

**Agenda**  
**Public Policy Committee**  
**April 7, 2022 – 12:00 p.m. to 1:30 p.m.**  
**Via Zoom Meetings**

*Public Policy Committee.....James W. Heath, Chairperson*

**A. Reports**

1. Approval of January 20, 2022 minutes
2. Approval of March 3, 2022 minutes
3. Public Policy Report

**B. Legislation**

**1. HB 5512** (Calley) Medical marihuana: other; inconsistencies between the Michigan Medical Marihuana Act and certain parts of the revised judiciary act of 1961 related to drug treatment courts; resolve in favor of the revised judiciary act of 1961. Amends sec. 7 of 2008 IL 1 (MCL 333.26427).

Status: 03/15/22 Reported out of House Committee on Judiciary without amendment and referred to the House Floor for second reading.

Referrals: 02/22/22 Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section; Cannabis Law Section.

Comments: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee.  
Comment provided to the February 22, 2022 House Committee on Judiciary is included in the materials.

**HB 5868** (Howell) Courts: drug court; eligibility criteria to drug treatment courts; modify. Amends sec. 1064 of 1961 PA 236 (MCL 600.1064).

Status: 03/05/22 Referred to House Committee on Judiciary.

Referrals: 03/08/22 Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.

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

Liaison: Kim Warren Eddie

**2. HB 5647** (Fink) Civil procedure: costs and fees; contingency fees in class action; require prior legislative approval for fees to be appropriated. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 1467.

Status: 12/15/21 Referred to House Committee on Judiciary.

Referrals: 12/21/21 Civil Procedure & Courts Committee.

Comments: Civil Procedure & Courts Committee.

Liaison: Lori A. Buiteweg

**3. HB 5676** (LaFave) Occupations: attorneys; small claims judgment collection on behalf of an awardee; allow for certain attorneys. Amends sec. 8409 of 1961 PA 236 (MCL 600.8409).

Status: 01/18/22 Referred to House Committee on Judiciary.

Referrals: 01/24/22 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Business Law Section; Litigation Section; Negligence Law Section.

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

Liaison: E. Thomas McCarthy, Jr.

**4. HB 5680** (Borton) Civil procedure: other; certain public video recordings of court proceedings; allow the victims' faces to be blurred. Amends secs. 8, 38 & 68 of 1985 PA 87 (MCL 780.758 et seq.).

Status: 01/18/22 Referred to House Committee on Judiciary.

Referrals: 01/24/22 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.

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

Liaison: Valerie R. Newman

**5. HB 5681** (VanWoerkom) Crime victims: statements; victim impact statements; allow to be made remotely. Amends secs. 15, 43 & 75 of 1985 PA 87 (MCL 780.765 et seq.).

Status: 01/18/22 Referred to House Committee on Judiciary.

Referrals: 01/24/22 Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.

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

Liaison: Valerie R. Newman

**6. HB 5758** (Lightner) Probate: other; allowing electronic signing and witnessing of certain documents under certain conditions; eliminate sunset.

Status: 02/16/22 Referred to House Committee on Judiciary.

Referrals: 02/22/22 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Elder Law & Disability Rights Section; Family Law Section; Probate & Estate Planning Section.

Comments: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Elder Law & Disability Rights Section; Family Law Section; Probate & Estate Planning Section.

**HB 5759** (Lightner) Occupations: notaries public; use of communication technology to perform electronic notarizations and remote electronic notarizations; modify and expand.

Status: 02/16/22 Referred to House Committee on Judiciary.

Referrals: 02/22/22 Access to Justice Policy Committee; Civil Procedure & Courts Committee; All Sections.

Comments: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Elder Law & Disability Rights Section; Family Law Section; Probate & Estate Planning Section; Real Property Law Section.

Liaison: Suzanne C. Larsen

**7. HB 5889** (Glenn) Civil procedure: evidence; consultations with human trafficking victims; provide confidentiality. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 2157c.

Status: 03/09/22 Referred to House Committee on Rules & Competitiveness.

Referrals: 03/21/22 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Children's Law Section; Criminal Law Section; Family Law Section; Immigration Law Section; Negligence Law Section.

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

Liaison: Takura N. Nyamfukudza

**8. HJR L** (Rabhi) Criminal procedure: bail; cash bail payments; prohibit. Amends secs. 15 & 16, art. I of the state constitution.

Status: 11/30/21 Referred to House Committee on Judiciary.

Referrals: 12/01/21 Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.

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

Liaison: Takura N. Nyamfukudza

**9. SB 869** (Horn) Courts: judges; personal information and physical safety protections for judges, their families, and household members; enhance. Creates new act.

Status: 02/09/22 Referred to Senate Committee on Judiciary & Public Safety.

Referrals: 02/15/22 Civil Procedure & Courts Committee; Judicial Section.

Comments: Civil Procedure & Courts Committee.

Liaison: Judge Cynthia D. Stephens

### **C. Consent Agenda**

**To allow the Criminal Jurisprudence & Practice Committee to submit its positions on each of the following items:**

**1. M Crim JI 8.2**

The Committee proposes a new instruction, M Crim JI 8.2, for aiding and abetting the crime of possession of a firearm at the time of committing a felony (aiding and abetting felony-firearm) because the primary aiding and abetting instruction, M Crim JI 8.1, is difficult to adapt in order to make it clear that simply aiding and abetting the underlying felony offense is insufficient to establish aiding and abetting the crime of felony-firearm. See *People v Moore*, 470 Mich 56 (2004). This instruction is entirely new.

**2. M Crim JI 13.6a, 13.6b, 13.6c, and 13.6d**

The Committee proposes to amend jury instructions M Crim JI 13.6a (first-degree fleeing and eluding), M Crim JI 13.6b (second-degree fleeing and eluding), M Crim JI 13.6c (third-degree fleeing and eluding), and M Crim JI 13.6d (fourth-degree fleeing and eluding) to comport with the wording of an amendment to MCL 750.479a. Further, requirements that the prosecutor prove prior offenses for second- and third-degree fleeing and eluding are proposed to be eliminated. See *Apprendi v New Jersey*, 530 US 466, 490; 120 S Ct 2348; 147 L Ed 2d 435 (2000). Deletions are in strike-through, and new language is underlined.

**MINUTES**  
**Public Policy Committee**  
**January 20, 2022 – 12:00 p.m. to 1:30 p.m.**

Committee Members: Lori A. Buiteweg, Kim Warren Eddie, James W. Heath, Suzanne C. Larsen, Valerie R. Newman, Brian D. Shekell, Thomas G. Sinas, Mark A. Wisniewski  
SBM Staff: Janet K. Welch, Peter Cunningham, Carrie Sharlow, Nathan Triplett  
GCSI Staff: Marcia Hune, Samantha Zandee

**A. Reports**

1. Approval of November 18, 2021 minutes  
**The minutes were approved unanimously (8).**

2. Public Policy Report  
**Peter Cunningham and Marcia Hune provided an oral report.**

**B. Unfinished Business**

1. **HB 5309** (LaFave) Occupations: attorneys; eligibility requirements for attorney licensed in another state to practice law in Michigan; modify. Amends secs. 937, 940 & 946 of 1961 PA 236 (MCL 600.937 et seq.) & adds sec. 945.

**The committee has no further action to take on this matter.**

**2. Bail Bonds Legislation**

**HB 5436** (Fink) Criminal procedure: bail; procedure for pretrial release determinations, criteria a court must consider for pretrial release determination, and reporting of data on pretrial release decisions; provide for. Amends sec. 6 & 6a, ch. V of 1927 PA 175 (MCL 765.6 & 765.6a) & adds sec. 6g, ch. V.

**HB 5437** (Yancey) Criminal procedure: bail; criteria a court must consider before imposing certain conditions of release and due process hearing related to pretrial detention; provide for. Amends sec. 6b, ch. V of 1927 PA 175 (MCL 765.6b) & adds sec. 6f, ch. V.

**HB 5438** (VanWoerkom) Criminal procedure: other; certain definitions in the code of criminal procedure and time period required for disposition of criminal charges; provide for. Amends sec. 1, ch. I & sec. 1, ch. VIII of 1927 PA 175 (MCL 761.1 & 768.1).

**HB 5439** (Young) Criminal procedure: bail; interim bail bonds for misdemeanors; modify. Amends sec. 1 of 1961 PA 44 (MCL 780.581).

**HB 5440** (LaGrand) Criminal procedure: bail; requirements for the use of a pretrial risk assessment tool by a court making bail decision; create. Amends 1927 PA 175 (MCL 760.1 - 767.69) by adding sec. 6f, ch. V.

**HB 5441** (Johnson) Criminal procedure: bail; act that provides bail for traffic offenses or misdemeanors; repeal. Repeals 1966 PA 257 (MCL 780.61 - 780.73).

**HB 5442** (Meerman) Traffic control: driver license; reference to surrendering license as condition of pretrial release and certain other references; amend to reflect changes in code of criminal procedure. Amends secs. 311 & 727 of 1949 PA 300 (MCL 257.311 & 257.727) & repeals sec. 311a of 1949 PA 300 (MCL 257.311a).

**HB 5443** (Brann) Criminal procedure: bail; setting of bond related to spousal or child support arrearage; modify. Amends sec. 165 of 1931 PA 328 (MCL 750.165).

**The committee has no further action to take on this matter.**

**C. Court Rules**

**1. ADM File No. 2021-41 – Proposed Amendments of MCR 6.001, 6.003, 6.006, 6.102, 6.103, 6.106, 6.445, 6.615, and 6.933 and Proposed Additions of MCR 6.105, 6.441, and 6.450**

The proposed amendments would make the rules consistent with recent statutory revisions that resulted from recommendations of the Michigan Joint Task Force on Jail and Pretrial Incarceration.

The committee reviewed recommendations from the following groups: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.

**The committee voted unanimously (8) to support ADM File No. 2021-41.**

## **2. ADM File No. 2021-05 – Proposed Amendments of MCR 6.302 and 6.310**

The proposed amendments of MCR 6.302 and 6.310 would require a court to specify the estimated sentencing guideline range as part of a preliminary evaluation of the sentence and to clarify that a defendant may withdraw a plea when the actual guidelines range is different than initially estimated. The committee reviewed recommendations from the following groups: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee.

**The committee voted 7 to 1 to support the proposed amendments with additional language added to MCR 6.302 to state explicitly that the defendant be allowed to withdraw his/her plea should the guideline range be different than the one stated on the plea agreement. This would make the court rule more consistent with MCR 6.310.**

## **3. ADM File No. 2019-16 – Proposed Amendment of MCR 7.212**

The proposed amendment of MCR 7.212 would require appellate briefs to be formatted for optimized reading on electronic displays.

The committee reviewed recommendations from the following groups: Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Appellate Practice Section; Criminal Law Section; Family Law Section; Two Member Comments.

**The committee voted 7 to 1 to support the proposed amendments as drafted and to recommend that Committees and Sections be authorized to submit their positions to the Court.**

## **4. ADM File No. 2021-45 – Amendment of MCR 7.306**

The amendment of MCR 7.306 creates procedure specific to original actions relating to cases filed involving the Independent Citizens Redistricting Commission.

The committee reviewed recommendations from the following groups: Civil Procedure & Courts Committee.

**The committee voted unanimously (8) to support the amendment to MCR 7.306.**

## **5. ADM File No. 2021-31 – Proposed Amendment of MCR 8.110**

In light of the federal Act making Juneteenth a federal holiday (PL117-17), this proposed amendment would similarly require that courts observe Juneteenth as a holiday. This proposed amendment is being considered in conjunction with other proposed amendments that would eliminate an existing holiday so as to retain the same number of holidays that are currently provided under the rule. The options the Court would like commenters to consider eliminating, if the commenters believe the number of holidays should remain the same, include the day after Thanksgiving, Christmas Eve, or New Year's Eve, similar to Federal legal holiday designations. For purposes of comment, commenters are invited to indicate their support or opposition to any of the proposed amendments individually or combined.

The committee reviewed recommendations from the following groups: Civil Procedure & Courts Committee.

**The committee voted 7 to 1 to support the proposed amendment of MCR 8.110, specifically Option D, adding Juneteenth to the court holiday calendar without removing any of the current holidays.**

## **D. Legislation**

**1. HB 5340** (Whiteford) Courts: other; family treatment court; create. Amends sec. 1082 of 1961 PA 236 (MCL 600.1082) & adds ch. 10D.

The committee reviewed recommendations from the following groups: Access to Justice Policy Committee; Criminal Law Section; Family Law Section.

**The committee agreed that this bill is *Keller* Permissible in improving the functioning of the courts and concerning the availability of legal services to society.**

**The committee voted unanimously (8) to support HB 5340 in concept and identified two areas of particular concern with the current bill language:**

- 1. Judges should have the discretion to admit a violent offender as a participant in the proposed the family treatment court; and**

2. **Participants should not be required to waive their right to counsel before entry into the proposed family treatment court.**

## **2. Eligibility for Specialty Courts**

**HB 5482** (Howell) Courts: drug court; eligibility to drug treatment courts; modify. Amends sec. 1066 of 1961 PA 236 (MCL 600.1066).

**HB 5483** (LaGrand) Courts: other; eligibility for mental health court participants; modify. Amends sec. 1093 of 1961 PA 236 (MCL 600.1093).

**HB 5484** (Yancey) Courts: drug court; termination procedure for drug treatment courts; modify. Amends sec. 1074 of 1961 PA 236 (MCL 600.1074).

The committee reviewed recommendations from the following groups: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.

**The committee agreed that this bill is *Keller* Permissible in improving the functioning of the courts and concerning the availability of legal services to society.**

**The committee voted unanimously (8) to support HB 5482, HB 5483, and HB 5484 as drafted, and to recommend an amendment to MCL 600.1064(1) to align that provision's language related to drug treatment court eligibility requirements for violent offenders with the language proposed in HB 5482.**

**3. HB 5541** (Fink) Occupations: attorneys; requirements for admission to state bar; modify. Amends secs. 931, 934 & 946 of 1961 PA 236 (MCL 600.931 et seq.) & adds sec. 935.

**The committee agreed that this bill is *Keller* Permissible in improving the functioning of the courts and concerning the regulation and discipline of attorneys and integrity of the legal profession.**

**4. HB 5593** (Calley) Criminal procedure: mental capacity; community mental health oversight of competency exams for defendants charged with misdemeanors; provide for. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 20b to ch. VIII.

The committee reviewed recommendations from the following groups: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee.

**The committee agreed that this bill is *Keller* Permissible in improving the functioning of the courts.**

**The committee voted unanimously (8) to support providing defendants in need with mental health referrals and treatment, but to oppose the legislation as drafted for the reasons stated by the Access to Justice Policy Committee and Criminal Jurisprudence & Practice Committee.**

## **E. Consent Agenda**

To allow the Criminal Jurisprudence & Practice Committee and Criminal Law Section to submit their positions on each of the following items:

### **1. M Crim JI 3.13 – Penalty**

The Committee proposes to amend M Crim JI 3.13 [Penalty] to remove any possible implication that the jury should find the defendant guilty so that the court could perform its duty of imposing a penalty. Deletions are in strike-through, and new language is underlined.

### **2. M Crim JI 20.11 – Sexual Act with Mentally Incapable, Mentally Disabled, Mentally Incapacitated, or Physically Helpless Person**

The Committee proposes to amend M Crim JI 20.11 [Sexual Act with Mentally Incapable, Mentally Disabled, Mentally Incapacitated, or Physically Helpless Person] to eliminate the element requiring that the defendant know of the complainant's mental impairment because the applicable statute, MCL 750.520b(1)(h), does not require proof of such knowledge. Deletions are in strike-through, and new language is underlined.

### **3. M Crim JI 24.1 – Unlawfully Driving Away an Automobile**

The Committee proposes to amend M Crim JI 24.1 [Unlawfully Driving Away an Automobile] to correct the fourth element currently addressing "intent" to be in accord with the statutory language of MCL 750.413 and *People v Crosby* 82 Mich App 1 (1978). Deletions are in strike-through, and new language is underlined.

**4. M Crim JI 34.6 – Food Stamp Fraud**

The Committee proposes a new instruction, M Crim JI 34.6 [Food Stamp Fraud], for crimes charged under MCL 750.300a.

**5. M Crim JI 35.12 – Cyberbullying/Aggravated Cyberbullying**

The Committee proposes a new instruction, M Crim JI 35.12 [Cyberbullying / Aggravated Cyberbullying], for crimes charged under MCL 750.411x.



**MINUTES**  
**Public Policy Committee**  
**March 3, 2022**

Committee Members: Lori A. Buiteweg, Kim Warren Eddie, James W. Heath, Suzanne C. Larsen, Valerie R. Newman, Takura N. Nyamfukudza, Brian D. Shekell, Thomas G. Sinas, Mark A. Wisniewski  
SBM Staff: Peter Cunningham, Carrie Sharlow, Nathan Triplett  
GCSI Staff: Samantha Zandee

**A. Court Rule Amendments**

**1. ADM File No. 2017-28: Amendment of MCR 1.109**

The amendment of MCR 1.109 establishes a process for individuals to be authorized to have access to a party's date of birth for purposes of verification of identity with that party's consent.

The following entities offered recommendations for review: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Probate & Estate Planning Section.

**The committee voted unanimously (9) to oppose the amendment to Rule 1.109 as presented in ADM File No. 2017-28.**

**2. ADM File No. 2021-47: Amendment of MCR 3.950**

In response to a request from the ACLU, MCR 3.950 is amended to make the rule consistent with MCL 764.27a by requiring juvenile offenders who are waived into the adult criminal justice system under MCL 712A.4 to be kept separate and apart from adult prisoners.

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

**The committee voted unanimously (9) to support the amendment to Rule 3.950 as presented in ADM File No. 2021-47.**

**3. ADM File No. 2019-28/2021-36: Proposed Alternative Amendments of MCR 9.202 and Proposed Addition of MCR 9.245**

The proposed alternative amendments would address whether and how costs should be imposed in JTC proceedings. Under Alternative A, the provision allowing the Court to impose costs of prosecution for fraud, deceit, or intentional misrepresentation would be eliminated, and the rule would be clarified to reflect that costs may not be imposed. Under Alternative B, the provision allowing the Court to impose costs of prosecution for fraud, deceit, or intentional misrepresentation would be eliminated, and a proposed new rule would allow basic costs to be assessed as in general civil actions. The following entities offered recommendations for review: Civil Procedure & Courts Committee; Judicial Ethics.

**The committee voted unanimously (9) to take no position on ADM File No. 2019-28/2021-36 and authorize the Judicial Ethics Committee to advocate its position on the proposed alternative amendments.**

**4. ADM File No. 2021-07: Proposed Amendment of MRPC 1.8**

The proposed amendment of MRPC 1.8 would clarify that the inclusion of an arbitration clause in an attorney-client agreement is prohibited unless the client is independently represented in reviewing the provision.

The following entities offered recommendations for review: Civil Procedure & Courts Committee; Professional Ethics Committee; Alternative Dispute Resolution.

The Committee was unable to reach a recommendation on the proposal. Instead, the Committee voted to advance two alternative motions to the Board for consideration. Commissioners will be asked to vote for one of the alternatives. The two alternative motions are listed below along with a short explanation of the rationale for each:

- **Alternative One:** The Board opposes the proposed amendment to MRPC 1.8 and to authorize the Professional Ethics Committee and Alternative Dispute Resolution Section to advocate their respective positions on the proposal.  
**Rationale:** Opponents of this proposed amendment believe that it unnecessarily interferes with the ability of attorneys and their clients to enter into engagement agreements on mutually agreeable terms and that prohibiting arbitration clauses in such agreements absent independent representation will impose additional costs and complexity on clients seeking legal representation. There is also a concern that the proposal conflicts with the Federal Arbitration Act and discourages the use of alternative dispute resolution.
- **Alternative Two:** The Board supports the proposed amendment to MRPC 1.8 and to authorize Professional Ethics Committee and Alternative Dispute Resolution Section to advocate their respective positions on the proposal.  
**Rationale:** Supporters of this proposed amendment believe that it is necessary to protect the interests of clients who may not fully understand the implications agreeing to arbitration in the absence of independent counsel on the matter. Additionally, they note that adopting the rule does not preclude an attorney and their client from opting to use arbitration to resolve a dispute if one should arise. Rather, the amendment effectively moves that decision from the engagement agreement to the time when a dispute arises and therefore when both the attorney and client are better able to assess on equal footing whether arbitration or litigation is the more suitable avenue to address a particular dispute.

