Michigan
Law Revision Commission

TWENTY-SECOND ANNUAL REPORT
1987

MICHIGAN
LAW REVISION COMMISSION

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MICHIGAN LAW REVISION COMMISSION
Twenty-Second Annual Report to the Legislature

To the Members of the Michigan Legislature:

The Michigan Law Revision Commission hereby presents its twenty-second annual report pursuant to Section 403 of Act No. 268 of the Public Acts of 1986.

The Commission, created by Section 401 of that Act, 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. Terms of the members appointed by the Legislative Council are staggered. The Legislative Council designates the Chairman of the Commission. The Vice Chairman is elected by the Commission.

Membership

The legislative members of the Commission during 1987 were Senator Rudy Nichols of Waterford, Senator John Kelly of Detroit, Representative Perry Bullard of Ann Arbor, and Representative David Honigman of West Bloomfield. As Director of the Legislative Service Bureau, Elliott Smith was an ex-officio Commission member. The appointed members of the Commission were Anthony Derezinski, David Lebenbom, Richard McLellan, and Richard C. Van Dusen. Mr. McLellan served as Chairman and Mr. Derezinski served as Vice Chairman. Professor Jerold Israel of the University of Michigan Law School served as Executive Secretary and Gary Gulliver served as the liaison between the Legislative Service Bureau and the Commission. Brief biographies of the Commission members and staff are located at the end of this report.

The Commission's Work in 1987

The Commission is charged by statute with the following duties:

1. 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.

2. 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.

3. 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.

4. To recommend, from time to time, 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 law of this state, civil and criminal, into harmony with modern conditions.

5. To encourage the faculty and students of the law schools of this state to participate in the work of the Commission.

6. To cooperate with the law revision commissions of other states and Canadian provinces.

7. To issue an annual report.

The problems to which the Commission directs it 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 the 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 during the past year have been devoted primarily to three areas. First, Commission members met with legislative chairpersons to secure disposition of 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 without the United States (e.g., California, New York, and British Columbia).

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, we found that the subjects treated had been considered by the Michigan legislature in recent legislation. In other instances, Uniform or Model Acts were not pursued as formal recommendations because similar or identical legislation was currently pending before the legislature upon the initiation of legislators having a special interest in the particular subject.

Three of the topics studied by the Commission over the past year have resulted in legislative recommendations. Those are:

(1) The Uniform Determination of Death Act

(2) Lost Property Act

(3) Amendment of various provisions referring to Abolished Courts

Recommendations and proposed statutes on these three topics accompany this Report.

Proposals for Legislative Consideration in 1987

In addition to our new recommendations, the Commission recommends favorable consideration of the following recommendations of past years upon which no final action was taken in 1987.

(1) Repeal of M.C.L. Section 764.9 (duplicate provision relating to arrests in county other than that of the offense) -- H.B. 4065, passed by the House; S.B. 63, passed by the Senate. See Recommendations of the 1982 Annual Report, page 9.

(2) Uniform Transfers to Minors Act -- S.B. 85, passed by the Senate. See Recommendations of the 1984 Annual Report, page 17.

(3) Amendment of the Assumed Names Act (limited partnership) -- S.B. 233, passed by the Senate; H.B. 4426, passed by the House. See Recommendations of the 1984 Annual Report, page 11.

(4) Uniform Transboundary Pollution Reciprocal Access Act. S.B. 10, 348; H.B. 5163. See Recommendations of the 1984 Annual Report, page 71.

(5) Justice of the Peace Repealers. See Recommendations of the 1985 Annual Report, page 12, 1986 Annual Report, page 125.

(6) Uniform Law on Notarial Acts. See S.B. 77, passed by the Senate; H.B. 5219. See Recommendations of the 1985 Annual Report, page 17.

(7) Uniform Statutory Rule Against Perpetuities, S.B. 78, 79, passed by the Senate. See Recommendations of the 1986 Annual Report, page 16.

(8) Amendments to Delete References to Abolished Courts. See Recommendations of the 1986 Annual Report, page 127.

Current Study Agenda

Topics on the current study agenda of the Commission are:

(1) Amendments to Uniform Trade Secrets Act
(2) Uniform Fraudulent Transfer Act (Uniform Fraudulent Conveyance Act)
(3) Uniform Premarital Agreement Act
(4) Amendments to Uniform Real Estate Tax Apportionment Act
(5) Uniform Comparative Fault Act
(6) Duties, Rights, and Responsibilities of Receivers
(7) Health Care Consent for Minors
(8) Health Care Information, Access and Privacy
(9) Public Officials--Conflict of Interest and Misuse of Office
(10) Statewide Registration of Assumed Names by Individuals and Partnerships
(11) Revision of the Administrative Procedures Act
(12) Granting and Withdrawal of Medical Practice Privileges in Hospitals
(13) Usury Statutes

The Commission continues to operate with its sole staff member, the part-time Executive Secretary, whose offices are in the University of Michigan Law School, Ann Arbor, Michigan 48109-1215. By using faculty members at the several Michigan law schools as consultants and law students as researchers, the Commission has been able to operate at a budget substantially lower than that of similar commissions in other jurisdictions.

The Legislative Service Bureau, through Mr. Gary Gulliver, its Director of Legal Research, has generously assisted the Commission in the development of its legislative program. The Director of the Legislative Service Bureau continues to handle the fiscal operations of the Commission under procedures established by the Legislative Council.

Prior Enactments

The following Acts have been adopted to date pursuant to recommendations of the Commission and in some cases amendments thereto by the Legislature:

1967 Legislative Session

Subject	Commission Report	Act No.
Original Jurisdiction of Court of Appeals	1966, p. 43	65
Corporation Use of Assumed Names	1966, p. 36	138
Interstate and International Judicial Procedures	1966, p. 25	178
Stockholder Action Without Meetings	1966, p. 41	201
Powers of Appointment	1966, p. 11	224
Dead Man's Statute	1966, p. 29	263

1968 Legislative Session

Subject	Commission Report	Act No.
Possibilities of Reverter and Right of Entry	1966, p. 22	13
Stockholder Approval of Mortgaging Assets	1966, p. 39	287
Corporations as Partners	1966, p. 34	288
Guardian Ad Litem	1967, p. 53	292
Emancipation of Minors	1967, p. 50	293
Jury Selection	1967, p. 23	326

1969 Legislative Session

Subject	Commission Report	Act No.
Access to Adjoining Property	1968, p. 21	55
Recognition of Acknowledgments	1968, p. 61	57
Dead Man's Statute Amendment	1969, p. 29	63
Notice of Tax Assessments	1968, p. 30	115
Antenuptial Agreements	1968, p. 27	139
Anatomical Gifts	1968, p. 39	189
Administrative Procedures Act	1967, p. 11	306
Venue Act	1968, p. 19	333

1970 Legislative Session

Subject	Commission Report	Act No.
Land Contract Foreclosures	1967, p. 55	86
Artist-Art Dealer Relationships Act	1969, p. 44	90
Minor Students Capacity to Borrow Act	1969, p. 51	107
Warranties in Sales of Art Act	1969, p. 47	121
Appeals from Probate Court Act	1968, p. 32	143
Circuit Court Commission Power of Magistrates Act	1969, p. 62	238

1971 Legislative Session

Subject	Commission Report	Act No.
Revision of Grounds for Divorce	1970, p. 7	75
Civil Verdicts by 5 of 6 Jurors In Retained Municipal Courts	1970, p. 40	158
Amendment of Uniform Anatomical Gift Act	1970, p. 45	186

1972 Legislative Session

Subject	Commission Report	Act No.
Summary Proceeding for Possession of Premises	1970, p. 16	120
Interest on Judgments Act	1969, p. 64	135
Business Corporation Act	1970, Supp.	284
Constitutional Amendment re Juries of 12	1969, p. 65	HJR "M"

1973 Legislative Session

Subject	Commission Report	Act No.
Execution and Levy in Proceedings	1970, p. 51	96
Technical Amendments to Business Corporation Act	1973, p. 8	98

1974 Legislative Session

Subject	Commission Report	Act No.
Venue in Civil Actions Against Non-Resident Corporations	1971, p. 63	52
Model Choice of Forum Act	1972, p. 60	88
Extension of Personal Jurisdiction in Domestic Relations Cases	1972, p. 53	90
Technical Amendments to the General Corporations Act	1973, p. 38	140
Technical Amendments to the Revised Judicature Act	1971, p. 7	297
1974 Technical Amendments to the Business Corporation Act	1974, p. 30	303
Amendment to "Dead Man's" Statute	1972, p. 70	305
Attachment Fees Act	1968, p. 23	306
Contribution Among Joint Tortfeasors Act	1967, p. 57	318
District Court Venue in Civil Actions	1970, p. 42	319
Elimination of Pre-judgment Garnishment	1972, p. 7	371

1975 Legislative Session

Subject	Commission Report	Act No.
Amendment of Hit-Run Provisions to Provide Specific Penalty	1973, p. 54	170
Equalization of Income Rights of Husband and Wife in Entirety Property	1974, p. 30	288
Uniform Disposition of Community Property Rights at Death Act	1973, p. 50	289
Insurance Policy in Lieu of Bond Act	1969, p. 54	290
Uniform Child Custody Jurisdiction Act	1969, p. 22	297

1976 Legislative Session

Subject	Commission Report	Act No.
Due Process in Replevin Actions	1972, p. 7	79
Qualifications of Fiduciaries	1966, p. 32	262
Revision of Revised Judicature Act Venue Provisions	1975, p. 20	375
Durable Family Power of Attorney	1975, p. 18	376

1978 Legislative Session

Subject	Commission Report	Act No.
Study Report on Juvenile Obscenity Law	1975, p. 133	33
Multiple Party Deposits	1966, p. 18	53
Amendment of Telephone and Messenger Service Act Amendments	1973, p. 48	63
Elimination of References to Abolished Courts		
a. Township By-Laws	1976, p. 74	103
b. Public Recreation Hall Licenses	1976, p. 74	138
c. Village Ordinances	1976, p. 74	189
d. Home Rule Village Ordinances	1976, p. 74	190
e. Home Rule Cities	1976, p. 74	191
f. Preservation of Property Act	1976, p. 74	237
g. Bureau of Criminal Identification	1976, p. 74	538
h. Fourth Class Cities	1976, p. 74	539
i. Election Law Amendments	1976, p. 74	540
j. Charter Townships	1976, p. 74	553
Amendments of the Plat Act	1976, p. 58	367
Amendments to Article 9 of the Uniform Commercial Code	1975, Supp.	369

1980 Legislative Session

Subject	Commission Report	Act No.
Condemnation Procedures Act	1968, p. 11	87
Technical Revision of the Code of Criminal Procedure	1978, p. 37	506

1981 Legislative Session

Subject	Commission Report	Act No.
Elimination of Reference to the Justice of the Peace: Provision on the Sheriff's Service of Process	1976, p. 74	148
Amendment of R.J.A. Section 308 (Court of Appeals Jurisdiction) in accord with R.J.A. Section 861	1980, p. 34	206

1982 Legislative Session

Subject	Commission Report	Act No.
Revised Uniform Limited Partnership Act	1980, p. 40	213
Technical Amendments to the Business Corporation Act	1980, p. 8	407
Amendment of Probate Code as to Interest on Judgments	1980, p. 37	412

1983 Legislative Session

Subject	Commission Report	Act No.
Elimination of Various Statutory References to Abolished Courts	1979, p. 9	87
Uniform Federal Lien Registration Act	1979, p. 26	102

1984 Legislative Session

Subject	Commission Report	Act No.
Study Report on Legislative Privilege		
a. Immunity in Civil Actions	1983, p. 14	27
b. Limits of Immunity in Contested Cases	1983, p. 14	28
c. Amendments to R.J.A. for Legislative Immunity	1983, p. 14	29
Disclosure of Treatment Under the Psychologist/Psychiatrist-Patient Privilege	1978, p. 28	362

1986 Legislative Session

Subject	Commission Report	Act No.
Amendments to the Uniform Limited Partnership Act	1983, p. 9	100

1987 Legislative Session

Subject	Commission Report	Act No.
Amendment to Article 8 of the U.C.C.	1984, p. 97	16
Disclosure in the Sale of Visual Art Objects Produced in Multiples	1981, p. 57	40, 53, 54

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

Respectfully submitted,

Richard D. McLellan, Chairman
Anthony Derezinski, Vice Chairman
David Lebenbom
Richard C. Van Dusen
Sen. Rudy Nichols
Sen. John Kelly
Rep. Perry Bullard
Rep. David Honigman
Elliott Smith

Date: January 30, 1988

UNIFORM DETERMINATION OF DEATH ACT

Public Act 124 of 1979 (M.C.L. §333.1021) currently provides:

> A person will be considered dead if in the announced opinion of a physician, based on ordinary standards of medical practice in the community, there is the irreversible cessation of spontaneous respiratory and circulatory functions. If artificial means of support preclude a determination that these functions have ceased, a person will be considered dead if in the announced opinion of a physician, based on ordinary standards of medical practice in the community, there is the irreversible cessation of spontaneous brain functions. Death will have occurred at the time when the relevant functions ceased.

This Act is derived from the Model Act proposed by Alexander Capron and Leon Kass in 121 U. of Penn. Law Review 87-118 (1972). The Capron-Kass Model was a clear advance at the time, but it is now viewed as scientifically inaccurate, even by its authors. Indeed, Professor Capron served as executive director of the President's Commission that approved the Uniform Determination of Death Act, an act designed to provide a more scientifically accurate legal definition of death. The Uniform Determination of Death Act (UDDA), promulgated by the National Conference of Commissioners on Uniform State Laws in 1980, was also approved by the

American Medical Association. It has been adopted in 22 states and the District of Columbia.

The object of the Uniform Act, like P.A. 124, is two-fold. It seeks to codify the common law cardiorespiratory standard for determining death and to establish an appropriate statutory standard for making brain death determinations. A comparison of the Michigan statute and the UDDA suggests the desirability of the latter.

The current Michigan statute begins, "A person will be considered dead ..." Death is best regarded as a physiological fact. Being "considered dead" seems to suggest that the determination is not necessarily related to the physiological facts. No statute on death determination should suggest doubt on this issue. The Uniform Act states when a person "is dead."

The current statute refers to "spontaneous respiratory and circulatory functions" and "spontaneous brain functions." The word "spontaneous" has turned out to be medically ambiguous and unsatisfactory as a standard for making a determination of death. This language from the Capron-Kass Model is probably the most seriously deficient aspect of the current language. The Uniform Act eliminates the reference to "spontaneous."

There is also ambiguity in the phrase "brain functions" as it is used in P.A. 124. Brain death should not be declared until the brain has entirely failed. The brain has a number of functions, and physiologically all need not fail at the same time. P.A. 124 does not clearly state that all must have ceased. The Uniform Act requires irreversible cessation of "all functions," including the "brain stem." As noted in the Prefatory Note to the Uniform Act (see Appendix A), this language is necessary to distinguish "neocortical death."

The current law also errs scientifically in looking to brain death only if "artificial means of support preclude a determination that these functions [i.e., respiratory and circulatory functions] have ceased." In fact, a determination of cardiorespiratory death is not "precluded" by the respirator. Even with the respirator, there will eventually be a cardiorespiratory failure. The key factor is that where there is brain death as defined by the Uniform Act, there would also be cardiorespiratory death without the respirator. Indeed, the UDDA has been criticized on the ground that death comes only with the irreversible cessation of the whole brain, and the irreversible cessation of circulatory and respiratory functions merely as proof that there has been a cessation of all brain functions. See Bernat, Culver, and Gert, Defining Death in Theory and Practice, 12 Hastings Center Report 5 (February 1982).

