

final minutes

Michigan Law Revision Commission (MLRC) Meeting

Wednesday, December 5, 2018 ▪ 12:00 noon
Legislative Council Conference Room
3rd Floor ▪ Boji Tower Building
124 W. Allegan ▪ Lansing, Michigan

Members Present:

Richard McLellan, Chair
Tony Derezinski, Vice Chair (teleconference)
Jennifer Dettloff
Representative Brian Elder
Representative Peter Lucido
Senator Tonya Schuitmaker
George Ward
Judge William C. Whitbeck (teleconference)

Members Absent and Excused:

None

I. Convening of Meeting

Chair McLellan called the meeting to order at 12:04 p.m.

II. Roll Call

The Chair began with an introduction of those present at today's meeting. The roll was taken and a quorum was present. There were no absent members.

III. Approval of May 18, 2017 MLRC Meeting Minutes

The Chair asked for a motion to approve the minutes of the May 18, 2017 MLRC meeting. No corrections or additions were offered. **Representative Lucido moved, supported by Representative Elder, to adopt the minutes of the May 18, 2017 Michigan Law Revision Commission meeting. There was no further discussion. The minutes were unanimously approved.**

IV. 2017 Michigan Law Revision Commission Annual Report

The Chair called on Ms. Wilensky to present the items to be included in the 2017 Michigan Law Revision Commission Annual Report. She proceeded with an overview of the reports and information to be included in the annual report and highlighted the changes in the FOIA report which was revised using comments from the last Commission meeting. A discussion followed of additional changes including revising the proposed statutory language in MCL 15.235(2) concerning a public bodies response to a FOIA request, to provide that the public body may produce or make available the requested documents or portions of the requested documents within the statutory timeframes. See attached proposed annual report for more details.

Ms. Wilensky directed the members' attention to a Report to the Legislature on Recommendations for Codifying Michigan's Choice-of-Law Rules (see attached). Chris Schwartz, who worked on the report, was present and provided an overview of the report. A discussion followed. Ms. Wilensky noted that the report is presented for the Commission's review and consideration and will not be included in the 2017 MLRC Annual Report.

The 2017 Report on Recent Court Decisions Identifying Statutes for Legislative Actions and Recommendations to the Legislature was presented and discussed. Ms. Wilensky proceeded with a brief description of the one decision identified as needing legislative action and the corresponding Commission's recommendation.

Representative Elder was excused to leave for session.

Senator Schuitmaker arrived at 1:21 p.m.

The Chair laid before the Commission the proposed final report.

Representative Lucido moved, supported by Senator Schuitmaker, to approve the proposed 2017 Michigan Law Revision Commission Annual Report with the additional changes discussed. There was no further discussion.

The motion prevailed with a vote of 7-0-0.

FAVORABLE ROLL CALL:

YEAS: Chair McLellan, Commissioner Derezinski, Commissioner Dettloff, Representative Lucido, Senator Schuitmaker, Commissioner Ward, Judge Whitbeck.

NAYS: None.

PASS: None.

The Chair announced the discussed revisions will be made and the 2017 Michigan Law Revision Commission Annual Report will be printed and distributed.

V. New Business

Report to the Legislature on Recommendations for Codifying Michigan's Choice-of-Law Rules

See discussion of this report made under the MLRC annual report discussion.

VI. Other Business

The Chair offer that the Commission should look at two issues--the overcriminalization of the executive branch and immigration. He will send Commissioners a Crain's Detroit Business article he wrote, "Don't criminalize state decisions", along with Judge Whitbeck's rebuttal to his article. He suggested these issues should be looked at largely from the point of view of a state workforce issue. Ms. Wilensky will look at whether the Commission can focus on these issues in 2019.

VII. Comments from Commissioners

The Chair asked if there were any comments from the Commissioners. Senator Schuitmaker expressed her appreciation for the opportunity to serve on the Commission. There were no other comments.

VIII. Public Comment

The Chair asked if there were any public comments. There were none.

IX. Adjournment

Having no further business, the Chair adjourned the meeting at 1:48 p.m.

(Minutes were approved at the October 23, 2019 Michigan Law Revision Commission meeting.)

