of an eye or ear or loss of the use of an eye or ear.

(d) Loss or substantial impairment of a body function.

(e) Serious visible disfigurement.

(f) A comatose state that lasts for more than 3 days.

(g) Measurable brain or mental impairment.

(h) A skull fracture or other serious bone fracture.

(i) Subdural hemorrhage or subdural hematoma.

(j) Loss of an organ.

(7) Fourth, that, when the defendant discharged the firearm, [he / she] caused physical injury to (*name complainant*) [not amounting to serious impairment of a body function] [3].

Use Note

1. *Firearm* is defined in MCL 28.421(1)(c) and MCL 750.222(e).

2. MCL 750.234a(10)(b) references MCL 257.58c for the definition of *serious impairment of a body function.*

3. Use this language only when there is a dispute over the level of injury, and the jury is considering the lesser offense that the defendant caused a "physical injury," rather than a "serious impairment of a body function."

This charge does not apply to a peace officer in the performance of his or her duties. MCL 750.234b(6).

Self-defense or defense of others is a defense to this charge. MCL 750.234b(7). Appropriate instructions from M Crim JI 7.15 through 7.24 must be given where such a defense is raised.

[AMENDED] M Crim JI 11.37b Discharge of a Firearm in a Building

(1) The defendant is charged with intentionally discharging a firearm in a dwelling or potentially occupied structure. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant discharged a firearm.[1]

(3) Second, that [he / she] did so intentionally, that is, on purpose.

(4) Third, that [he / she] discharged the firearm in a building that [he / she] had reason to believe was either a dwelling or a potentially occupied structure.

A dwelling is a building where people usually live. It does not matter whether or not someone was actually in the building at the time.

A potentially occupied structure is a building that a reasonable person knows or should know was likely to be occupied by one or more persons due to its nature, function, or location. It does not matter whether a person was actually present in the structure.

(5) Fourth, that the defendant acted with reckless disregard for the safety of other persons.

~~(6) [Fifth, that when the defendant discharged the firearm, [he / she] caused physical injury to / caused serious body injury to / caused the death of] (*name complainant*)].~~

~~[*Select from paragraphs (5) through (7) where one of the following aggravating factors has been charged:*]~~

[*Select from paragraphs (6) through (8) where one of the following aggravating factors has been charged:*]

(6) Fifth, that when the defendant discharged the firearm [he / she] caused the death of [*name complainant*].

(7) Fifth, that when the defendant discharged the firearm [he / she] caused serious impairment of a body function to [*name complainant*].

~~*[Use (6) where it is alleged that the complainant suffered serious body injury]*~~[2]

~~(6)~~ Serious impairment[2] of a body function includes, but is not limited to, one or more of the following:

(a) Loss of a limb or loss of use of a limb.

(b) Loss of a foot, hand, finger, or thumb or loss of the use of a foot, hand, finger, or thumb.

(c) Loss of an eye or ear or loss of the use of an eye or ear.

(d) Loss or substantial impairment of a body function.

(e) Serious visible disfigurement.

(f) A comatose state that lasts for more than 3 days.

(g) Measurable brain or mental impairment.

(h) A skull fracture or other serious bone fracture.

(i) Subdural hemorrhage or subdural hematoma.

(j) Loss of an organ.

(8) Fifth, that when the defendant discharged the firearm, [he / she] caused physical injury to [*name complainant*] [not amounting to serious impairment of a body function][3].

Use Note

1. *Firearm* is defined in MCL 28.421(1)(c) and MCL 750.222(e).

2. MCL 750.234a(10)(b) references MCL 257.58c for the definition of *serious impairment of a body function.*

3. Use this language only when there is a dispute over the level of injury, and the jury is considering the lesser offense that the defendant caused a "physical injury," rather than a "serious impairment of a body function."

This charge does not apply to a peace officer in the performance of his or her duties. MCL 750.234b(6).

Self-defense or defense of others is a defense to this charge. MCL 750.234b(7). Appropriate instructions from M Crim JI 7.15 through 7.24 must be given where such a defense is raised.

Public Policy Position
Model Criminal Jury Instructions 11.37a and 11.37b

SUPPORT WITH AMENDMENTS

Explanation
The committee voted to support the Model Criminal Jury Instructions 11.37a and 11.37b with the following amendments:

1. Replace the reference to MCL 750.234a(10)(b) in Use Note 2 with MCL 750.234b(10)(d) in both 11.37a and 11.37b.
2. In 11.37b, strike-through "Select from paragraphs (5) through (7) where one of the following aggravating factors has been charged:"
3. In 11.37b, underline "Select from paragraphs (6) through (8) where one of the following aggravating factors has been charged."

