52nd Annual Report 2021-2022

Michigan Law Revision Commission

Term Members:

PETER B. RUDDELL,
Chair

ANTHONY DEREZINSKI,
Vice Chair

BRIAN A. LAVICTOIRE

AMY E. MURPHY

Legislative Members:

SENATOR STEPHANIE CHANG

SENATOR JIM RUNESTAD

REPRESENTATIVE RYAN BERMAN

REPRESENTATIVE KARA HOPE

Ex Officio Member:

JENNIFER DETTLOFF
Legislative Council Administrator

Boji Tower, 3rd Floor
124 West Allegan
P.O. Box 30036
Lansing, Michigan 48909-7536

JANE O. WILENSKY, *Executive Secretary*

Michigan
Law Revision Commission

FIFTY-SECOND ANNUAL REPORT
2021-2022

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LAW REVISION COMMISSION

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MICHIGAN LAW REVISION COMMISSION
FIFTY-SECOND ANNUAL REPORT TO THE LEGISLATURE
FOR CALENDAR YEARS 2021-2022

To the Members of the Michigan Legislature:

The Michigan Law Revision Commission presents its fifty-second annual report pursuant to section 403 of Act No. 268 of the Public Acts of 1986, MCL 4.1403.

The Commission, created by section 401 of Act No. 268 of the Public Acts of 1986, MCL 4.1401, consists of two members of the Senate, with one from the majority and one from the minority party, appointed by the Majority Leader of the Senate; two members of the House of Representatives, with one from the majority and one from the minority party, appointed by the Speaker of the House; the Director of the Legislative Service Bureau or his or her designee, who serves as an ex officio member; and four members appointed by the Legislative Council. The terms of the members appointed by the Legislative Council are staggered. The Legislative Council designates the Chair of the Commission. The Vice Chair is elected by the Commission.

Membership

The legislative members of the Commission during 2021-2022 were Senator Stephanie Chang of Detroit; Senator Jim Runestad of White Lake; Representative Ryan Berman of Commerce Township; and Representative Kara Hope of Holt. Legislative Council Administrator Jennifer Dettloff has been the ex officio member of the Commission since 2016. The appointed members of the Commission were Peter B. Ruddell, Anthony Derezinski, Brian A. LaVictoire, and Amy E. Murphy. Mr. Ruddell served as Chairperson and Mr. Derezinski served as Vice Chairperson. Jane O. Wilensky served as Executive Secretary. Brief biographies of the Commission members and staff are located at the end of this report.

The Commission's Work in 2021-2022

The Commission is charged by statute with the following duties:

- To examine the common law and statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and to recommend needed reform.
- To receive and consider proposed changes in law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, any bar association, and other learned bodies.
- To receive and consider suggestions from justices, judges, legislators and other public officials, lawyers, and the public generally as to defects and anachronisms in the law.
- To recommend such changes in the law as it deems necessary in order to modify or eliminate antiquated and inequitable rules of law, and to bring the civil and criminal law of this state into harmony with modern conditions.
- To encourage the faculty and students of the law schools of this state to participate in the work of the Commission.

- To cooperate with the law revision commissions of other states and Canadian provinces.
- To issue an annual report.

The problems to which the Commission directs its studies are largely identified through an examination by the Commission members and the Executive Secretary of the statutes and case law of Michigan, the reports of learned bodies and commissions from other jurisdictions, and legal literature. Other subjects are brought to the attention of the Commission by various organizations and individuals, including members of the Legislature.

The Commission's efforts have been devoted primarily to three areas. First, Commission members provided information to legislative committees related to various proposals previously recommended by the Commission. Second, the Commission examined suggested legislation proposed by various groups involved in law revision activity. These proposals included legislation advanced by the Council of State Governments, the National Conference of Commissioners on Uniform State Laws, and the law revision commissions of various jurisdictions within and outside the United States. Finally, the Commission considered various problems relating to special aspects of current Michigan law suggested by its own review of Michigan decisions and the recommendations of others.

As in previous years, the Commission studied various proposals that did not lead to legislative recommendations. In the case of certain uniform or model acts, the Commission sometimes found that the subjects treated had been considered by the Michigan Legislature in recent legislation and, therefore, did not recommend further action. In other instances, uniform or model acts were not pursued because similar legislation was currently pending before the Legislature upon the initiation of legislators having a special interest in the particular subject.

The Commission continues to operate with its sole staff member, the part-time Executive Secretary. The current Executive Secretary of the Commission is Jane O. Wilensky, who was responsible for the publication of this report. By using faculty members at several Michigan law schools as consultants and law students as researchers, the Commission has been able to operate on a budget substantially lower than that of similar commissions in other jurisdictions.

The Office of the Legislative Council Administrator handles the administrative functions and fiscal operations of the Commission under procedures established by the Legislative Council.

The Commission continues to welcome suggestions for improvement of its program and proposals.

Respectfully submitted,

Peter B. Ruddell, Chair
Anthony Derezinski, Vice Chair
Brian A. LaVictoire
Amy E. Murphy
Senator Stephanie Chang
Senator Jim Runestad
Representative Ryan Berman
Representative Kara Hope
Jennifer Dettloff

A RESOLUTION HONORING ANTHONY DEREZINSKI

Whereas, It is with great respect for his professional and personal commitment to the State of Michigan that we thank and honor Anthony Derezinski for his commitment to public service and for his service as a member of the Michigan Law Revision Commission since May 1986 and,

Whereas, Mr. Derezinski graduated from Muskegon Catholic Central High School, and attended Marquette University, earning a Juris Doctor degree from the University of Michigan Law School, and earning a Master of Laws degree from Harvard Law. As a distinguished attorney, he also was an instructor at The University of Michigan School of Education instructing in courses pertaining to various aspects of Education Law.

Whereas, Mr. Derezinski served as a Lieutenant in the Judge Advocate General's Corps in the United States Navy from 1968 to 1971 and as a military judge in the Republic of Vietnam. He is a member of the Veterans of Foreign Wars, Derezinski Post 7729, the American Legion Department of Michigan, and the Vietnam Veterans of America.

Whereas, Mr. Derezinski was elected to the State of Michigan Senate and served one term from 1975 to 1978 representing the Muskegon area. He served as a member of the Board of Regents of Eastern Michigan University for 14 years, and served on the Committee of Visitors of the University of Michigan Law School. He also served as a member to the Council of the Center for the Education of Women in Ann Arbor, Michigan, as well as served on the Foundation Board of the Hospice of Ann Arbor, Michigan. He also was elected in November of 2008 to serve as a Councilmember to the Ann Arbor City Council.

Whereas, as Vice Chair of the Michigan Law Revision Commission, Mr. Derezinski's experience and insights contributed to his outstanding service to the Commission. His keen understanding of administrative law and the operations of government as well as the legislative process positively influenced the Commission's work. He was instrumental in developing the Commission's Special Report on Sentencing Guidelines and Justice Reinvestment, helping to recommend legislation that would improve public safety in a cost-effective way. His dedication and commitment to public service earned the respect of his colleagues and is deeply appreciated; now, therefore, be it

Resolved by the membership of the Michigan Law Revision Commission, That we extend this expression of our respect and thanks to the Anthony Derezinski for his service to the State of Michigan; and be it further

Resolved, That a copy of this resolution be reprinted in the 2021-2022 Annual Report of the Michigan Law Revision Commission.

A RESOLUTION HONORING GEORGE E. WARD

Whereas, It is with great respect for his professional and personal commitment to the State of Michigan that we thank and honor George E. Ward for his commitment to public service and for his service as a member of the Michigan Law Revision Commission since August 1994 and,

Whereas, Mr. Ward graduated from Saints Peter and Paul High School in, Saginaw, the University of Detroit, and the University of Michigan Law School. Mr. Ward is married and the father of five children.

Whereas, Mr. Ward served as Chief Assistant Prosecuting Attorney in Wayne County in the administration of the Honorable John D. O'Hair. Prior to that, he was a clerk to a justice of the Michigan Supreme Court and in private civil practice for twenty years in the City of Detroit. He recently returned to private practice in Detroit.

Whereas, Mr. Ward serves as an Adjunct Professor at the Detroit College of Law at Michigan State University, Wayne State University Law School, University of Detroit Mercy Law School, and University of Michigan-Dearborn; a member of the Boards of Directors of Wayne Center and Wayne County Catholic Social Services; past President of the Incorporated Society of Irish American Lawyers; a former member and President of the Board of Control of Saginaw Valley State University; a former commissioner of the State Bar of Michigan; and a former commissioner and President of the Wayne County Home Rule Charter Commission.

Resolved by the membership of the Michigan Law Revision Commission, That we extend this expression of our respect and thanks to George E. Ward for his service to the State of Michigan; and be it further

Resolved, That a copy of this resolution be reprinted in the 2021-2022 Annual Report of the Michigan Law Revision Commission.

A RESOLUTION HONORING BRIAN LAVICTOIRE

Whereas, It is with great respect for his professional and personal commitment to the State of Michigan that we thank and honor Brian LaVictoire for his commitment to public service and for his service as a member of the Michigan Law Revision Commission since September 2018 and,

Whereas, Mr. LaVictoire graduated from Michigan State University's James Madison College with a B.A. in Political Theory and Constitutional Democracy, and graduated magna cum laude from Michigan State University College of Law and,

Whereas, Mr. LaVictoire served an Assistant Attorney General for the Michigan Department of Attorney General where his practice focused on advising the State regarding its administration of the various state retirement systems, and representing the State in all stages of litigation involving the systems. Mr. LaVictoire also represented the State in complex multimillion dollar construction contract litigation and,

Whereas, Mr. LaVictoire serves as Deputy General Counsel for Investments and Compliance for the Municipal Employees' Retirement System of Michigan (MERS) where he advises the organization on all legal matters pertaining to MERS' $11 billion portfolio, including reviewing, drafting and negotiating various contracts pertaining to MERS' investments in both public and private markets. Mr. LaVictoire also assists MERS in maintaining its compliance with applicable state and federal laws and regulations.

Resolved by the membership of the Michigan Law Revision Commission, That we extend this expression of our respect and thanks to Brian LaVictoire for his service to the State of Michigan; and be it further

Resolved, That a copy of this resolution be reprinted in the 2021-2022 Annual Report of the Michigan Law Revision Commission.

2021 REPORT ON RECENT COURT DECISIONS IDENTIFYING STATUTES FOR LEGISLATIVE ACTION AND RECOMMENDATIONS TO THE LEGISLATURE

As part of its statutory charge to examine recent judicial decisions to discover defects and anachronisms in the law and to recommend needed reforms, the Michigan Law Revision Commission undertook a review of Michigan Supreme Court and Court of Appeals decisions issues from January 1 through December 31, 2021 urging legislative action. That review identified two decisions for which the Commission recommends action, one decision for which the Commission makes no recommendation at this time, and six decisions for which the Commission makes no recommendation of specific legislative action.

The decisions examined by the Commission are:

1. ***County of Ingham v Michigan County Rd Commission Self-Insurance Pool,*** 2021 WL 6062290 (Mich. Dec. 21, 2021)
2. ***Sheffield v Detroit City Clerk***, 962 NW2d 157 (2021)
3. ***Rott v Rott,*** 2021 WL 3234466 (Mich. July 30, 2021)
4 ***In re: Seay***, 335 Mich App 715 (2021)
5. ***People v Boshell,*** 2021 WL 1931983 (Mich.App. May 13, 2021)
6. ***People v Johnson,*** 336 MichApp 688 (2021)
7. ***People v Proctor***, 2021 WL 2619693 (Mich.App. June 24, 2021)
8. ***Zaryski v Nigrelli***, 2021 WL 2600824 (Mich.App. June 24, 2021)
9. ***In re: N.R. Hockett,*** 339 Mich App 250 (2021)

1. Right of County Board of Commissioners to Receive Surplus Equity from the Michigan County Road Commission Self-Insurance Pool. *County of Ingham v Michigan County Rd Commission Self-Insurance Pool,* 2021 WL 6062290 (Mich. Dec. 21, 2021)

Background

Beginning in 1909, every county in Michigan had to have a county road system with a county road commission. 1909 PA 283, MCL 224.6. In 1982, the Municipal Corporations Act, MCL 124.1 *et seq.* was amended to allow any two or more municipal corporations to form a self-insurance pool to manage risk. MCL 124.5(1) as added by 1982 PA 138. Shortly thereafter, county road commissions formed such a pool. The contract creating the pool allowed excess funds to be redistributed to the member county road commissions. The contract permitted the pool's board of directors "to treat members who withdrew from future Trust Years differently and less favorably than they treat members who continue in the Trust for future years."

In 2012, the Legislature amended the County Road Law, MCL 224.1 *et seq.,* and the county board of commissions act, MCL 46.1 *et seq.,* to permit County Boards of Commissioners to dissolve their county road commissions and perform the duties of the dissolved road commissions. MCL 224.6(7), as amended by 2012 PA 14. Subsequently, the plaintiff counties exercised this right, dissolved their county road commissions and transferred power to their county boards of commissioners. The counties claimed they were entitled to surplus equity from the pool. After review of the relevant documents and agreements, the Supreme Court held that

the counties no longer qualified for membership in the self-insurance pool and were not entitled to a distribution of surplus equity.

