

## **2023 Annual Report of the Criminal Law Committee of the Michigan Judges Association**

Co-Chairs: Kwame Rowe and Paul Stutesman

Members; Cori Barkman, Kathleen Brickley, Thomas C. Cameron, Jason Elmore, Cynthia Lane, James Maceroni, Annette Rose Smedley, Manvel Trice.

The Criminal Law Committee reviews all proposed bills that relate to crimes and criminal procedure. MJA has a long-standing policy to not comment on whether a proposed statute is a good or bad idea. We only look for whether it will influence our work or our discretion in handling our dockets. You will see that we took no position on most of the items we reviewed.

We have spent a large amount of time on proposed changes to bonds; the Red Flag laws; and the second look legislation. We have met with legislators and their staff with the help of Monica Martinez, the MJA hard working legislative liaison on all of the issues. We rarely get what we want but we are able to make our position known and have had success in getting certain changes in the proposed bills.

We meet on zoom at noon the Friday before the Executive Committee meets. We are blessed with hard working members and are always looking for anyone else who is interested. If you would like to join the committee, contact either of the Chairs of the Committee or the MJA President.

Below is a list of the proposed legislation we reviewed each month and a note as to the position we took.

### **January 2023**

- [HB 4006 of 2023](#)

Crimes: abortion; penalty for administering with intent to procure miscarriage; repeal. Repeals sec. 14 of 1931 PA 328 (MCL 750.14).

No position

- [SB 0022 of 2023](#)  
Aeronautics: airports; prohibition of weapons in a sterile area of an airport; clarify, and provide penalties.  
No position
- [HB 4024 of 2023](#)  
Criminal procedure: jurisdiction; venue for prosecution of delivery of a controlled substance causing death; modify. Amends sec. 317a of 1931 PA 328 (MCL 750.317a).  
Support
- [HB 4025 of 2023](#)  
Criminal procedure: jurisdiction; jurisdiction for prosecution for delivery of controlled substance causing death; modify. Amends 1927 PA 175 (MCL 760.1 - 777.69) & adds sec. 5a to ch. II.  
Support
- [HB 4031 of 2023](#)  
Corrections: other; reference to crime of administering drugs to procure miscarriage; remove to reflect repeal. Amends sec. 33b of 1953 PA 232 (MCL 791.233b).  
No position
- [HB 4032 of 2023](#)  
Criminal procedure: sentencing guidelines; reference to crime of administering drugs to procure miscarriage; remove to reflect repeal. Amends sec. 16a, ch. XVII of 1927 PA 175 (MCL 777.16a).  
No position

## **February 2023**

SB 0056- Adds gender neutral language to MCL 750.335 titled, "Lewd and lascivious cohabitation and gross lewdness." -No position

SB 1208 of 2022 – No position as it has already become law see PA 0272 of 2022

SB 0067- Amends MCL 750.90 titled, "Sexual Intercourse under pretext of medical treatment." Broadens language regarding sexual assaults in the medical field. Increases penalty from 10 years to up to 25 years under certain circumstances. No position.

SB 0068- Amends chapter index numbers, category, and class. No position.

SB 0073- Amends portion of the Freedom of Information Act. Specifically, adds two paragraphs that restrict discovery of information that would reveal the identity of a party who proceeds anonymously in a civil action in which the party alleges they were a victim of sexual misconduct. No position.

SB 0079- Amends MCL 28.435 by striking original section 15 and adds section 9. In general, section 9 makes it crime to leave a firearm unattended or accessible to minors. No position.

SB 0080- Amends code of criminal procedure index. No position.

SB 0068- Amends code of criminal procedure index. No position.

SB 0070- Amends code of criminal procedure index. No position.

SB 0072- Amends code of criminal procedure index. No position.

SB 0080- Amends code of criminal procedure index. No position.

SB 0085- Amends code of criminal procedure index. No position.

SB 00429- Amends the firearm statute. Changes language throughout from pistol to "firearm." Changes person to "individual." Does not change any

court process. No position.

SB 00419- Amends the firearm statute, which makes it a crime to not properly store firearm. No position.

SB 1558- Amends the Use tax act regarding notice requirements that exempts the sale of firearm safety devices from sales and use tax. No position.

