

**State Bar of Michigan
Criminal Jurisprudence and Practice Committee
Thursday, December 12, 2013 – 1 to 3 PM
State Bar of Michigan Building, 306 Townsend Street, Lansing, MI**

MINUTES

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

Advisor: Donna McKneelen

SBM Staff: Peter Cunningham, Carrie Sharlow

1. Call to Order & Welcome – The meeting was call to order at 1:02 PM.
2. Meeting Minutes from November 14, 2013 meeting – The minutes were unanimously adopted.
3. Old Business
 - a. [SB 0633](#) (Caswell) Traffic control, other; Traffic control, driver license; State agencies (existing), state; State agencies (existing), treasury. Traffic control; other; option of community service in lieu of payment of driver responsibility fees; allow in certain circumstances. Amends sec. 732a of 1949 PA 300 (MCL 257.732a) & adds sec. 732b.

The bill was removed from the agenda as not Keller permissible.

4. New Business
 - a. [HB 5012](#) (Kowall) Crimes; prostitution; minors engaged in prostitution; create presumption of coercion under certain circumstances. Amends sec. 451 of 1931 PA 328 (MCL 750.451).

The committee voted unanimously to support the bill with recommended revisions. The committee appreciated the spirit of the bill, with the Department of Human Services getting involved in human trafficking cases. However, the statutory presumption is problematic. Therefore, the committee supports the bill with the removal of presumption and the addition of court adjudication before the transfer to the Department of Human Services for programs.

The bill is Keller permissible in its effect of the functioning of the court. Once you start talking about statutory presumptions, as in this bill, this removes the courts' discretion and the burden of proof.

- b. [HB 5127](#)(Geiss) Criminal procedure, sentencing; Education, financing; State agencies (existing), education. Criminal procedure; sentencing; assessment fee for conviction of a misdemeanor or felony; create, and earmark into a safe and secure schools fund. Amends sec. 1j, ch. IX of 1927 PA 175 (MCL 769.1j).

The committee voted unanimously to oppose the bill. First, it would be extremely time-consuming to determine to exact school district in which a crime was committed. Second, the administrative work involved in this collection is not cost-effective with the collection of one dollar.

The bill is Keller permissible in its effect of the functioning of the court, in the use of the court's administration for the collection of fees.

- c. Preliminary Examination
[HB 5154](#) (Leonard) Criminal procedure; preliminary examination; certain rules and procedures for conducting a preliminary examination; revise. Amends secs. 4, 7, 11a, 11b & 13, ch. VI of 1927 PA 175 (MCL 766.4 et seq.).

[HB 5155](#) (Walsh) Courts; district court; probable cause conferences in felony and misdemeanor cases; clarify district court's jurisdiction. Amends secs. 8311 & 8511 of 1961 PA 236 (MCL 600.8311 & 600.8511) & repeals sec. 2167 of 1961 PA 236 (MCL 600.2167).

The committee voted 11 to 1 with 1 abstention to support the proposed substitute bill of HB 5154 as drafted by the Criminal Defense Attorneys of Michigan and Criminal Law Section workgroup, which

- **Requires discovery**
- **Allows for no victim testimony, and**
- **Video testimony take at the preliminary examination is admissible at trial.**

This support is conditioned on the removal of the word “shall” in Section 1, Line 6 to “may” so that the requirement of the preliminary examination is permissible rather than mandatory.

The committee voted unanimously to support HB 5155 with the removal of Section 8511(H).

5. Reports

- a. Criminal Law Section –

The Section has been discussing HB 5154 and HB 5155.

- b. Indigent Defense –

There is nothing new to report.

6. Adjournment.