

Agenda
Public Policy Committee
November 19, 2025 – 1:30 p.m. to 3:00 p.m.
Via Zoom Meetings

Public Policy Committee.....Erika L Bryant, Chairperson

1. Reports

1.1 Approval of September 17, 2025 minutes

1.2. Public Policy Report

2. Court Rule Amendments

2.1. ADM File No. 2020-08: Proposed Amendments of MCR 1.109, 2.104, 2.107, 2.119, 3.203, and 5.105

The proposed amendments of MCR 1.109, 2.104, 2.107, 2.119, 3.203, and 5.105 would, subject to an opting-out procedure, clarify the use of electronic service when MiFILE is not available in the court or for the particular case type.

Status: 01/01/26 Comment Period Expires.

Referred: 09/05/25 Access to Justice Policy Committee; Civil Procedure & Courts Committee; All Sections.

Comments: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Justice Initiatives Committee; Children’s Law Section; Negligence Law Section; Probate & Estate Planning Section.

Liaison: Ashley E. Lowe

2.2. ADM File No. 2023-23: Proposed Amendments of MCR 3.942 and 3.972

The proposed amendments of MCR 3.942 and 3.972 would, in delinquency and child protective proceeding bench trials, require the court to make findings of fact and conclusions of law and allow for the equivalent of a directed verdict.

Status: 01/01/26 Comment Period Expires.

Referred: 09/05/25 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Children’s Law Section; Family Law Section.

Comments: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Children’s Law Section.

Liaison: Lori A. Buiteweg

2.3. ADM File No. 2023-39: Proposed Amendment of MCR 7.215

The proposed amendment of MCR 7.215 would eliminate the requirement that parties provide copies of unpublished opinions cited in briefs filed in the Court of Appeals.

Status: 01/01/26 Comment Period Expires.

Referred: 09/05/25 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; All Sections.

Comments: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Appellate Practice Section; Children’s Law Section; Negligence Law Section.

Comments submitted to the Court are included in the materials.

Liaison: Douglas B. Shapiro

3. Legislation

3.1. HB 4840 (Lightner) Courts: business court; types of cases heard by the business court; revise. Amends sec. 8031 of 1961 PA 236 (MCL 600.8031).

Status: 11/04/25 Passed the House 99 to 1; Referred to Senate Committee on Civil Rights, Judiciary & Public Safety.

Referred: 09/09/25 Civil Procedure & Courts Committee; Business Law Section.

Comments: Civil Procedure & Courts Committee; Business Law Section.

Liaison: Thomas P. Murray, Jr.

3.2. SB 330 (McMorrow) Courts: juries; exemption from jury service; expand. Amends sec. 1307a of 1961 PA 236 (MCL 600.1307a).

Status: 10/21/25 Passed the Senate 34 to 2; Referred to House Committee on Judiciary.

Referred: 09/09/25 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; All Sections.

Comments: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee.

Liaison: Patrick J. Crowley

4. Model Criminal Jury Instructions – Consent Agenda

To allow the Criminal Jurisprudence & Practice Committee and Criminal Law Section to submit their positions on each of the following items:

4.1. Model Criminal Jury Instructions 11.38, 11.38a, 11.38b

The Committee proposes amending two existing instructions, M Crim JI 11.38 (Felon Possessing Firearm or Ammunition: Nonspecified Felony) and M Crim JI 11.38a (Felon Possessing Firearm or Ammunition: Specified Felony), to account for recent legislative changes to MCL 750.224f. Deletions are in ~~striketrough~~, and new language is underlined. The Committee also proposes creating M Crim JI 11.38b (Prohibited Person Possessing Firearm or Ammunition: Misdemeanor Involving Domestic Violence), an entirely new instruction based on the same statute.

4.2. Model Criminal Jury Instructions 11.45 and 11.45a

The Committee proposes two new instructions, M Crim JI 11.45 (Engaging in Computer-Assisted Shooting) and M Crim JI 11.45a (Providing or Offering to Provide Animals, Equipment, or Facilities for Computer-Assisted Shooting), to address the crimes set forth in MCL 750.236a and MCL 750.236b. These instructions are entirely new.

4.3. Model Criminal Jury Instructions 15.18b

The Committee proposes a new instruction, M Crim JI 15.18b (Moving Violation in a Work Zone or School Bus Zone Causing Death or Injury), for the offense of committing a moving traffic violation in a work zone or school bus zone that results in death or injury, as defined in MCL 257.601b. This instruction would serve as a companion to M Crim JI 15.18a, which applies to offenses committed before certain statutory changes took effect on April 2, 2025. The proposed new instruction would apply to offenses committed on or after that date.

4.4. Model Criminal Jury Instructions 20.10, 20.11, 20.22

The Committee proposes amending M Crim JI 20.10 (Personal Injury-Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless), M Crim JI 20.11 (Sexual Act with Mentally Incapable, Mentally Disabled, Mentally Incapacitated, or Physically Helpless Person by Relative or One in Authority), and M Crim JI 20.22 (Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless) to

reflect a recent change to the statutory definition of “mentally incapacitated.” See MCL 750.520a(k), as amended by 2023 PA 65. Deletions are in ~~strike through~~, and new language is underlined.

4.5. Model Criminal Jury Instructions 20.38d

The Committee proposes a new instruction, M Crim JI 20.38d (Child Sexually Abusive Activity - Causing or Allowing Without Producing Materials) to address violations of MCL 750.145c that do not involve possessing, creating, or distributing child sexually abusive material. See *People v Willis*, 322 Mich App 579 (2018), lv den 504 Mich 905 (2019). This instruction is entirely new.

4.6. Model Criminal Jury Instructions 36.9

The Committee proposes a new instruction, M Crim JI 36.9 (Soliciting a Person to Commit Prostitution) to address the crime set forth in MCL 750.448. This instruction is entirely new.

4.7. Model Criminal Jury Instructions 38.7

The Committee proposes a new instruction, M Crim JI 38.7 (Obtaining Blueprint or Security Plan to Commit a Terrorist Offense) to address the crime set forth in MCL 750.543r. This instruction is entirely new.

4.8. Model Criminal Jury Instructions 43.4, 43.4a, 43.4b, 43.4c

The Committee proposes new jury instructions for four election-related crimes found in MCL 168.932(b): M Crim JI 43.4 (Unauthorized Opening of a Ballot Box or Voting Machine), M Crim JI 43.4a (Damaging or Destroying a Ballot Box or Voting Machine), M Crim JI 43.4b (Possessing, Concealing, or Withholding a Ballot Box or Voting Machine), and M Crim JI 43.4c (Adding or Removing Ballots or Voting Totals in a Ballot Box or Voting Machine). These instructions are entirely new.

MINUTES
Public Policy Committee
September 17, 2025

Committee Members: Lori A. Buiteweg, Patrick J. Crowley, Lisa J. Hamameh, Ashley E. Lowe, Silvia A. Mansoor, John W. Reiser, III, Douglas B. Shapiro, Judge Cynthia D. Stephens, Danielle Walton

SBM Staff: Peter Cunningham, Nathan Triplett, Carrie Sharlow

GCSI: Samantha Zandee

1. Reports

1.1. Approval of June 11, 2025 minutes – The minutes were unanimously adopted.

1.2. Public Policy Report

2. Court Rule Amendments

2.1. ADM File No. 2021-29: Proposed Amendment of MCR 6.201

The proposed amendment of MCR 6.201 would require, before providing a police report or interrogation record to the defendant, redaction of personal identifying information and information otherwise protected under the rule.

The following entities offered recommendations: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee.

The committee 6 to 3 to support ADM File No. 2021-29 with an additional amendment that witness addresses and phone numbers will not be provided to the defendant without good cause shown to the court.

3. Consent Agenda

The Public Policy Committee approved the authorization to allow the Criminal Jurisprudence & Practice Committee and Criminal Law Section to submit their positions on each of the following items:

3.1. M Crim JI 1.10

The Committee proposes a new preliminary instruction, M Crim JI 1.10 (Referring to Jurors By Number) that would direct jurors not to draw any inferences from the use of juror numbers in lieu of names.

3.2. M Crim JI 3.17, 3.18, 3.20, 3.22

The Committee proposes amending M Crim JI 3.17 (Single Defendant-Single Count), M Crim JI 3.18 (Multiple Defendants-Single Count), M Crim JI 3.20 (Single Defendant-Multiple Counts-More Than One Wrongful Act), and M Crim JI 3.22 (Multiple Defendants-Multiple Counts-More Than One Wrongful Act) to present the possible verdicts in a consistent sequence, with “not guilty” appearing as the first option.

3.3. M Crim JI 16.1, 16.4 thru 16.8, 16.10, 16.11, 17.3

The Committee proposes amending the following instructions to eliminate an unnecessary element: M Crim JI 16.1 (First-degree Premeditated Murder), M Crim JI 16.4 (First-degree Felony Murder), M Crim JI 16.5 (Second Degree Murder), M Crim JI 16.6 (Element Chart First-degree Premeditated Murder and Second-degree Murder), M Crim JI 16.7 (Element Chart First-degree Felony Murder and Second-degree Murder), M Crim JI 16.8 (Voluntary Manslaughter), M Crim JI 16.10 (Involuntary Manslaughter), M Crim JI 16.11 (Involuntary Manslaughter – Firearm Intentionally Aimed), and M Crim JI 17.3 (Assault with Intent to Murder). The proposal primarily serves as a response to *People v Spears*, 346 Mich App 494 (2023), lv den ____ Mich ____ (December 13, 2024) (Docket No. 165768).

Additionally, M Crim JI 16.8 has been modified for greater consistency with M Crim JI 16.9, and M Crim JI 16.11 has been modified to remove duplicative language and to reflect statutory involuntary manslaughter's status as a cognate lesser included offense of murder, see MCL 750.329; *People v Smith*, 478 Mich 64 (2007).

3.4. M Crim JI 20.38, 20.38a, 20.38b, 20.38c

The Committee proposes amending M Crim JI 20.38 (Child Sexually Abusive Activity – Causing or Allowing), M Crim JI 20.38a (Child Sexually Abusive Activity – Producing), M Crim JI 20.38b (Child Sexually Abusive Activity – Distributing), and M Crim JI 20.38c (Child Sexually Abusive Activity – Possessing or Accessing) to account for the sentencing enhancements added by the Legislature in 2019. This proposal would also modify the title of each instruction to more accurately describe the offense at issue.

Order

Michigan Supreme Court
Lansing, Michigan

September 3, 2025

Megan K. Cavanagh,
Chief Justice

ADM File No. 2020-08

Brian K. Zahra
Richard H. Bernstein
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas
Noah P. Hood,
Justices

Proposed Amendments of
Rules 1.109, 2.104, 2.107,
2.119, 3.203, and 5.105 of
the Michigan Court Rules

By order dated July 26, 2021, the Court adopted and simultaneously published for comment amendments of many rules, including Rule 2.107 of the Michigan Court Rules. By order dated September 11, 2024, the Court published for comment a revised proposal that would amend Rules 2.107 and 3.203 of the Michigan Court Rules. On order of the Court, notice and an opportunity for comment having been provided on both proposals, the Court is now considering an alternative proposal that would amend Rules 1.109, 2.104, 2.107, 2.119, 3.203, and 5.105 of the Michigan Court Rules. Before determining whether any proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of this proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the [Public Administrative Hearings](#) page.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and
deleted text is shown by strikeover.]

Rule 1.109 Court Records Defined; Document Defined; Filing Standards; Signatures;
Electronic Filing and Service; Access

(A)-(F) [Unchanged.]

(G) Electronic Filing and Service.

(1)-(5) [Unchanged.]

(6) Electronic-Service Process.

(a) General Provisions.

(i) [Unchanged.]

- (ii) Service of process of all other documents electronically filed shall be accomplished electronically among authorized users through the electronic-filing system. If a party has been exempted from electronic filing or has not registered with the electronic-filing system, service shall be made on that party by any other method, except by electronic service under MCR 2.107, required by Michigan Court Rules.

(iii)-(v) [Unchanged.]

(b)-(c) [Unchanged.]

(7) [Unchanged.]

(H) [Unchanged.]

Rule 2.104 Process; Proof of Service

(A) Requirements. Proof of service may be made by

- (1) written acknowledgment of the receipt of a summons and a copy of the complaint and, if applicable, the electronic service notification form required by MCR 2.107(C)(3), dated and signed by the person to whom the service is directed or by a person authorized under these rules to receive the service of process;

(2)-(3) [Unchanged.]

(B)-(C) [Unchanged.]

Rule 2.107 Service and Filing of Pleadings and Other Documents

(A)-(B) [Unchanged.]

- (C) ElectronicManner of Service. All service by parties, except for service of process on case initiating documents, must be performed by using electronic means as provided in this subrule, unless an exception in subrule (C)(1) applies. Nothing in this subrule requires the court, friend of the court, or a nonparty to use electronic service.~~Except under MCR 1.109(G)(6)(a), service of a copy of a document on an attorney must be made by delivery or by mailing to the attorney at his or her last known business address or, if the attorney does not have a business address, then to his or her last known residence address. Except under MCR 1.109(G)(6)(a), service~~

~~on a party must be made by delivery or by mailing to the party at the address stated in the party's pleadings.~~

- (1) Exceptions. The requirement to use electronic means of service does not apply if:
 - (a) the party opts out as provided in subrule (C)(5),
 - (b) the document being served is a money judgment,
 - (c) another court rule requires a different method of service,
 - (d) another court rule prohibits the use of electronic service, or
 - (e) the jurisdiction in which the case is filed has implemented an electronic filing system pursuant to MCR 1.109(G) and supports e-filing and e-service for the case type at issue.
- (2) Methods of Electronic Service. Electronic service under this subrule must be performed using one of the following methods:
 - (a) e-mail, or
 - (b) alert consisting of an e-mail or text message to log into a secure website to view notices and court papers.
- (3) Notification. A party initiating a case must file and serve with the case initiation documents on all other parties a notification of electronic service on a form approved by the State Court Administrative Office. All other parties must file and serve the notification form with their responsive pleading, or if no responsive pleading is filed, at the party's or the party's attorney's first appearance. The notification form is nonpublic as that term is defined in MCR 1.109. The notification form must state:
 - (a) Whether the party opts out from using electronic service due to one of the barriers specified in subrule (C)(6).
 - (b) If the party is using electronic service, the notification form must also state:
 - (i) The method(s) of electronic service identified in subrule (C)(2) that the party agrees to send and receive. If the party agrees to

send and receive service under subrule (C)(2)(b), the party must identify the secure website.

- (ii) The email address or phone number that will be used for electronic service. Attorneys must include the same e-mail address currently on file with the State Bar of Michigan. If an attorney is not a member of the State Bar of Michigan, the email address must be the e-mail address currently on file with the appropriate registering agency in the state of the attorney's admission.
- (iii) The name(s) of other individuals designated to receive electronic service on behalf of a party.

A party must file and serve a new notification form if the party's opt out status changes.

- (4) Obligation to Update Information. Parties who are using electronic service under this subrule must immediately file with the court a new notification form and serve it on all parties if the e-mail address or phone number for service changes.
- (5) The following limitations and conditions concerning electronic service apply:
 - (a) Each e-mail or alert shall identify in the e-mail subject line or at the beginning of the text message the name of the court, case name, case number, and the title of each document being sent. Failure to include information required by this subrule does not render service incomplete.
 - (b) Documents served electronically must be in a format that is an identical copy of what was filed with the court and must not exceed the maximum size permitted by the identified e-mail providers.
 - (c) If a receiving party is unable to open a document that was served, within 24 hours of receiving the notice, the party must notify the sending party.
 - (d) An electronic service transmission sent at or before 11:59 p.m. is deemed to be served on that day. If the transmission is sent on a Saturday, Sunday, legal holiday, or other day on which the court is closed pursuant to court order, it is deemed to be served on the next

business day. The date and timestamp on the sender's sent email or text message is deemed the time an electronic service transmission was sent for purposes of this subrule.

- (e) Electronic service is complete upon transmission unless the party, court, or friend of the court making service receives notice that the attempted service did not reach the intended recipient. If an electronic service transmission is undeliverable or the receiving party is unable to open the document in the format sent as indicated in subrule (c), the entity responsible for serving the document must serve the document by delivery or regular mail under MCR 2.107(D), and include a copy of the return notice indicating that the electronic transmission was undeliverable. The court or friend of the court must also retain a notice that the electronic transmission was undeliverable.
- (f) If an attachment exceeds the maximum size permitted by the recipient's email provider, the party responsible for serving the document must serve the document by delivery or regular mail under MCR 2.107(D), and include a statement indicating that the electronic transmission was not possible due to its size. Service by mail or delivery is complete at the time of mailing or delivery. The court or friend of the court must also retain a notice that the electronic transmission was not possible.
- (g) Exhibits must be attached or sent and designated as separate documents.
- (6) Opting Out of Electronic Service. A party may opt out from using electronic service if any of the following barriers to effective electronic service exist:
 - (a) the party lacks reliable access to the Internet or an electronic device that is capable of sending or receiving electronic service;
 - (b) the party lacks the technical ability to use and understand the methods for engaging in electronic service described in subrule (C)(2);
 - (c) access from a home computer system, the ability to gain access at a public computer terminal, or publication of the party's personal email address may present a safety issue for the party;
 - (d) the party has a disability as defined under the Americans with Disabilities Act that prevents or limits the person's ability to use the methods of electronic service identified in subrule (C)(2);

- (e) the party has limited English proficiency that prevents or limits the person's ability to engage in or receive electronic service; or
- (f) the party is confined by governmental authority, including but not limited to an individual who is incarcerated in a jail or prison facility, detained in a juvenile facility, or committed to a medical or mental health facility.

An attestation that one of the barriers exists under subrules (a)-(f) is sufficient to opt out of electronic service under this rule.

