

Agenda
Public Policy Committee
April 22, 2021 – 12:00 p.m. to 1:30 p.m.
Via Zoom Meetings

Public Policy Committee.....Dana M. Warner, Chairperson

A. Reports

1. Approval of January 21, 2021 minutes
2. Public Policy Report

B. Legislation

1. **HB 4174** (Lightner) Criminal procedure: records; criminal justice system data collection; provide for. Creates new act.

Status: 02/09/21 Referred to House Judiciary Committee.

Referrals: 02/26/21 Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Criminal Law Section.

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

Liaison: Takura N. Nyamfukudza

2. **HB 4181** (Anthony) Civil procedure: evictions; residential evictions during the COVID-19 state of emergency; prohibit. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 5740.

Status: 02/09/21 Referred to House Judiciary Committee.

Referrals: 02/26/21 Access to Justice Policy Committee; 04/05/21 Real Property Law Section.

Comments: Access to Justice Policy Committee.

Liaison: Brian D. Shekell

3. **SB 0159** (MacDonald) Courts: juries; provision related to allowance of a one man grand jury; eliminate. Amends 1927 PA 175 by repealing secs. 3, 4, 5, 6, 6a & 6b, ch. VII (MCL 767.3 et seq.).

Status: 02/23/21 Referred to Senate Judiciary & Public Safety Committee.

Referrals: 02/26/21 Criminal Jurisprudence & Practice Committee; Criminal Law Section.

Comments: Criminal Jurisprudence & Practice Committee; Criminal Law Section.

Liaison: Valerie R. Newman

4. **Executive Budget for the Michigan Indigent Defense Commission for the 2021-2022 Fiscal Year**

Referrals: 02/26/21 Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee.

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

Liaison: Kim Warren Eddie

5. **Executive Budget for the Department of the Judiciary for the 2021-2022 Fiscal Year**

Referrals: 02/26/21 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee.

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

Liaison: E. Thomas McCarthy, Jr.

Agenda
Public Policy Committee
January 21, 2021 – 12 p.m. to 1:30 p.m.

Committee Members: Dana M. Warnez, Kim Warren Eddie, E. Thomas McCarthy, Jr., Valerie R. Newman, Takura N. Nyamfukudza, Nicholas M. Ohanesian, Brian Shekell, Thomas G. Sinas, Mark A. Wisniewski
SBM Staff: Janet Welch, Peter Cunningham, Elizabeth Goebel, Kathryn Hennessey, Carrie Sharlow
GCSI Staff: Marcia Hune, Samantha Zandee

A. Reports

1. Approval of November 20, 2020 minutes

The minutes were approved unanimously (9).

2. Public Policy Report

The Governmental Relations staff provided an oral report.

B. Court Rule Amendments

1. ADM File No. 2020-25: Proposed Addition of Administrative Order No. 2020-X

The proposed administrative order would replace the current administrative order regarding distribution of funds from the Lawyer Trust Account Program that was adopted more than 20 years ago. The distribution would remain largely the same as it is now: 70 percent to support delivery of civil legal services to the poor, 15 percent to promote improvements in the administration of justice, 10 percent to support increased access to justice (including racial, gender, and ethnic equality), and 5 percent for support of the activities of the Michigan Supreme Court Historical Society. What would be different is that in paragraph three, funds would be used to support increased access to justice generally with specific reference to racial, gender, and ethnic equality, instead of reference to the long-defunct task forces on Gender Issues in the Courts and Racial/Ethnic Issues in the Court. Those issues will continue to be a focus of the money to be spent, but will be able to include additional recommendations. Further, the money could be spent as directed by the State Court Administrator, instead of being spent “within the judiciary,” which unnecessarily restricts the ability to fund programs that exist outside the judiciary but fit within the funding parameters. Finally, the proposed AO would establish a cap on funding for the Michigan State Historical Society to reflect what are likely largely fixed costs for operational expenses; the remainder would be split among the remaining recipients.

The following entities offered recommendations: Access to Justice Policy Committee; Diversity & Inclusion Advisory Committee; Justice Initiatives.

The committee voted unanimously (9) to take no position and authorize the committees to submit their positions to the Court.

2. ADM File No. 2020-26: Proposed Amendments of MCR 1.109 and 8.119

The proposed amendments of MCR 1.109 and 8.119 would allow SCAO flexibility in protecting an individual’s personal identifying information and clarify when a court is and is not required to redact protected personal identifying information.

The following entities offered recommendations: Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Probate & Estate Planning Section.

The committee voted unanimously (9) to support the proposed amendments in concept with no comments on the specific language.

3. ADM File No. 2020-20: Proposed Amendment of MCR 2.105

The proposed amendment of MCR 2.105 would establish the manner of service on limited liability companies.

The committee tabled this to the February Executive Committee meeting.

4. ADM File No. 2020-19: Proposed Amendment of MCR 2.302

The proposed amendment of MCR 2.302 would require transcripts of audio and video recordings intended to be introduced as an exhibit at trial to be transcribed.

The following entities offered recommendations: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Appellate Practice Section.

The committee voted unanimously (9) to oppose this proposed amendment of Rule 2.302 in its current form. The committee opposed the proposed rule because of concerns with the burdens the proposed rule may place on litigants and the court and with the lack of clarity surrounding how recordings would be transcribed.

5. ADM File No. 2020-17: Proposed Addition of MCR 3.906

The proposed addition of MCR 3.906 would establish a procedure regarding the use of restraints on a juvenile in court proceedings.

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

The committee voted 7 to 2 to support the court rule, with the caveat that a judge may allow the use of restraints on a juvenile offender so long as the reasons for that decision are on the record.

6. ADM File No. 2020-07: Alternative Proposed Amendments of MCR 6.502

The proposed alternative amendments of MCR 6.502 would address the issue of a court's recharacterization of a defendant's motion for relief from judgment that is styled as something other than a motion for relief from judgment. Under Alternative A, the court would be required to notify the defendant of its intent to recharacterize the motion and allow the defendant an opportunity to withdraw or amend the motion. Under Alternative B, the court would be required to return the motion to the defendant with a statement of the reason for return.

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

The committee voted unanimously (9) to adopt the position presented by the Access to Justice Policy Committee.



To: Members of the Public Policy Committee
Board of Commissioners

From: Governmental Relations Staff

Date: April 15, 2021

Re: HB 4174 – Criminal Justice System Data Collection

Background

House Bill 4174 creates a statewide data collection and reporting system to collect data regarding criminal cases. The availability of data will allow agencies and individuals to conduct data analysis on issues pertaining to criminal cases. This will help identify trends and act accordingly to improve the functioning of the courts and the availability of legal services.

Keller Considerations

The Access to Justice Policy Committee, the Criminal Jurisprudence & Practice Committee, and the Criminal Law Section all concluded that the bill is *Keller*-permissible. Comprehensive, reliable data concerning criminal cases will promote accountability and facilitate more fact-based decision-making, leading to improvements in the functioning of the courts and access to justice.

Keller Quick Guide

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

Staff Recommendation

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

House Bill 4174 (2021) rss?

Friendly Link: <http://legislature.mi.gov/doc.aspx?2021-HB-4174>

Sponsor

Sarah Lightner (district 65)
(click name to see bills sponsored by that person)

Categories

Criminal procedure: records;

Criminal procedure: records; criminal justice system data collection; provide for. Creates new act.

Bill Documents

Bill Document Formatting Information

[x]

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Documents



House Introduced Bill

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As Passed by the House

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As Passed by the Senate

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House Enrolled Bill

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Bill Analysis

History

(House actions in lowercase, Senate actions in UPPERCASE)

NOTE: a page number of 1 indicates that the page number is soon to come.

Date ▲	Journal	Action
02/09/21 HJ 8 Pg. 115		introduced by Representative Sarah Lightner
02/09/21 HJ 8 Pg. 115		read a first time
02/09/21 HJ 8 Pg. 115		referred to Committee on Judiciary
02/10/21 HJ 9 Pg. 124		bill electronically reproduced 02/09/2021

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HOUSE BILL NO. 4174

February 09, 2021, Introduced by Rep. Lightner and referred to the Committee on Judiciary.

A bill to create the justice data collection and reporting system; and to provide for the powers and duties of certain state and local governmental officers and entities.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. (1) Subject to appropriation, no later than February 1, 2022, the state court administrative office shall enter into a contract with a vendor to provide a justice data collection and reporting system.

(2) The justice data collection and reporting system established under subsection (1) must do all of the following:

(a) Provide uniform collection, record, and reporting of data for all of the following:

(i) A criminal case from arrest through disposition and completion of a sentence, as applicable, including, but not limited to, a sentence of probation.

(ii) A juvenile justice system case, including, but not limited to, a disposition involving probation.

(iii) A case involving neglect or abuse of a child.

(iv) A civil case.

(b) Integrate with financial and other systems utilized by departments and agencies of this state and units of local government, including, but not limited to, the department of state police and other law enforcement agencies, prosecuting attorneys, and courts.

(c) Provide storage of the following information and data that may be accessed by approved users in real time, including, but not limited to, prosecutors, judges, law enforcement officers, and jail administrators:

(i) Data entered for the following events:

(A) Arrest and jail booking.

(B) Authorizations for a criminal charge or filing of a petition, as

applicable.

(C) Sentencing.

(D) Probable cause findings following a preliminary examination, transfer, removal, and remand.

(ii) The name and address of each individual entered into a system that is capable of aggregating data for statistical purposes.

(iii) Restitution owed and remaining as to each defendant or juvenile.

(iv) Case entries for juvenile justice system cases, including cases placed on the consent calendar.

(d) Perform alias and phonetic name searches.

(e) Provide real time updates of record changes to approved users, including, but not limited to, prosecutors, judges, law enforcement officers, and jail administrators.

(f) Schedule court hearings by automatically locating first available dates.

(3) Not later than 1 year after the enactment of this act, the state court administrative office shall submit a report of the following to the committees and subcommittees of the senate and house of representatives concerned with appropriations, the judiciary, or corrections:

(a) An analysis of individuals who have multiple data entries under subsection (2), including, but not limited to, demographic information; restitution owed; restitution aging; fees, fines, and court costs owed; and fees, fines, and court costs aging.

(b) The extent the justice data collection and reporting system has improved overall system performance by decreasing the duplication of data.

(c) How the justice data collection and reporting system is tracking individuals who have entries from a juvenile justice system case or a case that involved abuse or neglect of the individual as a child, and who are subsequently involved in a criminal case.

**Public Policy Position
HB 4174**

Support the Concept

Explanation

The committee voted to support in concept the idea to create a justice data collection system that provides access to only aggregate information to the legislature as well as all stakeholders of the justice system.

Keller Explanation

The committee agreed that data collection, in general, no matter how it is framed in this particular piece of legislation, is helpful to improving the functioning of the courts.

Position Vote:

Voted For position: 21

Voted against position: 0

Abstained from vote: 0

Did not vote (absence): 7

Contact Persons:

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

Valerie R. Newman vnewman@waynecounty.com

**Public Policy Position
HB 4174**

Support in Concept

Explanation

The committee voted to support in concept the idea to create a justice data collection system that provides access to aggregate information to the legislature as well as all members of the criminal justice system.

Keller Explanation

The committee agreed with the Criminal Law Section's *Keller* permissibility explanation as stated below:

House Bill 4174 creates a statewide data collection and reporting system to collect data regarding criminal cases. The availability of data will allow agencies and individuals to conduct data analysis on issues pertaining to criminal cases. This will help identify trends that are present and act accordingly to improve the functioning of the courts and the availability of legal services.

Position Vote:

Voted For position: 16

Voted against position: 2

Abstained from vote: 0

Did not vote (absence): 5

Contact Persons:

Mark A. Holsomback mahols@kalcounty.com

Sofia V. Nelson snelson@sado.org

**Public Policy Position
HB 4174****Support****Explanation**

The Criminal Law Section of the State Bar of Michigan supports HB 4174.

