

**State Bar of Michigan
Criminal Jurisprudence and Practice Committee
Thursday, May 8, 2014 – 1 to 3 PM
State Bar of Michigan Building, 306 Townsend Street, Lansing, MI**

MINUTES

Committee Members: Ryan Lee Berman, Mary Alexis Bowen, Nichole Jongsma Derks, Nimish R. Ganatra, J. Kevin McKay, Julie A. Powell, Jonathan Sacks, Samuel R. Smith III, Michael A. Tesner, Bruce A. Timmons

Advisor: Donna McKneelen

SBM Staff: Peter Cunningham, Carrie Sharlow

1. Call to Order & Welcome
2. Meeting Minutes from March 13, 2014 meeting – The meeting minutes were unanimously approved.
3. New Business

a. [ADM File No. 2014-06 - Proposed Amendment of Rule 2.004 of the Michigan Court Rules](#)

The proposed revisions of MCR 2.004 would change the service provisions with regard to an inmate's participation in a hearing or conference so that service would be required on MDOC's Central Records Section, instead of service on individual wardens or supervisors at the MDOC facilities; the proposed changes also would allow an inmate's participation by video or videoconferencing.

Issued: April 23, 2014

Comment Period Expiration: August 1, 2014

The committee voted unanimously to support the proposed amendment, with ten in favor.

b. [ADM File No. 2013-21 - Amendments of Rules 6.112 and 6.113 of the Michigan Court Rules](#)

These amendments clarify how a prosecutor's notice of enhanced sentence required under MCL 769.13(1) is to be provided in courts in which arraignment has been eliminated under MCR 6.113(E).

Issued: April 23, 2014

Effective: Immediately, pending public comment and future public hearing

Comment Period Expiration: August 1, 2014

The committee voted unanimously to support the proposed amendments, with ten in favor.

c. [SB 0863](#)(Pavlov) Criminal procedure, evidence; Crimes, intoxication or impairment; Criminal procedure, preliminary examination; Criminal procedure, trial; Criminal procedure, arrests; Criminal procedure, pretrial procedure. Criminal procedure;

evidence; expert witness testimony concerning chemical testing and custody of evidence by video communication; allow at preliminary examination and trial for certain prosecutions, and provide for release subject to conditions reasonably necessary for the protection of the public under certain circumstances. Amends sec. 1, ch. III, sec. 6b, ch. V, & sec. 22, ch. VIII of 1927 PA 175 (MCL 763.1 et seq.).

Liaison: Bruce A. Timmons

Note: This bill is the same as HB 5383, which the committee discussed at the March 13, 2014 meeting. The following position was taken:

The committee voted unanimously to oppose HB 5383 due to several issues: (1) it denies the presumption of innocence by denying bond; (2) it puts information into LEIN without a trial; (3) it affects judicial discretion in requiring the judge to “inform the defendant on record...” and ties the hands of the judge by requiring several conditions for bond release; and (4) it negatively affects the constitutional confrontation clause by allowing an expert to testify via video.

The committee voted unanimously (with one abstention) to oppose the bill for the same reason the committee opposed HB 5383 in March 2014.

- d. [SB 0901](#) (Johnson) Law enforcement; other; sexual assault kit evidence submission act; create. Creates new act.

The committee voted 8 to 2 to support this in concept and express the following concerns as to (1) the mechanism for consent if the victim is a child and cannot authorize a legal document, (2) the preservation of evidence, and (3) the custodial issues regarding hospital care and appropriate depository after a one year period.

4. Reports

- a. Criminal Law Section – The Section discussed HB 5383.
- b. Indigent Defense – Nothing further at this time. There is \$750,000 to be spent before October 1.
- c. COMPAS risk assessment instruments – use at sentencing - Jonathan Sacks – COMPAS will be placed in all pre-sentencing reports. The Criminal Law Section has written a letter highlighting possible issues with this.