Number who voted in favor and opposed to the position:
Voted For position: 10
Voted against position: 0
Abstained from vote: 0
Did note vote: 7

Contact Person: Nimish R. Ganatra
Email: ganatran@ewashtenaw.org

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

==========

The Committee solicits comment on the following proposal by July 1, 2018. 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 .

==========

PROPOSED

The Committee proposes new instructions, M Crim JI 11.43 and 11.43a, where violations of MCL 750.210 and 750.209a are charged and the penalty may be enhanced under MCL 750.212a, involving the crimes of carrying or possessing explosive or combustible substances or compounds with intent to frighten, injure or kill, or carrying explosives in a public place.

[NEW] M Crim JI 11.43 Carrying or Possessing Explosive or Combustible Substances with Intent to Damage Property or to Frighten, Injure, or Kill a Person

(1) The defendant is charged with possessing or carrying an explosive or combustible substance with intent to damage property or to frighten, injure, or kill a person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant possessed [(an explosive or combustible substance or compound / a substance or compound that will become an explosive or combustible substance or compound when combined with another substance or compound) / an article containing (an explosive or combustible substance or compound / a substance or compound that will become an explosive or combustible substance or compound when combined with another substance or compound)].[1]

(3) Second, that the defendant knew that the substance or compound that [he / she] possessed was explosive or combustible, or would become an explosive or combustible substance or compound when combined with another substance or compound.

(4) Third, that when the defendant possessed the explosive or combustible substance or compound, [he / she] intended to [frighten, terrorize, intimidate, threaten, harass, injure, or kill another person / damage or destroy (any real or personal property without permission from the owner / any public property without permission from the governmental agency having authority over the property[2])].

[*Select from paragraphs (5) through (9) where one of the following aggravating factors has been charged:*]

(5) Fourth, that the explosive or combustible substance or compound damaged another person's property.

(6) Fourth, that the explosive or combustible substance or compound caused the death of another person.

(7) Fourth, that the explosive or combustible substance or compound caused the serious impairment of a body function to another person.[3]

(8) Fourth, that the explosive or combustible substance or compound caused physical injury [not amounting to serious impairment of a body function[4]] to another person.

(9) Fourth, that the explosive or combustible substance or compound was possessed in or was directed at [a child care or day care facility / a health care facility or agency / a building or structure open to the general public / a church, synagogue, mosque, or other place of religious worship / a school of any type / an institution of higher learning / a stadium / a transportation structure or facility open to the public (such as a bridge, tunnel, highway, or railroad) / an airport / a port / a natural gas refinery, storage facility, or pipeline / an electric, steam, gas, telephone, power, water, or pipeline facility / a nuclear power plant, reactor facility, or waste storage area / a petroleum refinery, storage facility, or pipeline / a vehicle, locomotive or railroad car, aircraft, or watercraft used to transport persons or goods / a government-owned building, structure, or other facility].[5]

Use Note

1. There is no statutory definition for explosive or combustible substances or compounds.

2. Use the second alternative only where the property is public property.

3. Use this language only when there is a dispute over the level of injury, and the jury is considering the lesser offense that the defendant caused a "physical injury," rather than causing a "serious impairment of a body function."

4. A definitional statute, MCL 750.200h, cites MCL 257.58c, which provides that serious impairment of a body function includes, but is not limited to, one or more of the following:

(a) Loss of a limb or loss of use of a limb.
(b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
(c) Loss of an eye or ear or loss of use of an eye or ear.
(d) Loss or substantial impairment of a bodily function.
(e) Serious visible disfigurement.
(f) A comatose state that lasts for more than 3 days.
(g) Measurable brain or mental impairment.
(h) A skull fracture or other serious bone fracture.
(i) Subdural hemorrhage or subdural hematoma.
(j) Loss of an organ.

5. MCL 750.212a.

[NEW] M Crim JI 11.43a Possessing Explosive Substance or Device in a Public Place

(1) The defendant is charged with possessing an explosive substance or device in a public place with unlawful intent. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant possessed an explosive substance or device.[1]

(3) Second, that the defendant knew that the substance or device that [he / she] possessed was explosive.

(4) Third, that the defendant possessed the explosive substance or device in a public place.[1]

(5) Fourth, that when the defendant possessed the explosive substance or device, [he / she] intended to frighten, terrorize, intimidate, threaten, harass, or annoy another person.