Keller Explanation

House Bill 4174 creates a statewide data collection and reporting system to collect data regarding criminal cases. The availability of data will allow agencies and individuals to conduct data analysis on issues pertaining to criminal cases. This will help identify trends that are present and act accordingly to improve the functioning of the courts and the availability of legal services.

Position Vote:

Voted for position: 14

Voted against position: 1

Abstained from vote: 1

Did not vote (absent): 9

Contact Person: Kahla Crino

Email: kcrino@ingham.org



To: Members of the Public Policy Committee
Board of Commissioners

From: Governmental Relations Staff

Date: April 15, 2021

Re: HB 4181 – Eviction Prohibition During COVID-19 State of Emergency

Background

This bill would amend the Revised Judicature Act to prohibit residential evictions until 60 days after the end of the COVID-19 emergency.

***Keller* Considerations**

A majority of the Access to Justice Policy Committee concluded the bill is *Keller*-permissible “because it amends a provision of the Judicature Act relating to summary proceedings, and it relates to the goal of improvement of the functioning of the courts by attempting to further align procedure with the current statewide Coronavirus Eviction Rental Assistance Program.”

***Keller* Quick Guide**

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

Staff Recommendation

The bill is not *Keller*-permissible. Although the State Bar has regularly provided technical assistance to the Legislature concerning the the Revised Judicature Act, which it was instrumental in developing in pre-*Keller* times, SBM has not, post-*Keller*, considered every proposed amendment of the Revised Judicature Act (RJA) to be *per se Keller*-permissible. Traditionally, for example, we have considered any legislation addressing which causes are actionable to be outside *Keller* boundaries, even if the proposed change would reduce caseloads and thereby reduce the burden on the court system. Similarly, we do not weigh in on legislation that involves balancing or re-balancing competing interests. We have focused our legislative attention, instead, on legislative proposals that would either improve or impair

the functioning of the courts within the context of how the courts operate pursuant to the substantive policy choices enacted by the legislature.

As reported by the Access to Justice Policy Committee, HB 4181 is designed to codify many of the protections put in place for tenants during the pandemic through eviction moratoriums. The bill's provisions apparently are intended to incentivize more landlords to participate in a new state [COVID Emergency Rental Assistance \(CERA\) program](#). However desirable it might be for court operations to mesh with executive branch programs, the underlying question in this legislation is an eviction moratorium.

If the question is whether landlords should be denied access to the courts during the pandemic and under what conditions, our traditional *Keller* analysis would say we can have no position.

If the question is what modifications should be made to the RJA to most effectively implement an eviction moratorium, the State Bar is available to offer technical assistance.

House Bill 4181 (2021) rss?

Friendly Link: <http://legislature.mi.gov/doc.aspx?2021-HB-4181>

Sponsors

Sarah Anthony (district 68)

Abraham Aiyash, Kara Hope, Ranjeev Puri, Julie Brixie, Stephanie Young, William Sowerby, Mary Cavanagh, Regina Weiss, Rachel Hood, Felicia Brabec, Kyra Harris Bolden, Lori Stone, Tenisha Yancey, Amos O'Neal, Brenda Carter, Laurie Pohutsky, Tullio Liberati, Alex Garza, Cara Clemente, Helena Scott, Padma Kuppa, Kelly Breen

(click name to see bills sponsored by that person)

Categories

Civil procedure: evictions;

Civil procedure: evictions; residential evictions during the COVID-19 state of emergency; prohibit. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 5740.

Bill Documents

Bill Document Formatting Information

[x]

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Bill Analysis

History

(House actions in lowercase, Senate actions in UPPERCASE)

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Date ▲	Journal	Action
02/09/21	HJ 8 Pg. 117	introduced by Representative Sarah Anthony
02/09/21	HJ 8 Pg. 117	read a first time
02/09/21	HJ 8 Pg. 117	referred to Committee on Judiciary
02/10/21	HJ 9 Pg. 124	bill electronically reproduced 02/09/2021

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HOUSE BILL NO. 4181

February 09, 2021, Introduced by Reps. Anthony, Aiyash, Hope, Puri, Brixie, Young, Sowerby, Cavanagh, Weiss, Hood, Brabec, Bolden, Stone, Yancey, O'Neal, Brenda Carter, Pohutsky, Liberati, Garza, Clemente, Scott, Kuppa and Breen 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 5740.`

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 5740. (1) Notwithstanding anything in this chapter or chapter 57a to the contrary, from the effective date of the amendatory act that added this section to 60 days after the termination of the COVID-19 emergency, a landlord or owner of a property shall not, for the purposes of a nonessential eviction for a residential dwelling unit, do either of the following:

(a) Terminate a tenancy.

(b) Send any notice, including a notice to quit, requesting or demanding that a tenant of a residential dwelling unit vacate the premises.

(2) Notwithstanding anything in this chapter or chapter 57a to the contrary, from the effective date of the amendatory act that added this section to 60 days after the termination of the COVID-19 emergency, a court shall not, in a summary proceeding for a nonessential eviction for a residential dwelling unit, do any of the following:

(a) Accept for filing a summons or complaint.

(b) Enter an order or judgment for a plaintiff for possession.

(c) Issue a writ of restitution or order for eviction.

(d) Deny, on the request of a defendant, a stay of a writ of restitution or order for eviction or, on the request by a party, a continuance of a summary proceeding.

(e) Schedule a court event, including, but not limited to, a motion hearing or a trial.

(3) Notwithstanding anything in this act to the contrary, all of the following are tolled from March 10, 2020 to 60 days after the termination of the COVID-19 emergency:

(a) A period of limitation or time limit for instituting summary proceedings or bringing a claim or counterclaim for damages under this chapter.

(b) A period applicable to a presumption under section 5720.

(c) A period under this chapter within which a summons must be served, a party must appear for trial, or a summary proceeding must be heard, even if the period is contained in a summons or other order issued by the court.

(d) A period under this chapter within which a defendant may make any payment to satisfy, partially or completely, a judgment or to preclude issuance of a writ of restitution or order for eviction, even if the period is contained in a judgment or order entered by the court.

(e) A time restriction under this chapter on issuance of a writ of restitution or order for eviction, even if the time restriction is contained in a judgment or order entered by the court.

(f) A period for taking an appeal from an order or judgment issued under this chapter.

(g) Any other time period or restriction applicable to a summary proceeding or action under this chapter that the court determines should be tolled or extended.

(4) Notwithstanding anything in this act or in any order of a court, from the effective date of the amendatory act that added this section to 60 days after the termination of the COVID-19 emergency, a person shall not serve or execute a writ of restitution or order for eviction for a nonessential eviction of a residential dwelling unit.

(5) Notwithstanding anything in this chapter or chapter 57a to the contrary, in a summary proceeding under this chapter or chapter 57a, a person shall not request and a court shall not award damages that consist of a late fee for nonpayment of rent that was due from March 10, 2020 to 60 days after the termination of the COVID-19 emergency for a residential dwelling unit if, not later than 30 days after the missed rent payment, the tenant provided notice and documentation to the landlord that the nonpayment of rent was because of a financial impact from COVID-19.

(6) This section does not relieve a tenant from the obligation to pay rent or, except as expressly provided in this section, restrict a landlord's ability to recover rent.

(7) As used in this section:

(a) "Nonessential eviction" means any of the following:

(i) An eviction for nonpayment of rent.

(ii) An eviction for no fault or no cause.

(iii) An eviction for cause that does not involve or include allegations of either of the following:

(A) Criminal activity that may impact the health or safety of other residents, health care workers, emergency personnel, persons lawfully on the subject property, or the general public.

(B) Lease violations that may impact the health or safety of other residents, health care workers, emergency personnel, persons lawfully on the subject property, or the general public.

(b) "The termination of the COVID-19 emergency" means the last date on which any of the following is in effect in this state:

(i) A state of emergency or state of disaster declared or extended under an executive order to deal with COVID-19.

(ii) A state of emergency or state of disaster declared or extended under a concurrent resolution of the legislature to deal with COVID-19.

(iii) An order issued under section 2253 of the public health code, 1978 PA 368, MCL 333.2253, to deal with COVID-19.

**Public Policy Position
HB 4181**

Support with Recommended Amendment

Explanation

The committee voted to support this legislation with additional clarifying language to base the process on the federal state of emergency timeline.

Summary proceedings already confer a significant advantage on landlords and the pandemic has significantly increased barriers to justice for tenants. It is anticipated to create housing instability for over 50,000 families this year. The COVID Emergency Rental Assistance (CERA) program launches this month and replaces the popular Eviction Diversion Program (EDP) that MSHDA launched in July 2020. CERA will provide millions in rental assistance to help tenants stay housed and to help landlords recoup rent. However, landlords are not obligated to participate in the program and many opt out citing administrative delays, limits on fees and costs, and the need to recover property. HB 4181 will codify many of the protections intended to be afforded to tenants under eviction moratoriums and the CERA Program. It will incentivize more landlords to participate in CERA while still tolling most of the protections which they would otherwise be able to avail themselves of until 60 days after the pandemic emergency termination.

Keller Explanation

The committee agreed this legislation is *Keller*-permissible because it amends a provision of the Judicature Act relating to summary proceedings, and it relates to the goal of improvement of the functioning of the courts by attempting to further align procedure with the current statewide Coronavirus Eviction Rental Assistance Program.

Position Vote:

Voted For position: 21

Voted against position: 0

Abstained from vote: 0

Did not vote (absence): 7

Contact Persons:

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

Valerie R. Newman vnewman@waynecounty.com



To: Members of the Public Policy Committee
Board of Commissioners

From: Governmental Relations Staff

Date: April 15, 2021

Re: SB 159 – Eliminate the Allowance of a One-Man Grand Jury

Background

This bill would amend the Code of Criminal Procedure to eliminate the provisions in the act that allow for the use of a “one-man grand jury.”

***Keller* Considerations**

The Criminal Jurisprudence & Practice Committee and the Criminal Law Section concluded the bill was *Keller*-permissible because of its impact on the functioning of the courts. The Criminal Law Section also believed the bill is *Keller*-permissible in that it would improve the quality of legal services available to defendants.

***Keller* Quick Guide**

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

Staff Recommendation

The bill satisfies the requirements of *Keller* and may be considered on its merits. The one-man grand is a criminal procedure device that relates directly to the functioning of the courts.

Senate Bill 0159 (2021) rss?

Friendly Link: <http://legislature.mi.gov/doc.aspx?2021-SB-0159>

Sponsor

Michael MacDonald (district 10)
(click name to see bills sponsored by that person)

Categories

Courts: juries;

Courts: juries; provision related to allowance of a one man grand jury; eliminate. Amends 1927 PA 175 by repealing secs. 3, 4, 5, 6, 6a & 6b, ch. VII (MCL 767.3 et seq.).

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Bill Analysis

History

(House actions in lowercase, Senate actions in UPPERCASE)

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Date ▲	Journal	Action
02/23/21 SJ 14 Pg. 192		INTRODUCED BY SENATOR MICHAEL D. MACDONALD
02/23/21 SJ 14 Pg. 192		REFERRED TO COMMITTEE ON JUDICIARY AND PUBLIC SAFETY

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SENATE BILL NO. 159

February 23, 2021, Introduced by Senator MACDONALD and referred to the Committee on Judiciary and Public Safety.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"

by repealing sections 3, 4, 5, 6, 6a, and 6b of chapter VII (MCL 767.3, 767.4, 767.5, 767.6, 767.6a, and 767.6b), section 6 of chapter VII as amended by 1999 PA 250.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Enacting section 1. Sections 3, 4, 5, 6, 6a, and 6b of chapter VII of the code of criminal procedure, 1927 PA 175, MCL 767.3, 767.4, 767.5, 767.6, 767.6a, and 767.6b, are repealed.