Neither the UDDA nor P.A. 124 specify an exact means of diagnosing the cessation of relevant functions. To do so would guarantee the Act's obsolescence as technology advances. Specifying criteria would inhibit advancement in technology, and also would inhibit the courts in determining the facts in each individual case and in recognizing acceptable standards as a dynamic, rather than static, concept. Accordingly, the UDDA refers simply to a determination made in accordance with "accepted medical standards."

P.A. 124 similarly refers to accepted medical standards, but adds complexity by using "ordinary standards of medical practice in the community." This localized standard can impose unnecessary proof problems by requiring proof that a particular means of determining cardiorespiratory or brain death is not only consistent with accepted medical practice, as recognized in medical texts, etc., but also is the practice utilized in the

particular community. Also, as stated by N.C.C.U.S.L., in urging adoption of the UDDA, there is a special benefit in avoiding variation on this subject:

> Citizens of every state expect to have death declared on the same basis wherever they may go or move. Fundamental to meeting this expectation is a uniform statute that guarantees the same death determinations in every state. Before death determinations were subject to statute and before brain death became an issue, there was virtual uniformity between the states under the common law. If the statutes do not establish uniformity, a beneficial aspect of the common law will be lost. There is a parallel movement in the medical profession to establish national criteria for determinations of death. There is no local or regional variation that is or should be acceptable in determining death. * * * Another issue that provides a need for uniformity is medical liability. Liability rules must correspond with national medical criteria. The liability rules ought to be as uniform as the criteria for determining death are, and uniform statutory determination of death standards are basic to both.

P.A. 124 also differs from the UDDA in requiring an announced opinion of a physician. That would certainly be a prerequisite to a determination of brain death under accepted medical standards. It might not, however, be necessary where there is cardiorespiratory death, especially since M.C.L. §52.201a allows for the appointment of medical examiner investigators who are not physicians. In any event, the addition to the UDDA of language requiring that there be an announced opinion of a physician was viewed as unnecessary in light of the desirability of keeping the statute uniform.

Maintaining the uniformity of the statute also led to the decision not to include within the proposed legislation provisions that parallel sections 2 and 3 of P.A. 124. Section 2 states that "death is to be pronounced before artificial means of supporting respiratory and circulatory functions are terminated." This provision might be inconsistent with accepted medical practice in rare situations where it may be difficult to determine brain death, although it clearly states the standard protocol. Section 3 of P.A. 124 states that the "means of determining death in section 1 shall be used for all purposes in this state, including the trial of civil and criminal cases." This provision was viewed as unnecessary since the structure of the UDDA readily indicates the general applicability of its definition of death.

It should be emphasized that the purpose of the UDDA is a minimal one. It recognizes cardiorespiratory and brain death in accordance with the criteria the medical profession universally accepts. The act does not authorize euthanasia or "death with dignity," and does not enact any sort of living will. The current state of medical decisionmaking as it relates to termination of life or other related issues remains unchanged. The UDDA is further explained in the N.C.C.U.S.L. commentary, attached as Appendix A.

The proposed bill follows:

A bill to provide for the determination of death, and to repeal certain acts and parts of acts.

UNIFORM DETERMINATION OF DEATH ACT

Sec. 1. An individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards.

Sec. 2. This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

Sec. 3. This Act may be cited as the Uniform Determination of Death Act.

Sec. 4. Act No. 124 of the Public Acts of 1979, being sections 333.1021 to 333.1024 of the Compiled Laws, is repealed.

APPENDIX A

PREFATORY NOTE TO DETERMINATION OF DEATH ACT

This Act provides comprehensive bases for determining death in all situations. It is based on a ten-year evolution of statutory language on this subject. The first statute passed in Kansas in 1970. In 1972, Professor Alexander Capron and Dr. Leon Kass refined the concept further in "A Statutory Definition of the Standards for Determining Human Death: An Appraisal and a Proposal," 121 Pa.L.Rev. 87. In 1975, the Law and Medicine Committee of the American Bar Association (ABA) drafted a Model Definition of Death Act. In 1978, the National Conference of Commissioners on Uniform State Laws (NCCUSL) completed the Uniform Brain Death Act. It was based on the prior work of the ABA. In 1979, the American Medical Association (AMA) created its own Model Determination of Death statute. In the meantime, some twenty-five state legislatures adopted statutes based on one or another of the existing models.

The interest in these statutes arises from modern advances in life-saving technology. A person may be artificially supported for respiration and circulation after all brain functions cease irreversibly. The medical profession, also, has developed techniques for determining loss of brain functions while cardiorespiratory support is administered. At the same time, the common law definition of death cannot assure recognition of these techniques. The common law standard for determining death is the cessation of all vital functions, traditionally demonstrated by "an absence of spontaneous respiratory and cardiac functions. There is, then a potential disparity between current and accepted biomedical practice and the common law.

The proliferation of model acts and uniform acts, while indicating a legislative need, also may be confusing. All existing acts have the same principal goal -- extension of the common law to include the new techniques for determination of death. With no essential disagreement on policy, the associations which have drafted statutes met to find common language. This Act contains that common language, and is the result of agreement between the ABA, AMA, and NCCUSL.

Part (1) codifies the existing common law basis for determining death -- total failure of the cardiorespiratory system. Part (2) extends the common law to include the new procedures for determination of death based upon irreversible loss of all brain functions. The overwhelming majority of cases will continue to be determined according to part (1). When artificial means of support preclude a determination under part (1), the Act recognizes that death can be determined by the alternative procedures.

Under part (2), the entire brain must cease to function, irreversibly. The "entire brain" includes the brain stem, as well as the neocortex. The concept of "entire brain" distinguishes determination of death under this Act from "neocortical death" or "persistent vegetative state." These are not deemed valid medical or legal bases for determining death.

This Act also does not concern itself with living wills, death with dignity, euthanasia, rules on death certificates, maintaining life support beyond brain death in cases of pregnant women or of organ donors, and protection for the dead body. These subjects are left to other law.

This Act is silent on acceptable diagnostic tests and medical procedures. It sets the general legal standard for determining death, but not the medical criteria for doing so. The medical profession remains free to formulate acceptable medical practices and to utilize new biomedical knowledge, diagnostic tests, and equipment.

It is unnecessary for the Act to address specifically the liability of persons who make determinations. No person authorized by law to determine death, who makes such a determination in accordance with the Act, should, or will be, liable for damages in any civil action or subject to prosecution in any criminal proceeding for his acts or the acts of others based on that determination. No person who acts in good faith, in reliance on a determination of death, should, or will be, liable for damages in any civil action or subject to prosecution in any criminal proceeding for his acts. There is no need to deal with these issues in the text of this Act.

Time of death, also, is not specifically addressed. In those instances in which time of death affects legal rights, this Act states the bases for determining death. Time of death is a fact to be determined with all others in each individual case, and may be resolved, when in doubt, upon expert testimony before the appropriate court.

Finally, since this Act should apply to all situations, it should not be joined with the Uniform Anatomical Gift Act so that its application is limited to cases of organ donation.

LOST PROPERTY ACT

INTRODUCTION[1]

I. CURRENT MICHIGAN LAW

A. Lost Goods and Stray Beasts Act

Michigan's Lost Goods and Stray Beasts Act (henceforth LGA), found at M.C.L. §§434.1-434.12 (Appendix B), is a pre-Civil-War enactment. Although many municipalities have local ordinances relating to the finding of lost property, the LGA is the only state law dealing with that topic. While the LGA also deals with stray animals, the discussion here is limited to the LGA provisions applicable to lost property.[2]

The LGA provisions governing "lost money or goods" have three basic segments. First, the LGA imposes certain obligations upon the finder. Failure to comply with those obligations precludes the finder from subsequently claiming ownership, and if the finder's failure is willfully and with fraudulent intent to convert, he is subject to a prescribed misdemeanor penalty of ten to fifty dollars. (See M.C.L. §434.12). The obligations imposed upon the finder are:

(1) if the property is worth $3.00 or more, the finder must post

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[1] This introduction was written prior to the adoption of Public Act 273 of 1987, which repealed the Lost Goods and Stray Beasts Act. See the Addendum at p. 71 infra.

[2] The provisions relating to animals are discussed in Appendix A.

notices in two public places and give notice to the township clerk (paying a fee for the entry of the finding in the township records) (M.C.L. §434.1).

(2) if the property is worth $10.00 or more, the finder must comply with the obligations noted above and also must (i) advertise in the newspaper (M.C.L. §434.2) and (ii) obtain an appraisal from the justice of the peace and file that appraisal with the township clerk (M.C.L. §434.6).

As noted above, if the finder fails to comply with all of the applicable obligations, he is "precluded from all the benefits" of the Act (M.C.L. §434.12).

The second basic segment of the LGA deals with the obligations and rights of the person who lost the property. The LGA gives the owner one year to reclaim the property and requires an owner reclaiming the property to give the finder reasonable compensation for his expenses. M.C.L. §434.7.

The third basic segment of the LGA deals with the distribution of unclaimed lost property. If the owner does not claim the property within one year, the LGA awards fifty percent of the value of the unclaimed property to the township and fifty percent of the value to the finder. (M.C.L. §434.8).

B. Statutory Interpretation of the L.G.A.

Only one case, which was appealed twice, has produced appellate opinions discussing the LGA. Doe v. Oceola Township, 84 Mich.App. 514 (1978); Willsmore v. Oceola Township, 106 Mich.App. 671 (1981). There, a hunter found a suitcase containing $383,840 buried in an undeveloped field in Oceola Township. The hunter/finder brought an action for declaratory

judgment to settle all rights to the money. The hunter asked that the money be declared common treasure-trove, or, in the alternative, lost money under the LGA. Under the former doctrine, the finder would be entitled to the entire value of the found money; under the LGA, only half. Both the owner of the field in which the suitcase was found and the Attorney General intervened. After failing to establish that he was the actual owner of the suitcase and money within it, the property owner (actually a land contract vendee) argued that he nonetheless had a right of first possession of the found money under "old common-law precedents," including the doctrine of locus in quo. The Attorney General argued that the property was subject to the law of escheats, which was said to have repealed, in effect, the LGA. The case thus raised three issues: (1) whether Michigan's "code of escheats" (M.C.L. §567.11 et seq.) effectively repealed the LGA; (2) whether the doctrine of treasure trove applies in Michigan; and (3) whether common law doctrines, such as locus in quo, supplanted the LGA where lost property was found on the land of another.

With respect to the first issue -- the applicability of the "code of escheats" -- the Court of Appeals in Willsmore reasoned that the escheats law had replaced the LGA where the escheats code applied, but here the buried money was not subject to escheat. 106 Mich.App. at 682-84. The money was not escheatable because it did not involve any of the three events that produced escheatable property: "(1) Death of an owner with no known heirs; (2) Owner's disappearance or absence from last known place of residence for a continuous period of seven years leaving no known heirs; or (3) Owner's abandonment of property." 106 Mich.App. at 682 (citing M.C.L. §567.14). The only possibility here was the third category, that of

"abandonment," but the escheats code defined abandoned property as that "against which a full period of dormancy [i.e., 7 years] has run," and here the money had been in the ground for only a few months.

As for the second issue -- whether Michigan recognized the treasure trove doctrine -- the Court of Appeals strongly suggested a negative answer. Treasure-trove is usually defined as any gold or silver, or plate or bullion in coin found concealed in the earth, or in a house or other private place, but not lying on the ground, with the owner of the discovered treasure being unknown. 22 A C.S.J. §§418-19. The finder of a treasure-trove has a right to possession against all except the true owner. The trial court had held that the treasure-trove doctrine did not apply in the instant case because the money had not been in the ground for no more than a few months. The Court of Appeals in Willsmore restated that reasoning (106 Mich.App. at 682), but also added a discussion of the treasure-trove doctrine that strongly suggested that the doctrine should not be adopted in Michigan. Willsmore noted:

> The property law doctrine of "treasure-trove" was never adopted in Michigan. Indeed, very few states in this country incorporated this English classification of property into their common law since its historical development was derived from the plundering Roman armies. As far as history records, the Romans did not plunder across the Atlantic Ocean. We decline to adopt the rule where the reason does not apply.

The Willsmore Court also offered alternative reasons in rejecting the property owner's contention that the LGA should not apply where common law doctrines gave the owner of real property the right to possess lost personal

property found on his premises. Initially, the Court cited the common law doctrine of locus in quo as exemplary of the type of common law precedent being advanced. Under this theory, the owner of the premises on which lost property is found is given "the right of first possession to hold on to the property for the return of the true owner." 106 Mich.App. at 684. The rationale for locus in quo is that the true owner will know where he lost his property and will return to that property to claim it. As long as the owner does not claim it, however, the finder can continue to possess it on his behalf. Here, however, the intervening party claiming to be the owner of the premises had not been in possession, but was only a land contract vendee who claimed constructive possession. The court noted that this was hardly sufficient to serve the rationale of the locus in quo doctrine. The true owner of the lost property would find it difficult to locate such vendees as they often are not the owners of record.

Having rejected the application of the locus in quo doctrine to a land contract vendee, the Willsmore Court went on to speak generally of the need to apply the LGA rather than such common law doctrines to cases such as that before it. First, there were the public policy reasons for relying on the LGA, rather than locus in quo, as the LGA provides greater incentives to post notice of the find, avoids the possibility of a situation of continuous bailment, and encourages honesty by finders by awarding them one-half value of unclaimed property. Second, common law distinctions drawn between property "embedded in the soil," "mislaid property," and property subject to locus in quo were formulated after the LGA was drafted. The phrase "lost property" as used in the LGA must be deemed a broad generic term, not limited by such later-created distinctions. 106 Mich.App. at 688.

C. Local Ordinances

While the LGA does not state specifically that it applies only to property found within a township, that certainly is the implication of its provisions requiring the posting of notices within the township, giving notice to the township clerk, etc. Thus, various municipalities have adopted ordinances applicable to the finding of lost property. Although we have not sought to survey all such ordinances, there is some indication that they are structured along the same lines of the LGA, although differing as to particulars. The Ann Arbor ordinance (§1:64), for example, does the following: (i) requires return to the owner if the finder knows or determines who is the owner (compare §434.1); (ii) requires delivery of the found property to the City Administrator if the property is worth more than $10.00 and the owner is unknown (compare §434.2); (iii) requires notification of the owner of the premises on which the property was found if the property has an apparent value of $200 or more; (iv) requires publication of a notice of finding if the property has an apparent value of $200.00 or more and the finder intends to claim it; (v) forfeits any finder interest if the finder fails to comply with the prescribed requirements (compare §434.12); (vi) requires a claiming owner to pay all costs (advertising by the finder, and expenses incurred by the City Administrator) (compare §434.7); (vii) sets up holding periods of 3 months for property worth less than $1,000, and 12 months for more valuable property (compare §434.8); (viii) gives to the complying finder any found property worth less than $1,000, or $1,000 plus one-half of the remainder of sales proceeds for higher valued property (the other half in excess of $1,000 going to the city) (compare §434.8).

Where the find is not made in a township and there is no applicable local ordinance, the common law apparently applies. This introduces the highly technical distinctions noted in Willsmore, supra. The focus under the common law relates to such matters as the finder's right of possession and the finder's criminal liability for conversion to personal use. See People v. Harmon, 217 Mich. 11 (1921). It does not provide the kind of structure as to time periods, notification, storage responsibilities, etc., as is found in "lost property" statutes.