Justice Viviano concurred with the majority but questioned whether the result was one the Legislature anticipated or desired. His particular concern was that "by exercising their statutory rights to dissolve their road commissions, these counties lost entitlement to funds they contributed to the Pool, but which were not used, i.e., the surplus equity." Reasoning that the funds lost represent overpayments made by taxpayers of the counties, Justice Viviano questioned whether "the Legislature in 2012 would have wanted to allow such punitive actions to be taken against counties for exercising their statutory right to dissolve their road commissions," and stated that the Legislature may wish to reexamine this issue in light of the Court's decision.

Question Presented
Should the Legislature provide circumstances under which a County Board of Commissioners may receive surplus equity distributions from the the Michigan County Road Commission Self-Insurance Pool?

Recommendation
The Commission recommends legislative review of this issue but makes no recommendation of specific legislative action.

2. The Role of the Governor in Reviewing New and Proposed Revisions to City Charters. *Sheffield v Detroit City Clerk, 9*62 NW2d 157 (2021)

Background
In 2018, Detroit residents adopted a proposal to revise the Detroit City Charter. A Charter Commission was established and a proposed revised charter was sent to the Governor in accordance with MCL 117.22, which provides that amendments to a city charter must be transmitted to the governor before being submitted to the electors. The Governor returned the proposed revised charter with comments and objections but without her signature. The statute describes what happens if the governor approves or disapproves a charter amendment, but does not address what happens if a proposed charter revision is returned without the governor's approval.

In an Order remanding the case to the circuit court, the Supreme Court ruled that the proposed revised charter could be submitted to Detroit voters. Justice Welch concurred and wrote separately to explain why she believes this is the correct result, adding in a footnote that if the Legislature disagrees with the Court's decision, it can enact more specific procedures governing the role of the Governor in reviewing new and proposed revisions to city charters.

Question Presented
Should the Legislature amend MCL 117.22 to provide procedures regarding the role of the Governor when reviewing new or proposed revisions to city charters?

Recommendation
The Commission recommends legislative review of this issue but makes no recommendation of specific legislative action.

3. Activities Covered by the Recreational Land Use Act. *Rott v Rott,* 2021 WL 3234466 (Mich. July 30, 2021)

Background
Plaintiff, Defendant's sister, was injured in her brother's backyard after riding on a zip-line that her brother installed. The defendant raised the Recreational Land Use Act (RUA), MCL 324.73301(1), as a defense to negligence and premises liability claims. The Supreme Court held that zip-lining is not an activity covered by the RUA.

MCL 324.73301(1) provided:

> Except as otherwise provided in the section, a cause of action shall not arise for injuries to a person who is on the land of another without paying to the owner, tenant, or lessee of the land a valuable consideration *for the purpose of* fishing, hunting, trapping, camping, hiking, sightseeing, motorcycling, snowmobiling, *or any other outdoor recreational use* or trail use, with or without permission, against the owner, tenant, or lessee of the land unless the injuries were caused by the gross negligence or willful and wanton misconduct of the owner, tenant, or lessee. (emphasis added).

Examining the phrase "for the purpose of" and the meaning of the catchall phrase "any other outdoor recreational use," the Court reasoned that two characteristics must exist for an activity to qualify as "any other outdoor recreational use" under the RUA. First, the activity could traditionally only be performed outdoors. Second, the activity requires only access to the land to enjoy. Because zip-lining involved the installation of zip-lining equipment, and cannot be performed without modifications or enhancements to the land, it does not require only access to the land. Accordingly, the Court held that zip-lining is not an activity covered by the RUA. In a footnote in the majority opinion, the Court suggests that "future cases may be more difficult to resolve than this one, and it may be beneficial for the Legislature to revisit the RUA to clarify the intended scope of the statute."

Question Presented
Should the Legislature clarify the criteria for activities covered by the Recreational Land Use Act?

Recommendation
The Commission recommends legislative review of this issue but makes no recommendation of specific legislative action.

4. Personal Jurisdiction When a Person Commits a Crime while a Juvenile but Proceedings Are Not Initiated Until the Person is an Adult. *In re: Seay,* 335 Mich App 715 (2021)

Background
The State filed a petition in the family division of circuit court alleging that respondent, then 24, committed second-degree criminal sexual conduct when he was a minor, aged 15 or 16. On the same day, the State also filed a motion asking the family division to waive jurisdiction to the circuit court so the respondent could be tried as an adult. The referee recommended that the family division not authorize the petition and dismiss the case, concluding that the family court

lacked jurisdiction because the respondent was 24 when the petition was filed. The family division agreed and dismissed the case.

In a *per curiam* opinion, the Court of Appeals reversed the decision, and remanded the case to the family division to determine whether to authorize the petition and hold a waiver hearing. The Court adopted the reasoning of *People v Schneider*, 119 MichApp 480 (1982), which holds that without regard to the defendant's age at the time of transfer, the probate court has jurisdiction for the limited purpose of holding a waiver hearing to the criminal court.

The court noted that statutes and caselaw governing jurisdiction of a person who allegedly commits a criminal act while a juvenile but is not charged for those acts until after the person is 18 does not directly address the circumstances in this case because those procedures address situations in which criminal proceedings have been initiated in circuit court and it is then determined that the crime was committed when the person was a juvenile. See MCL 712A.3 and MCL 712A.4.

Judge Letica concurred with the result and wrote separately, noting that "although I am also persuaded by the reasoning of the majority in *People v Schneider*…., I would invite the Legislature to address this situation." Judge Letica cited two cases, *In re Fultz*, 211 MichApp at 313, and *In re Matson*, unpublished *per curiam* opinion of the Court of Appeals, in which the courts also invited the Legislature to address the factors to be considered when a person allegedly commits a crime while a juvenile but criminal proceedings are not begun until the person is an adult.

Question Presented
Should the Legislature clarify the factors to be considered in determining the court's jurisdiction for a person who allegedly commits a crime while a juvenile but criminal proceedings are not initiated until the person is an adult?

Recommendation
The Commission recommends legislative review of this issue but makes no recommendation of specific legislative action.

5. Providing an Interlocutory Appeal for Challenges to Venue in Criminal Proceedings. *People v Boshell*, 2021 WL 1931983 (Mich.App. May 13, 2021)

Background
Defendant was tried in Macomb County for two different cases that were consolidated for jury trial. In one, defendant was convicted of assault with intent to commit murder, felony in possession of a firearm, carrying a weapon with unlawful intent, and three other counts. These crimes were committed in Lapeer County. In the second, defendant was convicted of first-degree premeditated murder, assault of a pregnant individual causing a miscarriage or stillbirth, and two counts of felony-firearm. These crimes were committed in Macomb County.

One of defendant's arguments on appeal was that his convictions for the crimes committed in Lapeer County should be vacated because venue in Macomb County was improper. The general rule is that defendants should be tried in the county where the crime was committed. The Legislature, however, may create exceptions to this general rule. The Court reviewed the

statutory exceptions found in MCL 762.8 and 762.9 in light of the facts of this case, and found that the the trial court abused its discretion when it denied defendant's motion to dismiss the Lapeer County charges on account of venue. However, because there was not a miscarriage of justice or denial of a constitutional right (See MCL 769.26 and MCL 600.1645), the error was harmless and the Court refused to disturb the convictions.

Judge Tukel concurred in the result but wrote separately to comment about venue challenges. In *People v Houthoofd*, 487 Mich 568 (2010), Justice Corrigan urged the Supreme Court or the Legislature to adopt a rule or statute that requires defendants to raise a venue issue by interlocutory appeal. *Id.* At 595. In most cases, improper venue will not result in a miscarriage of justice or constitutional error that would warrant reversal of a conviction, but, as demonstrated in this case and in *Houthoofd*, post-judgement challenges to claims of improper venue are effectively unreviewable. Justice Corrigan believed that codifying the requirement that venue challenges be made by interlocutory appeal would permit the effective resolution of claims of improper venue. Judge Tukel believes that the issue raised by Justice Corrigan is still not resolved, and urges the Supreme Court or the Legislature to provide a remedy by court rule or statute.

Question Presented
Should the Legislature provide an interlocutory appeal procedure for defendants in criminal proceedings to challenge the venue of the proceedings?

Recommendation
The Commission recommends legislative review of this issue but makes no recommendation of specific legislative action.

6. Court Imposed Fines under the Code of Criminal Procedure. *People v Johnson,* 2021 WL 1325360 (Mich.App. Apr. 8, 2021)

Background
This case raises a facial challenge to the constitutionality of MCL 769.1k(1)(b)(iii), which permits a trial court to impose court costs on a convicted defendant that are reasonably related to the actual costs incurred in processing a criminal case. The substance of defendant's argument is that the statute deprives criminal defendants of their due process right to appear before an impartial decision maker because the statute as written acts as an incentive for judges to convict criminal defendants and impose costs that raise revenues for the courts.

The Court of Appeals held that the statute is not unconstitutional on its face. In a footnote, the Court acknowledged that there has been a growing consensus that Michigan's court financing scheme needs legislative reform. The Court agreed with Chief Justice McCormack's concurrence in *People v Cameron*, 319 Mich App 215, 224 (2017), in which the Chief Justice expressed her concerns with the potential constitutional problems raised by the *amicus curiae* brief filed by the Michigan District Judges Association in that case. The Court also agreed with Justice McCormack that the Trial Court Funding Commission's Interim Report contained recommendations that could reduce the pressure that some judges have felt, concluding in the footnote in this case that "…we likewise urge the Legislature to take its recommendations seriously." (Note: *People v Cameron* was included in the 2019 Report on Recent Court

Decisions Identifying Statutes for Legislative Action in the Michigan Law Revision Commission 50th Annual Report, 2019, p.8.).

Question Presented
Should the Legislature review Michigan's scheme of court funding and consider the recommendations of the Trial Court Funding Commission?

Recommendation
The Commission again recognizes the importance of this issue and recommends that the Legislature review this issue and consider the recommendations in the Trial Court Funding Commission Final Report that was issued on September 6, 2019.

7. Updating the Enhanced Sentencing Provisions of MCL 750.81b to conform to amendments made in 2016 to the Provision of the Penal Code regarding Assault and Battery, MCL 750.81. *People v Proctor,* 2021 WL 2619693 (Mich.App. June 24, 2021)

Background
Defendant was charged with assault and battery of a domestic partner for assaulting his ex-girlfriend. MCL 750.81(2). The felony complaint included a "third offense notice," which stated that the defendant had two prior domestic violence convictions, and, therefore, would be subject to an enhanced sentence as provided in MCL 750.81(5). The prosecutor cited MCL 750.81b as the statutory authority for imposing an enhanced sentence. Defendant was convicted and sentenced as a domestic offender third offender. On appeal, defendant argued in part that MCL 750.81b does not apply in this case.

In an unpublished *per curiam* opinion, the Court of Appeals acknowledged that MCL 750.81b does not apply when the prosector seeks an enhanced sentence under MCL 750.81(5). MCL 750.81b provides that the section applies "in any case in which the prosecuting attorney seeks an enhanced sentence under section 81(3) or (4) or 81a(3)." The Court noted MCL 750.81 was amended in 2016 to add a subsection (3). 2016 PA 87. Before the amendment, the language now in subsection (5), providing an enhanced sentence for a third offense, was contained in subsection (4). The Court noted, "The Legislature failed to update MCL 81b in 2016, and has yet to do so. This was likely an oversight on the Legislature's part and should be remedied by legislative action."

Question Presented
Should the Legislature amend MCL 750.81b to conform to amendments made to MCL 750.81 in 2016 PA 87 that changed the number of the statutory section that provides an enhanced sentence for a third offense?

Recommendation
The Commission recommends that the Legislature amend MCL 750.81b to conform to the amendments in 2016 PA 87.

8. The Period to File an Affidavit of Merit in a Medical Malpractice Action while Other Challenges are Concurrently Being Pursued. *Zaryski v Nigrelli,* 2021 WL 2600824 (Mich.App. June 24, 2021)

Background
In this medical malpractice case, plaintiff failed to file an affidavit of merit (AOM) within 91 days of filing her complaint, MCL 600.2912d(3), arguing that defendants had erroneously denied access to her medical records in violation of MCL 600.2912b(5). The Court of Appeals rejected that argument, holding that plaintiff 's action was barred by the statute of limitations because of plaintiff's failure to file an AOM within the statutory period.

MCL 600.2912d(1) provides that an AOM signed by a health professional must be filed with a complaint alleging medical malpractice. Subsection (3), MCL 600.2912d(3) provides that if the defendant fails to allow access to medical records within a certain time period, plaintiff may file the AOM within 91 days of filing the complaint.

In this case, the parties were litigating the issue of whether defendant had denied access to plaintiff's medical records. The Court of Appeals held that MCL 600.2912d(3) contains no tolling language and, therefore, does not accommodate time spent litigating its application. The Court commented, "Although our ruling may seem unfair, we are merely applying the plain language of the statute, and it is up to the Legislature to potentially amend the statutory language in order to address the circumstances presented in this case and other scenarios."

Question Presented
Should the Legislature amend MCL 600.2912d(3) to toll the time to file an affidavit of merit if related litigation is ongoing during the statutory filing period?

Recommendation
The Commission recommends legislative review of this issue but makes no recommendation of specific legislative action.