**Public Policy Position
SB 0159**

Oppose

Explanation

The committee voted to oppose this legislation that would eliminate the system of the one-man grand jury process. The committee felt that the one-man grand jury remains an investigative tool and objections to it can be resolved in ways other than complete removal.

Keller Explanation

The committee agreed that this legislation is *Keller* permissible in affecting the functioning of the courts.

Position Vote:

Voted For position: 11

Voted against position: 6

Abstained from vote: 0

Did not vote (absence): 6

Contact Persons:

Mark A. Holsomback mahols@kalcounty.com

Sofia V. Nelson snelson@sado.org

**Public Policy Position
SB 0159****Support****Explanation**

The Criminal Law Section of the State Bar of Michigan supports SB 0159.

Keller Explanation

Eliminating the so called "one man grand jury" would impact the functioning of courts, by the Criminal Law Section's assessment, in a positive manner. Eliminating the secrecy allowable in the procedure will improve the quality of legal services available to defendants.

Position Vote:

Voted for position: 9

Voted against position: 7

Abstained from vote: 0

Did not vote (absent): 9

Contact Person: Kahla Crino

Email: kcrino@ingham.org

April 12, 2021

Public Policy Committee
Board of Commissions
State Bar of Michigan
Attn: Peter Cunningham
306 Townsend St.
Lansing, MI. 48933-2012

I urge you to recommend to the Board of Commission to appoint a special committee to review the one-man grand jury statute and recommend changes to make it more specific in procedure and separate text from the provision relating to citizen grand jury.

My reasons are reflected in my letter of March 24, 2021 to the Committee of Criminal Law and other materials I sent to the Committee.

Thank you,

Avern Cohn

AVERN COHN
219 Theodore Levin
United States Courthouse
231 West Lafayette
Detroit, MI 48226
(313) 234-5160

March 24, 2021

Committee on Criminal Law
State Bar of Michigan
Attn: Peter Cunningham
306 Townsend St.
Lansing, MI. 48933-2012

Re: Senate Bill No.159

I write to urge the committee to recommend to the Board of Commissioners that it urge the State Senate to revoke or reform the one-man grand jury statute.

The history of the Bar involvement with the statute is reflected in articles I sent you separately. My enclosed letter to the editor of the Detroit News explains my concerns.

As I see it the following are the defects in the statute:

1. The statute and rules authorizing citizen and one-man grand jury are intertwined and confusing. The statutes and rules as to each should be separate.
2. The secrecy provision of the statute is grossly over broad. There is no good reason to keep secret the petition for the grand jury and the order granting the petition.
3. The names of prospective witnesses should accompany any indictment. Keeping these secret for any length of time is unnecessary and unfair.
4. There are ambiguities about the right to a preliminary examination following an indictment to affirm or deny probable cause.
5. There should be a provision making it explicit any comments by the prosecutor should be confined to the courtroom. Attached are examples of out of court remarks by the prosecution in the Flint grand jury that were grossly wrong.

The right to an investigative subpoena gives the prosecutor all the authority that is needed to deal with complex cases.

The impaneling of a one-man grand jury to investigate public corruption in the legislature (Carr grand jury) the public officials (Ferguson grand jury) are examples of situations where an investigative subpoena would have been sufficient.

Thank you

A handwritten signature in blue ink, appearing to read 'Avern Cohn', with a long horizontal flourish extending to the right.

Avern Cohn

One-man grand jury in Flint case is unfair

While your editorial (Re: "Michigan should scrap one-man grand juries," March 4) has some merit it fails to discuss the misuse of the Flint one-man grand jury and the need for reform in the grand jury process. The indictment in the Flint one-man grand jury reflects the jurisprudential parochialism in the judges in Genesee County. Particularly, for example, the petition for one-man grand jury.

The late Robert Scigliano, a political science professor at Michigan State University, in his writings made clear that the use of the one-man grand jury should be limited to cases of political corruption and conspiracies.

In these kinds of cases an inquisition may be necessary in investigating criminal situations.

Certainly, that is not the case in Flint. The Flint defendants have been subject to several investigations, including one by the former Michigan attorney general.

The defendants in the Flint case have been unfairly treated by denial of access to the evidence

on which the juror found probable cause. They have no information as to the basis of the indictments, particularly the evidence to support a finding of probable cause.

I suggest that you should have concluded your editorial with a recommendation that the proceedings be moved out of Genesee County and take place in front of judges not subject to the clamor of Genesee County voters. It should be conducted by a special prosecutor not motivated by a desire for political approval. Your editorial should also have included a recommendation for a study of the current one-man grand jury process and the need for legislative reform.

In closing, you should know that on July 9, 1949, The News expressed skepticism over the one-man grand jury process, calling it a "failure in democracy."

Avern Cohn, senior judge
United States District Court
Eastern District of Michigan

Contact us: Phone: (313) 222-2292 | To submit a letter, visit detroitnews.com/opinion | Fax: (313) 496-5253 | Mail: 160 W. Fort Street, Detroit, MI 48226 ; Please include home and work phone numbers and city of residence

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DETROIT NEWS 3/12/21

3/9/21



SOM

Flint Water Prosecution Presses on in Court, Awaits District Court Review of Evidence Presented in Grand Jury Proceedings

Contact: Courtney Covington Watkins 517-290-1560

Agency: Attorney General

LANSING – Solicitor General Fadwa Hammoud today commented on a pattern of behavior by former Governor Rick Snyder’s legal team to discredit Michigan’s grand jury process following a hearing in Genesee County’s 67th District Court. The hearing comes one day after the legal team for Jarrod Agen – who is **among the nine individuals indicted on criminal charges** in the Flint Water Crisis investigation – received an unfavorable ruling in another court.

“Today’s hearing was one more attempt, in a series of miscalculations by the Snyder defense team, to disqualify and discredit the grand jury process. The grand jury is a secure and unbiased investigative tool used to determine if enough evidence exists to issue criminal indictments,” said Hammoud. “Today, Mr. Snyder’s lawyer tried to degrade the grand jury process, even going so far as to question the work of the grand juror, Judge David Newblatt. This shows just how far defense counsel is willing to go to deny justice to the people of Flint.”

Today’s hearing to dismiss charges against former Governor Rick Snyder was brought before Judge William Crawford II of the 67th District Court. This hearing comes one day after a ruling by Judge Elizabeth Kelly in the 7th Circuit Court to deny a motion by Snyder’s former chief of staff, Jarrod Agen. Agen sought to dismiss the perjury charge against him, claiming that the indictment failed to allege sufficient facts, the venue in Genesee County was improper and, the one-person grand jury did not have jurisdiction to issue the indictment.

At the conclusion of yesterday’s hearing, Judge Kelly addressed defense counsel’s failure to follow Michigan Court Rules regarding pleadings and asked defense counsel to strictly comply with the court rules in future pleadings.

"While this may be a high profile case, there are no velvet ropes in our criminal justice system. The defense may not like the process, but it is our responsibility to apply the law without prejudice and ensure we utilize all investigative tools in the pursuit of justice for the people of Flint," said Hammoud.

A ruling from Judge Crawford of the 67th District Court is expected within a week.

The grand jury process, commonly used in prosecutions across the country, provides the ability to conduct an investigation expeditiously and to use public resources in the most efficient way possible. In accordance with state law, discussions on the grand jury evidence are not allowed at this stage in the cases. Seventh Circuit Chief Judge Duncan Beagle is in the process of reviewing the evidence and has stated he will provide what he deems relevant to both parties for discovery purposes.

###

Please note: A criminal charge is merely an allegation and the defendant is presumed innocent unless and until proven guilty.

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State's Liquor Licensees Benefit from New Online Liquor Ordering System

AG Nessel Charges One Police Officer, Clears Another in Public Integrity Investigations

Female carpenter paves career path in male-dominated industry



AG NEWS

Flint Prosecution Team Receives Win in Court

Contact: Courtney Covington Watkins 517-290-1560

Agency: Attorney General

March 18, 2021

LANSING-- A Genesee County district court judge today denied a motion to dismiss criminal charges against former Gov. Rick Snyder in connection with the Flint water crisis.

Reading his ruling from the bench, Judge William Crawford II of the 67th District Court, denied the defense's motion to quash for lack of jurisdiction and improper venue. Specifically, Crawford stated that the defendant's argument that the grand juror did not have jurisdiction to issue the indictment "lacks merit". The judge seemed to agree that it is the prosecution's burden to establish venue beyond a reasonable doubt and disagreed with the defendant's argument that, as a matter of law, the charged offenses, neglect of duty, can only be charged in Ingham County.

Crawford's ruling was viewed as a win for the prosecution team led by Solicitor General Fadwa Hammoud and Wayne County Prosecutor Kym Worthy. "Today's ruling is a small victory for the people of Flint who patiently await their day in court," said Hammoud. "This ruling affirms what our team has argued from the beginning: that the use of the grand jury to investigate and bring charges against Mr. Snyder and others as part of the Flint water crisis was proper."

"The defense has said that 'neglecting a city is not a crime.' On behalf of the citizens of Flint, we vehemently disagree with the notion that public officials are entitled to show little regard for the health and safety of the people they are elected to serve," said Worthy.

In January, a grand jury indicted Snyder on two counts of willful neglect of duty, each a misdemeanor that carries a penalty of up to one year in prison or a fine of up to a \$1,000. The grand jury issued a total of 41 indictments against Snyder and eight other individuals as part of the investigation into the Flint water crisis.

[Click here to view a copy of Crawford's ruling.](#)

###

Please note: A criminal charge is merely an allegation and the defendant is presumed innocent unless and until proven guilty.



**Michigan Department of Attorney
General Written Public Summary of the
Department's Freedom of Information
Act Procedures and Guidelines
Michigan Department of Attorney
General Freedom of Information Act
Procedures and Guidelines
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AG Privacy Policy
AG Web Disclaimer**

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To: Members of the Public Policy Committee
Board of Commissioners

From: Governmental Relations Staff

Date: April 15, 2021

Re: FY 2021-2022 Budget for the Michigan Indigent Defense Commission as contained
in the Executive Budget Recommendation.

Background

In 2013, the Michigan Indigent Defense Commission Act (Act) was enacted as Public Act 93. That Act, supported by the State Bar of Michigan (SBM), created the Michigan Indigent Defense Commission (MIDC) and required the MIDC to develop standards for local indigent defense systems. Once those standards are approved, the local systems are required to develop compliance plans that include costs, and the state is obligated to fund any increased costs required to meet the new standards.

After the MIDC adopted the first four standards,¹ local systems developed and submitted compliance plans for MIDC approval, and now the state is required to fund the increased costs of implementing those compliance plans. FY 2018-19 was the first year that the state has provided funding to local indigent defense systems. SBM supported the Executive Budget Recommendation for FY 2019-20 which was fully funded by the legislature, as well as the FY 2020-21 budget.

***Keller* Considerations**

SBM has a long history of supporting improvements to Michigan's indigent defense system, including supporting the initial four minimum standards for indigent defense systems as well as the underlying

¹ SBM supported the first four minimum standards, which are:

1. Education and Training of Defense Counsel - Requires defense counsel to know certain areas of the law including forensic and scientific issues, use applicable technologies, and annually complete continuing legal education courses.
2. Initial Review - Directs defense counsel to be prepared to interview and to evaluate client capability to participate in their representation after appointment of the counsel and before any court proceeding in a confidential setting.
3. Investigation and Experts - Obligates defense counsel to perform investigations, request funds when appropriate to retain a professional defense investigator, and to seek the assistance of experts if necessary.
4. Counsel at First Appearance and Other Critical Stages - Mandates that a defense counsel be assigned to a defendant as soon as the individual is determined to be indigent. Furthermore, counsel must also be provided to defendants at pretrial appearances and for other critical stages at all criminal proceedings.

legislation and the most recent amendments to the statute. The Executive Budget Recommendation would directly provide funding to improve the quality and availability of legal services for indigent criminal defendants. The \$148.9 million Executive Budget Recommendation for indigent criminal defense will allow trial court funding units to meet the ongoing requirements for the effective assistance of counsel and will address the costs incurred by courts as they implement compliance plans to train and educate counsel in accordance with standards approved by the Michigan Indigent Defense Council.

