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June 22, 2005

The Honorable John R. Pastor
State Representative
State Capitol
P.O. Box 30014
Lansing, MI 48909-7514

306 Townsend Street
Michael Franck Building
Lansing, MI
48933-2083

Re. HB 4163 Eluding a Police Officer

Dear Representative Pastor:

At its June 10, 2005 meeting, the Board of Commissioners unanimously voted to **oppose in principle**¹ HB 4163.

For your information, I have enclosed a public policy report submitted to the State Bar from its Criminal Jurisprudence and Practice Committee. Please note that the opinions expressed in the report are that of the Committee and not the State Bar.

I would be happy to discuss the State Bar's position in more detail. I can be reached directly at (517) 346-6375 or jwelch@mail.michbar.org.

Sincerely,



Janet Welch
General Counsel

CC. Nancy J. Diehl, President
John T. Berry, Executive Director
Martin P. Krohner, Co-Chair, Criminal Jurisprudence and Practice Committee
Valerie R. Newman, Co-Chair, Criminal Jurisprudence and Practice Committee
Nell Kuhnmuensch, Governmental Consultant Services, Inc.

¹ Definition of oppose in principle: Pending legislation that the State Bar opposes but is not the subject of active lobbying effort. The State Bar is on record on this position and will explain it upon request.



Report on Public Policy Position

Name of Committee:

Criminal Jurisprudence and Practice Committee

Contact Person:

Valerie Newman/Marty Krohner

Email:

valerie@sado.org; marty@mich.com

Bill Number:

HB 4163 (Pastor) Crimes; fleeing and eluding; fleeing or eluding a police officer; establish a mandatory minimum 2-year sentence. Amends sec. 479a of 1931 PA 328 (MCL 750.479a).

Date position was adopted:

3/17/05

Process used to take the ideological position:

Committee meeting

Number of members in the decision-making body:

10

Number who voted in favor and opposed to the position:

Unanimous vote in opposition to legislation

Position:

This legislation creates mandatory sentences for the crime of fleeing and eluding, which impinges upon judicial discretion at sentencing.

The text (may be provided by hyperlink) of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report:

<http://www.legislature.mi.gov/mileg.asp?page=getObject&objName=2005-HB-4163>

RECOMMEND STATE BAR ACTION ON THIS ISSUE:

Arguments for the position:

There is no need to create mandatory sentences for the crime of fleeing and eluding. There is no indication that the current sentencing scheme, which gives the court discretion within the context of the sentencing guidelines, provides insufficient penalties for those convicted of this crime.

Arguments against the position (if any):

None.

If the State Bar currently has a position on this subject matter, state the position, and an analysis of whether the recommended position and the current State Bar position are in conflict.

On June 10, 2005, the State Bar of Michigan unanimously voted to adopt a position of oppose in principle.

Fiscal implications of the recommended policy to the State Bar of Michigan:

None.

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 competence, and the integrity of the profession.

Keller-permissible explanation:

Judicial discretion in sentencing is an integral and vital component of a fair and just criminal justice system.