

## CRIMINAL LAW SECTION

Respectfully submits the following position on:

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HB 5383

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The Criminal Law Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Criminal Law Section only and is not the position of the State Bar of Michigan.

The State Bar's position on this matter is to oppose the bill because it limits judicial discretion and denies the presumption of innocence by denying bond, but support the provision that would allow experts to testify for bind over purposes via video.

The total membership of the Criminal Law Section is 2,186.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 27. The number who voted in favor to this position was 15. The number who voted opposed to this position was 5. The number who abstained was 1.

## Report on Public Policy Position

**Name of Section:**

Criminal Law Section

**Contact person:**

Stephen Gobbo

**E-Mail:**

[sgobbo@gobbolaw.com](mailto:sgobbo@gobbolaw.com)

**Bill Number:**

[HB 5383](#) (Lauwers) 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.).

**Date position was adopted:**

April 15, 2014

**Process used to take the ideological position:**

Position adopted after discussion and vote at a scheduled meeting.

**Number of members in the decision-making body:**

27

**Number who voted in favor and opposed to the position:**

15 Voted for position

5 Voted against position

1 Abstained from vote

6 Did not vote

**Position:**

Oppose and Amend

**Explanation of the position, including any recommended amendments:**

Opposition is based upon the position that reliability of equipment testing is not yet proven and there is still a pilot project in progress. The Council also voted to authorize Chair Hoort to draft a letter in opposition, with recommendations, to legislators and other interested parties. The motion for this passed on a vote of 19 in favor, 2 opposed, and 0 abstentions.

**The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.**

<http://legislature.mi.gov/doc.aspx?2013-HB-5383>

**FOR LEGISLATIVE ISSUES ONLY:**

This position falls within the following Keller-permissible category:

- The regulation and discipline of attorneys
- ✓ The improvement of the functioning of the courts
- The availability of legal services to society
- The regulation of attorney trust accounts
- The regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession.

**Keller-permissible explanation:**

This bill affects the functioning of the court in its limiting of judicial discretion; an example of this is that it ties the hands of the judge by requiring several conditions for bond release.