***Keller* Quick Guide**

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

Staff Recommendation

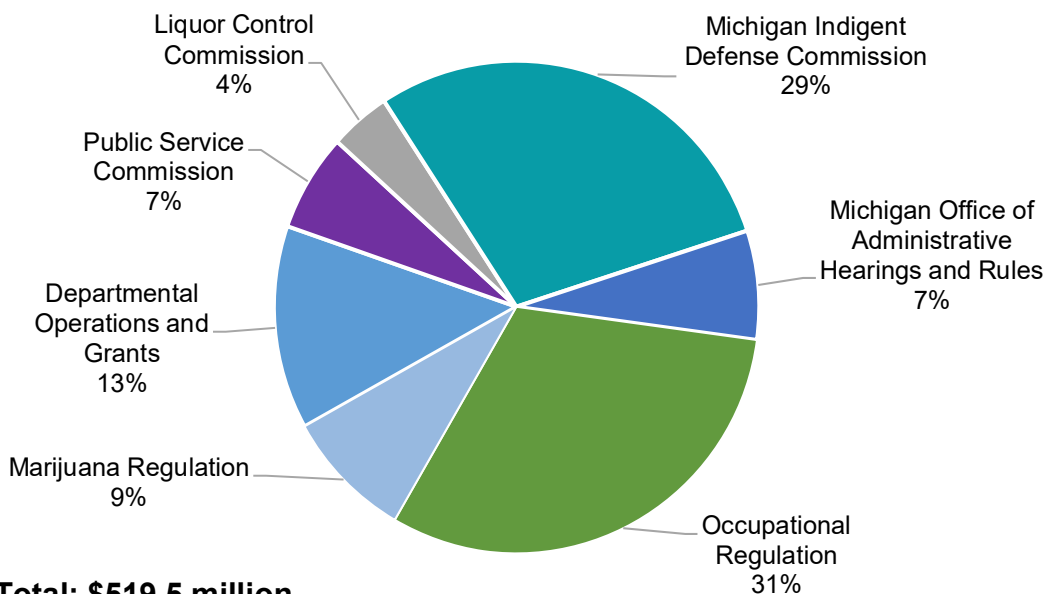
The bill satisfies the requirements of *Keller* and may be considered on its merits.

Department of Licensing and Regulatory Affairs Governor's Recommended Budget for Fiscal Years 2022 and 2023

The Department of Licensing and Regulatory Affairs (LARA) serves as the state's primary regulatory agency, providing oversight for a wide range of program areas, including health and childcare, business, construction, marijuana, indigent criminal defense, liquor, and professional occupations.

The Governor's recommended budget for fiscal years 2022 and 2023 includes total ongoing funding of \$512.4 million, of which \$178.8 million comes from the state's general fund. The Governor also recommends \$7.1 million in one-time funding in fiscal year 2022, all of which comes from the general fund.

Major Department Funding



Highlights

The Governor's recommended budget provides:

- ♦ **\$148.9 million for Indigent Criminal Defense Grants** (\$148.6 million general fund) for 120 trial court funding units to meet the ongoing requirements for the effective assistance of counsel for indigent criminal defendants, a \$31.4 million increase from fiscal year 2021.
- ♦ Of this increase, \$12 million is provided for local trial court funding units to comply with the newly approved minimum standard #5, Independence from the Judiciary, which was approved in October 2020. Compliance with minimum standard #5 will protect the independence of the public defense system and prevent undue political and budgetary influences on the system. Trial court units will develop compliance plans for this new standard in fiscal year 2022.

Licensing and Regulatory Affairs

- ♦ \$19.4 million of the increase is provided to support full year implementation costs of previously approved minimum standards #1 through #4.
 - ♦ **\$51.9 million for Marijuana Regulation** (all restricted funds) to regulate the state's medical and adult-use marijuana industry. Funding includes \$20 million to support research for veteran medical conditions and preventing suicide among veterans, in accordance with Initiated Law 1 of 2018. Excise tax collections from adult-use marijuana sales are forecast to result in the following fiscal year 2022 distributions: \$30 million to qualifying local counties and cities, \$35 million to the school aid fund for K-12 education, and \$35 million for road and bridge repair and maintenance.
 - ♦ **This funding also includes \$500,000 to address social equity within the marijuana industry** by expanding access to affordable capital.
 - ♦ **\$6.1 million to Modernize State Licensing Systems** (to be funded from the Information Technology Investment Fund in the Department of Technology, Management, and Budget), which are critical tools for LARA's regulatory duties. This investment will support the replacement of the existing 20-year-old Health Facilities and Substance Abuse Disorder licensing system (\$2.9 million), as well as the Certified Nurse Aide Licensing System (\$3.2 million). This modernization effort will benefit over 2,100 health facilities licensees, and over 52,000 certified nurse aides, nurse aide trainers, and training program licensees.
 - ♦ **\$5 million for the Michigan Saves Green Bank** (all general fund), to leverage private investment in clean energy improvements for Michigan's residents and businesses. By providing a credit enhancement to lenders, the green bank incentivizes lenders to provide more favorable rates and terms for renewable energy improvements benefitting property owners and the environment. This \$5 million investment will leverage \$150 million in private capital for clean energy improvements across the state.
 - ♦ **\$1.1 million** (all general fund) **to continue supporting State Infection Control Surveys in Skilled Nursing Facilities** to further the State's efforts to control the COVID-19 pandemic and protect the health, safety, and welfare of Michigan residents.
-

Department of Licensing and Regulatory Affairs
Governor's Recommended Budget for Fiscal Years 2022 and 2023
 \$ in Thousands

FY 2022 Adjustments

	<u>GF/GP</u>	<u>GROSS</u>
FY 2021 Original Enacted	\$149,605.6	\$484,389.6
Removal of FY 2021 One-Time Funding	(\$1,000.0)	(\$1,000.0)
FY 2022 Ongoing Investments		
Michigan Indigent Defense Commission Standard #5 - Funding for newly approved minimum standard #5, Independence from the Judiciary	\$12,000.0	\$12,000.0
Marijuana Social Equity Program - Funding for encouraging social equity in the marijuana industry	\$0.0	\$500.0
FY 2022 Reductions	\$0.0	\$0.0
FY 2022 Baseline Adjustments		
Michigan Indigent Defense Commission - Additional funding for full implementation of minimum standards #1- #4 and increased restricted fund authorization for local indigent reimbursements	\$19,350.0	\$19,450.0
Underground Natural Gas Storage Safety - Additional federal funding for inspections	\$0.0	\$352.5
Marijuana Regulatory Agency - Funding to support additional inspection activity	\$0.0	\$648.0
Employee-Related Payroll Adjustments	(\$109.7)	(\$1,555.3)
Other Technical Adjustments	(\$1,000.0)	(\$2,398.4)
FY 2022 Total Executive Recommendation - Ongoing Funding	\$178,845.9	\$512,386.4
FY 2022 One-Time Investments		
Michigan Saves Green Bank - Credit enhancement to incentivize renewable energy improvements	\$5,000.0	\$5,000.0
Nursing Facility Infection Control Surveys - Continued support for state inspections	\$1,100.0	\$1,100.0
Urban Search and Rescue - Funding shifted to one-time	\$1,000.0	\$1,000.0
FY 2022 Total Executive Recommendation - One-Time Funding	\$7,100.0	\$7,100.0
FY 2022 Total Executive Recommendation - Ongoing and One-Time	\$185,945.9	\$519,486.4
\$ Change from FY 2021 - Total Funding	\$36,340.3	\$35,096.8
% Change from FY 2021 - Total Funding	24.3%	7.2%

FY 2023 Planning Adjustments

	<u>GF/GP</u>	<u>GROSS</u>
FY 2022 Total Executive Recommendation	\$185,945.9	\$519,486.4
Removal of FY 2022 One-Time Funding	(\$7,100.0)	(\$7,100.0)
FY 2023 Total Executive Recommendation	\$178,845.9	\$512,386.4
\$ Change from FY 2022 - Total Funding	(\$7,100.0)	(\$7,100.0)
% Change from FY 2022 - Total Funding	(3.8%)	(1.4%)

Public Policy Position
Governor Whitmer's Executive Budget for the Michigan Indigent Defense
Commission under the Department of Licensing & Regulatory Affairs

Support

Explanation

The ATJ Policy Committee supports the governor's recommended budget for the Michigan Indigent Defense Commission.

Keller Permissibility:

The Executive Budget for the Michigan Indigent Defender Commission meets the requirements of *Keller*. Adequate funding of indigent defense in the courts is essential to the continued improvement of the courts.

Position Vote:

Voted For position: 21

Voted against position: 0

Abstained from vote: 2

Did not vote (absence): 5

Contact Persons:

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

Valerie R. Newman vnewman@waynecounty.com

Public Policy Position
**Governor Whitmer's Executive Budget for the Michigan Indigent Defense
Commission under the Department of Licensing & Regulatory Affairs**

Support

Explanation

The committee unanimously supports the executive budget for the Michigan Indigent Defense Commission (MIDC) under the Department of Licensing & Regulatory Affairs (LARA).

The budget includes ongoing funding of \$148.9 million, of which \$148.6 million is from the state's general fund. This is a \$31.4 million increase from the previous fiscal year.

Position Vote:

Voted For position: 15

Voted against position: 0

Abstained from vote: 2

Did not vote (absence): 6

Contact Persons:

Mark A. Holsomback mahols@kalcouny.com

Sofia V. Nelson snelson@sado.org



To: Members of the Public Policy Committee
Board of Commissioners

From: Governmental Relations Staff

Date: April 15, 2021

Re: FY 2021-2022 Judiciary Budget as contained in the Executive Budget Recommendation.

Background

The Judiciary Budget for FY 2021-2022 provides a total of \$319.5 million to fund the Michigan Supreme Court, Court of Appeals, Judicial compensation, the Judicial Tenure Commission, the State Appellate Defender Office (SADO), and various other programs and initiatives such as specialty courts, e-filing, and indigent civil legal assistance.

Highlights from the Executive Judiciary Budget Recommendation include:

- **\$325,700 continuing funds for Pretrial Assistance** (general fund) to continue the work of the Jail and Pretrial Incarceration Task Force by providing technical support to courts to support pretrial bail practices and detention sentencing determinations.
- **\$605,000 increase to support enacted Clean Slate legislation** (general fund). Funding will support ongoing costs for judicial information systems to automatically clear certain felonies and misdemeanors from criminal records. Providing a clean slate to eligible residents removes barriers to employment and housing opportunities and makes Michigan a national leader in criminal justice reform.
- **\$200,000 increase for Michigan Legal Help** (general fund). The program, through its website and affiliated local non-profit help centers, provides resources to help low- and moderate-income individuals representing themselves in civil matters, for which a court-appointed attorney is not provided.
- **\$19.1 million continuing funds to support problem solving courts** (\$13.5 million general fund), supporting specialized trial court programs that address the underlying substance abuse or mental health issues contributing to criminal behavior, by focusing on treatment and supervision as an alternative to incarceration.
- **\$821,800 increase for the implementation of the Statewide e-File System (MiFile)** for trial courts. The system will allow for the electronic filing of case related documents in any Michigan court at any time. The system has been under development since 2017, and initially implemented at eight pilot and model courts, prior to statewide launch.
- **\$360,700 increase for the State Appellate Defender's Office** (general fund) to support appellate level defense for indigent criminal defendants statewide.