## **B. Other**

### **1. FY 2022-23 Executive Budget Recommendation for the Michigan Indigent Defense Commission**

The committee agreed that the Budget in question is *Keller* permissible in affecting the functioning of the courts and increasing the availability of legal services to society.

The committee voted 8 in favor with one abstention to support the FY 2022-23 Executive Budget Recommendation for the Michigan Indigent Defense Commission.

### **2. FY 2022-23 Executive Budget Recommendation for the Judiciary**

The committee agreed that the Budget in question is *Keller* permissible in affecting the functioning of the courts and increasing the availability of legal services to society.

The committee voted 7 in favor with 1 in opposition to support the FY 2022-23 Executive Budget Recommendation for the Judiciary.



To: Members of the Public Policy Committee  
Board of Commissioners

From: Governmental Relations Staff

Date: April 1, 2022

Re: HB 5512 – Michigan Medical Marihuana Act Preemption of Problem-Solving Court  
Enabling Statutes

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### **Background**

In November 2008, Michigan voters approved the Michigan Medical Marihuana Act (“MMMA”), an initiated law that, among other things, permits the medical use of marihuana under Michigan law and provides certain protections for the medical use of marihuana. 2008 IL 1. Section 7(e) of the MMMA provides that “[a]ll other acts and parts of acts inconsistent with this act do not apply to the medical use of marihuana as provided for by this act.” HB 5512 was, in part, motivated by *People v Thue*, decided by the Michigan Court of Appeals in February 2021. 336 Mich App 35; 969 NW2d 346 (2021). In that case, the court concluded that §7(e) precludes a court from prohibiting the use of medical marihuana as a condition of probation. While there are no appellate opinions in Michigan to date addressing the question of how the problem-solving court enabling statutes should be read in conjunction with §7(e), treatment court judges are concerned that treatment courts would be treated analogously to the probation context.

The Michigan Association of Treatment Court Professionals (“MATCP”) testified before the House Judiciary Committee that concerns regarding §7(e) have led many treatment court judges not to inquire into the circumstances surrounding a potential treatment court participant’s use of medical marihuana and to refrain from prohibiting such a participant from using medical marihuana during their time in the treatment court program, regardless of the circumstances. At the same time, it has been reported that the ambiguity surrounding the interplay between §7(e) and the problem-solving courts has led other treatment court judges to adopt a blanket policy of excluding medical marihuana users as treatment court participants. As a result, §7(e) requires problem-solving courts to treat marihuana differently than any other medication. For example, a treatment court may inquire into a potential participant’s use of opioids and even prohibit opioid use, if circumstances warrant, even if the individual has a valid prescription. Rather than impose a bright line rule, HB 5512 would give treatment court judges the discretion to base admission/retention decisions and conditions on individualized evaluations. HB 5512 does not require, and MATCP does not support, that all treatment court participants be prohibited from using medical marihuana. Moreover, MATCP is approaching the issue in two parts: (1) supporting HB 5512 to address §7(e) concerns; (2) working with the State Court Administrative Office to revise the *Adult Drug Court Standards, Best Practices, and Promising Practices* manual for treatment courts to guide appropriate, case-by-case decision making by treatment court judges on questions surrounding participant use of medical marihuana.

MATCP also testified that Michigan receives \$1.95 million annually from the U.S. Department of Justice Bureau of Justice Assistance (“BJA”) and that these funds are presently at risk because BJA funds cannot be used to support programs that permit the use of marihuana.

Note that the House Judiciary Committee has been processing HB 5512 as part of a larger bill package addressing eligibility for participation in treatment court programs. That package includes HBs 5482-5484 and HB 5868, which would permit violent offenders to be admitted to treatment courts under specified circumstances. The Board voted to support HB 5482 in January 2022 and HB 5868 is on the Board’s April agenda for consideration.

***Keller* Considerations**

HB 5512, taken individually or as a component of the overall bill package, is reasonably related to the functioning of the courts, and therefore *Keller*-permissible, because it prescribes the scope of a judge’s discretion to permit a medical marihuana patient to participate in a drug treatment court and to place conditions on such participation. This legislation also impacts the availability of legal services to society by potentially expanding access to problem solving courts to medical marihuana patients who are being denied access to some treatment court judges today due to ambiguity over their discretion under the Michigan Medical Marihuana Act. Note that prior legislation concerning specialty courts has also been considered *Keller*-permissible by the Bar on this basis.

***Keller* Quick Guide**

<b>THE TWO PERMISSIBLE SUBJECT-AREAS UNDER <i>KELLER</i>:</b>	
<b>Regulation of Legal Profession</b>	<b>Improvement in Quality of Legal Services</b>
<div style="display: flex; align-items: center;"> <div style="writing-mode: vertical-rl; transform: rotate(180deg); font-weight: bold; margin-right: 10px;">As interpreted by AO 2004-1</div> <ul style="list-style-type: none"> <li>• Regulation and discipline of attorneys</li> <li>• Ethics</li> <li>• Lawyer competency</li> <li>• Integrity of the Legal Profession</li> <li>• Regulation of attorney trust accounts</li> </ul> </div>	<ul style="list-style-type: none"> <li>✓ Improvement in functioning of the courts</li> <li>✓ Availability of legal services to society</li> </ul>

**Staff Recommendation**

HB 5512 implicates both the functioning of the courts and the availability of legal services. The bill, therefore, considered individually or as part of the larger package, satisfies the requirements of *Keller* and may be considered on its merits.

# HOUSE BILL NO. 5512

November 02, 2021, Introduced by Reps. Calley, LaGrand, Mueller, Beson, Yaroch, Stone, Kupa, Sowerby, Filler, Meerman, Bezotte, Witwer, Green, Wozniak, Brann and Slagh and referred to the Committee on Regulatory Reform.

A bill to amend 2008 IL 1, entitled  
"Michigan Medical Marihuana Act,"  
by amending section 7 (MCL 333.26427), as amended by 2016 PA 546.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1           7. Scope of Act.

2           Sec. 7. (a) The medical use of marihuana is allowed under  
3 state law to the extent that it ~~is carried out in accordance~~  
4 **complies** with ~~the provisions of this act.~~

5           (b) This act does not ~~permit any~~ **authorize a** person to do any

1 of the following:

2 (1) Undertake any task under the influence of marihuana, ~~when~~  
3 **if** doing so would constitute negligence or professional  
4 malpractice.

5 (2) Possess marihuana, or ~~otherwise~~ engage in the medical use  
6 of marihuana, at any of the following locations:

7 (A) In a school bus.

8 (B) On the grounds of any preschool or primary or secondary  
9 school.

10 (C) In any correctional facility.

11 (3) Smoke marihuana at any of the following locations:

12 (A) On any form of public transportation.

13 (B) In any public place.

14 (4) Operate, navigate, or be in actual physical control of any  
15 motor vehicle, aircraft, snowmobile, off-road recreational vehicle,  
16 or motorboat while under the influence of marihuana.

17 (5) Use marihuana if that person does not have a serious or  
18 debilitating medical condition.

19 (6) Separate plant resin from a marihuana plant by butane  
20 extraction in any **of the following**:

21 **(A) A** public place. ~~or~~

22 **(B) A** motor vehicle. ~~or inside~~

23 **(C) Inside** or within the curtilage of any residential  
24 structure.

25 (7) Separate plant resin from a marihuana plant by butane  
26 extraction in a manner that demonstrates a failure to exercise  
27 reasonable care or reckless disregard for the safety of others.

28 (c) Nothing in this act ~~shall be construed to require~~ **requires**  
29 any of the following:

1 (1) A government medical assistance program or commercial or  
2 ~~non-profit~~ **nonprofit** health insurer to reimburse a person for costs  
3 associated with the medical use of marihuana.

4 (2) An employer to accommodate the ingestion of marihuana in  
5 any workplace or any employee working while under the influence of  
6 marihuana.

7 (3) A private property owner to lease residential property to  
8 any person who smokes or cultivates marihuana on the premises, if  
9 the prohibition against smoking or cultivating marihuana is in the  
10 written lease.

11 (d) Fraudulent representation to a law enforcement official of  
12 any fact or circumstance relating to the medical use of marihuana  
13 to avoid arrest or prosecution is punishable by a fine of \$500.00,  
14 ~~which is~~ in addition to any other penalties that may apply for  
15 making a false statement or for the use of marihuana other than use  
16 ~~undertaken pursuant to~~ **that complies with** this act.

17 (e) All other acts and parts of acts inconsistent with this  
18 act do not apply to the medical use of marihuana as provided for by  
19 this act. **However, if this act is inconsistent with any part of**  
20 **chapter 10a, 10b, 10c, or 12 of the revised judicature act of 1961,**  
21 **1961 PA 236, MCL 600.1060 to 600.1088, 600.1090 to 600.1099a,**  
22 **600.1099b to 600.1099m, and 600.1200 to 600.1212, that part**  
23 **applies.**

# Legislative Analysis



## LAWS INCONSISTENT WITH MEDICAL MARIHUANA ACT

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

**House Bill 5512 as referred to second committee**

**Sponsor: Rep. Julie Calley**

**1st Committee: Regulatory Reform**

**2nd Committee: Judiciary**

**Complete to 3-14-22**

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

### SUMMARY:

House Bill 5512 would amend the Michigan Medical Marihuana Act to provide that certain provisions of the Revised Judicature Act that deal with drug treatment courts, mental health courts, juvenile mental health courts, and veterans treatment courts apply if there is a conflict between those provisions and the Michigan Medical Marihuana Act.

The Michigan Medical Marihuana Act provides that all other acts and parts of acts that are inconsistent with it do not apply to the medical use of marijuana as provided for by it.

The bill would add an exception to provide that if the Michigan Medical Marihuana Act is inconsistent with any part of the following chapters of the Revised Judicature Act, that part applies:

- Chapter 10A (Drug Treatment Courts).
- Chapter 10B (Mental Health Court).
- Chapter 10C (Juvenile Mental Health Courts).
- Chapter 12 (Veterans Treatment Courts).

MCL 333.26427

### FISCAL IMPACT:

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

Legislative Analyst: Rick Yuille  
Fiscal Analyst: Robin Risko

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.



**Public Policy Position  
HB 5512****Oppose****Explanation**

The Committee voted to oppose HB 5512 because the bill may result in the exclusion of individuals who use medical marihuana from admission to treatment courts or allow treatment court judges to otherwise penalize treatment court participants or prospective participants who use medical marihuana, despite the fact that such use is immunized from penalty under the Michigan Medical Marihuana Act, 2008 IL 1.

**Position Vote:**

Voted For position: 10

Voted against position: 3

Abstained from vote: 6

Did not vote (absence): 8

**Keller Permissibility Explanation:**

The Committee agreed that HB 5512 is *Keller*-permissible because the legislation would impact eligibility for drug treatment court admission, the discretion permitted to treatment court judges, and the nature and scope of procedures used by treatment courts. All these issues affect the functioning of the treatment courts.

**Contact Persons:**

Katherine L. Marcuz [kmarcuz@sado.org](mailto:kmarcuz@sado.org)

Lore A. Rogers [rogersl4@michigan.gov](mailto:rogersl4@michigan.gov)

**Public Policy Position  
HB 5868 & HB 5512**

**Support**

**Explanation:**

The Committee voted unanimously (16) to support HB 5868. This bill is the result of a previous recommendation made by the Committee, and supported by the SBM Board of Commissioners, to resolve a conflict between MCL 600.1064 and the statutory language proposed in HBs 5482 and 5484 regarding drug treatment court eligibility.

The Committee voted unanimously (14) to support HB 5512. The legislation would restore parity in the treatment of medical marijuana and other medications (e.g., opioids) in treatment courts and allow treatment court judges to conduct individualized assessments of each potential treatment court participant's needs as it relates to the use of medical marijuana. The existing conflict between the Michigan Medical Marijuana Act, 2008 IL 1, and the treatment court enabling legislation undermines the holistic, individualized approach at the heart of treatment court success.

**Position Vote on HB 5868:**

Voted For position: 14  
Voted against position: 0  
Abstained from vote: 0  
Did not vote (absence): 10

**Position Vote on HB 5512:**

Voted For position: 16  
Voted against position: 0  
Abstained from vote: 0  
Did not vote (absence): 8

**Keller-Permissible Explanation:**

Both HB 5868 and HB 5512 are *Keller*-permissible because they each would affect the functioning of the courts by altering eligibility for participation in treatment courts and the level of discretion available to treatment court judges when considering the admission of a potential treatment court participant. In addition, these bills impact the availability of legal services by potentially expanding access to treatment courts for a larger number of violent offenders and medical marijuana patients.

**Contact Persons:**

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

## Melissa Sweet

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**From:** Jamie Lowell <jamescapeland@gmail.com>  
**Sent:** Tuesday, February 22, 2022 8:09 AM  
**To:** Melissa Sweet  
**Subject:** Submission for hearing today- HB5512

Dear Members of The Michigan House Judiciary Committee,

Please vote NO on HB 5512.

It has been reported and discussed that the intention of HB 5512, in part, is to allow the drug court judges the opportunity to permit registered medical marijuana patients to continue to use their medicine if the qualified condition is considered "severe" enough. This is a problematic proposal that ought to be reconsidered with better information and perspective.

The Michigan Supreme Court decision in 2021 concerning *People v Thue* prevents courts from prohibiting medical cannabis use by registered patients while on bond or probation. This was a landmark decision confirming intended rights for citizens using cannabis medicines. If there is to be a change in law or policy, it ought to be to clarify and to codify the MSC's opinion that medical marijuana patients ought not be denied their medicine by any court- even voluntary drug court.

The passage of HB 5512 would actually allow for our citizen's health care to be evaluated by people who are not the individual's doctor nor are even medical professionals. A person using medical marijuana can follow a process in order to participate in the MMMP (MI Medical Marijuana Program). This means that the participant has taken the necessary and state recognized steps to use cannabis for approved conditions. This includes an examination and a recommendation letter from a state licensed physician followed by getting application approval from the state before getting a card issued to demonstrate being accepted into the state's medical marijuana program registry. This existing process ought to suffice for determining use of cannabis while under the direction of the court. Allowing judges and courts the ability to mess with the health care of our citizens could be very dangerous. At the very least, it is not necessary nor is it appropriate.

Additionally, cannabis ought not still be considered on the list of the dangerous substances that the drug courts must regularly address. Having the power to deny medical marijuana to registered patients infers that cannabis is still erroneously recognized as a dangerous substance. In contrast, there is evidence suggesting that cannabis is effective in helping people recover from dangerous substance dependencies (links to studies included at the end). The drug courts ought to be aware of and utilize updated methods for recovery on behalf of those most desperately in need of help. This ought to include recognizing cannabis as a possible "exit therapy" from dangerous substances.

HB 5512 is currently opposed by the Michigan Cannabis Industry Association, MI Americans for Safe Access, MINorml, the Cannabis Caucus of the MI Democratic Party, Michigan Caregivers Association.

HB 5512 may be well intended, but was derived without reference for pertinent considerations by way of a process that inexplicably excluded many stakeholders with meaningful input. Please vote NO on HB 5512 so that the discussion may resumed including all necessary information.

Thank you for your consideration,

Jamie Lowell  
Director of Advocacy and Social Equity  
The Botanical Company

Links to cannabis harm reduction articles and studies-

Cannabidiol Treatment Might Promote Resilience to Cocaine and Methamphetamine Use Disorders:  
A Review of Possible Mechanisms

[https://media.proquest.com/media/hms/PFT/1/8qerJ?\\_s=vu21KzYOyE94VstaERh4aZN2qgl%3D](https://media.proquest.com/media/hms/PFT/1/8qerJ?_s=vu21KzYOyE94VstaERh4aZN2qgl%3D)

The emergence of innovative cannabis distribution projects in the T downtown eastside of Vancouver, Canada

<https://www.researchgate.net/publication/340580840> The emergence of innovative cannabis distribution projects in the downtown eastside of Vancouver Canada

Frequency of cannabis and illicit opioid use among people who use drugs and report chronic pain: A longitudinal analysis

<https://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1002967>

## Surprise finding: cannabis may beat cold turkey

<https://www.drugfoundation.org.nz/matters-of-substance/archive/july-2019/cannabis-may-beat-cold-turkey/>

Brain cannabinoid receptor 2: expression, function and modulation

<https://www.nature.com/articles/aps2016149>

### **Analysis: Opioid Recovery Subreddit Users Frequently Report Using Cannabis for Treating Withdrawal Symptoms**

[https://norml.org/news/2022/02/17/analysis-opioid-recovery-subreddit-users-frequently-report-using-cannabis-for-treating-withdrawal-symptoms/?fbclid=IwAR2boL3LZsQA87t38LOr\\_p0wmUPIYIYzdxPh77HZqP2PwcOsglcOvckppx8](https://norml.org/news/2022/02/17/analysis-opioid-recovery-subreddit-users-frequently-report-using-cannabis-for-treating-withdrawal-symptoms/?fbclid=IwAR2boL3LZsQA87t38LOr_p0wmUPIYIYzdxPh77HZqP2PwcOsglcOvckppx8)

Sent from Jamie's iPhone



To: Members of the Public Policy Committee  
Board of Commissioners

From: Governmental Relations Staff

Date: April 1, 2022

Re: HB 5868 – Violent Offender Participation in Problem Solving Courts

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### **Background**

At its January meeting, the Board of Commissioners voted to support House Bills 5482 – 5484, a package of bills which would permit violent offenders to be admitted as participants in drug treatment courts and mental health courts. Such offenders are categorically excluded from participation today. In addition, the Board recommended that a supplementary bill be introduced to amend MCL 600.1064(1) to align that provision’s language related to drug treatment court eligibility requirements for violent offenders with the language proposed in the new bill package. House Bill 5868 is a response to that recommendation and is now moving through the legislation process as part of a bill package alongside the original three bills.

HB 5868 amends MCL 600.1064(1) to strike the following language: “However, an individual is not eligible for admission into a drug treatment court if he or she is a violent offender.” When taken together with HBs 5482-5484, HB 5868 would permit the court to admit a violent offender as a participant in drug treatment court, if the drug treatment court judge and prosecuting attorney, in consultation with any known victim in the instant case, consent to such admission. In addition, current law requires that a drug treatment court be notified if a participant is accused of a new crime and that the judge then consider whether to terminate the individual’s participation as a result. In the event that a participant is convicted of a felony offense that occurred after admission to the drug treatment court, the statute requires the termination of participation. The bill package containing HB 5868 would permit a drug treatment court judge the discretion to allow continued participation in the felony circumstance after consultation with the treatment team and agreement by the prosecuting attorney.

### ***Keller* Considerations**

HB 5868, taken individually or as a component of the overall bill package, is reasonably related to the functioning of the courts, and therefore *Keller*-permissible, because it prescribes the scope of a judge’s discretion to permit a violent offender to participate in a drug treatment court and the process that must be followed to permit such participation. This legislation also impacts the availability of legal services to society by expanding access to problem solving courts to violent offenders. Note that prior legislation concerning specialty courts has also been considered *Keller*-permissible by the Bar on this basis.

*Keller* Quick Guide

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

**Staff Recommendation**

HB 5868 implicates both the functioning of the courts and the availability of legal services. The bill, therefore, considered individually or as part of the larger package, satisfies the requirements of *Keller* and may be considered on its merits.

