Agenda
Public Policy Committee
April 23, 2025 – 2:00 p.m. to 3:30 p.m.
Via Zoom Meetings

Public Policy Committee……Lisa J. Hamameh, Chairperson

A. Reports
1. Approval of March 5, 2025 minutes
2. Public Policy Report

B. Court Rule Amendments
1. ADM File No. 2023-12: Proposed Amendment of MCR 3.602
The proposed amendment of MCR 3.602(A) would clarify the applicability of MCR 3.602 and the Michigan Uniform Arbitration Act, MCL 691.1681 et seq.
Status: 05/01/25 Comment Period Expires.
Referred: 01/24/25 Civil Procedure & Courts Committee; Alternative Dispute Resolution Section.
Comments: Civil Procedure & Courts Committee; Alternative Dispute Resolution Section.
Liaison: John W. Reiser III

2. ADM File No. 2022-34: Proposed Amendment of MCR 3.991
The proposed amendment of MCR 3.991 would clarify the process for judicial reviews of referee recommendations in juvenile cases by allowing the parties to waive judicial review, limiting a judge's ability to conduct an early review, and requiring a judge to conduct a requested review in all cases within 21 days of the request.
Status: 05/01/25 Comment Period Expires.
Referred: 01/24/25 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Children's Law Section; Criminal Law Section; Family Law Section.
Comments: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Children's Law Section.
Comments provided to the Court are included in the materials.
Liaison: Lori A. Buiteweg

3. ADM File No. 2023-22: Proposed Amendment of MRPC 6.1
The proposed amendment of MRPC 6.1 would clarify and expand the scope of pro bono service.
Status: 05/01/25 Comment Period Expires.
Referred: 01/30/25 Access to Justice Policy Committee, Justice Initiatives Committee, Professional Ethics Committee.
Comments: Access to Justice Policy Committee; Justice Initiatives Committee.
Liaison: Ashley E. Lowe

C. Legislation
1. HB 4174 (Wegela) Juveniles: other; presumption of admissibility for a juvenile's self-incriminating responses obtained through deceptive police practices; modify. Amends sec. 1, ch. XIIA of 1939 PA 288 (MCL 712A.1) & adds sec. 17e to ch. XIIA.
Referred: 03/10/25 Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Children's Law Section; Criminal Law Section.
Comments: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee; Children's Law Section.
Liaison: Patrick J. Crowley

D. <u>Consent Agenda</u>

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

1. M Crim JI 13.1 and 13.2

The Committee proposes amending M Crim JI 13.1 (Assaulting, Resisting, or Obstructing a Police Officer or Person Performing Duties) and M Crim JI 13.2 (Assaulting or Obstructing Officer or Official Performing Duties) to place more emphasis on the requirement that the jury receive instructions on the legal framework for assessing whether the officers' actions were lawful. See People v Carroll, ___ Mich ___; 8 NW3d 576 (July 19, 2024) (Docket No. 166092). For each instruction, the proposed amendments would move the information currently conveyed in Use Note 4 into the body of the instruction. Deletions are in strikethrough, and new language is underlined.

2. M Crim JI 20.6 and 20.16

The Committee proposes amending M Crim JI 20.6 (Aiders and Abettors –Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless) and M Crim JI 20.16 (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 strikethrough, and new language is underlined.

3. M Crim JI 43.1, 43.1a, 43.2a, 43.3, and 43.3a

The Committee proposes new jury instructions for six election-related crimes found in MCL 168.931(1) and MCL 168.932(a): M Crim JI 43.1 (Offering an Incentive to Influence Voting), M Crim JI 43.1a (Bribing or Menacing an Elector), M Crim JI 43.2 (Accepting or Agreeing to Accept an Incentive Regarding Voting), M Crim JI 43.2a (Seeking an Incentive from a Candidate), M Crim JI 43.3 (Voter Coercion – Employment Threat), and M Crim JI 43.3a (Voter Coercion – Religious Threat). These instructions are entirely new.

MINUTES
Public Policy Committee
March 5, 2025

Committee Members: Lori A. Buiteweg, Aaron V. Burrell, Patrick J. Crowley, Lisa J. Hamameh, Ashley E. Lowe, Silvia A. Mansoor, Takura N. Nyamfukudza, John W. Reiser, III, Douglas B. Shapiro, Judge Cynthia D. Stephens (Ret'd), Danielle Walton
SBM Staff: Peter Cunningham, Nathan Triplett, Carrie Sharlow
GCSI Staff: Marcia Hune, Samanatha Zandee

A. Reports

1. Approval of January 14, 2025 minutes – The minutes were unanimously approved.
2. Public Policy Report – Nathan Triplett provided a verbal report.

B. Court Rule Amendments

1. ADM File No. 2022-34: Proposed Amendments of MCR 3.993 and 6.428

The proposed amendment of MCR 3.993 would add a new subrule (F) to provide for the restoration of appellate rights in juvenile cases, similar to that of criminal cases under MCR 6.428. The proposed amendment of MCR 3.993 would also provide a time limit for filing a motion under the rule, and both proposed amendments would clarify that a motion for restoration of appellate rights is limited to grounds for relief not raised in a prior proceeding or appeal, as well as require parties to provide the Court of Appeals with a copy of the order restoring appellate rights when filing the appeal unless the Court of Appeals directs otherwise.
The following entities offered recommendations for consideration: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Children's Law Section.
The committee voted 9 to 2 to support with an amendment deleting MCR 3.993(F)(1)-(3) and MCR 6.428(A)-(C).

2. ADM File No. 2023-33: Proposed Amendment of MCR 7.209

The proposed amendment of MCR 7.209 would clarify that the appellate courts can sua sponte order a stay of proceedings or stay the effect or enforcement of any trial court judgment or order.
The following entities offered recommendations for consideration: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Appellate Practice Section.
The committee voted unanimously (11) to support ADM File NO. 2023-33.

3. ADM File No. 2024-38: Proposed Amendment of Administrative Order No. 1985-5

The proposed amendment of AO 1985-5 would shorten the timeframe in which juvenile probation officers and casework staff must complete the Michigan Judicial Institute (MJI) certification training, establish new employment criteria when hiring juvenile probation officers, and ensure that copies of various tools, guides, and results are incorporated into case planning. These proposed amendments align with recommendations from the Juvenile Justice Task Force and recent legislation.
The following entities offered recommendations for consideration: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee.
The committee voted 10 to 1 to support with a recommendation that the required training be offered more frequently either virtually or in person, in whole or in part, by the State Court Administrative Office to facilitate compliance with the Administrative Order.

March 19, 2025

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

RE: ADM File No. 2022-34: Proposed Amendments of Rules 3.993 and 6.428 of the Michigan Court Rules

Dear Clerk Royster:

The Board of Commissioners of the State Bar of Michigan voted to support ADM File No. 2022-34 with an amendment deleting proposed Rule 3.993(F)(1)-(3) and Rule 6.428(A)-(C). In its review, the Board considered recommendations from the Access to Justice Policy Committee, Civil Procedure & Courts Committee, Criminal Jurisprudence & Practice Committee, and the Children's Law Section.

In January 2023, during the Court's consideration of amendments to Chapter 3 of the Michigan Court Rules aimed at ensuring that juveniles are fully advised of their appellate rights, the State Bar of Michigan recommended the addition of a new Rule 3.993(F) to provide for the restoration of appellate rights in juvenile cases. Thereafter, the Board voted unanimously to support the Court's proposed amendments of Rules 3.933 and 6.428, as published for comment on June 28, 2023, which largely mirrored the Bar's initial proposal.

The principal difference between the Bar's proposal and ADM File No. 2022-34, as republished for comment on December 19, 2024, is the addition of stringent time limitations on a party's ability to file a motion to restore their appellate rights. The Bar cannot support these limitations. While the proposed rule necessarily uses the term "party" in its text, it is critically important that we not lose sight of the fact that we are talking about children. As the Bar earlier argued to the Court, "[n]avigating the juvenile justice system is a daunting challenge for far too many young people whose lack of familiarity with the procedural intricacy of the legal system may result in the accidental waiver of their appellate rights, often with profound consequences." Arbitrarily cutting off children's ability to seek appellate review is fundamentally unfair and it is unnecessary, as the bench will retain the authority to judge each motion on its individual merits, as is already the case with Rule 6.428—the adult counterpart juvenile rule presently under consideration.[1]

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

[1] See, e.g., *State v Byars*, 346 Mich App 554; 13 NW3d 328 (2023) (Docket No. 357013); State v Tardy, ___ Mich App ___; ___ NW2d ___ (2023) (Docket No. 360026).

March 19, 2025

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

RE: ADM File No. 2023-33: Proposed Amendments of Rule 7.209 of the Michigan Court Rules

Dear Clerk Royster:

The Board of Commissioners of the State Bar of Michigan has considered ADM File No. 2023-33. In its review, the Board considered recommendations from the Access to Justice Policy Committee, Civil Procedure & Courts Committee, Criminal Jurisprudence & Practice Committee, and the Appellate Practice Section. The Board voted to support the proposed amendments of Rule 7.209.