## **March 2023**

- HB 4257: Amends MCL 750.136b, which is the child abuse statute. The proposal strikes definition of the words: “person”, “omission”, “physical harm”, “serious physical harm” and “serious mental harm.” The proposal add language that makes it illegal for a parent (or other legally responsible adult) to assist with a gender transition procedure for a child. It also adds the definition of “biological sex” and amends the definition of “child”. Nothing affects court process. **Recommend no action.**
- HB 4258: Amends MCL 769.12, which governs punishment for subsequent felony. The proposal does not involve court process and simply amends language making the statute more clear and concise. **Recommend no action.**
- HB 4259: Does not have any substantive changes. The proposal corrects a section number. **Recommend no action.**
- HB 4260: Does not involve court process. The proposal amends disciplinary time for prisoners and focuses on the parole board’s responsibilities. **Recommend no action.**
- HB 4162: Involves sentencing individuals, who were less than 19 years of age at the time of the violation, and who had the intent to kill or to cause serious impairment of body function of 2 or more individuals and the violation results in death, the person is guilty of a felony and shall be sentenced to a minimum of not less than 10 years or more than 60 years. **May need to discuss. The proposal creates**

**mandatory minimum of 10 years but conflicts with the penalty for 1<sup>st</sup> degree murder. This amendment takes away the discretion of the court to sentence individuals to life even when they have killed more than 1 person.**

- HB 4164: Amends the probate code. No substantive changes or court action. **Recommend no action.**
- HB 4155: Amends natural resources and environmental protection act. No changes to court action. **Recommend no action.**
- HB 4161: Like HB 4162. See above. **Recommend discussion.**
- HB 4160: Allows individuals, who were 19 years of age or younger and sentenced to life without parole to petition the parole board for early release. **Recommend discussion. It appears to invade the Court's sentence without giving the court an opportunity to weigh in.**
- HB 4173: "The criminal justice policy commission is created in the legislative council." In addition to other members, the commission will have one circuit court judge and one district court judge. **Recommend no action.**
- SB 120: Is like HB 4162 and 4161 as it relates to individuals 19 years of age or younger.
- SB 106: Amends the "partial-birth abortion ban act." The proposal does not change court process but changes possible penalties. **Recommend no action.**
- SB 107: Amends the code of criminal procedure index. **Recommend no action.**
- SB 108: Adds section 14a to MCL 750.1 to 750.568. No court process involved. **Recommend no action.**

- SB 109: Amends the code of criminal procedure index. **Recommend no action.**
- SB 110: Amends the “born alive infant protection act.” No court process involved. **Recommend no action.**
- SB 111: Amends the code of criminal procedure index. **Recommend no action.**
- SB 122: Has language like HB 4162 regarding individuals under age 19. See above. **Recommend discussion.**
- SB 123: Has language like HB 4162 regarding individuals under age 19. See above. **Recommend discussion.**
- HB 4139: Amends the code of criminal procedure index. **Recommend no action.**
- HB 4144: Amends MCL 28.435 by adding section 9, which makes it illegal to leave a firearm unattended around minors. Does not involve court process or change. **Recommend no action.**
- HB 4138: Amends and requires background checks for purchasing firearms. The proposal does not change any substantive court process and does not appear to directly affect the court. **Recommend no action.**
- HB 4252: Amends reporting requirements under the Michigan Vehicle Code. In general, the proposal changes “person” to “individual.” The proposal does not appear to add any additional requirements for the court, but appears to follow same court reporting requirements. **Recommend no action.**
- SB 80: Amends the code of criminal procedure index. **Recommend no action.**
- SB 85: Amends the code of criminal procedure index. **Recommend no action.**

- HB 4148: Amends the code of criminal procedure index. **Recommend no action.**

## April 2023

- HB 4302: Amends MCL 750.13 (enticing minor under 16) as well as certain provisions of CSC statues related to minors and marriage. Section 13 is amended to strike the words "... or marriage" from the statue. Further, would amend 520d, striking "... or if both persons are lawfully married to each other". There are other non-substantive changes that have nothing to do with court process. **Recommend no action.**
- SB 0204: Adds section 145h to MCL 750.1 to 750.568. The proposal makes it illegal to intentionally exploit a vulnerable adult in a manner that would cause the vulnerable adult to provide that person with sexually explicit visual material. **Recommend no action.**
- SB 0217: Is similar, if not identical, to HB 4302. The bill does not involve a change to court process. **Recommend no action.**
- HB 4320: Is similar, if not identical, to SB 0204. **Recommend no action.**
- HB 4321: Amends MCL 324.8905a (littering). The proposal increases the penalties for littering based upon the number of violations. The max penalty would still be a civil fine. The only change to court process is that the sentencing court must determine whether there is a subsequent violation (like habitual notices). **Recommend no action.**
- HB 4323: Amends MCL 750.1 to 750.568 by adding section 479d. Section 479d makes it illegal, after being instructed not to come within 21 feet of a patrol vehicle, for an individual to nevertheless approach the patrol vehicle. There is no court process involved. **Recommend no action.**