9. *In re. N.R. Hockett,* 339 Mich App 250 (2021)

Background
This case involves an interpretation of MCL 712A.2(b), a provision of the Probate Code that grants jurisdiction to the trial court over juveniles under 18 years old. In this case, NRH had multiple mental health diagnoses. His mother refused to pick him up from the hospital because she was homeless and felt he needed more help with his mental health problems than she could give.

The statute provides in part that the trial court has jurisdiction when a parent "when able to do so, neglects or refuses to provide provide proper or necessary education, medical, surgical or other care necessary" for a child and further provides for jurisdiction when a "home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent…is an unfit place for a juvenile to live in." MCL 712A2(b).

The Court of Appeals affirmed the trial court's decision to exercise jurisdiction over NHR but acknowledged the extremely difficult position of the mother who had a child with significant

mental health issues and had no home. The Court wrote, "It is unfortunate that our statute uses the word 'unfit' to describe situations such as this." The Court noted that the underlying purpose of the statute is to protect children from an unfit homelife, which the Court did not feel was present in this case. The Court wrote: "Our concern is that this mother, who took desperate action to get care for her child, is now labeled 'unfit' and listed on a registry for persons who acted to harm their children when she, in fact, was seeking to protect her child." Believing that this is not an isolated situation, the Court stated that it "can only look to our policymakers for a resolution of this conundrum."

Question Presented

Should the Legislature amend MCL 712A.2(b) to address situations in which a parent who is unable to provide mental health services for a child but has not engaged in any active wrongdoing must give up custody of the child to obtain those services?

Recommendation

Brillian Bao, University of Michigan Law School student and Research Assistant for the Michigan Law Revision Commission, is preparing a report for the Commission that reviews statutes from other states and makes recommendations about statutory changes to address situations in which a parent must relinquish custody of a child to obtain mental health services. The Commission will review and consider that report before making a Recommendation in this case.

2022 REPORT ON RECENT COURT DECISIONS IDENTIFYING STATUTES FOR LEGISLATIVE ACTION AND RECOMMENDATIONS TO THE LEGISLATURE

As part of its statutory charge to examine recent judicial decisions to discover defects and anachronisms in the law and to recommend needed reforms, the Michigan Law Revision Commission undertook a review of Michigan Supreme Court and Court of Appeals decisions issued from January 1 through December 31, 2022 urging legislative action. That review identified three decisions for which the Commission recommends action, and six decisions for which the Commission makes no recommendation of specific legislative action.

The decisions examined by the Commission are:

1. ***Nienstedt v Sec'y of State,*** 980 NW2d 721 (Mich, Nov 4, 2022)
2. ***Davis v Highland Park City Clerk,*** 979 NW2d 202 (Mich, Sept 14, 2022)
3. ***Johnson v Bd of State Canvassers,*** 509 Mich 1015 (2022)
4 ***Promote the Vote 2022 v Bd of State Canvassers,*** 979 NW2d 188 (Mich, Sept 8, 2022)
5. ***Reproductive Freedom for All v Bd of State Canvassers,*** 978 NW2d 854 (Mich, Sept 8, 2022)
6. ***In re: Baby Boy Doe,*** 509 Mich 1056 (2022)
7. ***Macomb County Prosecutor v Macomb County Exec,*** 509 Mich 1098 (2022)
8. ***In re: Guardianship of Versalle,*** 509 Mich 961 (2022)
9. ***Jordan v Dept of Health and Human Services,*** 2022 WL 3007975, SC: 162485 (July 28, 2022)

1. Providing the Full Text of Proposed Constitutional Amendments to Voters Before Election Day. *Nienstedt v Sec'y of State,* 980 NW2d 721 (Mich, Nov 4, 2022).

Background

Under Michigan law, there is no requirement that voters receive a copy of the text of proposed constitutional amendments. In this case, plaintiff asked the court to order that the full text of all proposed amendments to the constitution be sent to absentee voters along with their absentee ballots.

The Supreme Court denied the request for superintending control. Justice Viviano concurred in the result but wrote separately to encourage the Legislature to devise a means to provide the full text of proposed amendments to voters. Michigan law currently provides that the full text of a proposed constitutional amendment must be included in petitions to place the amendment on the ballot. Const 1963, art XII, § 2; MCL 168.482(3). After that, a 100-word summary of the proposed amendment must appear on the ballot, Const 1963, art XII, § 2; copies of the text of the amendment must be posted "in conspicuous places in the room where the election is held." MCL 168.480; and the Secretary of State must post the language of the amendment online. MCL 168.483a(3). Believing that voters need the chance to read and consider the language that may govern them, Justice Viviano strongly encouraged the Legislature to require that "voters be provided with the full text of any proposed constitutional amendments or laws that they will be asked to vote upon."

Question Presented
Should the Legislature require that voters receive the full text of proposed constitutional amendments or laws that appear on the ballot?

Recommendation
The Commission recommends legislative review of this issue but makes no recommendation of specific legislative action.

2. Affidavit Requirements for Candidates Running for Nonpartisan Offices. *Davis v Highland Park City Clerk*, 979 NW2d 202 (Mich, Sept 14, 2022).

Background
Candidates nominated for a federal, state, county, city, township, or village office at a political party convention or caucus must file an affidavit of identity ("AOI") within one business day after being nominated. MCL 168.558(1). The AOI must include, among other things, "the candidate's political party or a statement indicating no party affiliation if the candidate is running without political party affiliation[.]" MCL 168.558(2). This case challenged the eligibility of a candidate for the office of mayor of Highland Park, an officially designated nonpartisan office, claiming that the affidavit was not filled out properly because it did not contain a statement that the candidate was running without party affiliation, and, therefore, was defective under MCL 168.558(2).

The case was decided on standing grounds, but the facts revealed confusion with various provisions of Michigan election law. In fact, numerous candidates for judicial office, which is nonpartisan, had their AOIs challenged and at least one was kept off the ballot as a result.

Justice Viviano concurred with the result but wrote separately to urge the Legislature to clarify two potential areas of confusion in the statute. First, it is redundant to require candidates for nonpartisan offices to state in the AOI that they are running without party affiliation because candidates running for nonpartisan offices are placed on the nonpartisan ballot, where no partisan designation is possible. Second, the statute raises questions about how candidates for the Michigan Supreme Court are to fill out their AOIs. Though the office is nonpartisan, MCL 168.590(3) suggests that candidates must comply with the requirements in MCL 168.558(2). But Const 1963, art VI, § 2 allows the names of incumbent justices to be placed on the ballot by simply filing an affidavit of candidacy. Because it is hard to reconcile the qualifying petition process with the requirements of the Constitution, Justice Viviano believes that, if the Legislature intended that the requirements for Supreme Court candidates differ from the requirements for other candidates for nonpartisan offices, the statutes should be amended to clarify that intent.

Question Presented
Should the Legislature amend MCL 168.558(2) and MCL 168.590 to clarify the affidavit requirements for candidates running for nonpartisan offices?

Recommendation

The Commission recommends legislative review of this issue but makes no recommendation of specific legislative action.

3. Amending Michigan Election Law to Provide More Time for Review by the Courts. *Johnson v Bd of State Canvassers,* 509 Mich 1015 (2022).

Background

Under MCL 168.53 and MCL 168.544f, nominating petitions for the office of Governor must include the signatures of at least 15,000 registered electors. Plaintiff submitted nominating petitions that included signatures of approximately 23,193 registered electors. The Bureau of Elections invalidated nearly 9,400 signatures because it was determined that the signatures were on fraudulent petition sheets. Plaintiff filed a writ of mandamus, which the Court of Appeals denied. The Supreme Court denied plaintiff's application for leave to appeal.

Justice Zahra concurred in the decision but wrote separately to urge the Legislature to amend Michigan Election Law, MCL 168.1 *et seq.*, to require that the process of filing petitions with the Bureau of Elections and consideration and determination by the Board of State Canvassers be started at least six weeks earlier in the election cycle than currently required. Election law cases have specific deadlines that are needed to facilitate the timely printing and distribution of ballots. In this case, there were only eight days between the Board's vote and the date the Supreme Court needed to decide the case. Justice Zahra noted that cases brought before the court can present complex questions of law, which may require extensive briefing and may not be able to be resolved in a matter of days. Setting earlier filing deadlines would give the judicial branch "a better opportunity to provide meaningful judicial review to those allegedly aggrieved" by decisions of the Bureau or Board.

Question Presented

Should the Legislature amend Michigan Election Law, MCL 168.1 *et seq.*, revise filing deadline for gubernatorial candidates?

Recommendation

The Commission recommends that the Legislature examine a bifurcated system of filing deadlines where petition candidates have an earlier filing deadline than fee only candidates.

4. Amending Michigan Election Law to Provide More Time for Review by the Courts. *Promote the Vote 2022 v Bd of State Canvassers,* 979 NW2d 188 (Mich, Sept 8, 2022).

Background

Plaintiffs sought a writ of mandamus to compel the Board of State Canvassers to certify their petition for the November general election ballot. The petition was challenged on the grounds that it failed to include all the constitutional provisions that would be abrogated by the proposed amendments as required by Const 1963, art XII, § 2 and MCL 168.482. The Supreme Court held that the proposed amendments would not abrogate any of the constitutional provisions identified and granted the writ.

Justice Zahra dissented and, again, urged the Legislature to amend Michigan election laws to provide more time between the certification of candidates and policy questions to be placed on

the general election ballot and the date by which the ballot must be finalized and sent for production so that the Court had ample time to conduct a meaningful review of such important questions.

Question Presented
Should the Legislature amend Michigan Election Law, MCL 168.1 *et seq.*, to provide more time for review by the courts?

Recommendation
The Commission recommends that the Legislature examine a bifurcated system of filing deadlines where petition candidates have an earlier filing deadline than fee only candidates.

5. Amending Michigan Election Law to Provide More Time for Review by the Courts. *Reproductive Freedom for All v Bd of State Canvassers,* 978 NW2d 854 (Mich, Sept 8, 2022).

Background

Plaintiffs sought a writ of mandamus to compel the Board of State Canvassers to certify their petition for the November general election ballot. The petition was challenged on the grounds that there was insufficient space between certain words of the text of the proposed amendment. The Supreme Court held that the full text of the proposed amendment complied with the requirements of MCL 168.482(3), and the alleged insufficient spacing did not change the meaning of the language of the amendment. The Court granted the writ of mandamus.

Justice Zahra dissented and, again, urged the Legislature to amend the election laws to require certification by the Board of State Canvassers at least six weeks before the affected ballot must be finalized. He wrote "The time in which this Court is called upon to act in such cases is woefully insufficient and dramatically impedes our ability to give full and complete consideration to the weighty and important questions that typically accompany these challenges."

Question Presented
Should the Legislature amend Michigan Election Law, MCL 168.1 *et seq.*, to provide more time for review by the courts?

Recommendation
The Commission recommends that the Legislature examine a bifurcated system of filing deadlines where petition candidates have an earlier filing deadline than fee only candidates.

6. The Rights of Nonsurrendering Parents under the Safe Delivery of Newborns Law. *In re: Baby Boy Doe,* 509 Mich 1056 (2022).

Background

This case involves the Safe Delivery of Newborns Law (SDNL), MCL 712.1 *et seq.* The issue was whether the petitioner's complaint for divorce and custody request for the unborn child constituted a petition for custody under the SDNL.

The SDNL encourages parents of unwanted newborn babies to deliver them to emergency services rather than abandoning them. The statute provides that an individual claiming to be the nonsurrendering parent of a newborn may file a petition with the court for custody "[n]ot later than 28 days after notice of the surrender of a newborn has been published." MCL 712.10(1). In this case, petitioner filed for divorce while his wife was pregnant, stating that he was uncertain that he was the father of the child and acknowledging that his wife intended to give the child up for adoption or surrender the child under the SDNL. The Supreme Court held that because petitioner's complaint for divorce was filed before the child's birth, the statutory requirement of the SDNL was not met.

Justice Zahra, joined by Justice McCormick, concurred in part and dissented in part but wrote separately to express his view that the SDNL raises significant constitutional concerns and is a "highly flawed law." The SDNL presumes the termination of a nonsurrendering parent's rights without any showing of parental unfitness, regardless of whether the nonsurrendering parent is a legal parent or putative parent. Because the SDNL does not distinguish between the greater rights possessed by legal parents from the lesser rights afforded a putative parent, Justice Zahra believes the SDNL is unconstitutional as applied to legal parents. Additionally, Justice Zahra notes issues with the ancillary goal of expediting adoption. While the state has a legitimate and important interest in protecting the health and safety of minors, the state interest is "largely satisfied simply by the placement of the child with a non parent." Placing the child in foster care, rather than rushing a child into adoption, would provide an adequate substitute procedural safeguard against constitutional concerns with the SDNL.

Justice Welch wrote separately to address other issues but also encouraged the Legislature to consider amending the statute to better ensure that the competing rights of all parties are safeguarded to the greatest degree possible.

Question Presented
Should the Legislature amend the Safe Delivery of Newborns Law, MCL 712.1 *et seq.* to consider the rights and interests of a nonsurrendering parent?

Recommendation
The Commission recommends legislative review of this issue but makes no recommendations of specific legislative action.

7. Standing to Challenge Municipal Budgeting Decisions. *Macomb County Prosecutor v Macomb County Exec,* 509 Mich 1098 (2022).