The Board believes that explicitly adding "[o]n its own initiative or on a party's motion" to the text of Rule 7.209 reflects current practice and will serve to clarify any uncertainty that may exist regarding the Court of Appeals authority to order a stay of proceedings or to stay the effect or enforcement of a judgment or order *sua sponte*.

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

March 19, 2025

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

RE: ADM File No. 2024-38: Proposed Amendment of Administrative Order No. 1985-5

Dear Clerk Royster:

The Board of Commissioners of the State Bar of Michigan has considered ADM File No. 2024-38. In its review, the Board considered recommendations from the Access to Justice Policy, Civil Procedure & Courts, and Criminal Jurisprudence & Practice Committees. The Board voted to support ADM File No. 2024-38.

The Board further recommends that the required Michigan Judicial Institute certification training for juvenile court staff be offered more frequently, either virtually or in person, in whole or in part, to facilitate compliance with the Administrative Order's provisions.

The Bar appreciates the Court's ongoing efforts to fully implement the recommendations of the Michigan Task Force on Juvenile Justice Reform, of which ADM File No. 2024-38 is but the latest example.

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

Sincerely,

Peter Cunningham
Executive Director

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

Order

Michigan Supreme Court
Lansing, Michigan

January 15, 2025

ADM File No. 2023-12

Proposed Amendment of
Rule 3.602 of the Michigan
Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rule 3.602 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 3.602 Arbitration

(A) Applicability of Rule. Courts shall have all powers described in MCL 691.1681 *et seq*., or reasonably related thereto, for arbitrations governed by that statute. Unless otherwise provided by statute, an action or proceeding commenced on or after July 1, 2013, is governed by MCL 691.1681 *et seq*., and not this rule. The remainder of this rule applies to all other forms of arbitration, in the absence of contradictory provisions in the arbitration agreement or limitations imposed by statute, including MCL 691.1683(2).

(B)-(N) [Unchanged.]

Staff Comment (ADM File No. 2023-12): The proposed amendment of MCR 3.602(A) would clarify the applicability of MCR 3.602 and the Michigan Uniform Arbitration Act, MCL 691.1681 *et seq*.

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 May 1, 2025 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 filing a comment, please refer to ADM File No. 2023-12. Your comments and the comments of others will be posted under the chapter affected by this proposal.

I, Larry S. Royster, 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.

January 15, 2025

Clerk

Public Policy Position
ADM File No. 2023-12 – Proposed Amendment of MCR 3.602

Support

Explanation
The Committee voted to support the proposed amendment of MCR 3.602.

Position Vote:
Voted For position: 22
Voted against position: 1
Abstained from vote: 0
Did not vote (absence): 5

Contact Person:
Marla Linderman Richelew mrichelew@gmail.com

Public Policy Position
ADM File No. 2023-12: Proposed Amendment of MCR 3.602

Support

Explanation

The ADR Section recommends that the Supreme Court adopt the amendment to MCR 3.602 proposed in ADM File No. 2023-12. The proposed amendment will alleviate confusion between MCR 3.602 and the Michigan Uniform Arbitration Act, MCL 691.1681 et seq. (MUAA).

Reasons Supporting the Amendment

The MUAA was enacted effective July 1, 2013. Section 3 of the MUAA provides that "[o]n or after July 1, 2013, this act governs an agreement to arbitrate whenever made." MCL 691.1683. Yet, parties and the Court of Appeals continue to apply MCR 3.602 even to arbitrations governed by the MUAA. An example is Wolf Creek Productions, Inc v Gruber, 2022 WL 4587813, unpublished per curium opinion of the Court of Appeals, decided September 29, 2022 (Docket No. 358559). The opinion from another recent case, Walker v. Blue Cross Blue Shield of Michigan, Ingham County Circuit Court No. 17-005454-CZ (February 3, 2022) demonstrates the confusion caused by the conflicting provisions of the MUAA and the court rule.

While many provisions of MCR 3.602 are similar to the MUAA, the statute and MCR 3.602 contain distinctly different time limits for seeking to vacate, modify, or correct an arbitration award. With one exception, the MUAA provides that such a motion must be filed within 90 days of receiving notice of the award, or of a modified or corrected award. See MCL 691.1703(2), MCL 691.1704(1). The one exception is that a party seeking to vacate an award on the ground that it "was procured by corruption, fraud, or other undue means" must file a motion "within 90 days after the ground is known or by the exercise of reasonable care would have been known by the moving party." If there is no pending civil action between the parties, "a complaint regarding the agreement to arbitrate must be filed and served as in other civil actions." MCL 691.1685(2).

In contrast, MCR 3.602 provides two entirely different deadlines depending on whether there is already a pending civil action. If an action is pending, a motion to vacate, modify, or correct an award must be filed "within 91 days after the date of the award." MCR 3.602(J)(3), (K)(2). But if there is no pending action, a complaint must be filed much sooner, i.e., "no later than 21 days after the date of the arbitration award." MCR 3.602(J)(1), (K)(1). And if a motion to vacate an award "is predicated on corruption, fraud, or other undue means, it must be filed within 21 days after the grounds are known or should have been known." MCR 3.602(J)(3).

In a typical case where there is no pending action, a party wishing to seek to vacate an arbitration award must choose between filing within 21 days in accordance with MCR 3.602, or 90 days pursuant to MCL 691.1703. The Court of Appeals' continued application of MCR 3.602 even in cases where the MUAA governs, means that parties face the risk of having their challenge deemed

untimely if they do not follow the court rule.

In short, the proposed amendment of MCR 3.602 will eliminate confusion and prevent the potential loss of due process rights to a party who follows the 90-day time limit in the statute instead of the 21-day time limit in the current court rule.

Position Vote:
Voted for position: 20
Voted against position: 0
Abstained from vote: 0
Did not vote: 1

Contact Person: Larry J. Saylor
Email: saylor@millercanfield.com

Order

Michigan Supreme Court
Lansing, Michigan

January 15, 2025

Elizabeth T. Clement,
Chief Justice

Brian K. Zahra
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas,
Justices

ADM File No. 2022-34

Proposed Amendment of
Rule 3.991 of the Michigan
Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 3.991 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 3.991 Review of Referee Recommendations

(A) General.

(1) Before signing an order based on a referee's recommended findings and conclusions, a judge of the court must~~shall~~ review the recommendations if requested by a party in the manner provided by subrule (B). The parties may waive judicial review of the referee's recommendation by consenting in writing to immediate entry of the order.

(2) [Unchanged.]

(3) A~~Nothing in this rule prohibits a~~ judge must not~~from~~ review~~ing~~ a referee's recommendation before the expiration of the time for requesting review unless the parties waived judicial review as provided in subrule (A)(1) or the court finds good cause as stated in a written order~~and entering an appropriate order.~~

(4) After the entry of an order under this subrule (A)~~(3)~~, a request for review may not be filed. Reconsideration of the order is by motion for rehearing under MCR 3.992.

(B)-(C) [Unchanged.]

(D) Prompt Review; No Party Appearance Required. Absent good cause for delay, the judge muste~~shall~~ consider the request within 21 days after it is filed ~~if the minor is in placement or detention~~. The judge need not schedule a hearing to rule on a request for review of a referee's recommendations.

(E)-(G) [Unchanged.]

Staff Comment (ADM File No. 2022-34): The proposed amendment of MCR 3.991 would clarify the process for judicial reviews of referee recommendations in juvenile cases by allowing the parties to waive judicial review, limiting a judge's ability to conduct an early review, and requiring a judge to conduct a requested review in all cases within 21 days of the request.

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 May 1, 2025 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. 2022-34. Your comments and the comments of others will be posted under the chapter affected by this proposal.

I, Larry S. Royster, 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.

January 15, 2025

Clerk

Public Policy Position
ADM File No. 2022-34: Proposed Amendment of 3.991

Support with Amendment

Explanation
The committee voted unanimously (17) to support the proposed amendment of MCR 3.991 with additional clarifying language of "the right to request" before the words "judicial review" in (A)(1) and (A)(3).

Position Vote:
Voted For position: 17
Voted against position: 0
Abstained from vote: 0
Did not vote (absence): 7

Contact Persons:
Daniel S. Korobkin dkorobkin@aclumich.org
Katherine L. Marcuz kmarcuz@sado.org

Public Policy Position
ADM File No. 2022-34: Proposed Amendments of MCR 3.991

Support

Explanation
The Committee voted to support the proposed amendments of MCR 3.991.

Position Vote:
Voted For position: 21
Voted against position: 0
Abstained from vote: 1
Did not vote (absence): 5

Contact Person:
Marla Linderman Richelew mrichelew@gmail.com

Public Policy Position
ADM File No. 2022-34: Proposed Amendments of MCR 3.991

Support with Amendment

Explanation:
The Committee voted to support ADM File No. 2022-34 with an amendment specifying that a judge is only required to wait seven days to review a referee's recommendation when a party asserts that they intend to seek review.