48th Annual Report 2017

Michigan Law Revision Commission

JANE O. WILENSKY, *Executive Secretary*



Term Members:

RICHARD D. MCLELLAN,
Chairperson

ANTHONY DEREZINSKI,
Vice Chairperson

GEORGE E. WARD

WILLIAM C. WHITBECK

Legislative Members:

SENATOR BERT JOHNSON

SENATOR TONYA SCHUITMAKER

REPRESENTATIVE PETER J. LUCIDO

REPRESENTATIVE BRIAN K. ELDER

Ex Officio Member:

JENNIFER DETTLOFF

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Lansing, Michigan 48909-7536

Michigan Law Revision Commission

FORTY-EIGHTH ANNUAL REPORT 2017

MICHIGAN LAW REVISION COMMISSION

Term Members:

RICHARD D. McLELLAN, *Chairperson*
ANTHONY DEREZINSKI, *Vice Chairperson*
GEORGE E. WARD
WILLIAM C. WHITBECK

Legislative Members:

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This report may be downloaded from the Commission’s Internet website,
<http://council.legislature.mi.gov/mlrc.html>

MICHIGAN LAW REVISION COMMISSION
FORTY-EIGHTH ANNUAL REPORT TO THE LEGISLATURE
FOR CALENDAR YEAR 2017

To the Members of the Michigan Legislature:

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

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

Membership

The legislative members of the Commission during 2017 were Senator Bert Johnson of Detroit; Senator Tonya Schuitmaker of Lawton; Representative Peter Lucido of Shelby Township; and Representative Brian K. Elder of Bay City. Legislative Council Administrator Jennifer Dettloff has been the ex officio member of the Commission since November 9, 2016. The appointed members of the Commission were Richard D. McLellan, Anthony Derezinski, George E. Ward, and William C. Whitbeck. Mr. McLellan served as Chairperson and Mr. Derezinski served as Vice Chairperson. Jane O. Wilensky served as Executive Secretary. Brief biographies of the Commission members and staff are located at the end of this report.

The Commission's Work in 2017

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 such changes in the law as it deems necessary in order to modify or eliminate antiquated and inequitable rules of law, and to bring the civil and criminal law of this state into harmony with modern conditions.
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 its studies are largely identified through an examination by the Commission members and the Executive Secretary of the statutes and case law of Michigan, the reports of learned bodies and commissions from other jurisdictions, and legal literature. Other subjects are brought to the attention of the Commission by various organizations and individuals, including members of the Legislature.

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

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

Proposals for Legislative Consideration in 2017

In addition to its new recommendations, the Commission recommends favorable consideration of the following recommendations of past years upon which no final action was taken in 2017:

- (1) Enhance Licensure of International Corporate Lawyers in Michigan, 2012-13 Annual Report, page 6.
- (2) Updating the Open Meetings Act, 2012-13 Annual Report, page 18.
- (3) Use of Technology to Conduct Government Meetings, 2003 Annual Report, page 9.
- (4) Governor's Power to Remove Public Officials from Office, 2003 Annual Report, page 21.
- (5) Immunity for Court-Appointed Psychologists, 2000 Annual Report, page 84.
- (6) Pre-Dispute, Contractual Venue Selection Clauses, 1998 Annual Report, page 203.
- (7) Uniform Unincorporated Nonprofit Associations Act, 1997 Annual Report, page 144.
- (8) Prison Mailbox Rule, 1997 Annual Report, page 137.
- (9) Uniform Conflict of Laws—Limitations Act, 1997 Annual Report, page 151.
- (10) E-Mail and the Freedom of Information Act, 1997 Annual Report, page 133.
- (11) Uniform Putative and Unknown Fathers Act, 1994 Annual Report, page 117.
- (12) Motorcycles and the No-Fault Insurance Act, 1993 Annual Report, page 131.
- (13) Tortfeasor Contribution under MCL 600.2925a(5), 1992 Annual Report, page 21.

- (14) International Commercial Arbitration, 1991 Annual Report, page 31.
- (15) Uniform Contribution Among Joint Tortfeasors Act, 1991 Annual Report, page 19.
- (16) Uniform Statutory Rule Against Perpetuities, 1990 Annual Report, page 41.
- (17) Standardization of Condemnation Powers Provisions, 1989 Annual Report, page 15.
- (18) Consolidated Receivership Statute, 1988 Annual Report, page 72.

Current Study Agenda

Topics on the current study agenda of the Commission are:

- (1) Recommendations for Codifying Michigan Choice-of-Law Rules.
- (2) Impact of Immigration Policies on Michigan Laws.
- (3) New Cyber Business Court.

The Commission continues to operate with its sole staff member, the part-time Executive Secretary. The current Executive Secretary of the Commission is Jane O. Wilensky, who was responsible for the publication of this report. By using faculty members at several Michigan law schools as consultants and law students as researchers, the Commission has been able to operate on a budget substantially lower than that of similar commissions in other jurisdictions. At the end of this report, the Commission provides a list of more than 120 Michigan statutes passed since 1967 upon the recommendation of the Commission.