Background

This case involves an interpretation of a provision of the Uniform Budgeting and Accounting Act, MCL 141.421 *et seq.*. Under the Act, certain individuals have standing to challenge municipal budgeting decisions. MCL 141.438(6) provides, in part: "An elected official who heads a branch of county government or the chief judge of a court funded by a county has standing to bring suit against the chief administrative officer of that county concerning an action relating to the enforcement of a general appropriation act for that branch of county government or that court."

The question in this case was whether the Macomb County Prosecutor is considered an "elected official who heads a branch of county government" and, therefore, has standing to bring suit to direct the County Executive to disburse funds for additional positions in the Prosecutor's office. The Court of Appeals held that the Macomb County Prosecutor heads a "branch" of county government and, therefore, had standing to sue.

The Supreme Court denied defendant's Application for Leave to Appeal. Justice Viviano concurred but wrote separately because he believes the result is not intuitive in some respects so the Legislature may want to clarify the language of the statute. Justice Viviano believes the Court of Appeals reached the correct result but the arguments presented regarding the statutory interpretation lead to the conclusion that the statutory language at issue might benefit from being revisited by the Legislature.

Question Presented
Should the Legislature amend MCL 141.438(6) to clarify its intent regarding individuals who have standing to challenge municipal budgeting decisions?

Recommendation
The Commission recommends legislative review of this issue but makes no recommendation of specific legislative action.

8. Requiring Parental Presumption of Child's Best Interest in Certain Court Appointments of Guardians of Minors. *In re: Guardianship of Versalle,* 509 Mich 961 (2022).

Background

MCL 700.5204(2)(b) permits a court to create a guardianship when "[t]he parent or parents permit the minor to reside with another person and do not provide the other person with legal authority for the minor's care and maintenance, and the minor is not residing with with his or her parent or parents when the petition is filed."

In this case, petitioner filed for guardianship of her two granddaughters under MCL 700.5204(2)(b). Both children lived with their grandmother full time after respondent (their father) was evicted from his apartment. Respondent did not give petitioner any written legal authority to care for his children. The children lived with their grandmother when she filed the petition for guardianship. One month after filing, respondent moved the children from Michigan to Texas. The trial court granted the guardianships and the Court of Appeals affirmed. The Supreme Court denied respondent's application for leave to appeal.

Justice Welch concurred with the denial of leave, but wrote separately out of concern that even though facially valid, the statute presents a substantial risk of unconstitutional application. In *Troxel v Granville,* 530 US 57; 120 S Ct 2054; 147 L Ed 2d 49 (2000), the U.S. Supreme Court held that a Washington visitation statute violated the mother's fundamental right to make parenting decisions regarding her children. Justice Welch wrote that a statute can satisfy *Troxel* in two ways, either of which is sufficient: (1) by requiring a showing that a parent is unfit, or (2) by requiring a heightened showing that a parental act or decision is not in the child's best interest. In her view, while MCL 700.5204(2)(b) incorporates the first option closely enough to

survive a facial *Troxel* challenge, there are some cases where there is a gap between the statute's requirements and parental fitness. Justice Welch urged the Legislature to revise the statute to contain an express parental presumption like that in the Child Custody Act (CCA), MCL 722.21 *et seq.*, which requires a showing by clear and convincing evidence that custody with a parent is not in the child's best interests. While the presumption in the CCA is not the only one that can satisfy *Troxel*, Justice Welch believes that adopting a presumption like that would be a simple option for avoiding future cases in which a parent may be subject to a de facto termination of parental rights without the protections and services that termination proceedings entail.

Question Presented
Should the Legislature amend MCL 700.5204(2)(b) to require a showing by clear and convincing evidence that custody of a child with a parent is not in the child's best interest?

Recommendation
The Commission recommends legislative review of this issue but makes no recommendation of specific legislative action.

9. Amending the Michigan Worker's Disability Compensation Act to address situations involving long-term opioid treatment stemming from workplace injuries. *Jordan v Dep't of Health and Human Services, 2*022 WL 3007975, SC:162485 (July 28, 2022).

Background

Plaintiff was injured at work and prescribed opioid painkillers as part of her treatment. She developed a dependency on the painkillers, which she alleges rendered her unemployable. She began receiving benefits under the Michigan Worker's Disability Compensation Act (WDCA) MCL 418.101 *et seq.* Her benefits were later discontinued and she applied for reinstatement of her benefits. The Michigan Compensation Appellate Commission (MCAC) reversed the decision of a magistrate who held that plaintiff was ineligible for benefits. The Court of Appeals reversed the decision of the MCAC.

In a unanimous *per curiam* opinion, the Supreme Court held that the record was too incomplete to enable effective appellate review.

Justice Bernstein concurred but wrote separately to express his concern that "neither the language of the relevant statutes nor the language of the applicable administrative rules provides sufficient instruction on how to properly adjudicate this issue." In his view, this case "highlights a massive problem that has the potential to create a financial catastrophe for employees and employers alike" because the language of the WDCA does not make clear who should be responsible for wages due to long-term opioid treatment stemming from an initial workplace injury. He urged the Legislature to consider statutory solutions to balance the interests of both employers and employees affected by the crisis and provide further guidance about how costs should be allocated, especially since statutory language may not put anyone on notice of the true extent of this burden.

Question Presented

Should the Legislature amend provisions of the Worker's Disability Compensation Act, MCL 418.101 *et seq.* to address the responsibilities of parties in situations involving long-term opioid treatment stemming from workplace injuries?

Recommendation

The Commission recommends legislative review of this issue but makes no recommendation of specific legislative action.

2023 REPORT TO THE LEGISLATURE ON RECOMMENDATIONS FOR REVISIONS TO MICHIGAN'S FREEDOM OF INFORMATION ACT

In its 2017 Report to the Legislature on Recommendations for Revisions to the Michigan Freedom of Information Act ("FOIA"), the Michigan Law Revision Commission ("MLRC") recommended a number of updates to the FOIA. The MLRC decided to review that Report and determine whether those recommendations remained appropriate or whether additional or alternative recommendations were necessary. This Report contains the Commission's current recommendations for revisions to the FOIA.

I. Required Production of Public Records

Under MCL 15.235(2), a public body must respond to a request for information within 5 days of receiving it by granting the request, denying it, granting it in part and denying it in part, or by giving a written notice of an extension of up to 10 days.

As highlighted by the Court of Appeals decision in *Cramer v Village of Oakley,* 316 Mich App 60 (2016), the words "granted" and "fulfilled" are not synonymous. The FOIA does not contain a provision that requires a public body to "fulfill" or "produce" public records.

The 2017 MLRC Report recommended that the FOIA be amended to require a public body to fulfill a written request that the public body had granted. The 2017 Report recommended a time period of 5 days plus the optional 10 day extension to both grant and fulfill a written request.

2023 MLRC Recommendation: The public body is required to produce the public records in a reasonable amount of time as determined by the Legislature.

II. "Public Body" Definition

With regard to local public officials, MCL 15.232(h) (iii) defines public body as a " county, city, township, village, intercounty, intercity, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof."

The 2017 Report recommended amendments expanding the entities and individuals at the local government level who would be considered a "public body".

2023 MLRC Recommendation: Modification of the definition of public body to include elected officials and employees.

III. "Public Record" Definition

Under MCL 15.232(2)(i), a public record is "a writing prepared, owned, used, in the possession of or retained by a public body in the performance of an official function, from the time it is created."

The 2017 Report identified the issue of notes takes by a member of a public body in the exercise of an official public function.

2023 MLRC Recommendation: Modification of the definition of public record to records in the performance of official function — without limitation on possession, custody, control of the record or if the electronic device is partially or fully funded by a public body.

IV. "Writing" Definition

MCL 15.232(l) defines "writing" as "handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, hard drives, solid state storage components, or other means or recording or retaining meaningful content."

The 2017 Report recommended expanding the definition of writing to include other electronic storage methods, such as cloud storage.

2023 MLRC Recommendation: Modification of the definition of writing to include new storage methods.

V. Required Acknowledgement by Public Body

Written requests are increasingly being captured by spam filters in electronic submissions. A person who submits a request is unsure of the timing of the request and the public body's response requirements.

2023 MLRC Recommendation: Require the public body to acknowledge the written request within 1 business day of receiving the request.

VI. Reading Rooms

Public bodies often get numerous duplicate requests for information. Fulfilling several duplicate requests can be taxing on the time of public employees. The 2017 Report recommended the establishment of "reading rooms" similar those required under the Federal FOIA law in which certain responses must be posted on the government's website. The 2017 Report was general in nature on this particular item.

2023 Recommendation: Recommends establishment of reading rooms similar to the provisions of federal law. A state agency must publish public records on its official internet presence when the state agency determines either (1) the state agency will receive written requests for substantially the same information, or (2) the state agency receives 3 or more written requests for substantially the same information.

VII. Required Internet Posting

Similar to the issue of fulfillment, under MCL 15.241, state agencies are required to "publish" the following public records:

1. Final orders or decisions in contested cases and the records on which they were made.
2. Promulgated rules.

3. Other written statements that implement or interpret laws, rules, or policy, including but not limited to guidelines, manuals, and forms with instructions, adopted or used by the agency in the discharge of its functions.

However, there is no requirement that the state agency publish the material in a way that assures that citizens have easy access to the public records. Many of the public records identified above require a written request to obtain the records, which is contrary to the intent of this section of FOIA.

Some state agencies, such as the Department of Insurance and Financial Services post all the public records referenced above on the agency's official internet presence. However, many state agencies do not post this public information.

2023 Recommendation: A state agency must publish the above-referenced public records on its official internet presence in a way that assures citizens have easy access.

VIII. Oversight Body

The 2017 Report recommended the creation of a new state agency to oversee the application and administration of the FOIA law.

2023 Recommendation: The Commission recommends that the Legislature review the concept of an oversight body.

AN ACT to provide for public access to certain public records of public bodies; to permit certain fees; to prescribe the powers and duties of certain public officers and public bodies; to provide remedies and penalties; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

15.231 Short title; public policy.

Sec. 1.

(1) This act shall be known and may be cited as the "freedom of information act".

(2) It is the public policy of this state that all persons, except those persons incarcerated in state or local correctional facilities, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this act. The people shall be informed so that they may fully participate in the democratic process.

15.232 Definitions.

Sec. 2.

As used in this act:

(a) "Cybersecurity assessment" means an investigation undertaken by a person, governmental body, or other entity to identify vulnerabilities in cybersecurity plans.

(b) "Cybersecurity incident" includes, but is not limited to, a computer network intrusion or attempted intrusion; a breach of primary computer network controls; unauthorized access to programs, data, or information contained in a computer system; or actions by a third party that materially affect component performance or, because of impact to component systems, prevent normal computer system activities.

(c) "Cybersecurity plan" includes, but is not limited to, information about a person's information systems, network security, encryption, network mapping, access control, passwords, authentication practices, computer hardware or software, or response to cybersecurity incidents.

(d) "Cybersecurity vulnerability" means a deficiency within computer hardware or software, or within a computer network or information system, that could be exploited by unauthorized parties for use against an individual computer user or a computer network or information system.

(e) "Field name" means the label or identification of an element of a computer database that contains a specific item of information, and includes but is not limited to a subject heading such as a column header, data dictionary, or record layout.

(f) "FOIA coordinator" means either of the following:

(i) An individual who is a public body.

(ii) An individual designated by a public body in accordance with section 6 to accept and process requests for public records under this act.

(g) "Person" means an individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity. Person does not include an individual serving a sentence of imprisonment in a state or county correctional facility in this state or any other state, or in a federal correctional facility.

(h) "Public body" means any of the following:

(i) A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of the state government, but does not include the governor or lieutenant governor, the executive office of the governor or lieutenant governor, or employees thereof.

(ii) An agency, board, commission, or council in the legislative branch of the state government.

(iii) A county, city, township, village, intercounty, intercity, or regional governing body, council, school district, special district, or municipal corporation, **or any elected or appointed**

official, employee,[1] or a board, department, commission, council, **committee,** or agency thereof.

(iv) Any other body that is created by state or local authority or is primarily funded by or through state or local authority, except that the judiciary, including the office of the county clerk and its employees when acting in the capacity of clerk to the circuit court, is not included in the definition of public body.

(i) "Public record" means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, **and which remains in the possession custody or control of the public body without regard to its location** ~~**from the time it is created**~~. Public record does not include computer software**, but includes any records sent or retained by a public body's electronic information technology system or device which is owned by a public body or funded in whole or in part by a public body**.[2] This act separates public records into the following 2 classes:

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[1] MLRC 2017 Recommendation (modified) and Mackinac Center Recommendation in light of *Litkouhi v. Rochester Community Schools,* Oakland Circuit Court, December 15, 2022 and *Bisio v. City of the Village of Clarkson*, 506 Mich 57 (2020).

[2] MLRC 2017 Recommendation (modified) and Mackinac Center Recommendation in light of *Litkouhi v. Rochester Community Schools,* Oakland Circuit Court,

(i) Those that are exempt from disclosure under section 13.

(ii) All public records that are not exempt from disclosure under section 13 and that are subject to disclosure under this act.

( ) "Produce" means to provide requested records.

(j) "Software" means a set of statements or instructions that when incorporated in a machine usable medium is capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular function, task, or result. Software does not include computer-stored information or data, or a field name if disclosure of that field name does not violate a software license.