- HB 4325: Is similar, if not identical, to HB 4321. **Recommend no action.**
- HB 4339: Adds section 22b to MCL 750.1 to 750.568. Prevents the prosecuting attorney from amending a gun charge in a manner that would allow the individual to legally possess a firearm if a conviction for the amended charge would not prohibit the individual from possessing a firearm. **May want to discuss during committee meeting.**
- SB 0236: MCL 750.520a language adding gender neutral language. No substantive changes. **Recommend no action.**
- SB 0248: Amends MCL 600.2163a (support dogs in courtroom). It adds language that a person 16-years of age or older with a developmental disability is also eligible for support. It also takes away court discretion to provide support. For example, "the court **shall** permit the witness to use dolls or mannequins..." **May want to discuss during committee meeting.**
- SB 0257: Amends MCL 600.101 to 600.9947 by adding section 1429. The proposal makes it a requirement that if a court makes a video recording of a public court proceeding, then the court shall make the recording available for public access. The video recording must be made available within 10 days and continue to be available for at least 60 days after the recording was made. **May want to discuss during committee meeting.**
- HB 4384: Promulgates duties for the Michigan sentencing commission. Does not appear to change overall court process. **Recommend no action.**
- HB 4385: Amends MCL 324.1602 by adding section 1507. The proposal makes it illegal for an employee of the department (not sure which department) to enter into or upon private property and provides several exceptions. There are changes throughout the proposal, but none seem substantive, nor do they involve court process. **Recommend no action.**

- HB 4387: Amends the code of criminal procedure index. **Recommend no action.**
- HB 4400: Amends the code of criminal procedure index. **Recommend no action.**
- HB 4402: Amends the code of criminal procedure index. **Recommend no action.**
- **Second Look Legislation: Will discuss during committee meeting.**

## May 2023

- HB 4422: Adds threatening a department of health and human services' employee with physical harm and embezzlement from a vulnerable adult by amending sections 61 and 61a (MCL 780.811 and MCL 780.811a). Does not change court process. **Recommend no action.**
- SB 0263: Amends "Address confidentiality program act" adding kidnapping to the statute. Does not change court process. **Recommend no action.**
- SB 0264: Similar to 0263. **Recommend no action.**
- HB 4420: Amends "The code of criminal procedure" MCL 760.1 to 777.69, which would allow prosecutors and police officers to share personal identifying information to domestic or sexual violence service provider agencies. No court involvement. **Recommend no action.**
- HB 4423: Amends the Crime Victim's Rights Act. The proposal would allow victims to make victim impact statements remotely. **Recommend no action.**
- HB 4431: Amends sections 158 and 159 of the Michigan Penal Code. The proposal strikes the current title "Crime Against Nature or Sodomy" and amends the title to "Bestiality". The proposal strikes

certain language and adds language regarding bestiality. No court actions. **Recommend no action.**

- HB 4432: Amends MCL 28.243, which deals with maintaining fingerprint identification. The proposal does not substantively change the status of the law. **Recommend no action.**
- HB 4433: Amends the criminal code of procedure index. **Recommend no action.**
- HB 4442: Amends the criminal code of procedure index. **Recommend no action.**
- HB 4443: Amends the drunk driving statute (MCL 257.625). The proposal adds violations that result in property damage and the penalties thereto. **Recommend no action.**
- HB 4469: Amends section 5513 of MCL 600.5513. The proposal strikes the court ability to revoke a prisoner's disciplinary credit. It is unclear from the statute what disciplinary credit means. **Recommend no action.**
- HB 4453: Amends sections 13 and 41 of the Crime Victim's Right Act (MCL 780.763 and 780.791). The proposal requires the victim to be notified that a defendant may be eligible to earn productivity credits that could reduce a sentence of imprisonment. **May want to discuss in committee meeting.**
- HB 4468: Amends prisoner good time system. The proposal would strike an inmate's ability to receive disciplinary credit and has other proposed changes. **May want to discuss in committee meeting.**
- HB 4471: Amends the code of criminal procedure by amending MCL 769.12, .31 and MCL 777.17f. The proposal strikes disciplinary credit and has other non-substantive changes. **May want to discuss in committee meeting.**

