

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

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

Minutes

Committee Members: Hon. David A. Hoort, Nichole Jongsma Derks, John Freeman, Daniel Corrigan Grano, Abed E. Hammoud, Timothy Hilton Havis, J. Kevin McKay, Barry Franklin Poulson, Samuel R. Smith

1. Call to Order & Welcome – The meeting was called to order at 2:10 PM
2. Approval of Minutes – The minutes were unanimously approved by the eight members in attendance.
3. Old Business
 - a. [2010-17 Proposed Amendment of Rule 3.707 of the Michigan Court Rules](#)
This proposal, submitted by the Michigan Judges Association, would clarify that the right to bring a motion to modify or terminate a personal protection order as established by MCR 3.707 applies to ex parte PPOs.
Issued: February 1, 2011
Comment period expiration: June 1, 2011
Public hearing: To be scheduled

The committee supports the proposal only if a good cause exception to modification or termination of any order, exparte or otherwise is added to the proposal. The motion was unanimous among the nine persons present.

- b. [2008-28 - Proposed Amendment of Rule 6.005 of the Michigan Court Rules](#)
The proposed amendment would revise MCR 6.005(H) to clarify that appointed defense counsel in a criminal proceeding either must file a substantive response to a prosecutor's application for interlocutory appeal or notify the Court of Appeals that the lawyer intends not to submit a pleading.
Issued: December 21, 2010
Comment Period Expires: April 1, 2011
Public Hearing: To be scheduled

The committee voted to oppose because there is no funding mechanism for the payment of fees for appellate work done by appointed trial counsel. The motion was unanimous among the nine persons present.

4. New Business
 - a. Prisoner Identification
[HB 4074](#) (O'Brien) Corrections; prisoners; certain prisoner reentry programs, including issuance of identification card and copies of other identifying documents; require, and

require prisoners to obtain certain records. Amends secs. 35, 37 & 67 of [1953 PA 232](#) (MCL [791.235](#) et seq.) & adds sec. 34b.

[HB 4075](#) (Shirkey) State; identification cards; forms of identification necessary to apply for a state identification card; include corrections identification card and allow access to certain department of corrections data. Amends sec. 1 of [1972 PA 222](#) (MCL [28.291](#)).

[HB 4076](#) (Damrow) Traffic control; driver license; forms of identification necessary to apply for driver license; include corrections identification card. Amends sec. 307 of [1949 PA 300](#) (MCL [257.307](#)).

[HB 4077](#) (Gardon) Criminal procedure; sentencing; certain records necessary to obtain identification documents; assist convicted persons in obtaining. Amends sec. 14, ch. XI of [1927 PA 175](#) (MCL [771.14](#)).

Status: 01/13/11 Referred to House Judiciary

The committee voted to support the proposed legislation. The motion was unanimous among the nine persons present.

- b. [HB 4164](#) (Oakes) Traffic control; other; option of community service in lieu of payment of driver responsibility fees for certain low-income individuals; provide. Amends sec. 732a of [1949 PA 300](#) (MCL [257.732a](#)) & adds sec. 732b.

Status: 02/01/11 Referred to House Judiciary

The committee voted to support in concept but remain opposed to the driver responsibility fees. The motion was supported by eight persons present; the ninth abstains because he feels the bill is not Keller permissible.

- c. [HB 4261](#) (McMillin) Crime victims; rights; names and addresses of minors who have been victims of child abuse or sex crimes; allow to be exempted from disclosure under freedom of information act. Amends sec. 13 of [1976 PA 442](#) (MCL [15.243](#)).

Status: 02/16/11 Referred to House Judiciary

The committee voted to support the bill. It was felt that if a victim's name was published, that person would be less likely to testify or press charges. The motion was unanimous among the nine persons present.

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

Status: 02/24/11 Referred to House Judiciary

The committee voted to support in concept provided that two-way interactive technology is submitted for video recording. The motion was supported 6 in favor, 3 opposing.

- e. [HB 4392](#) (Segal) Crimes; other; court to defer prosecution of person less than 18 years convicted of cyberbullying; allow under certain circumstances. Amends [1927 PA 175](#) (MCL [760.1](#) - [777.69](#)) by adding sec. 4b to ch. IX.

Status: 03/08/11 Referred to House Judiciary

The committee voted to support the legislation but oppose subsection (4) providing for mandatory punishments. The committee feels that subsection removes the

judge's discretion with the word "shall." The committee feels this "shall" should be changed to "may" to keep the subsection in line with the rest of the bill. The motion was unanimous among the eight persons present.

- f. [HB 4403](#) (Jackson) Courts; juries; individuals who fail to return jury questionnaires; ensure continued eligibility for jury service. Amends sec. 1313 of [1961 PA 236](#) (MCL [600.1313](#)). Status: 03/09/11 Referred to House Judiciary

The committee voted to support the legislation. The motion was unanimous among the eight persons present.

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

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

The bills will be tabled to the April Meeting.

5. Committee Reports

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

6. Adjournment.

NOTE:

Due to the lack of quorum, an e-vote was sent out. The final votes were as follows:

2010-17 Proposed Amendment of Rule 3.707 of the Michigan Court Rules: 16 members in favor of support, 0 against

2008-28 Proposed Amendment of Rule 6.005 of the Michigan Court Rules: 12 members in favor of opposition, 4 against

Prisoner Identification (HB 4074 – HB 4077): 16 members in favor of support, 0 against

HB 4164: 15 members in favor of support, 0 against, 1 abstaining

HB 4261: 15 members in favor of support, 0 against, 1 abstaining

HB 4327: 12 members in favor of opposition, 4 against

HB 4392: 15 members in favor of support, 0 against

HB 4403: 15 members in favor of support, 0 against