- (7) A document served by electronic service that the court or friend of the court or their authorized designee is required to sign may be signed in accordance with MCR 1.109(E).
 - (8) The party, court, or friend of the court shall maintain an archived record of sent items that shall not be purged until a judgment or final order is entered and all appeals have been completed.
 - (9) This rule does not require the court or the friend of the court to create functionality it does not have nor accommodate more than one standard for electronic service.
- (D) Except under MCR 1.109(G)(6)(a) or MCR 2.107(C)(2), service of a copy of a document on an attorney is made by delivery or by mailing to the attorney at the attorney's last known business address or, if the attorney does not have a business address, then to the attorney's last known residence address. Except under MCR 1.109(G)(6)(a) or MCR 2.107(C)(2), service on a party is made by delivery or by mailing to the party at the address stated in the party's pleadings.
- (1) Delivery to Attorney. Delivery of a copy to an attorney within this rule means
 - (a) handing it to the attorney personally, or serving it electronically under MCR 1.109(G)(6)(a), or, MCR 2.107(C)(2) if agreed to by the parties,
~~e-mailing it to the attorney as allowed under MCR 2.107(C)(4);~~
 - (b)-(c) [Unchanged.]
 - (2) Delivery to Party. Delivery of a copy to a party within this rule means

- (a) handing it to the party personally, or serving it electronically under MCR 1.109(G)(6)(a), or, ~~MCR 2.107(C)(2)~~if agreed to by the parties, ~~e-mailing it to the attorney as allowed under MCR 2.107(C)(4); or~~
- (b) [Unchanged.]
- (3) [Unchanged.]
- (4) ~~Alternative Electronic Service~~
 - (a) ~~Except as provided by MCR 1.109(G)(6)(a)(ii), the parties may agree to alternative electronic service among themselves by filing a stipulation in that case. Some or all of the parties may also agree to alternative electronic service of notices and court documents in a particular case by a court or a friend of the court by filing an agreement with the court or friend of the court respectively. Alternative electronic service may be by any of the following methods:~~
 - (i) ~~e-mail,~~
 - (ii) ~~text message, or~~
 - (iii) ~~alert consisting of an e-mail or text message to log into a secure website to view notices and court papers.~~
 - (b) ~~Obligation to Provide and Update Information.~~
 - (i) ~~The agreement for alternative electronic service shall set forth the e-mail addresses or phone numbers for service. Attorneys who agree to e-mail service shall include the same e-mail address currently on file with the State Bar of Michigan. If an attorney is not a member of the State Bar of Michigan, the email address shall be the e-mail address currently on file with the appropriate registering agency in the state of the attorney's admission. Parties or attorneys who have agreed to alternative electronic service under this subrule shall immediately notify, as required, the court or the friend of the court if the e-mail address or phone number for service changes.~~
 - (ii) ~~The agreement for service by text message or text message alert shall set forth the phone number for service. Parties or attorneys who have agreed to service by text message or text~~

~~message alert under this subrule shall immediately notify, as required, the court or the friend of the court if the phone number for service changes.~~

- ~~(c) The party or attorney shall set forth in the agreement all limitations and conditions concerning e-mail or text message service, including but not limited to:

 - ~~(i) the maximum size of the document that may be attached to an e-mail or text message,~~
 - ~~(ii) designation of exhibits as separate documents,~~
 - ~~(iii) the obligation (if any) to furnish paper copies of e-mailed or text message documents, and~~
 - ~~(iv) the names and e-mail addresses of other individuals in the office of an attorney of record designated to receive e-mail service on behalf of a party.~~~~
- ~~(d) Documents served by e-mail or text message must be in PDF format or other format that prevents the alteration of the document contents. Documents served by alert must be in PDF format or other format for which a free downloadable reader is available.~~
- ~~(e) A document served by alternative electronic service that the court or friend of the court or his or her authorized designee is required to sign may be signed in accordance with MCR 1.109(E).~~
- ~~(f) Each e-mail or text message that transmits a document or provides an alert to log in to view a document shall identify in the e-mail subject line or at the beginning of the text message the name of the court, case name, case number, and the title of each document being sent.~~
- ~~(g) An alternative electronic service transmission sent at or before 11:59 p.m. shall be deemed to be served on that day. If the transmission is sent on a Saturday, Sunday, legal holiday, or other day on which the court is closed pursuant to court order, it is deemed to be served on the next business day.~~
- ~~(h) A party or attorney may withdraw from an agreement for alternative electronic service by notifying the party or parties, court, and the~~

~~friend of the court, as appropriate, in writing and shall take effect immediately.~~

- ~~(i) Alternative electronic service is complete upon transmission, unless the party, court, or friend of the court making service learns that the attempted service did not reach the intended recipient. If an alternative electronic service transmission is undeliverable, the entity responsible for serving the document must serve the document by regular mail under MCR 2.107(C)(3) or by delivery under MCR 2.107(C)(1) or (2), and include a copy of the return notice indicating that the electronic transmission was undeliverable. The court or friend of the court must also retain a notice that the electronic transmission was undeliverable.~~
- ~~(j) The party, court, or friend of the court shall maintain an archived record of sent items that shall not be purged until a judgment or final order is entered and all appeals have been completed.~~
- ~~(k) This rule does not require the court or the friend of the court to create functionality it does not have nor accommodate more than one standard for alternative electronic service.~~
- ~~(l) The party or attorney requesting electronic service under this subrule is required to submit a request to initiate, update, modify, or withdraw from electronic service to the court independently from the friend of the court office.~~

(D)-(F) [Relettered (E)-(G) but otherwise unchanged.]

- ~~(G) Notwithstanding any other provision of this rule, until further order of the Court, all service of process except for case initiation must be performed using electronic means (eFiling where available, email, or fax, where available) to the greatest extent possible. Email transmission does not require agreement by the other party(s) but should otherwise comply as much as possible with the provisions of subsection (C)(4).~~

Rule 2.119 Motion Practice

(A)-(B) [Unchanged.]

(C) Time for Service and Filing of Motions and Responses.

- (1) Unless a different period is set by these rules or by the court for good cause, a written motion (other than one that may be heard ex parte), notice of the hearing on the motion, and any supporting brief or affidavits must be served as follows:

(a) [Unchanged.]

(b) at least 7 days before the time set for the hearing, if served by delivery under MCR 2.107(C)(1), ~~or (2)~~, MCR 2.107(D), or MCR 1.109(G)(6)(a).

- (2) Unless a different period is set by these rules or by the court for good cause, any response to a motion (including a brief or affidavits) required or permitted by these rules must be served as follows:

(a) [Unchanged.]

(b) at least 3 days before the hearing, if served by delivery under MCR 2.107(C)(1), ~~or (2)~~, MCR 2.107(D), or MCR 1.109(G)(6)(a).

(3)-(4) [Unchanged.]

(D)-(G) [Unchanged.]

Rule 3.203 Service of Notice and Court Documents in Domestic Relations Cases

- (A) Manner of Service. Unless otherwise required by court rule or statute, the case initiating documents and, if applicable, the electronic service notification form required by MCR 2.107(C)(3) must be served pursuant to MCR 2.105. In cases in which the court retains jurisdiction

(1)-(2) [Unchanged.]

- (3) ~~Alternative~~-Electronic Service.

(a) A party or an attorney may file an agreement with the friend of the court to authorize the friend of the court to serve notices and court papers on the party or attorney in accordance with MCR 2.107(C)(4). However, the friend of the court must not use electronic service if federal law, state law, or court rule:

- (i) prohibits the document from being served electronically in a form that complies with other court rules governing the document, or
- (ii) requires restrictions that make it less likely the recipient can receive or open the document.
- (b) A party filing a post-judgment motion must file with the motion a new notification form required under MCR 2.107(C)(3).
- (c) A party at any time may opt out from using electronic service by filing a new notification form required under MCR 2.107(C)(3) and serving it on the other party.
- (d) When a party opts out of electronic service, no case documents may be served electronically.

(B)-(J) [Unchanged.]

Rule 5.105 Manner and Method of Service

(A) Manner of Service.

- (1) [Unchanged.]
- (2) Unless another method of service is required by statute, court rule, or special order of a probate court, service may be made:
 - (a) [Unchanged.]
 - (b) by electronic service in accordance with MCR 1.109(G)(6)(a) or MCR 2.107(C), as applicable.

Foreign consul and the Attorney General may be served by mail or by electronic service in accordance with MCR 1.109(G)(6)(a) or MCR 2.107(C), as applicable.

(3)-(4) [Unchanged.]

(B) Method of Service.

- (1) Personal Service.

- (a) On an Attorney. Personal service of a document on an attorney must be made by

(i)-(ii) [Unchanged.]

(iii) if the office is closed or the attorney has no office, by leaving it at the attorney's usual residence with some person of suitable age and discretion residing there;~~or~~

(iv) sending the document by registered mail or certified mail, return receipt requested, and delivery restricted to the addressee; but service is not made for purpose of this subrule until the attorney receives the document;or

(v) sending the document electronically in accordance with MCR 1.109(G)(6) or MCR 2.107(C), as applicable.

- (b) On Other Individuals. Personal service of a document on an individual other than an attorney must be made by

(i) [Unchanged]

(ii) leaving it at the person's usual residence with some person of suitable age and discretion residing there;~~or~~

(iii) sending the document by registered mail or certified mail, return receipt requested, and delivery restricted to the addressee; but service is not made for purpose of this subrule until the individual receives the document;or

(iv) sending the document electronically in accordance with MCR 1.109(G)(6) or MCR 2.107(C), as applicable.

- (c) [Unchanged.]

(2)-(3) [Unchanged]

- ~~(4) E-mail. Unless otherwise limited or provided by this court rule or MCR 1.109(G)(6)(a)(ii), parties to a civil action or interested persons to a proceeding may agree to service by e-mail in the manner provided in and governed by MCR 2.107(C)(4).~~

- (45) Electronic Service. Electronic service of a document shall be made in accordance with MCR 1.109(G)(6)(a) or MCR 2.107(C) when required.

(C)-(E) [Unchanged.]

Staff Comment (ADM File No. 2020-08): The proposed amendments of MCR 1.109, 2.104, 2.107, 2.119, 3.203, and 5.105 would, subject to an opting-out procedure, clarify the use of electronic service when MiFILE is not available in the court or for the particular case type.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by January 1, 2026 by clicking on the “Comment on this Proposal” link under this proposal on the [Court’s Proposed & Adopted Orders on Administrative Matters](#) page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When submitting a comment, please refer to ADM File No. 2020-08. Your comments and the comments of others will be posted under the chapter affected by this proposal.



I, Elizabeth Kingston-Miller, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 3, 2025

Elizabeth Kingston-Miller
Clerk

Public Policy Position

**ADM File No. 2020-08: Proposed Amendments of MCR 1.109, 2.104, 2.107,
2.119, 3.203, and 5.105**

Support with Amendments**Explanation**

The Committee voted unanimously to reiterate its previously adopted position on the prior iteration of this proposal—and to support the position of the Justice Initiatives Committee—specifically: to support ADM File No. 2020-08 with an amendment to provide that, while parties represented by counsel should be required to *opt out* of electronic service, parties proceeding pro se should be required to *opt in* to electronic service.

Position Vote:

Voted For position: 16

Voted against position: 0

Abstained from vote: 0

Did not vote (absence): 5

Contact Persons:

Garrett Burton

gburton@sado.org

Mira Edmonds

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Public Policy Position**ADM File No. 2020-08: Proposed Amendments of MCR 1.109, 2.104, 2.107, 2.119, 3.203, and 5.105****Support with Amendments****Explanation**

The Committee agrees in principle with modernizing court procedures through electronic service but identifies significant concerns with the current proposal. **We strongly recommend that pro se parties be required to opt in rather than opt out.** Additionally, there is concern that several provisions require modification to address due process, religious freedom, and equal protection concerns.

I. DUE PROCESS CONCERNS - ACCESS TO COURTS**A. Mandatory Electronic Service with Limited Opt-Out**

MCR 2.107(C) mandates electronic service with only six enumerated opt-out grounds in MCR 2.107(C)(6). This may create barriers to meaningful court access for litigants who don't fit these narrow categories, including elderly individuals uncomfortable with technology, low-income persons with sporadic internet access, persons with disabilities, persons with language barriers, and rural residents with intermittent connectivity.

The fundamental right of access to courts (*Boddie v. Connecticut*, 401 U.S. 371 (1971); Const 1963, art 1, § 17) requires that procedural rules not prevent meaningful participation. Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), the high private interest at stake (loss of property, parental rights, liberty), combined with significant risk of erroneous deprivation and minimal government burden of less restrictive alternatives, suggests this mandatory regime may face constitutional challenges.

B. Pro Se Litigants at Greatest Risk

Pro se litigants—the most vulnerable population—must navigate the opt-out process and attest to specific barriers. This could create procedural traps for parties unfamiliar with court procedures who may fail to opt out, then find themselves unable to receive or respond to electronic service. This concern is heightened for pro se litigants with disabilities affecting communication, cognitive processing, or visual impairments, who may struggle to understand the opt-out requirements or may not recognize that their condition qualifies under MCR 2.107(C)(6)(d).

Committee Issue A: What happens if a party answers the pleading but never returns the notification form? The rule provides no answer, which could lead to inconsistent treatment across courts. **The process should be uniform across all courts.**

C. Committee Recommendations

1. **Require opt-in for pro se parties** (primary recommendation)
2. **Add catch-all opt-out provision:** "Any other substantial hardship or good cause shown"
3. **Grant judicial discretion** to excuse electronic service requirements
4. **Correct cross-reference:** MCR 2.107(C)(1)(a) should reference subrule (C)(6), not (C)(5)

II. RELIGIOUS FREEDOM CONCERNS - THE 24-HOUR RULE

A. Conflict with Sabbath Observance

MCR 2.107(C)(5)(c) requires parties to notify the sender within 24 hours if unable to open a document. This may create an irreconcilable conflict for religious observers:

- **Jewish observers and Seventh-day Adventists:** Shabbat runs approximately 25 hours (Friday sundown to Saturday sundown) and there are other religious holidays that prohibit work for more than one day.
- Observant practitioners refrain from using electronic devices during work prohibited days.

Violation Scenario: Document served Friday 6:00 PM won't open. Recipient observes Shabbat and cannot check email until Saturday evening (25+ hours later). The recipient may violate the 24-hour rule through religious observance alone.

Combined with MCR 2.107(C)(5)(d) (service complete if sent by 11:59 PM), Sabbath observers lose effective response time and face systematic disadvantage in motion practice under MCR 2.119(C).

B. Strict Scrutiny or Rational Basis Standard

Government actions that substantially burden religious exercise must satisfy strict scrutiny (*See e.g., Sherbert v. Verner*, 374 U.S. 398 (1963); *People v. DeJonge*, 442 Mich 266 (1993)). The 24-hour deadline may not be narrowly tailored because a 48-72 hour deadline would serve the same efficiency interest while accommodating religious practice. On the other hand, *Employment Div v Smith* held that an incidental burden on religion based on a neutral, generally applicable law is only subject to the rational basis test. *Employment Div v Smith*, 494 US 872 (1990). Increasing the period to 72 hours decreases the likelihood of this provision being contested.

C. Additional Populations Affected

The proposed 24-hour period does not account for weekends, holidays (including religious holidays prohibiting work), illness, or vacations. Without accommodations, these rules could result in ADEA, PWDORA, ELCRA, and religious and due process constitutional violations.

The 24-hour deadline may disproportionately affect:

- **Disabled individuals** who need more time to access documents
- **Non-English speakers** who cannot obtain translation services within 24 hours
- **Incarcerated persons** who have no control over when prison staff deliver emails (recently, service was returned after the reply period passed because the person was in the infirmary)
- **All litigants:** "Bounce back" emails often don't return for a week or two, meaning hearings could occur without notice

The Committee notes: This rule runs counter to promoting work-life balance. It is neither practical nor does it recognize technical realities that sometimes attachments do not open, especially on mobile devices, and not everyone opens their e-mails on a daily basis.

D. Committee Recommendations

Change "within 24 hours" to "within 72 hours" or "within 3 business days" to accommodate religious observers while maintaining prompt notification. There should also be an accommodation made for good cause (i.e. bereavement, birth, illness, hospitalization or jury duty).

III. STRUCTURAL DUE PROCESS CONCERNS - SENDER SELF-REPORTING

A. Concerns with Sender Self-Reporting

MCR 2.107(C)(5)(e) provides: "Electronic service is complete upon transmission unless the party...making service receives notice that the attempted service did not reach the intended recipient."

This structure may create due process issues by deeming service complete automatically while placing the burden on the sender—who may benefit from non-receipt—to report failures, with no independent verification mechanism.

The Committee observes: The Court puts the onus on the sender to inform the Court that service has not been accomplished. The Court has numerous examples of times where attorneys have gamed the system, for example, in collection matters, claiming service when it had not, in fact, occurred. Further, for example, in family matters, expecting parties, who succeed in motions due to the other party not responding or attending a hearing, to inform the court that notice was not achieved is concerning. Moreover, with advancements in artificial intelligence, how will service be proven or disproven? The committee suggests that MIFile be expanded so that it can be used to serve other parties even if a court is not yet an e-file court.

Additional concern: What if the sender misses the 'bounce back' or because it comes from an unknown e-mail fails to open it because of concerns that it is spam. Ensuring due process over convenience should be the guiding principle.

B. Constitutional Notice Standards

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950), requires notice "reasonably calculated...to apprise interested parties of the pendency of the action." This rule may not satisfy *Mullane* because it deems service complete without actual notice, relies entirely on the good faith of a party with a conflict of interest, and provides no neutral verification.

C. Scenarios Demonstrating Potential Problems

Concealed Bounce-Back: Attorney serves critical motion, receives bounce notification, deletes it, and files certificate of service. Opposing party never receives motion and cannot prove attorney received bounce notification.

"Didn't See It" Defense: Bounce goes to sender's spam folder. Sender claims ignorance. No objective verification available to determine if sender was negligent or dishonest.

The recipient cannot easily know a document was sent, that service failed, or that sender received a bounce notification. The sender can easily delete bounce notifications, claim technical ignorance, and face uncertain sanctions.

D. Comparison to Traditional Service

Personal and mail service require: detailed affidavits, independent verification (process server or postmark), physical records, and court review before deeming service complete.

Proposed electronic service provides: limited safeguards, reliance primarily on server's attestation, automatic completion, and minimal independent verification.

E. Committee Technical Concern: Proposed MCR 2.107(C)(2) provides for two "Methods of Electronic Service": (a) email, or (b) an email or text message "to log into a secure website to view notices and court papers." The Committee notes that litigants and their counsel often exchange documents that must be served not only by attaching such documents to emails or emailing an alert to log into a secure website, but also by emailing a file transfer link (like a Dropbox or Sharepoint file transfer link) that does not involve logging into a secure website from which (often voluminous or large sized files, *see, e.g.*, proposed MCR 2.107(C)(5)(f) noting the "maximum size permitted" limit imposed by many email providers) may be downloaded. File transfer links are often free or of low cost and provide a practical solution for many litigants and attorneys to exchange large documents, particularly in discovery. Accordingly, the Committee respectfully suggests modifying MCR 2.107(C)(2)(b) to include file transfer links as an additional means of service as follows: "(b) alert consisting of an email or text message to (i) log into a secure website to view notices and court papers and documents, or (ii) download notices and court papers and documents by means of a provided file transfer link."