- HB 4482: Amends MCL 600.5851b. The proposal allows victims of sexual assault to commence an action to recover damages 10 years after the time the claim accrues, the individual reaches the age of 52, or seven years after the date the individual discovers both the individual's **Recommend no action.**
- HB 4484: Amends MCL 600.6431 and 600.6452, which in general has to do with claims against the state. The proposal adds criminal sexual conduct to those claims that do not apply under the statute. **Recommend no action.**
- HB 4485: Amends statute of limitations for certain CSC violations. **Recommend no action.**
- HB 4488: Amends "Sexual assault victims' medical forensic intervention treatment act." The proposal does not involve court process and appears to give more rights to victims of sexual assault. **Recommend no action.**
- HB 4489: Amends the "Sexual assault kit evidence submission act." The proposal would require agencies to keep sexual assault kits for 20 years. It also imposes certain obligations on health care facilities. **Recommend no action.**
- HB 4490: Amends the public health code and imposes certain obligations on health care facilities. Does not involve court. **Recommend no action.**
- SB 311: Non-substantive changes to MCL 769.12, 777.11b, and 777.16m. **Recommend no action.**
- SB 312: Non-substantive changes to the "Corrections code of 1953." **Recommend no action.**
- HB 4522: Amends MCL 600.1082 by adding chapter 10d. The proposal would create a "Family treatment court." **May want to discuss but might be family law committee issue.**

- HB 4523: Amends MCL 600.1093. The proposal allows for violent offenders to be admitted into mental health court if the judge and prosecuting attorney (in consultation with the victim) agree. **Recommend no action.**
- HB 4524: The proposal allows the judge, in consultation with the treatment team and the agreement of the prosecuting attorney, to continue a participant's participation in drug treatment court if the defendant is convicted of a felony for an offense that occurred after admission into the program. **Recommend no action.**
- HB 4525: Like HB 4524. **Recommend no action.**
- HB 4516: Non-substantive changes to MCL 400.1501. **Recommend no action.**
- HB 4520: Amends MCL 750.81. The proposal adds health care professionals and medical volunteers as victims under the act. No court action needed. **Recommend no action.**
- HB 4521: Like HB 4520. **Recommend no action.**
- HB 4526: Amends the code of criminal procedure index. **Recommend no action.**
- HB 4535: Adds section 335b to MCL 750.1 to 750.568. The proposal makes it a crime for anyone over the age of 18 to send sexually explicit video/pictures to another individual over the age of 18 without consent. It also creates a civil cause of action for the same. **Recommend no action.**
- HB 4539: Amends the code of criminal procedure index. **Recommend no action.**
- HB 4540: Amends MCL 750.1 to 750.568 by adding section 135b, which makes it illegal to provide a puberty-blocking drug to a minor to delay or suppress pubertal development in that minor to assist that minor with a gender transition. Additionally, a person shall not

provide genital gender reassignment surgery to a minor. **Recommend no action.**

## June 2023

- HB 4559: Amends section MCL 333.17764 of the public health code. No substantive changes and no changes affect court process. **Recommend no action.**
- HB 4560: Amends several provisions of the penal code. Adds language regarding mandatory sentences. In short, mandatory sentence provided does not apply to resentencing conducted under sections 27a to 27h of chapter IX (proposed Second Look Legislation) of the code of criminal procedure. **Recommend no action.**
- HB 4556: Amends MCL 769.12 and 769.25 by adding sections 27a-h to chapter IX. Adds resentencing language which states, "This section does not apply to the resentencing of an individual under sections 27a to 27h of this chapter." Section 27a-27h adds language consistent with Second Look legislation. **Need to discuss.**
- HB 4558: Amends the Crime Victim's Right Act by amending sections 13 and 41 (MCL 780.763 and 780.791). Adds language regarding a victim's right to make an impact statement at a resentencing hearing under the proposed Second Look Legislation. **Recommend no action, subject to discussion regarding Second Look Legislation.**
- HB 4593: Amends MCL 324.40111a under the Natural Resources and Environmental Protection Act. A person may engage in wildlife and bird feeding only under certain conditions. No court action involved. **Recommend no action.**
- HB 4629: Amends the probate code to requiring a person or agency designated by the court to use a detention screening tool on the juvenile before juvenile detention. **Seems more appropriate for Family Law Committee. Recommend no action.**

