

DOMESTIC VIOLENCE COMMITTEE
Respectfully submits the following position on:

*
HB 4176
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The Domestic Violence Committee is comprised of members appointed by the President of the State Bar of Michigan.

The position expressed is that of the Domestic Violence Committee only and is not an official position of the State Bar of Michigan, nor does it necessarily reflect the views of all members of the State Bar of Michigan.

The State Bar position on this matter is to oppose the bill as written, but support the concept of expungment of criminal files of people who have been found not guilty or have their charges dropped in appropriate cases.

The total membership of the Domestic Violence Committee 18.

The position was adopted after discussion at a scheduled meeting, followed by an electronic vote. The number of members in the decision-making body is 18. The number who voted in favor to this position was 16. The number who voted opposed to this position was 2.

Report on Public Policy Position

Name of Committee:

Domestic Violence Committee

Contact persons:

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Bill Number:

[HB 4176](#) (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.

Date position was adopted:

March 19, 2015

Process used to take the ideological position:

Position adopted after discussion at a scheduled meeting, followed by an electronic vote.

Number of members in the decision-making body:

18

Number who voted in favor and opposed to the position:

16 Voted for position

0 Voted against position

0 Abstained from vote

2 Did not vote

Position:

Oppose

Explanation of the position, including any recommended amendments:

This bill creates an incentive for DV perpetrators to coerce survivors to recant. Also, it invades the province of the prosecutor set forth in the Michigan Constitution. See *People v Williams*, 244 Mich App 249 (2001), holding that the prosecutor has exclusive authority to decide whether to go forward with prosecution in the absence of the "complaining witness."

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

<http://legislature.mi.gov/doc.aspx?2015-HB-4176>

FOR LEGISLATIVE ISSUES ONLY:

This position falls within the following Keller-permissible category:

- The regulation and discipline of attorneys
- ✓ The improvement of the functioning of the courts
- The availability of legal services to society
- The regulation of attorney trust accounts
- The regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession.

Keller-permissible explanation:

There is a good argument that this would negatively affect the functioning of the courts because cases would be dismissed even where the facts would support a conviction without the testimony of the victim.