# HOUSE BILL NO. 5868

March 02, 2022, Introduced by Reps. Howell and LaGrand and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled  
"Revised judicature act of 1961,"  
by amending section 1064 (MCL 600.1064), as added by 2004 PA 224.

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

1           Sec. 1064. (1) Each drug treatment court shall determine  
2 whether an individual may be admitted to the drug treatment court.  
3 No individual has a right to be admitted into a drug treatment  
4 court. ~~However, an individual is not eligible for admission into a~~  
5 ~~drug treatment court if he or she is a violent offender.~~

6           (2) In addition to admission to a drug treatment court under

1 this act, an individual who is eligible for admission pursuant to  
2 this act may also be admitted to a drug treatment court under any  
3 of the following circumstances:

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

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

10 (i) Section 7411 of the public health code, 1978 PA 368, MCL  
11 333.7411.

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

14 (iii) Section 430 of the Michigan penal code, 1931 PA 328, MCL  
15 750.430.

16 (iv) Section 350a of the Michigan penal code, 1931 PA 328, MCL  
17 750.350a.

18 (3) To be admitted to a drug treatment court, an individual  
19 must cooperate with and complete a preadmissions screening and  
20 evaluation assessment and must agree to cooperate with any future  
21 evaluation assessment as directed by the drug treatment court. A  
22 preadmission screening and evaluation assessment ~~shall~~**must** include  
23 all of the following:

24 (a) A complete review of the individual's criminal history,  
25 and a review of whether or not the individual has been admitted to  
26 and has participated in or is currently participating in a drug  
27 treatment court, whether admitted under this act or under section  
28 11 of chapter II of the code of criminal procedure, 1927 PA 175,  
29 MCL 762.11, section 7411 of the public health code, 1978 PA 368,



1 MCL 333.7411, section 4a of chapter IX of the code of criminal  
2 procedure, 1927 PA 175, MCL 769.4a, section 1 of chapter XI of the  
3 code of criminal procedure, 1927 PA 175, MCL 771.1, section 350a of  
4 the Michigan penal code, 1931 PA 328, MCL 750.350a, or section 430  
5 of the Michigan penal code, 1931 PA 328, MCL 750.430, and the  
6 results of the individual's participation. A review of the law  
7 enforcement information network may be considered sufficient for  
8 purposes of this subdivision unless a further review is warranted.  
9 The court may accept other verifiable and reliable information from  
10 the prosecution or defense to complete its review and may require  
11 the individual to submit a statement as to whether or not he or she  
12 has previously been admitted to a drug treatment court and the  
13 results of his or her participation in the prior program or  
14 programs.

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

17 (c) As much as practicable, a complete review of the  
18 individual's history regarding the use or abuse of any controlled  
19 substance or alcohol and an assessment of whether the individual  
20 abuses controlled substances or alcohol or is drug or alcohol  
21 dependent. It is the intent of the legislature that this assessment  
22 should be a clinical assessment as much as practicable.

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

26 (e) For a juvenile, an assessment of the family situation  
27 including, as much as practicable, a comparable review of any  
28 guardians or parents.

29 (4) Except as otherwise permitted in this act, any statement

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

7 (5) The court may request that the department of state police  
8 provide to the court information contained in the law enforcement  
9 information network pertaining to an individual applicant's  
10 criminal history for the purposes of determining an individual's  
11 admission into the drug treatment court and general criminal  
12 history review, including whether the individual has previously  
13 been admitted to and participated in a drug treatment court under  
14 this act, or under section 11 of chapter II of the code of criminal  
15 procedure, 1927 PA 175, MCL 762.11, section 7411 of the public  
16 health code, 1978 PA 368, MCL 333.7411, section 4a of chapter IX of  
17 the code of criminal procedure, 1927 PA 175, MCL 769.4a, section 1  
18 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL  
19 771.1, section 350a of the Michigan penal code, 1931 PA 328, MCL  
20 750.350a, or section 430 of the Michigan penal code, 1931 PA 328,  
21 MCL 750.430, and the results of the individual's participation. The  
22 department of state police shall provide the information requested  
23 by a drug treatment court under this subsection.

**Public Policy Position  
HB 5868****Support****Explanation**

The Committee voted to support HB 5868. The Committee previously voted support HB 5482 with the amendment proposed by the Criminal Jurisprudence & Practice Committee: “to amend MCL 600.1064(1) to align that provision’s language related to drug treatment court eligibility requirements for violent offenders with the language proposed in HB 5482. Amending only one section will create a statutory conflict and unnecessary confusion.” HB 5868 provides this clarification.

**Position Vote:**

Voted For position: 18

Voted against position: 0

Abstained from vote: 0

Did not vote (absence): 9

**Keller Permissibility Explanation:**

The Committee agreed that HB 5868 is *Keller*-permissible because the bill will improve the functioning of the courts by expanding eligibility of drug treatment court to certain violent offenders. The amendment would potentially increase the number of defendants eligible to enter drug treatment courts, thereby improving access to legal services.

**Contact Persons:**

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Lore A. Rogers [rogersl4@michigan.gov](mailto:rogersl4@michigan.gov)

**Public Policy Position  
HB 5868 & HB 5512**

**Support**

**Explanation:**

The Committee voted unanimously (16) to support HB 5868. This bill is the result of a previous recommendation made by the Committee, and supported by the SBM Board of Commissioners, to resolve a conflict between MCL 600.1064 and the statutory language proposed in HBs 5482 and 5484 regarding drug treatment court eligibility.

The Committee voted unanimously (14) to support HB 5512. The legislation would restore parity in the treatment of medical marijuana and other medications (e.g., opioids) in treatment courts and allow treatment court judges to conduct individualized assessments of each potential treatment court participant's needs as it relates to the use of medical marijuana. The existing conflict between the Michigan Medical Marijuana Act, 2008 IL 1, and the treatment court enabling legislation undermines the holistic, individualized approach at the heart of treatment court success.

**Position Vote on HB 5868:**

Voted For position: 14  
Voted against position: 0  
Abstained from vote: 0  
Did not vote (absence): 10

**Position Vote on HB 5512:**

Voted For position: 16  
Voted against position: 0  
Abstained from vote: 0  
Did not vote (absence): 8

**Keller-Permissible Explanation:**

Both HB 5868 and HB 5512 are *Keller*-permissible because they each would affect the functioning of the courts by altering eligibility for participation in treatment courts and the level of discretion available to treatment court judges when considering the admission of a potential treatment court participant. In addition, these bills impact the availability of legal services by potentially expanding access to treatment courts for a larger number of violent offenders and medical marijuana patients.

**Contact Persons:**

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



To: Members of the Public Policy Committee  
Board of Commissioners

From: Governmental Relations Staff

Date: April 1, 2022

Re: HB 5647 – Attorney General Duties Related to Certain Contingency Fee Matters in Class Actions

**Background**

House Bill 5647 would amend the Revised Judicature Act, 1961 PA 236, to add a new Sec. 1467. This section would provide that if the Attorney General receives notice of a proposed settlement in a class action pending in a Michigan or federal court in which the state or any of its officers or departments is a defendant and Michigan residents are class members, the Attorney General shall review any provisions about the payment of attorney fees. The bill also requires the Attorney General to take all steps to participate in any motion or hearing on the approval of attorney fees in such an action and that “[i]n doing so the Attorney General shall consider and advocate on behalf of the best interests of the residents of this state who are class members and shall state on the record whether the request for attorney fees should be approved, rejected, or modified by the courts.” Finally, the bill requires the Attorney General to “take all necessary administrative steps” to “avoid a conflict of interest in performing duties [prescribed in the new section].”

***Keller* Considerations**

Whether or not reasonable attorney fees are available in class actions against the state may have a significant impact on the feasibility and willingness of attorneys to bring such actions on behalf of clients in need of representation. As a result, the provisions of HB 5647 may chill some litigants from bringing meritorious legal claims. This concern is reasonably related to the availability of legal services to society and therefore HB 5647 is *Keller*-permissible.

***Keller* Quick Guide**

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

**Staff Recommendation**

The provisions contained within HB 5647 would potentially have a significant impact on the availability of legal services to society, specifically in class actions against the state. Therefore, HB 5647 is *Keller*-permissible.

# HOUSE BILL NO. 5647

December 15, 2021, Introduced by Rep. Fink and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled  
"Revised judicature act of 1961,"  
(MCL 600.101 to 600.9947) by adding section 1467.

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

1           Sec. 1467. (1) If the attorney general receives notice of a  
2 proposed settlement in a class action pending in a court of this  
3 state or a federal court in which the state or any of its  
4 departments or officers is a defendant and residents of this state  
5 are class members, the attorney general shall review any provisions  
6 in the notice or in the proposed settlement about the payment of

1 attorney fees.

2 (2) After reviewing a notice under subsection (1), the  
3 attorney general shall participate, or if participation is not  
4 automatically allowed, take all steps to participate, in any motion  
5 or hearing on the approval of the attorney fees. In doing so, the  
6 attorney general shall consider and advocate on behalf of the best  
7 interests of the residents of this state who are class members and  
8 shall state on the record whether the request for attorney fees  
9 should be approved, rejected, or modified by the court.

10 (3) If the attorney general represents the state or any of its  
11 departments or officers or another person in a class action to  
12 which this section applies, the attorney general shall take all  
13 necessary administrative steps within the office of the attorney  
14 general to avoid a conflict of interest in performing duties under  
15 subsection (2).

16 (4) As used in this section, "the state or any of its  
17 departments or officers" means that term as defined in section  
18 6419.



**Public Policy Position****HB 5647****Oppose****Explanation:**

The Committee voted to oppose House Bill 5647. The proposed legislation would have a chilling effect on the ability of litigants to effectively access the courts and pursue meritorious claims and will discourage lawyers from making legal services available to certain clients due to uncertainty about the recovery of costs and appropriate fees for legal services.

**Position Vote:**

Voted for position: 22

Voted against position: 0

Abstained from vote: 2

Did not vote (absence): 8

**Keller Permissibility Explanation:**

Because the proposed legislation would create uncertainty that would discourage lawyers from making legal services available to a significant subset of clients, while chilling some litigants from bringing meritorious claims, this bill would impact the availability of legal services to society and is thus *Keller*-permissible.

**Contact Person:**

Lori J. Frank

[lori@markofflaw.com](mailto:lori@markofflaw.com)



To: Members of the Public Policy Committee  
Board of Commissioners

From: Governmental Relations Staff

Date: April 1, 2022

Re: HB 5676 – Representation in Small Claims Division Related to Execution or Other Enforcement of Judgment

**Background**

House Bill 5676 would amend Sec. 8409 of the Revised Judicature Act, 1961 PA 236, to permit a party to an action in the small claims division of the district court to be represented by an attorney “in matters related to the issuance of execution or other enforcement” of a small claims judgment. In all other respects, the general rule that an attorney shall not “take part in the filing, prosecution, or defense of litigation in the small claims division” remains undisturbed. MCL 600.8408.

***Keller* Considerations**

Whether and to what extent representation by counsel is available in the small claims division of a district court will impact both the functioning of the courts and the availability of legal services to litigants. The absence of counsel is one of the distinguishing features of small claims actions, which are designed to expeditiously resolve cases for the recovery of \$6,500 or less. Allowing a party to be represented only at the execution/enforcement stage of a small claims proceeding would alter both the purpose and fairness of the small claims division.

***Keller* Quick Guide**

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

**Staff Recommendation**

Permitting legal representation at the execution/enforcement stage of a small claims proceeding will impact both the functioning of the courts and the availability of legal services. As such, HB 5676 is *Keller*-permissible and may be considered on its merits.

# HOUSE BILL NO. 5676

January 18, 2022, Introduced by Reps. LaFave, Bezotte and Steven Johnson and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled  
"Revised judicature act of 1961,"  
by amending section 8409 (MCL 600.8409), as amended by 1991 PA 192.

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

1           Sec. 8409. (1) ~~Attachment~~**The small claims division shall not**  
2 **issue a writ of attachment** or garnishment ~~shall not issue from the~~  
3 ~~small claims division prior to~~**before** judgment, but **may issue a**  
4 **writ of** execution ~~may issue~~ in the manner prescribed by law, and  
5 the judgment may be enforced in any other manner provided by law  
6 and not prohibited under ~~the provisions of~~ this chapter. **A party to**

1 an action under this chapter may be represented by an attorney at  
2 law in matters related to the issuance of execution or other  
3 enforcement of the judgment.

4 (2) The state court administrator shall prepare instruction  
5 sheets clearly explaining in plain English how, and under what  
6 circumstances, a plaintiff in whose favor a judgment has been  
7 entered may request the court to issue a writ of execution,  
8 attachment, or garnishment to enforce payment of the judgment. A  
9 copy of the instruction sheet ~~shall~~**must** be offered to the  
10 plaintiff at the same time as a copy of the judgment is given to  
11 the plaintiff under section 8410. Additional copies of the  
12 instruction sheets, and forms for writs of garnishment, ~~shall~~**must**  
13 be made available at the office of each clerk and deputy clerk of  
14 the district court.

**Public Policy Position  
HB 5676**

**Oppose**

**Explanation**

The committee voted unanimously (21) to oppose the legislation. While the committee believes that it is generally desirable to provide litigants with greater access to counsel in legal proceedings, allowing a party to be represented only at the execution/enforcement stage of the small claims proceeding undermines the purpose and fairness of the small claims division.

**Position Vote:**

Voted For position: 21

Voted against position: 0

Abstained from vote: 0

Did not vote (absence): 6

**Keller Permissibility Explanation:**

The committee agreed that the legislation is *Keller*-permissible as it will impact the functioning of the courts and the availability of legal services to litigants.

**Contact Persons:**

Katherine L. Marcuz [kmarcuz@sado.org](mailto:kmarcuz@sado.org)

Lore A. Rogers [rogersl4@michigan.gov](mailto:rogersl4@michigan.gov)

**Public Policy Position  
House Bill 5676**

**Oppose**

**Explanation:**

The Committee voted unanimously to oppose House Bill 5676. Permitting legal representation of certain parties only at the execution/enforcement stage of a small claims proceeding undermines the unique nature and purpose of the small claims division.

**Position Vote:**

Voted for position: 19

Voted against position: 0

Abstained from vote: 0

Did not vote (absence): 13

**Keller Permissibility Explanation:**

House Bill 5676 is *Keller*-permissible as the question of whether and to what extent parties may be represented by counsel in small claims proceedings will impact both the functioning of the courts and the availability of legal services to litigants.

**Contact Person:**

Lori J. Frank

[lori@markofflaw.com](mailto:lori@markofflaw.com)



To: Members of the Public Policy Committee  
Board of Commissioners

From: Governmental Relations Staff

Date: April 1, 2022

Re: HB 5680 – Blurring Crime Victim Images in Streamed Court Proceedings

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**Background**

House Bill 5680 would amend the William Van Regenmorter Crime Victim’s Rights Act, 1985 PA 87, to allow a crime victim’s “picture, photograph, drawing, or other visual representation” to be blurred in certain court proceedings made available to the public via streaming on the internet or other means. Similar information and visual representations of a crime victim are currently exempt from disclosure under the Freedom of Information Act, 1976 PA 442. As introduced, blurring is permitted (“may”), but not required (“shall/must”).

***Keller* Considerations**

As Michigan emerges from COVID-19 and weighs what role remote proceedings should have in post-pandemic environment, the parameters within which courts may make their proceedings available on the Internet will have a significant impact on their functioning. Additionally, streaming court proceedings, and whether a victim’s image is blurred in such proceedings, will likely impact the victim’s willingness to cooperate with or seek redress from the judicial system. As such, HB 5680 is reasonably related to both the functioning of the courts and availability of legal services and is therefore *Keller*-permissible.

***Keller* Quick Guide**

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

**Staff Recommendation**

Whether a crime victim's image may be blurred when court proceedings are streamed on the internet or otherwise made available is a question that is reasonably related to both the functioning of the courts and availability of legal services. HB 5680 is therefore *Keller*-permissible.



# HOUSE BILL NO. 5680

January 18, 2022, Introduced by Reps. Borton and Filler and referred to the Committee on Judiciary.

A bill to amend 1985 PA 87, entitled "William Van Regenmorter crime victim's rights act," by amending sections 8, 38, and 68 (MCL 780.758, 780.788, and 780.818), as amended by 2012 PA 457.

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

1           Sec. 8. (1) Based upon the victim's reasonable apprehension of  
2 acts or threats of physical violence or intimidation by the  
3 defendant or at defendant's direction against the victim or the  
4 victim's immediate family, the prosecuting attorney may move that

1 the victim or any other witness not be compelled to testify at  
2 pretrial proceedings or at trial for purposes of identifying the  
3 victim as to the victim's address, place of employment, or other  
4 personal identification without the victim's consent. A hearing on  
5 the motion ~~shall~~**must** be in camera.

6 (2) The work address and address of the victim ~~shall~~**must** not  
7 be in the court file or ordinary court documents unless contained  
8 in a transcript of the trial or it is used to identify the place of  
9 the crime. The work telephone number and telephone number of the  
10 victim ~~shall~~**must** not be in the court file or ordinary court  
11 documents except as contained in a transcript of the trial.

12 (3) Under section 24 of article I of the state constitution of  
13 1963, guaranteeing to crime victims the right to be treated with  
14 respect for their dignity and privacy, ~~all of the following~~  
15 information and visual representations of a victim ~~are exempt from~~  
16 ~~disclosure under the freedom of information act, 1976 PA 442, MCL~~  
17 ~~15.231 to 15.246~~**are subject to the following:**

18 (a) The home address, home telephone number, work address, and  
19 work telephone number of the victim **are exempt from disclosure**  
20 **under the freedom of information act, 1976 PA 442, MCL 15.231 to**  
21 **15.246**, unless the address is used to identify the place of the  
22 crime.

23 (b) A picture, photograph, drawing, or other visual  
24 representation, including any film, videotape, or digitally stored  
25 image of the victim, **are exempt from disclosure under the freedom**  
26 **of information act, 1976 PA 442, MCL 15.231 to 15.246**, and, if the  
27 picture, photograph, drawing, or other visual representation is  
28 from a court proceeding that is made available to the public  
29 through streaming on the internet or other means, the picture,

1 **photograph, drawing, or visual representation may be blurred.**

2 (c) The following information concerning a victim of child  
3 abuse, criminal sexual conduct, assault with intent to commit  
4 criminal sexual conduct, or a similar crime who was less than 18  
5 years of age when the crime was committed **is exempt from disclosure**  
6 **under the freedom of information act, 1976 PA 442, MCL 15.231 to**  
7 **15.246:**

8 (i) The victim's name and address.

9 (ii) The name and address of an immediate family member or  
10 relative of the victim, who has the same surname as the victim,  
11 other than the name and address of the accused.

12 (iii) Any other information that would tend to reveal the  
13 identity of the victim, including a reference to the victim's  
14 familial or other relationship to the accused.

15 (4) Subsection (3) does not preclude the release of  
16 information to a victim advocacy organization or agency for the  
17 purpose of providing victim services.

18 Sec. 38. (1) Based upon the victim's reasonable apprehension  
19 of acts or threats of physical violence or intimidation by the  
20 juvenile or at the juvenile's direction against the victim or the  
21 victim's immediate family, the prosecuting attorney may move or, in  
22 the absence of a prosecuting attorney, the victim may request that  
23 the victim or any other witness not be compelled to testify at any  
24 court hearing for purposes of identifying the victim as to the  
25 victim's address, place of employment, or other personal  
26 identification without the victim's consent. A hearing on the  
27 motion ~~shall~~**must** be in camera.