F. Additional Committee Concerns

Committee Issue B: Service by programs/links under MCR 2.107(C)(2)(b) may require users to agree to adhesion contracts mandating arbitration or waiving jury trial rights. Many programs allow sending but not receiving, require additional software purchases, or work only on computers, not mobile devices. Persons unfamiliar with litigation may mistakenly or by default agree to use a program they cannot actually use or access creating due process issues.

Committee Issue D: In domestic violence cases, these rules could require victims to open e-mails from their abusers in case they happen to include court documents.

F. Committee Recommendations

Option 1 - Court System Verification (RECOMMENDED): Electronic service complete upon transmission through the court's electronic filing system, which maintains electronic records of delivery or failure. For service outside the court system, sender must file proof of delivery confirmation.

Option 2 - Tiered Approach: For routine filings, service complete upon transmission unless sender receives notice of failure. For dispositive motions, change of custody, change in support, or documents that could result in default, service must include proof of e-filing delivery confirmation or traditional service.

IV. EQUAL PROTECTION CONCERNS

The mandatory electronic service regime may create disparate impact on protected classes:

- **Low-income litigants:** May be unable to afford reliable internet or rely on public library computers with limited hours
- **Elderly litigants:** May lack familiarity with electronic systems but not meet "lack of technical ability" threshold
- **Disabled individuals:** Attestation requirement may inadequately protect those with cognitive or visual impairments
- **Non-English speakers:** Electronic systems often English-only; translation unavailable within 24 hours
- **Persons living in rural areas.** There are numerous documented places in Michigan where connectivity is not available or where available is unreliable. The requirements of these rules are overly burdensome to those who lack dependable connectivity access.

V. SUMMARY OF RECOMMENDATIONS

A. Due Process - Access to Courts

1. Require opt-in for pro se parties (primary recommendation)
2. Add catch-all opt-out: "Any other substantial hardship or good cause shown"
3. Grant judicial discretion to excuse electronic service requirements
4. Establish uniform procedure when party answers but fails to return notification form
5. Correct cross-reference in MCR 2.107(C)(1)(a)

B. Religious Freedom, Disability and Language Accommodation - 24-Hour Rule

1. Extend deadline to 72 hours or 3 business days

C. Structural Due Process - Sender Self-Reporting

1. Adopt court system verification (Option 1), OR
2. Institute uniform procedural protections

D. Additional Protections

1. Address terms of service issues for third-party platforms
2. Provide domestic violence protections
3. Clarify or limit emergency provision MCR 2.107(G)

VI. CONCLUSION

The Committee strongly supports modernizing Michigan court procedures through electronic service. However, ensuring due process over convenience should be the guiding principle. The recommended modifications would help achieve efficiency goals while better protecting fundamental rights of access to courts, religious freedom, due process, and equal protection.

The Committee request that if the State Bar of Michigan does not adopt the recommendations made in this memo, that permission be given to the Committee to present this memo to the Court for consideration. Careful attention to these issues now could help prevent constitutional challenges and create a sustainable electronic service system that better serves all Michiganders.

Position Vote:

Voted For position: 20

Voted against position: 1

Abstained from vote: 1

Did not vote: 9

Contact Person:

Marla Linderman Richelew mrichelew@gmail.com

Public Policy Position

ADM File No. 2020-08: Proposed Amendments of MCR 1.109, 2.104, 2.107, 2.119, 3.203, and 5.105

Support with Amendments**Explanation**

The Committee voted to reiterate its previously adopted position on the prior iteration of this proposal and to support ADM File No. 2020-08 with an amendment to provide that, while parties represented by counsel should be required to *opt out* of electronic service, parties proceeding pro se should be required to *opt in* to electronic service.

Position Vote:

Voted For position: 14

Voted against position: 0

Abstained from vote: 0

Did not vote (absence): 6

Contact Person:

Ashley E. Lowe alowe@lakeshorelegalaids.org

Public Policy Position
**ADM File No. 2020-08: Proposed Amendments of MCR 1.109, 2.104, 2.107,
2.119, 3.203, and 5.105**

Support

Explanation

The Children's Law Section Council supports ADM File No 2020-08. Because no one on the Council is aware of any counties which utilize MiFILE for juvenile court proceedings, the Council believes that it is particularly important for our area of law to provide easy and uniform means of electronic service, which this ADM would accomplish by creating a presumption of email service.

Position Vote:

Voted for position: 13

Voted against position: 0

Abstained from vote: 1

Did not vote: 5

Contact Person: Joshua Pease

Email: jpease@sado.org

Public Policy Position
**ADM File No. 2020-08: Proposed Amendments of MCR 1.109, 2.104, 2.107,
2.119, 3.203, and 5.105**

Position Vote:

Voted for position: 11

Voted against position: 0

Abstained from vote: 0

Did not vote: 1

Contact Person: Madelyne Lawry

Explanation

The State Bar of Michigan Negligence Law Section appreciates the Court's continued efforts to modernize the Michigan Court Rules to reflect today's electronic practice realities. Electronic filing and service are essential to efficient and equitable litigation. The Section fully supports the goal of improving consistency in e-service and ensuring that all courts and litigants benefit from modern, accessible technology.

However, while the Section recognizes the intent behind these proposed amendments, the proposed revisions to MCR 2.107 are overly complex, internally inconsistent, and not practical for day-to-day implementation. The proposed framework creates unnecessary administrative burdens and ambiguities that will lead to confusion, inconsistent practices, and potential disputes over the validity of service, without meaningfully improving efficiency or access to justice.

1. The Only Realistic Solution Is a Unified, Statewide E-Filing and E-Service System

The Section strongly urges the Court to prioritize a single statewide e-filing and e-service platform, administered through the existing MiFILE infrastructure, as the exclusive long-term solution.

Michigan lawyers already manage multiple logins and filing procedures across counties. Expanding ad hoc systems, especially those that differ by case type or local court, compounds the problem. Uniform statewide e-filing and e-service are the only path to true consistency, predictability, and efficiency.

2. Concerns with Proposed MCR 2.107

a. Service by Text Message Is Impractical and Unreasonable

MCR 2.107(C)(2)(b) and (C)(3)(b)(ii) authorize electronic service by “an alert consisting of a text message” and permit a phone number to be used for service. This is neither practical nor appropriate for professional legal practice.

- i. Most attorneys do not - and cannot - send or receive text messages from firm business lines.
- ii. There is no reliable or standardized way to archive or verify text message transmissions for proof of service.
- iii. Text message service introduces cost, security, and confidentiality concerns, and would require firms to purchase or maintain technology most do not have.
- iv. The rule as written would force attorneys to accommodate the technology preferences of opposing counsel or parties, even when their own systems cannot support text service.

Likewise, allowing “secure website alerts” for individual cases would be burdensome and confusing. Attorneys handling multiple matters would have to monitor dozens of unique secure links, often for multiple defendants in a single case. This model is wholly impractical and should be abandoned.

Electronic service should occur only by email or through an approved statewide e-filing platform.

b. Notification of Electronic Service Form

The rule refers to a new “notification of electronic service” form that will be nonpublic, yet no form has been published for review. It is unclear how parties are expected to file a “nonpublic” document in practice, whether this will require a motion to seal in each case or a new administrative process.

The Section recommends eliminating the separate form and instead requiring that attorneys provide their email address and the names of authorized recipients in their first filed document, with an obligation to promptly update that information if it changes. This is simple, consistent with federal practice, and far less cumbersome.

c. Subrule (C)(5) Is Overly Complicated and Internally Contradictory

Subrule (C)(5), which dictates how electronic service must be performed, is unnecessarily detailed, confusing, and in several places internally inconsistent.

- i. *Identification in subject line (C)(5)(a):*

The rule requires inclusion of the court name, case name, case number, and title of every document, but then provides that failure to do so “does not render service incomplete.”

This creates a serious risk of inadequate notice: a sender may transmit an email that does not sufficiently identify the case, perhaps with the subject “Attached” and an unlabeled PDF, and service would still be deemed complete. That invites gamesmanship and imposes an unfair risk on the recipient.

The rule should instead require that an email’s subject line include the case name or other information sufficient to identify the matter, and that service is *not complete* if the message does not reasonably identify the case and the documents served.

ii. *File-size limits (C)(5)(b), (f):*

Requiring that filings “not exceed the maximum size permitted by the identified email providers” is impossible to apply. Senders rarely know a recipient’s email provider or its size limits. Moreover, mandating regular mail as the only backup method is outdated.

Modern file-sharing tools such as Dropbox, OneDrive, or secure firm portals provide a safer and more efficient means to transmit large files and should be permitted.

iii. *Unreadable attachments and delivery failures (C)(5)(c), (e):*

Requiring the recipient to report within 24 hours that a file cannot be opened is unrealistic and unworkable, particularly over weekends or holidays. The rule should instead allow recipients to request re-service within a reasonable time after discovering an issue.

The rule also fails to specify whether service is complete on the first or second transmission. Logically and fairly, service should be deemed complete only upon successful delivery of a readable document.

iv. *Spam filters and firewalls:*

The rule treats service as “complete upon transmission” even if an email is diverted to spam or blocked by a firewall, something entirely outside the control of either party. This creates a risk of inadequate notice.

To mitigate this, the rule should require that if a party later learns an email was not actually received, service is not deemed complete until a readable copy is successfully transmitted. The rule should also encourage attorneys to whitelist opposing counsel’s email addresses at the start of a case.

v. *Exhibits (C)(5)(g):*

The language is grammatically confusing and unclear as to whether exhibits must be both “attached and designated as separate documents” or simply “attached.” This must be clarified.

d. Opt-Outs Under (C)(6) Are Too Broad and Internally Inconsistent

The numerous exceptions listed in (C)(6) make opting out of e-service extremely broad, to the point that nearly any party could claim an exemption. If opting out is intended to be this flexible, the

process should be simple and unconditional, not a checklist of personal or technological barriers. Requiring parties to attest that they have a disability, lack technological proficiency, or face safety issues is unnecessary and intrusive, and could raise privacy and confidentiality concerns.

The Section recommends that a party be permitted to opt out for any reason. No explanation or attestation should be required. This approach respects individual privacy, protects vulnerable litigants, and avoids unnecessary disputes over whether a claimed limitation “qualifies.”

Finally, subrule (C)(1)(a) incorrectly cites (C)(5) instead of (C)(6); this internal inconsistency should be corrected.

e. Subrules (C)(7)–(9) Are Unnecessary and Confusing

These provisions add complexity without value. Attorneys are already ethically obligated to maintain records of their filings and service. Requiring an “archived record” of text messages is impractical and meaningless given that most attorneys cannot export or verify SMS communications. Texting should be eliminated as a possible means of service and these sections should be deleted or significantly condensed.

f. Internal Inconsistencies Between (C) and (D)

Subrule (D) excludes MCR 1.109(G)(6)(a) from its coverage, yet (D)(1)(a) refers to circumstances “when using MCR 1.109(G)(6)(a).” This is inconsistent and must be reconciled to ensure clarity as to when and how the provisions apply.

3. Recommended Simplification

To achieve clarity, uniformity, and fairness, MCR 2.107 should be rewritten to focus on three practical principles:

- a. *Default:* All documents other than initiating pleadings should be served electronically by email unless another method is permitted or required by court order or rule.
- b. *Opt-Out:* Any party may opt out of electronic service for any reason.
- c. *Proof and Timing:* Service is complete only upon successful transmission of a readable document to the designated email address, unless the sender receives notice of non-delivery.

To further ensure fairness:

- a. If a sender later learns that an email was blocked, filtered, or otherwise undelivered, service should be void and must be re-transmitted, with the new date controlling.
- b. If a recipient cannot open a document or reasonably requests re-service, service should not be considered complete until a readable copy is provided.

- c. Parties should be encouraged to confirm receipt when electronic service is first initiated and to maintain reasonable verification records (sent email, delivery confirmation, or similar evidence).

All technical details, i.e. file size limits, exhibit handling, formatting, and record-keeping, should be addressed through SCAO administrative guidance, not codified in the court rules.

Conclusion

The Negligence Law Section commends the Court's commitment to advancing Michigan's judicial system through technology. However, the proposed amendments to MCR 2.107 are too detailed, too rigid, and too impractical to function effectively in real-world litigation.

E-service is essential, but only if it is simple, uniform, and reliable. The Section urges the Court to streamline MCR 2.107, remove text-message and secure-link provisions, and adopt a straightforward email-based service rule until a single statewide e-filing and e-service platform is fully implemented.

Public Policy Position
ADM File No. 2020-08: Proposed Amendments of MCR 1.109, 2.104, 2.107,
2.119, 3.203, and 5.105

Support with Recommended Amendments

Explanation

Council supports amending Michigan Court Rule 5.105 as presented with the following additional amendments to clarify application of the proposed electronic service rules in probate court:

- Addition to MCR 5.105(A)(2)(b): “A Petition or Application which opens a file are considered ‘case initiating documents’ for the purpose of applying MCR 1.109(G)(6)(a) and MCR 2.107(C)” so that MCR 5.105(A)(2)(b) reads as follows: "by electronic service in accordance with MCR 1.109(G)(6)(a) or MCR 2.107(C), as applicable. A Petition or Application which opens a file are considered “case initiating documents” for the purpose of applying MCR 1.109(G)(6)(a) and MCR 2.107(C)."
- Addition to MCR 5.105(B)(4): “Except as otherwise ordered by the court, any interested person in a probate proceeding is considered a party for the purpose of applying MCR 1.109(G)(6)(a) and MCR 2.107(C)” so that MCR 5.105(B)(4) reads as follows: "Electronic Service. Electronic service of a document shall be made in accordance with MCR 1.109(G)(6)(a) or MCR 2.107(C) when required. Except as otherwise ordered by the court, any interested person in a probate proceeding is considered a party for the purpose of applying MCR 1.109(G)(6)(a) and MCR 2.107(C)."

Position Vote:

Voted for position: 17

Voted against position: 0

Abstained from vote: 1

Did not vote: 5

Explanation

In addition to the Section's public policy position taken with respect to the proposed amendments to MCR 5.105 provided under ADM File No. 2020-08, issued September 3, 2025, the Section offers the following comments:

Probate courts should be similarly required to accept filings and to submit communications to the interested persons through electronic measures of the court's choosing, and to accept remote payments.

Position Vote:

Voted for position: 15

Voted against position: 2

Abstained from vote: 1

Did not vote: 5

Contact Person: Melisa M.W. Mysliwec / **Email:** melisa.mysliwec@btlaw.com

SBM STATE BAR OF MICHIGAN

December 23, 2024

Larry S. Royster
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2020-08: Proposed Amendments of Rules 2.107 and 3.203 of the Michigan Court Rules

Dear Clerk Royster:

At its most recent meeting, the Board of Commissioners of the State Bar of Michigan considered ADM File No. 2020-08. In its review, the Board considered recommendations from the Access to Justice Policy Committee, Civil Procedure & Courts Committee, and the Family Law Section. The Board voted unanimously to support the proposed amendments of Rules 2.107 and 3.203 with a further amendment providing that, while parties represented by counsel should be required to *opt out* of electronic service, parties proceeding pro se should be required to *opt in*.

In the vast majority of circumstances, electronic service has proven to be a valuable innovation that promotes greater efficiency and expedited communication in legal proceedings. In those special circumstances when electronic service is not accessible or otherwise appropriate, the amendments proposed in ADM File No. 2020-08 include procedures for parties to opt out. While these procedures are likely sufficient for those parties represented by counsel familiar with the Court Rules and comfortable with legal practice, default electronic service would likely create additional, unintended access to justice issues for unrepresented individuals, especially those who lack ready, reliable access to the internet. Requiring parties proceeding pro se to opt in to electronic service will help ameliorate this concern.

Thank you for the opportunity to comment on the proposed amendments.

Sincerely,



Peter Cunningham
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court
Joseph P. McGill, President



Order

Michigan Supreme Court
Lansing, Michigan

September 3, 2025

Megan K. Cavanagh,
Chief Justice

ADM File No. 2023-23

Brian K. Zahra
Richard H. Bernstein
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas
Noah P. Hood,
Justices

Proposed Amendments of
Rules 3.942 and 3.972 of
the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rules 3.942 and 3.972 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the [Public Administrative Hearings](#) page.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and
deleted text is shown by strikeover.]

Rule 3.942 Trial

(A)-(C) [Unchanged.]

(D) Bench Trial. In an action tried without a jury, the juvenile may make a motion pursuant to MCR 6.419(D) at the close of the prosecutor's case-in-chief.

(~~E~~) Verdict. In a delinquency proceeding, the verdict must be guilty or not guilty of either the offense charged or a lesser included offense. At a trial without a jury, the court must state on the record or in a written opinion its findings of fact and conclusions of law.

Rule 3.972 Trial

(A)-(D) [Unchanged.]

(E) Bench Trial. In an action tried without a jury, a respondent may make a motion pursuant to MCR 2.504(B)(2) at the close of the petitioner's case-in-chief.

(~~F~~E) Verdict. In a child protective proceeding, the verdict must be whether one or more of the statutory grounds alleged in the petition have been proven. At a trial without a jury, the court must state on the record or in a written opinion its findings of fact and conclusions of law.

(F)-(G) [Relettered (G)-(H) but otherwise unchanged.]

Staff Comment (ADM File No. 2023-23): The proposed amendments of MCR 3.942 and 3.972 would, in delinquency and child protective proceeding bench trials, require the court to make findings of fact and conclusions of law and allow for the equivalent of a directed verdict.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by January 1, 2026 by clicking on the “Comment on this Proposal” link under this proposal on the [Court’s Proposed & Adopted Orders on Administrative Matters](#) page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When submitting a comment, please refer to ADM File No. 2023-23. Your comments and the comments of others will be posted under the chapter affected by this proposal.