(k) "Unusual circumstances" means any 1 or a combination of the following, but only to the extent necessary for the proper processing of a request:

(i) The need to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct public records pursuant to a single request.

(ii) The need to collect the requested public records from numerous field offices, facilities, or other establishments which are located apart from the particular office receiving or processing the request.

December 15, 2022 and *Bisio v. City of the Village of Clarkson*, 506 Mich 57 (2020).

(l) "Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, hard drives, solid state storage components, **hybrid drives, cloud storage, quantum networks and computing systems**[3] or other means of recording or retaining meaningful content.

(m) "Written request" means a writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means.

15.233 Public records; request requirements; right to inspect, copy, or receive; subscriptions; forwarding requests; file; inspection and examination; memoranda or abstracts; rules; compilation, summary, or report of information; creation of new public record; certified copies.

Sec. 3.

(1) Except as expressly provided in section 13, upon providing a public body's FOIA coordinator with a written request that describes a public record sufficiently to enable the public body to find the public record, a person has a right to inspect, copy, or receive

[3] MLRC 2017 Recommendation

copies of the requested public record of the public body. A request from a person, other than an individual who qualifies as indigent under section 4(2)(a), must include the requesting person's complete name, address, and contact information, and, if the request is made by a person other than an individual, the complete name, address, and contact information of the person's agent who is an individual. An address must be written in compliance with United States Postal Service addressing standards. Contact information must include a valid telephone number or electronic mail address. A person has a right to subscribe to future issuances of public records that are created, issued, or disseminated on a regular basis. A subscription is valid for up to 6 months, at the request of the subscriber, and is renewable. An employee of a public body who receives a request for a public record shall promptly forward that request to the freedom of information act coordinator.

(2) A freedom of information act coordinator shall keep a copy of all written requests for public records on file for no less than 1 year.

(3) A public body shall furnish a requesting person a reasonable opportunity for inspection and examination of its public records, and shall furnish reasonable facilities for making memoranda or abstracts from its public records during the usual business hours. A public body may make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the

discharge of its functions. A public body shall protect public records from loss, unauthorized alteration, mutilation, or destruction.

(4) This act does not require a public body to make a compilation, summary, or report of information, except as required in section 11.

(5) This act does not require a public body to create a new public record, except as required in section 11, and to the extent required by this act for the furnishing of copies, or edited copies pursuant to section 14(1), of an already existing public record.

(6) The custodian of a public record shall, upon written request, furnish a requesting person a certified copy of a public record.

15.234 Fee; limitation on total fee; labor costs; establishment of procedures and guidelines; creation of written public summary; detailed itemization; availability of information on website; notification to requestor; deposit; failure to respond in timely manner; increased estimated fee deposit; deposit as fee; failure to pay or appeal deposit; request abandoned.

Sec. 4.

(1) A public body may charge a fee for a public record search, for the necessary copying of a public record for inspection, or for providing a copy of a public record if it has established, makes publicly available, and follows procedures and guidelines to implement this section as described in subsection (4). Subject to subsections (2), (3), (4), (5), and (9), the fee must be limited to actual mailing costs, and to the actual incremental cost of duplication or publication including labor, the cost of search, examination, review, and the deletion and separation of exempt from

nonexempt information as provided in section 14. Except as otherwise provided in this act, if the public body estimates or charges a fee in accordance with this act, the total fee must not exceed the sum of the following components:

(a) That portion of labor costs directly associated with the necessary searching for, locating, and examining of public records in conjunction with receiving and fulfilling a granted written request. The public body shall not charge more than the hourly wage of its lowest-paid employee capable of searching for, locating, and examining the public records in the particular instance regardless of whether that person is available or who actually performs the labor. Labor costs under this subdivision shall be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down.

(b) That portion of labor costs, including necessary review, if any, directly associated with the separating and deleting of exempt information from nonexempt information as provided in section 14. For services performed by an employee of the public body, the public body shall not charge more than the hourly wage of its lowest-paid employee capable of separating and deleting exempt information from nonexempt information in the particular instance as provided in section 14, regardless of whether that person is available or who actually performs the labor. If a public body does not employ a person capable of separating and deleting exempt information from nonexempt

information in the particular instance as provided in section 14 as determined by the public body's FOIA coordinator on a case-by-case basis, it may treat necessary contracted labor costs used for the separating and deleting of exempt information from nonexempt information in the same manner as employee labor costs when calculating charges under this subdivision if it clearly notes the name of the contracted person or firm on the detailed itemization described under subsection (4). Total labor costs calculated under this subdivision for contracted labor costs must not exceed an amount equal to 6 times the state minimum hourly wage rate determined under section 4 of the improved workforce opportunity wage act, 2018 PA 337, MCL 408.934. Labor costs under this subdivision shall be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down. A public body shall not charge for labor directly associated with redaction under section 14 if it knows or has reason to know that it previously redacted the public record in question and the redacted version is still in the public body's possession.

(c) For public records provided to the requestor on any form of nonpaper physical media, the actual and most reasonably economical cost of the nonpaper physical media. The requestor may stipulate that the public records be provided on nonpaper physical media, electronically mailed, or otherwise electronically provided to him or her in lieu of paper copies. This subdivision does not apply if a

public body lacks the technological capability necessary to provide records on the particular nonpaper physical media stipulated in the particular instance.

(d) For paper copies of public records provided to the requestor, the actual total incremental cost of necessary duplication or publication, not including labor. The cost of paper copies shall be calculated as a total cost per sheet of paper and shall be itemized and noted in a manner that expresses both the cost per sheet and the number of sheets provided. The fee must not exceed 10 cents per sheet of paper for copies of public records made on 8-1/2- by 11-inch paper or 8-1/2- by 14-inch paper. A public body shall utilize the most economical means available for making copies of public records, including using double-sided printing, if cost saving and available.

(e) The cost of labor directly associated with duplication or publication, including making paper copies, making digital copies, or transferring digital public records to be given to the requestor on nonpaper physical media or through the internet or other electronic means as stipulated by the requestor. The public body shall not charge more than the hourly wage of its lowest-paid employee capable of necessary duplication or publication in the particular instance, regardless of whether that person is available or who actually performs the labor. Labor costs under this subdivision may be estimated and charged in time increments of the public body's choosing; however, all partial time increments shall be rounded down.

(f) The actual cost of mailing, if any, for sending the public records in a reasonably economical and justifiable manner. The public body shall not charge more for expedited shipping or insurance unless specifically stipulated by the requestor, but may otherwise charge for the least expensive form of postal delivery confirmation when mailing public records.

(2) When calculating labor costs under subsection (1)(a), (b), or (e), fee components shall be itemized in a manner that expresses both the hourly wage and the number of hours charged. The public body may also add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits if it clearly notes the percentage multiplier used to account for benefits in the detailed itemization described in subsection (4). Subject to the 50% limitation, the public body shall not charge more than the actual cost of fringe benefits, and overtime wages shall not be used in calculating the cost of fringe benefits. Overtime wages shall not be included in the calculation of labor costs unless overtime is specifically stipulated by the requestor and clearly noted on the detailed itemization described in subsection (4). A search for a public record may be conducted or copies of public records may be furnished without charge or at a reduced charge if the public body determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public.

A public record search shall be made and a copy of a public record shall be furnished without charge for the first $20.00 of the fee for each request by either of the following:

(a) An individual who is entitled to information under this act and who submits an affidavit stating that the individual is indigent and receiving specific public assistance or, if not receiving public assistance, stating facts showing inability to pay the cost because of indigency. If the requestor is eligible for a requested discount, the public body shall fully note the discount on the detailed itemization described under subsection (4). If a requestor is ineligible for the discount, the public body shall inform the requestor specifically of the reason for ineligibility in the public body's written response. An individual is ineligible for this fee reduction if any of the following apply:

(i) The individual has previously received discounted copies of public records under this subsection from the same public body twice during that calendar year.

(ii) The individual requests the information in conjunction with outside parties who are offering or providing payment or other remuneration to the individual to make the request. A public body may require a statement by the requestor in the affidavit that the request is not being made in conjunction with outside parties in exchange for payment or other remuneration.

(b) A nonprofit organization formally designated by the state to carry out activities under subtitle C of the developmental disabilities assistance and bill of rights act of 2000, Public Law 106-402, and the protection and advocacy for individuals with mental illness act, Public Law 99-319, or their successors, if the request meets all of the following requirements:

(i) Is made directly on behalf of the organization or its clients.

(ii) Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the mental health code, 1974 PA 258, MCL 330.1931.

(iii) Is accompanied by documentation of its designation by the state, if requested by the public body.

(3) A fee as described in subsection (1) shall not be charged for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14 unless failure to charge a fee would result in unreasonably high costs to the public body because of the nature of the request in the particular instance, and the public body specifically identifies the nature of these unreasonably high costs.

(4) A public body shall establish procedures and guidelines to implement this act and shall create a written public summary of the specific procedures and guidelines relevant to the general public regarding how to submit written requests to the public body and explaining how to understand a public body's written responses,

deposit requirements, fee calculations, and avenues for challenge and appeal. The written public summary shall be written in a manner so as to be easily understood by the general public. If the public body directly or indirectly administers or maintains an official internet presence, it shall post and maintain the procedures and guidelines and its written public summary on its website. A public body shall make the procedures and guidelines publicly available by providing free copies of the procedures and guidelines and its written public summary both in the public body's response to a written request and upon request by visitors at the public body's office. A public body that posts and maintains procedures and guidelines and its written public summary on its website may include the website link to the documents in lieu of providing paper copies in its response to a written request. A public body's procedures and guidelines must include the use of a standard form for detailed itemization of any fee amount in its responses to written requests under this act. The detailed itemization must clearly list and explain the allowable charges for each of the 6 fee components listed under subsection (1) that compose the total fee used for estimating or charging purposes. Other public bodies may use a form created by the department of technology, management, and budget or create a form of their own that complies with this subsection. A public body that has not established procedures and guidelines, has not created a written public summary, or has not made those items publicly available without charge as

required in this subsection is not relieved of its duty to comply with any requirement of this act and shall not require deposits or charge fees otherwise permitted under this act until it is in compliance with this subsection. Notwithstanding this subsection and despite any law to the contrary, a public body's procedures and guidelines under this act are not exempt public records under section 13.

(5) If the public body directly or indirectly administers or maintains an official internet presence, any public records available to the general public on that internet site at the time the request is made are exempt from any charges under subsection (1)(b). If the FOIA coordinator knows or has reason to know that all or a portion of the requested information is available on its website, the public body shall notify the requestor in its written response that all or a portion of the requested information is available on its website. The written response, to the degree practicable in the specific instance, must include a specific webpage address where the requested information is available. On the detailed itemization described in subsection (4), the public body shall separate the requested public records that are available on its website from those that are not available on the website and shall inform the requestor of the additional charge to receive copies of the public records that are available on its website. If the public body has included the website address for a record in its written response to the requestor and the

requestor thereafter stipulates that the public record be provided to him or her in a paper format or other form as described under subsection (1)(c), the public body shall provide the public records in the specified format but may use a fringe benefit multiplier greater than the 50% limitation in subsection (2), not to exceed the actual costs of providing the information in the specified format.

(6) A public body may provide requested information available in public records without receipt of a written request.

(7) If a verbal request for information is for information that a public body believes is available on the public body's website, the public employee shall, where practicable and to the best of the public employee's knowledge, inform the requestor about the public body's pertinent website address.

(8) In either the public body's initial response or subsequent response as described under section 5(2)(d), the public body may require a good-faith deposit from the person requesting information before providing the public records to the requestor if the entire fee estimate or charge authorized under this section exceeds $50.00, based on a good-faith calculation of the total fee described in subsection (4). Subject to subsection (10), the deposit must not exceed 1/2 of the total estimated fee, and a public body's request for a deposit must include a detailed itemization as required under subsection (4). The response must also contain a best efforts estimate by the public body regarding the time frame it will take the public

body to comply with the law in providing the public records to the requestor. The time frame estimate is nonbinding upon the public body, but the public body shall provide the estimate in good faith and strive to be reasonably accurate and to provide the public records in a manner based on this state's public policy under section 1 and the nature of the request in the particular instance. If a public body does not respond in a timely manner as described under section 5(2), it is not relieved from its requirements to provide proper fee calculations and time frame estimates in any tardy responses. Providing an estimated time frame does not relieve a public body from any of the other requirements of this act.

(9) If a public body does not respond to a written request in a timely manner as required under section 5(2), the public body shall do the following:

(a) Reduce the charges for labor costs otherwise permitted under this section by 5% for each day the public body exceeds the time permitted under section 5(2) for a response to the request, with a maximum 50% reduction, if either of the following applies:

(i) The late response was willful and intentional.

(ii) The written request included language that conveyed a request for information within the first 250 words of the body of a letter, facsimile, electronic mail, or electronic mail attachment, or specifically included the words, characters, or abbreviations for "freedom of information", "information", "FOIA", "copy", or a

recognizable misspelling of such, or appropriate legal code reference for this act, on the front of an envelope, or in the subject line of an electronic mail, letter, or facsimile cover page.

(b) If a charge reduction is required under subdivision (a), fully note the charge reduction on the detailed itemization described under subsection (4).