28 (2) Under section 24 of article I of the state constitution of  
29 1963, guaranteeing to crime victims the right to be treated with

1 respect for their dignity and privacy, ~~all of the following~~  
2 information and visual representations of a victim ~~are exempt from~~  
3 ~~disclosure under the freedom of information act, 1976 PA 442, MCL~~  
4 ~~15.231 to 15.246~~: **are subject to the following:**

5 (a) The home address, home telephone number, work address, and  
6 work telephone number of the victim **are exempt from disclosure**  
7 **under the freedom of information act, 1976 PA 442, MCL 15.231 to**  
8 **15.246.**

9 (b) A picture, photograph, drawing, or other visual  
10 representation, including any film, videotape, or digitally stored  
11 image of the victim, **are exempt from disclosure under the freedom**  
12 **of information act, 1976 PA 442, MCL 15.231 to 15.246, and, if the**  
13 **picture, photograph, drawing, or other visual representation is**  
14 **from a court proceeding that is made available to the public**  
15 **through streaming on the internet or other means, the picture,**  
16 **photograph, drawing, or visual representation may be blurred.**

17 (c) The following information concerning a victim of child  
18 abuse, criminal sexual conduct, assault with intent to commit  
19 criminal sexual conduct, or a similar crime who was less than 18  
20 years of age when the crime was committed **is exempt from disclosure**  
21 **under the freedom of information act, 1976 PA 442, MCL 15.231 to**  
22 **15.246:**

23 (i) The victim's name and address.

24 (ii) The name and address of an immediate family member or  
25 relative of the victim, who has the same surname as the victim,  
26 other than the name and address of the accused.

27 (iii) Any other information that would tend to reveal the  
28 identity of the victim, including a reference to the victim's  
29 familial or other relationship to the accused.

1 (3) Subsection (2) does not preclude the release of  
 2 information to a victim advocacy organization or agency for the  
 3 purpose of providing victim services.

4 Sec. 68. (1) Based upon the victim's reasonable apprehension  
 5 of acts or threats of physical violence or intimidation by the  
 6 defendant or at defendant's direction against the victim or the  
 7 victim's immediate family, the prosecuting attorney may move that  
 8 the victim or any other witness not be compelled to testify at  
 9 pretrial proceedings or at trial for purposes of identifying the  
 10 victim as to the victim's address, place of employment, or other  
 11 personal identification without the victim's consent. A hearing on  
 12 the motion ~~shall~~**must** be in camera.

13 (2) Under section 24 of article I of the state constitution of  
 14 1963, guaranteeing to crime victims the right to be treated with  
 15 respect for their dignity and privacy, ~~all of the following~~  
 16 information and visual representations of a victim are ~~exempt from~~  
 17 ~~disclosure under the freedom of information act, 1976 PA 442, MCL~~  
 18 ~~15.231 to 15.246:~~**subject to the following:**

19 (a) The home address, home telephone number, work address, and  
 20 work telephone number of the victim **are exempt from disclosure**  
 21 **under the freedom of information act, 1976 PA 442, MCL 15.231 to**  
 22 **15.246.**

23 (b) A picture, photograph, drawing, or other visual  
 24 representation, including any film, videotape, or digitally stored  
 25 image of the victim, **are exempt from disclosure under the freedom**  
 26 **of information act, 1976 PA 442, MCL 15.231 to 15.246, and, if the**  
 27 **picture, photograph, drawing, or other visual representation is**  
 28 **from a court proceeding that is made available to the public**  
 29 **through streaming on the internet or other means, the picture,**

1 **photograph, drawing, or visual representation may be blurred.**

2 (c) The following information concerning a victim of child  
3 abuse, criminal sexual conduct, assault with intent to commit  
4 criminal sexual conduct, or a similar crime who was less than 18  
5 years of age when the crime was committed **is exempt from disclosure**  
6 **under the freedom of information act, 1976 PA 442, MCL 15.231 to**  
7 **15.246:**

8 (i) The victim's name and address.

9 (ii) The name and address of an immediate family member or  
10 relative of the victim, who has the same surname as the victim,  
11 other than the name and address of the accused.

12 (iii) Any other information that would tend to reveal the  
13 identity of the victim, including a reference to the victim's  
14 familial or other relationship to the accused.

15 (3) Subsection (2) does not preclude the release of  
16 information to a victim advocacy organization or agency for the  
17 purpose of providing victim services.

# Legislative Analysis

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## **ALLOW VISUAL REPRESENTATIONS OF CRIME VICTIMS TO BE BLURRED IN STREAMED COURT PROCEEDINGS**

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

**House Bill 5680 as introduced**  
**Sponsor: Rep. Ken Borton**  
**Committee: Judiciary**  
**Complete to 1-31-22**

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

### **SUMMARY:**

House Bill 5680 would amend the William Van Regenmorter Crime Victim's Rights Act to allow a crime victim's image to be blurred in certain court proceedings made available to the public.

The act currently exempts certain information and visual representations of a crime victim from disclosure under the Freedom of Information Act (FOIA), including a picture, photograph, drawing, or other visual representation of the victim, such as a film, videotape, or digitally stored image.

The bill would additionally allow such a picture, photograph, drawing, or other visual representation to be blurred if it is from a court proceeding that is made available to the public through streaming on the internet or other means.

MCL 780.758 et seq.

### **FISCAL IMPACT:**

House Bill 5680 would have an indeterminate fiscal impact on local units of government. According to the State Court Administrative Office, local courts would have to purchase and deploy software that would enable courts to blur victims' faces while on Zoom. This would also require a designated staff person to actively manage the filter. The costs for the software are not known at this time.

Legislative Analyst: Emily S. Smith  
Fiscal Analyst: Robin Risko

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

**Public Policy Position  
HB 5680 & HB 5681**

**Support HB 5680 with Amendment  
Support HB 5681**

**Explanation**

The committee voted unanimously (18) to support HB 5680 with an amendment to provide that while the court *may* blur the image of a victim that is made available to the public through streaming on the internet or other means, it *must* do so if requested by the victim. Blurring a picture, photograph, drawing, or other visual representation of a victim will help ensure that crime victims' right "to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process" is maintained as it becomes more common for court proceedings to be streamed or otherwise made available to the general public on the internet. The committee believes that courts have already invested in online platforms in an effort to increase access to the courts to litigants and the general public and that additional protection for crime victims is a necessary part of continued use of remote hearings, streaming, or online access to recorded court proceedings.

The committee also voted unanimously (18) to support HB 5681 because it will provide additional options for crime victims' participation in the legal process without compromising defendant's rights. Remote victim impact statements are more protective of victims who are afraid of seeing the defendant while offering their victim impact statement.

**Position Vote:**

Voted For position: 18

Voted against position: 0

Abstained from vote: 0

Did not vote (absence): 9

**Keller Permissibility Explanation:**

The committee agreed that this legislation is *Keller*-permissible because it increases access to the courts and would improve the functioning of the courts, particularly remote court hearings and streaming of court proceedings.

**Contact Persons:**

Katherine L. Marcuz [kmarcuz@sado.org](mailto:kmarcuz@sado.org)

Lore A. Rogers [rogersl4@michigan.gov](mailto:rogersl4@michigan.gov)



**Public Policy Position  
House Bill 5680**

**No Position; Recommend Amendment**

**Explanation:**

The Committee voted to take no position on House Bill 5680. Should the legislation move forward, the Committee recommends that it be amended to permit unredacted copies of a covered picture, photograph, drawing, or other visual representation to be released with prior written consent from the crime victim.

**Position Vote:**

Voted for position: 17

Voted against position: 2

Abstained from vote: 0

Did not vote (absence): 13

**Keller Permissibility Explanation:**

The proposed legislation will impact how and to what extent courts utilize virtual proceedings and online streaming of court proceedings and what procedures are used in these settings. These issues impact the daily operation of court proceedings and, as such, they are reasonably related to the functioning of the courts and therefore *Keller*-permissible.

**Contact Person:**

Lori J. Frank

[lori@markofflaw.com](mailto:lori@markofflaw.com)

**Public Policy Position  
HB 5680**

**Oppose**

**Explanation:**

The Committee voted to oppose HB 5680. The Committee was concerned about the technological feasibility and cost of the legislation and the disparate treatment the bill would allow between victims, defendants, and other participants in court proceedings. In addition, the Committee felt that the legislation implicated a number of larger questions about the continued use of online court proceedings in Michigan that cannot be adequately addressed in this legislation at this time. How these issues are addressed will be significantly impacted, for example, by policy questions presently being considered by the Supreme Court in various administrative proposals. Until there is greater clarity about the scope and parameters of online proceedings in a post-pandemic environment, the Committee does not believe it is appropriate for the legislature to act on this legislation.

**Position Vote:**

Voted For position: 13

Voted against position: 3

Abstained from vote: 0

Did not vote (absence): 8

**Keller-Permissible Explanation:**

The parameters within which courts may make their proceedings available on the Internet will have a significant impact on their functioning. Additionally, streaming court proceedings, and whether a victim's image is blurred in such proceedings, will likely impact the victim's willingness to cooperate with or seek redress from the judicial system. As such, HB 5680 is reasonably related to both the functioning of the courts and availability of legal services and is therefore *Keller*-permissible.

**Contact Persons:**

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

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



To: Members of the Public Policy Committee  
Board of Commissioners

From: Governmental Relations Staff

Date: April 1, 2022

Re: HB 5681 – Remote Victim Impact Statements

**Background**

House Bill 5681 would amend the William Van Regenmorter Crime Victim’s Rights Act, 1985 PA 87, to permit a crime victim to elect to provide an oral impact statement remotely, as opposed to appearing in person at the sentencing of a defendant.

***Keller* Considerations**

Giving victims of crime the option to elect between providing an oral impact statement either in-person or remotely will necessarily increase the means by which such victims can access courts, at least at the sentencing stage of the proceeding, and impact the functioning of the courts. Whether a remote option is available is therefore reasonably related to both the functioning of the courts and the availability of legal services to society. HB 5681 is therefore *Keller*-permissible.

***Keller* Quick Guide**

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

**Staff Recommendation**

Whether victim impact statements may be provided remotely is reasonably related to both the functioning of the courts and the availability of legal services to society. As such, HB 5681 is *Keller*-permissible and may be considered on its merits.

# HOUSE BILL NO. 5681

January 18, 2022, Introduced by Reps. VanWoerkom and Filler and referred to the Committee on Judiciary.

A bill to amend 1985 PA 87, entitled "William Van Regenmorter crime victim's rights act," by amending sections 15, 43, and 75 (MCL 780.765, 780.793, and 780.825), as amended by 2018 PA 153.

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

1           Sec. 15. (1) The victim has the right to appear and make an  
2 oral impact statement at the sentencing of the defendant. If the  
3 victim is physically or emotionally unable to make the oral impact  
4 statement, the victim may designate any other person 18 years of  
5 age or older who is neither the defendant nor incarcerated to make

1 the statement on his or her behalf. The other person need not be an  
2 attorney. **The victim may elect to remotely provide the oral impact**  
3 **statement under this section.**

4 (2) Unless the court has determined, in its discretion, that  
5 the defendant is behaving in a disruptive manner or presents a  
6 threat to the safety of any individuals present in the courtroom,  
7 the defendant must be physically present in the courtroom at the  
8 time a victim makes an oral impact statement under subsection (1).  
9 In making its determination under this subsection, the court may  
10 consider any relevant statement provided by the victim regarding  
11 the defendant being physically present during that victim's oral  
12 impact statement. This subsection applies to cases in which the  
13 sentencing of the defendant occurs ~~on or after the effective date~~  
14 ~~of the amendatory act that added this subsection.~~**May 22, 2018.**

15 (3) ~~The 2018 amendatory act that PA 153, which~~ amended this  
16 section and sections 43 and 75, ~~shall be known and may be cited as~~  
17 the "Rebekah Bletsch law".

18 Sec. 43. (1) The victim has the right to appear and make an  
19 oral impact statement at the juvenile's disposition or sentencing.  
20 If the victim is physically or emotionally unable to make the oral  
21 impact statement, the victim may designate any other person 18  
22 years of age or older who is neither the defendant nor incarcerated  
23 to make the statement on his or her behalf. The other person need  
24 not be an attorney. **The victim may elect to remotely provide the**  
25 **oral impact statement under this section.**

26 (2) ~~Upon~~**On** request, ~~the victim shall be notified by the~~  
27 prosecuting attorney, or, ~~pursuant to~~ **in accordance with** an  
28 agreement under section 48a, the court, **shall notify the victim** of  
29 the disposition of the juvenile's offense not more than 30 days

1 after the disposition is made.

2 (3) Unless the court has determined, in its discretion, that  
3 the juvenile is behaving in a disruptive manner or presents a  
4 threat to the safety of any individuals present in the courtroom,  
5 the juvenile must be physically present in the courtroom at the  
6 time a victim makes an oral impact statement under subsection (1).  
7 In making its determination under this subsection, the court may  
8 consider any relevant statement provided by the victim regarding  
9 the juvenile being physically present during that victim's oral  
10 impact statement. This subsection applies to cases in which the  
11 sentencing of the juvenile occurs ~~on or after the effective date of~~  
12 ~~the amendatory act that added this subsection.~~ **May 22, 2018.**

13 (4) ~~The 2018 amendatory act that~~ **PA 153, which** amended this  
14 section and sections 15 and 75, ~~shall be known and~~ may be cited as  
15 the "Rebekah Bletsch law".

16 Sec. 75. (1) If no presentence report is prepared, the court  
17 shall notify the prosecuting attorney of the date and time of  
18 sentencing at least 10 days ~~prior to~~ **before** the sentencing. The  
19 victim has the right to submit a written impact statement and has  
20 the right to appear and make an oral impact statement at the  
21 sentencing of the defendant. If the victim is physically or  
22 emotionally unable to make the oral impact statement, the victim  
23 may designate any other person 18 years of age or older who is  
24 neither the defendant nor incarcerated to make the statement on his  
25 or her behalf. The other person need not be an attorney. **The victim**  
26 **may elect to remotely provide the oral impact statement under this**  
27 **section.** The court shall consider the victim's statement in  
28 imposing sentence on the defendant.

29 (2) Unless the court has determined, in its discretion, that

1 the defendant is behaving in a disruptive manner or presents a  
2 threat to the safety of any individuals present in the courtroom,  
3 the defendant must be physically present in the courtroom at the  
4 time a victim makes an oral impact statement under subsection (1).  
5 In making its determination under this subsection, the court may  
6 consider any relevant statement provided by the victim regarding  
7 the defendant being physically present during that victim's oral  
8 impact statement. This subsection applies to cases in which the  
9 sentencing of the defendant occurs ~~on or after the effective date~~  
10 ~~of the amendatory act that added this subsection.~~ **May 22, 2018.**

11 (3) ~~The 2018 amendatory act that~~ **PA 153, which** amended this  
12 section and sections 15 and 43, ~~shall be known and may be cited as~~  
13 the "Rebekah Bletsch law".

# Legislative Analysis

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## **ALLOW VICTIM ORAL IMPACT STATEMENT TO BE PROVIDED REMOTELY**

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

**House Bill 5681 as introduced**  
**Sponsor: Rep. Greg VanWoerkom**  
**Committee: Judiciary**  
**Complete to 1-29-22**

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

### **SUMMARY:**

House Bill 5681 would amend the William Van Regenmorter Crime Victim's Rights Act to allow a victim impact statement to be made remotely.

Currently under the act, a victim has the right to appear and make an oral impact statement at the sentencing of the defendant or at the juvenile's disposition or sentencing. If the victim is physically or emotionally unable to make the oral impact statement, he or she may designate an adult (except for the defendant or someone who is incarcerated) to make the statement on his or her behalf. The defendant or juvenile must be physically present in the courtroom when a victim makes an oral impact statement, unless the court determines that the defendant or juvenile is disruptive or a threat to anyone's safety. In making this determination, the court may consider any relevant statement provided by a victim as to the defendant's or juvenile's physical presence during that victim's oral impact statement.

The bill would amend the above provisions to additionally allow the victim to choose to provide the oral impact statement remotely.

MCL 780.795 et seq.

### **FISCAL IMPACT:**

House Bill 5681 will have no fiscal impact on the state or on local units of government.

Legislative Analyst: Emily S. Smith  
Fiscal Analysts: Sydney Brown  
Robin Risko

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.



**Public Policy Position  
HB 5680 & HB 5681**

**Support HB 5680 with Amendment  
Support HB 5681**

**Explanation**

The committee voted unanimously (18) to support HB 5680 with an amendment to provide that while the court *may* blur the image of a victim that is made available to the public through streaming on the internet or other means, it *must* do so if requested by the victim. Blurring a picture, photograph, drawing, or other visual representation of a victim will help ensure that crime victims' right "to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process" is maintained as it becomes more common for court proceedings to be streamed or otherwise made available to the general public on the internet. The committee believes that courts have already invested in online platforms in an effort to increase access to the courts to litigants and the general public and that additional protection for crime victims is a necessary part of continued use of remote hearings, streaming, or online access to recorded court proceedings.

The committee also voted unanimously (18) to support HB 5681 because it will provide additional options for crime victims' participation in the legal process without compromising defendant's rights. Remote victim impact statements are more protective of victims who are afraid of seeing the defendant while offering their victim impact statement.

**Position Vote:**

Voted For position: 18

Voted against position: 0

Abstained from vote: 0

Did not vote (absence): 9

**Keller Permissibility Explanation:**

The committee agreed that this legislation is *Keller*-permissible because it increases access to the courts and would improve the functioning of the courts, particularly remote court hearings and streaming of court proceedings.

**Contact Persons:**

Katherine L. Marcuz [kmarcuz@sado.org](mailto:kmarcuz@sado.org)

Lore A. Rogers [rogersl4@michigan.gov](mailto:rogersl4@michigan.gov)

**Public Policy Position  
HB 5681**

**Support**

**Explanation:**

The Committee voted unanimously (16) to support HB 5681. Permitting crime victims or their representatives to make victim impact statements remotely will make this stage of a criminal proceeding more flexible and convenient for victims, and thereby encourage their full participation in such proceedings.

**Position Vote:**

Voted For position: 16

Voted against position: 0

Abstained from vote: 0

Did not vote (absence): 8

**Keller-Permissible Explanation:**

Permitting victim impact statements to be made remotely will impact the manner in which this stage of a criminal proceeding is conducted. As a result, HB 5681 is reasonably related to the functioning of the courts and therefore *Keller*-permissible.

**Contact Persons:**

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

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



To: Members of the Public Policy Committee  
Board of Commissioners

From: Governmental Relations Staff

Date: April 1, 2022

Re: HB 5758 – Eliminate Sunset on Electronic Signing/Witnessing of Certain Documents

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### **Background**

House Bill 5758 would amend Sec. 1202 of the Estates and Protected Individuals Code, 1998 PA 386, to eliminate the sunset (July 1, 2021) of the authority to sign and witness certain documents using 2-way real-time audiovisual technology under specified requirements.

In April 2020, Governor Whitmer issued the first of what would become a series of executive orders authorizing and encouraging the use of electronic signatures and remote notarization and witnessing during the COVID-19 pandemic. See, e.g. Executive Order 2020-41. In October 2020, the Michigan Supreme Court ruled that the Emergency Powers of the Governor Act, 1945 PA 302, the principal legal authority undergirding Governor Whitmer's pandemic executive orders, was an unconstitutional delegation of legislative authority and that most of the Governor's orders had no force or effect as of April 30, 2020. *In re Certified Questions From United States Dist Ct*, 506 Mich 332; 958 NW2d 1 (2020). The Legislature ultimately responded to the Court's ruling by introducing a series of bills aimed at codifying certain provisions originally contained in the Governor's executive orders. Those included HB 6294, which added Sec. 1202 to the Estates and Protected Individuals Code, 1998 PA 386, and statutorily authorized the remote signing and witnessing of certain documents. 2020 HB 6294; 2020 PA 246. The initial legislation contained a sunset of January 1, 2021, which was subsequently extended to July 1, 2021. 2020 SB 1189; 2020 PA 338. Rather than further extend the statutory sunset, HB 5758 would simply remove the sunset and allow remote signing and witnessing to continue in perpetuity under the requirements of the Act.

