

DOMESTIC VIOLENCE COMMITTEE
Respectfully submits the following position on:

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HB 4583 & HB 4584

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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. The State Bar of Michigan has authorized the Domestic Violence Committee to advocate its position.

The State Bar position on this matter is to oppose.

The total membership of the Domestic Violence Committee is 17.

The position was adopted after an electronic discussion and vote. The number of members in the decision-making body is 17. The number who voted in favor to this position was 12. The number who voted opposed to this position was 0.

Report on Public Policy Position

Name of committee:

Domestic Violence Committee

Contact person:

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Bill Number:

[HB 4583](#) (Johnson) Children; parental rights; immediate termination of parental rights and visitation rights for parent or legal guardian upon sentencing for criminal sexual conduct or other sex crimes; allow. Amends sec. 19b, ch. XIA of [1939 PA 288](#) (MCL 712A.19b).

[HB 4584](#) (Johnson) Family law; parenting time; immediate termination of a grandparenting time order upon sentencing for certain criminal sexual conduct; allow. Amends sec. 7b of [1970 PA 91](#) (MCL [722.27b](#)).

Date position was adopted:

May 28, 2013

Process used to take the ideological position:

Position adopted after an electronic discussion and vote.

Number of members in the decision-making body:

17

Number who voted in favor and opposed to the position:

12 Voted for position

0 Voted against position

0 Abstained from vote

5 Did not vote

Position:

Oppose

Explanation of the position, including any recommended amendments:

HB 4583 would amend the probate code, in particular the child protection law, to expedite termination of parental rights when a parent is convicted of criminal sexual conduct against his/her child or sibling of the child for penetration, attempted penetration or assault with intent to penetrate. If the sentencing court finds there are grounds for termination of parental rights and that termination is in the child's best interests, the sentencing court, without requiring a termination hearing, shall order termination or parental rights.

The bill has some positive qualities because it promotes the safety of children and the non-offending parent by quickly resolving the question of the perpetrator's access to children without requiring the family or CPS to initiate a new action in the family court.

However, the bill has flaws. It vests the decision regarding termination of parental rights in the criminal court by judges who have no training in child protection law. It excludes CSC-2 crimes (felony contact), which are as harmful to children as crimes involving penetration. Further, if the criminal court, in the discretion granted under this bill, refuses to terminate rights, res judicata or collateral estoppel could prevent the family from seeking termination in the family court.

HB 4584 has the same benefits and flaws as HB 4583, which this committee also opposed. The bill is an attempt to promote the safety of children by quickly resolving the question of a convicted grandparent's access to the child without requiring the parent to file a motion to terminate grandparenting time in the family court and incur the costs, time and emotional trauma that would be involved in the proceeding.

However, the flaws outweigh the benefits. The bill vests the decision regarding grandparenting time in the criminal court by judges who have no training in family law. It excludes CSC-2 crimes (felony contact), which are as harmful to children as crimes involving penetration. Further, if the criminal court, in the discretion granted under this bill, refuses to terminate grandparenting time, res judicata or collateral estoppel could prevent the parent from seeking termination in the family court.

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?2013-HB-4583>

<http://legislature.mi.gov/doc.aspx?2013-HB-4584>

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:

These bills limit the functioning of the courts by vesting the criminal court with new authority without providing for adequate training or communication between the courts. Further, the issue of res judicata raised by the bills could limit the availability of the court system to some litigants.