[*Provide paragraph (6) where the aggravating factor has been charged:*]

(6) Fifth, that the explosive substance or device was possessed in [a child care or day care facility / a health care facility or agency / a building or structure

open to the general public / a church, synagogue, mosque, or other place of religious worship / a school of any type / an institution of higher learning / a stadium / a transportation structure or facility open to the public (such as a bridge, tunnel, highway, or railroad) / an airport / a port / a natural gas refinery, storage facility, or pipeline / an electric, steam, gas, telephone, power, water, or pipeline facility / a nuclear power plant, reactor facility or waste storage area / a petroleum refinery, storage facility, or pipeline / a vehicle, locomotive or railroad car, aircraft, or watercraft used to transport persons or goods / a government-owned building, structure or other facility].[2]

Use Note

1. There is no statutory definition for explosive or combustible substances or compounds.

2. MCL 750.212a.

Public Policy Position
Model Criminal Jury Instructions 11.43 and 11.43a

SUPPORT WITH AMENDMENTS

Explanation
The committee voted to support the Model Criminal Jury Instructions 11.43a as written and 11.43 with the amendments presented in the attached document.

Number who voted in favor and opposed to the position:
Voted For position: 10
Voted against position: 0
Abstained from vote: 0
Did note vote: 7

Contact Person: Nimish R. Ganatra
Email: ganatran@ewashtenaw.org

[NEW] M Crim JI 11.43 Carrying or Possessing Explosive or Combustible Substances with Intent to Damage Property or to Frighten, Injure, or Kill a Person

(1) The defendant is charged with possessing or carrying an explosive or combustible substance with intent to damage property or to frighten, injure, or kill a person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant possessed [(an explosive or combustible substance or compound / a substance or compound that will become an explosive or combustible substance or compound when combined with another substance or compound) / an article containing (an explosive or combustible substance or compound / a substance or compound that will become an explosive or combustible substance or compound when combined with another substance or compound)].[1]

(3) Second, that the defendant knew that the substance or compound that [he / she] possessed was explosive or combustible, or would become an explosive or combustible substance or compound when combined with another substance or compound.

(4) Third, that when the defendant possessed the explosive or combustible substance or compound, [he / she] intended to [frighten, terrorize, intimidate, threaten, harass, injure, or kill another person / damage or destroy (any real or personal property without permission from the owner / any public property without permission from the governmental agency having authority over the property[2])].

[*Select from paragraphs (5) through (9) where one of the following aggravating factors has been charged:*]

(5) Fourth, that the explosive or combustible substance or compound damaged another person's property.

(6) Fourth, that the explosive or combustible substance or compound caused the death of another person.

(7) Fourth, that the explosive or combustible substance or compound caused the serious impairment of a body function to another person.~~3~~

~~4.~~ A definitional statute, MCL 750.200h, cites MCL 257.58c, which provides that serious impairment of a body function includes, but is not limited to, one or more of the following:

(a) Loss of a limb or loss of use of a limb.

(b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.

(c) Loss of an eye or ear or loss of use of an eye or ear.

(d) Loss or substantial impairment of a bodily function.

(e) Serious visible disfigurement.

(f) A comatose state that lasts for more than 3 days.

(g) Measurable brain or mental impairment.

(h) A skull fracture or other serious bone fracture.

(i) Subdural hemorrhage or subdural hematoma.

(j) Loss of an organ.

(8) Fourth, that the explosive or combustible substance or compound caused physical injury [not amounting to serious impairment of a body function[3~~4~~]] to another person.

(9) Fourth, that the explosive or combustible substance or compound was possessed in or was directed at [a child care or day care facility / a health care facility or agency / a building or structure open to the general public / a church, synagogue, mosque, or other place of religious worship / a school of any type / an institution of higher learning / a stadium / a transportation structure or facility open to the public (such as a bridge, tunnel, highway, or railroad) / an airport / a port / a natural gas refinery, storage facility, or pipeline / an electric, steam, gas, telephone, power, water, or pipeline facility / a nuclear power plant, reactor facility, or waste storage area / a petroleum refinery, storage facility, or pipeline / a vehicle, locomotive or railroad car, aircraft, or watercraft used to transport persons or goods / a government-owned building, structure, or other facility].[5]

Use Note

1. There is no statutory definition for ~~explosive or combustible~~ substances or ~~compounds~~devices.

2. Use the second alternative only where the property is public property.

3. Use this language only when there is a dispute over the level of injury, and the jury is considering the lesser offense that the defendant caused a "physical injury," rather than causing a "serious impairment of a body function."