### ***Keller* Considerations**

Documents governed by the provisions of Estates and Protected Individuals Code, 1998 PA 386, are central to a number of areas of legal practice and litigation. Whether these documents may be executed remotely and under what requirements will have a potentially significant impact on the availability of any number of legal services. As such, legislation that would permit remote witnessing to continue is reasonably related to the availability of legal services to society and is therefore *Keller*-permissible.

*Keller* Quick Guide

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

**Staff Recommendation**

Whether and under what requirements remote witnessing of documents is permitted to continue is reasonably related to the availability of legal services to society. Therefore, HB 5758 is *Keller*-permissible and may be considered on its merits.

# HOUSE BILL NO. 5758

February 16, 2022, Introduced by Rep. Lightner and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled  
"Estates and protected individuals code,"  
by amending section 1202 (MCL 700.1202), as amended by 2020 PA 338.

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

1           Sec. 1202. (1) Notwithstanding anything in this act to the  
2 contrary, the act of signing or witnessing the execution of a  
3 document or instrument under this act, including, but not limited  
4 to, a will under article II, a disclaimer under section 2903, a  
5 funeral representative designation, a parental appointment of a

1 guardian of a minor under section 5202, an appointment of a  
2 guardian of a legally incapacitated individual under section 5301,  
3 a durable power of attorney under section 5501, or a patient  
4 advocate designation is satisfied by use of a 2-way real-time  
5 audiovisual technology if all of the following requirements are  
6 met:

7 (a) The 2-way real-time audiovisual technology must allow  
8 direct, contemporaneous interaction by sight and sound between the  
9 signatory and the witnesses.

10 (b) The interaction between the signatory and the witnesses  
11 must be recorded and preserved by the signatory or the signatory's  
12 designee for a period of at least 3 years.

13 (c) The signatory must affirmatively represent either that the  
14 signatory is physically situated in this state, or that the  
15 signatory is physically located outside the geographic boundaries  
16 of this state and that either of the following applies:

17 (i) The document or instrument is intended for filing with or  
18 relates to a matter before a court, governmental entity, public  
19 official, or other entity subject to the jurisdiction of this  
20 state.

21 (ii) The document or instrument involves property located in  
22 the territorial jurisdiction of this state or a transaction  
23 substantially connected to this state.

24 (d) The signatory must affirmatively state during his or her  
25 interaction with the witnesses on the 2-way real-time audiovisual  
26 technology what document they are executing.

27 (e) Each title page and signature page of the document or  
28 instrument being witnessed must be shown to the witnesses on the 2-  
29 way real-time audiovisual technology in a manner clearly legible to

1 the witnesses, and every page of the document or instrument must be  
2 numbered to reflect both the page number of the document or  
3 instrument and the total number of pages of the document or  
4 instrument.

5 (f) Each act of signing the document or instrument must be  
6 captured sufficiently up close on the 2-way real-time audiovisual  
7 technology for the witnesses to observe.

8 (g) The signatory or the signatory's designee must transmit by  
9 facsimile, mail, or electronic means a legible copy of the entire  
10 signed document or instrument directly to the witnesses within 72  
11 hours after it is executed.

12 (h) Within 72 hours after receipt, the witnesses must sign the  
13 transmitted copy of the document or instrument as a witness and  
14 return the signed copy of the document or instrument to the  
15 signatory or the signatory's designee by facsimile, mail, or  
16 electronic means.

17 (i) The document or instrument is either of the following:

18 (i) In writing.

19 (ii) A record that is readable as text at the time of signing.

20 (2) The rights or interests of a person that relies in good  
21 faith and without actual notice that a document or instrument  
22 described in subsection (1) was executed on or after April 30,  
23 2020, ~~and before July 1, 2021,~~ but was not executed in accordance  
24 with subsection (1) are not impaired, challenged, or terminated on  
25 that basis alone.

26 (3) Compliance with this section is presumed. A person  
27 challenging a document or instrument described in and executed in  
28 accordance with subsection (1) may overcome the presumption by  
29 establishing, by clear and convincing evidence, that the signatory

1 or a witness intentionally failed to comply with the requirements  
2 under subsection (1).

3 (4) This section applies to a document or instrument described  
4 in subsection (1) executed on or after April 30, 2020. ~~and before~~  
5 ~~July 1, 2021.~~

6 (5) As used in this section:

7 (a) "Electronic" means relating to technology having  
8 electrical, digital, magnetic, wireless, optical, electromagnetic,  
9 or similar capabilities.

10 (b) "Record" means information that is inscribed on a tangible  
11 medium or that is stored in an electronic or other medium and is  
12 retrievable in perceivable form.

13 (c) "Sign" or "signing" means with present intent to  
14 authenticate or adopt a record to do either of the following:

15 (i) Execute or adopt a tangible symbol.

16 (ii) Affix to or logically associate with the record an  
17 electronic symbol or process.





To: Members of the Public Policy Committee  
Board of Commissioners

From: Governmental Relations Staff

Date: April 1, 2022

Re: HB 5759 – Remote and Electronic Notarization

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### **Background**

House Bill 5759 would amend the Michigan Law on Notarial Acts, 2003 PA 238, to modify and expand the provisions permitting the use of communication technology to perform remote and electronic notarizations.

The bill defines “communication technology,” in relevant part, as an electronic device or profess that allows a notary public and a remotely located individual to communicate with each other simultaneously by sight and sound and allows the notary public to record and store an audio or visual recording of a notarial act performed remotely.

The bill would permit a notary public to select one or more remote electronic notarization platforms to perform notarial acts and would prohibit a person from requiring a notary public to perform a notarial act remotely with a platform that the notary has not selected. It also specifies the process by which a provider or user of an electronic notarization system or a notary public may request that the Secretary of State and the Director of the Department of Technology, Management, and Budget approve the use of an electronic notarization system and create the standards for such systems. The bill outlines conditions under which a notarial act may be performed remotely using communication technology other than an approved electronic notarization platform. In order for this provision to apply, the notary public must be an attorney licensed to practice law in Michigan (or under the supervision of an attorney licensed to practice law in Michigan) or an employee or authorized agent of a financial services provider, as defined in the bill, under specified conditions.

Finally, the bill would repeal MCL 55.286d retroactive to July 1, 2021. That section outlined the applicability of the remote notarization provisions that were originally adopted by 2020 PA 249 and which were to expire after June 30, 2021. In other words, the bill would make remote notarization a permanent tool, rather than a pandemic accommodation.

In April 2020, Governor Whitmer issued the first of what would become a series of executive orders authorizing and encouraging the use of electronic signatures and remote notarization and witnessing during the COVID-19 pandemic. See, e.g. Executive Order 2020-41. In October 2020, the Michigan Supreme Court ruled that the Emergency Powers of the Governor Act, 1945 PA 302, the principal legal authority undergirding Governor Whitmer’s pandemic executive orders, was an unconstitutional

delegation of legislative authority and that most of the Governor’s orders had no force or effect as of April 30, 2020. *In re Certified Questions From United States Dist Ct*, 506 Mich 332; 958 NW2d 1 (2020). The Legislature ultimately responded to the Court’s ruling by introducing a series of bills aimed at codifying certain provisions originally contained in the Governor’s executive orders. Those bills included House Bill 6297, which statutorily authorized remote notarization with a sunset of December 31, 2020. 2020 HB 6297; 2020 PA 249. The sunset of that legislation was subsequently extended to June 30, 2021. 2020 HB 1187; 2020 PA 336. As noted above, rather than further extend the statutory sunset, HB 5759 would simply remove the sunset and allow remote notarization to continue in perpetuity under the requirements of the Act.

***Keller* Considerations**

Notarization is essential to a number of areas of legal practice and in litigation. The permissibility of remote notarization will have a potentially significant impact on the availability of any number of legal services. As such, legislation that would permit and expand remote notarization is reasonably related to the availability of legal services to society and is therefore *Keller*-permissible.

***Keller* Quick Guide**

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

**Staff Recommendation**

Whether and under what requirements remote notarization is permitted to continue is reasonably related to the availability of legal services to society. Therefore, HB 5759 is *Keller*-permissible and may be considered on its merits.

# HOUSE BILL NO. 5759

February 16, 2022, Introduced by Rep. Lightner and referred to the Committee on Judiciary.

A bill to amend 2003 PA 238, entitled "Michigan law on notarial acts," by amending sections 3, 5, 26, 26a, 26b, and 27 (MCL 55.263, 55.265, 55.286, 55.286a, 55.286b, and 55.287), sections 3, 26, and 26b as amended by 2020 PA 249 and sections 5 and 27 as amended and section 26a as added by 2018 PA 360, and by adding section 26e; and to repeal acts and parts of acts.

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

**1**           Sec. 3. As used in this act:

1           (a) "Acknowledgment" means a declaration by an individual in  
2 the presence of a notary public that he or she has signed a record  
3 for the purposes stated in the record and, if the record is signed  
4 in a representative capacity, that he or she signed the record with  
5 the proper authority and signed it as the act of the person  
6 identified in the record.

7           (b) "Cancellation" means the nullification of a notary public  
8 commission due to an error or defect or because the notary public  
9 is no longer entitled to the commission.

10           (c) **"Communication technology" means an electronic device or**  
11 **process that does 1 or both of the following:**

12           (i) **Allows a notary public and a remotely located individual,**  
13 **including an individual for whom the notarial act is being**  
14 **performed or a witness to the notarial act or to a legal**  
15 **transaction covered under section 26e, to communicate with each**  
16 **other simultaneously by sight and sound, and allows the notary**  
17 **public to record and store an audio or visual recording of the**  
18 **notarial act as required under section 26b.**

19           (ii) **If necessary, and consistent with other applicable law,**  
20 **facilitates communication between a notary public and a remotely**  
21 **located individual who has a vision, hearing, or speech impairment.**

22           (d) ~~(e)~~—"Credential analysis" means a process or service by  
23 which a third party affirms the validity of an identity document  
24 described ~~in~~ **under** section 25(6)(c) through a review of public and  
25 proprietary data sources conducted remotely.

26           (e) ~~(d)~~—"Department" means the department of state.

27           (f) ~~(e)~~—"Electronic" means relating to technology that has  
28 electrical, digital, magnetic, wireless, optical, electromagnetic,  
29 or similar capabilities.

1           **(g)** ~~(f)~~—"Electronic notarization system" means a set or system  
2 of applications, programs, hardware, software, or technologies  
3 designed to enable a notary public to perform electronic  
4 notarizations.

5           **(h)** ~~(g)~~—"Electronic signature" means an electronic sound,  
6 symbol, or process attached to or logically associated with a  
7 record and executed or adopted by an individual with the intent to  
8 sign the record.

9           **(i)** "Financial institution" means any of the following  
10 entities:

11           **(i)** A federal or state chartered bank, credit union, savings  
12 bank, or savings and loan institution.

13           **(ii)** An entity of the federally chartered farm credit system.

14           **(iii)** A subsidiary of an entity described in subparagraph **(i)** or  
15 **(ii)** that is wholly owned by that entity.

16           **(iv)** A credit union service organization owned in whole or in  
17 part by 1 or more federal or state chartered credit unions.

18           **(j)** "Financial services provider" means a financial  
19 institution, licensed mortgage lender, licensed real estate broker,  
20 or title insurance company.

21           **(k)** ~~(h)~~—"Identity proofing" means a process or service by  
22 which a third party provides a notary public with a reasonable  
23 means to verify the identity of an individual through a review of  
24 personal information from public or proprietary data sources  
25 conducted remotely.

26           **(l)** ~~(i)~~—"Information" includes data, text, images, sounds,  
27 codes, computer programs, software, and databases.

28           **(m)** ~~(j)~~—"In a representative capacity" means any of the  
29 following:

1 (i) For and on behalf of a corporation, limited liability  
2 company, partnership, trust, association, or other legal entity as  
3 an authorized officer, manager, agent, partner, trustee, or other  
4 representative of the entity.

5 (ii) As a public officer, personal representative, guardian, or  
6 other representative in the capacity recited in the record.

7 (iii) As an attorney in fact for a principal.

8 (iv) In any other capacity as an authorized representative of  
9 another person.

10 (n) ~~(k)~~ "In the presence of" means ~~either~~ **1 or both** of the  
11 following:

12 (i) In the same physical location with and close enough to see,  
13 hear, communicate with, and exchange tangible identification  
14 credentials with another individual.

15 (ii) Interacting with another individual by means of ~~audio and~~  
16 ~~visual~~ communication technology that is part of a remote electronic  
17 notarization platform approved under section 26b or ~~2-way real-time~~  
18 ~~audiovisual~~ **communication** technology that meets the requirements  
19 under section ~~26e~~. **26e**.

20 Sec. 5. As used in this act:

21 (a) "Jurat" means a certification by a notary public that a  
22 signer, whose identity is personally known to the notary public or  
23 proven on the basis of satisfactory evidence, has made in the  
24 presence of the notary public a voluntary signature and taken an  
25 oath or affirmation vouching for the truthfulness of the signed  
26 record.

27 (b) "Lineal ancestor" means an individual who is in the direct  
28 line of ascent including, but not limited to, a parent or  
29 grandparent.

1 (c) "Lineal descendant" means an individual who is in the  
2 direct line of descent including, but not limited to, a child or  
3 grandchild.

4 (d) "Notarial act" means any of the following:

5 (i) An act, whether performed with respect to a tangible or  
6 electronic record, that a notary public commissioned in this state  
7 is authorized to perform including, but not limited to, taking an  
8 acknowledgment, administering an oath or affirmation, taking a  
9 verification upon oath or affirmation, or witnessing or attesting a  
10 signature performed in compliance with this act.

11 (ii) An act described in subparagraph (i) that is performed in  
12 another jurisdiction and meets the requirements of section 25a.

13 (e) "Notify" means to communicate or send a message by a  
14 recognized mail, delivery service, or electronic means.

15 (f) "Official misconduct" means 1 or more of the following:

16 (i) The exercise of power or the performance of a duty that is  
17 unauthorized, unlawful, abusive, negligent, reckless, or injurious.

18 (ii) The charging of a fee that exceeds the maximum amount  
19 authorized by law.

20 (g) "Person" means an individual or a corporation, business  
21 trust, statutory trust, estate, partnership, trust, limited  
22 liability company, association, joint venture, public corporation,  
23 government or governmental subdivision, agency, or instrumentality,  
24 or any other legal or commercial entity.

25 (h) "Record" means information that is inscribed on a tangible  
26 medium or that is stored in an electronic or other medium and is  
27 retrievable in perceivable form.

28 (i) "Remote electronic notarization platform" means  
29 **communication technology or** any combination of **communication**

1 **technology and other** technology that enables a notary public to  
 2 perform a notarial act remotely ; ~~that allows the notary public to~~  
 3 ~~communicate by sight and sound with the individual for whom he or~~  
 4 ~~she is performing the notarial act, and witnesses, if applicable,~~  
 5 ~~by means of audio and visual communication;~~ and that includes  
 6 features to conduct credential analysis and identity proofing.

7 (j) "Revocation" means the termination of a notary public's  
 8 commission to perform notarial acts.

9 Sec. 26. (1) ~~Except as otherwise provided in section 26c, a~~  
 10 **Subject to section 26a, a** notary public may select 1 or more  
 11 ~~tamper-evident~~ electronic notarization systems to perform notarial  
 12 acts electronically. A person may not require a notary public to  
 13 perform a notarial act electronically with an electronic  
 14 notarization system that the notary public has not selected.

15 (2) **Subject to section 26b, a notary public may select 1 or**  
 16 **more remote electronic notarization platforms to perform notarial**  
 17 **acts for or involving remotely located individuals. A person may**  
 18 **not require a notary public to perform a notarial act remotely with**  
 19 **a remote electronic notarization platform that the notary public**  
 20 **has not selected.**

21 (3) **A notary public may perform a notarial act using**  
 22 **communication technology as provided under section 26e.**

23 (4) ~~(2) Before~~ **Except for a notarial act described under**  
 24 **subsection (3), before** a notary public performs the notary public's  
 25 initial notarial act electronically **or remotely**, the notary public  
 26 ~~shall~~ **must** notify the secretary that the notary public will ~~be~~  
 27 ~~performing~~ **perform** notarial acts electronically **or remotely** and  
 28 identify ~~the~~ **an** electronic notarization system **or remote electronic**  
 29 **notarization platform approved by the secretary and the department**



1 **of technology, management, and budget under section 26a or 26b**  
 2 **respectively that** the notary public intends to use for electronic  
 3 **or remote** notarizations. ~~If the secretary and the department of~~  
 4 ~~technology, management, and budget have approved the use of 1 or~~  
 5 ~~more electronic notarization systems under section 26a, the notary~~  
 6 ~~public must select the system he or she intends to use from the~~  
 7 ~~approved electronic notarization systems. The~~

8 **(5) The secretary may disallow the use of 1 or both of the**  
 9 **following:**

10 **(a) ~~an~~An** electronic notarization system ~~if the electronic~~  
 11 ~~notarization system that~~ does not satisfy the ~~criteria~~**standards**  
 12 described in section 26a.

13 **(b) A remote electronic notarization platform that does not**  
 14 **satisfy the standards described in section 26b.**

15 Sec. 26a. (1) By March 30, 2019, the secretary and the  
 16 department of technology, management, and budget shall review and  
 17 approve at least 1 electronic notarization system for the  
 18 performance of electronic notarizations in this state. The  
 19 secretary and the department of technology, management, and budget  
 20 may approve multiple electronic notarization systems ~~, and may~~  
 21 ~~grant approval of~~**approve** additional electronic notarization  
 22 systems on an ongoing basis. ~~The secretary and the department of~~  
 23 ~~technology, management, and budget shall review the criteria for~~  
 24 ~~approval of electronic notarization systems, and whether currently~~  
 25 ~~approved electronic notarization systems remain sufficient for the~~  
 26 ~~electronic performance of notarial acts, at least every 4 years.~~

27 **(2) A provider or user of an electronic notarization system or**  
 28 **a notary public may submit a request to the secretary and the**  
 29 **department of technology, management, and budget to approve an**

1 electronic notarization system.

2 (3) Except as otherwise provided under section 26e, a notary  
3 public shall not use an electronic notarization system that is not  
4 approved by the secretary and the department of technology,  
5 management, and budget under this section.

6 (4) ~~(2)~~—Subject to subsection ~~(3)~~, ~~(5)~~, in considering whether  
7 to approve an electronic notarization system for use in this state  
8 under subsection (1), the secretary and the department of  
9 technology, management, and budget shall **create standards for**  
10 **electronic notarization systems. In creating the standards, the**  
11 **secretary and the department of technology, management, and budget**  
12 **shall** consider, at a minimum, **all of** the following **factors**:

13 (a) The need to ensure that any change to or tampering with an  
14 electronic record containing the information required under this  
15 act is evident.

16 (b) The need to ensure integrity in the creation, transmittal,  
17 storage, or authentication of electronic notarizations, records, or  
18 signatures.

19 (c) The need to prevent fraud or mistake in the performance of  
20 electronic notarizations.

21 (d) The ability to adequately investigate and authenticate a  
22 notarial act performed electronically with that electronic  
23 notarization system.

24 (e) The most recent standards regarding electronic  
25 notarizations or records promulgated by national bodies, including,  
26 but not limited to, the National Association of Secretaries of  
27 State.

28 (f) The standards, practices, and customs of other  
29 jurisdictions that allow electronic notarial acts.

