

**State Bar of Michigan
Criminal Jurisprudence and Practice Committee**

March 13, 2008 at 2:00 P.M. State Bar Building Lansing

MINUTES

Attendees: John Boufford, Richard Cunningham, Michael Gordner, Abed Hammoud, Timothy Havis, Hon. David A. Hoort, Erika Julien, Martin Krohner, John Livesay, Valerie Newman, Samuel Smith

SBM Staff: Elizabeth Lyon

1. Call to Order
2. Welcome
3. New Business
 - a. [HB 4092](#) (Vagnozzi) Criminal procedure; evidence; DNA testing upon arrest for certain crimes; require. Amends sec. 520m of [1931 PA 328](#) (MCL [750.520m](#)).

This bill was viewed as not being Keller permissible. Marty Krohner will refer it to the Criminal Law Section.

- b. [HB 4167](#) (Clack) Crimes; weapons; penalties for intentionally discharging a firearm from vehicle; increase under certain circumstances. Amends secs. 234a & 234b of [1931 PA 328](#) (MCL [750.234a](#) & [750.234b](#)).

This bill was viewed as not being Keller permissible.

- c. [HB 5608](#) (Law, K.) Civil procedure; statute of limitations; civil action for damages resulting from criminal sexual conduct against a minor; extend tolling of statute of limitations. Amends secs. 5838a & 5851 of [1961 PA 236](#) (MCL [600.5838a](#) & [600.5851](#)).

The committee will refer this bill to the Civil Procedure and Courts Committee for consideration.

- d. [HB 5760](#) (Jackson) Courts; reorganization; Detroit recorder's court; reestablish. Amends sec. 504 of [1961 PA 236](#) (MCL [600.504](#)) & adds ch. 10B.

Item will be deferred pending more information, including historical position on abolishing Recorders Court. Item may be postponed until after the first House Judiciary Committee hearing.

Discussion will continue at the next meeting. Marty and Val will worked with Elizabeth concerning archived information.

- e. [HB 5829](#) (Johnson) Corrections; parole; eligibility for parole for certain prisoners; revise. Amends sec. 34 of [1953 PA 232](#) (MCL [791.234](#)).

This bill was viewed as not being Keller permissible.

- f. HB 5830 & HB 5831
 - i. [HB 5830](#) (Meadows) Criminal procedure; probation; persons sentenced to lifetime probation for certain drug crimes; clarify applicability of statute. Amends secs. 7401 & 7403 of [1978 PA 368](#) (MCL [333.7401](#) & [333.7403](#)) & repeals sec. 7413 of 1978 PA 368 (MCL [333.7413](#)).
 - ii. [HB 5831](#) (Jones, R.) Criminal procedure; probation; certain provisions regarding lifetime probationers; clarify. Amends sec. 2, ch. XI of [1927 PA 175](#) (MCL [771.2](#)).

The committee voted unanimously to support HB 5830 & HB 5831. However, there are requests to clarify language on sentencing issues.

- g. [HJR 00](#) (Agema) Criminal procedure; bail; individual charged with a felony who has entered or remained in United States illegally; prohibit granting bail. Amends sec. 15, art. I of the state constitution.

The committee voted to oppose for the following reasons: (1) court does not always know immigration status; (2) the issue of judicial discretion; (3) jail overcrowding; (4) there are situations were persons enter illegally and become citizens; (5) this would interfere with legitimate law enforcement efforts; (6) we have immigration courts people can be referred to; (7) the federal constitution question.

- h. [SB 0661](#) (Jansen) Criminal procedure; sentencing guidelines; sentencing guidelines for crimes involving gangs; enact, and assign 50 points under offense variable 13 under certain circumstances. Amends secs. 16t & 43, ch. XVII of [1927 PA 175](#) (MCL [777.16t](#) & [777.43](#)).

There was discussion on the Keller permissibility of this bill. It was recommended that scoring points is a function of the Court and a discretionary call to some degree if the standard is not clear, something court has to decide and can be appealed.

The committee voted on the Keller permissibility: eight members voted in favor; two voted against.

The committee discussed the number of points listed in the bill and voted 9 to 1 to support the bill, with no higher than 25 points.

- i. [SB 1059](#) (Cropsey) Family law; parental rights; process for judicial waiver of parental consent requirement; clarify. Amends secs. 3 & 4 of [1990 PA 211](#) (MCL [722.903](#) & [722.904](#)).

This bill doesn't concern criminal cases and therefore is not within the Committee's jurisdiction.

- j. [SB 1066](#) (Pappageorge) Traffic control; civil infraction procedures; attendance at basic driver improvement course; allow in lieu of being found responsible for traffic violation under certain circumstances. Amends secs. 320a & 743 of [1949 PA 300](#) (MCL [257.320a](#) & [257.743](#)) & adds sec. 320d.

The committee voted 8 to 2 to support the bill due to the following reasons: (1) it gives judges discretion; (2) dollar amount waivable if able to prove indigency, look at ability to pay.

The two opposed votes were due to: the fact that this would still show up on drivers records; it may save some driver responsibility fees and may help some rich people. Also, setting a fine could create more work for the courts.

- k. [SB 1114](#) (Brown) Crimes; stolen property; determination of severity level of crimes of larceny; amend calculation of value of property to include cost of damage caused by the larceny. Amends sec. 356 of [1931 PA 328](#) (MCL [750.356](#)).

This bill was viewed as not being Keller permissible.

- l. [SB 1134](#) (Cropsey) Vehicles; equipment; high blood alcohol content drunk driving convictions; create as separate crime and provide for certain license sanctions and ignition interlock device requirements. Amends secs. 319, 322, 625 & 625b of [1949 PA 300](#) (MCL [257.319](#) et seq.) & adds sec. 20b.

The committee voted to oppose due to the following reasons: (1) Mandatory sentencing provision too broad; (2) BAC monitoring (current provision) works fine; (3) Give discretion as to who needs monitoring or interlock devices.

- m. [ADMN No. 2006-32 – Proposed Amendment of Rule 2.504 of the Michigan Court Rules](#):

This proposed amendment would allow a court, on motion of any party or sua sponte, to enter a default or dismiss a party's action or claim for failure to comply with the rules or a court order. The current rule allows such actions by the court only if the plaintiff makes such a motion. The proposed amendment would also allow the court to dismiss on its own initiative an action in which the plaintiff, on the law and the facts presented, is not entitled to relief, and would make the rule applicable to claims and hearings

in addition to actions. The rule currently allows only the defendant to make such a motion.

The committee voted unanimously to support this.

o. [ADMN No. 2007-38 – Proposed Amendment of Rule 6.201 of the Michigan Court Rules:](#)

The proposed amendment of MCR 6.201(B)(1) would eliminate the requirement that the prosecuting attorney provide the defendant with any exculpatory information or evidence known to the prosecuting attorney only upon request. This proposal also clarifies that the prosecuting attorney is required to provide such information or evidence regardless of whether it is requested by the defendant. The Court would appreciate specific comments on whether a court rule requiring the prosecuting attorney to provide the defendant with exculpatory information or evidence is necessary, in light of the prosecuting attorney's constitutional obligation to do so under *Brady v Maryland*, 373 US 83 (1963), and, if so, whether the proposed amendment of MCR 6.201(B)(1) is consistent with the requirements of *Brady*.

Prosecutors have constitutional obligation to give the information. This would be a way to enforce it.

The committee voted unanimously to support this.

4. Adjournment.