II. DEFICIENCIES IN THE CURRENT LAW

The LGA has five major shortcomings. First, the LGA does not provide statewide coverage. As mentioned above, some cities have enacted their own lost property ordinances, but others have not. The nature of the subject matter does not, in any event, lend itself to local law variations. Matters relating to the establishment of title commonly are determined by laws having statewide application and there is no reason why that principle should not apply here.

Second, the LGA has an awkward structure, resulting from the interspersement of provisions relating to stray beasts among the provisions relating to lost goods or money. (M.C.L. §§434.1-2, 6-8, 12 concern lost goods and money while M.C.L. §§434.3-6, 9-14 concern stray beasts). As explained in Appendix A, the provisions relating to lost animals are largely superseded by Public Act 328 of 1976.

Third, the dollar amounts used in the Act are antiquated. Lost property provisions commonly draw distinctions based upon the value of the property, but the LGA draws its lines at $3.00 and $10.00. As a result, a

finder of a $10.00 watch would be required by the LGA to pay for an advertisement in the local paper (which could cost $10.00 in itself), pay the justice of the peace (a non-existent office today) 50 cents for an appraisal of the watch and 6 cents a mile for travel expenses, and pay the township clerk 6 cents to file the appraisal certificate and 25 cents to list the find.

Fourth, the LGA assumes a community sufficiently small so that posting notices in public places and advertising in a local paper will provide sufficient notice of the find. Today, the community is less likely to have a place where one would expect to find such notices, and there often is not a single newspaper to which one would automatically turn to find such an advertisement (even where the value of the property justifies the cost of the advertisement). The best means of providing notice is through a standardized reporting requirement to a central clearing house, i.e., providing one or two sources to which the owner will automatically turn in expectation that a find would have there been reported.

Fifth, and most importantly, the LGA rests on unrealistic assumptions as to what constitutes sufficient incentive for compliance. Except where the value of the property may be quite large, the LGA provides little incentive to the finder. To eventually gain title to the lost item, the finder must post notice, place an advertisement in the paper, procure an appraisal from a local official, file the necessary certificate, and wait one year. Then, if the property is not claimed, the finder is required to share the value of the property with the local government unit. While a finder might be willing to do this as to an item that has significant value and that is not readily sold without some evidence of title, reporting of

most finds is hardly promoted (and perhaps discouraged) by the LGA.

III. PROPOSED REFORM

The proposed statute is modeled in large part upon the New York's Lost Property Act. 40 N.Y.S. §251, et seq. (Appendix D). It has the following major elements:

(1) Statewide application. The same basic requirements apply throughout the state. At the same time, there is room for some local variation because: (i) discretion is given to local units of government to assign the central clearing house function either to its police department or some other agency (both falling within the definition of "law enforcement agency"); (ii) the agency's responsibilities are spelled out in general terms, leaving the development of specifics to the local units (e.g., while the agency must keep a record of the reported finding, including the identity of the finder, the statute does not specify exactly what items of information must be included); and (iii) the agency is given the opportunity to arrange for custody of the lost property and manner of notification in a way that suits local circumstances.

(2) Reliance on Central Clearinghouse for "Find" Reports The proposal relies on the "law enforcement agency" as the central clearinghouse, the place to which the find is reported and the place to which the owner is most likely to look for information regarding the possible recovery of lost property. The one exception is where the property is found on premises for which there is a lost and found department; there, the finder can also fulfill the reporting requirements by delivering the property to that lost and found department. In most situations, the lost and found will be the

first place an owner would contact. Even here, however, where the property has more than minimal value and remains unclaimed, the find will later be reported to the law enforcement agency (as that must be done by the lost and found department as a prerequisite to eventually disposing of the unclaimed property).

While the LGA uses the township clerk as a central reporting authority, it also requires the posting of notices and the placement of advertisement. The proposed statute requires "reasonable public notice," but leaves to the judgment of the law enforcement agency what should constitute such notice. This may be a posting in the offices of the agency, a posting at some other place, or a newspaper advertisement, as the agency deems appropriate.

(3) Compensation and Protection of the Law Enforcement Agency. As under the LGA, the proposed statute requires that there be a reasonable fee paid for recordkeeping and reimbursement of expenses for storage and notification. Unlike the LGA, however, no attempt is made to specify in the statute the amount of the fee. As with other administrative matters, that is left to the agency. Moreover, in all of its actions -- such as returning the property to the owner, storing the property itself, assigning storage to the finder or a third party, assessing the value of the property, and disposing of the property -- the agency is protected against liability, provided it does not act intentionally to cause harm.

(4) Reducing the Finder's Responsibilities. The proposed statute places less responsibility upon the finder. As under the LGA, the finder who can identify the owner has a responsibility to report the find, even if the value of the found property is less than the minimum required for

reporting when the owner is unknown. The proposed statute allows the finder the choice of reporting either to the owner directly or to the agency (who will then contact the owner). The latter may be the easiest route in some cases.

Where the owner is unknown, the LGA imposes responsibility on the finder only where the value is $3.00 or more. The proposed statute draws this minimum-value line at $25.00. Moreover, where the property is above the minimum the finder need do no more than report the find to the law enforcement agency. The finder is not responsible for posting notices or placing advertisements, and need not store the property (although that may be allowed if the agency and finder agree).

Where the finder violates the requirements of the LGA, he loses all rights to the property. Under the proposed statute, if the finder does not report within the specified period, but makes a later report, he can still lay claim to the property although the waiting period is extended.

The proposed statute also differs from the LGA in that it does not contain a criminal provision. The LGA provides for fines where the finder's failure to report stems from a fraudulent intent to convert. Such action, however, would more appropriately be treated under the general theft provisions of the Penal Code. See the Report of Mich. Bar Committee to Revise the Penal Code (1979) at page 309.

(5) Providing Greater Incentives for the Finder. Like the LGA, the proposed statute allows the finder to gain title to the property if it is not claimed by the owner. The proposed statute differs, however, in two important respects. First the time periods are shorter; the longest waiting period following a timely filing of report is six months, but that now

applies only if the property is worth $1,000.00 or more. Periods of 30 and 90 days apply to finds of lesser value. Second, after paying appropriate expenses and fees, the finder gets title to the total property; there is no sharing of value with the government.[3]

The proposed bill follows:

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[3] The change from the LGA in awarding full value to the finder should not have a significant negative impact upon local government revenue. There appear to be few cases like Willsmore. On the other hand, if the proposed act encourages more reporting, the local unit may gain, since it will receive full value when neither the owner nor the finder lay claim to the property.

DRAFT OF LOST PROPERTY ACT

Replacing portions of the Lost Goods and Stray Beasts Act

M.C.L. 434.1-434.12

SECTION ONE [Definitions]

(1) "Property" means any money, goods, chattels, or any other tangible article, whether or not it can be lawfully owned, except for each of the following:

(a) Property escheatable pursuant to Public Act 329 of 1947, as amended, being sections 567.11 to 567.76 of the Michigan Compiled Laws.

(b) Animals.

(c) Wrecks governed by the provisions of navigation law.

(d) Vehicles governed by Public Act 300 of 1949, as amended, being sections 257.1 to 257.923 of the Michigan Compiled Laws.

(e) Property governed by Public Act 238 of 1957, as amended, being sections 434.151 to 434.156 of the Michigan Compiled Laws.

(2) "Lost property" includes not only property which has been lost, but also mislaid property and treasure trove. "Lost property" does not include abandoned property, but found property

shall be presumed to be lost rather than abandoned unless the circumstances clearly evidence that the property was abandoned.

(3) "Owner" means any person entitled to possession of the lost property as against the finder and as against any other person who has made a claim.

(4) "Finds." A person does not find lost property unless he or she (1) takes possession of that property, and (ii) believes it to be lost property or believes it to be abandoned property where the circumstances do not clearly evidence that the property was abandoned.

(5) "Finder" means a person who finds lost property and reports the find to a law enforcement agency or has the find reported on his or her behalf by a lost and found department as provided in section 7(3).

(6) "Law enforcement agency" means the Michigan State Police, the county sheriff's office, the police department of a local unit of government, or any agency specifically designated by a local governmental unit to perform the functions assigned by this statute to a law enforcement agency.

SECTION TWO [Responsibilities of Persons Finding Property]

(1) A person who finds lost property, and who knows the identity and address of the owner of that property shall, within seven days after the finding, do any one of the following:

(a) Report the finding to the owner and make the property available to the owner or return the

property to the owner.

(b) Report the finding to a law enforcement agency located in the political subdivision within which the property was found, and deliver the property to that law enforcement agency if so directed.

(c) Deliver the property to the lost and found department if the property is found on the premises of an entity which provides a lost and found department.

(2) A person who finds lost property worth twenty-five dollars or more and who does not know both the identity and address of the owner of that property shall, within seven days after the finding, do either of the following:

(a) Report the finding to a law enforcement agency located within the political subdivision within which the property was found, and deliver the property to that law enforcement agency if so directed.

(b) Deliver the property to the lost and found department if the property is found on the premises of an entity which provides a lost and found department.

SECTION THREE [Agency's Responsibilities -- Receiving Report, Arranging for Storage]

(1) A law enforcement agency shall take custody of lost

property reported as found unless the law enforcement agency and the person or lost and found department making the report agree that either that person, that department, or a third party take custody of the property for the time period specified in section 6.

(2) A law enforcement agency taking custody of lost property shall give the person or lost and found department depositing the property a receipt for the property.

(3) The law enforcement agency shall keep a record of the reporting of each finding, including a description of the property, the identity of the finder, and the arrangement for custody.

(4) The law enforcement agency shall inform the party reporting the finding of the period specified in section 6 for which the property must be kept and of the rights of the finder after the lapse of that period without a claim by the owner.

(5) The law enforcement agency shall assess the value of lost property based on its own judgment and that assessment shall not be subject to challenge.

(6) A law enforcement agency, finder, or lost and found department, where it takes custody of lost property pursuant to subsection (1), shall not be liable for the damage or loss of that lost property unless it has intentionally caused such damage or has unlawfully converted the property.

SECTION FOUR [Agency's Responsibilities -- Notification]

(1) A law enforcement agency receiving a report of a finding shall provide notice as follows:

(a) If the identity and address of the owner of the property are known, notice shall be given to the owner by mail, telephone, or other means.

(b) If the lost property was found in a place other than a public street or highway, the identity and the address of the owner of the property are not both known, and person in possession or control of the premises upon which the property was found has not received notice from the finder, the law enforcement agency shall provide notice to that person, if known, by mail, telephone or other means. If the person so notified cannot identify and locate the owner and the lost property is worth twenty-five dollars or more, reasonable public notice shall also be given as provided in subsection (c).

(c) If the lost property is worth twenty-five dollars or more and the identity and address of the owner are not both known, reasonable public notice shall be made within ten days of the reported finding. The judgment of the law enforcement agency as to what constitutes reasonable public notice shall not

be subject to challenge.

(2) If the time specified in section 6 has lapsed, the property has not been claimed by the owner, and the property is worth one hundred dollars or more, the name and address of the finder are known, the law enforcement agency shall notify the finder by telephone, mail or other means, within twenty days of the lapsing of the time period, that the finder is entitled to claim the property as provided in section 6.

SECTION FIVE [Agency's Responsibilities -- Disposal of Lost Property]

(1) Perishable lost property may be sold by a law enforcement agency as promptly and in such manner as it deems appropriate, and its determination in this regard shall not be subject to challenge. The funds from such a sale shall be treated in the same manner as other lost property.

(2) Where the law enforcement agency concludes that the lost property itself poses an imminent hazard to health or property, and that safe storage is not practicable, the agency may dispose of the property in such manner as it deems appropriate, and its determination in this regard shall not be subject to challenge.

(3) If the cost of storage equals the value of the property as assessed by the law enforcement agency, the property shall be given to the individual or entity entitled to reimbursement for that storage. The agency shall not be held liable for an erroneous determination in this regard.

(4) If an individual or entity establishes to the satisfaction of the law enforcement agency that he, she, or it is the owner of lost property, and the property has not been otherwise disposed of pursuant to this act, the agency shall return the lost property to that person or entity, or arrange for its return from the party having custody, subject to the conditions specified in section 8.

(5) If the finder claims the property and is entitled to receive the property under section 6, the property shall be given to the finder as provided in that section.

(6) If the finder does not claim the lost property within thirty days after the lapsing of the period specified in section 6, the law enforcement agency may dispose of the property in accordance with regulations governing that agency's disposition of property. Any lost money or money received from the sale of lost property shall be deposited in the general treasury of the unit of government of which the law enforcement agency is a part.

SECTION SIX [Finder's Rights]

(1) A finder of lost property worth less than one hundred dollars is entitled to receive that property if both of the following conditions exist:

(a) The owner has not claimed the property (i) within thirty days of the report of the finding to the law enforcement agency where that report was made by the finder within ten days of the finding, (ii) within

thirty days of the report of the finding to the law enforcement agency where that report was made by a lost and found department, or (iii) within sixty days of the report of the finding to the law enforcement agency where that report was made by the finder more than ten days after the finding.

(b) The owner has not claimed the property prior to the finder actually taking possession of the property.

(2) A finder of lost property worth more than one hundred dollars but less than one thousand dollars is entitled to receive that property if both of the following conditions exist:

(a) The owner has not claimed the property (i) within ninety days of the report of the finding to the law enforcement agency where that report was made by the finder within ten days of the finding, (ii) within ninety days of the report of the finding to the law enforcement agency where that report was made by a lost and found department, or (iii) within one hundred and eighty days of the report of the finding to the law enforcement agency where that report was made by the finder more than ten days after the finding.

(b) The owner has not claimed the property prior to the finder taking actual possession of the property.

(3) A finder of lost property worth one thousand dollars or more is entitled to receive the property if both of the following

conditions exist:

(a) The owner has not claimed the property (i) within one hundred and eighty days of the report of the finding to the law enforcement agency where that report was made by the finder within ten days of the finding, (ii) within one hundred and eighty days of the report of the finding to the law enforcement agency where that report was made by a lost and found department, or (iii) within three hundred and sixty days of the report of the finding to the law enforcement agency where that report was made by the finder more than ten days after the finding.

(b) The owner has not claimed the property prior to the finder actually taking possession of the property.

(4) When entitled to receive the property as provided in subsection (1), (2), or (3), the finder must file a claim to the property with the law enforcement agency, even if that property is already in the finder's possession, and must pay the reasonable expenses incurred by the agency in connection with the storage and disposition of the property and a reasonable recordkeeping fee set by the agency.

SECTION SEVEN [Lost and Found Department's Responsibilities]

(1) If the lost and found department knows the identity and address of the owner of lost property delivered to its custody,

notice shall be given to the owner by mail, telephone, or other means.

(2) If a person establishes to the satisfaction of the lost and found department that he or she is the owner of lost property held in the custody of that department, the lost and found department shall return that lost property to that person.

(3) If lost property in the custody of a lost and found department is worth less than twenty-five dollars and is not claimed by the owner within a time period specified by the department, the department shall return the property to the finder or dispose of the property as it sees fit.

(4) If lost property in the custody of a lost and found department is worth twenty-five dollars or more and is not claimed by the owner within a time period specified by the department, the lost and found department shall report the finding of the property to a law enforcement agency on behalf of the finder. If the name and address of the finder is unknown, the lost and found department shall be treated as the finder.

(5) A lost and found department may assess the value of lost property based on its own judgment and that judgment shall not be subject to challenge.