I, Elizabeth Kingston-Miller, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 3, 2025

Elizabeth Kingston-Miller
Clerk

Public Policy Position
ADM File No. 2023-23: Proposed Amendments of MCR 3.942 and 3.972

Support

Explanation

The Committee voted unanimously to support ADM File No. 2023-23. The Committee believes that the absence of court rules regarding bench trials in juvenile court proceedings creates procedural gaps that will be filled by the proposed amendments of MCR 3.942 and 3.972. Moreover, the present lack of findings of fact and conclusions of law in some circumstances inhibits appellate review. The proposed amendments will bring juvenile court rules closer in line with existing civil and criminal rules. It would also address another gap in the existing rules by making the civil bench trial motion for involuntary dismissal applicable in child protective proceedings and the criminal bench trial motion for directed verdict applicable in juvenile delinquencies.

Position Vote:

Voted For position: 16

Voted against position: 0

Abstained from vote: 0

Did not vote (absence): 5

Contact Persons:

Garrett Burton

gburton@sado.org

Mira Edmonds

edmondm@umich.edu

Public Policy Position
ADM File No. 2023-23: Proposed Amendments of MCR 3.942 and 3.972

Support

Explanation

The Committee voted unanimously to support the proposed amendments of MCR 3.942 and 3.972.

Position Vote:

Voted For position: 20

Voted against position: 0

Abstained from vote: 0

Did not vote (absence): 11

Contact Person:

Marla Linderman Richelew mrichelew@gmail.com

Public Policy Position
ADM File No. 2023-23: Proposed Amendments of MCR 3.942 and 3.972

Support with Recommended Amendments

Explanation

The Children's Law Section Council supports ADM File No 2023-23 with a recommendation that language be added to MCR 3.972(E) that a court not grant a motion under MCR 2.504(B)(2) until the child's lawyer-guardian ad litem be given an opportunity to present evidence. Because child protective proceedings involve three parties (petitioner, respondent parent, and child), the Council believes that it is important that all parties have an opportunity to present proofs and call witnesses before the trial court decides whether the petitioner has presented sufficient evidence to meet their burden of proof. The lawyer-guardian ad litem will sometimes call witnesses and present evidence in their own case-in-chief which supports the assertion of jurisdiction, often as a means of supporting the position put forward by the petitioner. Cutting off the lawyer-guardian ad litem before they can put on their own case could serve to limit the rights of children within these cases.

Position Vote:

Voted for position: 10

Voted against position: 2

Abstained from vote: 2

Did not vote: 5

Contact Person: Joshua Pease

Email: jpease@sado.org

Order

Michigan Supreme Court
Lansing, Michigan

September 3, 2025

Megan K. Cavanagh,
Chief Justice

ADM File No. 2023-39

Brian K. Zahra
Richard H. Bernstein
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas
Noah P. Hood,
Justices

Proposed Amendment of
Rule 7.215 of the Michigan
Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 7.215 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the [Public Administrative Hearings](#) page.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and
deleted text is shown by strikeover.]

Rule 7.215 Opinions, Orders, Judgments, and Final Process for Court of Appeals

(A)-(B) [Unchanged.]

(C) Precedent of Opinions.

- (1) An unpublished opinion is not precedentially binding under the rule of stare decisis. Unpublished opinions should not be cited for propositions of law for which there is published authority. If a party cites an unpublished opinion, the party must explain the reason for citing it and how it is relevant to the issues presented. ~~A party who cites an unpublished opinion must provide a copy of the opinion to the court and to opposing parties with the brief or other paper in which the citation appears.~~

(2) [Unchanged.]

(D)-(J) [Unchanged.]

Staff Comment (ADM File No. 2023-39): The proposed amendment of MCR 7.215 would eliminate the requirement that parties provide copies of unpublished opinions cited in briefs filed in the Court of Appeals.

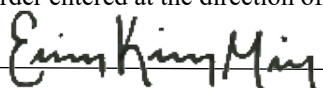
The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by January 1, 2026 by clicking on the “Comment on this Proposal” link under this proposal on the [Court’s Proposed & Adopted Orders on Administrative Matters](#) page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When submitting a comment, please refer to ADM File No. 2023-39. Your comments and the comments of others will be posted under the chapter affected by this proposal.



I, Elizabeth Kingston-Miller, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 3, 2025


Clerk

Public Policy Position
ADM File No. 2023-39: Proposed Amendment of MCR 7.215

Support

Explanation

The Committee voted unanimously to support ADM File No. 2023-39. The Committee believes that the existing requirement that parties provide copies of unpublished opinions cited in briefs filed in the Court of Appeals is antiquated. The Committee also noted that enforcement of the existing Rule is uneven. The readily available of unpublished opinions today makes the existing rule unnecessary.

Position Vote:

Voted For position: 15

Voted against position: 0

Abstained from vote: 0

Did not vote (absence): 6

Contact Persons:

Garrett Burton

gburton@sado.org

Mira Edmonds

edmondm@umich.edu

Public Policy Position
ADM File No. 2023-39: Proposed Amendment of MCR 7.215

Support

Explanation

The Committee voted unanimously to support the proposed amendment of MCR 7.215.

Position Vote:

Voted For position: 20

Voted against position: 0

Abstained from vote: 1

Did not vote (absence): 10

Contact Person:

Marla Linderman Richelew mrichelew@gmail.com

Public Policy Position
ADM File No. 2023-39: Proposed Amendment of MCR 7.215

Support

Explanation:

The Committee voted unanimously to support the proposed amendment of MCR 7.215.

Position Vote:

Voted For position: 13

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 8

Contact Persons:

John A. Shea

jashea@earthlink.net

Public Policy Position
ADM File No. 2023-39: Proposed Amendment of MCR 7.215

Support

Explanation

The Children's Law Section Council supports ADM File No 2023-39. With the ability to easily search for unpublished opinions on Westlaw, Lexis, Casemaker, the Michigan courts website, and even Google, the requirement that a party attach a copy of an unpublished opinion with an appellate brief is unnecessary.

Position Vote:

Voted for position: 11

Voted against position: 0

Abstained from vote: 1

Did not vote: 7

Contact Person: Joshua Pease

Email: jpease@sado.org

Public Policy Position
ADM File No. 2023-39: Proposed Amendment of MCR 7.215

Support

Explanation:

The State Bar of Michigan Appellate Practice Section Council supports the Proposed Amendment of Rule 7.215 of the Michigan Court Rules, which eliminates the requirement that parties provide copies of unpublished opinions cited in briefs. The Council believes that the Proposed Amendment will promote efficiency and benefit litigants, their counsel, and the judicial system.

First, attaching unpublished opinions to briefs has become unnecessary today since opinions are publicly accessible in electronic databases including obtaining an opinion directly from the Cases, Opinions & Orders page of the Court's own website, as well as Lexis, Westlaw, and even Google. Given this access, judges, their staff, and opposing counsel can locate unpublished opinions by citations alone. The Proposed Amendment recognizes the advancements that the Michigan Court of Appeals and State Bar of Michigan have made in reproducing copies of unpublished opinions for free, digitally.

Second, the Proposed Amendment promotes efficiency by streamlining the brief preparation process for litigants and their counsel. It removes the burden, time, and administrative cost of locating, downloading, and adding opinions to what may already be voluminous appendices. For litigants that file an appendix in paper form, the savings in terms of printing costs and paper usage may be significant.

Third, the Proposed Amendment benefits judges and judicial staff by reducing the file size of filings and appendices. Again, for an appendix filed in paper form, this impact may be significant in reducing the Court's environmental footprint.

Finally, the Proposed Amendment creates consistency with the Federal Rules of Appellate Procedure, FRAP 32.1, which only require attaching opinions that are not in a publicly accessible electronic database. Such consistency benefits the Michigan bar as a whole by reducing confusion between state and federal practice and better facilitating multi-jurisdictional practice.

For the foregoing reasons, the Council strongly supports the Proposed Amendment.

Position Vote:

Voted for position: 18

Voted against position: 0

Abstained from vote: 0

Did not vote: 5

Contact Person: Fawzeih Daher / **Email:** fdaher@bodmanlaw.com

Public Policy Position
ADM File No. 2023-39: Proposed Amendment of MCR 7.215

Explanation

The Negligence Law Section supports ADM File No. 2023-39.

Position Vote:

Voted for position: 13

Voted against position: 0

Abstained from vote: 1

Did not vote: 0

Contact Person: Madelyne Lawry

Email: neglaw@sharedresources.us

Name: JAMES N McNALLY

Date: 09/03/2025

ADM File Number: 2023-39

Comment:

I endorse the proposal to remove the requirement that parties attach unpublished opinions to their briefs. Besides the fact that the "attach and explain" rule is one of the most widely ignored and unenforced procedural rules, I have always felt that attaching these cases as appendices or exhibits drew unwarranted attention to the least-binding authority in the brief. By now, everyone has free access to those opinions via the Court's web page; there is no need to clutter up our filings with these documents.

From: Amanda Morris Smith
To: ADMcomment
Subject: Comment for ADM File No. 2023-39
Date: Thursday, September 4, 2025 3:11:38 PM
Attachments: 2023-39 2025-09-03 formor propamdmcr7.215.pdf

Good afternoon,

I'm writing in reference to ADM File No. 2023-39, to wit: omitting the requirement that counsel provide a copy of unpublished COA opinions (see attached).

While I broadly support this rule change, I am not fully in support of it. This is because parties use different legal research tools and I have found, in the past, that when a party cites to LEXIS (for example), there's no way for me to find the case in Westlaw (the program used by my office). Under that set of circumstances, the only way I can find out what the unpublished case says is if the party attaches a copy of it to their pleading. If that requirement is omitted, I do not know how I'd be able to read and verify an unpublished case cited by a party.

Thanks for your consideration,

APA Amanda Morris Smith
Wayne County Prosecutor's Office, Appellate Division
P: 313-224-5787

From: [Nathan Inks](#)
To: [ADMcomment](#)
Subject: ADM 2023-39 - Proposed Amendment of MCR 7.215
Date: Wednesday, October 29, 2025 4:02:07 PM

You don't often get email from nathan@bloomsluggett.com. [Learn why this is important](#)

EXTERNAL EMAIL

Good afternoon,

I write to provide comment on ADM No. 2023-39, Proposed Amendment of MCR 7.215. I am generally supportive of the desire to eliminate the requirement that one citing an unpublished opinion must provide a copy of the opinion with the brief. This requirement is already frequently ignored, and having the full copy of the opinion is rarely useful. However, I do have one concern with the proposal. Although the *Michigan Appellate Opinion Manual* sets forth a standard citation format for unpublished opinions that includes the docket number and date of decision, some attorneys do not follow the manual and instead include only the Westlaw or Lexis citation in their brief. Most law firms do not maintain subscriptions to both services, and in pro per parties typically have no access to either platform. Thus, it may be prudent to add something along the lines of the following to MCR 7.215(C)(1): “If a party cites an unpublished opinion, the party must **provide the docket number and date of decision as part of the citation** and explain the reason for citing it and how it is relevant to the issues presented.”

Thank you

--

Nathan Inks
Attorney

Bloom Sluggett, PC
Counselors & Attorneys

161 Ottawa Ave NW
Suite 400
Grand Rapids, MI 49503
nathan@bloomsluggett.com
P: (313) 919-1527
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Received

NOV 05 2025

SHELDON G. LARKY
2100 RHINE ROAD
WEST BLOOMFIELD MI 48323-3065
(248) 642-4660
FAX (248) 939-8008

State Court Administrative Office

Thursday, October 30, 2025

State Court Administrator
Michigan Supreme Court
P.O. Box 30052
Lansing, Michigan 48909

re: *ADM File No. 2023-39*

Dear Administrator:

The Supreme Court should adopt the proposed amendment to MCR 7.215 by eliminating the necessity for a party to present a copy of an unpublished opinion.

Since all unpublished Court of Appeal opinions are on the court's website, it is easy for court personnel and a judge to view the case. There is no need to print something which is highly accessible.

Sincerel yours,

A handwritten signature in black ink, appearing to read 'Sheldon G. Larky', written in a cursive style.

Sheldon G. Larky

SGL;s

Name: Paige Petrosky

Date: 11/17/2025

ADM File Number: 2023-39

Comment:

Good morning,

I am commenting on ADM No. 2023-39, Proposed Amendment of MCR 7.215. I support the adoption of the proposed amendment because unpublished cases are readily available on the internet, and because this rule is often ignored anyways.

I agree with Mr. Inks's suggestion to require the docket number and date of decision in the citation to make the unpublished case easier to find.



To: Members of the Public Policy Committee
Board of Commissioners

From: Nathan A. Triplett, Director of Governmental Relations

Date: November 14, 2025

Re: HB 4840 – Business Court Jurisdiction

Background

House Bill 4840 would amend the Revised Judicature Act, 1961 PA 236, to clarify that the scope of “business or commercial disputes” which a business court (organized under Sec. 8033 of the Act) is authorized to adjudicate includes shareholder actions brought under Sec. 489 of the Business Corporation Act, 1972 PA 284, and actions brought by LLC members under Sec. 515 of the Michigan Limited Liability Company Act, 1993 PA 23. The bill would also clarify that a business court may adjudicate proceedings to enforcement judgements that arise out of business or commercial disputes that follow from business court proceedings.

House Bill 4840 was favorably reported from the House Judiciary Committee. On November 11, 2025, the full House approved the bill, which has since been referred to the Senate Civil Rights, Judiciary & Public Safety Committee for consideration.

***Keller* Considerations**

The State Bar of Michigan has a long history of engaging with legislation related to the creation and operation of specialty courts. In 2011, SBM supported the legislation (2011 HB 5128) that initially created the business courts. The Board reasoned that such legislation was necessarily related to the functioning of the courts because it would have a significant impact on court dockets (and therefore their functioning) by moving many, if not most, business or commercial disputes into a specialized docket that would facilitate more timely, effective, and predicable resolution of complex business cases. More recently, regarding other specialty courts, the Board determined that a three-bill legislative package related to drug and mental health treatment court eligibility standards (2023 HB 4523-4525) was *Keller*-permissible because it was germane to both functioning of the courts and the availability of legal services. By clarifying the jurisdiction of business courts, House Bill 4840 will necessarily impact the court’s docket and functioning and make the benefits of business court available to a broader swath of litigants. As such, like similar specialty court legislation considered previously by the Board, the bill is germane to the functioning of the courts and therefore *Keller*-permissible.

Keller Quick Guide

THE TWO PERMISSIBLE SUBJECT-AREAS UNDER KELLER:

<i>As interpreted by AO 2004-1</i>	Regulation of Legal Profession	Improvement in Quality of Legal Services
	Regulation and discipline of attorneys	✓ Improvement in functioning of the courts
	Ethics	Availability of legal services to society
	Lawyer competency	
	Integrity of the Legal Profession	
	Regulation of attorney trust accounts	

Staff Recommendation

House Bill 4840 is necessarily related to the functioning of the courts and therefore *Keller*-permissible. The bill may be considered on its merits.

HOUSE BILL NO. 4840

September 04, 2025, Introduced by Rep. Lightner and referred to Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending section 8031 (MCL 600.8031), as amended by 2017 PA 101.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 8031. (1) As used in this section to section 8047:

2 (a) "Business court" means a special docket as described and
3 organized under section 8033 and administered as provided in this
4 section to section 8047.

5 (b) "Business enterprise" means a sole proprietorship,
6 partnership, limited partnership, joint venture, limited liability

1 company, limited liability partnership, for-profit or not-for-
2 profit corporation or professional corporation, business trust,
3 real estate investment trust, or any other entity in which a
4 business may lawfully be conducted in the jurisdiction in which the
5 business is being conducted. Business enterprise does not include
6 an ecclesiastical or religious organization.

7 (c) "Business or commercial dispute" means any of the
8 following:

9 (i) An action in which all of the parties are business
10 enterprises, unless the only claims asserted are expressly excluded
11 under subsection (3).

12 (ii) An action in which 1 or more of the parties is a business
13 enterprise and the other parties are its or their present or former
14 owners, managers, shareholders, members of a limited liability
15 company or a similar business organization, directors, officers,
16 agents, employees, suppliers, guarantors of a commercial loan, or
17 competitors, and the claims arise out of those relationships.

18 (iii) An action in which 1 of the parties is a nonprofit
19 organization, and the claims arise out of that party's
20 organizational structure, governance, or finances.

21 (2) Business or commercial disputes include, but are not
22 limited to, the following types of actions:

23 (a) Those involving the sale, merger, purchase, combination,
24 dissolution, liquidation, organizational structure, governance, or
25 finances of a business enterprise.

26 (b) Those involving information technology, software, or
27 website development, maintenance, or hosting.

28 (c) Those involving the internal organization of business
29 entities and the rights or obligations of shareholders, partners,

1 members, owners, officers, directors, or managers.

2 (d) Those arising out of contractual agreements or other
3 business dealings, including licensing, trade secret, intellectual
4 property, antitrust, securities, noncompete, nonsolicitation, and
5 confidentiality agreements if all available administrative remedies
6 are completely exhausted, including, but not limited to,
7 alternative dispute resolution processes prescribed in the
8 agreements.

9 (e) Those arising out of commercial transactions, including
10 commercial bank transactions.

11 (f) Those arising out of business or commercial insurance
12 policies.

13 (g) Those involving commercial real property.

14 **(h) Regardless of whether the business is a named party in the**
15 **action, those actions arising under section 489 of the business**
16 **corporation act, 1972 PA 284, MCL 450.1489, and section 515 of the**
17 **Michigan limited liability company act, 1993 PA 23, MCL 450.4515.**

18 (3) Notwithstanding subsections (1) and (2), business or
19 commercial disputes expressly exclude the following types of
20 actions:

21 (a) Personal injury actions including, but not limited to,
22 wrongful death and malpractice actions.

23 (b) Product liability actions in which any claimant is an
24 individual.

25 (c) Matters within the jurisdiction of the family division of
26 circuit court.

27 (d) Proceedings under the probate code of 1939, 1939 PA 288,
28 MCL 710.21 to 712B.41.

29 (e) Proceedings under the estates and protected individuals

1 code, 1998 PA 386, MCL 700.1101 to 700.8206.

2 (f) Criminal matters.

3 (g) Condemnation matters.

4 (h) Appeals from lower courts or any administrative agency.

5 (i) ~~Proceedings~~ **Except for business court proceedings,**
6 **proceedings** to enforce judgments of any kind, including
7 supplementary hearings.

8 (j) Landlord-tenant matters involving only residential
9 property.

10 (k) Land contract, mortgage, construction, and condominium
11 lien foreclosure matters and actions involving the enforcement of
12 condominium and homeowners associations governing documents.

13 (l) Motor vehicle insurance coverage under the insurance code
14 of 1956, 1956 PA 218, MCL 500.100 to 500.8302.