***Keller* Considerations**

The Executive Judiciary Budget Recommendation meet the requirements of *Keller*. Adequate funding of the courts is essential to their functioning. Many of the programs funded by the Judiciary Budget, such as increasing caseloads for the State Appellate Defender Office, would improve the quality and increase the availability of legal services to society.

***Keller* Quick Guide**

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

Staff Recommendation

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

Judiciary

Governor's Recommended Budget for Fiscal Years 2022 and 2023

A constitutionally independent branch of state government, the Judiciary comprises the Supreme Court, the Court of Appeals, and related judicial agencies, including the Judicial Tenure Commission and the State Appellate Defender's Office. The Judiciary budget also provides funding to trial courts, including the payment of judge's salaries, grant awards to support problem solving courts and specialty programs, technological assistance, reimbursements for court caseloads, and juror compensation.

The Governor's recommended budget for fiscal year 2022 includes total ongoing funding of \$319.5 million, of which \$208.3 million comes from the state's general fund.

Highlights

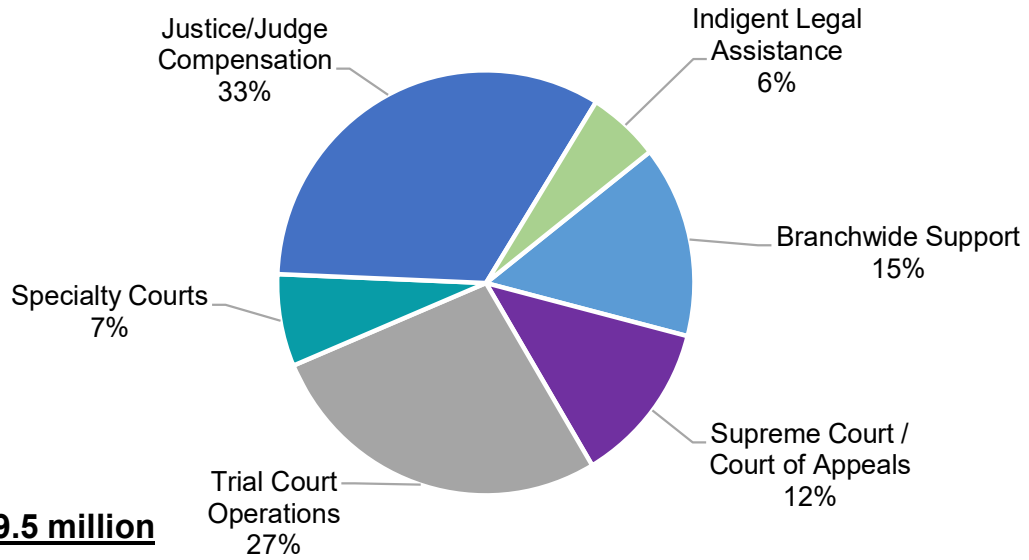
The Governor's recommended budget includes several important investments to improve access to fair and equal legal systems:

- ◆ **\$325,700 continuing funds for Pretrial Assistance** (general fund) to continue the work of the Jail and Pretrial Incarceration Task Force by providing technical support to courts to support pretrial bail practices and detention sentencing determinations.
- ◆ **\$605,000 increase to support enacted Clean Slate legislation** (general fund). Funding will support ongoing costs for judicial information systems to automatically clear certain felonies and misdemeanors from criminal records. Providing a clean slate to eligible residents removes barriers to employment and housing opportunities and makes Michigan a national leader in criminal justice reform.
- ◆ **\$200,000 increase for Michigan Legal Help** (general fund). The program, through its website and affiliated local non-profit help centers, provides resources to help low- and moderate-income individuals representing themselves in civil matters, for which a court-appointed attorney is not provided.
- ◆ **\$19.1 million continuing funds to support problem solving courts** (\$13.5 million general fund), supporting specialized trial court programs that address the underlying substance abuse or mental health issues contributing to criminal behavior, by focusing on treatment and supervision as an alternative to incarceration.
- ◆ **\$821,800 increase for the implementation of the Statewide e-File System (MiFile)** for trial courts. The system will allow for the electronic filing of case related documents in any Michigan court at any time. The system has been under development since 2017, and initially implemented at eight pilot and model courts, prior to statewide launch.

Judiciary

- ♦ **\$360,700 increase for the State Appellate Defender’s Office** (general fund) to support appellate level defense for indigent criminal defendants statewide.

Judiciary Budget - By Program Area



Total: \$319.5 million

Judiciary
Governor's Recommended Budget for Fiscal Years 2022 and 2023
 \$ in Thousands

FY 2022 Adjustments

	<u>GF/GP</u>	<u>GROSS</u>
FY 2021 Original Enacted	\$201,934.3	\$313,641.2
Removal of FY 2021 One-Time Funding	(\$1,806.8)	(\$1,806.8)
FY 2022 Ongoing Investments		
Statewide e-File System - Adds staffing support for MiFile statewide roll-out.	\$0.0	\$821.8
Judicial Information Systems - Adds ongoing support for Clean Slate legislation.	\$605.0	\$605.0
Problem Solving Courts - Increases grant support for trial court diversion programs.	\$600.0	\$600.0
Court of Appeals - Increases support for court operations.	\$547.9	\$547.9
Appellate Defender's Office - Increases support for appellate caseloads.	\$360.7	\$360.7
State Court Administrative Office - Supports pretrial program technical assistance.	\$325.7	\$325.7
Judicial Information Systems - Increases support for Michigan Legal Help.	\$200.0	\$200.0
Judicial Institute - Adds Justice Training Fund grant authorization.	\$0.0	\$100.0
FY 2022 Reductions	\$0.0	\$0.0
FY 2022 Baseline Adjustments		
Appellate Defender's Office - Montgomery v. Louisiana Compliance.	\$939.1	\$939.1
Employee-Related Payroll Adjustments	\$3,422.8	\$3,334.9
Other Technical Adjustments	\$1,194.2	(\$164.4)
FY 2022 Total Executive Recommendation - Ongoing Funding	\$208,322.9	\$319,505.1
FY 2022 One-Time Investments	\$0.0	\$0.0
FY 2022 Total Executive Recommendation - One-Time Funding	\$0.0	\$0.0
FY 2022 Total Executive Recommendation - Ongoing and One-Time	\$208,322.9	\$319,505.1
\$ Change from FY 2021 - Total Funding	\$6,388.6	\$5,863.9
% Change from FY 2021 - Total Funding	3.2%	1.9%

FY 2023 Planning Adjustments

	<u>GF/GP</u>	<u>GROSS</u>
FY 2022 Total Executive Recommendation	\$208,322.9	\$319,505.1
Removal of FY 2022 One-Time Funding	\$0.0	\$0.0
FY 2023 Baseline Adjustment - adjust baseline Clean Slate ongoing costs	\$175.0	\$175.0
FY 2023 Baseline Adjustment - remove Montgomery v. Louisiana from baseline	(\$939.1)	(\$939.1)
FY 2023 Total Executive Recommendation	\$207,558.8	\$318,741.0
\$ Change from FY 2022 - Total Funding	(\$764.1)	(\$764.1)
% Change from FY 2022 - Total Funding	(0.4%)	(0.2%)



Michigan Supreme Court
Chief Justice Bridget M. McCormack
March 10, 2021
Overview of the FY 2021-22
Judiciary Budget Request



Today's Presentation



Key Themes

Structure of Judiciary

Judiciary Response to COVID-19

- Focus on Technology
- Enhanced Public Access

Access to Justice

- Expanding Self-Help Resources
- Reducing the Civil Justice Gap

Jail and Pretrial Reform Next Steps

- Jail and Pretrial Task Force
 - Innovative Pretrial Services Proposal
- ### Courts as Resources
- Problem-solving courts



Key Themes



INDEPENDENCE – The people want an independent judiciary, free from political pressure, making decisions that are transparent, accountable, and based on the law.

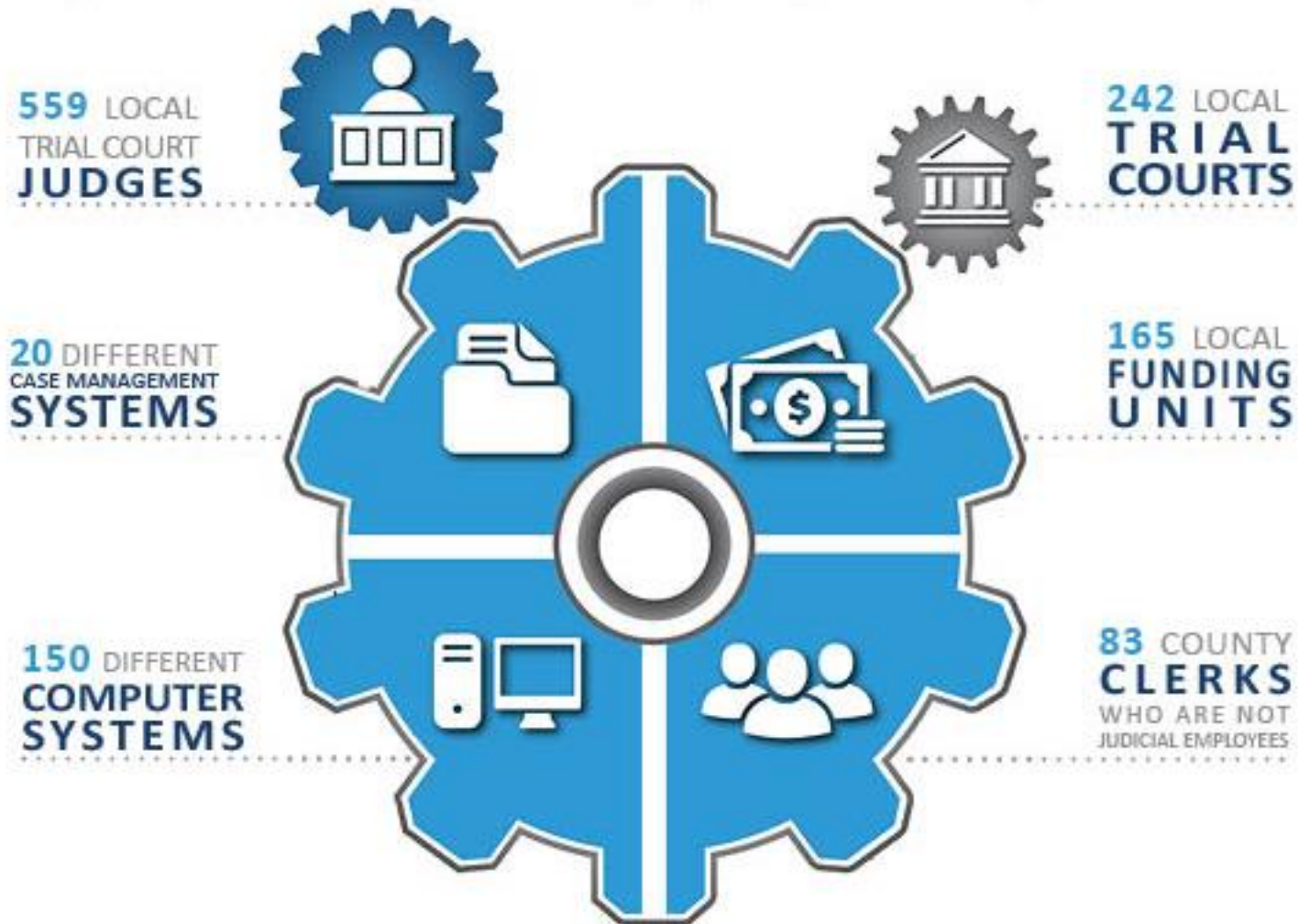
ACCESSIBILITY – Our court system must be accessible to every Michigan citizen, whether or not they can afford a lawyer.