SECTION EIGHT [Owner's Rights and Responsibilities]

(1) An owner of lost property claiming return of that property shall reimburse the finder and the law enforcement agency for all reasonable expenses incurred by them in complying with the

provisions of this Act. Where the find was reported to a law enforcement agency, the owner shall also pay a reasonable recordkeeping fee set by the agency.

(2) If the property is held by a third party custodian, the owner is entitled to receive the property only upon payment of a reasonable storage fee to that custodian in addition to the reasonable expenses specified in subsection (1).

SECTION NINE [Liability for Return]

(1) Except where there is a violation of subsection (2), a finder, law enforcement agency, third party custodian acting at the direction of a law enforcement agency, or lost and found department shall not be held liable for delivery of lost property to a person believed to be the owner.

(2) If at any time prior to the return of lost property an action or proceeding is commenced to determine any claimants right to that property and written notice of such action is served upon any party having custody of that property, that party shall not thereafter deliver the property to any person except pursuant to a court order.

SECTION TEN [Exceptions]

(1) If the finder takes possession of lost property while he is upon premises with respect to which his presence is a crime, the person in possession of the premises shall have the rights of

the finder if, before the finder receives title to the property pursuant to section 6(4), that person files with the law enforcement agency having custody of the property written notice asserting such rights.

(2) If the finder is an officer or employee of a government unit and takes possession of the property in the course of his or her official duty, the government unit shall be deemed to be the finder for the purposes of this act. If, in any other case, the finder is an employee under a duty to deliver the lost property to his or her employer, the employer shall have the rights of the finder if, before the finder receives title pursuant to section 6(4), the employer files with the law enforcement agency a written notice asserting such rights.

(3) This act does not supersede or limit any other act or rule of law governing the custody or disposition of property which constitutes evidence of the commission of a crime, property which may not lawfully be possessed without licence, or property which was stolen.

SECTION ELEVEN [Title to Lost Property]

(1) The title to lost property for which a finding has been reported to a law enforcement agency shall vest in the finder, or other persons entitled to assert the rights of the finder under sections 7 and 9, when the claim of the finder is properly filed and accepted pursuant to section 6(4).

(2) The title to lost property which has been delivered to a

police agency shall vest in the law enforcement agency if the law enforcement agency disposes of the property pursuant to sections 5(1), 5(2), 5(3), or 5(6).

(3) If the title to lost property for which a finding has been reported does not vest in any other person, title shall vest in the law enforcement agency to which the find was reported.

SECTION TWELVE [Repealer]

(1) Chapter 47 of the Revised Statutes of 1846, being sections 434.1 to 434.14 of the Michigan Compiled Laws, is repealed.

COMMENTARY ON THE PROPOSED STATUTE

I. SECTION ONE: DEFINITIONS

(1). **"Property."** There is no definition of "property" in the IGA. New York has an extensive definition of "property," which is used primarily to distinguish property subject to the lost property statute from property governed by other statutes:

> "The term `property' . . . means money, instruments payable, drawn or issued to bearer or to case, goods or chattels and tangible personal property other than (a) `instruments' . . ., (b) animals, (c) wrecks governed by the provisions of the navigation law, (d) logs . . . and (e) vehicles. . . ." 40 N.Y.S. §251(1).

Following the New York format, the proposed statute's definition of property initially includes any money, goods, chattels or other tangible items, but then excludes various special items of property that are governed by other statutes. These are:

> Escheatable property. Escheatable property is excluded from the definition of property in the draft statute because it is adequately handled by the Code of Escheats. That code allows the state to assert ownership over property intentionally (or presumed to be intentionally) left by the owner with a "holder." Escheatable property thus really is not "lost" since the owner knew (at least initially knew) where the property was located and the holder did not come into possession of the property as a finder. In any event, Willsmore v. Oceola Township, 106

Mich.App. 671 (1981) suggests that the escheats law should prevail where its provisions apply.

Animals. Animals are covered in the LGA, but the nature of animals (mobility, feeding, etc.) requires a different treatment of the duties of the finder and different responsibilities for the agency receiving a report of the find. See Appendix A. New York similarly excludes animals.

Wrecks. Wrecks are not governed by the draft lost property statute but instead by navigation law. New York similarly excludes wrecks.

Vehicles. Vehicles are not governed by the draft lost property statute but instead by vehicle and traffic law. The current Michigan provision on "abandoned" vehicles is M.C.L. §§257.252a to 257.252g. New York similarly excludes vehicles.

Property in state custody. Public Act 238 of 1957, M.C.L. §434.151 et seq., governs lost property found in state institutions or on state owned property.

It should be noted that the above list of exclusion does not include stolen property. Public Act 54 of 1959, M.C.L. §§434.171 to 434.172 applies to stolen property received by a county sheriff where that property is not claimed within 6 months. The Act provides for certain procedures to be used in the disposition of that unclaimed property. Public Act 214 of 1979, M.C.L. §§434.181 to 434.184, governs stolen property "received" by a law enforcement officer of a village or township or "abandoned personal property" "discovered" by such an officer. Like Public Act 54, it comes into play after the property is unclaimed for 6 months and it provides for the procedure to be followed in the disposition of such property. Public

Act 203 of 1937 similarly applies to stolen property recovered by the Michigan state police which is not claimed within 6 months. Since these three provisions become applicable only after the property remains unclaimed, and apply to material "recovered" by the police agency (which would include material delivered to the agency by private finders), there is no need to exempt stolen property for the general provisions of this Act. However, the provisions of these three acts should govern as to the disposition and custody of such property by the police. Accordingly, stolen property is not excluded from the definition of property, but section 10 does provide that this act does not supercede any act governing the custody or disposition of stolen property.

(2). **"Lost property."** 40 N.Y.S. §251(3) serves as the model for the definition of "lost property." The definition is necessary since "lost" here means more than that which has been left in a place where it cannot be found. For these purposes it also includes:

> Mislaid property. Mislaid property was distinguished at common law from lost property. This was property left in a position and place suggesting it was temporarily forgotten (e.g., on the seat of a bus or the counter of a store) and the owner was likely to quickly return to recover it. The distinction has significance especially for the law of theft, since mislaid property was viewed as taken from the possession of the owner. Most modern penal codes have rejected the distinct treatment of "mislaid" and "lost" property. The same is true for a lost property provision. When one takes property into his or her possession as a finder, there should be no need to draw such subtle distinctions; the obligation should be the same whether the property is

lost or mislaid.

Treasure trove. The proposed definition of lost property also would specifically include buried treasure (treasure-trove). This is consistent with the reasoning in Willsmore, supra.

An additional sentence notes that abandoned property is not included in the definition of lost property. This is true by definition since the owner here has intentionally renounced any interests he or she had in the property. Finders of abandoned property are not required to try to locate the owner, since title has been renounced. However, finders might be able to frustrate the intent of a lost property statute if they could simply argue that they believed the property was abandoned. To balance these concerns, the definition of lost property presumes that found property was lost, rather than abandoned, unless if the "circumstances clearly evidence that the property was abandoned." See 40 N.Y.S. §251(3).

(3). **"Owner."** This definition comes from 40 N.Y.S. §251(4). It's function is to allow a determination of ownership vis a vis those who have made claims. It does not become necessary to check the absolute priority of the owner's interest so long as the only competing claim is by the finder.

(4). **"Finds."** This definition makes clear that a person finds lost property only if that person takes possession of the property. If one just leaves the property where he or she discovers it, no responsibility is imposed. Also, the definition ties the act of finding to the necessary mental element -- a belief that the property is lost or an impermissible belief that it is abandoned where the circumstances do not clearly evidence that to be the case.

(5). **"Finder."** This definition adds to the act of finding the

fulfillment of the reporting requirement either by the person himself or by the lost and found department in his behalf, thereby allowing a shorthand reference to such finders in later provisions.

(6). **"Law enforcement agency"** is defined to include not only police departments, but other agencies designated to perform the same clearing house function by a particular local government. It is expected that where this is done, the local police department will direct the finder to that other agency serving this function.

The duty to report to an agency is stated in section 2 as applicable to "a law enforcement agency located within the political subdivision within which the property was found." In some instances, there will be more than one agency there located -- e.g., a State Police post and a county sheriff's office. Those agencies can by agreement divide their jurisdiction according to where the property was found, which would facilitate the owner's search for the property. If that is not done, the owner simply will have to call more than one agency to determine if the property was reported as found.

II. SECTION TWO: FINDER'S RESPONSIBILITY

Under the proposed statute, the responsibilities of the finder depend on whether the finder knows the identity and address of the owner. The reference here is to actual state of mind. But whether the finder knew or did not know an owner's identity is unlikely to be a subject of litigation. For where the property involved has significant value, the obligations of the finder are similar whether or not he or she knows the owner's identity.

1. Finder's responsibilities where owner is known. Like the LGA, the proposed statute does not make the duty to attempt to return lost property

to a known owner dependent on the value of the property. Compare 40 N.Y.S. §252(1). If the identity and address of the owner are known, an attempt to facilitate return is required regardless of the value of the property. Since returning the property itself can be burdensome, the LGA imposes a duty on the finder simply to give the owner "notice" of the find. The proposed statute makes clear that the finder must also make the property available to the owner to obtain possession (assuming the finder does not return it along with the giving of notice).

The proposed statute also recognizes other alternatives to direct dealing with the owner. The finder may report the find to a law enforcement agency (and than deliver it to that agency if so requested) or deliver the property to a lost and found department if the property is found on premises for which there is a lost and found department. This assists the finder who can't readily contact the owner, or simply wants to avoid direct contact with a stranger. The agency or lost and found would then contact the known owner. See proposed sections 4(1)(a) and 7(1).

The LGA requires that finders give notice to the known owner "immediately." See M.C.L. §434.4. The draft statute gives the finder seven days, the current time period for reporting finds when the owner is not known. New York similarly adopts the same time requirement for reporting for both known and unknown owners. See 40 N.Y.S. §252(1).

2. Finder's responsibility where owner unknown. If the finder does not know the name and address of the owner, the case for requiring some substantial effort to return is lessened. Here, there is a much greater likelihood that the property will not be returned notwithstanding that effort. Accordingly, there is need to balance the burden of making that

effort against the benefit to the owner of a successful effort. This means taking into consideration the value of the property; the value of the loss to the owner should be high enough to justify the burden of reporting even though return is not that likely. New York uses $20.00 as the minimum value needed to invoke a finder's duty to report under its lost property statute. See 40 N.Y.S. §251(1). The proposed statute uses a somewhat higher figure; it imposes responsibilities on finders who do not know the identity of the owner only if the property is worth at least $25.00. There is no magic on this figure, although it does seem clear that the LGA minimum of $3.00 is too low.

Like the LGA and the New York provision, reference is made to actual value rather than the finder's belief as to value. Since the finder is not subject to criminal liability, he or she is not placed at risk by undervaluing the property. Indeed, the undervaluation would have to be quite substantial before the failure of the finder to report even gives use to some type of civil suit.

If the property is worth twenty-five dollars or more, the finder is given two basic alternatives, delivery to a lost and found or reporting to the law enforcement agency (and delivery if the agency so requests). Here again a seven day period is imposed.

III. SECTION THREE: AGENCY RESPONSIBILITIES (RECORDKEEPING, AND CUSTODY OF PROPERTY)

The proposed statute makes the law enforcement agency instead of the finder responsible for the acceptance, storage, notice and disposition of lost property. See sections 3-5. Section 3 deals with the agency's reporting and property-handling responsibilities.

Presently, the finder is responsible for holding the property. See M.C.L. §434.1. In New York, the police are responsible for holding the lost property until the owner appears or the property is returned to the finder. See 40 N.Y.S. §253(1). Section 3 requires the agency to take custody if the finder insists upon it, although the agency can then assign the storage function to a third party. On the other hand, if the finder is willing to assume custody, the agency can allow the finder to do so. This probably will be the accepted arrangement when the item is easily stored, not of great value, and unlikely to be claimed by the owner. The agency assumes no responsibility by allowing the finder to continue to retain custody. See section 3(7). The use of a third party custodian is only likely where the property is of sufficient value as to ensure that the custodian will receive its fee.

Where the agency takes custody, the finder must be given a receipt. See subsection (2). In any event, a record of the find and the arrangement for custody must be made. See subsection (3). So that the finder can make a claim after the appropriate waiting period, the agency must also inform the finder of the waiting period and the finder's rights thereafter. See subsection (4).

Because the agency must follow different procedures based on its valuation of the property, subsection (5) provides that it shall assess the value and that assessment is not subject to challenge.

To encourage the finder to agree to keep the property where the agency so desires, subsection (6) provides that the finder will not be liable for loss or damage unless he or she acted in bad faith -- i.e., intentionally harmed or converted unlawfully. The same policy is carried over to the lost

and found department to encourage those departments as well. The law enforcement agency itself is given similar protection, but the same does not apply to third-party custodian, as that custodian will be performing that function for a fee and should bear responsibility for negligence.

IV. SECTION FOUR; AGENCY RESPONSIBILITY (NOTIFICATION)

Under the LGA, the finder is responsible for "immediately" giving notice to "known" owners. See M.C.L. §§434.1-2. Under section 4(1)(a), the proposed statute would require the law enforcement agency to notify the known owner where the finder prefers simply to operate through the agency.

If the owner's identity is not known, but the property was found on a location other than a public highway or street, the agency is directed to give notice to the occupant of the premises on which the property was found if that person has not yet received notice from the finder. See section 4(1)(b). This provision is not present in the LGA, which treats all cases of an unknown owner under its general public notice provisions discussed, but is derived from the New York statute. See 40 N.Y.S. §253(3). The assumption here is that, if not the owner himself, the occupant might be able to expedite the return of lost property to its owner. Notice can be by the means the agency finds most convenient -- "mail, telephone, or other means."

The LGA imposes differential obligations as to public notice and imposes those on the finder. The dollar amounts triggering different obligations are $3.00 and $10.00. See M.C.L. §434.1-2. At $3.00, the finder must post a public notice, and at $10.00, he or she must advertise in a newspaper. The proposed statute imposes an obligation to make reasonable public notice only when a law enforcement agency assesses the value of the

lost property at $25.00 or more. (Below that the finder need not even report the find). Moreover, it allows the police to determine the form that notice will take. Advertising in a newspaper is not required. Indeed, for some items, a listing at the police station may be viewed as adequate public notice.

Under section 3(4), the agency will have informed the person making the report of the finder's rights. Thus the finder will have received notice of those rights, including the waiting period, where the report is made by the finder rather than a lost and found department. Where the report was made by a lost and found department, it most often will have informed the finder of the section 6 provisions, although that is not required under section 7. In any event, section 4(2) requires further notice by the law enforcement agency where the property is worth more than $100.00 and the finder is known (which will usually be the case in light of the record required under section 3(3)). Cf. 40 N.Y.S. §253(8) (providing for notice to finder in all cases).

V. SECTION FIVE: AGENCIES RESPONSIBILITY (DISPOSAL)

Initially, a provision is made for perishable disposable property modeled after 40 N.Y.S. §253(5). Secondly, a similar provision is made for hazardous material, such as explosives, gases, or radioactive material, that may require special storage or even destruction if storage is not available in the community. Where the cost of storage outruns the value of the property, the holding period is cut short and the property is used to compensate the person entitled to storage fees. Subsections (4), (5), and (6) set forth the disposition provisions for most cases. Initially, subsection (4) establishes the basic authorization for return to the owner.