15 (m) Insurance coverage disputes in which an insured or an
16 alleged insured is an individual consumer.

17 (n) Employment discrimination.

18 (o) Civil rights including, but not limited to, an action
19 brought under any of the following:

20 (i) The Elliott-Larsen civil rights act, 1976 PA 453, MCL
21 37.2101 to 37.2804.

22 (ii) The persons with disabilities civil rights act, 1976 PA
23 220, MCL 37.1101 to 37.1607.

24 (iii) Chapter XXI of the Michigan penal code, 1931 PA 328, MCL
25 750.146 to 750.148.

26 (p) Wrongful discharge, except for actions involving corporate
27 officers or directors.

28 (q) Worker's compensation claims under the worker's disability
29 compensation act, 1969 PA 317, MCL 418.101 to 418.941.

1 Enacting section 1. This amendatory act takes effect 90 days
2 after the date it is enacted into law.

BUSINESS COURT: TYPES OF ACTIONS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4840 as introduced
Sponsor: Rep. Sarah Lightner
Committee: Judiciary
Complete to 9-24-25

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4840 would amend the Revised Judicature Act to newly allow *business courts* (specialized dockets used by some circuit courts for managing business-related cases) to hear certain types of civil actions arising from ***business or commercial disputes***. (See “Background” for the current list of disputes that may be heard by these courts.) The bill would also authorize the business court to hold proceedings to enforce judgments, including holding supplementary hearings, in actions involving business or commercial disputes.

Business or commercial dispute means any of the following:

- An action in which all of the parties are ***business enterprises***, unless the only claims asserted are expressly excluded by the act.
- An action in which one or more of the parties is a business enterprise and the other parties are its or their present or former owners, managers, shareholders, members of a limited liability company or a similar business organization, directors, officers, agents, employees, suppliers, guarantors of a commercial loan, or competitors, and the claims arise out of those relationships.
- An action in which one of the parties is a nonprofit organization, and the claims arise out of that party’s organizational structure, governance, or finances.

Business enterprise means a sole proprietorship, partnership, limited partnership, joint venture, limited liability company, limited liability partnership, for-profit or not-for-profit corporation or professional corporation, business trust, real estate investment trust, or any other entity in which a business may lawfully be conducted in the jurisdiction in which the business is being conducted. Business enterprise does not include an ecclesiastical or religious organization.

The bill would amend a list of examples of business or commercial disputes that can be heard by the business court to add the following types of actions that could be heard *regardless of whether* the business is a named party in the action:

- An action brought by a ***shareholder*** under section 489 of the Business Corporation Act for the purpose of establishing that the acts of the ***directors*** or those in control of a ***corporation*** are illegal, fraudulent, or ***willfully unfair and oppressive*** to the corporation or to the shareholder.
- An action brought by a ***member*** of a ***limited liability company*** (LLC) under section 545 of the Michigan Limited Liability Company Act for the purpose of establishing that acts of the ***managers*** or members in control of the LLC are illegal, fraudulent, or constitute willfully unfair and oppressive conduct toward the LLC or the member.¹

¹ <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-450-4515>

Shareholder means a person that holds units of proprietary interest in a corporation and is considered to be synonymous with “member” in a nonstock corporation.

Director means a member of the *board* of a corporation.

Board means board of directors or other governing board of a corporation.

Corporation (or domestic corporation) means a corporation formed under the Business Corporation Act, or existing on January 1, 1973, and formed under any other statute of this state for a purpose for which a corporation may be formed under the act.

Willfully unfair and oppressive conduct means either of the following, depending on the act under which an action is brought:

- If brought under the Business Corporation Act, the term means a continuing course of conduct or a significant action or series of actions that substantially interferes with the interests of the shareholder as a shareholder. Willfully unfair and oppressive conduct may include the termination of employment or limitations on employment benefits to the extent that the actions interfere with distributions or other shareholder interests disproportionately as to the affected shareholder. The term does not include conduct or actions that are permitted by an agreement, the articles of incorporation, the bylaws, or a consistently applied written corporate policy or procedure.
- If brought under the Michigan Limited Liability Company Act, the term means a continuing course of conduct or a significant action or series of actions that substantially interferes with the interests of the member as a member. Willfully unfair and oppressive conduct may include the termination of employment or limitations on employment benefits to the extent that the actions interfere with distributions or other member interests disproportionately as to the affected member. The term does not include conduct or actions that are permitted by the articles of organization, an operating agreement, another agreement to which the member is a party, or a consistently applied written company policy or procedure.

Member means a person that has been admitted to an LLC as provided in section 501 of the Michigan Limited Liability Company Act,² or, in the case of a foreign LLC, a person that is a member of the foreign LLC in accordance with the laws under which the foreign LLC is organized.

Limited liability company (or domestic limited liability company) means an LLC that has included in its articles of organization a purpose that meets, and that at all times conducts its activities to meet, the requirements established in section 102 of the Michigan Limited Liability Company Act.³

The bill would take effect 90 days after being enacted.

MCL 600.8031

² <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-450-4501>

³ <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-450-4102>

BACKGROUND:

Since the enactment of 2012 PA 333,⁴ circuit courts with three or more judges are required to create a specialized business court docket to manage and resolve complex business cases. Business courts operate according to local administrative orders that are issued by each circuit, which must be approved by the State Court Administrative Office and the Michigan Supreme Court.⁵ As of September 2025, 18 of Michigan's 57 judicial circuits maintain a business court.⁶

A civil action must be assigned to a business court if all or part of the action includes a business or commercial dispute, even if the case also contains nonbusiness claims.⁷ Section 8031 of the Revised Judicature Act currently provides the following nonexhaustive list of actions that constitute a business or commercial dispute:

- Actions involving the sale, merger, purchase, combination, dissolution, liquidation, organizational structure, governance, or finances of a business enterprise.
- Actions involving information technology, software, or website development, maintenance, or hosting.
- Actions involving the internal organization of business entities and the rights or obligations of shareholders, partners, members, owners, officers, directors, or managers.
- Actions arising out of contractual agreements or other business dealings, including licensing, trade secret, intellectual property, antitrust, securities, noncompete, nonsolicitation, and confidentiality agreements if all available administrative remedies are completely exhausted, including, but not limited to, alternative dispute resolution processes prescribed in the agreements.
- Actions arising out of commercial transactions, including commercial bank transactions.
- Actions arising out of business or commercial insurance policies.
- Actions involving commercial real property.

The act also stipulates that the definition of business or commercial disputes expressly *excludes* the following types of actions:

- Personal injury actions, including wrongful death and malpractice actions.
- Product liability actions in which any claimant is an individual.
- Matters within the jurisdiction of the family division of circuit court.
- Proceedings under the Probate Code.⁸
- Proceedings under the Estates and Protected Individuals Code.⁹
- Criminal matters.
- Condemnation matters.
- Appeals from lower courts or any administrative agency.
- Proceedings to enforce judgments of any kind, including supplementary hearings. (As described above, House Bill 4840 would modify this provision by authorizing the

⁴ <https://www.legislature.mi.gov/Bills/Bill?ObjectName=2011-HB-5128>

⁵ <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-600-8033>

⁶ <https://www.courts.michigan.gov/administration/trial-court/trial-court-operations/business-court/>

⁷ <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-600-8035>

⁸ <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-Act-288-of-1939>

⁹ <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-Act-386-of-1998>

business court hold proceedings, including supplementary hearings, to enforce judgments of any kind *as long as* they are business court proceedings.)

- Landlord-tenant matters involving only residential property.
- Land contract, mortgage, construction, and condominium lien foreclosure matters and actions involving the enforcement of condominium and homeowners associations governing documents.
- Motor vehicle insurance coverage under the Insurance Code.¹⁰
- Insurance coverage disputes in which an insured or an alleged insured is an individual consumer.
- Employment discrimination.
- Civil rights, including an action brought under any of the following:
 - The Elliott-Larsen Civil Rights Act.¹¹
 - The Persons With Disabilities Civil Rights Act.¹²
 - Chapter XXI of the Michigan Penal Code,¹³ which pertains to certain civil rights violations.
- Wrongful discharge, except for actions involving corporate officers or directors.
- Worker's compensation claims under the Worker's Disability Compensation Act.¹⁴

FISCAL IMPACT:

A fiscal analysis is in progress.

Legislative Analyst: Aaron A. Meek
Fiscal Analyst: Robin Risko

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

¹⁰ <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-Act-218-of-1956>

¹¹ <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-Act-453-of-1976>

¹² <https://legislature.mi.gov/Laws/MCL?objectName=mcl-Act-220-of-1976>

¹³ <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-328-1931-XXI>

¹⁴ <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-Act-317-of-1969>

**Public Policy Position
HB 4840**

Support

Explanation

The Committee voted unanimously to support House Bill 4840. The Committee believes that the proposed legislation will provide further clarity to the operation of business courts, which will benefit the bench and bar alike.

Position Vote:

Voted For position: 20

Voted against position: 0

Abstained from vote: 1

Did not vote (absence): 10

Keller Permissible Explanation

The Committee determined that House Bill 4840 is reasonably related to improvement in the functioning of the courts and therefore *Keller*-permissible.

Contact Person:

Marla Linderman Richelew mrichelew@gmail.com

**Public Policy Position
HB 4840**

SUPPORT

Explanation

Here is the language of the resolutions adopted by the Council:

WHEREAS, House Bill No. 4840 (the “Bill”) was introduced by Representative Lightner of the Michigan House of Representatives and referred to the Committee on Judiciary on September 3, 2025; and

WHEREAS, the Bill would amend MCL 600.8031 to clarify that shareholder litigation and litigation among LLC members under MCL 450.1489 and 450.4515, respectively, would be assigned to the business court, regardless of whether the company is a party to the suit, and clarify that enforcement of business court judgments would occur in the business courts; and

WHEREAS, the Council of the Business Law Section (the “Section”) of the State Bar of Michigan (the “Council”) believes that the Bill will bring much needed clarity to an aspect of Michigan business law; and

WHEREAS, Article VI, Section 11 of the Section’s Bylaws provides that “[a]ny action, which may be taken at any regular or special meeting, may be taken by unanimous written consent provided a record of the consent of each Council member is registered”:

NOW, THEREFORE, BE IT RESOLVED, that the Council hereby unanimously expresses its support for the Bill and its desire that the Michigan Legislature pass the Bill.

FURTHER RESOLVED, that the appropriate members or staff of the Council shall file any and all documents with the State Bar of Michigan necessary to document this public policy position.

Position Vote:

Voted for position: 15

Voted against position: 0

Abstained from vote: 0

Did not vote: 0

Contact Person: Michael K. Molitor

Email: molitorm@cooley.edu



To: Members of the Public Policy Committee
Board of Commissioners

From: Nathan A. Triplett, Director of Governmental Relations

Date: November 14, 2025

Re: SB 330 – Familial Caretaker, Parental Caretaker, and Bereavement Jury Exemptions

Background

Senate Bill 330 would amend Sec. 1307a of the Revised Judicature Act, 1961 PA 236, to provide familial caretaker, parental caretaker, and bereavement exemptions from jury service. The bill provides that a familial caretaker of a hospice patient or in a period of bereavement may claim an exemption upon making the request of the court and providing a letter from a physician, certified nurse, or any official member of the hospice team assigned to the relevant patient's care that verifies that the individual requesting the exemption is a familial caregiver of the patient. The bill also provides that a parental caregiver of a child with a serious health condition may claim an exemption from jury service for the period of care. A parental caregiver must provide the court with a letter from a physician, certified nurse, or an official member of the health care team assigned to the child's care that verifies that the individual seeking the exemption is the parental caregiver of the child with a serious health condition.

The bill defines "familial caretaker" as "a family member, close family friend, or another important adult in the patient's life or the patient's family's life that provides full-time care, nurturing, or protection of the patient" and a "family member" as "a spouse, adult child, grandparent, aunt, uncle, sibling, or a member of the individual's tribe or clan."

"Parental caregiver" is defined in the bill as an individual who is the caregiver of (1) the individual's biological, adopted, or foster child, stepchild, or legal ward; (2) a child of a covered individual's domestic partner; (3) a child to whom a covered individual stands in loco parentis; or (4) an individual to whom a covered individual stood in loco parentis when the individual was a minor.

"Period of bereavement" is defined as "1 year after the death of the patient in hospice."

"Serious health condition" is defined as "an illness, injury, impairment, or physical or mental condition that involves either . . . (i) Inpatient care in a hospital, hospice, or residential care facility [or] (ii) Continuous treatment by a health care provider."

Senate Bill 330 was reported favorably by the Senate Civil Rights, Judiciary & Public Safety Committee. On October 21, 2025, the bill was approved by the full Senate by a vote of 34-2-1. It has been referred to the Judiciary Committee in the House.

***Keller* Considerations**

Jury selection, seating, and composition are critical components—with constitutional implications—in many legal proceedings that are necessarily related to the functioning of the courts. As such, the

Board of Commissioners has consistently determined that legislation impacting how juries are called, composed, and selected is *Keller*-permissible. Most recently, in 2023, the Board determined that legislation (2023 HB 4850) providing certain military personnel with an exemption from jury service was *Keller*-permissible. The same determination was reached in 2021 regarding legislation (2021 HB 4550) allowing farmers to postpone jury service during certain months and in 2006 regarding legislation (2006 SB 1317) exempting individuals who have served on a jury within the preceding 24 months from service. In the present case, creating jury service exemptions for familial caretakers, parental caretakers, and for bereavement falls squarely within this broad category of legislation and is likewise necessarily related to the functioning of the courts.

***Keller* Quick Guide**

THE TWO PERMISSIBLE SUBJECT-AREAS UNDER KELLER:

<i>As interpreted by AIO 2004-1</i>	Regulation of Legal Profession	Improvement in Quality of Legal Services
	Regulation and discipline of attorneys	✓ Improvement in functioning of the courts
	Ethics	Availability of legal services to society
	Lawyer competency	
	Integrity of the Legal Profession	
	Regulation of attorney trust accounts	

Staff Recommendation

Senate Bill 330 is necessarily related to the functioning of the courts and therefore *Keller*-permissible. The bill may be considered on its merits.

SENATE BILL NO. 330

May 29, 2025, Introduced by Senators MCMORROW, POLEHANKI, SHINK, GEISS, CHANG, WOJNO, BAYER, KLINEFELT and CAVANAGH and referred to Committee on Civil Rights, Judiciary, and Public Safety.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending section 1307a (MCL 600.1307a), as amended by 2023 PA
308.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1307a. (1) To qualify as a juror, an individual must meet
2 all of the following criteria:
3 (a) Be a citizen of the United States, 18 years of age or
4 older, and a resident in the county for which the individual is
5 selected, and in the case of a district court in districts of the
6 second and third class, be a resident of the district.

1 (b) Be able to communicate in the English language.

2 (c) Be physically and mentally able to carry out the functions
3 of a juror. Temporary inability must not be considered a
4 disqualification.

5 (d) Not have served as a petit or grand juror in a court of
6 record during the preceding 12 months.

7 (e) Not have been convicted of a felony.

8 (2) An individual more than 70 years of age may claim
9 exemption from jury service and must be exempt upon making the
10 request.

11 (3) An individual who is a nursing mother may claim exemption
12 from jury service for the period during which she is nursing her
13 child and must be exempt upon making the request if she provides a
14 letter from a physician, a lactation consultant, or a certified
15 nurse midwife verifying that she is a nursing mother.

16 (4) An individual who is a participant in the address
17 confidentiality program created under the address confidentiality
18 program act, 2020 PA 301, MCL 780.851 to 780.873, may claim
19 exemption from jury service for the period during which the
20 individual is a program participant. To obtain an exemption under
21 this subsection, the individual must provide the participation card
22 issued by the department of attorney general upon the individual's
23 certification as a program participant to the court as evidence
24 that the individual is a current participant in the address
25 confidentiality program.

26 (5) An individual who is a service member of the United States
27 Armed Forces may claim exemption from jury service for the period
28 during which the individual is on active duty and must be exempt
29 upon making the request of the court and providing a copy of the

1 service member's orders.

2 (6) An individual who is the spouse of a service member of the
3 United States Armed Forces may claim exemption from jury service
4 for the period during which the individual resides outside of this
5 state or the United States due to the service member's active duty
6 status. The spouse under this ~~section~~**subsection** must be exempt
7 upon making the request of the court and providing a copy of the
8 service member's orders.

9 (7) An individual who is the familial caretaker of a hospice
10 patient or is in a period of bereavement may claim exemption from
11 jury service for the period of care. The familial caretaker under
12 this subsection must be exempt upon making the request of the court
13 and providing a letter from a physician, a certified nurse, or any
14 official member of the hospice team assigned to the patient's care
15 that verifies that the individual is a familial caregiver of the
16 patient.

17 (8) An individual who is the parental caregiver of a child
18 with a serious health condition may claim exemption from jury
19 service for the period of care. The parental caregiver under this
20 subsection must be exempt upon making the request of the court and
21 providing a letter from a physician, a certified nurse, or an
22 official member of the health care team assigned to the child's
23 care that verifies the individual is the parental caregiver of the
24 child with a serious health condition.

25 (9) ~~(7)~~—For the purposes of this section and sections 1371 to
26 1376, an individual has served as a juror if that individual has
27 been paid for jury service.

28 (10) ~~(8)~~—As used in this section:

29 (a) "Certified nurse midwife" means an individual licensed as

1 a registered professional nurse under article 15 of the public
2 health code, 1978 PA 368, MCL 333.16101 to 333.18838, who has been
3 issued a specialty certification in the practice of nurse midwifery
4 by the board of nursing under section 17210 of the public health
5 code, 1978 PA 368, MCL 333.17210.

6 (b) "Familial caretaker" means a family member, close family
7 friend, or another important adult in the patient's life or the
8 patient's family's life that provides full-time care, nurturing, or
9 protection of the patient.

10 (c) "Family member" means a spouse, adult child, grandparent,
11 aunt, uncle, sibling, or a member of the individual's tribe or
12 clan.

13 (d) ~~(b)~~—"Felony" means a violation of a penal law of this
14 state, another state, or the United States for which the offender,
15 upon conviction, may be punished by death or by imprisonment for
16 more than 1 year or an offense expressly designated by law to be a
17 felony.

18 (e) ~~(e)~~—"Lactation consultant" means a lactation consultant
19 certified by the International Board of Lactation Consultant
20 Examiners.

21 (f) "Parental caregiver" means an individual who is the
22 caregiver of any of the following:

23 (i) The individual's biological, adopted, or foster child,
24 stepchild, or legal ward.