~~4. A definitional statute, MCL 750.200h, cites MCL 257.58c, which provides that serious impairment of a body function includes, but is not limited to, one or more of the following:~~

~~(a) Loss of a limb or loss of use of a limb.~~

~~(b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.~~

~~(c) Loss of an eye or ear or loss of use of an eye or ear.~~

~~(d) Loss or substantial impairment of a bodily function.~~

~~(e) Serious visible disfigurement.~~

~~(f) A comatose state that lasts for more than 3 days.~~

~~(g) Measurable brain or mental impairment.~~

~~(h) A skull fracture or other serious bone fracture.~~

~~(i) Subdural hemorrhage or subdural hematoma.~~

~~(j) Loss of an organ.~~

~~5~~4. MCL 750.212a.

FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS

==========

The Committee solicits comment on the following proposal by July 1, 2018. 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 .

==========

PROPOSED

The Committee proposes new instructions, M Crim JI 11.44 and 11.44a, where violations of MCL 750.211a are charged, and the penalty may be enhanced under MCL 750.212a, involving the crimes of making, selling, buying, or possessing Molotov cocktails, or of making, selling, buying, or possessing incendiary explosive devices with intent to frighten, injure or kill, or carrying explosives in a public place.

[NEW] M Crim JI 11.44 Manufacturing, Buying, Selling, Furnishing, or Possessing Molotov Cocktails

(1) The defendant is charged with manufacturing, selling, furnishing, buying, or possessing a Molotov cocktail. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [manufactured / sold / furnished / bought / possessed] a Molotov cocktail or similar device.

A Molotov cocktail is an improvised incendiary device that is constructed from a bottle or other container filled with a flammable or combustible material or substance and that has a wick, a fuse, or other device that is designed or intended to ignite the contents of the bottle or container when it is thrown or placed near a target.

(3) Second, that when the defendant [manufactured / sold / furnished / bought / possessed] it, [he / she] knew that it was a Molotov cocktail or similar incendiary device.

[NEW] M Crim JI 11.44a Manufacturing, Buying, Selling Furnishing, or Possessing an Incendiary Explosive Device with Intent to Damage Property or to Frighten, Injure or Kill a Person

(1) The defendant is charged with manufacturing, selling, furnishing, buying, or possessing an incendiary device with intent to damage property or to frighten, injure, or kill a person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [manufactured / sold / furnished / bought / possessed] a device that [would explode on impact / would explode with the application of heat or a flame / was highly incendiary].

(3) Second, that when the defendant [manufactured / sold / furnished / bought / possessed] the device, [he / she] knew that it [would explode on impact / would explode with the application of heat or a flame / was highly incendiary].

(4) Third, that when the defendant [manufactured / sold / furnished / bought / possessed] the device, [he / she] intended to frighten, terrorize, intimidate, threaten, harass, injure, or kill another person or intended to [damage or destroy any real or personal property without permission from the owner / damage or destroy any public property without permission from the governmental agency with authority over the public property[1]].

[*Select from paragraphs (5) through (9) where one of the following aggravating factors has been charged:*]

(5) Fourth, that the device damaged [another person's property without permission from the owner / public property without permission from the governmental agency with authority over the property[1]].

(6) Fourth, that the device caused the death of another person.

(7) Fourth, that the device caused the serious impairment of a body function to another person.[2]

(8) Fourth, that the device caused physical injury [not amounting to serious impairment of a body function[3]] to another person.

(9) Fourth, that the device was manufactured, sold, furnished, bought, or possessed in or was directed at [a child care or day care facility / a health care facility or agency / a building or structure open to the general public / a church,

synagogue, mosque, or other place of religious worship / a school of any type / an institution of higher learning / a stadium / a transportation structure or facility open to the public (such as a bridge, tunnel, highway, or railroad) / an airport / a port / a natural gas refinery, storage facility, or pipeline / an electric, steam, gas, telephone, power, water, or pipeline facility / a nuclear power plant, reactor facility, or waste storage area / a petroleum refinery, storage facility, or pipeline / a vehicle, locomotive or railroad car, aircraft, or watercraft used to transport persons or goods / a government-owned building, structure, or other facility].[4]

Use Note

1. Use the second alternative only where the property is public property.

2. A definitional statute, MCL 750.200h, cites MCL 257.58c, which provides that serious impairment of a body function includes, but is not limited to, one or more of the following:

(a) Loss of a limb or loss of use of a limb.
(b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
(c) Loss of an eye or ear or loss of use of an eye or ear.
(d) Loss or substantial impairment of a bodily function.
(e) Serious visible disfigurement.
(f) A comatose state that lasts for more than 3 days.
(g) Measurable brain or mental impairment.
(h) A skull fracture or other serious bone fracture.
(i) Subdural hemorrhage or subdural hematoma.
(j) Loss of an organ.

