

**Public Policy Position
HB 4620**

The Children's Law Section is a voluntary membership section of the State Bar of Michigan, comprised of 545 members. The Children's Law Section is not the State Bar of Michigan and the position expressed herein is that of the Children's Law Section only and not the State Bar of Michigan. The State Bar's position on this legislation is to support the bill in principle but oppose as drafted.

The Children's Law Section has a public policy decision-making body with 19 members. On September 15, 2021, the Section adopted its position after an electronic discussion and vote. 15 members voted in favor of the Section's position, 0 members voted against this position, 0 members abstained, 4 members did not vote.

Support with Recommended Amendments**Explanation:**

Continued support for the premise of HB 4620 (the creation of an "indigent juvenile defense department" in the State of Michigan) with consideration of the concerns previously raised.

Commitment to partnering with the Legislative and Executive branches of the State of Michigan to work toward statewide standardized juvenile delinquency representation and training.

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CHILDREN'S LAW SECTION

August 1, 2021

To Whom it May Concern,

The Children's Law Section of the State Bar of Michigan, by and through its Juvenile Representation Committee (hereinafter referred to as the Committee) has the following concerns, listed below, as to HB 4620 (hereinafter referred to as "the Bill") as written:

1. As to the Implementation and Funding of the Bill as written:

- a. As juveniles are inherently indigent, the language as to assessments of indigency (taken from the Michigan Indigent Defense Commission Act (MIDC) (Act 95 of 2013)) should be eliminated.
- b. More direction is needed as to how "local shares" of this funding are to be assessed. In addressing this issue, the authors of the Bill need to evaluate the effects of the Raise the Age legislation (becoming effective in 10/2021), issues of funding involving the Child Care Fund and federal IV-E funding, etc. As juvenile and adult defense funding are different, there is a need for clearer guidance in this area.
- c. Consideration should be given to structuring the Department in a statewide fashion similar to the Michigan Appellate Assigned Counsel System (MAACS) to provide a more coherent approach to juvenile defense services with an independent "Commission" overseeing the Department. The CLS section envisions the Department as an independent agency separate from governmental oversight.
- d. The Committee has grave concerns about the Director of the Department serving at the pleasure of the Governor. Ceding control over juvenile defense to the executive branch (in which prosecution of crimes and delinquency is housed) is a conflict of interest.
- e. The establishment of a clearinghouse must be *required* of the Department. Prosecutors in this state have a mandated database of resources. This provision must be extended to the defense.
- f. The issue of staffing needs to be addressed.
- g. Review of juvenile representation by the "Court of Claims" should be omitted as it does not apply to juvenile delinquency. If the reference to the Court of Claims applies to a county review of standards imposed this remains problematic and

need more clarification/direction. However, any standards imposed for representation must be standardized and enforced statewide.

2. As to Training and Standards in the Bill as written:

- a. There needs to be more specific standards and more clearly outlined acceptable and applicable juvenile practice standards than are presently contained in the Bill. The standards currently incorporated are little more than the adult standards reiterated from the MIDC and do not reflect the nature and needs of the juvenile process. In setting these standards a public hearing should be held to incorporate the concerns of the stakeholders in this process. Concerns expressed in the National Juvenile Defense Center's report *Overdue for Justice* (6/20) should be incorporated into any standards set.
- b. Duties and specialized training as to representation in waiver cases needs expansion from what is currently contained in Section 9, para. 3 of the Bill.

3. As to Reimbursement of Attorneys in the Bill as written:

- a. The lack of proposed funding structure for juvenile counsel is a glaring omission from the Bill. Lack of standardized compensation was specifically addressed in *Overdue for Justice*. The Bill should benefit from the lessons learned from the MIDC.
- b. The Bill needs to contain standards limiting, if not abolishing, waiver of counsel by juveniles, even with parental consent.

4. As to Conflicts in the Bill as written:

- a. The Bill needs to establish a process for dealing with legal conflicts. Further, that established practice must be established consistently statewide.

5. As to Confidentiality and Representation in the Bill as written:

- a. More work is needed on the definition and parameters of "representation" of juveniles. Clarification of the role of juvenile defense counsel is needed in the Bill stressing that counsel represents the child's "legal" interests and not the child's (or as perceived by the parents) "best interest" (which is not the representational standard in delinquency representation). Further, representation here does not include the "wants" of the legal parents. The language that the parent is the "legal representative" of the child should be omitted. Section 9, para. 4 should be omitted.

- b.** Police and prosecutors are not on the same team as juvenile counsel in the delinquency setting and making them so is a violation of the 6th and 14th Amendments of the U.S. Constitution.
- c.** The Bill needs to set a standard for representation of juveniles that is “juvenile - specific and designed to ensure that the delivery services provides effective assistance of counsel. Such services need independence from the judiciary” (See generally, *Overdue for Justice*, 85). Further, these standards need to include clear guidance on responsibilities, protected rights to due process and appreciation of juveniles’ developmental differences. The Bill needs to establish some mechanism to ensure compliance with the standards set.
- d.** The Bill needs to refer to established requirements of representation already contained in in both MCL 712A.17d and the ABA Standards on Juvenile Justice. This will act to institutionalize good representation of juveniles instead of here setting a bare minimum floor of practice. The Bill needs to be tasked with establishing standards of good practice by establishing clear guidance on responsibilities and duties.
- e.** The Bill needs to specifically address the right to confidential meetings between juveniles and their counsel. The Bill must further address continuity of that counsel, including in the waiver/designation context.
- f.** Continuity of counsel and standards for representation of juvenile delinquents in the appellate context are also lacking and need to be addressed in the Bill.
- g.** Defense counsel cannot be subjected to an audit under Section 13, para.1. This is a violation of the Code of Professional Responsibility’s basic requirements of attorney/client confidentiality. Further, Prosecutors are not subject to similar audit. This section should be omitted in its entirety

The Committee looks forward to an opportunity to meet with the sponsors of HB 4620 and other members of the Michigan Legislature, either as a whole or through its various members and committees to ensure that any bill passed and implemented be one which benefits both the juveniles requiring delinquent representation and the State of Michigan as a whole.

Sincerely,

The Juvenile Representation Committee of the Children’s Law Section of the
State Bar of Michigan