25 (ii) A child of a covered individual's domestic partner.

26 (iii) A child to whom a covered individual stands in loco
27 parentis.

28 (iv) An individual to whom a covered individual stood in loco
29 parentis when the individual was a minor.

1 (g) "Period of bereavement" means 1 year after the death of
2 the patient in hospice.

3 (h) "Period of care" means the period of time that an
4 individual is a familial caretaker and includes a period of
5 bereavement.

6 (i) ~~(d)~~—"Physician" means an individual licensed by the state
7 to engage in the practice of medicine or osteopathic medicine and
8 surgery under article 15 of the public health code, 1978 PA 368,
9 MCL 333.16101 to 333.18838.

10 (j) "Serious health condition" means an illness, injury,
11 impairment, or physical or mental condition that involves either of
12 the following:

13 (i) Inpatient care in a hospital, hospice, or residential care
14 facility.

15 (ii) Continuous treatment by a health care provider.



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
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Senate Bill 330 (as passed by the Senate)
Sponsor: Senator Mallory McMorrow
Committee: Civil Rights, Judiciary, and Public Safety

Date Completed: 10-30-25

RATIONALE

According to the Centers for Disease Control and Prevention (CDC), approximately one in five adults across the United States serves as a caretaker to a family member or friend.¹ Being a familial caretaker for a hospice patient or a parental caregiver for a child with a serious health condition can be difficult and time-consuming; however, caretakers or caregivers currently may not be legally excused from jury service if they receive a summons. According to testimony before the Senate Committee on Civil Rights, Judiciary, and Public Safety, some courts accept caretaking or caregiving as a legitimate excuse from jury service, but some courts do not. Those not afforded an excuse must comply with the summons or face the possibility of being in contempt of court, even though they may not feasibly be able to serve because of their duties as caretaker. Accordingly, expanding the legal exemptions for jury service to include such caretakers and caregivers has been suggested.

CONTENT

The bill would amend Chapter 13 (Jurors) of the Revised Judicature Act to allow a familial caretaker of a hospice patient and a parental caregiver of a child with a serious health condition to claim exemption from jury service for the period of care.

Generally, an individual who is a citizen of the United States, at least 18 years old, and a resident of the applicable county qualifies as a juror. The Act currently allows specific individuals to claim exemptions from jury service, such as an individual who is a nursing mother during the nursing period and an individual who is a service member of the United States Armed Forces during the individual's period of active duty. The Act requires individuals who qualify to claim exemptions to provide specific proof, such as a doctor's letter for a nursing mother or a copy of the service member's orders.

Under the bill, an individual who was the familial caretaker of a hospice patient or was in a period of bereavement could claim exemption from jury service for the period of care. The individual would have to be exempt upon making the request to the court and providing a letter from a physician, a certified nurse, or any official member of the hospice team assigned to the patient's care that verified that the individual was a familial caregiver of the patient.

The bill would define "period of care" as the period of time that an individual is a familial caretaker and includes a period of bereavement. "Familial caretaker" would mean a family member, close family friend, or another important adult in the patient's life or the patient's family's life that provides full-time care, nurturing, or protection of the patient. "Family member" would mean a spouse, adult child, grandparent, aunt, uncle, sibling, or a member of the individual's tribe or clan. "Period of bereavement" would mean one year after the death of the patient in hospice.

¹ Kilmer, Greta, *et al.*, "Changes in Health Indicators Among Caregivers — United States, 2015–2016 to 2021–2022", *CDC*, August 29, 2024.

Additionally, the bill would allow an individual who was the parental caregiver of a child with a serious health condition to claim exemption from jury service for the period of care. The individual would have to be exempt upon making the request of the court and providing a letter from a physician, a certified nurse, or an official member of the health care team assigned to the child's care that verified the individual was the parental caregiver of the child with a serious health condition.

The bill would define "parental caregiver" as an individual who is the caregiver of any of the following:

- The individual's biological, adopted, or foster child, stepchild, or legal ward.
- A child of a covered individual's domestic partner.
- A child to whom a covered individual stands in loco parentis.
- An individual to whom a covered individual stood in loco parentis when the child was a minor.

"Serious health condition" would mean an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential care facility or continuous treatment by a health care provider.

MCL 600.1307a

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill would remove an undue burden placed on caregivers. According to the U.S. District Court for the Eastern District of Michigan, the average trial lasts three to five days, but some trials may continue for weeks.² For caregivers, especially those caring for terminally or seriously ill individuals, the time lost due to jury duty may prove burdensome. For this reason, some caregivers seek an exemption from jury duty; however, according to testimony before the Senate Committee on Civil Rights, Judiciary, and Public Safety, courts vary in their willingness to accept caregiving as a legitimate exemption. In Grand Traverse County, caregivers may be excused if, "[their] circumstances fall within the statutory provisions for an excuse from service based upon undue or extreme physical or financial hardship".³ Some courts may allow it, but some may not, forcing a caregiver to seek alternative caregiving arrangements. If a caregiver cannot find an alternative, the caregiver faces the possibility of being held in contempt by the court. Testimony also indicates that some caregivers must navigate medical and court bureaucracy to receive an exemption, which adds further stress to an already difficult situation. Caregivers must juggle their own responsibilities and health and that of their dependents. Those caring for the terminally or seriously ill also struggle with grief. Caregivers deserve compassion, and the bill would support them by creating an exemption and a clear way for caregivers to access that exemption.

Opposing Argument

Jury duty is an important responsibility that is undermined by the State's many exemptions. The Act already allows a court to defer the jury service of an individual for whom jury duty

² "Information For Jurors Frequently Asked Questions", U.S. District Court for the Eastern District of Michigan. Retrieved 10-23-25.

<https://www.mied.uscourts.gov/index.cfm?pageFunction=Information%20for%20jurorsFAQList&faqgroup=Information%20for%20jurors>.

³ "I am a caregiver to a disabled person, can I be excused?", Grand Traverse County. Retrieved 10-23-2025. <https://gtcountymi.gov/FAQ.aspx?QID=83>.

would prove an undue hardship.⁴ Caregivers denied an exemption do not meet this criterion. The bill would undermine the judicial process by making it more difficult for courts to find eligible, available jurors. Courts should retain the ability to determine deferral and exemption, and caregivers should be required to perform their civic duties.

Legislative Analyst: Tyler VanHuyse

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Michael Siracuse

⁴ See MCL 600.1320.

SAS\S2526\s330a

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.

Public Policy Position
SB 330**Support****Explanation**

The Committee voted unanimously to support Senate Bill 330. The Committee believes that jury exemptions for a “familial caretaker of a hospice patient or is in a period of bereavement” and a “parental caregiver of a child with a serious health condition” are sensible and appropriate. The Committee does not believe that these new exemptions will skew the demographic mix of jurors and took note of the fact that individuals in these circumstances are often excused or allowed to postpone jury service today on an ad hoc basis.

Position Vote:

Voted For position: 15

Voted against position: 0

Abstained from vote: 0

Did not vote (absence): 6

Keller Permissible Explanation

The Committee determined that Senate Bill 330 is reasonably related to improvement in the functioning of the courts and therefore *Keller*-permissible.

Contact Persons:

Garrett Burton

gburton@sado.org

Mira Edmonds

edmondm@umich.edu

Public Policy Position
SB 0330

Support with Amendments

Explanation

The Committee voted unanimously to support SB 330 with two amendments: (1) the period of bereavement should be reduced from 1 year to 90 days; (2) the familial caretaker and period of bereavement exemptions from jury service should be expanded beyond caring for/grieving only hospice patients to those facing/dying as a result of a serious health condition.

Position Vote:

Voted For position: 20

Voted against position: 1

Abstained from vote: 0

Did not vote (absence): 10

Keller Permissible Explanation

The Committee determined that Senate Bill 330 is reasonably related to improvement in the functioning of the courts and therefore *Keller*-permissible.

Contact Person:

Marla Linderman Richelew mlichelew@gmail.com

**Public Policy Position
SB 330**

Support with Amendment

Explanation:

The Committee voted unanimously to support SB 330 with an amendment to (10)(g):

“Period of bereavement” means ~~1-year~~ 90 days after the death of a patient in hospice
or an immediate family member.

Position Vote:

Voted For position: 13

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 8

Contact Persons:

John A. Shea

jashca@earthlink.net



To: Members of the Public Policy Committee
Board of Commissioners

From: Nathan A. Triplett, Director of Governmental Relations

Date: November 13, 2025

Re: Model Criminal Jury Instructions – Authorization to Advocate

In recent history, the State Bar of Michigan Board of Commissioners has not opted to adopt and advocate public policy positions on model criminal jury instructions. Instead, the Bar's Criminal Law Section and Criminal Jurisprudence & Practice Committee are regularly called upon to offer feedback to the Michigan Supreme Court's Committee on Model Criminal Jury Instructions on proposals to amend or repeal existing instructions, or to adopt new instructions.

Article VIII, Section 7 of the SBM Bylaws permits a section that has adopted a position on a *Keller*-permissible policy to publicly advocate that position on behalf of the section "unless expressly directed otherwise by the Board of Commissioners, the Representative Assembly, or, if the matter requires urgent attention, the Executive Committee of the State Bar.

State Bar entities other than sections—including standing committees—are not permitted, under Article VIII, Section 8 of the SBM Bylaws, to "publicly advocate a public policy position that has not been adopted by the Board of Commissioners or Representative Assembly unless authorized to do so by a majority vote of the Board of Commissioners or Representative Assembly."

To comply with these Bylaws requirements, the Board's consent agenda includes a proposed motion for consideration:

To authorize the Criminal Law Section and the Criminal Jurisprudence & Practice Committee to advocate their respective positions on the following model criminal jury instruction proposals:

- M Crim JI 11.38, 11.38a, 11.38b
- M Crim JI 11.45 and 11.45a
- M Crim JI 15.18b
- M Crim JI 20.10, 20.11, 20.22
- M Crim JI 20.38d
- M Crim JI 36.9
- M Crim JI 38.7
- M Crim JI 43.4, 43.4a, 43.4b, 43.4c

Copies of the proposed instructions are attached to this memorandum.



**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

=====

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by February 1, 2026. Comments may be sent in writing to Christopher M. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

=====

PROPOSED

The Committee proposes amending two existing instructions, M Crim JI 11.38 (Felon Possessing Firearm or Ammunition: Nonspecified Felony) and M Crim JI 11.38a (Felon Possessing Firearm or Ammunition: Specified Felony), to account for recent legislative changes to MCL 750.224f. Deletions are in ~~strike~~through, and new language is underlined. The Committee also proposes creating M Crim JI 11.38b (Prohibited Person Possessing Firearm or Ammunition: Misdemeanor Involving Domestic Violence), an entirely new instruction based on the same statute.

**[AMENDED] M Crim JI 11.38 Felon Possessing Firearm or
Ammunition: Nonspecified Felony**

(1) The defendant is charged with possession of [a firearm / ammunition] after having been convicted of a felony. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(12) First, that the defendant knowingly [possessed / used / transported / sold / distributed / received / carried / shipped / purchased¹] [a firearm / ammunition²] in this state.³

(23) Second, that at that time, the defendant had previously been convicted of [*name felony*].⁴

[Use the following paragraph only if the defendant offers some evidence that more than three years had ~~has~~ passed since completion of the sentence on the underlying offense:]

(34) Third, that less than three years had passed since [all fines were paid / all imprisonment was served / all terms of (probation / parole) were successfully completed].⁵

Use Notes

1. “Purchase” or receipt of ammunition is not barred under the statute.
2. ~~“Ammunition”~~ *Ammunition* is defined in MCL 750.224f(910)(a) as “any projectile that, in its current state, may be ~~propelled~~ expelled from a firearm by an explosive.”
3. The prosecutor need not prove that the firearm was “operable.” *People v Peals*, 476 Mich 636, 656; 720 NW2d 196 (2006).
4. The judge, not the jury, determines whether the charged prior ~~felony~~ offense is a “felony” as defined in MCL 750.224f(910)(b), a “misdemeanor involving domestic violence” as defined in MCL 750.224f(10)(c), or a more serious “specified felony” as defined in MCL 750.224f(10)(d). The jury determines whether the defendant has in fact been convicted of that charged prior ~~felony~~ offense. For prosecutions involving a “specified felony,” use M Crim JI 11.38a. For prosecutions involving a “misdemeanor involving domestic violence,” use M Crim JI 11.38b. The defendant may stipulate that he or she was convicted of ~~a felony~~ an offense to avoid the court identifying that specific ~~felony~~ offense and the prosecutor offering proof of that ~~felony~~ offense. See *People v Swint*, 225 Mich App 353; 572 NW2d 666 (1997), (citing *Old Chief v United States*, 519 US 172 (1997)).
5. The judge’s determination of the character of the ~~felony~~ offense as explained in Use Note 4 will determine whether the prohibition extends for three years, ~~or five years, or eight years~~. Under subsections (1) and (3) of ~~the statute~~ MCL 750.224f, the three-year period applies to crimes defined in subsection (910)(b) as felonies; Under subsections (2) and (4), the five-year ban applies to crimes defined as “specified” felonies in subsection (10)(d). Under subsection (5), the eight-year ban applies to crimes defined in subsection (10)(c) as misdemeanors involving domestic violence.

**[AMENDED] M Crim JI 11.38a Felon Possessing Firearm or
Ammunition: Specified Felony**

(1) The defendant is charged with possession of [a firearm / ammunition] after having been convicted of a specified felony. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(12) First, that the defendant knowingly [possessed / used / sold / distributed / received / carried / shipped / transported / purchased¹] [a firearm / ammunition²] in this state.³

(23) Second, that at that time, the defendant had previously been convicted of [*name specified felony*].⁴

[Use the following paragraphs only if the defendant offers some evidence that more than five years ~~had~~~~has~~ passed since completion of the sentence on the underlying offense and that his or her firearm rights have been restored, MCL 28.424-:]

(34) Third, that less than five years had passed since [all fines were paid / all imprisonment was served / all terms of (probation / parole) were successfully completed].⁵

(45) Fourth, that the defendant's right to [possess / use / transport / sell / purchase / carry / ship / receive / distribute] [a firearm / ammunition] has not been restored pursuant to Michigan law.⁶

Use Notes

1. “Purchase” or receipt of ammunition is not barred under the statute.
2. “~~Ammunition~~” Ammunition is defined in MCL 750.224f(910)(a) as “any projectile that, in its current state, may be ~~propelled~~ expelled from a firearm by an explosive.”
3. The prosecutor need not prove that the firearm was “operable.” *People v Peals*, 476 Mich 636, 656; 720 NW2d 196 (2006).
4. The judge, not the jury, determines whether the charged prior ~~felony~~ offense is a “felony” as defined in MCL 750.224f(910)(b), a “misdemeanor involving domestic violence” as defined in MCL 750.224f(10)(c), or a more serious “specified felony” as defined in MCL 750.224f(10)(d). The jury determines whether the defendant has in fact been convicted of that charged prior ~~felony~~ offense. For

prosecutions involving a “nonspecified felony,” use M Crim JI 11.38. For prosecutions involving a “misdemeanor involving domestic violence,” use M Crim JI 11.38b. The defendant may stipulate that he or she was convicted of a felony-an offense to avoid the court identifying that specific felony-offense and the prosecutor offering proof of that felony-offense. *See People v Swint*, 225 Mich App 353; 572 NW2d 666 (1997), (citing *Old Chief v United States*, 519 US 172 (1997)).

5. The judge’s determination of the character of the felony-offense as explained in Use Note 4 will determine whether the prohibition extends for three years, ~~or five years, or eight years~~. Under subsections (1) and (3) of ~~the statute~~ MCL 750.224f, the three-year period applies to crimes defined in subsection (910)(b) as felonies; Under subsections (2) and (4), the five-year ban applies to crimes defined as “specified” felonies in subsection (10)(d). Under subsection (5), the eight-year ban applies to crimes defined in subsection (10)(c) as misdemeanors involving domestic violence.

6. This paragraph is to be given when the court determines that some evidence relating to restoration was admitted at trial. *See People v Henderson*, 391 Mich 612; 218 NW2d 2 (1974), (addressing the burden of going forward and the burden of proof where a defendant submits evidence that he or she was licensed to carry a concealed weapon).

[NEW]	M Crim JI 11.38b	Prohibited Firearm Misdemeanor Violence	Person or Involving	Possessing Ammunition: Domestic Violence
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(1) The defendant is charged with possession of [a firearm / ammunition] after having been convicted of a misdemeanor involving domestic violence. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant knowingly [possessed / used / sold / distributed / received/ carried / shipped / transported / purchased]¹ [a firearm / ammunition²] in this state.³

(3) Second, that at that time, the defendant had previously been convicted of [*name specified misdemeanor involving domestic violence*].⁴

[Use the following paragraph only if the defendant offers some evidence that more than eight years had passed since completion of the sentence on the underlying offense:]

(4) Third, that less than eight years had passed since [all fines were paid / all imprisonment was served / all terms of (probation / parole) were successfully completed].⁵

Use Notes

1. Although MCL 750.224f(5) prohibits the “purchase” or “receipt” of ammunition, MCL 750.224f(7) does not indicate the penalty for this conduct.

2. *Ammunition* is defined in MCL 750.224f(10)(a) as “any projectile that, in its current state, may be expelled from a firearm by an explosive.”

3. The prosecutor need not prove that the firearm was “operable.” *People v Peals*, 476 Mich 636, 656; 720 NW2d 196 (2006).

4. The judge, not the jury, determines whether the charged prior offense is a “felony” as defined in MCL 750.224f(10)(b), a “misdemeanor involving domestic violence” as defined in MCL 750.224f(10)(c), or a more serious “specified felony” as defined in MCL 750.224f(10)(d). The jury determines whether the defendant has in fact been convicted of that charged prior offense. For prosecutions involving a “nonspecified felony,” use M Crim JI 11.38. For prosecutions involving a “specified felony,” use M Crim JI 11.38a. The defendant may stipulate that he or she was convicted of an offense to avoid the court identifying that specific offense and the prosecutor offering proof of that offense. *See People v Swint*, 225 Mich App 353; 572 NW2d 666 (1997) (citing *Old Chief v United States*, 519 US 172 (1997)).