Position Vote:
Voted For position: 17
Voted against position: 1
Abstained from vote: 0
Did not vote (absent): 8

Contact Persons:
Nimish R. Ganatra nimishg@umich.edu
John A. Shea jashea@earthlink.net

Public Policy Position
ADM File No. 2022-34: Proposed Amendment of MCR 3.991

Support with Recommended Amendments

Explanation

The Children's Law Section supports ADM File No 2022-34 in concept. The current procedure for requesting review of referee recommendations under MCR 3.991 is deeply flawed, particularly when combined with the restrictive provisions of MCR 3.992. This ADM goes a long way toward fixing some of those flaws. However, the Section recommends amendments to help alleviate some potential issues which this proposal may cause.

There are instances in which it is necessary for the juvenile court judge to quickly sign an order following a hearing with a referee, such as when the referee removes children from abusive parents or directs that a child be placed in detention. Delays in signing that order can both prevent the effectiveness of the order and cause issues with funding through Title IV-E. To address those concerns, the Section recommends that that MCR 3.991 be amended to continue to allow judges to sign the recommended order at any time but that parties be allowed to file a timely request for review even after the judge has already signed the order so that the rehearing procedures of 3.992 are not triggered by the judge signing the order.

The Section also believes that, if the above recommendation is adopted, the time for requesting review should be extended from 7 days to 14 days. The current time period of 7 days is often too short for attorneys to file detailed and meaningful objections to the referee's recommended order, particularly if the attorney has other pending matters such as trial.

In addition to these recommended amendments, the Section encourages the Court to revisit MCR 3.992. The current rule does not allow a party to move for rehearing on the basis that the judge or referee erred in their ruling on an issue and instead limits to the motion to matters which were not presented or not considered. If a judge signs an order while the time for requesting review of referee recommendations is pending, the current rule bars the request for review and would only allow a motion for rehearing. In that motion, though, the parties would be barred from arguing that the referee erred in their findings on an issue which was addressed by the referee. This restriction is part of why 3.991 should be amended, and we believe that, regardless of what happens with 3.991, the Court should also amend 3.992 to make it less restrictive.

Position Vote:

Voted for position: 11
Voted against position: 2
Abstained from vote: 2
Did not vote: 4

Contact Person: Josh Pease
Email: jpease@sado.org

Name: Jolene Clearwater

Date: 02/25/2025

ADM File Number: 2022-34

Comment:
I am opposed to this amendment. I believe that this amendment will create issues in funding and the enforcement of court orders when referees are utilized in emergent child protective and delinquency proceedings. Regarding the enforcement of orders, if the judge is precluded from signing a referee recommendation until at least 7 days after the referee signature, this will impact the ability to enforce a court order to remove a child from the home, to place a juvenile in detention, or to immediately enact any emergent action the court deems necessary. This may also have impact on IV-E funding, which requires that the removal date and the judicial signature date match in order for funding eligibility. Under this rule, in any case handled by a referee, there would be a minimum 7 day window where IV-E funding would be cut off because the judge would not be permitted to sign during the 7 day objection window.

I believe the prudent approach would be to allow the judge to sign a referee recommendation immediately while preserving the parties' right to object within the 7 day window after the referee signature. The judge should not be precluded from making an emergency order the order of the Court, while simultaneously allowing the Court to review an objection to the order if timely filed.

The practical implications of this rule are that judges' dockets are going to be overwhelmed with emergency cases which require an immediate signature. Referees would be cut out of proceedings involving emergencies because their recommendations could not take effect for 7 days. This would create a huge burden on judges across the state who rely on their referees to assist in docket management, particularly on-call, after hours, or emergent situations.

Circuit Court Judges
Matthew J. McGivney, Chief Judge
Circuit and District Courts

L. Suzanne Geddis
Susan Longsworth

Livingston County Trial Courts
204 S. HIGHLANDER WAY, HOWELL, MI 48843

Probate Court Judge
Miriam A. Cavanaugh, Chief Judge
Probate Court

District Court Judges
Shauna N. Murphy
Daniel B. Bain

March 4, 2025

Michigan Supreme Court
PO Box 30052
Lansing, MI 48909

Re: 2022-34 Proposed Amendment of MCR 3.991

To This Honorable Court,

MCR 3.991 proposed amendments include:

> (3) A~~Nothing in this rule prohibits a~~ judge must not~~from~~ review~~ing~~ a referee's recommendation before the expiration of the time for requesting review unless the parties waived judicial review as provided in subrule (A)(1) or the court finds good cause as stated in a written order~~and entering an appropriate order.~~

This amendment may have the potential to endanger children. Currently, juvenile court judges are permitted to issue orders recommended by referees before the 7 days has expired for a party to request a review. MCR 3.991 allows juvenile courts to act immediately when children are at a risk of harm. Now, if the Department of Health and Human Services petitions for the removal of a child who is at a substantial risk of harm, referees may hear the request for removal and judges may issue the referee's recommendation the same day. Likewise, when immediate placement change is necessary in a delinquent matter to protect a child who is at substantial risk of harm, judges can issue the change in placement order the same day a referee heard the case.

Juvenile courts need to be swift and nimble to protect children.

The proposed amendments would require judges to only issue a recommended order before 7 days if a companion written order is issued with specific findings for good cause if parties do not waive judicial review. In instances where a child is removed from care, parents' and children's appellate rights immediately trigger. This combination means any counsel for a parent who stipulates to waiving a review of referee recommendation could be *de facto* ineffective. The likelihood all parties would stipulate to removal recommendations is unlikely.

If the proposed amendments are adopted, judges would have to review the recommended order and the record of the proceedings to determine if good cause were present to issue the order before the 7-day timeline tolls. This change has the potential to cause delays, and delays have the potential to expose children to further harm.

In addition, parties currently have the ability for relief pursuant to MCR 3.992 to file a Motion for Reconsideration. Even if a judge signs the recommended order before 7 days have past, parties may still bring the case back before the assigned judge. The current process does not infringe on any party's rights.

We ask this Honorable Court to not adopt the current proposed amendments to MCR 3.991.

Sincerely,

3/4/2025

Hon. Matthew J. McGivney
Chief Judge of the 44th Circuit Court

3/5/2025

Hon. Miriam A. Cavanaugh
Chief Probate Judge

3/8/2025

Hon. Susan Longsworth
44th Circuit Family Court Judge

3/4/25

Ref. Lydia Fields
Juvenile Court Referee

To SCAO:

I am a juvenile court referee in the County of Hillsdale and request that the proposed changes not be adopted as presented for the two stated reasons. Alternatively, I am proposing an alternative rule change that maintains the spirit behind the change.

First, when a child's removal is recommended during an abuse/neglect hearing under MCL 712A.13a that is presided over by a referee, the proposed rule change does not allow a judge to immediately sign an order authorizing the removal. DHHS will not remove a child in this situation until a judge signs the order. This effectively makes this request done during a hearing by a referee ineffective. Note: If a removal request is done ex-parte under MCL 712A.14b instead of during a hearing under MCL 712A13a, a judge is not required to sign the order for the removal to take place.

Second, the rule delays the processing of orders. Referees often prepare recommendations soon after a hearing, and a judge typically signs the recommendations within a short time after their presentation. Currently, the court rule's allowance for review is often eliminated before a request for review is made because of the speed in which orders are signed. I believe the goal of the proposed change is to provide the parties assurance that the referee's recommendations can be reviewed under a higher standard. The current court rule only allows reviews only until a judge signs the order. Once an order is signed, a request for review must be made by motion in accordance with MCR 3.992, which has a lower standard of review.

As a result, an alternative amendment is included that would ensure a review request under MCR 3.991 can be completed for up to 14 days and would not interfere with the hearing processes in place or affect removals, regardless of whether the recommendations have been adopted and signed by a judge.

RULE 3.991 REVIEW OF REFEREE RECOMMENDATIONS

(A) General.

(1) ~~Before signing an order based on a referee's recommended findings and conclusions, a~~ A judge may sign an order based upon a referee's recommended findings and conclusions when received, and the court may enter an order once signed by a judge.

(2) A judge of the court ~~shall~~ must review the recommendations if requested by a party in the manner provided by subrule (B).

~~(2)~~ (3) If no such request for review is filed within the time provided by subrule (B)(3), the ~~court may enter an~~ order remains entered or shall be entered in accordance with the referee's recommendations.

~~(3)~~ (4) Nothing in this rule prohibits a judge from reviewing a referee's recommendation before the expiration of the time for requesting review and entering an appropriate order.

~~(4)~~ (5) After the entry of an order and the time to request a review may be filed under subrule (B)(3), ~~under subrule (A)(3),~~ a request for review may not be filed. Reconsideration of the order is by motion for rehearing under MCR 3.992.