(10) This section does not apply to public records prepared under an act or statute specifically authorizing the sale of those public records to the public, or if the amount of the fee for providing a copy of the public record is otherwise specifically provided by an act or statute.

(11) Subject to subsection (12), after a public body has granted and fulfilled a written request from an individual under this act, if the public body has not been paid in full the total amount under subsection (1) for the copies of public records that the public body made available to the individual as a result of that written request, the public body may require a deposit of up to 100% of the estimated fee before it begins a full public record search for any subsequent written request from that individual if all of the following apply:

(a) The final fee for the prior written request was not more than 105% of the estimated fee.

(b) The public records made available contained the information being sought in the prior written request and are still in the public body's possession.

(c) The public records were made available to the individual, subject to payment, within the time frame estimate described under subsection (8).

(d) Ninety days have passed since the public body notified the individual in writing that the public records were available for pickup or mailing.

(e) The individual is unable to show proof of prior payment to the public body.

(f) The public body calculates a detailed itemization, as required under subsection (4), that is the basis for the current written request's increased estimated fee deposit.

(12) A public body shall no longer require an increased estimated fee deposit from an individual as described under subsection (11) if any of the following apply:

(a) The individual is able to show proof of prior payment in full to the public body.

(b) The public body is subsequently paid in full for the applicable prior written request.

(c) Three hundred sixty-five days have passed since the individual made the written request for which full payment was not remitted to the public body.

(13) A deposit required by a public body under this act is a fee.

(14) If a deposit that is required under subsection (8) or (11) is not received by the public body within 45 days from receipt by the

requesting person of the notice that a deposit is required, and if the requesting person has not filed an appeal of the deposit amount pursuant to section 10a, the request shall be considered abandoned by the requesting person and the public body is no longer required to fulfill the request. Notice of a deposit requirement under subsection (8) or (11) is considered received 3 days after it is sent, regardless of the means of transmission. Notice of a deposit requirement under subsection (8) or (11) must include notice of the date by which the deposit must be received, which date is 48 days after the date the notice is sent.

15.235 Request to inspect or receive copy of public record; response to request; failure to respond; damages; contents of notice denying request; signing notice of denial; notice extending period of response; action by requesting person; law enforcement records management system; alternate responses.

Sec. 5.

(1) Except as provided in section 3, a person desiring to inspect or receive a copy of a public record shall make a written request for the public record to the FOIA coordinator of a public body. A written request made by facsimile, electronic mail, or other electronic transmission is not received by a public body's FOIA coordinator until 1 business day after the electronic transmission is made. However, if a written request is sent by electronic mail and delivered to the public body's spam or junk-mail folder, the request is not received until 1 day after the public body first becomes aware of the

written request. The public body shall note in its records both the time a written request is delivered to its spam or junk-mail folder and the time the public body first becomes aware of that request. **A public body must acknowledge, in writing, receipt of a written request no later than 1 business day after receiving the written request.**

(2) Unless otherwise agreed to in writing by the person making the request, a public body shall, subject to subsection (10), respond to a request for a public record within 5 business days after the public body receives the request by doing 1 of the following:

(a) Granting the request.

(b) Issuing a written notice to the requesting person denying the request.

(c) Granting the request in part and issuing a written notice to the requesting person denying the request in part.

(d) Issuing a notice extending for not more than 10 business days the period during which the public body shall respond to the request. A public body shall not issue more than 1 notice of extension for a particular request.

(3) A public body must produce all public records responsive to the written request, except the public records exempt under Section 13: [in a reasonable period of time and manner prescribed by the

Legislature].[4] [5] ~~Failure to respond to a request under subsection (2) constitutes a public body's final determination to deny the request if either of the following applies:~~

~~(a) The failure was willful and intentional.~~

~~(b) The written request included language that conveyed a request for information within the first 250 words of the body of a letter, facsimile, electronic mail, or electronic mail attachment, or specifically included the words, characters, or abbreviations for "freedom of information", "information", "FOIA", "copy", or a recognizable misspelling of such, or appropriate legal code reference to this act, on the front of an envelope or in the subject line of an electronic mail, letter, or facsimile cover page.~~

(4) In a civil action to compel a public body's disclosure of a public record under section 10, the court shall assess damages against the public body under section 10(7) if the court has done both of the following:

(a) Determined that the public body has not complied with subsection (2).

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[4] MLRC 2017 Recommendation (modified). The 2017 Recommendation required grant of the request and production within 5 or 15 days. Modification based on concern raised by the Attorney General in the March 1, 2022 letter.

(b) Ordered the public body to disclose or provide copies of all or a portion of the public record.

(5) A written notice denying a request for a public record in whole or in part is a public body's final determination to deny the request or portion of that request. The written notice must contain:

(a) An explanation of the basis under this act or other statute for the determination that the public record, or portion of that public record, is exempt from disclosure, if that is the reason for denying all or a portion of the request.

(b) A certificate that the public record does not exist under the name given by the requester or by another name reasonably known to the public body, if that is the reason for denying the request or a portion of the request.

(c) A description of a public record or information on a public record that is separated or deleted under section 14, if a separation or deletion is made.

(d) A full explanation of the requesting person's right to do either of the following:

(i) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the disclosure denial.

(ii) Seek judicial review of the denial under section 10.

(e) Notice of the right to receive attorneys' fees and damages as provided in section 10 if, after judicial review, the court determines

that the public body has not complied with this section and orders disclosure of all or a portion of a public record.

(6) The individual designated in section 6 as responsible for the denial of the request shall sign the written notice of denial.

(7) If a public body issues a notice extending the period for a response to the request, the notice must specify the reasons for the extension and the date by which the public body will do 1 of the following:

(a) Grant the request.

(b) Issue a written notice to the requesting person denying the request.

(c) Grant the request in part and issue a written notice to the requesting person denying the request in part.

(8) If a public body makes a final determination to deny in whole or in part a request to inspect or receive a copy of a public record or portion of that public record, the requesting person may do either of the following:

(a) Appeal the denial to the head of the public body under section 10.

(b) Commence a civil action, under section 10.

(9) Notwithstanding any other provision of this act to the contrary, a public body that maintains a law enforcement records management system and stores public records for another public body that subscribes to the law enforcement records management system is not

in possession of, retaining, or the custodian of, a public record stored on behalf of the subscribing public body. If the public body that maintains a law enforcement records management system receives a written request for a public record that is stored on behalf of a subscribing public body, the public body that maintains the law enforcement records management system shall, within 10 business days after receipt of the request, give written notice to the requesting person identifying the subscribing public body and stating that the requesting person shall submit the request to the subscribing public body. As used in this subsection, "law enforcement records management system" means a data storage system that may be used voluntarily by subscribers, including any subscribing public bodies, to share information and facilitate intergovernmental collaboration in the provision of law enforcement services.

(10) A person making a request under subsection (1) may stipulate that the public body's response under subsection (2) be electronically mailed, delivered by facsimile, or delivered by first-class mail. This subsection does not apply if the public body lacks the technological capability to provide an electronically mailed response.

15.236 FOIA coordinator.

Sec. 6.

(1) A public body that is a city, village, township, county, or state department, or under the control of a city, village, township, county, or state department, shall designate an individual as the public body's FOIA coordinator. The FOIA coordinator shall be responsible for accepting and processing requests for the public body's public records under this act and shall be responsible for approving a denial under section 5(4) and (5). In a county not having an executive form of government, the chairperson of the county board of commissioners is designated the FOIA coordinator for that county.

(2) For all other public bodies, the chief administrative officer of the respective public body is designated the public body's FOIA coordinator.

(3) An FOIA coordinator may designate another individual to act on his or her behalf in accepting and processing requests for the public body's public records, and in approving a denial under section 5(4) and (5).

15.240 Options by requesting person; appeal; actions by public body; receipt of written appeal; judicial review; civil action; venue; de novo proceeding; burden of proof; private view of public record; contempt; assignment of action or appeal for hearing, trial, or argument; attorneys' fees, costs, and disbursements; assessment of award; damages.

Sec. 10.

(1) If a public body makes a final determination to deny all or a portion of a request, the requesting person may do 1 of the following at his or her option:

(a) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial.

(b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, the court of claims, to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.

(2) Within 10 business days after receiving a written appeal pursuant to subsection (1)(a), the head of a public body shall do 1 of the following:

(a) Reverse the disclosure denial.

(b) Issue a written notice to the requesting person upholding the disclosure denial.

(c) Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.

(d) Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the head of the public body shall respond to the written appeal. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.

(3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under

subsection (1)(a). If the head of the public body fails to respond to a written appeal pursuant to subsection (2), or if the head of the public body upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing a civil action under subsection (1)(b).

(4) In an action commenced under subsection (1)(b), a court that determines a public record is not exempt from disclosure shall order the public body to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. Venue for an action against a local public body is proper in the circuit court for the county in which the public record or an office of the public body is located has venue over the action. The court shall determine the matter de novo and the burden is on the public body to sustain its denial. The court, on its own motion, may view the public record in controversy in private before reaching a decision. Failure to comply with an order of the court may be punished as contempt of court.

(5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(6) If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action

commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).

(7) If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the public body to pay a civil fine of $1,000.00, which shall be deposited into the general fund of the state treasury. The court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of $1,000.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

15.240a Fee in excess of amount permitted under procedures and guidelines or MCL 15.234.

Sec. 10a.

(1) If a public body requires a fee that exceeds the amount permitted under its publicly available procedures and guidelines or section 4, the requesting person may do any of the following:

(a) If the public body provides for fee appeals to the head of the public body in its publicly available procedures and guidelines, submit to the head of the public body a written appeal for a fee reduction that specifically states the word "appeal" and identifies how the required fee exceeds the amount permitted under the public body's available procedures and guidelines or section 4.

(b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, in the court of claims, for a fee reduction. The action must be filed within 45 days after receiving the notice of the required fee or a determination of an appeal to the head of a public body. If a civil action is commenced against the public body under this subdivision, the public body is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute. An action shall not be filed under this subdivision unless 1 of the following applies:

(i) The public body does not provide for appeals under subdivision (a).

(ii) The head of the public body failed to respond to a written appeal as required under subsection (2).

(iii) The head of the public body issued a determination to a written appeal as required under subsection (2).

(2) Within 10 business days after receiving a written appeal under subsection (1)(a), the head of a public body shall do 1 of the following:

(a) Waive the fee.

(b) Reduce the fee and issue a written determination to the requesting person indicating the specific basis under section 4 that supports the remaining fee. The determination shall include a certification from the head of the public body that the statements in the determination are accurate and that the reduced fee amount complies with its publicly available procedures and guidelines and section 4.

(c) Uphold the fee and issue a written determination to the requesting person indicating the specific basis under section 4 that supports the required fee. The determination shall include a certification from the head of the public body that the statements in the determination are accurate and that the fee amount complies with the public body's publicly available procedures and guidelines and section 4.

(d) Issue a notice extending for not more than 10 business days the period during which the head of the public body must respond to the written appeal. The notice of extension shall include a detailed reason or reasons why the extension is necessary. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.

(3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1)(a).

(4) In an action commenced under subsection (1)(b), a court that determines the public body required a fee that exceeds the amount permitted under its publicly available procedures and guidelines or section 4 shall reduce the fee to a permissible amount. Venue for an action against a local public body is proper in the circuit court for the county in which the public record or an office of the public body is located. The court shall determine the matter de novo, and the burden is on the public body to establish that the required fee complies with its publicly available procedures and guidelines and section 4. Failure to comply with an order of the court may be punished as contempt of court.

(5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(6) If the requesting person prevails in an action commenced under this section by receiving a reduction of 50% or more of the total fee, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The

award shall be assessed against the public body liable for damages under subsection (7).

(7) If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by charging an excessive fee, the court shall order the public body to pay a civil fine of $500.00, which shall be deposited in the general fund of the state treasury. The court may also award, in addition to any actual or compensatory damages, punitive damages in the amount of $500.00 to the person seeking the fee reduction. The fine and any damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

(8) As used in this section, "fee" means the total fee or any component of the total fee calculated under section 4, including any deposit.

15.240b Failure to comply with act; civil fine.

Sec. 10b.

If the court determines, in an action commenced under this act, that a public body willfully and intentionally failed to comply with this act or otherwise acted in bad faith, the court shall order the public body to pay, in addition to any other award or sanction, a civil fine of not less than $2,500.00 or more than $7,500.00 for each

occurrence. In determining the amount of the civil fine, the court shall consider the budget of the public body and whether the public body has previously been assessed penalties for violations of this act. The civil fine shall be deposited in the general fund of the state treasury.

15.241 Matters required to be published and made available by state agency; form of publications; effect of matter not published and made available; exception; action to compel compliance by state agency; order; attorneys' fees, costs, and disbursements; jurisdiction; definitions.

Sec. 11.

(1) A state agency ~~shall~~ **must** publish **on the state agency's official internet presence** and make available to the public all of the following:

(a) Final orders or decisions in contested cases and the records on which they were made.

(b) Promulgated rules.

(c) Other written statements that implement or interpret laws, rules, or policy, including but not limited to guidelines, manuals, and forms with instructions, adopted or used by the agency in the discharge of its functions.

(2) Publications may be in electronic format or in pamphlet, loose-leaf, or other appropriate form in printed, mimeographed, or other written matter.