5. The judge’s determination of the character of the offense as explained in Use Note 4 will determine whether the prohibition extends for three years, five years, or eight years. Under subsections (1) and (3) of MCL 750.224f, the three-year period applies to crimes defined in subsection (10)(b) as felonies. Under subsections (2) and (4), the five-year ban applies to crimes defined as “specified” felonies in subsection (10)(d). Under subsection (5), the eight-year ban applies to crimes defined in subsection (10)(c) as misdemeanors involving domestic violence.

Public Policy Position
Model Criminal Jury Instructions 11.38, 11.38a, 11.38b

Support

Explanation:

The Committee voted unanimously to support Model Criminal Jury Instructions 11.38, 11.38a, 11.38b.

Position Vote:

Voted For position: 12

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 9

Contact Persons:

John A. Shea

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**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

=====

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by February 1, 2026. Comments may be sent in writing to Christopher M. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

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PROPOSED

The Committee proposes two new instructions, M Crim JI 11.45 (Engaging in Computer-Assisted Shooting) and M Crim JI 11.45a (Providing or Offering to Provide Animals, Equipment, or Facilities for Computer-Assisted Shooting), to address the crimes set forth in MCL 750.236a and MCL 750.236b. These instructions are entirely new.

[NEW] M Crim JI 11.45 Using Computer Assistance for Shooting an Animal

(1) The defendant is charged with the crime of computer-assisted shooting of an animal. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant used a [firearm / bow / crossbow]¹ to kill an animal. It does not matter whether the animal was located in Michigan.

(3) Second, that the defendant used a computer or any other device, equipment, or software to remotely control the aiming and discharge of the [firearm / bow / crossbow].²

Use Notes

1. Use “firearm” if the defendant is charged with violating MCL 750.236a(1)(a). Use “bow” or “crossbow” if the defendant is charged with violating MCL 750.236b(1)(a).

2. MCL 750.236a(2)(a) and MCL 750.236b(2)(a) define *computer-assisted shooting* identically.

[NEW] M Crim JI 11.45a Providing or Offering to Provide Animals, Equipment, or Facilities for Computer-Assisted Shooting

(1) The defendant is charged with the crime of providing or offering to provide animals, equipment, or facilities for computer-assisted shooting. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant

[Select from the following according to the charges and evidence:]

- (a) provided or offered to provide an animal to serve as a target for computer-assisted remote shooting.
- (b) provided or offered to provide equipment specifically designed or adapted for computer-assisted shooting. Such equipment does not include general-purpose computers, software,¹ devices for accessing the Internet,² cameras, fencing, building materials, or [firearms / bows / crossbows].³ The equipment must be specially designed or adapted to aim and discharge a [firearm / bow / crossbow] remotely at an animal.
- (c) provided or operated facilities for computer-assisted remote shooting that are equipped to facilitate computer-assisted shooting of animals, including real estate and buildings, hunting blinds, and offices or rooms that have equipment specifically designed or adapted for computer-assisted shooting.

It does not matter whether or not the defendant was going to be paid for providing the [animal / equipment / facilities].

(3) Second, that the defendant intended to provide the [animal / equipment / facilities] to facilitate the killing of [the / an] animal by a [firearm / bow / crossbow] that could be aimed and discharged remotely using a computer or any other device, equipment, or software.

Use Notes

1. Under MCL 750.236a(1)(c)(ii) and MCL 750.236b(1)(c)(ii), a person is not prohibited from providing or offering to provide “[g]eneral-purpose computer software, including an operating system and communications programs.”

2. Under MCL 750.236a(1)(c)(iii) and MCL 750.236b(1)(c)(iii), a person is not prohibited from providing or offering to provide “[g]eneral telecommunications hardware or networking services for computers, including adapters, modems, servers, routers, and other facilities associated with internet access.”

3. Use “firearm” if the defendant is charged with violating MCL 750.236a(1)(b)-(d). Use “bow” or “crossbow” if the defendant is charged with violating MCL 750.236b(1)(b)-(d).

Public Policy Position
Model Criminal Jury Instructions 11.45 and 11.45a

Support

Explanation:

The Committee voted unanimously to support Model Criminal Jury Instructions 11.45 and 11.45a.

Position Vote:

Voted For position: 12

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 9

Contact Persons:

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**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

=====

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PROPOSED

The Committee proposes a new instruction, M Crim JI 15.18b (Moving Violation in a Work Zone or School Bus Zone Causing Death or Injury), for the offense of committing a moving traffic violation in a work zone or school bus zone that results in death or injury, as defined in MCL 257.601b. This instruction would serve as a companion to M Crim JI 15.18a, which applies to offenses committed before certain statutory changes took effect on April 2, 2025. The proposed new instruction would apply to offenses committed on or after that date.

[NEW]	M Crim JI 15.18b	Moving Violation in a Work Zone or School Bus Zone Causing Death or Injury [Use for Acts Occurring on or After April 2, 2025]
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(1) [The defendant is charged with the crime / You may consider the lesser charge¹] of committing a moving traffic violation in a [work / school bus] zone that caused [the death of / an injury to] a person. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant operated a motor vehicle.² To operate means to drive or have actual physical control of the vehicle.

(3) Second, that, while operating the motor vehicle, the defendant committed a moving violation by *[describe the moving violation that carries a 3 or more point penalty under MCL 257.320a]*.

(4) Third, that when [he / she] committed the violation, the defendant was in a [work / school bus] zone:

[Select from the following:]

(a) A work zone is a portion of a street or highway that is open to vehicular traffic, adjacent to a [barrier / berm / lane / shoulder] where [construction / maintenance / public utility work / reconstruction / repair / resurfacing / surveying] is being conducted by one or more individuals, and is between a “work zone begins” sign and [an “end road work” sign / the last temporary traffic control device before the normal flow of traffic resumes].³

(b) A work zone is a portion of a street or highway that is open to vehicular traffic, adjacent to a [barrier / berm / lane / shoulder] where [construction / maintenance / public utility work / reconstruction / repair / resurfacing / or surveying] is being conducted by one or more individuals, and is between a “begin work convoy” sign and an “end work convoy” sign.

(c) If construction, maintenance, surveying, or utility work activities were conducted by a work crew using a moving or stationary vehicle exhibiting a rotating beacon or strobe light, a work zone is a portion of a street or highway that is open to vehicular traffic, adjacent to a [barrier / berm / lane / shoulder] where [construction / maintenance / public utility work / reconstruction / repair / resurfacing / surveying] is being conducted by one or more individuals, and is between the following points:

(i) 150 feet behind the rear of the vehicle or the point from which the beacon or strobe light is first visible on the street or highway behind the vehicle, whichever is the point closest to the vehicle, and

(ii) 150 feet in front of the front of the vehicle or the point from which the beacon or strobe light is first visible on the street or highway in front of the vehicle, whichever is the point closest to the vehicle.

(d) A “school bus zone” is the area within 20 feet of a school bus that has stopped and is displaying two alternately flashing red lights at the same level.⁴

(5) Fourth, that by committing the moving violation, the defendant caused [the death of (*name deceased*) / (*name injured person*) to suffer an injury⁵]. To cause [the death of (*name deceased*) / such injury to (*name injured person*)], the defendant’s moving violation must have been a factual cause of the [death / injury], that is, but for committing the moving violation, the [death / injury] would not have

occurred. In addition, the [death / injury] must have been a direct and natural result of committing the moving violation.

[(6) Fifth, that the [death / injury] was not caused by the negligence of [(*name deceased*) / (*name injured person*)] in the work zone or school bus zone.

Negligence is the failure to use ordinary care like a reasonably careful person would do under the circumstances. It is up to you to decide what a reasonably careful person would or would not do.⁶]⁷

Use Notes

1. Use when instructing on this crime as a lesser offense.
2. The term *motor vehicle* is defined in MCL 257.33.
3. The term *work zone* is defined in MCL 257.79d.
4. A *school bus zone* is defined in MCL 257.601b(5)(c) and does not include the opposite side of a divided highway per MCL 257.682(2).
5. The word *injury* is not statutorily defined.
6. This definition of *negligence* is drawn generally from M Civ JI 10.02 (Negligence of Adult – Definition).
7. Read this paragraph only where the defense has introduced evidence of negligence by the deceased or injured person. This appears to be an affirmative defense.

**Public Policy Position
Model Criminal Jury Instructions 15.18b**

Support

Explanation:

The Committee voted unanimously to support Model Criminal Jury Instructions 15.18b.

Position Vote:

Voted For position: 12

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 9

Contact Persons:

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**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

=====

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=====

PROPOSED

The Committee proposes amending M Crim JI 20.10 (Personal Injury-Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless), M Crim JI 20.11 (Sexual Act with Mentally Incapable, Mentally Disabled, Mentally Incapacitated, or Physically Helpless Person by Relative or One in Authority), and M Crim JI 20.22 (Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless) to reflect a recent change to the statutory definition of “mentally incapacitated.” *See* MCL 750.520a(k), as amended by 2023 PA 65. Deletions are in ~~striketrough~~, and new language is underlined.

[AMENDED] M Crim JI 20.10 Personal Injury-Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless

(1) [Second / Third], that the defendant caused personal injury to [*name complainant*].

(2) “Personal injury” means bodily injury, disfigurement, chronic pain, pregnancy, disease, loss or impairment of a sexual or reproductive organ, or mental anguish. “Mental anguish” means extreme pain, extreme distress, or extreme suffering, either at the time of the event or later as a result of it.

[(3) Here are some things you may think about in deciding whether (*name complainant*) suffered mental anguish:

(a) Was (*name complainant*) upset, crying, or hysterical during or after the event?

(b) Did (he / she) need psychological treatment?

(c) Did the incident interfere with (*name complainant*)’s ability to work or lead a normal life?

(d) Was (*name complainant*) afraid that (he / she) or someone else would be hurt or killed?

(e) Did (he / she) feel angry or humiliated?

(f) Did (he / she) need medication for anxiety, insomnia, or other symptoms?

(g) Did the emotional effects of the incident last a long time?

(h) Did (*name complainant*) feel scared afterward about the possibility of being attacked again?

(i) Was the defendant (*name complainant*)’s parent?

(4) These are not the only things you should think about. No single factor is necessary. You must think about all the facts and circumstances to decide whether (*name complainant*) suffered mental anguish.]*¹

(5) [Third / Fourth], the prosecutor must prove that [*name complainant*] was [mentally incapable / mentally incapacitated / physically helpless]² at the time of the alleged act.

[Choose one or more of (6a), (7b), or (8c):]

(6a) “Mentally incapable” means that [*name complainant*] was suffering from a mental disease or defect that made [him / her] incapable of appraising either the physical or moral nature of [his / her] conduct.

(7b) “Mentally incapacitated” means that [*name complainant*] was unable to understand or control what [he / she] was doing because of ~~[drugs or alcohol given to (him / her) / something done to (him / her)]~~ without [his / her] consent. [drugs / alcohol / (identify intoxicant) / something done to (him / her) without (his / her) consent]. [It does not matter if (*name complainant*) voluntarily consumed the (drugs / alcohol / [identify intoxicant]).]³

(8c) “Physically helpless” means that [*name complainant*] was unconscious, asleep, or physically unable to communicate that [he / she] did not want to take part in the alleged act.

(96) [Fourth / Fifth], that the defendant knew or should have known that [name complainant] was [mentally incapable / mentally incapacitated / physically helpless] at the time of the alleged act.

Use Notes

~~*Paragraphs (3) and (4) are discretionary. If used, both paragraphs must be given together. The factors listed are taken from *People v Petrella*, 424 Mich 221, 270-271; 380 NW2d 11 (1985).~~

Use this instruction in conjunction with M Crim JI 20.1, Criminal Sexual Conduct in the First Degree; M Crim JI 20.2, Criminal Sexual Conduct in the Second Degree; or M Crim JI 20.18, Assault with Intent to Commit Criminal Sexual Conduct in the Second Degree (Contact).

1. Paragraphs (3) and (4) are discretionary. If used, both paragraphs must be given together. The factors listed are taken from *People v Petrella*, 424 Mich 221, 270-271; 380 NW2d 11 (1985).

2. MCL 750.520a provides the definitions of *mentally incapable*, *mentally incapacitated*, and *physically helpless*.

3. This sentence does not need to be read where the consumption of an intoxicating substance is not at issue.

[AMENDED] M Crim JI 20.11 Sexual Act with Mentally Incapable, Mentally Disabled, Mentally Incapacitated, or Physically Helpless Person by Relative or One in Authority

(1) [Second / Third], that [name complainant] was [mentally incapable / mentally disabled / mentally incapacitated / physically helpless]¹ at the time of the alleged act.

[Choose one or more of (2a), (3b), (4c), or (5d):]

(2a) “Mentally incapable” means that [name complainant] was suffering from a mental disease or defect that made [him / her] incapable of appraising either the physical or moral nature of [his / her] conduct.

(3b) “Mentally disabled” means that [name complainant] had a mental illness, was intellectually disabled, or had a developmental disability. “Mental illness” is a substantial disorder of thought or mood that significantly impairs judgment, behavior, or the ability to recognize reality and deal with the ordinary

demands of life. “Intellectual disability” means significantly subaverage intellectual functioning that appeared before [name complainant] was ~~eighteen~~ 18 years old and impaired two or more of [his / her] adaptive skills.¹² “Developmental disability” means an impairment of general thinking or behavior that originated before the age of ~~eighteen~~ 18, had continued since it started or can be expected to continue indefinitely, was a substantial burden to [name complainant]’s ability to function in society, and was caused by [intellectual disability as described / cerebral palsy / epilepsy / autism / an impairing condition requiring treatment and services similar to those required for intellectual disability].

(4c) “Mentally incapacitated” means that [name complainant] was unable to understand or control what [he / she] was doing because of ~~[drugs, alcohol or another substance given to (him / her) / something done to (him / her)]~~ without [his / her] consent. [drugs / alcohol / (identify intoxicant) / something done to (him / her) without (his / her) consent]. [It does not matter if (name complainant) voluntarily consumed the (drugs / alcohol / [identify intoxicant]).]³

(5d) “Physically helpless” means that [name complainant] was unconscious, asleep, or ~~physically incapable~~ physically unable to communicate that [he / she] did not want to take part in the alleged act.

[Choose the appropriate option according to the charge and the evidence:]

(62) [Third / Fourth], that the defendant and [name complainant] were related to each other, either by blood or marriage, as [*state relationship, e.g., first cousins*].²⁴

(63) [Third / Fourth], that at the time of the alleged act, the defendant was in a position of authority over [name complainant], and used this authority to coerce [name complainant] to submit to the sexual acts alleged. It is for you to decide whether, under the facts and circumstances of this case, the defendant was in a position of authority.

Use Notes

Use this instruction in conjunction with M Crim JI 20.1, Criminal Sexual Conduct in the First Degree; M Crim JI 20.2, Criminal Sexual Conduct in the Second Degree; or M Crim JI 20.18, Assault with Intent to Commit Criminal Sexual Conduct in the Second Degree (Contact).

1. MCL 750.520a provides the definitions of *developmental disability, intellectual disability, mental illness, mentally disabled, mentally incapable, mentally incapacitated, and physically helpless.*

~~12.~~ The court may provide the jury with a definition of *adaptive skills* where appropriate. The phrase is defined in MCL 330.1100a(3), and means skills in ~~1~~one or more of the following areas:

- (a) Communication.
- (b) Self-care.
- (c) Home living.
- ~~(e)~~ Social skills.
- (e) Community use.
- (f) Self-direction.
- ~~(f)~~ Health and safety.
- (h) Functional academics.
- (i) Leisure
- ~~(h)~~ Work.

3. This sentence does not need to be read where the consumption of an intoxicating substance is not at issue.

~~24.~~ The following are relatives of a person to the fourth degree of consanguinity:

First degree of consanguinity:

Parents
Children

Second degree of consanguinity:

Brothers and ~~S~~sisters
Grandchildren
Grandparents

Third degree of consanguinity:

Great ~~G~~grandchildren
Great ~~G~~grandparents
Aunts and Uncles
Nephews and ~~N~~nieces

Fourth degree of consanguinity:

Great-great ~~G~~grandchildren
Great-great ~~G~~grandparents
Grand ~~A~~aunts and Uncles
First ~~C~~cousins
Grand ~~N~~nephews and Nieces

**Complainant Mentally Incapable,
Mentally Incapacitated, or
Physically Helpless**

(1) [Fifth / Sixth], that [*name complainant*] was [mentally incapable / mentally incapacitated / physically helpless] at the time of the alleged act.¹

[Choose one or more of (a), (b), or (c):]

(a) “Mentally incapable” means that [*name complainant*] was suffering from a mental disease or defect that made [him / her] incapable of appraising either the physical or moral nature of [his / her] conduct.

(b) “Mentally incapacitated” means that [*name complainant*] was unable to understand or control what [he / she] was doing because of ~~[drugs or alcohol given to (him / her) / something done to (him / her)]~~ without [his / her] consent [drugs / alcohol / (*identify intoxicant*) / something done to (him / her) without (his / her) consent]. [It does not matter if (*name complainant*) voluntarily consumed the (drugs / alcohol / (*identify intoxicant*)).]²

(c) “Physically helpless” means that [*name complainant*] was unconscious, asleep, or physically unable to communicate that [he / she] did not want to take part in the alleged act.

(2) [Sixth / Seventh], that the defendant knew or should have known that [*name complainant*] was [mentally incapable / mentally incapacitated / physically helpless] at the time of the alleged act.

Use Notes

Use this instruction in conjunction with M Crim JI 20.17, Assault with Intent to Commit Criminal Sexual Conduct Involving Penetration.

1. MCL 750.520a provides the definitions of *mentally incapable*, *mentally incapacitated*, and *physically helpless*.

2. This sentence does not need to be read where the consumption of an intoxicating substance is not at issue.

Public Policy Position
Model Criminal Jury Instructions 20.10, 20.11, 20.22

Support

Explanation:

The Committee voted unanimously to support Model Criminal Jury Instructions 20.10, 20.11, 20.22.

Position Vote:

Voted For position: 12

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 9

Contact Persons:

John A. Shea

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**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

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PROPOSED

The Committee proposes a new instruction, M Crim JI 20.38d (Child Sexually Abusive Activity - Causing or Allowing Without Producing Materials) to address violations of MCL 750.145c that do not involve possessing, creating, or distributing child sexually abusive material. *See People v Willis*, 322 Mich App 579 (2018), lv den 504 Mich 905 (2019). This instruction is entirely new.