(B) Form of Request; Time. A party's request for review of a referee's recommendation must:

(1) be in writing,

(2) state the grounds for review,

(3) be filed with the court within ~~7~~ 14 days after the conclusion of the inquiry or hearing or within 7 days after the issuance of the referee's written recommendations, whichever is later, and

(4) be served on the interested parties by the person requesting review at the time of filing the request for review with the court. A proof of service must be filed.

(C) Response. A party may file a written response within 7 days after the filing of the request for review.

(D) Prompt Review; No Party Appearance Required. Absent good cause for delay, the judge ~~shall~~ must consider the request within 21 days after it is filed ~~if the minor is in placement or detention.~~ The judge need not schedule a hearing to rule on a request for review of a referee's recommendations.

(E) Review Standard. The judge must enter or maintain an order adopting the referee's recommendation unless:

(1) the judge would have reached a different result had he or she heard the case; or

(2) the referee committed a clear error of law, which

(a) likely would have affected the outcome, or

(b) cannot otherwise be considered harmless.

If the order has been signed

(F) Remedy. The judge may adopt, modify, amend, or deny the recommendations of the referee or order, in whole or in part, on the basis of the record and the memorandums prepared, and an amended order shall be filed, or may conduct a hearing, whichever the court in its discretion finds appropriate for the case.

(G) Stay. The court may stay any order or grant bail to a detained juvenile, pending its decision on review of the referee's recommendation.

Sincerely,
Timothy E. Dixon
Referee/Administrator

Name: Christina K. L. Walsh

Date: 03/27/2025

ADM File Number: 2022-34

Comment:
To this Honorable Court:
In consideration of the proposed amendments to MCR 3.991, I would join in the concerns raised by the 44th Circuit Court-Juvenile Division. At first glance, the amendment to MCR 3.991 seems to bring the use of referees and their recommendations more in line with recommendations from family court referees in custody & divorce cases. However, there is no provision for a juvenile court referee's order to have any interim effect like there is for divorce & custody referees.
The change in the court rule would also impose a huge burden on an already overburdened system. Referees may conduct all hearings in an abuse-neglect case unless the parties demand a jury trial or a trial by judge. Referees routinely conduct preliminary hearings which can result in an order removing children from parent's care. The Juvenile Court is tasked with acting in situations which pose a substantial risk of harm to the child, and the Court needs the flexibility to use the limited resources it has to best protect children while protecting parent's rights.
As the assistant prosecutor solely assigned to these cases, I am concerned about the need to file a demand for judge for every case I file, so that I can be assured children can be protected. This amendment would mean that a Judge would have to conduct every hearing where an immediate order is needed. Without provision for additional judges, I do not see how this could occur.
Abuse-Neglect cases proceed on an expedited basis. A hearing must be held within 24 hours of a child being removed ex-parte from a parent's care. An adjudication trial must be conducted within 63 days of removal. Initial disposition must occur within 28 days of an adjudication, and then periodic reviews occur every 91 days. This review period can be shorted upon filing of a request for a hearing, and motions can be filed to address any other immediate needs. These are continuous proceedings, and the landscape is ever changing.
Every 91 days a case is reviewed. By eliminating the immediate effect of an order, the effect on parents and their children could be catastrophic. For example, if the Referee orders the child returned home, and the DHHS objects to that, the parents would have to wait to have their children returned to their care until the 21 day period expires. It could also delay court ordered treatment for children such as having a psychological evaluation and counseling to determine the appropriateness of parenting time. There is already a huge delay caused by not having enough mental health professionals, and to add a 21-day waiting period, could cause irrevocable harm to children and their parents.
While 21 days is a standard period for objection in other cases, Abuse-neglect cases are dealing with children who are out of their parents care. To make them wait any additional period of time could be disastrous to their mental health and create unnecessary barriers to timely reunification.
Abuse-Neglect cases also do not have legal thresholds for bring motions like custody cases do. I am thinking specifically about Vodvarka hearings in child custody cases where a change in circumstances must be shown. By the time the 21 days expires and a hearing is scheduled for a judge to review the referee's order, it will be time for another review hearing. This will create chaos. Abuse-Neglect courts need the ability to move quickly and this amendment removes that ability.

I would encourage this Honorable Court to decline to amend this rule at this time and consider creating a committee to study the Abuse/Neglect and Juvenile Delinquency Court rules as whole.

Sincerely,
Christina K. L. Walsh

Order

Michigan Supreme Court
Lansing, Michigan

January 29, 2025

Elizabeth T. Clement,
Chief Justice

Brian K. Zahra
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas,
Justices

ADM File No. 2023-22

Proposed Amendment of Rule 6.1 of the Michigan Rules of Professional Conduct

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On order of the Court, this is to advise that the Court is considering an amendment of Rule 6.1 of the Michigan Rules of Professional Conduct. 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 6.1. Pro Bono Public~~o~~ Service.

A lawyer should render public interest legal service. A lawyer may discharge this responsibility by annually:

(a) providing legal representation without charge to a minimum of three low-income individuals;

(b) providing at least 50 hours of legal representation or other services at no fee or at a substantially reduced fee to low-income individuals or to organizations that provide direct services to low-income individuals;

(c) participating in at least 50 hours of unpaid activities for improving the law, the legal system, or the legal profession; or

(d) contributing $300 or more to non-profit programs organized for the purpose of delivering civil legal services to low-income individuals or organizations. Lawyers whose income allows a higher contribution should contribute more than $500.

~~providing professional services at no fee or a reduced fee to persons of limited means, or to public service or charitable groups or organizations. A lawyer may also discharge this responsibility by service in activities for improving the law, the legal system, or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.~~

Comment:

The ABA House of Delegates has formally acknowledged "the basic responsibility of each lawyer engaged in the practice of law to provide public interest legal services" without fee, or at a substantially reduced fee, in one or more of the following areas: poverty law, civil rights law, public rights law, charitable organization representation and the administration of justice. This rule expresses that policy, but is not intended to be enforced through the disciplinary process.

The rights and responsibilities of individuals and organizations in the United States are increasingly defined in legal terms. As a consequence, legal assistance in coping with the web of statutes, rules and regulations is imperative for persons of modest and limited means, as well as for the relatively well-to-do.

The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in or otherwise support the provision of legal services to the disadvantaged. The provision of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer as well as the profession generally, but the efforts of individual lawyers are often not enough to meet the need. Thus, it has been necessary for the profession and government to institute additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services and other related programs have been developed, and others will be developed by the profession and government. Every lawyer should support all proper efforts to meet this need for legal services.

Paragraphs (b) and (c) recognize that some lawyers may not be able to provide direct client representation and therefore allow alternative methods of service such as becoming a member of a local pro bono committee; serving on a board of directors of a legal aid or legal services program; training other lawyers through a structured program; engaging in community legal education programs; advising organizations that provide direct services to low-income individuals; serving on bar association committees; taking part in Law Day activities; acting as a continuing legal education instructor, mediator, or arbitrator; assisting law students in moot court, mock trial, or other practical law school activities; or engaging in other activities to improve the law, the legal system, or the profession.

Each year, the State Bar's Committee on Pro Bono Involvement will publish a list of eligible programs to which a lawyer may financially contribute as contemplated in paragraph (d).

A lawyer may provide a combination of representation, services, activities, and financial contributions when fulfilling the responsibility to engage in pro bono efforts under this rule.

Staff Comment (ADM File No. 2023-22): The proposed amendment of MRPC 6.1 would clarify and expand the scope of pro bono service.

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 May 1, 2025 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. 2023-22. Your comments and the comments of others will be posted under the chapter affected by this proposal.

I, Larry S. Royster, 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.

January 29, 2025

Clerk

Public Policy Position
ADM File No. 2023-22: Proposed Amendment of MRPC 6.1

Support in Concept; Oppose as Drafted

Explanation

The Committee voted unanimously to support the position adopted by the Justice Initiatives Committee on ADM File No. 2023-22. Namely, to support the concept of reforming MRPC 6.1, but to oppose ADM File No. 2023-22 as published by the Court for comment. Instead, the Committee supports the alternative rule language proposed by the Justice Initiatives Committee.

