

p 517-346-6300

May 10, 2005

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The Honorable Tom Meyer  
State Representative  
State Capitol  
P.O. Box 30014  
Lansing, MI 48909-7514

306 Townsend Street

Michael Franck Building

Lansing, MI

48933-2083

**Re. HB 4213, HB 4214 and HB 4215 Juvenile Competency and Juvenile Alibi Defense**

Dear Representative Meyer:

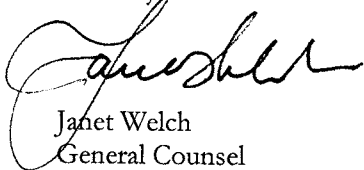
At its April 22, 2005 meeting, Board of Commissioners considered HB 4213, HB 4214 and HB 4215. After its consideration, the Board unanimously adopted the following positions supportive of the goals of this package:

- **Support in principle<sup>1</sup> the provisions of access to alibi and insanity defense to juveniles.**
- **Support in principle the mechanism to present those defenses to the trier-in-fact.**

For your information, I have enclosed public policy reports from the Judicial Conference and the Criminal Jurisprudence and Practice Committee. Please note that the opinions expressed in the reports are those of the Conference and Committee, and not of 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](mailto:jwelch@mail.michbar.org).

Sincerely,



Janet Welch  
General Counsel

CC. Nancy J. Diehl, President  
John T. Berry, Executive Director  
Hon. Kathryn J. Root, Chair, Judicial Conference  
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.

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<sup>1</sup> Definition of support in principle: pending legislation that the State Bar supports, but which 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 Section:**  
Judicial Conference

**Contact Person:**  
Judge Milton Mack

**Email:**  
mmack@wcpc.us

**Bill Number(s):**  
HB 4213 (Meyer) Juveniles; criminal procedure; forensic examinations of juveniles to determine competency; allow. Amends 1939 PA 288 (MCL 701.1 - 712A.32) by adding sec. 17e to ch. XIA.  
-TIE BAR WITH-  
HB 4214 (Meyer) Juveniles; criminal procedure; forensic examinations of juveniles to determine competency; allow. Amends secs. 1001a, 1020, 1022, 1024, 1026, 1028, 1030, 1031, 1032, 1034, 1036, 1038, 1040, 1042, 1044 & 1050 of 1974 PA 258 (MCL 330.2001a et seq.).  
-TIE BAR WITH-  
HB 4215 (Meyer) Juveniles; criminal procedure; provisions relating to the alibi defense; expand to include juveniles. Amends secs. 20, 20a, 21, 21a & 36, ch. VIII of 1927 PA 175 (MCL 768.20 et seq.)

**Date position was adopted:**  
March 11, 2005

**Process used to take the ideological position:**  
Proposed bills were e-mailed to all Probate Judges. The bills were then discussed at the regular meeting of the Executive Committee of the Judicial Conference.

**Number of members in the decision-making body:**  
27

**Number who voted in favor and opposed to the position:**  
16 yes  
0 no

**FOR SECTIONS ONLY:**

- ✓ This subject matter of this position is within the jurisdiction of the section.
- ✓ The position was adopted in accordance with the Section's bylaws.
- ✓ The requirements of SBM Bylaw Article VIII have been satisfied.

*If the boxes above are checked, SBM will notify the Section when this notice is received, at which time the Section may advocate the position.*

**Position:**

The Executive Committee of the Judicial Conference recommends that the State Bar support HB 4213, HB 4214 and HB 4215.

**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-4213>

<http://www.legislature.mi.gov/mileg.asp?page=getObject&objName=2005-HB-4214>

<http://www.legislature.mi.gov/mileg.asp?page=getObject&objName=2005-HB-4215>

**RECOMMEND STATE BAR ACTION ON THIS ISSUE:****Arguments for the position:**

The bills would create a uniform mechanism for making a competency determination, as well as treatment, where an issue has been raised as to whether a juvenile is competent to stand trial.

**Arguments against the position (if any):**

Addressing competency at the adjudicative phase of juvenile proceedings is the antithesis of the entire concept of the juvenile court. The recognition of the inherent incompetency of children is the hallmark of the juvenile court's existence. Competency should be considered at the dispositional phase. The bills, as drafted, do not make provision for sight and sound separation from adults who are also committed.

**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.**

As of April 22, 2005, the State Bar of Michigan's adopted the following positions supportive of the goals of this package:

- Support in principle the provisions of access to alibi and insanity defense to juveniles.
- Support in principle the mechanism to present those defenses to the trier-in-fact.

**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 competency, and the integrity of the profession.

**Keller-permissible explanation:**

The bills address the functioning of juvenile proceedings.



## 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 4213** (Meyer) Juveniles; criminal procedure; forensic examinations of juveniles to determine competency; allow. Amends 1939 PA 288 (MCL 701.1 - 712A.32) by adding sec. 17e to ch. XIIA.

-TIE BAR WITH-

**HB 4214** (Meyer) Juveniles; criminal procedure; forensic examinations of juveniles to determine competency; allow. Amends secs. 1001a, 1020, 1022, 1024, 1026, 1028, 1030, 1031, 1032, 1034, 1036, 1038, 1040, 1042, 1044 & 1050 of 1974 PA 258 (MCL 330.2001a et seq.).

-TIE BAR WITH-

**HB 4215** (Meyer) Juveniles; criminal procedure; provisions relating to the alibi defense; expand to include juveniles. Amends secs. 20, 20a, 21, 21a & 36, ch. VIII of 1927 PA 175 (MCL 768.20 et seq.)

**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 support

**Position:**

This bill gives the same protections to juveniles with mental health issues as already provided to adults in the criminal justice system.

**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&zobjName=2005-HB-4213>

<http://www.legislature.mi.gov/mileg.asp?page=getObject&zobjName=2005-HB-4214>

<http://www.legislature.mi.gov/mileg.asp?page=getObject&zobjName=2005-HB-4215>

## **RECOMMEND STATE BAR ACTION ON THIS ISSUE:**

### **Arguments for the position:**

Juveniles with mental health issues should have at least as much protection as adults.

### **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.**

As of April 22, 2005, the State Bar of Michigan's adopted the following positions supportive of the goals of this package:

- Support in principle the provisions of access to alibi and insanity defense to juveniles.
- Support in principle the mechanism to present those defenses to the trier-in-fact.

### **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 competency, and the integrity of the profession.**

### **Keller-permissible explanation:**

This directly affects the how the courts function in the treatment of juveniles.