Subsection (5), in turn, provides for delivery to the finder where section 6 so authorizes, and subsection (5) provides for disposal where neither the finder nor the owner makes a claim. The proceeds then go to the general treasury of the particular unit of government. Because the agencies will vary, the section states only that the disposition of the property will be in accord with local regulations. Possible models would be Public Act 203 of 1937 (M.C.L. §28.401 et seq.), Public Act 214 of 1979 (M.C.L. §434.181 et seq.) and Public Act 54 of 1959 (M.C.L. §434.171 et seq.), all dealing with the disposition of unclaimed stolen property.

VI. SECTION SIX: FINDER'S RIGHTS

The current IGA utilized a one year waiting period. New York takes a four-tiered approach. Lost property valued less than $100.00 is held just three months; more than $100.00 and less than $500.00, six months; less than $5,000, one year; and more than $5,000, three years. See 40 N.Y.S. §253(7). The proposed statute adopts a three tiered approach. Lost property valued less than $100.00 need be held only 30 days, between $100.00 and less than $1,000, for 90 days, and $1,000 or more for 180 days. If the property was not delivered within the required 10 day period, the waiting period is doubled. This provides an incentive for prompt delivery and further protects the owner who may be harder to locate when the report is not made promptly.

Even though the time period has run, the finder is not entitled to the property if the owner should first arrive on the scene. The finder must, in any event, file his claim within the 30 day period specified in section 5(6), and must pay reasonable expenses including a reasonable recordkeeping fee. This provision is designed to leave the agency "whole," but unlike the

LGA, the local government value does not share in the finder's luck by taking half of the value. Because sharing provisions are a disincentive to reporting the discovery of lost property, modern statutes mandate either the return of the lost property to the finder upon payment of reasonable expenses relating to the custodial agencies disposition of the property or the sale of the property with the finder receiving the proceeds minus such expenses. See e.g., 40 N.Y.S. §254(2); Cal. Code §2080.3.

VII. SECTION SEVEN: LOST AND FOUND DEPARTMENT

Under the proposed statute, a finder may deliver lost property to a lost and found department wherever there is a lost and found department. That will be the first place to which an owner will turn to find his lost property. To encourage the use of such departments, the statute does not require the department to keep the property for a certain number of days. If the property is worth less than $25.00, it may dispose of it as it pleases. If the property is worth $25.00 or more, the department may shift responsibility to the law enforcement agency in much the same way as would the original finder. If it does, and the finder gave his or her name and address, the transfer by the department is treated as if the finder made the transfer (i.e., after the waiting period, the finder will be entitled to the property). If not, the department is treated as the finder.

Like a law enforcement agency, a lost and found department must notify the owner of lost property if the identity of the owner is known and return the lost property to the owner if the owner establishes to the satisfaction of the lost and found department that he or she is the owner. Like a law enforcement agency also, a lost and found department's judgment of the value of lost property for the $25.00 dividing line is not subject to challenge

[see section 7(3)].

VIII. SECTION EIGHT: OWNER'S RESPONSIBILITY

The draft statute requires that the owner reimburse the appropriate party for all reasonable expenses relating to compliance with the act; this includes storage, notification, and disposal in the case of perishables. Unless the finder retained custody of the lost property pursuant to section 3, those expenses will have been borne by the police agency. If the property is being held by a third party custodian, a reasonable storage fee should be paid to that custodian. In addition, where the find was reported (i.e., the property was not returned directly to a known owner under section 2(1)(a)) the reasonable recordkeeping fee must be paid.

IX. SECTION NINE: LIABILITY FOR RETURN

Lost property may be returned to the owner by a finder, a lost and found department, a law enforcement agency, or a third-party custodian (acting at the direction of the agency). In each instance, the party returning the property should not be held liable where convinced that the person to whom it gave the property was the owner. See subsection (1). If there is a dispute over ownership, a court order can be obtained and served upon the person having custody. See subsection (2). See 40 N.Y.S. §256(6).

X. SECTION TEN: EXCEPTIONS

This section adopts a number of exceptions recognized in New York's lost property act. Following 40 N.Y.S. §256(1), the draft allows the owner of a premises to assert the rights of the finder, provided that is done in a timely fashion, where the finder's presence on the premises constituted a crime. This prohibits criminals from being rewarded for their criminal activity.

Similarly, following 40 N.Y.S. §256(2), employers whose employees are under a duty to deliver lost property to the employers have the rights of the finder when such employees find lost property. Also like 40 N.Y.S. §256(2), a government employee does not have the rights of a finder if that employee finds lost property in the course of his or her official duty. Of course, where the find is made within a government institution or on government property, Public Act 238 of 1957 will apply in any event, as provided in section 1(1).

Finally, the draft statute has an exemption as to custody and disposition for property that is being held as evidence for a criminal proceeding, property that cannot be possessed without a license, and stolen property. This allows for the application of other laws relating primarily to disposition, such as the three Public Acts governing police disposition of stolen property not claimed within six months. See M.C.L. §§28.401 et seq., 434.171 et seq., 434.181 et seq.

XI. SECTION ELEVEN: TITLE

This provision is derived from 40 N.Y.S. §257. The first two subsections deal with the two basic means of transfer of title -- to the finder or persons who stand in the place of the finder, and to the law enforcement agency where there has been no claim. Finally subsection (3) is designed as a catch-all for unforeseen circumstances.

XII. SECTION TWELVE

With this statute replacing the LGA provisions governing lost property and with LGA provisions on stray animals no longer needed, see Appendix A, the LGA should be repealed.

APPENDIX A

STRAY BEASTS

I. Provisions of the LGA. The LGA at M.C.L. §434.3 allows any "resident freeholder" of a township to "take up" any "horses, mules, or asses" (between November 1st and March 31st), any "stray cattle [sic], sheep, or swine, running at large. Notice then must be given to the owner, if known, or the township clerk (who then sends a copy of the report to the county clerk). See M.C.L. §§434.3, 434.4. If the owner doesn't claim the animal within 1 month, and the animal is worth $10.00 or more, notices must be published in a local newspaper. See M.C.L. §434.5. The finder also must obtain an appraisal of the animal's worth from a justice of the peace and file that with the clerk, but here a 3 month period applies. See M.C.L. §434.6. The owner has 6 months to claim the animal (and pay costs). See M.C.L. §434.9. After that, provision is made for an auction (at which the finder may bid), with the proceeds (after deducting fees and costs) going to the township. See M.C.L. §434.10. If the owner appears within 1 year, and establishes his claim, then the owner receives the net proceeds, rather than the township. Failure to comply with the Act precludes the finder from the benefits of the Act. M.C.L. §434.12, and a misdemeanor penalty of $10.00 to $50.00 applies if there is a failure to comply "willfully and with fraudulent intent to convert." See M.C.L. §434.12. A person who unlawfully takes the animal from the finder is responsible to the finder for the value of the animal. See M.C.L. §434.13. Finally, after 1 month, the finder can "moderately and carefully work" a found horse, mule, or ox.

II. Public Act 328 of 1976. (M.C.L. §§433.11 to 433.20). (Appendix C). This Act "to regulate animals running at large" applies to "cattle, horses, sheep, swine, mules, burros, or goats." See M.C.L. §433.11. Since "asses" in M.C.L. §434.3 and "burros" in M.C.L. §433.11 refer to the same animal, the coverage of the Public Act 328 is as broad as the LGA. Under M.C.L. §433.14, a person may seize and take into custody an animal found running at large (without the time limitation as to sheep, cattle, and swine found in M.C.L. §434.3). The finder is required to "immediately notify a law enforcement agency," which shall then take custody or possession of the animal. See M.C.L. §433.14(2). If the owner is known, the agency returns the animal to the owner (who must provide compensation for any damage done by the animal). See M.C.L. §433.15. If the owner is not known, notice must be published in a local newspaper. See M.C.L. §433.15. If the animal is not claimed within 15 days after notice, the animal is sold at a public auction. See M.C.L. §§433.15, 433.16. The owner may redeem the animal by paying the auction price within 3 months. See M.C.L. §433.16. The proceeds from the auction (minus expenses) go to the "city or township treasurer" of the city or township in which the animal was found. See M.C.L. §433.16.

Public Act 328 basically replaces the LGA as to the subject of lost animals. There is no reason to have both provisions. As a recently enacted provision, having statewide application, Public Act 328 should be kept and the LGA repealed.

III. Amendment of Public Act 328. The proposed lost property statute differs in several respects from Public Act 328. The question therefore is presented as to whether the latter act should be modified to conform with the proposed lost property statute, or whether the difference between

animals and personal property justify the differences in the two provisions.

The first major area of difference -- that in specified time periods -- rests in large part on the difference between strays and lost personal property. M.C.L. §433.14 requires that the finder of strays "immediately" notify the police, while proposed section 2 would require the finder of lost property to report within 7 days. Because animals need care (the police must promptly take delivery of the stray under M.C.L. §433.14(2)), a shorter time period is appropriate for strays. Public Act 328, under M.C.L. §433.15, provides for a 15 day waiting period before an auction is permissible (although M.C.L. §433.16 effectively requires a longer period by insisting upon 21 days notice prior to the auction). The owner may redeem the stray, however, within 3 months following the sale. This compares to the three-tiered (30, 90, and 180 days) waiting period provided in proposed section 6 for lost property. In the case of animals, the storage difficulties mandate a shorter waiting period, and the interests of purchaser at an auction justify a 3 month limitation on redemption.

Where the owner of the stray is not known, Public Act 328, under M.C.L. §433.15(b), requires public notice of the find in the form of "notice in a newspaper of general circulation in the area that the animal is in the custody or possession of the law enforcement agency." While proposed section 4(1)(c) also requires "reasonable public notice" where the property is worth at least $25.00, but what constitutes adequate notice is left to the discretion of the law enforcement agency. Because of the greater number of finds likely to be reported under the proposed statute and the wider range of items of varying value and likelihood of identification by an owner, more discretion in deciding what constitutes appropriate public

notice is appropriate in a lost property statute.

The most significant difference between Public Act 328 and the proposed statute relates to allocation of the lost property where not claimed by the owner. Public Act 328 provides that the proceeds from the auction of unclaimed strays shall go to the local government (minus the deduction for expenses for the auction and the keeping of the animals). See M.C.L. §433.16(3). The proposed section will give the lost property (or proceeds from its sales) to the finder (minus expenses and a recordkeeping fee). This is viewed as necessary to encourage compliance with the Act. The finder is offered the incentive of possibly obtaining title to the lost item if it is not claimed. A similar incentive may not be needed in the case of lost animals, where a finder is far less likely to take possession and keep the stray. Since that determination was made by the legislature in the adoption of Public Act 328 (enacted in 1976), we do not suggest that it be "rethought."

APPENDIX B

CURRENT MICHIGAN STATUTES

R.S. 1846, Ch. 47.

LOST GOODS AND STRAY BEASTS.

434.1 Lost money or goods; notice of finding.

Sec. 1. When any person shall find any lost money, or lost goods, if the owner thereof be known, he shall immediately give notice thereof to such owner; if the owner thereof be unknown, and such money or goods be of the value of 3 dollars or more, the finder shall, within 2 days, cause notice thereof to be posted in 2 public places within the township where the same were found; and shall also, within 7 days, give notice thereof in writing to the township clerk of such township, and pay him 25 cents for making an entry thereof in a book to be kept for that purpose.

HISTORY: CL 1857, 1603;—CL 1871, 2013;—How. 2061;—CL 1897, 5739;—CL 1915, 7445;—CL 1929, 9000;—CL 1948, 434.1.

ESCHEATED ESTATES: See Compilers' § 567.12 et seq.

434.2 Lost money or goods; notice by publication.

Sec. 2. If the money or goods so found be of the value of 10 dollars or more, and the owner thereof be unknown, the finder thereof shall also, within 1 month after such finding, cause notice thereof to be advertised in some newspaper in the same county, if one be published there, and if not, then in some newspaper published in an adjoining county and continued therein, for 6 successive weeks.

HISTORY: CL 1857, 1604;—CL 1871, 2014;—How. 2062;—CL 1897, 5740;—CL 1915, 7446;—CL 1929, 9001;—CL 1948, 434.2.

434.3 Taking up of animal running at large.

Sec. 3. It shall be lawful for any resident freeholder of any township in this state to take up any stray horses, mules, or asses, by him found going at large in such township, beyond the range where such horses, mules, or asses usually run at large: and also to take up between the first day of November and the thirty-first day of March, any stray neat *cattel, sheep or swine, by him found going at large therein, beyond the range where such animals usually run at large.

HISTORY: CL 1857, 1605;—CL 1871, 2015;—Am. 1879, p. 143, Act 143, Eff. Aug. 30;—How. 2063;—CL 1897, 5741;—CL 1915, 7447;—CL 1929, 9002;—CL 1948, 434.3.

*NOTE: It is evident the word "cattel" should be "cattle".

RESTRAINT OF ANIMALS: See Compilers' § 433.1 et seq.

434.4 Taking up of animal running at large; notice to owner, to township clerk, to county clerk; entry, fees.

Sec. 4. Such finder shall immediately give notice thereof to the owner of any such animal, if known to him; but if the owner thereof be unknown, such finder shall, within 10 days, cause notice thereof to be entered with the township clerk, in such book as aforesaid containing a description of the color, age, and natural and artificial marks of such animals as near as may be together with the name and residence of such finder, and shall pay to said township clerk the sum of 50 cents for entering the same, and sending notice as hereinafter required; and the township clerk shall, immediately upon receipt of such notice, make and send to the county clerk a copy of the same, who shall immediately upon receipt thereof, enter the same in a book to be kept by him for that purpose, and the finder shall pay to the township clerk the further sum of 25 cents, which sum shall be sent with the notice as aforesaid to the county clerk, and the same shall be the amount of fees said county clerk shall be entitled to receive for his services.

HISTORY: CL 1857, 1606;—Am. 1871, p. 241, Act 158, Eff. July 18;—CL 1871, 2016;—How. 2064;—CL 1897, 5742;—CL 1915, 7448;—CL 1929, 9003;—CL 1948, 434.4.

434.5 Taking up of animal running at large; publication of notice.

Sec. 5. If the owner of any such animal or animals shall not, within 1 month, appear and reclaim them, and such animal or animals, taken up at the same time shall be of the value of 10 dollars or more, the finder shall cause such notice to be published in a newspaper in the same county, if one be published there, and if not, then in a newspaper published in an adjoining county, and continued therein for 6 successive weeks.

HISTORY: CL 1857, 1607;—CL 1871, 2017;—How. 2065;—CL 1897, 5743;—CL 1915, 7449;—CL 1929, 9004;—CL 1948, 434.5.

434.6 Appraisal of lost goods or stray animals; filing, fees.

Sec. 6. Every finder of lost goods or stray animals, of the value of 10 dollars or more, shall, within 3 months, and before any use shall be made thereof, procure an appraisal of the same to be made and certified by a justice of the peace of his township, which appraisal he shall within said 3 months, cause to be filed with the township clerk; and he shall pay to such justice 50 cents for such appraisal and certificate, and 6 cents for each mile necessarily traveled by him in such service, and to the clerk 6 cents for filing the certificate.

HISTORY: CL 1857, 1608;—CL 1871, 2018;—How. 2066;—CL 1897, 5744;—CL 1915, 7450;—CL 1929, 9005;—CL 1948, 434.6.