Position Vote:

Voted For position: 20
Voted against position: 0
Abstained from vote: 0
Did not vote (absence): 4

Contact Persons:

Daniel S. Korobkin dkorobkin@aclumich.org
Katherine L. Marcuz kmarcuz@sado.org

Public Policy Position
ADM File No. 2023-22: Proposed Amendment to MRPC 6.1

Support in Concept; Oppose as Drafted

Explanation

The Committee voted unanimously to support revisions MRPC 6.1 in concept, but to oppose the language published by the Court for comment. Instead, the Committee would propose the language below, which is substantially based upon a proposal submitted to the Court by the Legal Services Association of Michigan ("LSAM") and the State Planning Body ("SPB"). In addition to the State Bar's Justice Initiatives Committee, this proposed language has been reviewed and supported by the Access to Justice Steering Committee:

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to provide at least 50 hours of *pro bono* legal services per year and make a financial contribution to an organization that provides legal services to individuals with limited means or to the Access to Justice Fund. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the 50 hours of legal services without fee or expectation of fee to:
  (1) persons of limited means; or
  (2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and

(b) provide any additional services through:
  (1) delivery of legal services at no fee or at a substantially reduced fee to individuals, groups, or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental, and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;
  (2) delivery of legal services at no fee or at a substantially reduced fee to persons of limited means; or
  (3) participation in activities for improving the law, the legal system, or the legal profession; and

(c) in addition, the lawyer should voluntarily contribute financial support to the Access to Justice Fund or an organization that provides legal services to individuals of limited means. The Michigan State Bar Foundation will regularly determine and publish suggested annual donation amounts.

Comment

[1] Every lawyer, regardless of professional prominence or professional workload, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Services can be performed in civil matters or in criminal or quasi-criminal matters for

which there is no government obligation to provide funds for legal representation, such as post-conviction death- penalty appeal cases.

[2] Paragraphs (a)(1) and (a)(2) recognize the critical need for legal services that exists among persons of limited means by providing that a substantial majority of the legal services rendered annually to the disadvantaged be furnished without fee or expectation of fee. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rulemaking and the provision of free training or mentoring to those who represent persons of limited means. The variety of these activities should facilitate participation by government lawyers, even when restrictions exist on their engaging in the outside practice of law.

[3] Persons eligible for legal services under paragraphs (a)(1) and (a)(2) are those who qualify for participation in programs funded by the Legal Services Corporation and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but nevertheless, cannot afford counsel. Legal services can be rendered to individuals or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means. The term "governmental organizations" includes, but is not limited to, public protection programs and governmental offices or agencies that provide direct services to persons of limited means.

[4] Because service must be provided without fee or expectation of fee, the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of paragraphs (a)(1) and (a)(2). Accordingly, services rendered cannot be considered pro bona if an anticipated fee is uncollected, but the award of statutory attorneys' fees in a case originally accepted as pro bona would not disqualify such services from inclusion under this section. Lawyers who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means.

[5] While it is possible for a lawyer to fulfill the annual responsibility to perform pro bona services exclusively through activities described in paragraphs (a)(1) and (a)(2), to the extent that any hours of service remained unfulfilled, the remaining commitment can be met in a variety of ways as set forth in paragraph (b). Constitutional, statutory or regulatory restrictions may prohibit or impede government and public sector lawyers and judges from performing the pro bona services outlined in paragraphs (a)(1) and (a)(2). Accordingly, where those restrictions apply, government and public sector lawyers and judges may fulfill their pro bona responsibility by performing services outlined in paragraph (b).

[6] Paragraph (b)(1) includes the provision of certain types of legal services to those whose incomes and financial resources place them above limited means. It also permits the pro bono lawyer to accept a substantially reduced fee for services. Examples of the types of issues that may be addressed under this paragraph include First Amendment claims, Title VII claims and environmental protection claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural and religious groups.

[7] Paragraph (b)(2) covers instances in which lawyers agree to and receive a modest fee for furnishing legal services to persons of limited means. Participation in judicare programs and

acceptance of court appointments in which the fee is substantially below a lawyer's usual rate are encouraged under this section.

[8] Paragraph (b)(3) recognizes the value of lawyers engaging in activities that improve the law, the legal system, or the legal profession. Serving on bar association committees, serving on boards of pro bono or legal services programs, taking part in Law Day activities, acting as a continuing legal education instructor, a mediator or an arbitrator, and engaging in legislative lobbying to improve the law, the legal system or the profession are a few examples of the many activities that fall within this paragraph.

[9] Because the provision of pro bono services and financial contributions is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, there may be times when it is not feasible for a lawyer to engage in pro bono services. At such times a lawyer may discharge the pro bono responsibility by providing financial support over the amount recommended by the Michigan State Bar Foundation.

[10] There is a tremendous need for civil legal aid resources for persons of limited means. The Access to Justice Campaign is administered by the Michigan State Bar Foundation, in partnership with the State Bar of Michigan, to increase resources for several nonprofit legal aid programs that provide civil legal aid for individuals with limited means throughout Michigan. The Michigan State Bar Foundation will regularly publish guidance and recognition lists suggesting annual contribution amounts.

[11] Law firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services called for by this Rule.

[12] The responsibility set forth in this Rule is not intended to be enforced through disciplinary process.

Position Vote:
Voted For position: 15
Voted against position: 0
Abstained from vote: 0
Did not vote (absence): 4

Contact Persons:
Ashley E. Lowe alowe@lakeshorelegalaid.org

SBM STATE BAR OF MICHIGAN

To: Members of the Public Policy Committee
Board of Commissioners

From: Nathan A. Triplett, Director of Governmental Relations

Date: April 14, 2025

Re: HB 4174 – Deceptive Interrogation Practices / Inadmissibility of Evidence

Background

House Bill 4174 would amend the Probate Code, 1939 PA 288, to create a presumption that any statement, admission, or confession (written or oral) made by a juvenile is involuntary and inadmissible as evidence if a law enforcement officer, court official, or any agents thereof engage in deception during an interaction with the juvenile. Under the bill, this rule of evidence would be limited only to those matters in which the juvenile is within the jurisdiction of the family division of the circuit court under MCL 712A.2.

The bill defines "deception" as:

> [K]nowingly using conduct or written, oral, electronic, nonverbal, or any other form of communication to communicate a false fact about evidence, misrepresent the accuracy of a fact, or communicate an unauthorized statement about leniency or another false promise.

The presumption of involuntariness and inadmissibility may be overcome: "if the prosecution proves by clear and convincing evidence that the statement, admission, or confession was all of the following: (a) Voluntary; (b) Not made as a result of the use of deception; (c) reliable."

The bill would apply to statements, admissions, and confessions made on or after January 1, 2027.

Ten states have taken legislative action to address deceptive interrogation practices that target children. Illinois became the first in 2021, followed by Oregon, Utah, Delaware, California, Colorado, Indiana, Nevada, Connecticut, and Washington. Legislation is now pending in several other states. Countries including the United Kingdom, Germany, Australia, France, Spain, New Zeeland, Taiwan, and Japan generally prohibit police deception.

Proponents of this legislation argue that deceptive interrogation practices frequently result in false confessions and wrongful convictions/adjudications. While this concern applies to both adults and children, the cognitive limitations of children who are still developing intellectually and emotionally make them uniquely susceptible to suggestion. Proponents also argue that permitting law enforcement officers and court officials to lie to children erodes their trust in police and courts in a manner that will persist long after they have grown into adulthood with deleterious effects on both the criminal legal system, specifically, and civil society more broadly. Opponents of such legislation argue that the use of deception makes it more likely that law enforcement officers will be able to obtain evidence

that will lead to convictions/adjudications and that such evidence should be admissible as long as it was given voluntarily.

The Children's Law Section, Access to Justice Policy Committee, and Criminal Jurisprudence & Practice Committee each reviewed House Bill 4174 and recommend that the Board of Commissioners support the legislation with an amendment to strike any language regarding a rebuttable presumption of inadmissibility. Instead, they support an absolute prohibition on the admission of evidence obtained via deceptive interrogation practices targeting children. The Criminal Law Section supports the bill as introduced. They did not consider the alternative supported by the other section and committees.

Keller Considerations

House Bill 4174 modifies a rules of evidence admissibility. Because the proposed policy comes before the Board as proposed legislation, the Board must make a determination as to the *Keller*-permissibility of the bill. Had a substantively identical policy been proposed instead as an amendment to the Rules of Evidence themselves, the Board would have presumed *Keller*-permissibility. Moreover, SBM staff was unable to identify a prior circumstance in which the Board deemed a bill modifying a rule of evidence to be *Keller*-impermissible.

The rules of evidence that govern court proceedings are necessarily related to the functioning of our courts. House Bill 4174 specifically relates to court functioning because it establishes a rule of presumptive evidence inadmissibility and a specific set of standards that must be met for a court to permit the presumption to be overcome. Both proponents and opponents of the legislation agree that its adoption would have a significant impact on juvenile court proceedings. The bill also relates to court functioning because admitting evidence acquired via deception, especially when the deception targets children, undermines the integrity of judicial proceedings and public confidence in the legal system.

The Children's Law Section, Criminal Law Section, Access to Justice Policy Committee, and Criminal Jurisprudence & Practice Committee each considered the *Keller*-permissibility of this legislation. They were unanimous in their determination that the bill was reasonably or necessarily related to court functioning and therefore satisfied the requirements of *Keller*.

Keller Quick Guide

THE TWO PERMISSIBLE SUBJECT-AREAS UNDER KELLER:

As interpreted by AO 2004-1

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 4174 establishes a rule of evidence and is necessarily related to the functioning of the courts. It is therefore *Keller*-permissible and may be considered on its merits.