**[NEW] M Crim JI 20.38d Child Sexually Abusive Activity – Arranging
for Without Producing Materials**

(1) The defendant is charged with the crime of arranging for a child to engage in sexually abusive activity. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [arranged for / financed] a child under 18 years old to engage in child sexually abusive activity [or (attempted / prepared / conspired) to do so].¹

(3) Child sexually abusive activity includes

*[Choose any of the following that apply:]*²

- (a) sexual intercourse, which is genital-genital, oral-genital, anal-genital, or oral-anal penetration, whether the intercourse is real or simulated, and whether it is between persons of the same or opposite sex, or between a person and an animal, or with an artificial genital, [and / or]

- (b) erotic fondling, which is the touching of a person's clothed or unclothed genitals, pubic area, buttocks, female breasts, or the developing or undeveloped breast area of a child for the purpose of sexual gratification or stimulation of any person involved, but does not include other types of touching, even if affectionate, [and / or]
- (c) sadomasochistic abuse, which is restraining or binding a person with rope, chains, or any other kind of binding material; whipping; or torturing for purposes of sexual gratification or stimulation, [and / or]
- (d) masturbation, which is stimulation by hand or by an object of a person's clothed or unclothed genitals, pubic area, buttocks, female breasts, or the developing or undeveloped breast area of a child for sexual gratification or stimulation, [and / or]
- (e) passive sexual involvement, which is watching, drawing attention to, or exposing someone to persons who are performing real or simulated sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, sexual excitement, or erotic nudity for the purpose of sexual gratification or stimulation of any person involved, [and / or]
- (f) sexual excitement, which is the display of someone's genitals in a state of stimulation or arousal, [and / or]
- (g) erotic nudity, which is showing the genital, pubic, or rectal area of someone in a way that tends to produce lewd or lustful emotions.

(4) Second, that the defendant knew or reasonably should have known that the person was less than 18 years old or failed to take reasonable precautions to determine whether the person was less than 18 years old.³

*[Add the following paragraph if appropriate:]*⁴

(5) Third, that the child sexually abusive activity involved

[Choose any of the following that apply:]

- (a) a child who has not yet reached puberty, or

- (b) sadomasochistic abuse, which [I have already defined / is restraining or binding a person with rope, chains, or any other kind of binding material; whipping; or torturing for purposes of sexual gratification or stimulation], or
- (c) sexual acts between a person and an animal,⁵ or
- (d) a video or more than 100 images of child sexually abusive material.

Use Notes

1. Use bracketed language only where the defendant is charged with “attempt[ing] or prepar[ing] or conspir[ing] to arrange for . . . or finance any child sexually abusive activity” See MCL 750.145c(2).

2. The statute prohibits both real and simulated sexual acts. Where the acts are simulated, the instructions should be modified accordingly.

3. The statute lists several alternatives for this element of the offense in MCL 750.145c(2), (3), and (4):

. . . if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child.

Generally, the language of the instruction will suffice. However, in appropriate cases, the court may select some or all of the other statutory language for this element.

4. Paragraph (5) applies when the prosecution seeks the enhanced sentence set forth in MCL 750.145c(2)(b). It need not be given when sadomasochistic abuse is the only type of child sexually abusive activity being alleged because, in that scenario, the jury will have already found the facts pertaining to the sentence enhancement.

5. MCL 750.145c uses the term *bestiality* but does not define it. In *People v Carrier*, 74 Mich App 161, 165-166; 254 NW2d 35 (1977), the Michigan Court of Appeals indicated that bestiality encompasses sexual acts between a man or woman and an animal. These acts are not limited to anal copulation.

**Public Policy Position
Model Criminal Jury Instructions 20.38d**

Support

Explanation:

The Committee voted unanimously to support Model Criminal Jury Instructions 20.38d.

Position Vote:

Voted For position: 12

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 9

Contact Persons:

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**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

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The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by February 1, 2026. Comments may be sent in writing to Christopher M. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

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PROPOSED

The Committee proposes a new instruction, M Crim JI 36.9 (Soliciting a Person to Commit Prostitution) to address the crime set forth in MCL 750.448. This instruction is entirely new.

[NEW]	M Crim JI 36.9	Soliciting a Person to Commit Prostitution
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(1) The defendant is charged with the crime of soliciting, accosting, or inviting another person to commit prostitution or any other lewd or immoral act. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant intentionally communicated with [*identify person*] verbally, by gesture, or by any other means.

(3) Second, that when communicating with [*identify person*], the defendant proposed that [*identify person*] commit [an act of prostitution / a lewd act].

[Prostitution means performing sexual acts for money or for anything of value. / A lewd act is conduct that is sexual in nature and is shocking to the sensibilities of a reasonable person, is outside of reasonable societal standards of decency, and would be offensive to a reasonable person.]

(4) Third, that when the defendant communicated with [*identify person*], [he / she] did so [in a public place / in or from a building / in or from a car].

[A public place is anywhere that people are generally allowed to be without being given permission.]

(5) Fourth, that the defendant was at least 16 years old when [he / she] proposed the [act of prostitution / lewd act].

*[Use the following paragraph only if the defendant was under 18 years of age at the time of the alleged offense:]*¹

(6) Fifth,² that the defendant was not forced or coerced into proposing the [act of prostitution / lewd act]. You may, but you do not have to, infer from the defendant's youth that [he / she] was forced or coerced into committing the offense by another person engaged in human trafficking.³

Use Notes

1. For a violation of MCL 750.448 committed by a defendant under 18 years of age, MCL 750.451(6) establishes a presumption that the defendant was forced or coerced into committing the offense by another person engaged in human trafficking in violation of MCL 750.462a *et seq.* The prosecution may overcome this presumption by proving beyond a reasonable doubt that the person was not forced or coerced into committing the offense.

2. Do not read this paragraph if the state petitioned the family division of the circuit court to find the defendant to be dependent and in danger of substantial physical or psychological harm under MCL 712A.2 but the defendant failed to substantially comply with court-ordered services. In this scenario, the defendant is not eligible for the presumption under MCL 750.451(6).

3. *Human trafficking* for purposes of MCL 750.451(6) refers to the crimes set forth in MCL 750.462a–.462h. If appropriate, the jury should be instructed on the relevant form of human trafficking. *See* M Crim JI 36.1–36.6.

Public Policy Position
Model Criminal Jury Instructions 36.9

Support with Amendment

Explanation:

The Committee voted unanimously to support the proposed instruction with an amendment to subsection six to conform the instruction more closely to the statute, MCL 750.451(6):

(6). Fifth, that the defendant was not forced or coerced into proposing the [act of prostitution/lewd act] *by another person engaged in human trafficking*. You may, but you do not have to, infer that [he/she] was forced or coerced into committing the offense by another person engaged in human trafficking.

The statute, MCL 750.451(6) states the following:

(6) In any prosecution of a person under 18 years of age for an offense punishable under this section or a local ordinance substantially corresponding to an offense punishable under this section, it shall be presumed that the person under 18 years of age was coerced into child sexually abusive activity or commercial sexual activity in violation of section 462e or otherwise forced or coerced into committing that offense by another person engaged in human trafficking in violation of sections 462a to 462h. The prosecution may overcome this presumption by proving beyond a reasonable doubt that the person was not forced or coerced into committing the offense. The state may petition the court to find the person under 18 years of age to be dependent and in danger of substantial physical or psychological harm under section 2(b)(3) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2. A person under 18 years of age who fails to substantially comply with court-ordered services under section 2(b)(3) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, is not eligible for the presumption under this section.

The Committee recommends adding the emphasized language above to indicate that this provision only applies when the claim is that a person engaged in human trafficking was influencing the defendant to act.

Position Vote:

Voted For position: 12

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 9

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PROPOSED

The Committee proposes a new instruction, M Crim JI 38.7 (Obtaining Blueprint or Security Plan to Commit a Terrorist Offense) to address the crime set forth in MCL 750.543r. This instruction is entirely new.

**[NEW] M Crim JI 38.7 Obtaining Blueprint or Security Plan to
Commit a Terrorist Offense**

(1) The defendant is charged with the crime of obtaining [a blueprint / an architectural or engineering diagram / a security plan / (*identify type of plan or diagram*)] to commit a terrorist offense. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant obtained or possessed [a blueprint / an architectural or engineering diagram / a security plan / (*identify type of plan or diagram*)] of [*identify vulnerable target*].¹

(3) Second, that when the defendant obtained or possessed the [blueprint / architectural or engineering diagram / security plan / (*identify type of plan or diagram*)] of [*identify vulnerable target*], [he / she] intended to

[*Select from the following according to the charges and evidence:*]²

(a) commit the crime of [*identify violent felony*]³ [which I have previously described to you / knowing that it would be dangerous to human life and trying to use intimidation or coercion on civilians or to influence or affect the conduct of the government].⁴

(b) commit the crime of hindering prosecution of terrorism [which I have previously described to you / by intentionally assisting a person to commit an act of terrorism or aiding someone who is wanted as a material witness in connection with an act of terrorism].⁵

(c) commit the crime of soliciting or providing material support for an act of terrorism [which I have previously described to you / by providing, raising, soliciting, or collecting resources, documents, equipment, facilities, substances, property, assets, or materials to commit an act of terrorism].⁶

(d) commit the crime of making a threat to commit an act of terrorism [which I have previously described to you / by communicating a threat to commit an act of terrorism to another person].⁷

(e) commit the crime of making a false threat to carry out an act of terrorism [which I have previously described to you / by making a false statement that an act of terrorism had occurred, was occurring, or would occur].⁸

(f) commit the crime of using the Internet to disrupt government or public institutions [which I have previously described to you / by using the Internet or a telecommunications device or system or other electronic device or system to disrupt the functions of the public safety, educational, commercial, or governmental operations within this state].⁹

Use Notes

1. Whether a specific building or location is a vulnerable target appears to be a matter of law. The court may use the name of the vulnerable target instead of its generic description when instructing the jury, e.g., “City Hall” instead of “a building . . . operated by . . . a local unit of government” or “The First Presbyterian Church” instead of “a church . . . or other place of religious worship.” MCL 750.212a(2) describes *vulnerable target*:

(2) As used in this section, “vulnerable target” means any of the following:

(a) A child care center or day care center as defined in section 1 of 1973 PA 116, MCL 722.111.

(b) A health care facility or agency as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106.

(c) A building or structure open to the general public.

(d) A church, synagogue, mosque, or other place of religious worship.

(e) A public, private, denominational, or parochial school offering developmental kindergarten, kindergarten, or any grade 1 through 12.

(f) An institution of higher education.

(g) A stadium.

(h) A transportation structure or facility open to the public, including, but not limited to, a bridge, a tunnel, a public highway, or a railroad.

(i) An airport. As used in this subdivision, “airport” means that term as defined in section 2 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.2.

(j) Port facilities. As used in this subdivision, “port facilities” means that term as defined in section 2 of the Hertel-Law-T. Stopczynski port authority act, 1978 PA 639, MCL 120.102.

(k) A public services facility. As used in this subdivision, “public services facility” means any of the following facilities whether publicly or privately owned:

(i) A natural gas refinery, natural gas storage facility, or natural gas pipeline.

(ii) An electric, steam, gas, telephone, power, water, or pipeline facility.

(iii) A nuclear power plant, nuclear reactor facility, or nuclear waste storage facility.

(l) A petroleum refinery, petroleum storage facility, or petroleum pipeline.

(m) A vehicle, locomotive or railroad car, aircraft, or watercraft used to provide transportation services to the public or to provide for the movement of goods in commerce.

(n) A building, structure, or other facility owned or operated by the federal government, by this state, or by a political subdivision or any other instrumentality of this state or of a local unit of government.

2. Generally, this offense will be paired with another crime found in the Anti-Terrorism Act, and the court will provide the elements of that other offense. If not, use the second option found in each of the following paragraphs.

3. MCL 750.543b(h) provides that a violent felony is one that has an element of the use, attempted use, or threatened use of physical force against an individual, or of the use, attempted use, or threatened use of a harmful biological substance, a harmful biological device, a harmful chemical substance, a harmful chemical device, a harmful radioactive substance, a harmful radioactive device, an explosive device, or an incendiary device. Whether alleged felonious conduct amounts a “violent felony” appears to be a matter for the court to determine.

4. MCL 750.543b(a), .543f; M Crim JI 38.1.
5. MCL 750.543h; M Crim JI 38.2.
6. MCL 750.543k; M Crim JI 38.3, 38.3a.
7. MCL 750.543m; M Crim JI 38.4.
8. MCL 750.543m; M Crim JI 38.4a.
9. MCL 750.543p; M Crim JI 38.5.

Public Policy Position
Model Criminal Jury Instructions 38.7

Oppose

Explanation:

The Committee voted unanimously to oppose the Model Criminal Jury Instructions 38.7. The Committee does not believe that the instruction correctly tracks MCL 750.543r. Specifically, whether a structure is a vulnerable target is an element of the offense that the prosecution must prove and therefore should be added to the instruction.

Position Vote:

Voted For position: 12

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 9

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PROPOSED

The Committee proposes new jury instructions for four election-related crimes found in MCL 168.932(b): M Crim JI 43.4 (Unauthorized Opening of a Ballot Box or Voting Machine), M Crim JI 43.4a (Damaging or Destroying a Ballot Box or Voting Machine), M Crim JI 43.4b (Possessing, Concealing, or Withholding a Ballot Box or Voting Machine), and M Crim JI 43.4c (Adding or Removing Ballots or Voting Totals in a Ballot Box or Voting Machine). These instructions are entirely new.

**[NEW] M Crim JI 43.4 Unauthorized Opening of a Ballot Box or
Voting Machine**

(1) The defendant is charged with the crime of unauthorized opening of a ballot box or voting machine. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [broke open / violated the seals of / violated the locks of] a [ballot box / voting machine]. [A ballot box is a container used for transporting and storing voted ballots. / A voting machine is a system or device by which votes are recorded and counted.]¹

(3) Second, that the [ballot box / voting machine] was in use during the [*identify election and year*].

(4) Third, that the defendant [broke open / violated the seals of / violated the locks of] the [ballot box / voting machine] [during the progress of the (*identify election and year*) / after the closing of the polls in the (*identify election and year*) but before the final results of that election had been determined].

(5) Fourth, that when the defendant [broke open / violated the seals of / violated the locks of] the [ballot box / voting machine], [he / she] did not have the legal authority to do so.

Use Notes

1. The Michigan Election Law chapter does not define *ballot box* or *voting machine*. However, MCL 168.24j categorizes *ballot box* as a type of *ballot container*, which MCL 168.14a(a) defines as “a container that is used for transporting and storing voted ballots[.]” Additionally, MCL 168.794 provides definitions for *electronic tabulating equipment*, *electronic voting system*, and *voting device*, among other terms.

[NEW] M Crim JI 43.4a Damaging or Destroying a Ballot Box or Voting Machine

(1) The defendant is charged with the crime of damaging or destroying a [ballot box / voting machine]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant damaged or destroyed a [ballot box / voting machine]. [A ballot box is a container used for transporting and storing voted ballots. / A voting machine is a system or device by which votes are recorded and counted.]¹

(3) Second, that when the defendant damaged or destroyed the [ballot box / voting machine], [he / she] acted willfully. Willfully means that the defendant knowingly created the danger and intended to cause damage or destruction.

Use Notes

1. The Michigan Election Law chapter does not define *ballot box* or *voting machine*. However, MCL 168.24j categorizes *ballot box* as a type of *ballot container*, which MCL 168.14a(a) defines as “a container that is used for transporting and storing voted ballots[.]” Additionally, MCL 168.794 provides definitions for *electronic tabulating equipment*, *electronic voting system*, and *voting device*, among other terms.

[NEW] M Crim JI 43.4b Possessing, Concealing, or Withholding a Ballot Box or Voting Machine

(1) The defendant is charged with the crime of [possessing / concealing / withholding] a [ballot box / voting machine]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [possessed / concealed / withheld] a [ballot box / voting machine]. [A ballot box is a container used for transporting and storing voted ballots. / A voting machine is a system or device by which votes are recorded and counted.]¹

(3) Second, that when the defendant [obtained possession of / concealed / withheld] the [ballot box / voting machine], [he / she] did not have the authority to do so.

Use Notes

1. The Michigan Election Law chapter does not define *ballot box* or *voting machine*. However, MCL 168.24j categorizes *ballot box* as a type of *ballot container*, which MCL 168.14a(a) defines as “a container that is used for transporting and storing voted ballots[.]” Additionally, MCL 168.794 provides definitions for *electronic tabulating equipment*, *electronic voting system*, and *voting device*, among other terms.

[NEW] M Crim JI 43.4c Adding or Removing Ballots or Voting Totals in a Ballot Box or Voting Machine

(1) The defendant is charged with the crime of adding or removing ballots or voting totals in a ballot box or voting machine. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [added to / subtracted from] the [number of ballots legally deposited in the ballot box / totals on the voting machine]. [A ballot box is a container used for transporting and storing voted ballots. / A voting machine is a system or device by which votes are recorded and counted.]¹

(3) Second, that when the defendant [added to / subtracted from] the [number of ballots legally deposited in the ballot box / totals on the voting machine], [he / she] acted forcibly or fraudulently.

Use Notes

1. The Michigan Election Law chapter does not define *ballot box* or *voting machine*. However, MCL 168.24j categorizes *ballot box* as a type of *ballot container*,” which MCL 168.14a(a) defines as “a container that is used for transporting and storing voted ballots[.]” Additionally, MCL 168.794 provides definitions for *electronic tabulating equipment*, *electronic voting system*, and *voting device*, among other terms.

Public Policy Position
Model Criminal Jury Instructions 43.4, 43.4a, 43.4b, 43.4c

Oppose MCJI 43.4b As Drafted; Support 43.4, 43.4a, and 43.4c

Explanation:

The Committee voted unanimously to oppose MCJI 43.4b as drafted. The Committee believes that the proposed instruction does not accurately reflect the statutory language of MCL 168.932(b). The statute provides that “[a] person shall not obtain undue possession of that ballot box or voting machine” and separately that “[a] person shall not conceal, withhold, or destroy a ballot box or voting machine . . .” The word “undue” does not appear in the second sentence, because no person has legal authority to conceal or withhold a ballot box. To avoid confusion, the Committee recommends that MCJI 43.4.b be split into two instructions: one for undue possession and one for concealing and withholding.

The Committee had no objections to proposed MCJI 43.4, 43.4a, or 43.4c.

Position Vote:

Voted For position: 12

Voted against position: 0

Abstained from vote: 0

Did not vote (absent): 9

Contact Persons:

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