- HB 4635: Amends the DNA Identification Profiling Systems Act. No substantive changes to current law. **Recommend no action.**
- HB 4655: Amends MCL 765.6 and 765.6a. Proposed language takes away the court's discretion to set a reasonable bond and entitles a criminal defendant to release on personal recognizance or bail that is not excessive. Courts will also have to make findings that the defendant poses a clear and convincing risk. Also adds requirement for courts or pretrial services to send defendants automated text or mail reminders for court appearances. **Need to discuss with criminal law committee.**
- HB 4656: Amends MCL 765.6b. Adds language regarding pretrial release. Some language restricts courts' ability to impose certain pretrial release conditions. **Need to discuss with criminal law committee.**
- HB 4657: Amends MCL 760.1 to 777.69 by adding sections 11 and 11a. The proposal requires the state court administrative office to create a pretrial services division. **Need to discuss with criminal law committee.**
- HB 4658: Amends pretrial release of misdemeanor prisoners by giving bond to the arresting officer in certain circumstances. **Recommend no action.**
- HB 4659: Repeals MCL 780.61 to 780.73 effective Jan 1, 2025, which governs pretrial release of those accused of traffic or misdemeanor offenses. **Recommend no action.**
- HB 4660: Amends sections MCL 257.311 and 257.727 of the Michigan Vehicle Code. No substantive changes. No change to court process. **Recommend no action.**
- HB 4661: Amends MCL 750.165. The amendment amends pretrial release related to spousal or child support arrearage. It strikes language regarding the court setting bond at not less than \$500 or

25% of the arrearage, whichever is greater and allows court to follow proposed bond amendment in section MCL 765.6. **Support.**

- HB 4662: Amends MCL 761.1 and 768.1. The proposal adds the definition of “absconding.” It defines absconding as willful intent to avoid or delay adjudication and creates a rebuttable presumption of absconding if more than 30 days have elapsed from the date of the defendant’s missed court appearance and defendant has failed to appear. Also, amends speedy trial language- A defendant must be tried, and a final determination of the charge must be made, not more than 18 months after arrest or the issuance of an appearance ticket (no exceptions for docket congestion). **May want to discuss with Committee.**
- HB 4690: Amends MCL 760.1 to 777.69. The proposal would require courts, if ordering a defendant to attend a treatment program as a part of a sentence, to inquire, on the record, if the defendant has objection to a religious element of that treatment program. If the defendant objects, then the proposal requires a court to identify a secular treatment program. **Discuss with criminal law committee.**
- HB 4696: Amends the Code of Criminal Procedure Index. **Recommend no action.**
- HB 4701: Amends the Code of Criminal Procedure Index. **Recommend no action.**
- SB 0368: Amends the Code of Criminal Procedure Index. **Recommend no action.**
- SB 0371: Amends the Code of Criminal Procedure Index. **Recommend no action.**
- SB 0376: Amends MCL 760.1 to 777.69 by adding section 34a to chapter IX. The proposal creates a Michigan sentencing commission in the legislative council. **Support.**

- SB 0377: Amends MCL 760.1 to 777.69 by adding section 34b to chapter IX. The proposal creates duties for the Michigan sentencing commission. **Recommend no action.**
- HB 4711: Amends MCL 769.12, 777.11b, and 777.16m. The proposal also amends the Code of Criminal Procedure Index. No substantive changes. **Recommend no action.**
- HB 4714: Amends MCL 791.233b. No substantive changes. **Recommend no action.**
- HB 4726: Amends the Code of Criminal Procedure Index. **Recommend no action.**
- HB 4738: Amend MCL 760.1 to 777.69 by adding section 40b. The proposal requires the prosecuting attorney to keep all personal information of a witness confidential unless the personal information is a part of the res gestae of the charge crime. On motion by the defendant, a court may order the personal information to be tendered. **Recommend no action.**
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- HB 4739: Is like HB 4738. **Recommend no action.**
- SB 0386: Amends the Code of Criminal Procedure Index. **Recommend no action.**