(3) Except to the extent that a person has actual and timely notice of the terms thereof, a person is not required to resort to, and shall not be adversely affected by, a matter required to be published and made available, if the matter is not so published and made available.

(4) This section does not apply to public records that are exempt from disclosure under section 13.

(5) A person may commence an action in the court of claims to compel a state agency to comply with this section. If the court determines that the state agency has failed to comply, the court shall order the state agency to comply and shall award reasonable attorneys' fees, costs, and disbursements to the person commencing the action. The court of claims has exclusive jurisdiction to issue the order.

(6) As used in this section, "state agency", "contested case", and "rule" mean "agency", "contested case", and "rule" as those terms are defined in the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

[proposed] 15.242 State Agency Reading Rooms[6]

[6] MLRC 2017 Report Recommendation; modeled after 5 U.S.C. 552

A state agency must publish on the state agency's official internet presence all public records the state agency produced in response to a written request, which either:

(1) due the nature of the subject matter, the state agency determines have become or are likely to become the subject of subsequent written requests for substantially the same public record; or

(2) the state agency received a written request three or more times for substantially the same public record.

15.243 Exemptions from disclosure; public body as school district, intermediate school district, or public school academy; withholding of information required by law or in possession of executive office.

Sec. 13.

(1) A public body may exempt from disclosure as a public record under this act any of the following:

(a) Information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.

(b) Investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:

(i) Interfere with law enforcement proceedings.

(ii) Deprive a person of the right to a fair trial or impartial administrative adjudication.

(iii) Constitute an unwarranted invasion of personal privacy.

(iv) Disclose the identity of a confidential source, or if the record is compiled by a law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source.

(v) Disclose law enforcement investigative techniques or procedures.

(vi) Endanger the life or physical safety of law enforcement personnel.

(vii) Disclose the identity of a party who, as described in subdivision (cc), proceeds anonymously in a civil action in which the party alleges that the party was the victim of sexual misconduct. For the purpose of securing the party's anonymity, that party or the party's designee may provide written notification of the civil action and the party's wish to remain anonymous to any law enforcement agency that has investigating records subject to this subparagraph, and the law enforcement agency shall retain a copy of that notification in its files with those investigating records.

(c) A public record that if disclosed would prejudice a public body's ability to maintain the physical security of custodial or penal institutions occupied by persons arrested or convicted of a crime or admitted because of a mental disability, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.

(d) Records or information specifically described and exempted from disclosure by statute.[7]

(e) A public record or information described in this section that is furnished by the public body originally compiling, preparing, or receiving the record or information to a public officer or public body in connection with the performance of the duties of that public officer or public body, if the considerations originally giving rise to the exempt nature of the public record remain applicable.

(f) Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy if:

(i) The information is submitted upon a promise of confidentiality by the public body.

(ii) The promise of confidentiality is authorized by the chief administrative officer of the public body or by an elected official at the time the promise is made.

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[7] The Attorney General recommends modification to this section that would (1) require records described in this subsection be exempt from disclosure; and (2) expand the exemption to include regulations, including federal regulations, and not just statutes. See *American Civil Liberties Union of Michigan v Calhoun County Sheriff's Office*, 509 Mich 1 (2022).

(iii) A description of the information is recorded by the public body within a reasonable time after it has been submitted, maintained in a central place within the public body, and made available to a person upon request. This subdivision does not apply to information submitted as required by law or as a condition of receiving a governmental contract, license, or other benefit.

(g) Information or records subject to the attorney-client privilege.

(h) Information or records subject to the physician-patient privilege, the psychologist-patient privilege, the minister, priest, or Christian Science practitioner privilege, or other privilege recognized by statute or court rule.

(i) A bid or proposal by a person to enter into a contract or agreement, until the time for the public opening of bids or proposals, or if a public opening is not to be conducted, until the deadline for submission of bids or proposals has expired.

(j) Appraisals of real property to be acquired by the public body until either of the following occurs:

(i) An agreement is entered into.

(ii) Three years have elapsed since the making of the appraisal, unless litigation relative to the acquisition has not yet terminated.

(k) Test questions and answers, scoring keys, and other examination instruments or data used to administer a license, public employment,

or academic examination, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.

(l) Medical, counseling, or psychological facts or evaluations concerning an individual if the individual's identity would be revealed by a disclosure of those facts or evaluation, including protected health information, as defined in 45 CFR 160.103.

(m) Communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action. This exemption does not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure. This exemption does not constitute an exemption under state law for purposes of section 8(h) of the open meetings act, 1976 PA 267, MCL 15.268. As used in this subdivision, "determination of policy or action" includes a determination relating to collective bargaining, unless the public record is otherwise required to be made available under 1947 PA 336, MCL 423.201 to 423.217.

(n) Records of law enforcement communication codes, or plans for deployment of law enforcement personnel, that if disclosed would prejudice a public body's ability to protect the public safety unless the public interest in disclosure under this act outweighs the public interest in nondisclosure in the particular instance.

(o) Information that would reveal the exact location of archaeological sites. The department of natural resources may promulgate rules in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to provide for the disclosure of the location of archaeological sites for purposes relating to the preservation or scientific examination of sites.

(p) Testing data developed by a public body in determining whether bidders' products meet the specifications for purchase of those products by the public body, if disclosure of the data would reveal that only 1 bidder has met the specifications. This subdivision does not apply after 1 year has elapsed from the time the public body completes the testing.

(q) Academic transcripts of an institution of higher education established under section 5, 6, or 7 of article VIII of the state constitution of 1963, if the transcript pertains to a student who is delinquent in the payment of financial obligations to the institution.

(r) Records of a campaign committee including a committee that receives money from a state campaign fund.

(s) Unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance, public records of a law enforcement agency, the release of which would do any of the following:

(i) Identify or provide a means of identifying an informant.

(ii) Identify or provide a means of identifying a law enforcement undercover officer or agent or a plain clothes officer as a law enforcement officer or agent.

(iii) Disclose the personal address or telephone number of active or retired law enforcement officers or agents or a special skill that they may have.

(iv) Disclose the name, address, or telephone numbers of family members, relatives, children, or parents of active or retired law enforcement officers or agents.

(v) Disclose operational instructions for law enforcement officers or agents.

(vi) Reveal the contents of staff manuals provided for law enforcement officers or agents.

(vii) Endanger the life or safety of law enforcement officers or agents or their families, relatives, children, parents, or those who furnish information to law enforcement departments or agencies.

(viii) Identify or provide a means of identifying a person as a law enforcement officer, agent, or informant.

(ix) Disclose personnel records of law enforcement agencies.

(x) Identify or provide a means of identifying residences that law enforcement agencies are requested to check in the absence of their owners or tenants.

(t) Except as otherwise provided in this subdivision, records and information pertaining to an investigation or a compliance conference

conducted by the department under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, before a complaint is issued. This subdivision does not apply to records or information pertaining to 1 or more of the following:

(i) The fact that an allegation has been received and an investigation is being conducted, and the date the allegation was received.

(ii) The fact that an allegation was received by the department; the fact that the department did not issue a complaint for the allegation; and the fact that the allegation was dismissed.

(u) Records of a public body's security measures, including security plans, security codes and combinations, passwords, passes, keys, and security procedures, to the extent that the records relate to the ongoing security of the public body.

(v) Records or information relating to a civil action in which the requesting party and the public body are parties.

(w) Information or records that would disclose the Social Security number of an individual.

(x) Except as otherwise provided in this subdivision, an application for the position of president of an institution of higher education established under section 4, 5, or 6 of article VIII of the state constitution of 1963, materials submitted with such an application, letters of recommendation or references concerning an applicant, and records or information relating to the process of searching for and

selecting an individual for a position described in this subdivision, if the records or information could be used to identify a candidate for the position. However, after 1 or more individuals have been identified as finalists for a position described in this subdivision, this subdivision does not apply to a public record described in this subdivision, except a letter of recommendation or reference, to the extent that the public record relates to an individual identified as a finalist for the position.

(y) Records or information of measures designed to protect the security or safety of persons or property, or the confidentiality, integrity, or availability of information systems, whether public or private, including, but not limited to, building, public works, and public water supply designs to the extent that those designs relate to the ongoing security measures of a public body, capabilities and plans for responding to a violation of the Michigan anti-terrorism act, chapter LXXXIII-A of the Michigan penal code, 1931 PA 328, MCL 750.543a to 750.543z, emergency response plans, risk planning documents, threat assessments, domestic preparedness strategies, and cybersecurity plans, assessments, or vulnerabilities, unless disclosure would not impair a public body's ability to protect the security or safety of persons or property or unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance.

(z) Information that would identify or provide a means of identifying a person that may, as a result of disclosure of the information, become a victim of a cybersecurity incident or that would disclose a person's cybersecurity plans or cybersecurity-related practices, procedures, methods, results, organizational information system infrastructure, hardware, or software.

(aa) Research data on road and attendant infrastructure collected, measured, recorded, processed, or disseminated by a public agency or private entity, or information about software or hardware created or used by the private entity for such purposes.

(bb) Records or information that would reveal the specific location or GPS coordinates of game, including, but not limited to, records or information of the specific location or GPS coordinates of game obtained by the department of natural resources during any restoration, management, or research project conducted under section 40501 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.40501, or in connection with the expenditure of money under section 43553 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.43553. As used in this subdivision, "game" means that term as defined in section 40103 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.40103.

(cc) Information that would reveal the identity of a party who proceeds anonymously in a civil action in which the party alleges

that the party was the victim of sexual misconduct. As used in this subdivision, "sexual misconduct" means the conduct described in section 90, 136, 145a, 145b, 145c, 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.90, 750.136, 750.145a, 750.145b, 750.145c, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g, regardless of whether the conduct resulted in a criminal conviction.

(2) A public body shall exempt from disclosure information that, if released, would prevent the public body from complying with 20 USC 1232g, commonly referred to as the family educational rights and privacy act of 1974. A public body that is a local or intermediate school district or a public school academy shall exempt from disclosure directory information, as defined by 20 USC 1232g, commonly referred to as the family educational rights and privacy act of 1974, requested for the purpose of surveys, marketing, or solicitation, unless that public body determines that the use is consistent with the educational mission of the public body and beneficial to the affected students. A public body that is a local or intermediate school district or a public school academy may take steps to ensure that directory information disclosed under this subsection is not used, rented, or sold for the purpose of surveys, marketing, or solicitation. Before disclosing the directory information, a public body that is a local or intermediate school district or a public school academy may require the requestor to execute an affidavit

stating that directory information provided under this subsection will not be used, rented, or sold for the purpose of surveys, marketing, or solicitation.

(3) This act does not authorize the withholding of information otherwise required by law to be made available to the public or to a party in a contested case under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(4) Except as otherwise exempt under subsection (1), this act does not authorize the withholding of a public record in the possession of the executive office of the governor or lieutenant governor, or an employee of either executive office, if the public record is transferred to the executive office of the governor or lieutenant governor, or an employee of either executive office, after a request for the public record has been received by a state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of government that is subject to this act.

15.243a Salary records of employee or other official of institution of higher education, school district, intermediate school district, or community college available to public on request.

Sec. 13a.

Notwithstanding section 13, an institution of higher education established under section 5, 6, or 7 of article 8 of the state constitution of 1963; a school district as defined in section 6 of

Act No. 451 of the Public Acts of 1976, being section 380.6 of the Michigan Compiled Laws; an intermediate school district as defined in section 4 of Act No. 451 of the Public Acts of 1976, being section 380.4 of the Michigan Compiled Laws; or a community college established under Act No. 331 of the Public Acts of 1966, as amended, being sections 389.1 to 389.195 of the Michigan Compiled Laws shall upon request make available to the public the salary records of an employee or other official of the institution of higher education, school district, intermediate school district, or community college.

15.244 Separation of exempt and nonexempt material; design of public record; description of material exempted.

Sec. 14.

(1) If a public record contains material which is not exempt under section 13, as well as material which is exempt from disclosure under section 13, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying.

(2) When designing a public record, a public body shall, to the extent practicable, facilitate a separation of exempt from nonexempt information. If the separation is readily apparent to a person requesting to inspect or receive copies of the form, the public body shall generally describe the material exempted unless that description would reveal the contents of the exempt information and thus defeat the purpose of the exemption.

Sec. 15. [The Legislature shall review the concept of an Oversight Body to oversee the application and administration of FOIA, including an administrative appeal process.]

BIOGRAPHIES OF COMMISSION MEMBERS AND STAFF

PETER B. RUDDELL

Mr. Ruddell is Chair of the Michigan Law Revision Commission, appointed in 2021. Mr. Ruddell replaced Richard D. McLellan who held the role of Chair since 1986. Mr. Ruddell will be the fourth person to Chair the commission since its establishment in 1965.

Mr. Ruddell is the Government Relations and Regulatory Practice Group Co-Leader and Partner at Honigman LLP. Mr. Ruddell is an accomplished attorney and government relations advisor with more than two decades of experience around state government, public policy, and elections. He is widely recognized for his experience in representing clients with their health, insurance, education, and budget issues.

Among his many legislative accomplishments, he is highly regarded for his work in passing the Dr. Ron Davis Smoke-free Air Law, which made all Michigan restaurants, bars, and work sites smoke-free. He is sought after for his advice and guidance on complicated regulatory and legislative issues.