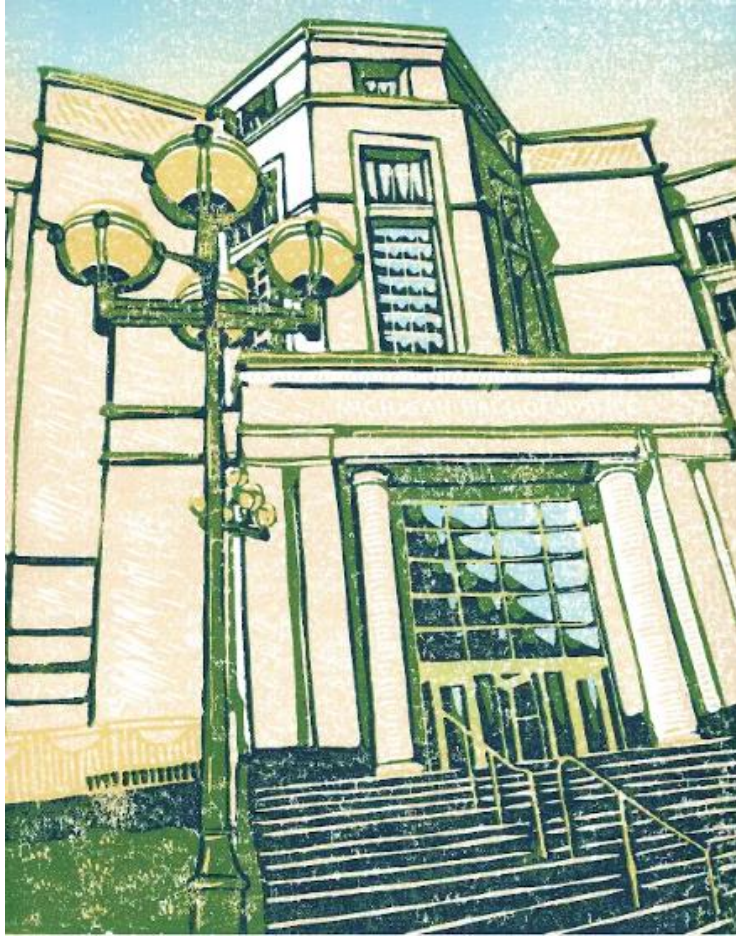
ENGAGEMENT – Michigan judges should be engaged and responsive to the problems and concerns of local communities.

EFFICIENCY – Our branch of government must be efficient and prudent with public resources and focused on providing the best possible customer service to individuals, families, businesses, and governments alike.



Michigan's Complicated Judiciary





Michigan Judiciary's Response to COVID-19

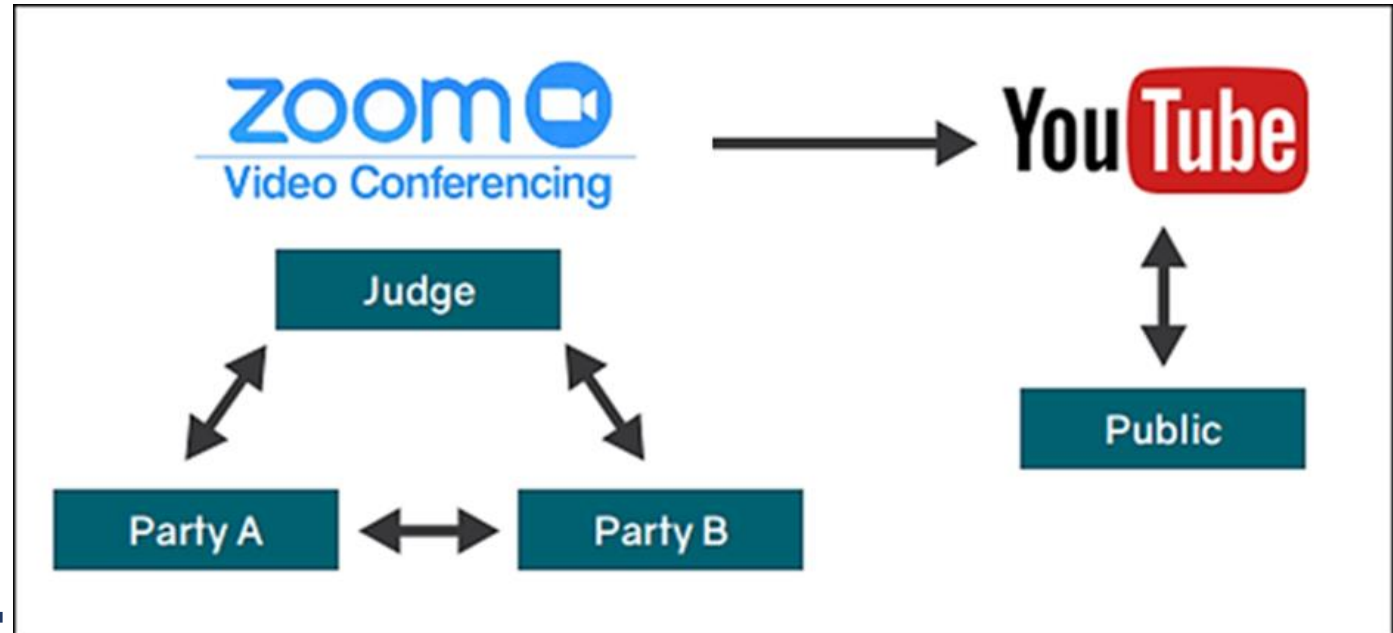
Focus on Technology



Virtual Courtrooms Key to Keeping Judiciary Running



- Pre-pandemic – most judges already equipped with Zoom licenses.
- Quickly provided additional training and licenses for other court officers.
- Published Virtual Courtroom Guidelines/Standards
- Avoid “Zoom-bombing” by only sharing access with participants.
- Public access provided by livestreaming to YouTube.



Directory Facilitates Public Access



MiCOURT Virtual Courtroom Directory



Search

BY LOCATION

Locate a virtual courtroom by county or current location (click )

Oakland County



Search

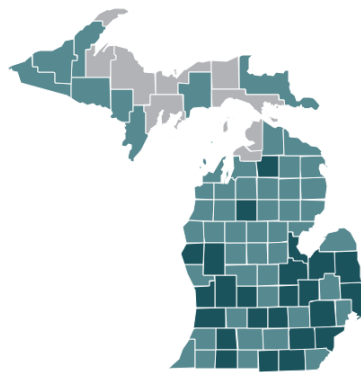
OR

BY JUDGE

Locate a virtual courtroom by Judge or Hearing Officer

Enter Judge or Hearing Officer

Search



Click a county to see available virtual courtrooms

Live now Offline Unknown

Results only include existing Virtual Courtrooms

COVID-19 Each court's local administrative order for *Return to Full Capacity* can be found [here](#).

List of Judges and Livestream Status

Judge/Hearing Officer Honorable Shelia R. Johnson Chief Judge District Judge	Court 46th District Court - Southfield	Virtual Courtroom Watch	Status LIVE NOW
Judge/Hearing Officer Ms. Tiffany McEvans Dallah Magistrate	Court 46th District Court - Southfield	Virtual Courtroom Watch	Status Offline
Judge/Hearing Officer Honorable Debra Nance District Judge	Court 46th District Court - Southfield	Virtual Courtroom Watch	Status Offline
Judge/Hearing Officer Honorable James B. Brady Chief Judge District Judge	Court 47th District Court - Farmington Hills	Virtual Courtroom Watch	Status LIVE NOW
Judge/Hearing Officer Mr. Matthew Friedrich Magistrate	Court 47th District Court - Farmington Hills	Virtual Courtroom Watch	Status LIVE NOW



Public can watch proceedings on YouTube



YouTube

Search



- Virtual Courtroom Directory has been used more than 200,000 times.
- Trial court YouTube channels have about 80,000 subscribers.
- Nearly 1,000 court officers have presided over more than 2.5 million hours of remote hearings

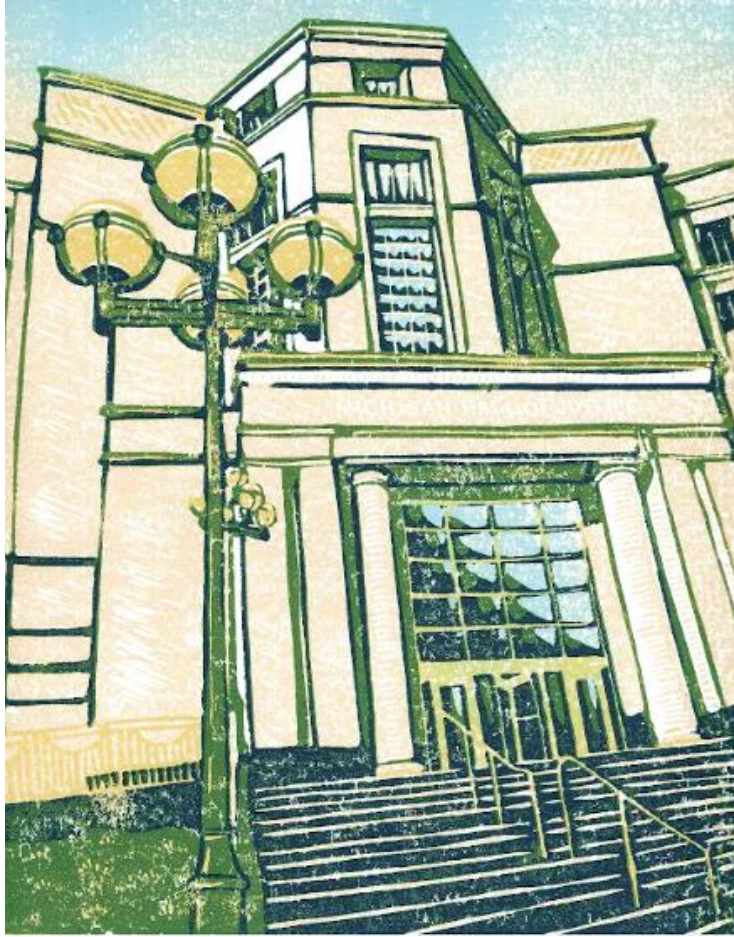


COVID-19 Lessons Learned



- Virtual courtrooms are here to stay.
- When physical access is limited, virtual access is potentially unlimited – opening court proceedings to more people.
- In some cases, virtual hearings are easier for participants, e.g. children in sensitive proceedings.
- At the same time, judges need to be cognizant of the need to close the virtual courtroom for such proceedings.
- Must also be aware of lack of access to computers and wifi for many low income state residents.
- Judges and court staff are flexible, resilient, and committed to serving the public no matter what.





Access to Justice

- Expanding self-help resources
 - ✓ Michigan Legal Help
- Reducing the civil justice gap
 - ✓ Justice for All Task Force



Michigan is a National Legal Self Help Leader



MICHIGAN LEGAL HELP

Helping Michigan residents solve their legal problems

English

Español


Please Tell Us What You Think

Make a Donation

 [Welcome](#)

 [Self-Help Tools](#)

 [Organizations & Courts](#)

 [Guide to Legal Help](#)

www.michiganlegalhelp.org



Michigan Legal Help



- www.michiganlegalhelp.org is a national leader in providing legal self-help resources to residents.
- Site has been accessed more than 11 million times since 2012.
- During pandemic, more than 60,000 visitors EACH WEEK.
- With the help of easy tool kits, users complete 325 legal forms each day.
- 19 self-help centers statewide.

