

State Bar of Michigan
Criminal Jurisprudence and Practice Committee
Thursday, March 17, 2011, 2 PM
at the State Bar of Michigan Building

Teleconference 1-877-352-9775, Passcode 9152168764#

AGENDA

1. Call to Order & Welcome
2. Approval of Minutes
3. Old Business
 - a. [2010-17 Proposed Amendment of Rule 3.707 of the Michigan Court Rules](#)
This proposal, submitted by the Michigan Judges Association, would clarify that the right to bring a motion to modify or terminate a personal protection order as established by MCR 3.707 applies to ex parte PPOs.
Issued: February 1, 2011
Comment period expiration: June 1, 2011
Public hearing: To be scheduled
 - b. [2008-28 - Proposed Amendment of Rule 6.005 of the Michigan Court Rules](#)
The proposed amendment would revise MCR 6.005(H) to clarify that appointed defense counsel in a criminal proceeding either must file a substantive response to a prosecutor's application for interlocutory appeal or notify the Court of Appeals that the lawyer intends not to submit a pleading.
Issued: December 21, 2010
Comment Period Expires: April 1, 2011
Public Hearing: To be scheduled
4. New Business
 - a. Prisoner Identification
[HB 4074](#) (O'Brien) Corrections; prisoners; certain prisoner reentry programs, including issuance of identification card and copies of other identifying documents; require, and require prisoners to obtain certain records. Amends secs. 35, 37 & 67 of [1953 PA 232](#) (MCL [791.235](#) et seq.) & adds sec. 34b.
[HB 4075](#) (Shirkey) State; identification cards; forms of identification necessary to apply for a state identification card; include corrections identification card and allow access to certain department of corrections data. Amends sec. 1 of [1972 PA 222](#) (MCL [28.291](#)).
[HB 4076](#) (Damrow) Traffic control; driver license; forms of identification necessary to apply for driver license; include corrections identification card. Amends sec. 307 of [1949 PA 300](#) (MCL [257.307](#)).
[HB 4077](#) (Gardon) Criminal procedure; sentencing; certain records necessary to obtain identification documents; assist convicted persons in obtaining. Amends sec. 14, ch. XI of [1927 PA 175](#) (MCL [771.14](#)).
Status: 01/13/11 Referred to House Judiciary

History: In 09-10, HB 5176 – HB 5179 were introduced, dealing with the same subject. The State Bar of Michigan and the Criminal Jurisprudence & Practice Committee both supported the package of bills.

The State Bar has a history of supporting similar initiatives to assist former prisoners to obtain identification in order to gain access to various public buildings, including courts and other government buildings.

- b. [HB 4164](#) (Oakes) Traffic control; other; option of community service in lieu of payment of driver responsibility fees for certain low-income individuals; provide. Amends sec. 732a of [1949 PA 300](#) (MCL [257.732a](#)) & adds sec. 732b.
Status: 02/01/11 Referred to House Judiciary
- c. [HB 4261](#) (McMillin) Crime victims; rights; names and addresses of minors who have been victims of child abuse or sex crimes; allow to be exempted from disclosure under freedom of information act. Amends sec. 13 of [1976 PA 442](#) (MCL [15.243](#)).
Status: 02/16/11 Referred to House Judiciary

History: HB 6101 (09-10) is the comparable bill from HB 4261 (11-12). The State Bar of Michigan supported HB 6101.

HB 6101 and HB 4261 are essentially the same bill but for the following:

HB 4261 says "institution of higher education described under section 5 or 7 of article VIII"

HB 6101 says "institution of higher education established under section 4, 5, or 6 of article VIII"

Article VIII from the 1963 Constitution

Section 4 - Higher education institutions - This includes University of Michigan, Michigan State University, Wayne State University, Eastern Michigan University, Michigan College of Science and Technology, Central Michigan University, Northern Michigan University, Western Michigan University, Ferris Institute, Grand Valley State College

Section 5 - University of Michigan, Michigan State University, Wayne State University

Section 6 - Other institutions of higher education - This is generally those having authority to grant baccalaureate degrees shall each be governed by a board of control

Section 7 - Community and Junior Colleges.

