

**State Bar of Michigan**  
**Criminal Jurisprudence and Practice Committee**  
**Thursday, May 10, 2012 – 2 to 4 PM**  
**State Bar of Michigan Building, 306 Townsend Street, Lansing, MI**

**MINUTES**

Committee Members: Fred E. Bell, Ryan Lee Berman, Nichole Jongsma Derks, James W. Heath, Hon. David A. Hoort, John L. Livesay, J. Kevin McKay, Donna McKneelen, Julie A. Powell, Richmond M. Riggs, Gretchen A. Schlaff, Samuel R. Smith

Advisors: Angela M. Povilaitis

1. Call to Order & Welcome – The meeting was called to order at 2:15 PM.
2. Old Business

- a. [HB 4844](#) (Pettalia) Civil procedure; personal protection orders; statewide personal protection order registry; create, and provide for law enforcement information network (LEIN) access. Amends secs. 2950 & 2950a of [1961 PA 236](#) (MCL [600.2950](#) & [600.2950a](#)) & adds sec. 2950n.

Family Law Section: Oppose; State Bar of Michigan: Oppose; Civil Procedure & Courts Committee: Oppose; Criminal Jurisprudence & Practice Committee: Oppose; Justice Policy Initiative: Oppose

The Bar offered a position last year. Elizabeth was contacted by the Representative's office for further specifics as to Bar opposition of the bill and to see if there was any way to amend the bill for Bar support.

The committee's biggest concern is the registry being public. It was felt that the registry should be non-public and have a removal provision.

3. New Business

- a. [2009-19 Proposed Amendments of Rules 6.425, 6.502, 7.204, and 7.205 of the Michigan Court Rules](#)

The amendments proposed in this order would impose time limits for the filing of motions for relief from judgment in criminal cases and would shorten time limits for late appeals in both civil and criminal actions. In proposed amendments of MCR 7.204 and MCR 7.205, alternative provisions are offered, under which, upon a showing of excusable neglect, the Court of Appeals or a trial court may grant an extension of time for filing a late appeal.

Issued: 4/27/2010

Comment Period Expired: 8/1/2010

Public Hearing Held: 9/15/2010

The Board of Commissioners discussed this item on July 23, 2010 and opposed. Appellate Practice Section and Criminal Law Section recommended opposition. The Appellate Practice Section has proposed an amendment to MCR 7.205 that would delay applications from 6 months to 12 months.

Amendments on 7.205 adopted June 2, 2011, Effective September 1, 2011.  
Liaisons: Samuel R. Smith and J. Kevin McKay

The State Appellate Defenders' Office is gathering material regarding the time limits. The committee is interested in seeing this information before responding. The item will be tabled.

b. [2010-34 - Proposed Amendment of Rule 6.519 of the Michigan Court Rules](#)

Alternative A would revise MCR 6.419 to be similar to the federal corollary of this rule (FR Crim P 29[b]). Under this language, the trial court would be entitled to reserve judgment on a motion for directed verdict. Alternative B would allow a trial court to reconsider its decision to grant a directed verdict. This language was proposed based on the United States Supreme Court decision of *Smith v Massachusetts*, 543 US 462 (2005).

Issued: May 2, 2012

Comment period expiration: September 1, 2012

Public hearing: To be scheduled

Liaisons: Ryan Lee Berman and Haytham Faraj

This item is tabled until the June meeting.

c. [2011-10 - Proposed Amendment of Rule 7.118 of the Michigan Court Rules](#)

The concept for this proposal was submitted by the State Bar of Michigan Prisons & Corrections Section. The section asserts that if a prosecutor or victim files an appeal of a decision of the Michigan Parole Board to grant parole, the appellee (the prisoner) should be entitled to be represented by counsel if the prisoner is indigent. The proposed amendments would require a prisoner to request representation within 14 days of notice of the appeal, and establish other procedural steps.

Issued: May 2, 2012

Comment period expiration: September 1, 2012

Public hearing: To be scheduled

Liaisons: John Freeman and James W. Heath

The committee supports amendment of MCR 7.118 in concept but asks that there be some consideration of funding issues and representation of the victim when the parolee is provided representation.