<input type="checkbox"/>	Page ?	Pageviews ? ↓
	Top Ten MLH Pages	125,314 % of Total: 100.00% (125,314)
<input type="checkbox"/>	1. /	6,181 (4.93%)
<input type="checkbox"/>	2. /guide-to-legal-help	3,561 (2.84%)
<input type="checkbox"/>	3. /mlh_intake_call	3,275 (2.61%)
<input type="checkbox"/>	4. /self-help-tools/family	3,143 (2.51%)
<input type="checkbox"/>	5. /self-help-tools/family/do-it-yourself-divorce	2,599 (2.07%)
<input type="checkbox"/>	6. /es/herramientas-de-autoayuda/familia/puntos-basicos-sobre-el-divorcio-como-se-dividen-sus-bienes-y-deudas	2,333 (1.86%)
<input type="checkbox"/>	7. /self-help-tools/housing/eviction-and-other-housing-issues-and-covid-19	2,171 (1.73%)
<input type="checkbox"/>	8. /self-help-tools/eviction-during-covid-19-pandemic/cdc-eviction-moratorium-information-and-forms-tenants	1,940 (1.55%)
<input type="checkbox"/>	9. /self-help-tools/family/i-need-divorce-and-i-do-not-have-minor-children	1,750 (1.40%)
<input type="checkbox"/>	10. /self-help-tools/srch	1,662 (1.33%)



Budget Request – Michigan Legal Help



- **Amount Requested: \$200,000 to support Michigan Legal Help**
- Funding will help MLH with additional support and resources to assist increasing numbers of self-represented litigants.
- Funding for MLH has not increased since 2014.
- Financial impact of COVID-19 has increased need.
- Section 321 of Judiciary budget charges the judicial branch with supporting a legal self-help website and local centers.
- Help provided on critical issues, including: divorce, child custody, child support, parenting time, evictions, domestic violence, unemployment, and public assistance.



Access to Justice: Justice for All Taskforce



Center on Court Access
to Justice for All

...promoting access-friendly courts

a project of
NCSC
National Center for State Courts

Closing the “Justice Gap”

- More than 7 out of 10 low-income households reported at least one civil legal problem in the last year.
- In nearly 9 out of 10 legal problems reported, low-income Americans received inadequate or no legal help.
- In 3 out of 4 civil cases, at least one party is self-represented.
- In Detroit, only 4 percent of tenants in 32,000 eviction cases filed in 2017 had an attorney.



Access to Justice – Justice for All Task Force



Brought together stakeholders to:

- Inventory resources and identify gaps.
- Develop a creative strategic plan.

GOAL: 100 percent access to the civil justice system

- Received \$100,000 one-time grant from National Center for State Courts to develop strategic plan.
- Focus on building partnerships with business community and highlighting the economic benefits of opening the doors of our justice system to all.
- Learn from other states who have implemented regulatory reform.
- Released strategic plan in December.



Nearly 100 people attended town hall meeting in Grand Rapids.

More than 175 people attended town hall meeting in Detroit.



Justice for All Strategic Plan



MICHIGAN JUSTICE FOR ALL TASK FORCE

Strategic Plan and Inventory Report

December 2020

JUSTICE  FOR ALL



- Simplify, streamline and create uniform processes to improve the ability to navigate the court system.
- Improve the triage and referral systems through usability testing so that individuals can be connected to the resources they need.
- Provide education for parties on remote access to court resources, expand use of text messaging and other convenient technology, use plain language to explain procedures and processes.
- Test and implement new ways of providing affordable legal services, educate public and stakeholders on available resources.
- Improve technology and access at legal self-help centers and increase public awareness of these tools.

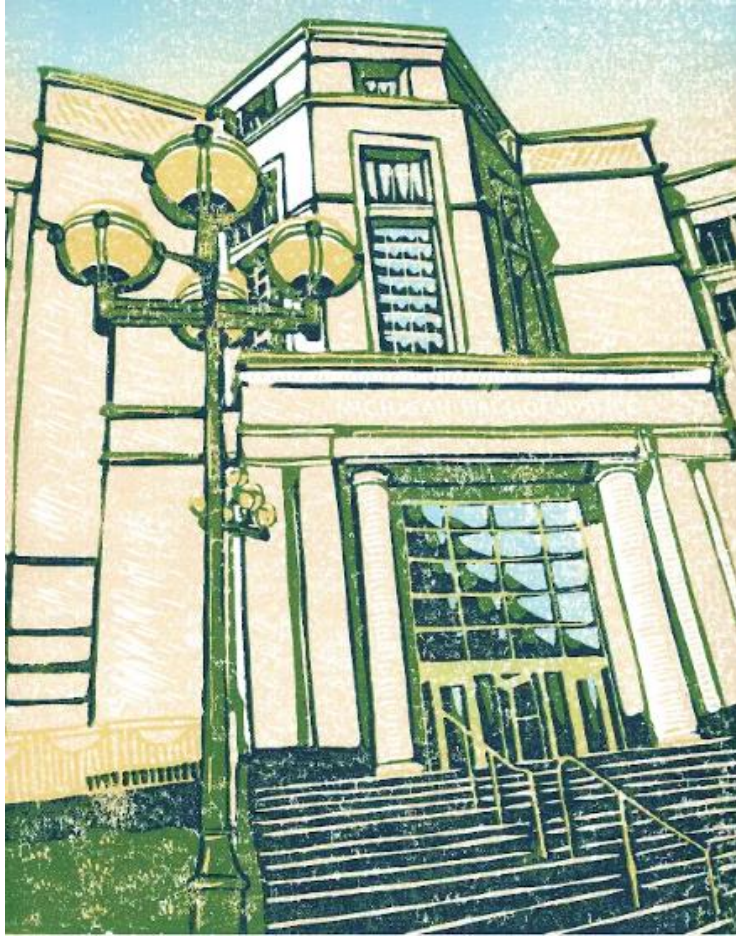


Budget Request – Justice for All



- **Amount Requested: \$798,000 ongoing funding to create and operate the Justice for All Commission**
- **2 FTE's and contractual support to:**
 - Implement strategic plan, including research and pilot projects
 - Systematic simplification of court rules and processes, including more than 900 court forms
 - Additional training for judges and court staff
 - Work with MLH to develop online forms portal
 - Establish framework for increased court & community engagement
 - Develop performance metrics for access to justice





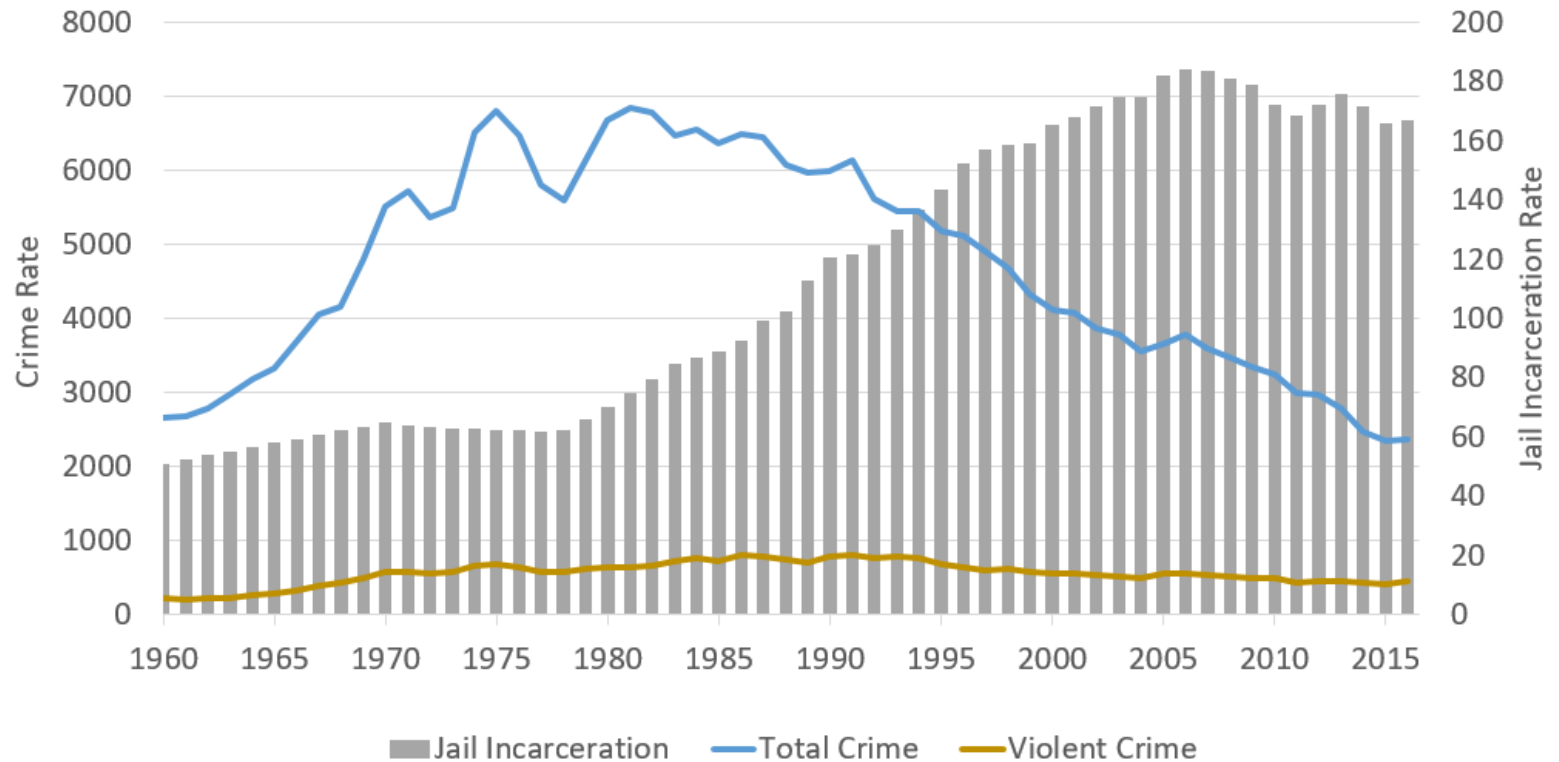
Michigan Joint Task Force on Jail and Pretrial Incarceration Next Steps



The Problem



- Despite lowest crime rate in 50 years, jail populations tripled.
- \$478 million spent on county jails each year.
- Half of jail inmates are unconvicted and awaiting trial.
- Rural jail populations are growing faster than urban populations. **...and we (didn't) know why!**



Jails Task Force Results



- Stop suspending and revoking licenses for actions unrelated to safe driving
- Reclassify most traffic offenses as civil rather than criminal
- Expand officer discretion to use appearance tickets as an alternative to arrest and jail
- Provide crisis response training for law enforcement and encourage diversion of people with behavioral health needs
- Presumptively impose sentences other than jail for non-serious misdemeanors



What's Next – Pretrial Reform



Research suggests pretrial incarceration can have profound impacts upon individuals, families, and communities.