By appointment of the Speaker of the House, Mr. Ruddell serves as representative to the 21st Century Education Commission.

Mr. Ruddell served as an aide to a former Michigan Senate Majority Leader and served as campaign manager to three Michigan Supreme Court Justices.

Mr. Ruddell is a graduate of the Michigan State University College of Law, J. D. and is a member of the State Bar of Michigan.

ANTHONY DEREZINSKI

Mr. Derezinski is Vice Chairman of the Michigan Law Revision Commission, a position he has filled since May 1986 following his appointment as a public member of the Commission in January of that year.

Mr. Derezinski recently served for four years as a Councilmember of the Ann Arbor City Council to which he was elected in 2008. He was also an Instructor at the University of Michigan School of Education where he taught courses in various aspects of education law. He is the former Director of Government Relations for the Michigan Association of School Boards from which he retired in 2008. He also previously served as an adjunct professor of law at the University of Michigan Law School and at the Department of Education Administration of Michigan State University, and previously was a visiting professor of law at the Thomas M. Cooley Law School.

Mr. Derezinski served as a State Senator from 1975 to 1978. He was a member of the Board of Regents of Eastern Michigan University for 14 years, served on the Committee of Visitors of the University of Michigan Law School, and was a member of the Council of the Center for the Education of Women in Ann Arbor. He also served on the Foundation Board of Hospice of Ann Arbor and as a Judge and Chief Judge of the Michigan Military Appeals Tribunal. He currently serves on the Boards of Directors of Washtenaw Literacy and of the Evangelical Homes of Michigan Foundation.

He served as a Lieutenant in the Judge Advocate General's Corps in the United States Navy from 1968 to 1971 and as a military judge in the Republic of Vietnam. He is a member of the Veterans of Foreign

Wars, Derezinski Post 7729, the American Legion Department of Michigan, and the Vietnam Veterans of America. He is also a Life Member of the Harley Owners' Group.

He is a graduate of Muskegon Catholic Central High School, Marquette University, the University of Michigan Law School (Juris Doctor degree), and Harvard Law School (Master of Laws degree). He is married and resides in Ann Arbor, Michigan.

BRIAN A. LAVICTOIRE

Mr. LaVictoire is a public member of the Michigan Law Revision Commission and was appointed to the Commission in 2019. He is the Deputy General Counsel for Investments and Compliance for the Municipal Employees' Retirement System of Michigan (MERS). Mr. LaVictoire advises the organization on all legal matters pertaining to MERS' $11 billion portfolio, including reviewing, drafting and negotiating various contracts pertaining to MERS' investments in both public and private markets. Mr. LaVictoire also assists MERS in maintaining its compliance with applicable state and federal laws and regulations.

Before coming to MERS, Mr. LaVictoire was an Assistant Attorney General for the Michigan Department of Attorney General where his practice focused on advising the State regarding its administration of the various state retirement systems and representing the State in all stages of litigation involving the systems. He also represented the State in complex multi-million-dollar construction contract litigation.

Mr. LaVictoire was one of the founding attorneys of McLellan Law Offices, PLLC, a boutique law practice led by Richard McLellan, the former managing member of Dykema Gossett's Lansing Office and one of the most prominent and respected lawyers in Michigan.

Before earning his law degree, Brian worked in the Michigan Legislature as a caucus liaison and regional field representative for the House Republican Caucus under then-Speaker Craig DeRoche.

He graduated from Michigan State University's James Madison College with a B.A. in Political Theory & Constitutional Democracy, and graduated magna cum laude from Michigan State University College of Law.

Mr. LaVictoire is a member of the State Bar of Michigan, the Institutional Limited Partners Association, the Association of Corporate Counsel, as well as the National Association of Public Pension Attorneys.

He lives in DeWitt, Michigan with his wife, Jennifer, and their two boys, Carter and Emmett.

AMY E. MURPHY

Ms. Murphy is a public member of the Michigan Law Revision Commission, and was appointed in 2021. She is a member at Miller Johnson Attorneys where she practices as a litigator with an emphasis in complex civil, white collar, and appellate litigation. She has served as counsel in a variety of matters, including cases involving claims of breach of contract, breach of fiduciary duty, shareholder oppression, theft of trade secrets, violation of noncompetition clauses, legal malpractice, and civil theft. She represents clients in high stakes business disputes, automotive supply chain litigation, and cases involving allegations of sexual abuse. She has defended clients in investigation by state and federal enforcement agencies.

Ms. Murphy served as a law clerk to the Honorable Anthony J. Scirica of the United States court of Appeals for the Third Circuit from 2013 to 2014 and the Honorable Ricard D. Bennett of the United States District Court for the District Court for the eastern and western districts of Michigan and the district of Maryland.

Ms. Murphy is a graduate of the University of Michigan Law School, where she earned her law degree with honors in 2012 and served as Editor-in-Chief of the Michigan Law Review. She received a Bachelor of Arts degree in English with honors from the University of Pennsylvania in 2009. She is a member of the bars of Michigan and the District of Columbia. She serves as a chair of the Young Lawyers Division of the federal Bar Association for the Western District of Michigan. She is also a member of the Grand Rapids Bar Association and the international Women's White Collar Defense Association. She serves as the Social Media Coordinator of the Michigan Chapter of Women's White Collar Defense Association.

STEPHANIE CHANG

Senator Stephanie Chang is a legislative member of the Michigan Law Revision Commission and has served on the Commission since 2019. Senator Chang, the first Asian American woman to be elected to the Michigan Legislature, worked as a community organizer in Detroit for nearly a decade before serving two terms in the Michigan House of Representatives. She was elected to the Michigan House of Representatives in November 2014 and reelected in 2016 and was first elected to serve the people of the 1st Senate District in November 2018. She currently represents part of Wayne County including Detroit City, Ecorse City, Gibraltar City, Grosse Ile Township, River Rouge City, Riverview City, Trenton City, Woodhaven City, Wyandotte City, and Brownstown Township (part).

Senator Chang now serves as minority vice chair of the Finance Committee, minority vice chair of the Judiciary and Public Safety Committee and serves on the Government Operations Committee. She was elected Democratic Floor Leader in 2019 and currently is a member of the Legislative Council.

She served as state director for NextGen Climate Michigan, alumni engagement and evaluation coordinator for the Center for Progressive Leadership in Michigan, deputy director for the Campaign for Justice and as an organizer for Michigan United/One United Michigan. She also worked as a community engagement coordinator for the James and Grace Lee Boggs School and assistant to Grace Lee Boggs, an activist, writer, and speaker.

Senator Chang also is a co-founder and past president of Asian and Pacific Islander American Vote-Michigan, and she served as a mentor with the Detroit Asian Youth Project.

In the state House, Senator Chang led the way on air quality protection, education, criminal justice reforms, improving economic opportunities, and affordable, safe drinking water. She passed bipartisan legislation on a range of issues including female genital mutilation, nitrous oxide "whip-its", reentry services for wrongfully convicted individuals who were exonerated, and more. She quickly earned her colleagues' respect and was named chair of the Progressive Women's Caucus in her second term. She also served on the leadership team for the House Democratic Caucus both terms and was a co-founder of the Asian Pacific American Legislative Caucus.

Senator Chang earned her bachelor's degree in psychology and master's degrees in public policy and social work from the University of Michigan.

She lives in Detroit with her husband, Sean Gray, and two young daughters.

JIM RUNESTAD

State Senator Jim Runestad is a legislative member of the Michigan Law Revision Commission, appointed in 2021. He was first elected to serve the 15th District in the Michigan Senate in November 2018, representing the cities of Northville, Novi, Orchard Lake, South Lyon, Walled Lake, and Wixom and the townships of Commerce, Lyon, Milford, Novi, West Bloomfield and White Lake.

Sen. Runestad has been appointed by his colleagues to serve as the assistant majority caucus chair. He also serves as chairman of the Finance Committee. Prior to joining the Senate, Runestad served four years in the Michigan House of Representatives, representing the 44th District. There he led the efforts to reform child abuse and neglect investigations to better protect children, and passed a law to crack down on felons who took bribes while in government. As a foster parent himself, Sen. Runestad spearheaded legislation to require foster care quality standards statewide.

As the son of two educators, Runestad chose to pursue studies in the field of education. Runestad earned a bachelor's degree in education from Central Michigan University with a concentration in history, economics and politics. Upon graduation, he spent time working with at-risk students in classrooms all across the state. For the last 15 years Jim has been operating his own insurance company, Runestad Financial Associates LLC.

Prior to his election to the state House, Sen. Runestad spent three terms as an Oakland County commissioner, where he was chairman of both the Public Services Committee and Planning and Building Committee. During his six-year tenure, Runestad worked with various county commissions to improve the level of Friend of the Court services. He also assisted the Michigan Civil Rights Initiative on the Proposition 2 ballot initiative, ending race preferences in government hiring and education.

Runestad was an active member of the North Oakland Board of Realtors Legislative Affairs and Grievance Committees, as well as having been involved with other various activities with the local Chamber of Commerce, including Meals on Wheels.

Jim and his wife, Kathy, reside in White Lake Township. There they've raised five children: Joel, Justin, Lena, Lee and Kayla.

RYAN BERMAN

State Representative Ryan Berman is a legislative member of the Michigan Law Revision Commission and has served on the Commission since 2019. He was first elected to serve the 39th District in the Michigan House of Representatives in November 2018, representing the residents of the city of Wixom, Commerce Township, a portion of West Bloomfield Township and the village of Wolverine Lake.

Representative Berman serves as the majority vice chair of the Insurance Committee and also serves on the Energy, Judiciary, Local Government and Municipal Finance, and Transportation committees.

Representative Berman is a graduate of Detroit Country Day School, Michigan State University and Wayne State University Law School.

He is an attorney and counselor at law, with a general practice in Bloomfield Hills. As a general practice attorney, Representative Berman works on issues ranging from international business and real estate to criminal law; he acts as general counsel and legal advisor to many small businesses. Representative

Berman is currently a reserve police officer, and previously served as a reserve deputy with the Oakland County Sheriff's Office.

He is the president of the Parkside by the Lakes Homeowner's Association, an Orchard Lake St. Mary's volunteer assistant wrestling coach, and a member of the Board of Trustees for the Crohn's & Colitis Foundation.

He and his wife, Stacie, have two daughters.

KARA HOPE

State Representative Kara Hope is a legislative member of the Michigan Law Revision Commission, and was appointed in 2021. She is serving her second term representing Michigan's 67th House District, which includes Mason, Stockbridge, Leslie, Webberville, Williamston, Dansville, Holt, Onondaga and South Lansing. She serves on the House Committee on Agriculture, the House Committee on Workforce, Trades & Talents, and the House Committee on Judiciary.

The daughter of two corrections officers, she learned early on about the value of public service. After receiving a bachelor's degree from Michigan State University, she returned to her hometown of Ionia where she found work as a writer for Ionia's daily newspaper. Wanting to better serve her community, she soon enrolled at Cooley Law School in Lansing, where she was chosen as the managing editor of the Cooley Law Review and interned with the Innocence Project.

Following law school, Representative Hope began work as a pre-hearing attorney in the Michigan Court of Appeals. After that assignment, she worked as a defense attorney before going on to teach as an adjunct professor back at Cooley Law School, and eventually started her solo practice in 2015, specializing in family law. After volunteering to work on a local environmental issue, she began considering serving her community in a political capacity and ran for the Ingham County Board of Commissioners in 2012, where she served until her election to the House.

She is the founding president of the all-volunteer non-profit, Holt Community Arts Council and in her capacity as a lawyer, she donated free legal services to Elder Law of Michigan, the Sam Corey Senior Center Club and the Mid-Michigan Environmental Action Council.

She and her husband raised their niece, who is now a college student, and their nephew, who is in high school.

JENNIFER DETTLOFF

Jennifer Dettloff has served as an ex officio member of the Michigan Law Revision Commission since her appointment as the Legislative Council Administrator in 2016. As Legislative Council Administrator, she is responsible for the supervision and oversight of the following agencies: Legislative Service Bureau, Legislative Corrections Ombudsman, Michigan Veterans' Facility Ombudsman, Joint Committee on Administrative Rules (staff), Michigan Law Revision Commission, State Drug Treatment Court Advisory Committee, and the Michigan Commission on Uniform State Laws.

Prior to being appointed to the Legislative Council, Ms. Dettloff served as Legal Counsel for two Senate Majority Leaders. She had previously served legislators in both the House and Senate in numerous capacities.

Ms. Dettloff is a member of the State Bar of Michigan. She holds a B.A. from James Madison College at Michigan State University in Social Relations and a J.D. from Thomas M. Cooley Law School.

JANE O. WILENSKY

Jane O. Wilensky was an Assistant Attorney General from 1984 until 2008, serving in the Finance and Development and Education and Social Services Divisions. From 1997 until 2008, she was the First Assistant in the Education and Social Services Division. Prior to her appointment as an Assistant Attorney General, she worked in the Office of Strategy and Forecasting in the Department of Commerce and the Office of Regulatory and Consumer Affairs in the Michigan Public Service Commission. She was a law clerk for the Honorable John W. Fitzgerald of the Michigan Supreme Court. In 2011, she was appointed Executive Secretary of the Commission.

Ms. Wilensky is a graduate of Boston University's School of Public Communications and received her J.D. Cum Laude from the Thomas M. Cooley Law School.