1           (5) ~~(3) If~~ Except as otherwise provided in subsection (6), the  
2 secretary and department of technology, management, and budget  
3 shall approve the use of an electronic notarization system ~~for the~~  
4 ~~performance of electronic notarizations if the system~~ is approved  
5 or certified by ~~a~~ either of the following and verifiable proof of  
6 the approval or certification is provided to the secretary and  
7 department of technology, management, and budget:

8           (a) A government-sponsored enterprise, as that term is defined  
9 in 2 USC ~~622(8)~~, ~~the secretary and the department of technology,~~  
10 ~~management, and budget shall approve the system for use in this~~  
11 ~~state if verifiable proof of that approval or certification is~~  
12 ~~provided to the secretary and department, unless 622.~~

13           (b) Another state in the United States.

14           (6) The secretary and department of technology, management,  
15 and budget may deny the use of ~~the~~ an electronic notarization  
16 system ~~is~~ described in subsection (5) if either 1 of the following  
17 applies:

18           (a) The system is affirmatively disallowed by the secretary  
19 under section 26.

20           (b) The secretary and department of technology, management,  
21 and budget determine that the system does not meet the applicable  
22 standards of this state after a review of the system.

23           (7) At least 1 time every 4 years, the secretary and the  
24 department of technology, management, and budget shall review the  
25 standards for approval of electronic notarization systems, and  
26 determine whether currently approved electronic notarization  
27 systems remain sufficient for the electronic performance of  
28 notarial acts.

29           Sec. 26b. (1) By March 30, 2019, the secretary and the

1 department of technology, management, and budget shall review and  
 2 may approve **at least 1** remote electronic notarization ~~platforms~~  
 3 **platform** for the performance of notarial acts in this state. ~~Except~~  
 4 ~~as otherwise provided in section 26e, a notary public shall not use~~  
 5 ~~a remote electronic notarization platform that is not approved~~  
 6 ~~under this section.~~ **The secretary and the department of technology,**  
 7 **management, and budget may approve multiple remote electronic**  
 8 **notarization platforms and may approve additional remote electronic**  
 9 **notarization platforms on an ongoing basis.**

10 (2) A provider or user of a remote electronic notarization  
 11 platform or a notary public may submit a request to the secretary  
 12 and the department of technology, management, and budget to approve  
 13 a remote electronic notarization platform.

14 (3) Except as otherwise provided under section 26e, a notary  
 15 public shall not use a remote electronic notarization platform that  
 16 is not approved by the secretary and the department of technology,  
 17 management, and budget under this section.

18 (4) ~~(2)~~ Subject to subsection ~~(3)~~, ~~(5)~~, in ~~developing criteria~~  
 19 ~~for the approval of any~~ **considering whether to approve a** remote  
 20 electronic notarization platform for use in this state, the  
 21 secretary ~~of state~~ and the department of technology, management,  
 22 and budget shall **create standards for remote electronic**  
 23 **notarization platforms. In creating the standards, the secretary**  
 24 **and the department of technology, management, and budget shall**  
 25 consider, at a minimum, all of the following **factors:**

26 (a) The need to ensure that any change to or tampering with an  
 27 electronic record containing the information required under this  
 28 act is evident.

29 (b) The need to ensure integrity in the creation, transmittal,

1 storage, or authentication of remote electronic notarizations,  
2 records, or signatures.

3 (c) The need to prevent fraud or mistake in the performance of  
4 remote electronic notarizations.

5 (d) The ability to adequately investigate and authenticate a  
6 notarial act performed remotely with that remote electronic  
7 notarization platform.

8 (e) The most recent standards regarding remote electronic  
9 notarization promulgated by national bodies, including, but not  
10 limited to, the National Association of Secretaries of State.

11 (f) The standards, practices, and customs of other  
12 jurisdictions that allow remote electronic notarial acts.

13 **(5) ~~(3) If~~ Except as otherwise provided in subsection (6), the**  
14 **secretary and department of technology, management, and budget**  
15 **shall approve the use of** a remote electronic notarization platform  
16 ~~for the performance of remote electronic notarizations if the~~  
17 **system** is approved or certified by ~~a~~ **either of the following and**  
18 **verifiable proof of the approval or certification is provided to**  
19 **the secretary and the department of technology, management, and**  
20 **budget:**

21 **(a) A** government-sponsored enterprise, as that term is defined  
22 in 2 USC ~~622(8)~~, ~~the secretary of state and the department of~~  
23 ~~technology, management, and budget shall approve the platform for~~  
24 ~~use in this state if verifiable proof of that approval or~~  
25 ~~certification is provided to the secretary and department, unless~~  
26 **622.**

27 **(b) Another state of the United States.**

28 **(6) The secretary and department of technology, management,**  
29 **and budget may deny the use of ~~the~~ a remote electronic notarization**

1 platform **described in subsection (5) if either 1 of the following**  
 2 **applies:**

3 (a) **The platform** is affirmatively disallowed by the secretary  
 4 **under section 26.**

5 (b) **The secretary and department of technology, management,**  
 6 **and budget determine that the platform does not meet the applicable**  
 7 **standards of this state after a review of the platform.**

8 (7) ~~(4) The~~ **At least 1 time every 4 years, the** secretary and  
 9 the department of technology, management, and budget shall review  
 10 ~~their~~ **the** standards for approving remote electronic notarization  
 11 platforms for use in this state ~~,~~ and whether the number of  
 12 approved remote electronic notarization platforms ~~are~~ **is**  
 13 sufficient. ~~, at least every 4 years.~~

14 (8) ~~(5) A~~ notary public may perform a notarial act using a  
 15 remote electronic notarization platform if ~~either~~ **1 or both** of the  
 16 following ~~is~~ **are** met:

17 (a) The notary public makes all applicable determinations  
 18 under section 25 according to personal knowledge or satisfactory  
 19 evidence, performance of the notarial act complies with section 27,  
 20 and the notary public does not violate section 31 in the  
 21 performance of the notarial act.

22 (b) The notary public, through use of the remote electronic  
 23 notarization platform, personal knowledge, or satisfactory  
 24 evidence, is able to identify the record before the notary public  
 25 as the same record presented by the individual for notarization.

26 (9) ~~(6) The~~ notary public shall not record by audio or visual  
 27 means a notarial act performed using a remote electronic  
 28 notarization platform, unless the notary public discloses to the  
 29 person that requested the notarial act that an audio or visual

1 recording is being made and how the recording will be preserved,  
 2 and the person consents or has previously consented to the  
 3 recording. A notary public may refuse to conduct a notarial act  
 4 using a remote electronic notarization platform if the person that  
 5 requested the notarial act objects to an audio or visual recording  
 6 of the notarial act.

7       **(10)** ~~(7)~~—If a notary public performs notarial acts using a  
 8 remote electronic notarization platform, the notary public shall  
 9 maintain a journal that records, at a minimum, each of those  
 10 notarial acts. A notary public shall maintain only 1 journal for  
 11 the recording of notarial acts and must keep the journal either as  
 12 a tangible, permanent bound register or in a tamper-evident,  
 13 permanent electronic format. A notary public shall retain the  
 14 journal for ~~at least~~ **not less than** 10 years after the performance  
 15 of the last notarial act recorded in it. If a notary public is not  
 16 reappointed ~~,~~ or **if** his or her commission is revoked, the former  
 17 notary public shall inform the secretary ~~of state~~ where the journal  
 18 is kept or, if directed by the secretary, shall forward the journal  
 19 to the secretary or a repository designated by the secretary.

20       **(11)** ~~(8)~~—A notary public shall make an entry in a journal  
 21 maintained under subsection ~~(7)~~ **(10)** contemporaneously with  
 22 performance of the notarial act, and the entry must include, at a  
 23 minimum, all of the following **information**:

- 24       (a) The date, time, and nature of the notarial act.  
 25       (b) A description of the record, if any.  
 26       (c) The full name and address of each individual for whom the  
 27 notarial act is performed.  
 28       (d) If the identity of the individual for whom the notarial  
 29 act is performed is based on personal knowledge, a statement to

1 that effect. If the identity of the individual for whom the  
 2 notarial act is performed is based on satisfactory evidence, a  
 3 brief description of the method of identification and the  
 4 identification credential presented, if any, including the date of  
 5 issuance and expiration for the credential.

6 (e) The fee charged, if any, by the notary public.

7 **(12)** ~~(9)~~—An entry made in a journal maintained by a notary  
 8 public under subsection ~~(7)~~—**(10)** must also reference ~~,~~ but ~~shall~~  
 9 not ~~itself~~—contain ~~,~~ any audio or visual recording of a notarial  
 10 act performed using a remote electronic notarization platform.  
 11 Subject to subsection (1), a notary public ~~must~~—**shall** retain an  
 12 audio or visual recording of a notarial act for ~~at least~~—**not less**  
 13 **than** 10 years after the performance of the notarial act.

14 **(13)** ~~(10)~~—A notary public may designate a custodian to do any  
 15 of the following **tasks**:

16 (a) Maintain the journal required under subsection ~~(7)~~—**(10)** on  
 17 his or her behalf.

18 (b) Retain an audio or visual recording of a notarial act  
 19 under subsection ~~(9)~~—**(12)** on his or her behalf. If an audio or  
 20 visual recording of a notarial act is transferred to a custodian to  
 21 hold on behalf of the notary public, the journal entry must  
 22 identify the custodian with sufficient information to locate and  
 23 contact that custodian.

24 **(14)** ~~(11)~~—A notarial act performed using a remote electronic  
 25 notarization platform under this section that otherwise satisfies  
 26 the requirements of this act is presumed to satisfy any requirement  
 27 under this act that a notarial act be performed in the **physical**  
 28 presence of a notary public.

29 **Sec. 26e. (1) Notwithstanding any other provision of this act,**



1 a notary public described in subsection (4) (a) or (b) may use  
2 communication technology other than an electronic notarization  
3 system or remote electronic notarization platform to perform  
4 notarial acts electronically if all of the following requirements  
5 are met:

6 (a) The communication technology allows direct interaction  
7 between the individual seeking the notary public's services, any  
8 witnesses, and the notary public, so that each can communicate  
9 simultaneously by sight and sound through an electronic device or  
10 process at the time of the notarization.

11 (b) The communication technology is capable of creating an  
12 audio and visual recording of the complete notarial act and the  
13 recording is made and retained as a notarial record in accordance  
14 with section 26b(10) to (12).

15 (c) The individual seeking the notary public's services and  
16 any required witnesses, if not personally known to the notary  
17 public, present satisfactory evidence of identity to the notary  
18 public during the video conference, and do not merely transmit it  
19 before or after the transaction, to satisfy the requirements of  
20 this act and any other applicable law.

21 (d) Subject to subdivision (e), the individual seeking the  
22 notary public's services affirmatively represents that the  
23 individual is physically situated in this state or is physically  
24 located outside the geographic boundaries of this state and that 1  
25 of the following applies:

26 (i) The record is intended for filing with or relates to a  
27 matter before a court, governmental entity, public official, or  
28 other entity subject to the jurisdiction of this state.

29 (ii) The record involves property located in the territorial

1 jurisdiction of this state or a transaction substantially connected  
2 to this state.

3 (e) If an individual is physically located outside of the  
4 geographic boundaries of this state, the notary public has no  
5 actual knowledge that the individual's act of making the statement  
6 or signing the record is prohibited by the laws of the jurisdiction  
7 in which the individual is physically located.

8 (f) The individual seeking the notary public's services, any  
9 required witnesses, and the notary public are able to affix their  
10 signatures to the record in a manner that renders any subsequent  
11 change or modification of the remote online notarial act to be  
12 tamper evident.

13 (g) The individual seeking the notary public's services or the  
14 individual's designee transmits by facsimile, mail, or electronic  
15 means a legible copy of the entire signed record directly to the  
16 notary public not later than 2 business days after the date it was  
17 signed. This requirement applies regardless of the manner in which  
18 the record is signed.

19 (h) Upon receiving a legible copy of the record with all of  
20 the necessary signatures, the notary public notarizes the record in  
21 accordance with section 27 and transmits the notarized record back  
22 to the individual seeking the notary public's services.

23 (i) A record notarized under this section may be witnessed  
24 through the use of communication technology if at least 1 witness  
25 to the signing of the document is a notary public described under  
26 subsection (4) (a) or (b).

27 (2) The official date and time of the notarization performed  
28 under this section is the date and time when the notary public  
29 witnesses the signature via communication technology as required

1 under this section.

2 (3) Notwithstanding any other law or regulation of this state,  
3 absent an express prohibition in a record against signing the  
4 record in counterparts, a record signed under this act may be  
5 signed in counterparts.

6 (4) A notary public may perform a notarial act using  
7 communication technology under this section if the notary public is  
8 1 of the following:

9 (a) An attorney licensed to practice law in this state, or a  
10 notary public acting in the course of his or her employment with,  
11 and at the direction and under the supervision of, an attorney  
12 licensed to practice law in this state. As used in this  
13 subdivision, "attorney" does not include an attorney who is also an  
14 employee or authorized agent of a financial services provider.

15 (b) An employee or authorized agent of a financial services  
16 provider in the course of his or her employment or agency for that  
17 financial services provider if all of the following conditions are  
18 met:

19 (i) The director of the department of insurance and financial  
20 services determines that the use of communication technology is  
21 necessary to allow the employee or authorized agent to execute or  
22 record a document with a county register of deeds during a  
23 statewide state of emergency or public health order declared by the  
24 President of the United States or governor of this state.

25 (ii) The director of the department of insurance and financial  
26 services promulgates emergency rules to implement his or her  
27 determination under subparagraph (i) pursuant to the administrative  
28 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

29 (5) If a record is notarized electronically under this

1 section, all of the following apply:

2 (a) The record does not need to be notarized under any other  
3 provision of this act.

4 (b) Compliance with this section is presumed. A person  
5 challenging a record notarized under this section may overcome the  
6 presumption by establishing that the notary public or the  
7 individual seeking the notary public's services intentionally  
8 failed to comply with a requirement described in this section.

9 (6) Nothing in this section prohibits or restricts a person  
10 from using an electronic notarization system or a remote electronic  
11 notarization platform otherwise approved for use to notarize a  
12 record under this act.

13 Sec. 27. (1) A notary public shall place his or her signature  
14 on every record upon which he or she performs a notarial act. The  
15 notary public shall sign his or her name exactly as his or her name  
16 appears on his or her application for commission as a notary  
17 public.

18 (2) On each record that a notary public performs a notarial  
19 act and immediately near the notary public's signature, as is  
20 practical, the notary public shall print, type, stamp, or otherwise  
21 imprint mechanically or electronically sufficiently clear and  
22 legible to be read by the secretary and in a manner capable of  
23 photographic reproduction all of the following **information** in this  
24 format or in a similar format that conveys all of the same  
25 information:

26 (a) The name of the notary public exactly as it appears on his  
27 or her application for commission as a notary public.

28 (b) The statement: "Notary public, State of Michigan, County  
29 of \_\_\_\_\_."

1 (c) The statement: "My commission expires \_\_\_\_\_."

2 (d) If performing a notarial act in a county other than the  
3 county of commission, the statement: "Acting in the County of  
4 \_\_\_\_\_."

5 (e) The date the notarial act was performed.

6 (f) If applicable, whether the notarial act was performed  
7 using ~~an~~ **1 of the following:**

8 **(i) An** electronic notarization system under section 26a. ~~or~~  
9 ~~performed using a~~

10 **(ii) A** remote electronic notarization platform under section  
11 26b.

12 **(iii) Communication technology under section 26e.**

13 **(g) If applicable, the specific electronic notarization**  
14 **system, remote notarization platform, or communication technology**  
15 **used to perform the notarial act.**

16 (3) A notary public may use a stamp, seal, or electronic  
17 process that contains all of the information required under  
18 subsection (2). ~~However, the~~ **If the notary public uses an**  
19 **electronic process, the text size must not be less than 10-point**  
20 **font. The** notary public shall not use the stamp, seal, or  
21 electronic process in a manner that renders anything illegible on  
22 the record being notarized. A notary public shall not use an  
23 embosser alone or use any other method that cannot be reproduced.

24 (4) The illegibility of the statements required under  
25 subsection (2) **or failure to use 10-point font under subsection (3)**  
26 **does not affect the validity of the transaction or record that was**  
27 **notarized.**

28 Enacting section 1. Section 26d of the Michigan law on  
29 notarial acts, 2003 PA 238, MCL 55.286d, is repealed retroactively

**1** effective July 1, 2021.

**Public Policy Position  
HB 5758 & HB 5759**

**Support**

**Explanation**

The Committee to support HB 5758 to allow remote witnessing of certain documents. The Committee voted unanimously to support HB 5759 to allow remote notarization of documents as long as certain requirements are met. The Committee believes that both remote witnessing and remote notarization serve the goal of making legal services more readily accessible to the public.

**Position Vote for HB 5758:**

Voted For position: 11  
Voted against position: 3  
Abstained from vote: 2  
Did not vote (absence): 11

**Position Vote for HB 5759:**

Voted For position: 18  
Voted against position: 0  
Abstained from vote: 0  
Did not vote (absence): 9

**Keller Permissibility Explanation:**

The Committee agreed that the legislation is *Keller*-permissible because remote witnessing and remote notarization of documents are both tools used in the provision of a wide variety of legal services, and which facilitate improved access those services.

**Contact Persons:**

Katherine L. Marcuz [kmarcuz@sado.org](mailto:kmarcuz@sado.org)  
Lore A. Rogers [rogersl4@michigan.gov](mailto:rogersl4@michigan.gov)

**Public Policy Position**  
**House Bills 5758 and 5759**

**HB 5758 – Oppose**  
**HB 5759 – Support**

**Explanation:**

The Committee voted to oppose House Bill 5758. While remote witnessing of certain documents was a necessity during the exigency of COVID-19, the risk of fraud and the probate litigation challenges created by remote witnessing outweigh the utility of this tool outside the pandemic context.

The Committee voted to support House Bill 5759. Remote/electronic notarization has proven to be useful in a number of contexts beyond COVID-19 and does not pose the same fraud concerns as remote witnessing.

**Position Vote:**

Voted for position: 16

Voted against position: 3

Abstained from vote: 0

Did not vote (absence): 13

**Keller Permissibility Explanation:**

Witnessing and notarization of certain documents are essential in a wide variety of legal contexts and access to each impacts the availability of an equally wide range of legal services. As such, HB 5758 and HB 5759 are *Keller*-permissible as reasonably related to the availability of legal services to society.

**Contact Person:**

Lori J. Frank

[lori@markofflaw.com](mailto:lori@markofflaw.com)



**Public Policy Position  
HB 5758**

**Support**

**Explanation**

The Elder Law & Disability Rights Section of the State Bar of Michigan supports House Bill 5758, as written.

**Position Vote:**

Voted for position: 19

Voted against position: 0

Abstained from vote: 0

Did not vote: 1

**Contact Person:** Maria R. Messina Wiersma

**Email:** [messina@mielderlaw.com](mailto:messina@mielderlaw.com)

**Public Policy Position  
HB 5759**

**Support**

**Explanation**

The Elder Law & Disability Rights Section of the State Bar of Michigan supports House Bill 5759, as written.

**Position Vote:**

Voted for position: 19

Voted against position: 0

Abstained from vote: 0

Did not vote: 1

**Contact Person:** Maria R. Messina Wiersma

**Email:** [messina@mielderlaw.com](mailto:messina@mielderlaw.com)

**Public Policy Position  
HB 5758**

**Support**

**Explanation**

Use of electronic execution of documents is highly effective and remains necessary, even as Covid-19 cases decline.

**Position Vote:**

Voted for position: 16

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 5

**Keller Permissible Explanation**

Offering electronic execution of documents to clients remains necessary for many clients who may still be at-risk for Covid-19 is still critical, and even for individuals not at-risk, or post-Covid, such services are helpful to making legal services available to large segments of the population.

**Contact Person:** James Chryssikos

**Email:** [jwc@chryssikoslaw.com](mailto:jwc@chryssikoslaw.com)

**Public Policy Position  
HB 5759**

**Support**

**Explanation**

Use of electronic notarization of documents is highly effective and remains necessary, even as Covid-19 cases decline.

