

**STATE BAR OF MICHIGAN
2014-2015 COMMITTEE ANNUAL REPORT**

Article VI §6, Bylaws of the State Bar of Michigan

No later than May 1 of each year, the chair of each committee and subentity of the Bar, with the assistance of the staff liaison, shall report to the Executive Director on a form provided by the State Bar on the activities and accomplishments of the committee or subentity.

Committee Name:

Criminal Jurisprudence & Practice Committee

Jurisdiction:

Review proposed court rules and statutes related to criminal procedure and practice in state courts and make recommendations concerning improvements in the operation of criminal law and procedure to promote the fair, speedy and efficient administration of criminal justice, including the establishment and operation of systems for the representation of indigent persons charged with criminal offenses.

Chair(s) and Committee Members:

Officer	Name	Address	Telephone	Email
Co-chair	Nichole Jongsma Derks	Foster Swift Collins & Smith PC; 151 Central Ave; Holland, MI 49423-2831	616.796.2516	nderks@fosterswift.com
Co-chair	J. Kevin McKay	63rd District Court; 1950 E. Beltline Ave NE; Grand Rapids, MI 49525-7075	616.632.7795	Kevin.mckay@kentcountymi.gov
Staff Liaison	Peter Cunningham	State Bar of Michigan; 306 Townsend St.; Lansing, MI 48933-2012	517.346.6325	pcunningham@mail.michbar.org

Member/Advisor/Other	Member/Advisor/Other
Ryan Lee Berman, Member	Richmond M. Riggs, Member
Wilson D. Brott, Member	Jonathan Sacks, Member
Opolla Brown, Member	Gretchen A. Schlaff, Member
Thomas E. Evans, Member	Samuel R. Smith, III, Member
Nimish R. Ganatra, Member	Lee A. Somerville, Member
Donna McKneelen, Member	Michael A. Tesner, Member
Julia F. Norton, Member	Bruce A. Timmons, Member
Julie A. Powell, Member	
Susan F. Reed, Member	

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Committee Meeting Schedule:

Please attach any additional information needed regarding Committee meetings as an addendum.

Meeting Type	Date	Location
Committee Meeting	Thursday, May 8, 2014	State Bar of Michigan Offices
Committee Meeting	Thursday, June 12, 2014	State Bar of Michigan Offices
Committee Meeting	Thursday, October 9, 2014	State Bar of Michigan Offices
Committee Meeting	Thursday, December 11, 2014	Teleconference
Committee Meeting	Thursday, February 12, 2015	State Bar of Michigan Offices
Committee Meeting	Thursday, March 12, 2015	State Bar of Michigan Offices

Resources provided by the State Bar of Michigan in support of committee work:

The committee receives staff support from Peter Cunningham and Carrie Sharlow. The State Bar covers meeting expenses.

Committee Activities:

Over six meetings, the Committee took the following public policy positions:

- ADM File No. 2014-06 - Proposed Amendment of Rule 2.004 of the Michigan Court Rules
Support
- ADM File No. 2013-21 - Amendments of Rules 6.112 and 6.113 of the Michigan Court Rules
Support
- ADM File No. 2014-18 - Proposed Amendment of Rule 6.001 of the Michigan Court Rules
Support
- ADM File No. 2013-36 – Proposed Amendments of Subchapter 7.300 of the Michigan Court Rules
Support the proposed changes to MCR 7.300 in concept with an addition to 7.305(F): Nonconforming Pleading. On its own initiative or on a party’s motion, the Court may order a party who filed a pleading that does not substantially comply with the requirements of this rule to file a conforming pleading within a specified time or else it may strike the nonconforming pleading. The submission to the clerk of a nonconforming pleading does not satisfy the time limitation for filing the pleading where the pleading has not been corrected within the specified time.
- ADM File No. 2013-35 - Proposed Amendment of MCR 7.211
Support
- ADM File No. 2014-42 - Amendments of MCR 6.006, 6.104, 6.110, and 6.111 and adoption of new MCR 6.108
Support the amendments and adoption of MCR 6.108 with two further amendments:

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The extraction of the term “felony” from MCR 6.108(B)

The addition to MCR 6.110(B)(2) of in accordance with 6.006(B) after “if the victim is present...”

- ADM File No. 2014-02 - Proposed Amendment of MCR 6.106

Support

- ADM File No. 2014-09 - Proposed Amendment of MCR 7.215

The committee voted 9 to 3 to oppose the proposed amendments to MCR 7.215(B) because the publication requirements become too restrictive.

The committee voted 11 to 1 to oppose the proposed amendments to MCR 7.215(C) for the reasons stated by Justice Markman in his dissent.

- ADM File No. 2015-03 - Amendment of MRPC 1.15

Support

- HB 5529(Jenkins) Courts, drug court; Veterans, benefits. Courts; drug court; providing information to veteran regarding veteran benefits; require. Amends sec. 1074 of 1961 PA 236 (MCL 600.1074).

Support

- HB 5531(Kurtz) Courts, other; Veterans, benefits. Courts; other; veteran completing sobriety court program to meet with veteran service organization or county veteran counselor as part of program; require. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 1085

Support

- HB 5545(Leonard) Criminal procedure, expunction; Records, other. Criminal procedure; expunction; criminal record expunction for certain offenses; allow under certain circumstances. Amends secs. 1, 3 & 4 of 1965 PA 213 (MCL 780.621 et seq.).