434.7 Lost money or goods; restitution to owner.

Sec. 7. If the owner or person entitled to the possession of any such money or goods, other than stray animals, shall appear at any time within 1 year after such entry with the township clerk, and shall make out his rights thereto, he shall have restitution of the same, or of the value thereof, upon his paying all the costs and charges aforesaid, together with a reasonable compensation to the finder for keeping and taking care of the same, and for his necessary travel and expenses in the case; which charges shall, in case of disagreement between the owner and finder, be determined by some justice of the peace of the township, who shall certify the same.

HISTORY: CL 1857, 1609;—CL 1871, 2019;—How. 2067;—CL 1897, 5745;—CL 1915, 7451;—CL 1929, 9006;—CL 1948, 434.7.

434.8 Lost money or goods; remaining to finder; township entitled to one-half of value.

Sec. 8. If no owner or person entitled to the possession of the same shall appear within 1 year, then such lost money or goods shall remain to the finder, he paying 1/2 of the value thereof to the treasurer of the township, according to said appraisement, after deducting from such value all the fees and charges aforesaid, to be determined and certified by a justice of the peace as aforesaid; and upon his neglect or refusal to pay the said 1/2 of the value, the same shall be recovered by the township treasurer, in an action of debt or on the case.

HISTORY: CL 1857, 1610;—CL 1871, 2020;—How. 2068;—CL 1897, 5746;—CL 1915, 7452;—CL 1929, 9007;—CL 1948, 434.8.

434.9 Stray beasts; restitution to owner.

Sec. 9. If the owner or person entitled to the possession of any such stray beast shall appear within 6 months after such entry with the township clerk and shall make out his right thereto, he shall have restitution of the same, upon paying all lawful charges as before provided in the case of lost goods.

HISTORY: CL 1857, 1611;—CL 1871, 2021;—How. 2069;—CL 1897, 5747;—CL 1915, 7453;—CL 1929, 9008;—CL 1948, 434.9.

434.10 Stray beasts; sale; notice, finder as bidder, proceeds.

Sec. 10. If such owner or person entitled to the possession of the same, shall not appear and make out his title to the animal or animals within the said 6 months, such animal or animals shall be sold at the request of the finder, by any constable of the township, at public auction, upon first giving notice thereof in writing, by posting up the same in 3 of the most public places in such township, at least 10 days before such sale, and the finder may bid therefor at such sale, and the money arising therefrom, after deducting all the lawful charges aforesaid, and the fees of the constable, which shall be the same as upon a sale on execution, shall be deposited in the treasury of the township, and notice thereof shall be given by the constable making such sale, to the township clerk, whose duty it shall be to charge the same to the treasurer of the township.

HISTORY: CL 1857, 1612;—CL 1871, 2022;—Am. 1873, p. 191, Act 143, Imd. Eff. Apr. 22;—How. 2070;—CL 1897, 5748;—CL 1915, 7454;—CL 1929, 9009;—CL 1948, 434.10.

434.11 Stray beasts; proceeds of sale, receipt by owner or township.

Sec. 11. If the owner or person entitled to the possession of any such animal shall appear within 1 year after the entry with the township clerk as aforesaid; and establish by his own affidavit or otherwise to the satisfaction of the township treasurer, his title thereto, he shall be entitled to receive the money so deposited in the township treasury, from the proceeds of the sale; and if no owner or person entitled to the possession of the same, shall appear within the said year, such money shall belong to the township.

HISTORY: CL 1857, 1612;—CL 1871, 2083;—How. 2071;—CL 1897, 5749;—CL 1915, 7425;—CL 1929, 9010;—CL 1948, 434.11.

434.12 Finder; preclusion from certain benefits; wilful neglect to comply, penalty.

Sec. 12. If the finder of any lost money, goods, or stray beasts, shall neglect to cause the same to be entered, advertised, or notice thereof to be posted, as directed in this chapter, he shall be precluded from all the benefits of this chapter, and from all claim for keeping such goods or animals, or on account of any charges in relation thereto; and if any party shall willfully and with fraudulent intent to convert the same to his own use, neglect to make such entry, or to cause the same to be advertised as hereinbefore provided, for 30 days, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than 10, nor more than 50 dollars, and in the default of the payment thereof, be imprisoned in the county jail for a period not exceeding 90 days.

HISTORY: CL 1857, 1614;—Am. 1867, p. 36, Act 27, Eff. June 27;—CL 1871, 2084;—How. 2072;—CL 1897, 5750;—CL 1915, 7426;—CL 1929, 9011;—CL 1948, 434.12.

434.13 Unlawful taking of animal taken up as stray; liability.

Sec. 13. If any person shall unlawfully take away any animal, taken up as a stray pursuant to the provisions of this chapter, without paying all the lawful charges incurred in relation to the same, he shall be liable to the finder thereof to the value of such animal, which may be recovered in an action of trespass, or on the case.

HISTORY: CL 1857, 1615;—CL 1871, 2085;—How. 2073;—CL 1897, 5751;—CL 1915, 7427;—CL 1929, 9012;—CL 1948, 434.13.

434.14 Moderate working of horses, or other animals taken up; value of labor deducted from charges.

Sec. 14. If any horses, mules or oxen, of sufficient age and strength, and used to work, shall be taken up under the provisions of this chapter as strays, and shall not be reclaimed by the owner within 1 month after the entry thereof with the township clerk, the person taking up the same may moderately and carefully work such horses, mules or oxen within the township where they were so taken up, and the value of such labor shall be deducted from the charges aforesaid.

HISTORY: CL 1857, 1616;—CL 1871, 2086;—How. 2074;—CL 1897, 5752;—CL 1915, 7428;—CL 1929, 9013;—CL 1948, 434.14.

434.101-434.112 Repealed. 1962, p. 12, Act 13, Imd. Eff. Mar. 19.

Sections provided for disposition of unclaimed property in hands of forwarding merchants and keepers of wharves, warehouses, taverns or depots for reception and storage of personalty.

P.A.1976, No. 328, Eff. March 31, 1977

AN ACT to regulate animals running at large; to provide for compensation for damage done by animals running at large; to prescribe penalties; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

433.11 Definitions

Sec. 1. As used in this act:

(a) "Animal" means cattle, horses, sheep, swine, mules, burros, or goats.

(b) "Owner" means a person who has a right of property in an animal, a person who keeps or harbors an animal or has it in his care, or a person who permits an animal to remain on or about the premises occupied by him.

(c) "Animal running at large" means an animal not under the control of the owner and not on the owner's premises.

P.A.1976, No. 328, § 1, Eff. March 31, 1977.

433.12 Animals running at large, permitting, enabling; misdemeanor

Sec. 2. (1) An animal shall not run at large in this state.

(2) The owner of an animal shall not permit or enable his animal to run at large in this state.

(3) A person other than the owner of an animal shall not wilfully and knowingly enable an animal to run at large in this state.

(4) A person who violates this section is guilty of a misdemeanor.

P.A.1976, No. 328, § 2, Eff. March 31, 1977.

433.13 Persons sustaining loss of or damage to property, demand for compensation

Sec. 3. (1) A person who sustains any loss of, or damage to, property by an animal running at large may demand reasonable compensation from the owner of the animal as reparation for the loss or damage or as ordered by the court.

(2) The demand for compensation shall be in writing and shall include:

(a) A statement of when, where, what, and how much damage was done.

(b) The identity or description of the animal and, if known, the identity of the owner of the animal.

(c) The amount of compensation demanded.

(3) The demand for compensation shall be verified by the claimant and submitted to the law enforcement agency which has the animal in its custody or possession.

P.A.1976, No. 328, § 3, Eff. March 31, 1977.

433.14 Seizure and taking into custody of animals running at large

Sec. 4. (1) A law enforcement officer may seize and take into custody or possession any animal running at large in violation of this act.

(2) A person may seize and take into custody or possession any animal found running at large or trespassing upon the premises owned or occupied by that person. A person who takes an animal into custody or possession pursuant to this subsection shall immediately notify a law enforcement agency of his action. The law enforcement agency shall promptly take custody or possession of the animal.

P.A.1976, No. 328, § 4, Eff. March 31, 1977.

433.15 Custody or possession of animal by law enforcement agency; return of animal, notice, sale

Sec. 5. A law enforcement agency which takes custody or possession of an animal under this act shall:

(a) If the owner of the animal is known, return the animal to its owner, unless the owner refuses to make reparation as provided in section 3.[1]

(b) If the owner of the animal is not known, give notice in a newspaper of general circulation in the area that the animal is in the custody or possession of the law enforcement agency. The notice shall include a description of the animal and the location where the animal was seized. If the animal is not claimed within 15 days after publication of the notice, the animal may be sold at public auction pursuant to section 6.[2]

P.A.1976, No. 328, § 5, Eff. March 31, 1977.

[1] Section 433.13.
[2] Section 433.16.

433.16 Same; auction sale; notice, proceeds, redemption

Sec. 6. (1) A law enforcement agency which has in its custody or possession an unclaimed animal for not less than 15 days after giving notice as required in section 5,[1] may sell the animal at public auction.

(2) Notice of the public auction shall be given in a newspaper of general circulation in the area not less than 21 nor more than 30 days prior to the day of sale. The notice shall list the number and species of animals to be sold and shall specify the time and place of the sale.

(3) The animals shall be sold to the highest bidder at the auction. The proceeds derived from the sale of the animals shall be used first to pay any expenses incurred by the law enforcement agency in caring for and keeping the animals; second, to pay the expenses of the sale; and third, any balance remaining shall be paid to the city or township treasurer of the city or township in which the animal was seized and credited to the general fund of that city or township.

(4) An animal sold pursuant to this section may be redeemed at any time within 3 months following the sale, if the owner pays the sale purchaser the amount paid at the sale plus a reasonable compensation for the care and keeping of the animal.

P.A.1976, No. 328, § 6, Eff. March 31, 1977.

[1] Section 433.15.

433.17 Same; destruction of animal

Sec. 7. An animal which is not purchased at a public auction held pursuant to section 6 [1] may be destroyed by the law enforcement agency.

P.A.1976, No. 328, § 7, Eff. Mach 31, 1977.

[1] Section 433.16.

433.18 Same; claim of animal by owner

Sec. 8. The owner of an animal in the custody or possession of a law enforcement agency pursuant to this act, at any time prior to the sale thereof, may claim and be entitled to the possession of the animal. Upon payment to the law enforcement agency of reasonable compensation for the care and keeping of the animal, upon satisfactory proof of ownership of the animal, and upon making reparation as provided in section 3,[1] the animal shall be returned to its owner.

P.A.1976, No. 328, § 8, Eff. March 31, 1977.

[1] Section 433.13.

433.19 Keeping of racing pigeons; ordinances prohibiting

Sec. 9. A city, village, township, or county shall not enact an ordinance which prohibits the orderly keeping of racing pigeons.

P.A.1976, No. 328, § 9, Eff. March 31, 1977.

433.20 Repeal

Sec. 10. Act No. 185 of the Public Acts of 1867, being sections 433.1 to 433.6 of the Compiled Laws of 1970, is repealed.

P.A.1976, No. 328, § 10, Eff. March 31, 1977.

SPECIAL ADDENDUM ON PUBLIC ACT 273 OF 1987

by: Jerold H. Israel, Executive Secretary

Following the drafting of the Lost Property proposal and its approval by the Law Revision Commission, the Legislature adopted a series of enactments relating to criminal law enforcement, including Public Act 273 of 1987. That Act repealed the Lost Goods and Stray Beasts Act, and substituted a comprehensive enactment "to provide procedures and remedies regarding lost property." The Commission had drafted its proposal prior to the Legislature's consideration of substitute Senate Bill 109, which later became Public Act 273. It had, however, examined S.B. 109 at its last meeting of 1987, prior to the approval of this Annual Report. It concluded at that time that there would be value in including the Lost Property proposal in its annual report, even if the Legislature should adopt substitute Senate Bill 109 (as subsequently occurred). Although the Commission proposal and S.B. 109 offered quite similar solutions for the basic deficiencies of the Lost Goods Act (see parts II and III of the introductory memorandum), there were certain procedural differences in the Commission's proposal that could be important in the administration of those solutions. Procedural enactments such as Public Act 273 often are amended in light of experience gained in their application, and it was the Commission's hope that its proposal might be useful to the Legislature should amendments to Public Act 273 be considered in the future.

Public Act 273 in many aspects is quite similar to the Commission's proposal. In particular, it includes the following key features also found in the Commission proposal.

(1) It provides statewide coverage (as contrasted to the LGA).

(2) It designates the law enforcement agency as the central agency to which "finds" should be reported.

(3) It provides for storage "in a location as determined by the law enforcement agency" [§2(4)], thus apparently allowing the agency to leave the property with the finder, particularly where the property has limited value. See also §3(2) of P.A. 273, providing that property of "minor value" "may be kept by the law enforcement agency in a safe location and may be inspected by the public upon request during normal business hours."

(4) It provides sufficient flexibility for prompt disposition of such lost property as may be hazardous or perishable.

(5) It provides for waiting periods shorter than the L.G.A., basically 6 months and 3 months, depending upon the value of the property.

(6) It provides that property of any significant value will be returned to the finder where it remains unclaimed after the waiting period has expired. There is no sharing of value as provided under the LGA.

There are, however, several aspects of the Commission's proposal that are not treated in Public Act 273, and several areas in which the Commission's proposal differs from Public Act 273 in treating the same subject.

Among those elements of coverage included in the Commission's proposal,

but not in Public Act No. 273, the following are the most significant:

1. The Commission's proposal deals with the lost and found department. Public Act 273 makes no reference to such a department, requiring that finds be reported in all instances to the police agency.

2. The Commission's proposal deals with the doctrines of treasure trove and wrecks, eliminating the former and excluding the latter. It also specifically excludes property covered by various other statutory provisions that might conceivably be viewed as overlapping with the lost goods statute. Public Act 273 refers to Public Act 300 of 1949 (governing abandoned vehicles) and Public Act 214 of 1971 (which applies to abandoned as well as stolen property), but not to other provisions. It does not, for example, specifically exclude stray animals, covered by Public Act 328 of 1976. Neither does it deal with the common law doctrine of abandonment.

3. The Commission's proposal allows the finder to simply return the lost property to the owner where the finder knows the identity and address of that person. Public Act 273 flatly requires that the find be reported to the police; there are no exceptions. This conceivably could cause difficulty for the finder who simply delivers the property to the wrong person, one he mistakenly believed to be the owner, without reporting the find to the police.

4. Apart from notice to a known owner and the keeping of a record of reported finds, Public Act No. 273 does not refer to the providing of other types of notice by the law enforcement agent. The Commission's proposal provides for notice to be given to the owner of the premises on which the property was found (when that owner is known

and was not so notified by finder) and also authorizes other forms of public notice as the agency deems appropriate.

5. Public Act 273 refers to "storage costs" in its section 5(1), which describes the notice to be given to owner. Unlike the Commission's proposal, however, it does not contain a general provision designed to pass along all costs, including a recordkeeping fee, to the finder or owner who eventually claims the property. Neither does Public Act 273 refer to the finder's costs, also covered in section 8 of the Commission's proposal.

6. Public Act 273 does not treat the question of whether the "finder" (entitled to the property if it is not claimed) is the individual or the employer where the person making the find is an employee acting in the course of his or her duties. See proposed section 10(2).

There are a variety of procedural differences in areas treated by both Public Act 273 and the Commission proposal. Those differences are largely the result of the proposal's attempt to meet certain potential administrative difficulties. In particular, the proposal seeks (1) to avoid overwhelming reporting and storage responsibilities by excluding found property of minor value, (2) to grant wide flexibility to the local agency in devising procedures for the reporting, storage, and disposition of lost property, and (3) to provide protection for the agency against challenges to the exercise of its authority. The specific differences produced by those objectives, as compared to Public Act 273, are discussed below.