**Position Vote:**

Voted for position: 16

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 5

**Keller Permissible Explanation**

Offering electronic notarization of documents to clients remains necessary for many clients who may still be at-risk for Covid-19 is still critical, and even for individuals not at-risk, or post-Covid, such services are helpful to making legal services available to large segments of the population.

**Contact Person:** James Chryssikos

**Email:** [jwc@chryssikoslaw.com](mailto:jwc@chryssikoslaw.com)

**Public Policy Position  
HB 5758 & HB 5759**

**Support**

**Position Vote:**

Voted for position: 19

Voted against position: 0

Abstained from vote: 0

Did not vote: 4

**Contact Person:** Katie Lynwood

**Email:** [klynwood@bllhlaw.com](mailto:klynwood@bllhlaw.com)

**Public Policy Position  
HB 5759**

**Offer Comments**

**Contact Person:** Dawn Patterson

**Email:** [dmpatterson@firstam.com](mailto:dmpatterson@firstam.com)

MEMORANDUM

**To:** RPLS Council

**From:** RPLS Legislative Committee

**Re:** HB 5759; Amendment to Michigan Law on Notarial Acts  
(<http://legislature.mi.gov/doc.aspx?2022-HB-5759> )  
Comments only – not a position

**Date:** March 29, 2022

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**Background:**

Public Act 238 of 2003, (MCL 55.261 through MCL 55.315) sets forth the Michigan Law on Notarial Acts. <http://legislature.mi.gov/doc.aspx?mcl-Act-238-of-2003>

The State of Michigan published a Notary Guide which may be found at: [E-Notary and Remote Notary Guide \(michigan.gov\)](#)

In 2018, Public Acts 360 through 364 (SB 664, SB 996, SB 997, SB 998, and SB 999) were enacted and took effect on March 12, 2019. These addressed **Electronic Notarizations**. The changes included a provision to allow a notary public to perform notarial acts electronically using a tamper-evident electronic notarization system approved or allowed by the Secretary of State (SOS).

Public Act 330 of 2018 (House Bill 5811) addressed **Remote Online Notarizations**. This is commonly referred to as **RON**. With RON, a remote signer appears before the notary public using a remote electronic notarization platform and involves the use of electronic documents, which are electronically signed and notarized by remote signer and notary public. This legislation took effect September 30, 2018. The changes/additions included a requirement that the SOS and the Department of Technology, Management, and Budget (DTMB) must review and may approve remote electronic notarization platforms for the performance of notarial acts by Michigan notaries. Here is a link to those approved platforms: [List of Vendors 8.23 \(michigan.gov\)](#)

The statutory basics of RON are as follows:

MCL 55.265(i) provides:

**"Remote electronic notarization platform"** means any combination of technology that enables a notary public to perform a notarial act **remotely**; that allows the notary public to communicate by sight and sound with the individual for whom he or she is performing the notarial act, and witnesses, if applicable, by means of audio and visual communication; and that **includes features to conduct credential analysis and identity proofing**. (Emphasis added.)

MCL 55.263(h) provides:

**"Identity proofing"** means a process or service by which a third party provides a notary public with a reasonable means to verify the identity of an individual through a review of personal information from public or proprietary data sources conducted remotely. (Emphasis added.)

In the field, this is sometimes referred to a **KBA** or knowledge based authentication.

MCL 55.263(c) provides:

**"Credential analysis"** means a process or service by which a third party affirms the validity of an identity document described in section 25(6)(c) through a review of public and proprietary data sources conducted remotely. (Emphasis added.)

Section 25(6)(c), MCL 55.285(6)(c) provides:

A notary public has satisfactory evidence that an individual is the individual whose signature is on a record if that individual is any of the following:

...

(c) Identified on the basis of a current license, identification card, or record issued by a federal or state government that contains the individual's photograph and signature.

### **HB 5759 would add a new type of notarization - RIN:**

Under Michigan law, there are currently three types of notarizations. (1) Traditional in-person pen and paper notarizations; (2) In-Person Electronic Notarizations and (3) Remote Online Notarizations. Among other terms, HB 5759 would amend the statute to add/authorize a fourth type of notarization. This type is sometimes referred to as **RIN** or remote ink notarization. In RIN, a remote signer appears before the notary public using [technology] and involves the use of paper documents, which are wet-ink signed and



traditionally notarized by remote signer and notary public. The bill sets forth the proposed terms of RIN by adding Section 26e.

One of the primary concerns about Section 26e or RIN is that it does not have the same integrity level as RON even though, in both RON and RIN, the signer is not in the physical presence of the notary public. RIN does not include KBA (knowledge based authentication) or Identity Proofing as required for RON and it is less tamper proof than RON. Another concern is RON is already in place for the parties that would be entitled to use RIN under the proposed legislation. What is the motivation to add another, less secure method?

To break this down further, the following comments are submitted:

**Comment 1:** With respect to Section 26e on RIN, it is somewhat unclear what “satisfactory evidence” of the remote signer would be. [Section 26e(1)(c)] It seems like the intent is to require the same methods as are currently required for an in-person traditional notarization because there is not an amendment to Section 55.285(6) where the term “satisfactory evidence” is defined for traditional in person notarizations and remote online notarizations performed under Section 26b. It does not make sense to establish one set of identification requirements for RON and a less cumbersome set of identification standards for RIN. In both cases, there is a remote signer that is not in the physical presence of the notary performing the notarial act.

**Comment 2:** Section 26e.(1) states that the communication technology may be used “to perform notarial act **electronically**.” However, the notarial act via RIN will be performed on paper, rather than electronically. This statement should be revised. The legislation specifically provides:

Sec. 26e. (1) Notwithstanding any other provision of this act, a notary public described in subsection (4)(a) or (b) may use communication technology other than an electronic notarization system or remote electronic notarization platform to perform notarial acts **electronically** if all of the following requirements are met:

**Comment 3:** It is unclear whether the limitations contained in Section 26e(1)(d) (i) and (ii) are intentional. These limitations were imposed when individuals located outside the United States are seeking RON from a US notary. The limitations make sense in the international signer context in order to

prevent sovereignty issues from arising. The limitations seem confusing when applied in the context of an individual located in another state.

**Comment 4:** Section 26e.(1)(f) does not make sense. A paper document would not be “tamper evident” in the same sense that an electronic document would be tamper evident.

**Comment 5:** This RIN legislation limits which parties may utilize it. Under the proposed legislation, in Section 26(e)(4), only a notary public that is an attorney licensed to practice law in Michigan, or an employee of the attorney acting within the scope of his/her employment may perform RIN. However, the definition of attorney does not include an attorney who is employed by or is an agent of a financial services provider. A financial services provider is defined under the proposed statute as a financial institution, licensed mortgage lender, licensed real estate broker, or title insurance company. A notary for a financial services provider may only utilize Section 26 (e) for RIN if the Director of the Department of Insurance and Financial Services determines it is necessary during a statewide emergency declared by the President of the United States or the Governor, and after the Director promulgates emergency rules to implement this determination. In other words, an attorney licensed in Michigan in private practice who is a notary may utilize RIN anytime whereas a notary for a financial services provider may utilize RIN only in a declared statewide emergency. No other notary may perform a notarial act under the RIN provisions of 26(e).

Along these lines, some questions are posed:

What if a seller wants to sign by RIN? The title company can only utilize RIN if there is a declared state of emergency and other hoops are satisfied. If the seller insists to sign via RIN, does this seller have to pay an attorney for that service outside of the closing? Will RIN cause confusion and problems with the Registers of Deeds (RODs)? Does the permission to use RIN include deeds of conveyance? Is there a provision that compels or allows the ROD to record a deed executed via RIN?

**Action:** Request this topic to be added to the agenda for the April 13, 2022 Council meeting. RPLS should consider whether to take a position on this legislation.



To: Members of the Public Policy Committee  
Board of Commissioners

From: Governmental Relations Staff

Date: April 1, 2022

Re: HB 5889 – Inadmissibility of Confidential Communications/Consultations With  
Victims of Human Trafficking

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### **Background**

House Bill 5889 would amend the Revised Judicature Act, 1961 PA 236, by adding a new Sec. 2157c to make certain confidential communications and consultations inadmissible as evidence in a civil or criminal proceeding without the prior written consent of a victim of human trafficking. Victims of human trafficking are individuals who either was or who alleges to have been the subject of human trafficking, a crime described in Chapter LXVII and LXVIIA of the Michigan Penal Code, 1931 PA 328.

For the purposes of the new section, “confidential communication” is defined as information transmitted in connection with the rendering of crisis intervention, advice, counseling, or other assistance that is either (i) between a victim of human trafficking and human trafficking victim service agency staff or (ii) between a victim of human trafficking or human trafficking victim service agency staff and any other individual to whom disclosure is reasonable necessary to further the interests of the victim.

The covered consultations include any of the following given or made in connection with a consultation between a victim of human trafficking and a counselor: a report, a working paper, or a statement contained in a report or working paper.

“Human trafficking victim service agency staff” is defined as an individual who is employed by or who volunteers services for a human trafficking victim support agency, and who in that capacity provides advice, supportive services, crisis intervention, advocacy, or other assistance to victims of human trafficking.

“Human trafficking victim support agency” is defined broadly as an office, refuge, shelter, safe house, institution, agency, center, or other entity that offers assistance to victims of human trafficking and their families through crisis intervention, shelter, advocacy, legal, supportive counseling, or similar service.

The bill also provides that confidentiality is not waived by the presence of another individual that is necessary to effectuate the communication.

According to proponents of HB 5889, such as the Michigan Coalition to End Domestic & Sexual Violence, the legislation is intended to “fill a gap” that presently exists between the treatment of victims of sexual assault and domestic violence under [MCL 600.2157a](#) and victims of human trafficking. These proponents believe that existing privileges are insufficient to cover the full scope of individuals engaged in communications and consultations with victims of human trafficking and that the bill would encourage more victims to come forward and seek assistance. Finally, proponents contend that the bill would bring Michigan state law into closer alignment with the confidentiality rules in place for certain federally funded victim services agencies.

***Keller* Considerations**

The proposed legislation would impact both whether victims of human trafficking seek legal services and how the courts are required to treat certain evidence in human trafficking matters in both criminal and civil proceedings. As such, the bill is reasonably related to both the functioning of the courts and the availability of legal services to society.

***Keller* Quick Guide**

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

**Staff Recommendation**

HB 5889 is reasonably related to both the functioning of the courts and the availability of legal services to society. As such, it may be considered on its merits.

# HOUSE BILL NO. 5889

March 09, 2022, Introduced by Rep. Glenn and referred to the Committee on Rules and Competitiveness.

A bill to amend 1961 PA 236, entitled  
"Revised judicature act of 1961,"  
(MCL 600.101 to 600.9947) by adding section 2157c.

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

1           Sec. 2157c. (1) The following are not admissible as evidence  
2 in a civil or criminal proceeding without the prior written consent  
3 of the victim of human trafficking:

4           (a) A confidential communication.

5           (b) Any of the following if given or made in connection with a  
6 consultation between a victim of human trafficking and a counselor:

1 (i) A report.

2 (ii) A working paper.

3 (iii) A statement contained in a report or working paper.

4 (2) The confidentiality provided under subsection (1) is not  
5 waived by the presence of another individual that is necessary to  
6 effectuate the communication.

7 (3) As used in this section:

8 (a) "Confidential communication" means information transmitted  
9 in connection with the rendering of crisis intervention, advice,  
10 counseling, or other assistance that is 1 of the following:

11 (i) Between a victim of human trafficking and human trafficking  
12 victim service agency staff.

13 (ii) Between a victim of human trafficking or human trafficking  
14 victim service agency staff and any other individual to whom  
15 disclosure is reasonably necessary to further the interests of the  
16 victim.

17 (b) "Human trafficking victim service agency staff" means an  
18 individual who is employed by or who volunteers services for a  
19 human trafficking victim support agency, and who in that capacity  
20 provides advice, supportive services, crisis intervention,  
21 advocacy, or other assistance to victims of human trafficking.

22 (c) "Human trafficking victim support agency" means an office,  
23 refuge, shelter, safe house, institution, agency, center, or other  
24 entity that offers assistance to victims of human trafficking and  
25 their families through crisis intervention, shelter, advocacy,  
26 legal, supportive counseling, or similar service.

27 (d) "Victim of human trafficking" means an individual who was  
28 or who alleges to have been the subject of human trafficking as  
29 described in chapter LXVII or LXVIIIA of the Michigan penal code,

1 1931 PA 328, MCL 750.448 to 750.462 and 750.462a to 750.462h.

**Public Policy Position  
HB 5889**

**Support**

**Explanation**

The Committee voted unanimously to support HB 5889. The legislation would ensure that victims of human trafficking are treated the same as similarly situated victims of sexual assault and domestic violence (See MCL 600.2157a) when it comes to the admissibility of certain confidential communications and consultations between a victim and their counselor or other human trafficking victim service agency staff. The Committee agreed that the bill may encourage more victims to seek legal assistance if they know their confidential communications are protected from disclosure. In addition, the bill would bring Michigan state law into closer alignment with the confidentiality rules in place for certain federally funded victim services agencies.

**Position Vote:**

Voted For position: 16

Voted against position: 0

Abstained from vote: 0

Did not vote (absence): 11

**Keller Permissibility Explanation:**

As the bill will impact both whether victims of human trafficking seek legal services and how the courts treat evidence in their cases, the Committee agreed that the legislation is *Keller*-permissible in affecting both the functioning of the courts and the availability of legal services to society.

**Contact Persons:**

Katherine L. Marcuz [kmarcuz@sado.org](mailto:kmarcuz@sado.org)

Lore A. Rogers [rogersl4@michigan.gov](mailto:rogersl4@michigan.gov)



**Public Policy Position**  
**House Bill 5889**

**Oppose**

**Explanation:**

The Committee voted to oppose House Bill 5889. Several concerns were raised during the Committee's deliberations, including: a lack of clarity about exactly what problem the legislation was seeking to address and how prevalent it is; how the proposed legislation would impact other existing privileges that may cover the materials this legislation aims to protect; the fact that the legislation addresses only whether such materials are admissible, not whether they are discoverable; and the lack of a clear definition of the limits of the new statutory privilege created by the legislation.

**Position Vote:**

Voted for position: 15

Voted against position: 4

Abstained from vote: 0

Did not vote (absence): 13

**Keller Permissibility Explanation:**

Because the proposed legislation would effectively create a new statutory privilege that would impact a wide swath of both civil and criminal proceedings, it will have a potentially significant impact on the functioning of courts. As such, the legislation is *Keller*-permissible.

**Contact Person:**

Lori J. Frank

[lori@markofflaw.com](mailto:lori@markofflaw.com)

**Public Policy Position  
HB 5889**

**Support**

**Explanation:**

The Committee voted to support HB 5889. MCL 600.2157a presently protects certain confidential communications and consultations for victims of sexual assault and domestic violence from disclosure in court proceedings. HB 5889 would provide similar protection to victims of human trafficking. Such protection may encourage more victims to seek legal assistance if they know their confidential communications are protected from disclosure.

**Position Vote:**

Voted For position: 9

Voted against position: 3

Abstained from vote: 2

Did not vote (absence): 10

**Keller-Permissible Explanation:**

How courts treat confidential communications and consultations related to human trafficking will impact the functioning of the courts; as such the Committee agreed that the legislation is *Keller*-permissible.

**Contact Persons:**

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

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



To: Members of the Public Policy Committee  
Board of Commissioners

From: Governmental Relations Staff

Date: April 1, 2022

Re: HJR L – Prohibiting Money Bail in the Michigan Constitution

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### **Background**

House Joint Resolution L proposes an amendment to Article I, Sections 15 and 16 of the Michigan Constitution to prohibit the imposition of money bail. It removes the reference to “sufficient sureties” from Section 15, which makes all persons bailable before conviction except under specified, limited circumstances. Section 16 currently provides that: “excessive bail shall not be required; excessive fines shall not be imposed; cruel or unusual punishment shall not be inflicted; nor shall witnesses be unreasonably detained.” HJR L would significantly revise the section to state that money bail or bail with sureties shall not be required, except if it is required by an interstate compact or for purposes of extradition. The proposed constitutional amendment would also specify that, before a person is convicted, the court shall release them on personal recognizance unless, after a hearing, the court finds that “the person is highly likely to willfully flee, poses a specific real and present threat to a person, or has violated a protection order or an existing condition of release.” It also authorizes the court to impose nonmonetary conditions of release “necessary to reasonably ensure appearance at trial or to protect an identifiable person from imminent harm.”

A proposed constitutional amendment requires approval by two-thirds of the members elected to and serving in each house of the legislature and submission to the electors at the next general election.

Note that the Board previously voted to support bail/bond reform legislation that aligns with recommendations made by the Michigan Joint Task Force on Jail and Pretrial Incarceration—namely, HB 5436-HB 5439 and HB 5441-HB 5443—and to oppose HB 5440, as it was not based upon any Task Force recommendation.

### ***Keller* Considerations**

The criminal legal system is premised on a presumption that defendants are innocent until proven guilty. Liberty, due process, and equal protection rights limit the use of pretrial detention, except when the defendant poses a threat of harm to others or when there is a significant risk that a defendant will not appear to answer a criminal charge. The bail system was intended to help courts ensure that defendants will return to court while their case is being adjudicated. A constitutional amendment proposing significant changes to the bail system could be considered *Keller*-permissible to the extent that one of the rationales of pretrial detention/release decisions is to maintain the integrity of the judicial process by securing defendants for trial. This is even more true when the amendment would

make alterations to the specific procedures used by courts to make these decisions about pretrial release procedures and conditions. HJR L is therefore *Keller*-permissible because it significantly affects the functioning of the courts.

### *Keller* Quick Guide

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

### **Staff Recommendation**

HJR L would have a significant impact on pretrial court procedures and implicate issues that are central to the functioning of the courts. It is therefore *Keller*-permissible.

# HOUSE JOINT RESOLUTION L

November 30, 2021, Introduced by Reps. Rabhi, Brenda Carter, Aiyash, Young, Pohutsky, Cynthia Johnson, Stone, Kuppa, Neeley, Sowerby, Cavanagh, Brabec, Scott, Brixie, Hood, Whitsett, Anthony and Yancey and referred to the Committee on Judiciary.

A joint resolution proposing an amendment to the state constitution of 1963, by amending sections 15 and 16 of article I to prohibit the imposition of money bail and to provide certain procedures regarding conditions of release.

Resolved by the Senate and House of Representatives of the state of Michigan, That the following amendment to the state constitution of 1963, to prohibit the imposition of money bail and to provide certain procedures regarding conditions of release, is proposed, agreed to, and submitted to the people of the state:

1 ARTICLE I  
2 Sec. 15. No person shall be subject for the same offense to be

1 twice put in jeopardy. All persons shall, before conviction, be  
2 bailable, ~~by sufficient sureties,~~ except that bail may be denied  
3 for the following persons when the proof is evident or the  
4 presumption great:

5 (a) A person who, within the 15 years immediately preceding a  
6 motion for bail pending the disposition of an indictment for a  
7 violent felony or of an arraignment on a warrant charging a violent  
8 felony, has been convicted of 2 or more violent felonies under the  
9 laws of this state or under substantially similar laws of the  
10 United States or another state, or a combination thereof, only if  
11 the prior felony convictions arose out of at least 2 separate  
12 incidents, events, or transactions.

13 (b) A person who is indicted for, or arraigned on a warrant  
14 charging, murder or treason.

15 (c) A person who is indicted for, or arraigned on a warrant  
16 charging, criminal sexual conduct in the first degree, armed  
17 robbery, or kidnapping with intent to extort money or other  
18 valuable thing thereby, unless the court finds by clear and  
19 convincing evidence that the defendant is not likely to flee or  
20 present a danger to any other person.