HOUSE BILL NO. 4174

March 06, 2025, Introduced by Reps. Wegela, Edwards, Grant, Wilson, McKinney, Rheingans, Myers-Phillips, Dievendorf, Pohutsky and Morgan and referred to Committee on Judiciary.

A bill to amend 1939 PA 288, entitled

"Probate code of 1939,"

by amending section 1 of chapter XIIA (MCL 712A.1), as amended by 2020 PA 389, and by adding section 17e to chapter XIIA.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XIIA

Sec. 1. (1) As used in this chapter:

(a) "Civil infraction" means that term as defined in section 113 of the revised judicature act of 1961, 1961 PA 236, MCL

600.113.

(b) "Competency evaluation" means a court-ordered examination of a juvenile directed to developing information relevant to a determination of ~~his or her~~ **the juvenile's** competency to proceed at a particular stage of a court proceeding involving a juvenile who is the subject of a delinquency petition.

(c) "Competency hearing" means a hearing to determine whether a juvenile is competent to proceed.

(d) "County juvenile agency" means that term as defined in section 2 of the county juvenile agency act, 1998 PA 518, MCL 45.622.

(e) "Court" means the family division of circuit court.

(f) "Deception" means knowingly using conduct or written, oral, electronic, nonverbal, or any other form of communication to communicate a false fact about evidence, misrepresent the accuracy of a fact, or communicate an unauthorized statement about leniency or another false promise.

(g) ~~(f)~~ "Department" means the department of health and human services. A reference in this chapter to the "department of social welfare" or the "family independence agency" means the department of health and human services.

(h) ~~(g)~~ "Foreign protection order" means that term as defined in section 2950h of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950h.

(i) ~~(h)~~ "Incompetent to proceed" means that a juvenile, based on age-appropriate norms, lacks a reasonable degree of rational and factual understanding of the proceeding or is unable to do 1 or more of the following:

(*i*) Consult with and assist ~~his or her~~ **the juvenile's** attorney

in preparing ~~his or her~~**the juvenile's** defense in a meaningful manner.

(*ii*) Sufficiently understand the charges against ~~him or her.~~**the juvenile.**

(j) ~~(i)~~ Until September 30, 2021, "juvenile" means a person who is less than 17 years of age who is the subject of a delinquency petition. Beginning October 1, 2021, "juvenile" means a person who is less than 18 years of age who is the subject of a delinquency petition.

(k) "Law enforcement officer" means law enforcement official as defined in section 7 of chapter III of the code of criminal procedure, 1927 PA 175, MCL 763.7.

(*l*) ~~(j)~~ "Least restrictive environment" means a supervised community placement, preferably a placement with the juvenile's parent, guardian, relative, or a facility or conditions of treatment that is a residential or institutional placement only utilized as a last resort based on the best interest of the juvenile or for reasons of public safety.

(m) ~~(k)~~ "Licensed child caring institution" means a child caring institution as defined and licensed under 1973 PA 116, MCL 722.111 to 722.128.

(n) ~~(*l*)~~ "MCI" means the Michigan children's institute created and established by 1935 PA 220, MCL 400.201 to 400.214.

(o) ~~(m)~~ "Mental health code" means the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

(p) ~~(n)~~ "Personal protection order" means a personal protection order issued under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, and includes a valid foreign protection order.

(q) ~~(o)~~ "Public agency" means the department, a local unit of government, the family division of the circuit court, the juvenile division of the probate court, or a county juvenile agency.

(r) ~~(p)~~ "Qualified juvenile forensic mental health examiner" means 1 of the following who performs forensic mental health examinations for the purposes of sections 1062 to 1074 of the mental health code, MCL 330.2062 to 330.2074, but does not exceed the scope of ~~his or her~~ **the qualified juvenile forensic mental health examiner's** practice as authorized by state law:

(*i*) A psychiatrist or psychologist who possesses experience or training in **all of** the following:

(A) Forensic evaluation procedures for juveniles.

(B) Evaluation, diagnosis, and treatment of children and adolescents with emotional disturbance, mental illness, or developmental disabilities.

(C) Clinical understanding of child and adolescent development.

(D) Familiarity with competency standards in this state.

(*ii*) A mental health professional other than a psychiatrist or psychologist who has completed a juvenile competency training program for forensic mental health examiners that is endorsed by the department under section 1072 of the mental health code, MCL 330.2072, and who possesses experience or training in all of the following:

(A) Forensic evaluation procedures for juveniles.

(B) Evaluation, diagnosis, and treatment of children and adolescents with emotional disturbance, mental illness, or developmental disabilities.

(C) Clinical understanding of child and adolescent

development.

(D) Familiarity with competency standards in this state.

(s) ~~(q)~~ "Qualified restoration provider" means an individual who the court determines, as a result of the opinion provided by the qualified **juvenile** forensic mental health examiner, has the skills and training necessary to provide restoration services. The court shall take measures to avoid any conflict of interest among agencies or individuals who may provide evaluation and restoration.

(t) ~~(r)~~ "Reasonable and prudent parenting standard" means decisions characterized by careful and sensible parental decisions that maintain a child's health, safety, and best interest while encouraging the emotional and developmental growth of the child when determining whether to allow a child in foster care to participate in extracurricular, enrichment, cultural, and social activities.

(u) ~~(s)~~ "Restoration" means the process by which education or treatment of a juvenile results in that juvenile becoming competent to proceed.

(v) ~~(t)~~ "Secure facility" means any public or private licensed child caring institution identified by the department as designed to physically restrict the movements and activities of the alleged or adjudicated juvenile offender that has the primary purpose of serving juveniles who have been alleged or adjudicated delinquent, other than a juvenile alleged or adjudicated under section 2(a)(2) to (4) of this chapter.

(w) ~~(u)~~ "Serious misdemeanor" means that term as defined in section 61 of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.811.

(x) ~~(v)~~ "Valid foreign protection order" means a foreign

protection order that satisfies the conditions for validity provided in section 2950i of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950i.

(2) Except as otherwise provided, proceedings under this chapter are not criminal proceedings.

(3) This chapter shall be liberally construed so that each juvenile coming within the court's jurisdiction receives the care, guidance, and control, preferably in ~~his or her~~ **the juvenile's** own home, conducive to the juvenile's welfare and the best interest of the state. If a juvenile is removed from the control of ~~his or her~~ **the juvenile's** parents, the juvenile ~~shall~~ **must** be placed in care as nearly as possible equivalent to the care that should have been given to the juvenile by ~~his or her~~ **the juvenile's** parents.

Sec. 17e. (1) If a law enforcement officer, court official, or an agent of a law enforcement officer or court official knowingly engages in deception during an interaction with a juvenile, any statement, admission, or confession, written or oral, of the juvenile to a law enforcement officer, court official, or an agent of the law enforcement officer or court official, is presumed to be involuntary and inadmissible as evidence in any hearing against a juvenile who is within the court's jurisdiction under section 2(a)(1) of this chapter.

(2) The presumption of involuntariness and inadmissibility of a juvenile's statement, admission, or confession under subsection (1) may be overcome if the prosecution proves by clear and convincing evidence that the statement, admission, or confession was all of the following:

(a) Voluntary.

(b) Not made as a result of the use of deception.

(c) Reliable.

(3) This section applies to self-incriminating responses of a juvenile made on or after January 1, 2027.

Enacting section 1. This amendatory act takes effect January 1, 2027.

Public Policy Position
HB 4174

Support with Amendment

Explanation

The Committee voted unanimously to support House Bill 4174 with the amendment recommended by the Children's Law Section that any language regarding a rebuttable presumption of inadmissibility be removed. Instead, the bill should provide for an absolute bar to admission as evidence of any statement, admission, or confession (written or oral) made by a child as a result of knowing deception by a law enforcement officer, court official, or an agent of a law enforcement officer or court official.

Position Vote:

Voted For position: 19
Voted against position: 0
Abstained from vote: 0
Did not vote (absence): 5

***Keller* Permissibility Explanation**

The Committee voted that HB 4174 is necessarily related to the functioning of the courts and therefore *Keller*-permissible.

Contact Persons:

Daniel S. Korobkin dkorobkin@aclumich.org
Katherine L. Marcuz kmarcuz@sado.org

Public Policy Position
HB 4174

Support

Explanation:
The Committee voted to support the Access to Justice Policy Committee position on House Bill 4174. Namely, to support the bill with the amendment recommended by the Children's Law Section that any language regarding a rebuttable presumption of inadmissibility be removed.

Position Vote:
Voted For position: 16
Voted against position: 2
Abstained from vote: 0
Did not vote (absent): 8

***Keller* Permissibility Explanation**
The Committee voted that HB 4174 is necessarily related to the functioning of the courts and therefore *Keller*-permissible.