Property of limited value. The Commission proposal imposes no duty upon the finder where the owner is not known and the property is valued at

$25.00 or less. In such a case, the finder can simply keep the property. Also, where the property is worth more than $25.00 but less than $100.00, it must be held for only 30 days. Indeed, if the costs of storage are likely to exceed value, it need not be kept that long. See section 5(3) of the proposal.

Public Act No. 273, on the other hand, requires the finder to report all finds to the police agency. That agency then has an obligation to inspect and classify the property. If it concludes the property is "junk" (that is, property "that does not have any fair market value or worth"), the agency may dispose of the property as it pleases (which would include giving it to the finder). Where the property is not collectible currency or currency, the property may be classified either as property of "major" or minor" value. Property is of "minor value" if its "fair market value is less than the total cost of preparing a property report, plus the costs of storage and disposition." As to such property, section 4(8) of Public Act 273 states that it "shall" be returned to the owner if claimed within a 3 month period (after which it may be "disposed of in any manner by the law enforcement agency"). Thus, finds of property worth less than $25.00 not only must be reported, but that property must be held (although not necessarily by the agency itself, as section 3(2) says only that it "may" be kept by the agency) for at least 3 months. Moreover, where the property is classified as collectible currency or currency, no matter how low its value, a record must be made, storage must be arranged, and the property must be held 6 months (with the finder then entitled to receive the property if it is unclaimed).

Thus, Public Act 273 assumes that there will be reporting and/or

holding for at least 3 months (and often 6 months) of both (1) the found property that need not be reported under the Commission's proposal (because worth less than $25.00) and (2) much of the property that the Commission's proposal would require to be reported but then would have to be held for 30 days or less (because its value was under $100.00 or the storage cost would outstrip its value). If the reporting and holding burdens imposed under Public Act 273 prove to be impracticable, or the actual reporting and holding practice departs so significantly from the letter of Public Act 273 as to suggest reexamination, the Legislature may desire to consider the alternative approach of the Commission's proposal.

Flexibility in Administration. The Commission's proposal differs from Public Act 273 in that it leaves the development of procedures largely to local option. Initially, while Public Act No. 273 and the Commission's proposal both designate the law enforcement agency as the central reporting agency, the Commission's proposal also allows the local governmental unit to designate an alternative agency. See section 1(6) (defining "law enforcement agency"). While assigning responsibility to a police department allows it to inspect all lost property to ascertain whether it might actually be contraband, stolen property, or possible evidence, some police departments may find that responsibility overly burdensome in light of available resources. In the past, some communities, operating under local ordinance, have delegated lost property responsibilities to other public agencies.

Upon receiving a report, Public Act No. 273 requires a formal classification of the property, after physical inspection, by the law enforcement agency. It requires in this connection that the classification

of property as being of major or minor value, or as being "hazardous," be done by persons "with expertise." It also provides a standard for determining when property may be as characterized "evidence" ("reasonable belief" that it could be used in a legal action) and authorizes scientific evaluation of property thought to be contraband. The Commission's proposal, on the other hand, allows for greater flexibility. It simply states that the law enforcement agency "shall assess the value of the lost property based on its own judgment and that assessment shall not be subject to challenge." Section 3(5). A similar provision applies to the classification of material as "hazardous" and the disposition of such material. See section 5(2). As for contraband and evidence, the proposal simply exempts such property (limiting evidence, however, to evidence of a crime) and provides that laws applicable to such property shall govern. See section 10.

Public Act 273 specifies that two reports must be kept for all property of major value, collectible currency, currency, perishable material, and hazardous material. One is a general description and the other is a more detailed description designed to assist in testing the owner's claim (and accordingly exempted from disclosure under the Freedom of Information Act). The reports must be completed within 48 hours, and the general report must be available for public inspection. The Commission's proposal simply notes that the agency shall keep a record and shall give a receipt to the finder and inform the finder of the holding period.

Similar variations are found in the provisions regarding notice. Thus, Public Act 273 requires that the owner, if known, be notified by first class mail and details the contents of the notice. The Commission proposal simply

provides for notice by "mail, telephone, or other means."

If experience in the administration of Public Act 273 should suggest a need for greater flexibility, the provisions of the Commission proposal in these areas and others may provide a helpful alternative.

Protection of the agency. Public Act 273 states that return to the owner shall be made if the law enforcement agency is "reasonably satisfied of that ownership" [§4(7)]. The Commission's proposal uses a similar standard [ownership established "to the satisfaction" of the agency]. However, it also provides that agency shall not be held liable for delivery to the wrong person absent a prior legal proceeding challenging an alleged owner's claim (with the agency having received notice of that action). The proposal similarly provides that the agency's assessment of value, and its disposition of matter it deems hazardous or perishable, are not subject to challenge. See sections 3(5), 5(1), 5(2). So too, the agency itself would not be liable for a mistaken delivery of property as payment for storage. See section 5(3). In these situations, the person who wrongfully received the property would be subject to suit, but not the agency.

The above provisions are designed to protect the agency. Such protection may be unnecessary, but should experience under Public Act 273 suggest that such protection would be useful, the Commission's proposal may provide a useful model.

AMENDMENTS TO DELETE REFERENCES TO ABOLISHED COURTS

Over the last several years, the Commission has proposed various amendments to different statutes designed to eliminate references to abolished courts, in particular, the Justice of the Peace. In the course of preparing these and similar "housekeeping" measures, it became apparent that the amendment process would be greatly facilitated if a single enactment could be used to achieve basically the same substantive amendment in a series of different statutes. Gary Gulliver, Director of Legal Research of the Legislative Service Bureau, explored the constitutionality of such an enactment in a memorandum that is attached as Appendix A. In light of the conclusions reached in that memorandum, the Commission is proposing its first enactment that would amend more than one legislative act. Both of the provisions to be amended relate to arrests made by railroad conductors and the presentation of the arrested person before the justice of the peace. One provision is found in Public Act No. 68 of 1913 and the other is found in Public Act No. 198 of 1873. (A separate bill amending the latter act was proposed in the 1986 Annual Report at p. 155). The amendments in each case would substitute a reference to the district court for the reference to the justice of the peace. Other changes are stylistic. If the legislature finds this approach acceptable, further enactments of this type will be proposed in the future.

The proposed bill follows:

A bill to amend section 3 of Act No. 68 of the Public Acts of 1913, entitled

"An act relating to drunkenness on railway trains or interurban cars, and prohibiting the drinking of intoxicating liquor thereon as a beverage, and providing for the arrest of offenders, and penalties for violation of this act,"

being section 436.203 of the Michigan Compiled Laws; and section 10 of article IV and section 10 of article V of Act No. 198 of the Public Acts of 1873, entitled as amended

"An act to revise the laws providing for the incorporation of the railroad bridge and tunnel companies and to regulate the running and management and to fix the duties and liabilities of all railroad, bridge, tunnel and other corporation owning or operating any railroad, bridge, or tunnel within this state, and to authorize the use of certain provisions of this act having to do with the exercise of the power of eminent domain by the state highway commissioner in certain cases, and to provide certain changes in such procedure when used by the state highway commissioner, and to confer certain rights and powers upon everyone coming under the provisions of this act,"

being sections 466.10 and 467.10 of the Michigan Compiled Laws, to modernize provisions of law relating to the abolished office of justice of the peace in regard to conduct on trains.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Section 3 of Act No. 68 of the Public Acts of 1913, being section 436.203 of the Michigan Compiled Laws, is amended to read as follows:

Sec. 3. The conductor of any railway train or interurban car, may summarily arrest, with or without warrant, any person violating any of the foregoing provisions, and for such purpose shall have the same power and authority as any peace officer, including the power to summon assistance; and such conductor shall further have power to deliver any person to any ~~policeman~~ POLICE OFFICER, constable, or other public officer at the next

station stop where such public officer can be found, and it shall be the duty of such officer to bring the person charged with such offense before the ~~nearest justice of the peace~~ DISTRICT COURT or municipal court of ~~the county~~ JURISDICTION IN WHICH THE ~~where said~~ offense was committed, and to make a complaint against such person, and such complaint made upon information and belief of said officer, shall be sufficient.

Section 2. Section 10 of article IV and section 10 of article V of Act No. 198 of the Public Acts of 1873, being sections 466.10 and 467.10 of the Michigan Compiled Laws, are amended to read as follows:

ARTICLE IV

Sec. 10. Any person who shall, while riding in the car either of a freight or passenger or other train, on nay railroad in this state, use or utter indecent, obscene, or profane language in the hearing of other passengers, or riotously or boisterously conduct himself or herself to the annoyance of other passengers, or who shall obtain any money or property from any passenger or person in such car by means of any game or device, or attempt so to do, shall, on conviction, ~~thereof,~~ be deemed guilty of a misdemeanor, and be punished by a fine not exceeding $100.00, ~~dollars,~~ or imprisonment in the county jail for a period not exceeding 90 days, or both, in the discretion of the court. Railroad conductors are hereby invested with the powers of sheriffs and constable in regard to offenses under this section occurring upon trains or cars in their charge, and are empowered to arrest and detain any person violating any of its provisions until the car or train shall arrive at some usual stopping place, where a sheriff, deputy, or undersheriff of any county, or constable, or marshal, or ~~policeman~~ POLICE

OFFICER of any city or village in this state may be, to whose custody he OR SHE may deliver such offender, with a written statement specifying generally in what respect such person has misbehaved; or if there be no such officer present to receive the offender, the conductor may deliver him OR HER to the ticket or freight agent at such stopping place, with such statement, who shall detain the offender in his OR HER custody, and may exercise the powers of sheriffs and constables in regard to persons charged with crimes in doing so, until such officer may be obtained to take charge of the offender, to whom he OR SHE shall be delivered, with such statement made by the conductor, and such officer shall take the person so offending into custody, and it shall be his OR HER duty to institute a complaint against such person for such offense before ~~a justice of the peace in his county~~ THE DISTRICT OR MUNICIPAL COURT OF THE JURISDICTION, and such ~~justice~~ COURT shall have jurisdiction to try such offender, and to impose the judgment authorized by this section.

ARTICLE V

Sec. 10. All penalties incurred under this act, when no otherwise provided for, may be sued for in the name of the people of the state of Michigan. ~~, and if such penalty be for a sum not exceeding 100 dollars, then such suit may be brought before a justice of the peace.~~

APPENDIX A

LEGISLATIVE SERVICE BUREAU

MEMORANDUM

To: Richard McLellan, Chairman, Michigan Law Revision Commission

From: Gary Brian Gulliver, Director of Legal Research

Re: One Object Rule

This memorandum is in response to the following question:

> Does the State Constitution either prohibit the enactment of legislation amending or repealing multiple acts or limit the power of the Legislature to enact such legislation?

The State Constitution of 1963 contains no provision directly prohibiting the amendment or repeal or multiple acts by a single act. The provision that would most limit such a practice is commonly referred to as the one object rule. That rule is set forth in the first part of the following phrase from Const 1963, art IV, §24:

> No law shall embrace more than one object, which shall be expressed in its title.

The rule has been a part of each Michigan Constitution since the State Constitution of 1850. The first major case to address the rule was People v. Mahaney, 13 Mich. 481 (1865). Justice Cooley, speaking for the Court, outlined the purpose of the rule, at 494-495:

> The history and purpose of this constitutional provision are too well understood to require any elucidation at our hands. The practice of bringing together into one bill subjects diverse in their nature, and having no necessary connection, with a view to combine in their favor the advocates of all, and thus secure the passage of several measures, no one of which could succeed upon its own merits, was one both corruptive of the legislator and dangerous to the State (emphasis added).

Cooley, although keenly aware of this "corruptive" practice of logrolling, nevertheless cautioned against an overly restrictive reading of the rule, at 495:

> But this purpose is fully accomplished when the law has but one general object, which is fairly indicated by its title. To require that every

> end and means necessary to the accomplishment of this general object should be provided for by a separate act relating to that alone, would not only be senseless, but would actually render legislation impossible.

He then examined the act in question and further refined his "necessary connection" test. Cooley noted the great particularity with which the act effectuated its purpose and stated "this particularity cannot possibly be objectionable [under the one object rule] so long as it introduces nothing foreign and incongruous, but is confined to the means supposed to be important to the end indicated." (13 Mich. 481, 496 emphasis added). Mahaney then stands for the proposition that, if a "necessary connection" is found between all the provisions of an act, the act will be in compliance with the one object rule and that, if none of the provisions of an act introduce material "foreign and incongruous," the requisite "necessary connection" will be found. The importance of the "nothing foreign and incongruous" portion of the "necessary connection" test is demonstrated by the Michigan courts' continuing reference to the need to determine whether any provisions of an act add such "foreign and incongruous" material. See Advisory Opinion, 1975 PA 227 (Question 1), 396 Mich. 123, 131-133 (1976); People v. Barber, 14 Mich.App. 395, 407 (1968); Dearborn v. DSS, 120 Mich.App. 125, 132 (1982); and Jenkins v. American Red Cross, 141 Mich.App. 785, 800 (1985).

Cooley reiterated his admonition in Mahaney that the "necessary connection" test should not be interpreted too restrictively, in his work, Constitutional Limitations (1868), a treatise discussing many constitutional law issues, published nearly contemporaneously with the Court's decision in Mahaney. In the treatise, at 144, Cooley added the highlighted language in the following quote, which was otherwise nearly verbatim from Mahaney, and spoke to the unreasonableness of requiring a separate act to address each of the different aspects of one general purpose:

> To require every end and means necessary or convenient for the accomplishment of this general object should be provided for by a separate act relating to that alone, would not be unreasonable, but would actually render legislation impossible.

This restatement of the "necessary connection" test would require only the finding of a convenient connection between the provisions of an act. That restatement of the test, when read with the "nothing foreign and incongruous" language of Mahaney, results in a test that would uphold an act alleged to be violative of the one object rule if all provisions of the act have a "necessary or convenient connection" as long as no provision introduces a matter that is "foreign and incongruous."

There are statements of the Michigan courts that would suggest a different standard than that described above. The seminal case for this other

standard is Board of Supervisors v. Reed, 243 Mich. 120 (1928). However, before I deal with the different standard suggested by Reed, there are two other points made by Reed that offer some valuable help in understanding the one object rule that I will discuss first.

First, Reed defines the term "object," holding that "[t]he object of a law is the aim or purpose of the enactment." 243 Mich. 120, 123. This suggests that, in the drafting of an act amending or repealing multiple acts, the addition or striking of language must be done to accomplish the same end. It is important to note at this point that the Michigan courts in decisions such as People v. Andrea, 48 Mich.App. 310 (1973), lv app den, have found that, for amendatory acts, the supplementation of an existing act is its object.

Second, Reed provides that "it is to the body of the law that we must look to determine whether it embraces more than object." 243 Mich. 120, 122. See also, on this point, In re Brewster St. Housing Site, 291 Mich. 313, 341 (1939); Advisory Opinion, 1975 PA 227 (Question 1), 396 Mich. 123, 128 (1976); and Pletz v. Secretary of State, 125 Mich.App. 335, 347 (1983). Bearing this point in mind, the drafter should recognize that no matter how dextrously the title is formed, it is more important that the language of the affected sections have a necessary or convenient connection. One of the least controvertible ways to conform to this notion would be to include in an amendatory act only those provisions to be amended or repealed that are so related that they could all have been originally enacted as part of the same act. This approach is in line with the approach suggested by the Attorney General in 1915 OAG 443 (3/30/15), in which he addressed the question of whether multiple acts could be repealed by a single act without offending the one object rule. He opined, at 444:

> It occurs to me that under the constitutional requirement in question any measure along the line suggested is subject to the same considerations as an act embodying affirmative legislation. Accordingly, it would not be competent for the legislature to provide in one enactment for the repeal of two or more prior statutes having purposes so diverse that they might not have been united in one measure at the time of the passage thereof.