21 (d) A person who is indicted for, or arraigned on a warrant  
22 charging, a violent felony which is alleged to have been committed  
23 while the person was on bail, pending the disposition of a prior  
24 violent felony charge or while the person was on probation or  
25 parole as a result of a prior conviction for a violent felony.

26 If a person is denied admission to bail under this section,  
27 the trial of the person shall be commenced not more than 90 days  
28 after the date on which admission to bail is denied. If the trial  
29 is not commenced within 90 days after the date on which admission

1 to bail is denied and the delay is not attributable to the defense,  
2 the court shall immediately schedule a bail hearing and shall set  
3 the amount of bail for the person.

4 As used in this section, "violent felony" means a felony, an  
5 element of which involves a violent act or threat of a violent act  
6 against any other person.

7 This section, as amended, shall not take effect until May 1,  
8 1979.

9 Sec. 16. (1) ~~Excessive~~ **Except if it is required by an**  
10 **interstate compact in which this state has entered or for purposes**  
11 **of extradition, money bail or bail with sureties** shall not be  
12 required. ~~Excessive~~ **Before a person is convicted the court shall**  
13 **release the person on his or her own recognizance unless after a**  
14 **hearing the court finds that the person is highly likely to**  
15 **willfully flee, poses a specific real and present threat to a**  
16 **person, or has violated a protection order or an existing condition**  
17 **of release. In order for the court to find that the person is**  
18 **highly likely to willfully flee, there must be circumstances**  
19 **present indicating the likelihood of flight beyond a simple history**  
20 **of nonappearance. The court may impose nonmonetary conditions of**  
21 **release necessary to reasonably ensure appearance at trial or to**  
22 **protect an identifiable person from imminent harm.**

23 (2) ~~Excessive~~ fines shall not be imposed; cruel or unusual  
24 punishment shall not be inflicted; nor shall witnesses be  
25 unreasonably detained.

26 Resolved further, That the foregoing amendment shall be  
27 submitted to the people of the state at the next general election  
28 in the manner provided by law.

## Public Policy Position HJR L

### Support

#### Explanation

The Committee voted to support HJR L. Support for the constitutional amendment proposed in this joint resolution is consistent with the Committee's prior support of statutory efforts to reform the use of cash bail in Michigan. The Committee has already taken a position supporting a package of bills—HB 5436-HB5443—based upon recommendations made by the Michigan Joint Task Force on Jail and Pretrial Incarceration. That public policy position was premised on the conclusion that cash bail reform would improve the functioning of the courts by securing the presence of defendants at court proceedings, while also promoting the responsible use of limited judicial resources and improving access to counsel. The Committee also noted that support for the proposed constitutional amendment aligned with the recommendations of the Task Force. Specifically noting that, after proposing implementation of a tiered statutory framework for pretrial release, Recommendation 9(e) of the Task Force report stated that:

Following implementation of the policy changes outlined above, ultimately transitioning to a pure detention-and-release system, similar to policy frameworks in New Jersey, New Mexico, the District of Columbia and the federal system, in which money bail may not be used to detain a person pretrial. This transition to a pure detention-and-release system will likely require a state constitutional amendment.

#### Position Vote:

Voted For position: 12

Voted against position: 5

Abstained from vote: 1

Did not vote (absence): 9

#### Keller Permissibility Explanation:

As with legislative efforts to reform cash bail recently considered by the Committee, HJR L will affect the functioning of the courts by ensuring that they have the tools necessary to secure the presence of defendants at court proceedings, while promoting the responsible use of limited judicial resources. In addition, releasing individuals on personal recognizance will improve their access to counsel and allow defendants to participate in the preparation of their defense in a more fulsome manner. As such, HJR L is *Keller*-permissible.

#### Contact Persons:

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Lore A. Rogers [rogersl4@michigan.gov](mailto:rogersl4@michigan.gov)



**Public Policy Position  
HJR L**

**Support**

**Explanation:**

While the committee overwhelmingly supports bail reform the 7 members who voted against this resolution expressed concern over it being done by constitutional amendment as well as needing more than a “simple history of non-appearance” to deny PR bond. Majority of the council, however, supported resolution as written.

**Position Vote:**

Voted for position: 11

Voted against position: 7

Abstained from vote: 0

Did not vote (absent): 0

**Keller-Permissibility Explanation:**

The improvement of the functioning of the courts

**Contact Person:** Sofia Nelson

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



To: Members of the Public Policy Committee  
Board of Commissioners

From: Governmental Relations Staff

Date: April 1, 2022

Re: SB 869 – Judicial Protection Act

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### **Background**

Senate Bill 869 would create a new Judicial Protection Act to protect the personal safety and information of judges and their immediate family members. The bill would permit a judge to submit a written request, on a form prescribed by the State Court Administrative Office, to a public body or person to prevent disclosure of the personal information of the judge, the judge's immediate family member, or an individual residing with the judge. The bill also outlines the minimum information that the SCAO-prescribed form must include.

For the purposes of the new act, “judge” includes a judge, full-time magistrate, or justice serving by election or appointment on the district court, circuit court, probate court, court of appeals, or supreme court of Michigan, as well as a judge, magistrate, or justice of a federal court who serves or has a residential address in Michigan. The bill defines “personal information” to include, among other things, residential address, home or cellular telephone number, personal email address, date of birth, and certain personal financial information.

A request provided to a public body under the bill would remain in effect until a judge provides a signed written permission to release some or all of the personal information. It prohibits a public body or person from publicly posting, displaying, or providing covered personal information and obligates the public body to remove such information if it has already been posted. Any covered personal information covered under the bill is made exempt from disclosure under the Freedom of Information Act, 1976 PA 442. The bill also specifies that a judge is not prevented from making their own information available.

SB 869 authorizes a judge to commence a civil action against a public body or person to compel compliance with the provisions of the new act or to enjoin noncompliance and outlines certain conditions applicable to such actions.

### ***Keller* Considerations**

As judicial officers are essential to the operation of the court system, the security of judges, magistrates, and justices is reasonably related to the functioning of the courts and therefore *Keller*-permissible.

*Keller* Quick Guide

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

**Staff Recommendation**

Ensuing the safety of judicial officers is reasonably related to the functioning of the courts. As such, SB 869 is *Keller*-permissible and may be considered on its merits.

# SENATE BILL NO. 869

February 09, 2022, Introduced by Senators HORN, WOZNIAK, BUMSTEAD, BIZON and LASATA and referred to the Committee on Judiciary and Public Safety.

A bill to protect the personal safety of judges and certain other individuals; to protect the personal information of judges and certain other individuals from disclosure; to provide for the powers and duties of certain state and local governmental officers and certain other people and entities; and to provide remedies.

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

1           Sec. 1. This act may be cited as the "judicial protection  
2 act".

3           Sec. 2. As used in this act:

1 (a) "Immediate family member" means the spouse, child,  
2 stepchild, adopted child, grandchild, parent, grandparent, brother,  
3 or sister of a judge or his or her spouse.

4 (b) "Judge" means any of the following:

5 (i) A judge, full-time magistrate, or justice who is serving by  
6 election or appointment on the district court, circuit court,  
7 probate court, court of appeals, or supreme court of this state.

8 (ii) A judge, magistrate, or justice who is serving on the  
9 United States Bankruptcy or District Court, Court of Appeals, or  
10 Supreme Court who serves or has a residential address in this  
11 state.

12 (iii) A judge serving on a tribal court for a federally  
13 recognized tribe located in this state.

14 (c) "Person" means an individual, corporation, limited  
15 liability company, partnership, firm, organization, association, or  
16 other legal entity but does not include a public body.

17 (d) "Personal information" means any of the following:

18 (i) Date of birth except as necessary to comply with section 19  
19 of article VI of the state constitution of 1963.

20 (ii) Residential address or address of other property owned.

21 (iii) Home or cellular telephone number.

22 (iv) State identification number or driver license number.

23 (v) Social Security number.

24 (vi) Personal email address.

25 (vii) Federal or state tax identification number.

26 (viii) Personal financial information including, but not limited  
27 to, the following information:

28 (A) Personal credit, charge, or debit card information.

29 (B) Bank account information.

1 (C) Bank, credit, or financial statements.

2 (D) Account or PIN numbers.

3 (E) Retirement account information.

4 (F) Portfolio holdings.

5 (ix) Motor vehicle ownership or leasing records.

6 (x) Marital status.

7 (xi) Medical and disability information.

8 (xii) Name or location of a current employment, school, or  
9 daycare of an immediate family member.

10 (e) "Public body" means that term as defined in section 2 of  
11 the freedom of information act, 1976 PA 442, MCL 15.232.

12 (f) "Residential address" means the place that is the settled  
13 home or domicile at which an individual legally resides and is a  
14 residence as defined in section 11 of the Michigan election law,  
15 1954 PA 116, MCL 168.11.

16 Sec. 3. (1) A judge may submit a written request, on a form  
17 prescribed by the state court administrative office, to a public  
18 body or person to prevent disclosure under section 4 of the  
19 personal information of the judge, the judge's immediate family  
20 member, or an individual residing with the judge. The form must  
21 include information on the appropriate methods to provide the form  
22 to a public body or person and require both of the following, as  
23 applicable:

24 (a) Proof of the judge's office and identity.

25 (b) The personal information of the judge, the judge's  
26 immediate family member, or the individual residing with the judge  
27 that the judge desires to protect.

28 (2) A written request provided to a public body or person  
29 under subsection (1) remains in effect until the judge provides a

1 signed written permission to release some or all of the personal  
2 information.

3       Sec. 4. (1) Except as otherwise provided, a public body that  
4 has received a request under section 3 shall not publicly post or  
5 display or provide to a person the specified personal information  
6 of a judge, a judge's immediate family member, or an individual  
7 residing with a judge, as applicable. A public body that has  
8 already publicly posted or displayed the specified personal  
9 information shall remove the personal information within 5 business  
10 days.

11       (2) Except as otherwise provided, a person that has received a  
12 request under section 3 shall not publicly post or display or sell,  
13 transfer, or provide to another person the specified personal  
14 information of a judge, a judge's immediate family member, or an  
15 individual residing with a judge, as applicable. A person that has  
16 already publicly posted or displayed the personal information shall  
17 remove the personal information within 5 business days.

18       Sec. 5. This act does not prevent a judge, a judge's family  
19 member, or an individual residing with a judge from making his or  
20 her personal information or the personal information of his or her  
21 immediate family public. If a judge, a judge's immediate family  
22 member, or an individual residing with a judge makes any of their  
23 personal information public, it does not invalidate a written  
24 request issued under section 3 or prohibit a judge from later  
25 issuing a written request related to that information.

26       Sec. 6. Any personal information covered by a written request  
27 under section 4(1) is exempt from disclosure under section 13(1)(d)  
28 of the freedom of information act, 1976 PA 442, MCL 15.243, by the  
29 public body that received the written request.

1           Sec. 7. Except as otherwise required by law, a judge may  
2 provide a post office box instead of a residential address on all  
3 public documents. As used in this section, "public documents" means  
4 any record filed with a public body or created by a public body.

5           Sec. 8. (1) If a public body or a person is not complying with  
6 this act, the judge may commence a civil action to compel  
7 compliance or to enjoin further noncompliance with this act.

8           (2) An action for injunctive relief against a local public  
9 body or person must be commenced in the circuit court, and venue is  
10 proper in any county in which the judge serves. An action for an  
11 injunction against a state public body must be commenced in the  
12 court of claims. If a judge commences an action for injunctive  
13 relief, the judge is not required to post security as a condition  
14 for obtaining a preliminary injunction or a temporary restraining  
15 order.

16           (3) An action for mandamus against a public body under this  
17 act must be commenced in the court of appeals.

18           (4) If a public body or person is not complying with this act,  
19 and a judge commences a civil action against the public body or  
20 person for injunctive relief to compel compliance or to enjoin  
21 further noncompliance with this act and succeeds in obtaining  
22 relief in the action, the judge must recover court costs and actual  
23 attorney fees for the action.

24           (5) It is not a defense to a violation of this act that the  
25 personal information disclosed was publicly available from another  
26 source.



**Public Policy Position  
Senate Bill 869**

**No Position**

**Explanation:**

The Committee voted to take no position on Senate Bill 869. While the Committee understands the safety concerns motivating this legislation and the potential importance of protecting judges' personal information from public disclosure, the majority of Committee members did not believe that the Committee was appropriately situated to balance the competing public policy interests of security and transparency.

**Position Vote:**

Voted for position: 19

Voted against position: 0

Abstained from vote: 0

Did not vote (absence): 13

**Keller Permissibility Explanation:**

The security of judges, magistrates, and justices is reasonably related to the functioning of the courts and therefore *Keller*-permissible.

**Contact Person:**

Lori J. Frank

[lori@markofflaw.com](mailto:lori@markofflaw.com)



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

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The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by May 1, 2022. Comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to [MCrimJI@courts.mi.gov](mailto:MCrimJI@courts.mi.gov).

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**PROPOSED**

The Committee proposes a new instruction, M Crim JI 8.2, for aiding and abetting the crime of possession of a firearm at the time of committing a felony (aiding and abetting felony-firearm) because the primary aiding and abetting instruction, M Crim JI 8.1, is difficult to adapt in order to make it clear that simply aiding and abetting the underlying felony offense is insufficient to establish aiding and abetting the crime of felony-firearm. See *People v Moore*, 470 Mich 56 (2004). This instruction is entirely new.

**[NEW] M Crim JI 8.2 Aiding and Abetting Felony Firearm**

- (1) In this case, the defendant is charged with committing the offense of possessing a firearm during the commission or attempted commission of a felony or intentionally assisting someone else in committing that offense.
- (2) Anyone who intentionally assists someone else in committing a crime is as guilty as the person who directly commits it and can be convicted of that crime as an aider and abettor.
- (3) To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:
  - (a) First, that the crime of possessing a firearm during the commission of a felony or attempted commission of a felony was actually committed, either by the defendant or someone else. It does not matter whether anyone else has been convicted of the crime.

(b) Second, that before or while the crime of possessing a firearm when committing or attempting to commit a felony was being committed, the defendant did something to assist in carrying, using, or possessing the firearm. It is not enough to find that the defendant did something to assist in the commission of the underlying crime. By words, acts, or deeds, the defendant must have procured, counseled, aided, or abetted another person to carry, use, or possess a firearm during the commission or attempted commission of a felony.

(c) Third, at that time the defendant must have intended that a firearm be carried, used, or possessed by another during the commission or attempted commission of a felony.

**Public Policy Position  
M Crim JI 8.2**

**Support**

**Explanation:**

The committee voted to support M Crim JI 8.2 as drafted.

**Position Vote:**

Voted For position: 13

Voted against position: 0

Abstained from vote: 0

Did not vote (absence): 11

**Contact Persons:**

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

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



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

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The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by May 1, 2022. Comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to [MCrimJI@courts.mi.gov](mailto:MCrimJI@courts.mi.gov).

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**PROPOSED**

The Committee proposes to amend jury instructions M Crim JI 13.6a (first-degree fleeing and eluding), M Crim JI 13.6b (second-degree fleeing and eluding), M Crim JI 13.6c (third-degree fleeing and eluding), and M Crim JI 13.6d (fourth-degree fleeing and eluding) to comport with the wording of an amendment to MCL 750.479a. Further, requirements that the prosecutor prove prior offenses for second- and third-degree fleeing and eluding are proposed to be eliminated. See *Apprendi v New Jersey*, 530 US 466, 490; 120 S Ct 2348; 147 L Ed 2d 435 (2000). Deletions are in strike-through, and new language is underlined.

**[AMENDED] M Crim JI 13.6a Fleeing and Eluding in the First Degree**

- (1) The defendant is charged with the crime of fleeing and eluding in the first degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:
- (2) First, that a [police / conservation] officer was in uniform and was performing [his / her] lawful duties [and that any vehicle driven by the officer was ~~adequately marked~~ identified as a law enforcement vehicle].
- (3) Second, that the defendant was driving a motor vehicle.
- (4) Third, that the officer ordered that the defendant stop [his / her] vehicle.
- (5) Fourth, that the defendant knew of the order.

(6) Fifth, that the defendant refused to obey the order by trying to flee or avoid being caught.

(7) Sixth, that the violation resulted in the death of another individual.

**[AMENDED] M Crim JI 13.6b Fleeing and Eluding in the Second Degree**

(1) The defendant is charged with the crime of fleeing and eluding in the second degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that a [police / conservation] officer was in uniform and was performing [his / her] lawful duties [and that any vehicle driven by the officer was ~~adequately marked~~ identified as a law enforcement vehicle].

(3) Second, that the defendant was driving a motor vehicle.

(4) Third, that the officer ordered that the defendant stop [his / her] vehicle.

(5) Fourth, that the defendant knew of the order.

(6) Fifth, that the defendant refused to obey the order by trying to flee or avoid being caught.

*[Choose one or more of the following alternatives:]*

(7) Sixth, that the violation resulted in serious impairment of a body function\* to an individual.

or

~~(8) Sixth, that the defendant has one or more prior convictions for first-, second-, or third-degree fleeing and eluding; attempted first-, second-, or third-degree fleeing and eluding; or fleeing and eluding under a current or former law of this state prohibiting substantially similar conduct.~~

or

~~(9) Sixth, that the defendant has any combination of two or more prior convictions for fourth-degree fleeing and eluding, attempted fourth-degree fleeing and eluding, or fleeing and eluding under a current or former law of this state prohibiting substantially similar conduct.~~

*Use Note*

\*The statute, MCL 750.479a(9), incorporates the statutory definition of “serious impairment of body function” found at MCL 257.58c: “Serious impairment of a body function” includes, but is not limited to, 1 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.



**[AMENDED] M Crim JI 13.6c Fleeing and Eluding in the Third Degree**

(1) The defendant is charged with the crime of fleeing and eluding in the third degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that a [police / conservation] officer was in uniform and was performing [his / her] lawful duties [and that any vehicle driven by the officer was ~~adequately marked~~ identified as a law enforcement vehicle].

(3) Second, that the defendant was driving a motor vehicle.

(4) Third, that the officer ordered that the defendant stop [his / her] vehicle.

(5) Fourth, that the defendant knew of the order.

(6) Fifth, that the defendant refused to obey the order by trying to flee or avoid being caught.

*[Choose one or ~~more~~ both of the following alternatives:]*

(7) Sixth, that the violation resulted in a collision or accident.

or

~~[(7) / (8)]~~ [Sixth / Seventh], some portion of the violation took place in an area where the speed limit was 35 miles per hour or less [whether as posted or as a matter of law].

or

~~(9) Sixth, that the defendant has a prior conviction for fleeing and eluding in the fourth degree, attempted fleeing and eluding in the fourth degree, or fleeing and eluding under a current or former law of this state prohibiting substantially similar conduct.~~

**[AMENDED] M Crim JI 13.6d Fleeing and Eluding in the Fourth Degree**

(1) The defendant is charged with the crime of fleeing and eluding in the fourth degree. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that a [police / conservation] officer was in uniform and was performing [his / her] lawful duties [and that any vehicle driven by the officer was ~~adequately marked~~ identified as a law enforcement vehicle].

(3) Second, that the defendant was driving a motor vehicle.

(4) Third, that the officer ordered that the defendant stop [his / her] vehicle.

(5) Fourth, that the defendant knew of the order.

(6) Fifth, that the defendant refused to obey the order by trying to flee or avoid being caught.

**Public Policy Position  
M Crim JI 13.6a, 13.6b, 13.6c, and 13.6d**

**Support**

**Explanation:**

The committee voted to support M Crim JI 13.6a – 13.6d as drafted.

**Position Vote:**

Voted For position: 15

Voted against position: 0

Abstained from vote: 0

Did not vote (absence): 9

**Contact Persons:**

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