

CRIMINAL JURISPRUDENCE & PRACTICE COMMITTEE  
Respectfully submits the following position on:

\*

HB 5383

\*

The Criminal Jurisprudence & Practice Committee is comprised of members appointed by the President of the State Bar of Michigan.

The position expressed is that of the Criminal Jurisprudence & Practice Committee. The State Bar of Michigan has authorized the Criminal Jurisprudence & Practice Committee to advocate its position.

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 Jurisprudence & Practice Committee is 15.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 15. The number who voted in favor to this position was 9. The number who voted opposed to this position was 0.

## Report on Public Policy Position

### Name of Committee:

Criminal Jurisprudence and Practice

### Contact persons:

Nichole Jongsma Derks

J. Kevin McKay

### E-Mail/Phone:

[nderks@fosterswift.com](mailto:nderks@fosterswift.com)

[kevin.mckay@kentcountymi.gov](mailto:kevin.mckay@kentcountymi.gov)

### 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:

March 13, 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:

15

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

9 Voted for position

0 Voted against position

0 Abstained from vote

6 Did not vote

### Position:

Oppose

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

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 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.