

**State Bar of Michigan
Criminal Jurisprudence and Practice Committee
Thursday, October 18, 2012 – 1 to 3 PM
State Bar of Michigan Building, 306 Townsend Street, Lansing, MI**

MINUTES (Draft)

Committee Members Present: J. Kevin McKay, Fred Bell, Ryan Lee Berman (Phone), Mary Alexis Bowen, Thomas P. Clement, Nicole Jongsma Derks, Nimish R. Ganatra, Donna McKneelen, Julie Powell, Jonathan Sacks (Phone), Samuel R. Smith, III

SBM Staff: Peter Cunningham, Janeice Morrow

1. Call to Order & Welcome – The meeting was called to order at 1:00 PM – a quorum was met.

Members were welcomed by Co-chair McKay and each was asked to provide a brief overview of their professional background.

A brief overview of the jurisdiction of the Committee and the mission statement was presented, as well as a discussion of Keller permissibility and how it determines the public policy issues the Committee can submit positions on.

Peter Cunningham discussed standing committees at SBM and the public policy path, noting that CJAP is not permitted to advocate their position until it is approved by the Bar.

Co-chair Derks discussed alternative meeting arrangement possibilities and welcomed new ideas for topics. She noted that liaisons would be assigned to new public policy items for each agenda. It would be the responsibility of each assigned member to be prepared to present those items at the meeting for discussion.

2. New Business

- a. [2012-12 - Proposed Amendment of Rule 3.925 of the Michigan Court Rules \(regarding retention and destruction of various records in juvenile cases\)](#)

The proposed amendments of MCR 3.925 would clarify rules and procedures for retention and destruction of various records in juvenile cases.

Issued: September 19, 2012

Comment period expiration: January 1, 2013

Liaison: Samuel R. Smith

A motion was made and seconded to support the proposed amendment. The motion passed with one member opposing.

Janeice Morrow will circulate position report to co-chairs.

b. [HB 5797](#) (Graves) **Parole Release Decisions**

Corrections, parole; State agencies (existing), corrections; State agencies (existing), attorney general. Corrections; parole; standard of review for parole board release decisions; modify, and allow for attorney general intervention. Amends sec. 34 of 1953 PA 232 (MCL 791.234).

Status: 08/15/12 Referred to House Judiciary

Liaison: Julie A. Powell

A motion was made and seconded to oppose the legislation. The motion passed with 3 members supporting the legislation and one abstention.

Janeice Morrow will circulate position report to co-chairs.

c. [HB 5799](#) (Brunner) **Crime Victim Access**

Corrections, parole; Crime victims, rights. Corrections; parole; review of certain documentation presented to parole board; require crime victim access. Amends sec. 35 of 1953 PA 232 (MCL 791.235).

Status: 08/15/12 Referred to House Judiciary

Liaison: Ryan Lee Berman

A motion was made and seconded to submit no position based on the lack of Keller permissibility. The motion passed unanimously.

d. [HB 5800](#) (Kennedy) **Crime Victim Access**

Crime victims; rights; review of certain documentation presented to parole board; require crime victim access. Amends secs. 19 & 21 of 1985 PA 87 (MCL 780.769 & 780.771).

Status: 08/15/12 Referred to House Judiciary

Liaison: Samuel R. Smith

A motion was made and seconded to submit no position based on the lack of Keller permissibility. The motion passed unanimously.

e. Video-Recorded Statements

[HB 5870](#) (McMillin) **Video-Recorded Statements**

Criminal procedure, evidence; Children, protection. Criminal procedure; evidence; consideration of videorecorded statements in certain proceedings; expand. Amends sec. 2163a of 1961 PA 236 (MCL 600.2163a).

Status: 09/11/12 Referred to House Judiciary

Liaison: Thomas P. Clement and Donna McKneelen

A motion was made and seconded to oppose the legislation. The motion passed with 2 members supporting the legislation and one abstention.

Janeice Morrow will circulate position report to co-chairs.

[HB 5871](#) (McMillin) **Video Recording Child Interrogations**

Law enforcement, investigations; Law enforcement, communications. Law enforcement; investigations; electronic video recording of child interrogations; require. Amends 1975 PA 238 (MCL 722.621 - 722.638) by adding sec. 8f.

Status: 09/11/12 Referred to House Judiciary

Liaison: Thomas P. Clement and Donna McKneelen

A motion was made and seconded to support the legislation. The motion passed unanimously.

Janeice Morrow will circulate position report to co-chairs.

[HB 5872](#) (McMillin) **Video-Recorded Statements**

Children, protection; Courts, probate court; Criminal procedure, evidence. Children; protection; videorecorded statements; allow to be used in child protective services hearings, increase fines, and require to retain for certain period of time. Amends sec. 17b, ch. XIA of 1939 PA 288 (MCL 712A.17b).

Status: 09/11/12 Referred to House Judiciary

Liaison: Thomas P. Clement and Donna McKneelen

A motion was made and seconded to support the legislation with amendment to subsection (20), removing the word “Court” as the custodian of the videorecorded statement, and adding “Department of Human Services” as the custodian of the videorecorded statement. The motion was unanimously approved.

Janeice Morrow will circulate position report to co-chairs.

f. [SB 1295](#) (Schuitmaker) **Probation Records**

Law enforcement, other; Law enforcement, records; Criminal procedure, probation. Law enforcement; other; certain records of probation to be provided to the Michigan commission on law enforcement standards; require. Amends sec. 7411 of 1978 PA 368 (MCL 333.7411).

Status: 09/20/12 Referred to Senate Judiciary

Liaison: James W. Heath

A motion was made and seconded to submit no position based on the lack of Keller permissibility. The motion passed with one abstention.

3. Reports

a. Criminal Law Section

No report was provided.

b. Eyewitness Task Force – Peter Cunningham

The Eyewitness Identification Task Force has been meeting through the summer. They have divided into four subcommittees (Law Enforcement Best Practices, Prosecutor Best Practices, Legislative Exploratory Subcommittee, and Jury Instructions). Their work is ongoing.

c. Indigent Defense Advisory Commission – Peter Cunningham

HB 5804 is the product of this Commission. The bill is out of House Judiciary and currently on House floor. The bill creates a commission that is made up of appointments. The Commission is charged with promulgating standards. The funding aspect of the bill says that counties would have to spend what they are currently spending and state would provide additional funding to meet Commission standards with warning that they would have to meet threshold before state would contribute. Votes are in the House to go out as is. Senate has already had a meeting. The Supreme Court and SCAO support.

g. Custodial Interrogation Recording Legislation SB 152 – Peter Cunningham

The bill has already passed the Senate – SBM people testified yesterday in support of bill. Additionally, prosecutors support the bill. One technical issue – House Judiciary is expected to vote on Nov 8.

2. Future Meetings.

a. Meeting Locations and Video Conferencing

Co-chair Derks informed the Committee that her firm, Foster Swift, has video conferencing capabilities if members would like to consider this alternative meeting arrangement in the future. Otherwise, the Committee will continue to meet at the Bar in person. The members approved the meeting schedule that was set (third Thursday of each the month – 1:00 – 3:00 PM).

Janeice Morrow will circulate the meeting schedule for the year.

3. The meeting adjourned at 2:55 PM.