The third point made by the Court in Reed, which runs counter to the one made previously in this memorandum, is best expressed by the following quote, at 122-123:

> Can it be said that this repeal is so connected with the object as disclosed by the provision in section one that it may be held to be germane to it? We think not. The provisions in these two sections might have been enacted in separate laws without either of them in any way referring to or affecting the other. The repeal of the local act was unnecessary to give legal effect to section one.

The quoted language would suggest that the "necessary connection" test of Mahaney should be read to invalidate any act, any provisions of which could have been enacted separately and still have had legal effect. One would not have to read very extensively in the published Public and Local Acts volumes of Michigan law before one would realize that the employment of such a standard would invalidate scores, if not hundreds, of Michigan acts, from the massive codes that address a myriad of separate and distinct, though not "foreign and incongruous," topics to simple amendatory acts addressing different sections of one act dealing with topics that are conveniently related, but which could have been addressed in separate acts with the same legal effect. In this light, it is important to note that the "possible separate enactment, legally effective" language of Reed is cited only in Advisory Opinion, 1975 PA 227 (Question 1), supra, and Hildebrand v. Revco, 137 Mich.App. 1 (1984), lv app den.

While the cited advisory opinion clearly suggests that the "possible separate enactment, yet legally effective" language of Reed should be utilized in determining whether an act is violative of the one object rule, reliance on the opinion as further substantiation of Reed is undermined in three respects. First, as noted in the opinion's companion opinion, Advisory Opinion, 1975 PA 227 (Questions 2-10), 396 Mich. 465, 477 (1976):

> An advisory opinion is not precedentially binding upon the Court and represents only the opinion of the parties signatory.

Second, reliance on Advisory Opinion, 1975 PA 227 (Question 1) as requiring the use of the "possible separate enactment, yet legally effective" language should also be questioned under the line of thought expressed in Seals v. Henry Ford Hospital, 123 Mich.App. 329 (1983). Seals noted that the advisory opinion mentioned so many different tests, it was difficult to determine the basis for its holding. This statement from Seals is best expressed in the following quote, at 336-337:

> We have no reservations, however, about holding that the arrest record provisions of the act are germane to its object. Ignoring the Supreme Court's numerous other opinions on the subject, defendants contend that this Court is bound to use what they call "the Reed test," referring to Kent County ex rel Bd of Supervisors v. Reed, 243 Mich. 120; 219 NW 656 (1928), in applying the single-object clause. Defendants would ask two questions: first, does the object of a provision have any "necessary connection" with the object of the remaining provisions of an act; second, could the provisions have been enacted in separate laws without referring to, or affecting, one another? Defendants' litmus-test analysis using a few phrases carefully excerpted from a Supreme Court opinion is not at all persuasive for several reasons. The Court, in Advisory Opinion, supra, did nothing to suggest that it was promulgating a "test" for deciding a single-object claim. Numerous other "tests" appear in the same opinion, e.g., does a provision add to

> an act "something foreign and incongruous"? (pp 132-133); is the act "exactly the type of legislation at which the framers of the Constitution directed their prohibition"? (p 130); are "distinct and unrelated objects" embraced in the same act? (p 129). While all of these "tests" may be useful, we must be guided primarily by the purpose of the constitutional provision: to prevent "logrolling," described by Justice Cooley ....

Third, given the Court's reference to the title of the act in determining whether the act had but one object, there might be some question as to whether the Court accepted one of the basic premises of Reed, that the object of an act is revealed by examining the body of the act. The Court's reference to the title of the act in question reads as follows, at 130:

> In the brief filed by Common Cause, a numerical count of items in the title represented 28 as having been listed claiming that they were "germane to the purpose of reforming the Michigan political process." The title of the Act does not mention reforming the political process. That brief referred to Advisory Opinion re Constitutionality of 1972 PA 294, 389 Mich. 441, 208 NW.2d 469 (1973), in which the Court held that the subject matter constituted a code, a unified law. Justice Levin in a concurrence mentioned the justification for its constitutionality "Especially in the case of a codification." In codes as enacted in Michigan, the Legislature tends to use in the title the words to "revise, consolidate and classify the laws" with respect to a particular object. Those words are typically found in code titles but not found here.

The Court of Appeals decision in Hildebrand also referenced the "possible separate enactment, legally effective" language of Reed. Just as the Seals court questioned whether Advisory Opinion, 1975 PA 227 (Question 1) utilized more than one test in determining whether an act violated the one object rule, the same question could be asked of the court which decided Hildebrand. While it cited the "possible separate enactment, legally effective" language in determining whether the inclusion of a section dealing with polygraph examinations in the Elliott-Larsen Civil Rights Act was violative of the rule, the Court of Appeals also based its decision on the fact the "[v]ery simply, the prohibiting of polygraphs as a basis for hiring or firing is not germane to the civil rights statute ...". 137 Mich.App. 1, 10. This sounds more reminiscent of the "foreign and incongruous" language than of the "possible separate enactment, legally effective" language. Additionally, given the continuing endorsement of the courts of this state of the "nothing foreign and incongruous" language in cases such as the cited case of Jenkins v. American Red Cross upholding the finding and the basis of the finding in Dearborn v. DSS, either the "nothing foreign and incongruous" language should be read to supersede the "possible separate enactment, legally effective" language or we are left

with a split of opinions of recent precedentially binding decisions at the Court of Appeals level.

At that point, the admonition of Justice Cooley to avoid an overly restrictive reading of the one object rule would suggest continued use of the more liberal "nothing foreign and incongruous" language, even though no court has specifically overruled Reed.

The conclusion of this memorandum that a carefully drafted act may amend or repeal multiple acts would come as no surprise to one familiar with the drafting practice of other states. A survey of the other 39 states that have a form of the constitutional one object/subject rule reveals that the courts of each of those states have permitted the amendments or repeal of multiple acts by a single act, albeit, that in some instances, there are very strict limitations on such bills such as that of New York's Constitution that permits such appropriations acts only if they are either supplemental appropriations acts or appropriations acts recommended by the governor (NY Const, art 7, §6) or such private or local acts only if they are recommended by an agency such as that state's Law Revision Commission (NY Const, art 3, §21).

GBG:jd

BIOGRAPHIES OF COMMISSION MEMBERS

RICHARD D. McLELLAN

Mr. McLellan is Chairman of the Michigan Law Revision Commission, a position he has filled since 1986, the year following his appointment as a public member of the Commission.

Mr. McLellan is a partner in the 275-lawyer firm of Dykema Gossett, which has offices in Michigan, Florida and Washington, D.C. He serves as the head of his firm's Government Policy and Practice Group.

He is a graduate of the Michigan State University Honors College and the University of Michigan Law School.

Prior to entering private practice, Mr. McLellan served as an Administrative Assistant to former Governor William G. Milliken. He is a former member of the National Advisory Food and Drug Committee in the United States Department of Health, Education and Welfare.

Mr. McLellan is also the Treasurer and a member of the Executive Committee of the Michigan State Chamber of Commerce and is the President of the Library of Michigan Foundation.

His legal practice includes primarily the representation of business interests in matters pertaining to state government. He is a member of his firm's International Practice Group which is responsible for coordinating services to non-United States companies who are clients of the firm.

McLellan is a member of the Board of Directors of Manufacturers Life Insurance Company of Michigan, a subsidiary of the Manufacturers Life Insurance Company of Canada.

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 is Corporate Counsel and the Vice-President of Public Affairs for Mercy Health Services.

He is a graduate of Muskegon Catholic Central High School, Marquette University, University of Michigan Law School (Juris Doctor degree), and Harvard Law School (Master of Laws degree). He is married and has one child.

Mr. Derezinski is a Democrat and served as State Senator from 1975 to 1978. He is currently a member of the Board of Regents of Eastern Michigan University.

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 No. 7729, the American Academy of Hospital Attorneys, the International Association of Defense Counsel, and the National Health Lawyers' Association.

DAVID LEBENBOM

Mr. Lebenbom is a public member of the Michigan Law Revision Commission and has served since his appointment in 1967, the second year of the Commission's existence.

Mr. Lebenbom is engaged in the private practice of law as David Lebenbom, P.C.

He is a graduate of Detroit Central High School, Wayne State University (where he graduated with distinction), and Columbia Law School. He is married and has four children.

Mr. Lebenbom is a Democrat and served as Chairman of the Wayne County Democratic Committee from 1961 to 1968.

He is a veteran of World War II with a Battle Star. He is a member of Congregation B'nai Moshe and Congregation Shaarey Zedek, the former President of the Jewish Community Council, and the current Vice President of the National Jewish Community Political Advisory Board.

Mr. Lebenbom is the Chair of the Columbia Law School Michigan Alumni Association.

RICHARD C. VAN DUSEN

Mr. Van Dusen is a public member of the Michigan Law Revision Commission and has served since his appointment in September 1977.

Mr. Van Dusen is Senior Partner in the law firm of Dickinson, Wright, Moon, Van Dusen and Freeman.

He is a graduate of Deerfield Academy, the University of Minnesota, and Harvard Law School. He is married and has three children.

Mr. Van Dusen is a Republican and served as a State Representative in 1955 and 1956, a delegate to the 1961-62 Michigan Constitutional Convention, and Under Secretary of the United States Department of Housing and Urban Development from 1969 to 1972. He has served on the Wayne State University Board of Governors from 1979 to the present.

He served in the United States Naval Reserve from 1943 to 1946. He is a member of the Episcopalian Church.

JOHN FRANCIS KELLY

Mr. Kelly is a legislative member of the Michigan Law Revision Commission and has served on the Commission since January 1986.

Mr. Kelly is a Democratic State Senator representing the 1st Senatorial District. He was first elected to the Senate in November 1978. Among his many committee assignments, he has served as the Minority Vice Chairman of the Senate Committee on Judiciary since 1979.

He is a graduate of Bishop Gallagher High School in Harper Woods, the University of Michigan (with honors), Wayne State University (Master's Degree in Public Administration), and the Detroit College of Law. He is married and has two children.

Mr. Kelly was in the United States Army Reserve from 1972 to 1981 and is currently a Captain in the Judge Advocate Corps of the Michigan National Guard. He is a member of the Detroit Council on Foreign Relations, the National Conference of State Legislatures Subcommittee on Governmental Operations, and the International Law Section of the American Bar Association.

He was appointed as a Special Envoy of the Governor to Sichuan Province, People's Republic of China, in 1983 and is a legislative representative to the Michigan Foreign Bank Advisory Commission.

Mr. Kelly is also a Commissioner of the National Conference of Commissioners on Uniform State Laws.

RUDY J. NICHOLS

Mr. Nichols is a legislative member of the Michigan Law Revision Commission and has served on the Commission since February 1987.

Mr. Nichols is a Republican State Senator representing the 8th Senatorial District. He was first elected to the Senate in January 1984, following his service as a State Representative representing the 20th House District from January 1983 to January 1984. Among his committee assignments, he is currently serving as Chair of the Senate Committee on Judiciary.

He is a graduate of Michigan State University and the Detroit College of Law. He is married and has two children.

Mr. Nichols is a member of the Waterford Republican Club, the Oakland County Republican Party, and the Waterford Optimist Club. He has been a leader in the Jaycees and was selected as one of the five Outstanding Young Men of Michigan in 1981.

W. PERRY BULLARD

Mr. Bullard is a legislative member of the Michigan Law Revision Commission and has served on the Commission since January 1981.

Mr. Bullard is a Democratic State Representative representing the 53rd House District. He was first elected to the State House in November, 1972. Among his committee assignments, he has served as Chair of the House Committee on Civil Rights and Chair of the House Committee on Labor. He is currently Chair of the House Committee on Judiciary.

He is a graduate of Harvard University and the University of Michigan Law School. He is single and has one child.

Mr. Bullard was in the United States Navy from 1964 to 1968, receiving several air medals. He is a member of the Michigan Commission on Criminal Justice, Educational Fund for Individual Rights Advisory Committee, and the American Civil Liberties Committee and is the Vice Chairman of the National Conference of

State Legislatures State-Federal Assembly Energy Committee.

He was named the Police Officers Association of Michigan's Legislator of the Year in 1979 and the Outstanding Legislator of the Year in 1980 by the American Association of University Professors.

Mr. Bullard is also a Commissioner of the National Conference of Commissioners on Uniform State Laws.

DAVID M. HONIGMAN

Mr. Honigman is a legislative member of the Michigan Law Revision Commission and has served on the Commission since January 1987.

Mr. Honigman is a Republican State Representative representing the 24th House District. He was first elected to the State House in November 1984. Among his committee assignments, he has served on the House Committee on Judiciary.

He is a graduate of Yale University (with honors) and the University of Michigan Law School. He is married.

Mr. Honigman serves on the Board of Trustees of the Michigan Cancer Foundation and the Alumni Board of Detroit County Day School. He is a member of the Michigan Regional Advisory Board of the Anti-Defamation League of B'nai Brith. He was named one of the Outstanding Young Men in America in 1985.

Mr. Honigman is also a Commissioner of the National Conference of Commissioners on Uniform State Laws.

ELLIOTT JOHN SMITH

Mr. Smith is an ex officio member of the Michigan Law Revision Commission due to his position as the Director of the Legislative Service Bureau, a position he has filled since January 1980.

Mr. Smith has worked with Michigan legislators since 1972 in various capacities, including his work as a Research Analyst for Senator Stanley Rozycki, Administrative Assistant to Senator Anthony Derezinski, and Executive Assistant to Senate Majority Leader William Faust before being named to his current position.

He is a graduate of Michigan State University. He is married and

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JEROLD ISRAEL

Mr. Israel is the Executive Secretary to the Michigan Law Revision Commission, a position he has filled since October 1973.

Mr. Israel joined the University of Michigan law faculty in 1961 and has taught courses in constitutional law, civil procedure, criminal law, and criminal procedure. He is currently the Alene and Allan F. Smith Professor of Law at the University of Michigan Law School.

He is a graduate of Case-Western Reserve University and Yale Law School. Following his graduation from Yale, he served as a law clerk to Justice Potter Stewart of the United States Supreme Court. He is married and has three children.

Mr. Israel was co-reporter for the Michigan State Bar Association's Proposed Michigan Criminal Code and for the National Conference of Commissioners on Uniform State Laws' Uniform Rules of Criminal Procedure. He has served as a member of Michigan Supreme Court committees and gubernatorial commissions and as a consultant to other states revising their court rules and statutes.

He has co-authored several publications concerning criminal justice administration, including two law school casebooks and a three-volume treatise.

GARY GULLIVER

Mr. Gulliver acts as the liaison between the Michigan Law Revision Commission and the Legislative Service Bureau, a responsibility he has had since May 1984.

Mr. Gulliver is currently the Director of Legal Research with the Legislative Service Bureau. He is a graduate of Albion College (with honors) and Wayne State University Law School. He has two children.

Mr. Gulliver is also a Commissioner of the National Conference of Commissioners on Uniform State Laws.