Support the bill, with the amendment that in the issue of disclosure in Section (5), divulging only be punished when done for malicious purposes.

- SB 0931(Jones) Criminal procedure, warrants; Criminal procedure, arrests; Criminal procedure, search and seizure; Courts, district court. Criminal procedure; warrants; district court magistrate to issue arrest warrant or search warrant electronically; allow. Amends secs. 1, 3 & 5 of 1966 PA 189 (MCL 780.651 et seq.).

SB 0932(Jones) Courts, judges; Courts, district court. Courts; judges; district court magistrates to decide motions to set aside default and requests to withdraw admission in civil infraction cases; allow under certain circumstances. Amends secs. 8511, 8512, 8512a & 8513 of 1961 PA 236 (MCL 600.8511 et seq.).

Support SB 931 with the correction of a typo found in Sec. 3. (b), and support SB 932 as it passed the Senate.

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- SB 1050 Criminal procedure, DNA; Law, sunset. Criminal procedure; DNA; filing deadline for petition seeking review of DNA evidence; extend sunset. Amends sec. 16, ch. X of 1927 PA 175 (MCL 770.16).

Support

- HB4176 (Lucido) Criminal procedure; expunction; expunction of all information in arrest record when individual is wrongly accused under certain circumstances; require. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec.26a to ch. IV.

HB4177 (Lucido) Law enforcement; law enforcement information network (LEIN); promulgation of rules to effectuate expunction and destruction of all arrest record information from LEIN and other databases by C.J.I.S. under certain circumstances; require. Amends sec. 4 of 1974 PA 163 (MCL 28.214).

HB4178 (Lucido) Criminal procedure; pretrial procedure; expunction and destruction of biometric data; eliminate certain exceptions. Amends sec. 3 of 1925 PA 289 (MCL 28.243).

Oppose

- SB 0094 (Schuitmaker) Law enforcement; other; certain records of probation to be provided to the Michigan commission on law enforcement standards; require. Amends sec. 7411 of 1978 PA 368 (MCL 333.7411).

Support

- SB 0151 (Bieda) Criminal procedure; DNA; filing deadline for petition seeking review of DNA evidence; remove sunset. Amends sec. 16, ch. X of 1927 PA 175 (MCL 770.16).

Support

- SB 0863 (Pavlov) Criminal procedure, evidence; Crimes, intoxication or impairment; Criminal procedure, preliminary examination; Criminal procedure, trial; Criminal procedure, arrests; Criminal procedure, pretrial procedure. Criminal procedure; evidence; expert witness testimony concerning chemical testing and custody of evidence by video communication; allow at preliminary examination and trial for certain prosecutions, and provide for release subject to conditions reasonably necessary for the protection of the public under certain circumstances. Amends sec. 1, ch. III, sec. 6b, ch. V, & sec. 22, ch. VIII of 1927 PA 175 (MCL 763.1 et seq.).

Oppose the bill for the same reason the committee opposed HB 5383 in March 2014.

- SB 0901 (Johnson) Law enforcement; other; sexual assault kit evidence submission act; create. Creates new act.

Support this in concept and express the following concerns as to (1) the mechanism for consent if the victim is a child and cannot authorize a legal document, (2) the preservation of evidence, and (3) the custodial issues regarding hospital care and appropriate depository after a one year period.

- M Crim JI 11.38 and M Crim JI 11.38a

Support the proposed criminal jury instruction with the removal of the extra "transported" from M Crim JI 11.38(1) and M Crim JI 11.38(a)(1).

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- M Crim JI 11.13, M Crim JI 11.14 and M Crim JI 11.15
Support the proposed jury instructions.

- M Crim JI 12.1a, M Crim JI 12.1b and M Crim JI 12.1c
Support the proposed jury instructions.

- M Crim JI 20.39, M Crim JI 20.39a, M Crim JI 20.39b, M Crim JI 20.39c, M Crim JI 20.39d, M Crim JI 20.39e, M Crim JI 20.39f, M Crim JI 20.39g, M Crim JI 20.39h, M Crim JI 20.39i, M Crim JI 20.39j, M Crim JI 20.39k, M Crim JI 20.39l
Support the proposed criminal jury instructions.

- M Crim JI 13.20 and M Crim JI 13.20a
**Support the proposed criminal jury instructions with the following amendment:
Use Note. If there is a contest as to whether the investigating individual was a peace officer, an instruction on the ~~appropriation~~ appropriate definition involved should be given. See MCL 750.4779c(5)(b).**

- M CRIM JI 23.3
Support the amendments to the jury instructions.

- M CRIM JI 20.4, M CRIM JI 20.14b, M CRIM JI 20.14c and M CRIM JI 20.14d
Support the amendments to the jury instructions.

- M CRIM JI 17.36
Support the amendments to the jury instructions.

- M Crim JI 20.1, M Crim JI 20.30b and M Crim JI 3.32
Support the amendments to the jury instructions.

- M Crim JI 7.9 and M Crim JI 7.11
Support the amendments to the jury instructions.

- Amendments to M Crim JI 15.1, 15.3, 15.4, 15.5, 15.6, 15.11 and 15.12, which apply to the drunk driving offenses under MCL 257.625, necessitated by statutory amendments.
Support the amendments to the jury instructions.

Future Goals and Activities:

The committee will continue its public policy work and continue to look into various special projects as the need arises.