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

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

Respectfully submitted,

Richard D. McLellan, Chairperson
Anthony Derezinski, Vice Chairperson
George E. Ward
William C. Whitbeck
Senator Bert Johnson
Senator Tonya Schuitmaker
Representative Brian K. Elder
Representative Peter J. Lucido
Jennifer Dettloff

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

Transparency is a critical requirement for public entities at all levels of state and local government. And government's handling of highly sensitive personal and administrative matters requires clear and articulate standards for government officials.

As part of its statutory charge to discover defects and anachronisms in the law and to recommend needed reforms, the Michigan Law Revision Commission conducted a review of the Michigan Freedom of Information Act, MCL 15.231 *et seq.*, ("FOIA"), court decisions interpreting FOIA, and legislation from other states to identify issues for consideration by the Legislature to improve the public's access to information regarding the affairs of government. Mindful of the fact that legislation is currently pending to create a new Legislative Open Records Act, the Commission has identified five areas that merit legislative review. Those areas are:

1. Language That Has Been Limited by Court Interpretation
2. Improvements to Statutory Language for Clarity
3. Amending FOIA Regarding Certain Private Entities That Receive Public Funds
4. Publication of FOIA Responses to a Government Website and Expansion of Michigan's Open Data Portal
5. Creation or Designation of an Entity to Monitor Access to Information Under FOIA

I. LANGUAGE THAT HAS BEEN LIMITED BY COURT INTERPRETATION

1. **The Words "Granted" and "Fulfilled" Are Not Synonymous. *Cramer v Village of Oakley*, 316 Mich.App. 60; 890 N.W.2d 895 (2016).**

A. Background

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

In *Cramer v. Village of Oakley*, the plaintiff made six separate FOIA requests regarding the village's reserve police department unit. Five days later, plaintiff was informed the requests were granted, and that the village would conduct a search and provide any documents located. The plaintiff sued, alleging that a written statement saying the village granted the requests did not comply with FOIA; rather, the documents had to be provided when the village responded to the request. Eleven days after receiving the request, the village provided the documents.

The circuit court ruled for the plaintiff, holding that the village did not provide the documents within the statutorily required period, which was tantamount to denial of the request.

The Court of Appeals reversed the decision. The court held that the words “granted” and “fulfilled” are not synonymous, and that the village complied with the statute by granting the request within the statutorily required period. The court noted that a requestor can sue for the fulfillment of their request if “an inordinate delay in the production of requested documents” occurs. *Id.*

B. Question Presented

Should the Legislature amend FOIA to clarify the terms “granted” and “fulfilled”? Should the Legislature define the amount of time that constitutes an “inordinate delay” under *Cramer*?

C. Recommendation

The Commission recommends amending the statutory language of MCL 15.235(2) to the following to clarify the issue:

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

(a) Granting AND FULFILLING the request BY PRODUCING THE REQUESTED DOCUMENTS WITHIN 5 BUSINESS DAYS OF RECEIVING THE REQUEST.

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

(c) Granting the request in part and issuing a written notice to the requesting person denying the request in part. THE GRANTED PORTION OF THE REQUEST MUST BE FULFILLED BY PRODUCING THE GRANTED SUBSET OF THE REQUESTED DOCUMENTS WITHIN 5 BUSINESS DAYS OF RECEIVING THE REQUEST.

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

2. Notes Taken by Municipal Officials in Public Meetings Are Not Necessarily Public Records. *Hopkins v Twp of Duncan*, 294 Mich.App. 401; 812 N.W.2d 27 (2011).

A. Background

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

In *Hopkins v. Twp. of Duncan*, a township resident requested copies of the notes taken by the members of the township board at a specific board meeting. The township refused to produce the requested records, and the resident filed suit. The Court of Appeals held that “handwritten notes of a township board member taken for his personal use, not circulated among other board members, not used in the creation of the minutes of any of the meetings, and retained or destroyed at his sole discretion, are not public records subject to disclosure under FOIA.” *Id.* at 402.

B. Question Presented

Should the Legislature amend FOIA to clarify that notes taken by municipal officials in public meetings are not public records?

C. Recommendation

The Commission recommends amending the statutory language of MCL 15.232(2)(i) to the following to clarify the issue:

“(i) ‘Public record’ means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. Public record does not include computer software. PUBLIC RECORD DOES INCLUDE THE NOTES TAKEN OR MADE BY A MEMBER OF A PUBLIC BODY IN A PUBLIC MEETING OF THAT PUBLIC BODY. This act separates public records into the following 2 classes:

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

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

3. Public Funds Do Not Include Fee-For-Service. *State Defender Employees v Legal Aid & Defender Ass’n of Detroit*, 230 Mich.App. 426; 584 N.W.2d 359 (1998).