Contact Persons:
Nimish R. Ganatra nimishg@umich.edu
John A. Shea jashea@earthlink.net

SBM State Bar of Michigan | CHILDREN'S LAW SECTION

Public Policy Position
HB 4174

Support with Recommended Amendments

Explanation
The Children's Law Section supports HB 4174 with a recommendation that any language about a rebuttable presumption of inadmissibility be removed. The bill should automatically render all statements by a child inadmissible if any deception was used during the interaction, and we oppose giving prosecutor's the ability to rebut that. We support a public policy against police using deception when interacting with children. The use of deception creates distrust and makes it less likely that children will be willing to cooperate with police, even when it would be that they do interact with them. Allowing police to use deception when interacting with children can also run the risk of teaching children that it is okay for them to lie because people they are told to trust (i.e., police) are allowed to lie. In order to enforce a public policy against the use of deception by police and others when interacting with children, the only viable remedy is a full prohibition on the use of deception.

Position Vote:
Voted for position: 11
Voted against position: 1
Abstained from vote: 3
Did not vote: 4

Contact Person: Joshua Pease
Email: jpease@sado.org

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 May 1, 2025. 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 amending M Crim JI 13.1 (Assaulting, Resisting, or Obstructing a Police Officer or Person Performing Duties) and M Crim JI 13.2 (Assaulting or Obstructing Officer or Official Performing Duties) to place more emphasis on the requirement that the jury receive instructions on the legal framework for assessing whether the officers' actions were lawful. See *People v Carroll*, ___ Mich ___; 8 NW3d 576 (July 19, 2024) (Docket No. 166092). For each instruction, the proposed amendments would move the information currently conveyed in Use Note 4 into the body of the instruction. Deletions are in ~~strikethrough~~, and new language is underlined.

[AMENDED] M Crim JI 13.1 Assaulting, Resisting, or Obstructing a Police Officer or Person Performing Duties

(1) The defendant is charged with the crime of assaulting, battering, wounding, resisting, obstructing, opposing, or endangering[1] a [police officer / (*state authorized person*)[2]] who was performing [his / her] duties. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered[1] [*name complainant*], who was a [police officer / (*state authorized person*)]. ["Obstruct" includes the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command.][3] [The defendant must have actually resisted by what (he / she) said or did, but physical violence is not necessary.][3]

(3) Second, that the defendant knew or had reason to know that [*name complainant*] was a [police officer / (*state authorized person*)] performing [his / her] duties at the time.

(4) Third, that [*name complainant*] gave the defendant a lawful command, was making a lawful arrest, or was otherwise performing a lawful act.~~[4]~~ [*Provide detailed legal instructions regarding the applicable law governing the officer's or official's legal authority to act.*][4]

[*Use the following paragraphs as warranted by the charge and proofs*~~.~~:]

(5) Fourth, that the defendant's act in assaulting, battering, wounding, resisting, obstructing, opposing, or endangering[1] a [police officer / (*state authorized person*)] caused the death of [*name complainant*].

(6) Fourth, that the defendant's act in assaulting, battering, wounding, resisting, obstructing, opposing, or endangering[1] a [police officer / (*state authorized person*)] caused [*name complainant*] to suffer serious impairment of a body function.[5]

(7) Fourth, that the defendant's act in assaulting, battering, wounding, resisting, obstructing, opposing, or endangering[1] a [police officer / (*state authorized person*)] caused a bodily injury requiring medical attention or medical care to [*name complainant*].

Use Note

This instruction should be used when the defendant is charged with violating MCL 750.81d. A defendant could be charged under MCL 750.479 with assaulting, resisting, or obstructing an officer or duly authorized person. In that event, use M Crim JI 13.2.

1. MCL 750.81d prohibits "assault[ing], batter[ing], wound[ing], resist[ing], obstruct[ing], oppos[ing], or endanger[ing]" certain officers or officials. The court may read all of that phrase or may read whatever portions it finds appropriate according to the charge and the evidence.

2. ~~"Person"~~ *Person* for purposes of this statute is defined to include police officers, deputy sheriffs, firefighters, and emergency medical service personnel, among others. MCL 750.81d(7)(b).

3. The court may include this sentence where necessary.

4. ~~The court should provide detailed legal instructions regarding the applicable law governing the officer's legal authority to act.~~ *See People v Carroll*, ___ Mich ___; 8 NW3d 576 (2024) (holding that trial court must provide jury with "a legal framework for assessing whether the officers' actions were lawful"); M Crim JI 13.5.

5. ~~MCL 750.479(8)(b)~~ MCL 750.81d(7)(c) defines ~~"serious impairment of a body function"~~ *serious impairment of a body function* according to MCL 257.58c in the Michigan ~~vehicle~~ Vehicle ~~code~~ Code. *See* M Crim JI ~~15.12~~15.2a.

[AMENDED] M Crim JI 13.2 Assaulting or Obstructing Officer or Official Performing Duties

(1) The defendant is charged with the crime of assaulting, battering, wounding, resisting, obstructing, opposing, or endangering[1] a [*state authorized person*][2] who was acting in the performance of [his / her] duties. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered[1] [*name complainant*], who was a [*state authorized person*] performing [his / her] duties. ["Obstruct" includes the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command.][3]

(3) Second, that the defendant knew or had reason to know that [*name complainant*] was then a [*state authorized person*] performing [his / her] duties at the time.

(4) Third, that [*name complainant*] gave the defendant a lawful command, was making a lawful arrest, or was otherwise performing a lawful act.~~.~~ [*Provide detailed legal instructions regarding the applicable law governing the officer's or official's legal authority to act.*][4]

(5) Fourth, that the defendant's actions were intended by the defendant, that is, not accidental.

[*Use the following paragraphs as warranted by the charge and proofs*~~.~~:]

(6) Fifth, that the defendant's act in assaulting, battering, wounding, resisting, obstructing, opposing, or endangering[1] a [*state authorized person*] caused the death of [*name complainant*].

(7) Fifth, that the defendant's act in assaulting, battering, wounding, resisting, obstructing, opposing, or endangering[1] a [*state authorized person*] caused serious impairment of a body function[5] to [*name complainant*].

(8) Fifth, that the defendant's act in assaulting, battering, wounding, resisting, obstructing, opposing, or endangering[1] a [*state authorized person*] caused a bodily injury requiring medical attention or medical care to [*name complainant*].[6]

Use Note

This instruction should be used when the defendant is charged with violating MCL 750.479. A defendant could be charged under MCL 750.81d with assaulting, resisting, or obstructing an officer. In that event, ~~see~~ use M Crim JI 13.1.

1. MCL 750.479 prohibits "assault[ing], batter[ing], wound[ing], resist[ing], obstruct[ing], oppos[ing], or endanger[ing]" certain officers or officials. The court may read all of that phrase or may read whatever portions it finds appropriate according to the charge and the evidence.

2. The statute lists authorized persons as medical examiners, township treasurers, judges, magistrates, probation officers, parole officers, prosecutors, city attorneys, court employees, court officers, or other officers or duly authorized persons. MCL 750.479(1)(a).

3. ~~"Obstruct"~~ *Obstruct* is defined in MCL 750.479(8)(a), as amended in 2002.

4. ~~The court should provide detailed legal instructions regarding the applicable law governing the official's legal authority to act.~~ *See People v Carroll*, ___ Mich ___; 8 NW3d 576 (2024) (holding that trial court must provide jury with "a legal framework for assessing whether the officers' actions were lawful"); M Crim JI 13.5.

5. MCL 750.479(8)(b) defines ~~"serious impairment of a body function"~~ *serious impairment of a body function* according to MCL 257.58c in the Michigan ~~vehicle~~ Vehicle ~~code~~ Code. *See* M Crim JI ~~15.12~~15.2a.

6. This aggravating circumstance could be the charged offense or a lesser offense, if warranted by the evidence.

Public Policy Position
M Crim JI 13.1 and 13.2

Support

Explanation:
The Committee voted to support the proposed instructions as drafted. The proposed amendments enhance the existing jury instructions by ensuring that jurors are properly and fully instructed on the basis of an official's legal authority to act.

Position Vote:
Voted For position: 17
Voted against position: 1
Abstained from vote: 0
Did not vote (absent): 8

Contact Persons:
Nimish R. Ganatra nimishg@umich.edu
John A. Shea jashea@earthlink.net

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

==========

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by May 1, 2025. 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 amending M Crim JI 20.6 (Aiders and Abettors – Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless) and M Crim JI 20.16 (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 ~~strikethrough~~, and new language is underlined.

[AMENDED] M Crim JI 20.6 Aiders and Abettors – Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless

(1) [Second / Third], that before or during the alleged sexual act, the defendant was assisted by another person, who either did something or gave encouragement to assist the commission of the crime.

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

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

~~(3)~~(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.

~~(4)~~(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)~~ 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*]).][1]

~~(5)~~(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.