People held before trial are more likely to:

Fail to appear for their case	Be convicted	Increase dependence on public assistance	Lose a job, income, or residence	Experience negative impacts on dependent children	Commit crimes in the future
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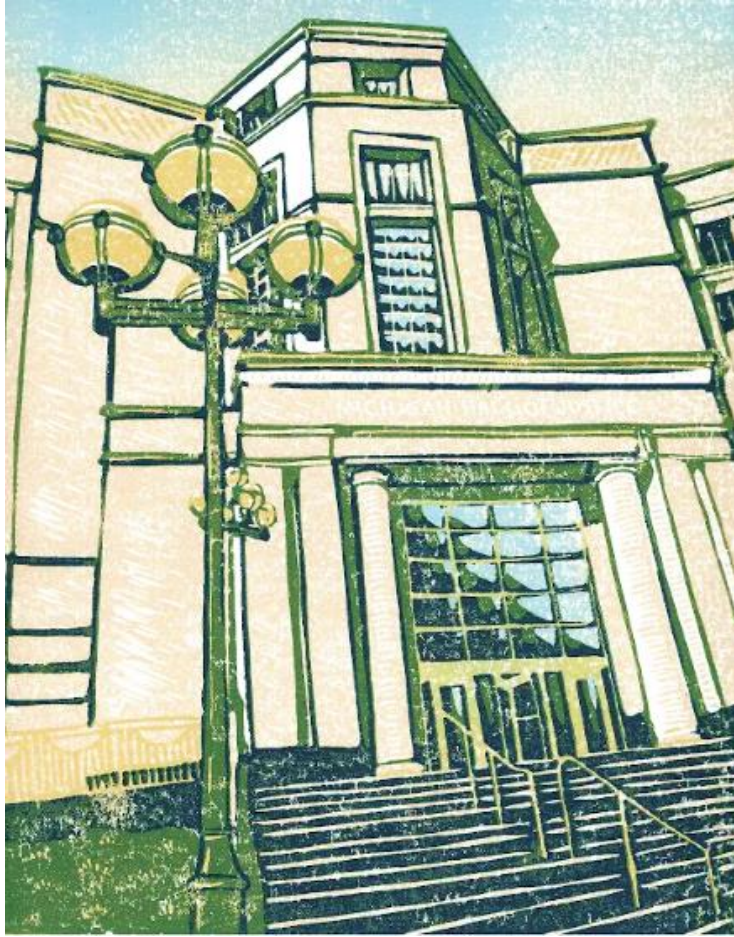


Budget Request - Innovative Pretrial Services



- **Amount Requested: \$325,700 of ongoing funding to support Innovative Pretrial Services**
- Support work of Jail and Pretrial Task Force
- Collect and analyze pretrial data
- Identify jurisdictions with elevated pretrial incarceration rates
- Provide technical assistance for assessing pretrial risk and supervising defendants
- Conduct judicial trainings on pretrial best practices and constitutional compliance
- Establish pretrial performance measures





Courts as Resources

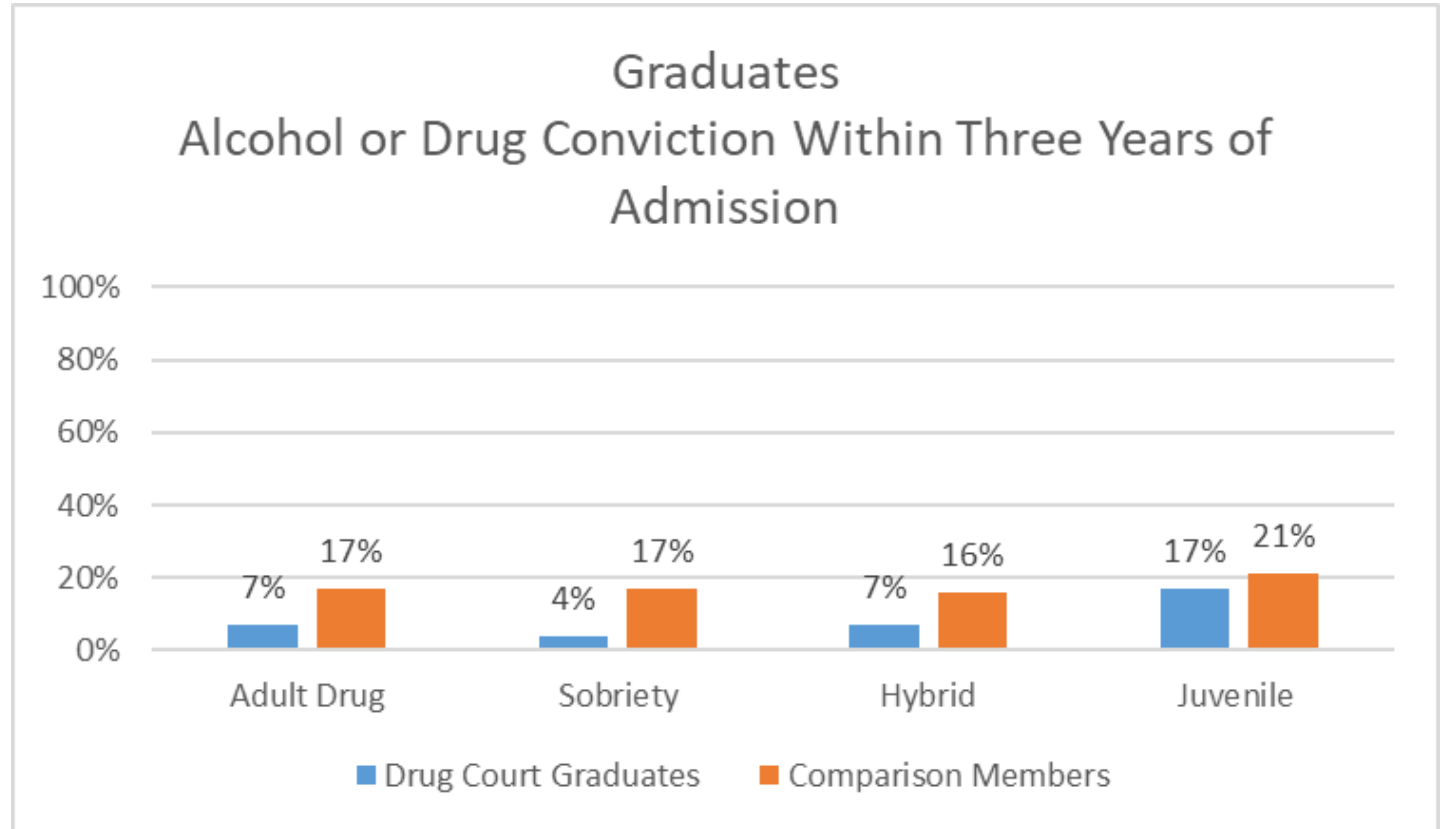
- Problem-solving courts
- Addressing the opioid crisis



199 Treatment Courts Solve Problems, Save Lives



- 134 drug treatment/DWI sobriety courts
 - 56 hybrid drug treatment/DWI sobriety
 - 36 DWI sobriety
 - 13 adult drug treatment
 - 12 juvenile drug treatment
 - 8 tribal family dependency
 - 9 tribal drug treatment/DWI sobriety
- 38 mental health courts (32 adult and 6 juvenile courts)
- 27 veterans treatment courts



Recidivism for Drug/Sobriety Court Graduates falls dramatically



Problem-Solving Courts - Making a Difference



Reduce crime and save money

- Graduates far less likely as standard probationers to be convicted of another crime within 3 years.
- Virtually all drug court and veterans court participants find employment upon graduation.
- These courts play critical role in battling opioid addiction.

Studies show average cost-savings per defendant of \$2,615 to \$12,218



Budget Request – Problem-Solving Courts



- **Amount Requested: \$488,300 in new funding to cover annual PSC economic increases (needed simply to maintain programming)**
- **Amount Requested: \$600,000 of ongoing funding**
 - \$300,000 for existing drug court programs
 - \$100,000 for existing mental health court programs
 - \$100,000 for existing veterans treatment court programs
 - \$100,000 for oral saliva testing pilot
- **Demand continues to grow -- the criminal justice system is the largest source of referral to substance use disorder treatment, and mental health and substance abuse disorders are increasing concerns for veterans.**
- **Expanded diversion is key focus in 2021 based on the recommendations of the Jail and Pretrial Task Force.**



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linkedin.com/company/michigan-supreme-court

You Tube 

youtube.com/michigancourts

 **Instagram**

instagram.com/msc_1836



Justice For All Proposal - \$798,000

This initiative will open the doors of Michigan's civil justice system to those that need it most and dramatically expand access to legal resources that directly affect public health and safety in Michigan. Examples of critical legal matters where self-represented litigants will be provided assistance include landlord/tenant eviction disputes, domestic abuse and violence, access to veterans benefits, disputes regarding children and custody, etc. This proposal will create and operate a Justice for All Initiative within the State Court Administrative Office which will provide for:

- Administration of the Access to Justice Commission (to be officially unveiled in January 2021);
- Training to judges and court staff on working with self-represented litigants;
- Working with stakeholders to systematically review and simplify court rules and processes;
- Assisting Michigan Legal Help in the development of an online forms portal;
- Participation in national work on Access to Justice;
- Establishing performance metrics for access to justice by evaluating currently available data, identifying missing data, and filling the gaps; and,
- Simplifying, translating, and automating legal forms into plain language.

The Justice for All initiative will also set up a framework for courts to establish effective community relationships that both open courthouse doors and send judges and court staff into the community to inform, educate, and support those who need help accessing the civil justice system.

Problem Solving Courts and Swift & Sure Economic Increases - \$488,300

This request of \$488,300 is for funding to cover the annual economic increases experienced by the Problem Solving Courts and the Swift & Sure program. The economic increases are expected to result in a 3% increase in the cost to maintain the same level of service provided in FY2021.

The Problem Solving Courts at the local level experience cost increases every year for economic factors such as salary increases and increases in healthcare costs. The Judicial branch is requesting additional funding to award to the courts to cover those economic increases.

Public Policy Position
Governor Whitmer's Executive Budget for the Judiciary

Support with Amendments

Explanation

The committee voted unanimously (21) with two abstentions to support the proposed budget with the following additions:

1. \$488,300 for Problem-Solving Courts and the Swift & Sure Program
This additional request is for funding to cover the annual economic increases experienced by the Problem-Solving Courts and the Swift & Sure program. The economic increases are expected to result in a 3% increase in the cost to maintain the same level of service provided in FY2021.
2. \$798,000 for the Justice for All Initiative under the State Court Administrative Office
This initiative will open the doors of Michigan's civil justice system to those that need it most and dramatically expand access to legal resources that directly affect public health and safety in Michigan. This proposal will create and operate a Justice for All Initiative within the State Court Administrative Office which will provide for: (a) Administration of the Access to Justice Commission (to be officially unveiled in January 2021); (b) training to judges and court staff on working with self-represented litigants; (c) working with stakeholders to systematically review and simplify court rules and processes; (d) assisting Michigan Legal Help in the development of an online forms portal; (e) participation in national work on Access to Justice; (f) establishing performance metrics for access to justice by evaluating currently available data, identifying missing data, and filling the gaps; and, (g) simplifying, translating, and automating legal forms into plain language.
3. Increased funding to improve and enhance the court's functioning to enforce restitution awards made by the courts.

Keller Permissibility:

The Executive Budget for the Judiciary meets the requirements of *Keller*. Adequate funding of the courts is essential to their functioning.

Position Vote:

Voted For position: 21
Voted against position: 0
Abstained from vote: 2
Did not vote (absence): 5

Contact Persons:

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

Public Policy Position
Governor Whitmer's Executive Budget for the Judiciary

Support with Additional Amendments

Explanation

The committee voted unanimously to support the executive budget for the Department of the Judiciary, with two additional amendments.

1. \$488,300 for Problem-Solving Courts and the Swift & Sure Program

This additional request is for funding to cover the annual economic increases experienced by the Problem-Solving Courts and the Swift & Sure program. The economic increases are expected to result in a 3% increase in the cost to maintain the same level of service provided in FY2021.

2. \$798,000 for the Justice for All Initiative under the State Court Administrative Office

This initiative will open the doors of Michigan's civil justice system to those that need it most and dramatically expand access to legal resources that directly affect public health and safety in Michigan. Examples of critical legal matters where self-represented litigants will be provided assistance include landlord/tenant eviction disputes, domestic abuse and violence, access to veterans' benefits, disputes regarding children and custody, etc. This proposal will create and operate a Justice for All Initiative within the State Court Administrative Office which will provide for:

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The Justice for All initiative will also set up a framework for courts to establish effective community relationships that both open courthouse doors and send judges and court staff into the community to inform, educate, and support those who need help accessing the civil justice system.



CRIMINAL JURISPRUDENCE & PRACTICE COMMITTEE

Position Vote:

Voted For position: 14

Voted against position: 0

Abstained from vote: 3

Did not vote (absence): 6

Contact Persons:

Mark A. Holsomback mahols@kalcounty.com

Sofia V. Nelson snelson@sado.org