The final vote was 9 in favor, with 2 abstentions.

d. [HB 5413](#) (Jackson) Criminal procedure; evidence; certain requirements for retention of evidence; establish. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 23 to ch. XVI.

Status: 02/16/12 Referred to House Judiciary

Liaisons: Nichole Jongsma Derks and Thomas P. Clement

This item is tabled until the June meeting. The members had several questions as to the definition of biological evidence and expressed an interested in drafting definitions for legislative review.

- e. [HB 5551](#)(Jenkins) Juror Mileage Reimbursement  
Courts, funding; Courts, juries. Courts; funding; mileage reimbursement rate for juror; increase. Amends sec. 1344 of 1961 PA 236 (MCL 600.1344).  
Status: 04/24/12 Referred to House Judiciary

[HB 5552](#)(Kowall) Juror Compensation  
Courts, funding; Courts, juries. Courts; funding; juror compensation; allow reimbursement if funding unit pays increased mileage. Amends sec. 151e of 1961 PA 236 (MCL 600.151e).  
Status: 04/24/12 Referred to House Judiciary  
Liaisons: Julie A. Powell and Scott R. Sanford

The committee voted unanimously to support these bills.

Retention of Non-Public Records

- f. [SB 0630](#) (Jones) Criminal procedure; probation; retention and release of nonpublic records of an arrest, diversion, discharge, or dismissal of certain controlled substance cases; clarify. Amends sec. 1070 of [1961 PA 236](#) (MCL [600.1070](#)).  
Status: 01/25/12 Referred to House Judiciary

[SB 0631](#) (Schuitmaker) Criminal procedure; probation; retention of nonpublic records during period of diversion for a controlled substance violation; clarify. Amends sec. 350a of [1931 PA 328](#) (MCL [750.350a](#)).  
Status: 01/25/12 Referred to House Judiciary

[SB 0632](#) (Beida) Criminal procedure; probation; retention of nonpublic records during period of diversion for a controlled substance violation; require. Amends sec. 7411 of [1978 PA 368](#) (MCL [333.7411](#)).  
Status: 01/25/12 Referred to House Judiciary

[SB 0633](#) (Smith) Criminal procedure; probation; retention of nonpublic records during period of diversion for certain crimes; clarify. Amends sec. 4a, ch. IX of [1927 PA 175](#) (MCL [769.4a](#)).

Status: 01/25/12 Referred to House Judiciary  
Liaisons: John L. Livesay and Richmond M. Riggs

The committee voted to oppose the bills for the reason that the bills take away the central registry. However, the committee supports the concept of the bills because of the uniformity in the treatment of courts.

Keller analysis – These bills speak directly to public records in court and the functions of the courts. It affects the rights of the defendant or lack thereof. The proposed legislation could improve the functioning of the courts if there was a uniform, consistent rule in all diversion cases to close the record at the point the case is placed on deferral status, and allow only certain entities access. The proposed legislation, however, impedes the efficiency of the court process if you have to get information from 83 counties.

- g. [SB 1014](#) (Nofs) Courts; jurisdiction; jurisdiction for prosecution of felony offenses; expand to county where consequence intended to have effect. Amends sec. 8, ch. II of 1927 PA 175 (MCL 762.8).

Status: 03/13/12 Referred to Senate Judiciary

Liaisons: Fred E. Bell and Daniel Corrigan Grano

The motion was made to support the bill. In the absence of quorum an e-vote will be sent out.

- h. Prisons & Corrections Section Position calling for legislation or court rule requiring appointment of counsel to indigent prisoners in prosecutor appeals of parole board decisions. – This is no longer applicable.

4. Discussion: 2012-2013 Committee Membership

5. Reports

- a. Criminal Law Section – The Criminal Law Section holds its Spring Conference in Frankenmuth on June 8-9, 2012. You do not have to be a member of the CLS to attend.
- b. Eyewitness Task Force – The Task Force met recently. An out-of-state expert will be coming for the next meeting. The existing focus is on photograph display identification procedures.
- c. Indigent Defense Advisory Commission – The commission meets next May 18 and June 22.
- d. Custodial Interrogation Recording Legislation – There is nothing new to report.

6. Adjournment. – Next meeting is June 7