- d. [HB 4327](#) (Brunner) Civil procedure; evidence; testimony of a vulnerable adult; allow to be presented by videotape or closed-circuit television under certain circumstances. Amends sec. 2163a of [1961 PA 236](#) (MCL [600.2163a](#)).
Status: 02/24/11 Referred to House Judiciary

History: The 09-10 bill was HB 4621 (Slavens). It died in Senate Judiciary. The State Bar of Michigan considered but took no position.

Criminal Law Section opposed. Criminal Jurisprudence & Practice Committee voted unanimously to support the concept of the bill. The committee wants the language in Line 3-4 of 'video recording' to be changed to 'two-way interactive video technology.'

Justice Policy Initiative unanimously passed a motion to support in concept, but felt that there needs to be more action in regards to (a) The definition of a "vulnerable adult" as defined by MCL 750.145M and the possibility of this being misused in court as an avoidance tactic; (b) The necessity of representatives from the defense and prosecution to witness the recording so each side has the ability to look out for interests; (c) The

possibility of un-due pressure or influence of the witness as such that cannot be viewed on the screen; (d) The assurance that the “vulnerable adult” would be transported to the court and recording session in appropriate comfort; and (e) The possible pre-coaching of the witness.

- e. [HB 4392](#) (Segal) Crimes; other; court to defer prosecution of person less than 18 years convicted of cyberbullying; allow under certain circumstances. Amends [1927 PA 175](#) (MCL [760.1](#) - [777.69](#)) by adding sec. 4b to ch. IX.
Status: 03/08/11 Referred to House Judiciary
- f. [HB 4403](#) (Jackson) Courts; juries; individuals who fail to return jury questionnaires; ensure continued eligibility for jury service. Amends sec. 1313 of [1961 PA 236](#) (MCL [600.1313](#)).
Status: 03/09/11 Referred to House Judiciary

History: Representative Jackson introduced the same bill last year: HB 5601. The State Bar of Michigan and the Criminal Jurisprudence & Practice Committee both supported the bill.

- g. Juvenile Competency
[SB 0246](#) (Schuitmaker) Juveniles; criminal procedure; juvenile competency standards; revise. Amends sec. 1, ch. XIIA of [1939 PA 288](#) (MCL 712A.1) & adds secs. 18n, 18o, 18p, 18q, 18r & 18s to ch. XIIA.
Status: 03/09/11 Referred to Senate Judiciary

[SB 0247](#) (Schuitmaker) Juveniles; criminal procedure; juvenile competency and culpability; clarify. Amends secs. 498d, 498e & 498h of [1974 PA 258](#) (MCL [330.1498d](#) et seq.) & adds secs. 1060, 1060a, 1060b, 1060c, 1062, 1064, 1066, 1068, 1070, 1072 & 1074.
Status: 03/09/11 Referred to Senate Judiciary

History: In 2009-2010, the committee took the following position on the Juvenile Competency bills:

The committee voted unanimously to support the Juvenile Competency legislation, but with requested amendments regarding what constitutes a qualified examiner, who bears the cost of the evaluation, and the issue of age and any presumption thereby of incompetency.

The committee seemed to be unanimous in its belief that this legislation would improve the functioning of the courts by providing standards, a means of evaluation and a legislative authorized disposition for juveniles found to be incompetent.

The concern expressed by the committee was a recognition of our state's economic position and the differing viewpoints between mental health advocates, prosecutors and probate judges. The concern with “Qualified examiner” is that it would allow registered professional nurses, social workers, counselors, and marriage and family therapists to do competency evaluations. As with adults, competency evaluations should be done by the forensic center with a corresponding right for an independent examination.

The concern with a presumptive age is the necessity thereof and the differing maturity levels of male and female juveniles, today and in the future. It would seem to be more fair or appropriate for questions of competency for this to be based on a juvenile and fact specific evaluation. Just as age is no longer a determinative factor in one's competence to testify, it would seem that one's age should not be given undue weight as to competency when age is probably the least determinative factor involved in the actual determination of competency.

The cost factor is related to these difficult economic times and the concerns relating to unfunded mandates. The legislation contains no provision for payment of the evaluation and seems to indicate that the prosecutor or the juvenile or someone else can be required to pay the costs of the evaluation.

The committee was given authorization to send its position.

5. Committee Reports

- a. Medical Marijuana Subcommittee
- b. Criminal Law Section
- c. Diversity Project
- d. Custodial Interrogation Recording Task Force
 - i. SB 0152

6. Adjournment.