3. Use this language only when there is a dispute over the level of injury, and the jury is considering the lesser offense that the defendant caused a "physical injury," rather than causing a "serious impairment of a body function."

4. MCL 750.212a.

Public Policy Position
Model Criminal Jury Instructions 11.44 and 11.44a

SUPPORT WITH AMENDMENTS

Explanation
The committee voted to support the Model Criminal Jury Instructions 11.44 as written and 11.44a with the amendments presented in the attached document.

Number who voted in favor and opposed to the position:
Voted For position: 12
Voted against position: 0
Abstained from vote: 0
Did note vote: 5

Contact Person: Nimish R. Ganatra
Email: ganatran@ewashtenaw.org

[NEW] M Crim JI 11.44a Manufacturing, Buying, Selling Furnishing, or Possessing an Incendiary Explosive Device with Intent to Damage Property or to Frighten, Injure or Kill a Person

(1) The defendant is charged with manufacturing, selling, furnishing, buying, or possessing an incendiary device with intent to damage property or to frighten, injure, or kill a person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [manufactured / sold / furnished / bought / possessed] a device that [would explode on impact / would explode with the application of heat or a flame / was highly incendiary].

(3) Second, that when the defendant [manufactured / sold / furnished / bought / possessed] the device, [he / she] knew that it [would explode on impact / would explode with the application of heat or a flame / was highly incendiary].

(4) Third, that when the defendant [manufactured / sold / furnished / bought / possessed] the device, [he / she] intended to frighten, terrorize, intimidate, threaten, harass, injure, or kill another person or intended to [damage or destroy any real or personal property without permission from the owner / damage or destroy any public property without permission from the governmental agency with authority over the public property[1]].

[*Select from paragraphs (5) through (9) where one of the following aggravating factors has been charged:*]

(5) Fourth, that the device damaged [another person's property without permission from the owner / public property without permission from the governmental agency with authority over the property[1]].

~~2.~~ A definitional statute, MCL 750.200h, cites MCL 257.58c, which provides that serious impairment of a body function includes, but is not limited to, one or more of the following:

(a) Loss of a limb or loss of use of a limb.
(b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
(c) Loss of an eye or ear or loss of use of an eye or ear.
(d) Loss or substantial impairment of a bodily function.
(e) Serious visible disfigurement.
(f) A comatose state that lasts for more than 3 days.
(g) Measurable brain or mental impairment.

(h) A skull fracture or other serious bone fracture.
(i) Subdural hemorrhage or subdural hematoma.
(j) Loss of an organ.

(6) Fourth, that the device caused the death of another person.

(7) Fourth, that the device caused the serious impairment of a body function to another person.~~2~~

(8) Fourth, that the device caused physical injury [not amounting to serious impairment of a body function~~23~~] to another person.

(9) Fourth, that the device was manufactured, sold, furnished, bought, or possessed in or was directed at [a child care or day care facility / a health care facility or agency / a building or structure open to the general public / a church, synagogue, mosque, or other place of religious worship / a school of any type / an institution of higher learning / a stadium / a transportation structure or facility open to the public (such as a bridge, tunnel, highway, or railroad) / an airport / a port / a natural gas refinery, storage facility, or pipeline / an electric, steam, gas, telephone, power, water, or pipeline facility / a nuclear power plant, reactor facility, or waste storage area / a petroleum refinery, storage facility, or pipeline / a vehicle, locomotive or railroad car, aircraft, or watercraft used to transport persons or goods / a government-owned building, structure, or other facility].~~34~~

Use Note

1. Use the second alternative only where the property is public property.

~~2. A definitional statute, MCL 750.200h, cites MCL 257.58c, which provides that serious impairment of a body function includes, but is not limited to, one or more of the following:~~
~~(a) Loss of a limb or loss of use of a limb.~~
~~(b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.~~
~~(c) Loss of an eye or ear or loss of use of an eye or ear.~~
~~(d) Loss or substantial impairment of a bodily function.~~
~~(e) Serious visible disfigurement.~~
~~(f) A comatose state that lasts for more than 3 days.~~
~~(g) Measurable brain or mental impairment.~~
~~(h) A skull fracture or other serious bone fracture.~~
~~(i) Subdural hemorrhage or subdural hematoma.~~
~~(j) Loss of an organ.~~

~~3~~2. Use this language only when there is a dispute over the level of injury, and the jury is considering the lesser offense that the defendant caused a "physical injury," rather than causing a "serious impairment of a body function."

~~4~~3. MCL 750.212a.