~~(6)~~(3) [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 Note

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

[AMENDED] M Crim JI 20.16 Complainant Mentally Incapable, Mentally Incapacitated, or Physically Helpless

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

[*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)~~ 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*]).][1]

(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) [Third / Fourth], 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 Note

Use this instruction in conjunction with M Crim JI 20.12, Criminal Sexual Conduct in the Third Degree, or M Crim JI 20.13, Criminal Sexual Conduct in the Fourth Degree.

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

Public Policy Position
M Crim JI 20.6 and 20.16

Support

Explanation:
The Committee voted unanimously to support the proposed instructions as drafted.

Position Vote:
Voted For position: 18
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 8

Contact Persons:
Nimish R. Ganatra nimishg@umich.edu
John A. Shea jashea@earthlink.net

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

==========

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by May 1, 2025. 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 new jury instructions for six election-related crimes found in MCL 168.931(1) and MCL 168.932(a): M Crim JI 43.1 (Offering an Incentive to Influence Voting), M Crim JI 43.1a (Bribing or Menacing an Elector), M Crim JI 43.2 (Accepting or Agreeing to Accept an Incentive Regarding Voting), M Crim JI 43.2a (Seeking an Incentive from a Candidate), M Crim JI 43.3 (Voter Coercion – Employment Threat), and M Crim JI 43.3a (Voter Coercion – Religious Threat). These instructions are entirely new.

[NEW] M Crim JI 43.1 Offering an Incentive to Influence Voting

(1) The defendant is charged with the crime of offering an incentive to influence voting. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [gave / loaned / promised] [*name valuable consideration*][1] to or for the benefit of any individual. It does not matter if the defendant did so [himself / herself] directly or did so indirectly through another person or method. A [gift of / loan of / promise to give] [*name valuable consideration*] must be specific to an individual and does not include purely political speech that promises benefits to the public in general.

(3) Second, that when the defendant [gave / loaned / promised] [*name valuable consideration*], [he / she] intended [to influence how any individual would vote / to reward any individual for not voting].[2]

Use Note

1. MCL 168.931(4) defines *valuable consideration* as including but not limited to "money, property, a gift, a prize or chance for a prize, a fee, a loan, an office, a position, an appointment, or employment."

2. This is a specific intent crime.

[NEW] M Crim JI 43.1a Bribing or Menacing an Elector

(1) The defendant is charged with the crime of bribing or menacing an elector. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that [*name targeted elector*] was an elector[1] who had a right to vote in [*identify location where the targeted elector would be voting*][2] in the [*date of election*] election. To be qualified as an elector, a person must be a citizen of the United States, at least 18 years of age, a resident of the state of Michigan for at least 6 months, and a resident of [*identify location where the targeted elector would be voting*] for at least 30 days.[3]

(3) Second, that the defendant attempted to [influence how (*name targeted elector*) would vote / discourage or prevent (*name targeted elector*) from voting / interrupt (*name targeted elector*) in giving (his / her) vote] in the [*date of election*] election through the use of [bribery / menacing conduct / (*describe other corrupt conduct*)].

It does not matter whether the defendant [himself / herself] directly [bribed / menaced / (*describe other corrupt conduct*)] [*name targeted elector*] or did so indirectly through another person or method.

[*Read the following paragraph when the allegation is that the defendant menaced or threatened the elector or engaged in other corrupt conduct involving speech*:][4]

[Menacing conduct includes verbal or nonverbal threats to cause any kind of harm whether physical or nonphysical. Where menacing conduct involves only spoken words, it must have been a true threat and not something like idle talk, a statement made in jest, or a political comment. It must have been made under circumstances where a reasonable person would think that others may take the threat seriously as expressing an intent to inflict harm or damage. The menacing conduct must have caused (*name targeted elector*) to reasonably believe that the person

making the threat would carry out the threat or would have it carried out on (his / her) behalf.]

[*Read the following paragraph when the allegation is that the defendant's corrupt conduct against the elector consisted entirely of nonthreatening false speech*:][4]

[The defendant must have knowingly made a false statement or statements related to voting requirements or voting procedures in an attempt to deter or influence an elector's vote.]

(4) Third, that the defendant intended to [influence how (*name targeted elector*) would vote / influence whether (*name targeted elector*) would vote / interrupt (*name targeted elector*) while voting or about to vote] in the [*identify election*] by using [bribery / threatening conduct / (*identify other corrupt conduct*)].[5]

Use Note

1. In MCL 168.10 of the Michigan Election Law Act, the phrase *qualified elector* means "a person who possesses the qualifications of an elector as prescribed in section 1 of article II of the state constitution of 1963 and who has resided in the city or township 30 days." Mich Const 1963 art 2, §1, defines *elector* as "[e]very citizen of the United States who has attained the age of 21 years, who has resided in this state six months, and who meets the requirements of local residence provided by law." U.S. Const amend XXVI, §1, provides, "The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age."

2. E.g., "the City of Detroit" or "Ada Township."

3. Add any other requirements of local residence provided by law per Mich Const 1963 art 2, §1, if there are any such requirements.

4. See *People v Burkman*, 513 Mich 300; ___ NW3d ___ (2024), for requirements where menacing behavior is involved or the "corrupt conduct" involved speech.

5. This is a specific intent crime.

[NEW] M Crim JI 43.2 Accepting or Agreeing to Accept an Incentive Regarding Voting

(1) The defendant is charged with the crime of accepting or agreeing to accept an incentive regarding voting. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant received or made an agreement to receive [*name valuable consideration*][1] for [his / her] own benefit or for the benefit of someone else.

(3) Second, that when the defendant received or agreed to receive [*name valuable consideration*], the defendant did so intentionally[2] in exchange for

[*Provide any of the following that apply according to the charges and evidence*:]

(a) voting or agreeing to vote at an election.

(b) influencing or attempting to influence someone else to vote at an election.

(c) not voting or agreeing not to vote at an election.

(d) influencing or attempting to influence someone else not to vote at an election.

(e) [*Identify other violation.*]

(f) both distributing absent voter ballot applications to voters and receiving signed applications from voters for delivery to the appropriate clerk or assistant of the clerk.

Use Note

1. MCL 168.931(4) defines *valuable consideration* as including but not limited to "money, property, a gift, a prize or chance for a prize, a fee, a loan, an office, a position, an appointment, or employment."

2. This is a specific intent crime.

[NEW] M Crim JI 43.2a Seeking an Incentive from a Candidate

(1) The defendant is charged with the crime of seeking an incentive from a candidate. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant requested that [*identify candidate*] provide [him / her] with [*identify valuable consideration*].[1]

(3) Second, that when the defendant requested that [*identify candidate*] provide the [*identify valuable consideration*], the defendant did so intentionally in exchange for the securing of votes or the influencing of voters with respect to the candidate's [nomination for / election to] the office of [*insert name of office described in the Michigan Election Law Act as stated in the complaint*]. This does not include a regular business transaction.

Use Note

1. MCL 168.931(4) defines *valuable consideration* as including but not limited to "money, property, a gift, a prize or chance for a prize, a fee, a loan, an office, a position, an appointment, or employment."

[NEW] M Crim JI 43.3 Voter Coercion – Employment Threat

(1) The defendant is charged with the crime of voter coercion by an employer. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that [*name complainant*] was an employee of the defendant.

(3) Second, that the defendant discharged or threatened to discharge [*name complainant*] or caused [him / her] to be discharged or to be threatened with being discharged.

(4) Third, that the defendant intended to influence [*name complainant*]'s vote at an election when [he / she] discharged or threatened to discharge [*name complainant*] or caused [*name complainant*] to be discharged or to be threatened with being discharged.[1]

Use Note

1. This is a specific intent crime.

[NEW] M Crim JI 43.3a Voter Coercion – Religious Threat

(1) The defendant is charged with the crime of coercing a voter by religious threat. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant was a [priest / pastor / curate / (*identify the office held by the defendant within the religious society*)].

(3) Second, that the defendant [(excommunicated / dismissed / expelled) (*name complainant*) from the (*name religious society*) / told (*name complainant*) that (he / she) would suffer religious disapproval / threatened that (*name complainant*) would be (excommunicated / dismissed / expelled) from the (*name religious society*)].

(4) Third, that the defendant intended to influence [*name complainant*]'s vote at an election when [he / she] [(excommunicated / dismissed / expelled) (*name complainant*) from the (*name religious society*) / told (*name complainant*) that (he / she) would suffer religious disapproval / threatened to (excommunicate / dismiss / expel) (*name complainant*) from the (*name religious society*)].[1]

Use Note

1. This is a specific intent crime.

Public Policy Position
M Crim JI 43.1, 43.1a, 43.2a, 43.3, and 43.3a

Support with Amendment

Explanation:
The Committee voted to support the proposed instructions with an amendment removing 43.1(a).

Position Vote:
Voted For position: 15
Voted against position: 1
Abstained from vote: 1
Did not vote (absent): 9

Contact Persons:
Nimish R. Ganatra nimishg@umich.edu
John A. Shea jashea@earthlink.net