A. Background

Under MCL 15.232(h)(iv), a public body (all of which are subject to FOIA requests) includes any entity that “is created by state or local authority or which is primarily funded by or through state or local authority.”

In *State Defender Union Employees v Legal Aid & Defender Ass’n of Detroit*, the plaintiff requested financial records from a non-profit corporation established to provide legal services to indigent persons residing in the city of Detroit. A majority of the revenue of the non-profit came from “public funds received for services rendered or to be rendered, including contracts with public agencies and as appointed counsel.” *Id.* at 428. The Court of Appeals held that the non-profit was not a public body because revenues that are generated from fee-for-service transactions with various governmental entities do not count as being “funded by or through state or local authority” for the purposes of FOIA. *Id.* at 433-34.

B. Question Presented

Should the Legislature review FOIA to clarify that being “primarily funded by or through state or local authority” does not include revenues from fee-for-service transactions, especially for entities that serve a public purpose like social service non-profits that receive public contracts?

C. Recommendation

The Commission recommends amending the statutory language of MCL 15.232(h) to the following to clarify the issue:

“(h) ‘Public body’ means any of the following:

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

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

(iii) A county, city, township, village, intercounty, intercity, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof.

(iv) Any other body that is created by state or local authority or is primarily funded by or through state or local authority, except that the judiciary, including the office of the county clerk and its employees when acting in the capacity of clerk to the circuit court, is not included in the definition of public body. FOR NON-PROFIT ORGANIZATIONS, REVENUES THAT ARE GENERATED FROM FEE-FOR-SERVICE TRANSACTIONS WITH VARIOUS GOVERNMENT ENTITIES DO NOT COUNT AS FUNDS FOR THE PURPOSE OF DETERMINING IF THE NON-PROFIT ORGANIZATION IS PRIMARILY FUNDED BY OR THROUGH STATE OR LOCAL AUTHORITY.”

II. OVERALL IMPROVEMENTS IN STATUTORY LANGUAGE FOR CLARITY

1. Clarify the Definition of Public Body

A. Background

MCL 15.232(h) defines public body as any of the following:

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

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

(iii) A county, city, township, village, intercounty, intercity, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof.

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

Subsection (iii) does not expressly include committees from local government units. Subsection (iii) also does not expressly include mayors, county executives, prosecutors, sheriffs, and other singular local offices—though it is often understood to include these offices.

B. Question Presented

Should the Legislature amend the definition of “public body” under Section 2(h) of FOIA, MCL 15.232(h), to expressly include local government committees and various singular local offices?

C. Recommendation

The Commission recommends amending the statutory language of MCL 15.232(h) to the following to clarify the issue:

“(h) ‘Public body’ means any of the following:

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

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

(iii) A county, city, township, village, intercounty, intercity, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, COMMITTEE, or agency thereof. IT SHALL ALSO INCLUDE MAYORS, COUNTY EXECUTIVES, PROSECUTORS, SHERIFFS, AND OTHER NON-JUDICIAL LOCAL GOVERNMENTAL OFFICES.

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

2. Clarify the Definition of Writing

A. Background

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

Although the legislature recently added hard drives and solid state storage components and although courts have interpreted “writing” to include digital and other electronically stored information for the purposes of FOIA, the definition of the term “writing” still lacks cloud storage, hybrid drives, and various other forms of digital and other electronically stored information, including likely future forms of electronic storage such as quantum networks and computing systems.

B. Question Presented

Should the Legislature amend the definition of “writing” under MCL 15.232(1) to expressly include more digital and other electronically forms of stored information?

C. Recommendation

The Commission recommends amending the definition of “Writing” in MCL 15.232(1) to read the following:

“(l) ‘Writing’ means handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, hard drives, solid-state storage components, HYBRID DRIVES, CLOUD STORAGE, QUANTUM NETWORKS AND COMPUTING SYSTEMS, or other means of recording or retaining meaningful content.”

3. Clarify the Language of Section 4(1)(c)

A. Background

MCL 15.234(1)(c) reads in part, “[Except as otherwise provided in this act, if the public body estimates or charges a fee in accordance with this act, the total fee shall not exceed the sum of the following components:] For public records provided to the requestor on nonpaper physical media, the actual and most reasonably economical cost of the computer discs, computer tapes, or other digital or similar media.”

Section 4(1)(c) does not include modern forms of non-paper physical media such as flash drives and secure digital cards.

B. Question Presented

Should the Legislature amend Section 4(1)(c) of FOIA, MCL 15.234(1)(c), to include more modern forms of non-paper physical media such as flash drives?

C. Recommendation

The Commission recommends amending the statutory language of MCL 15.234(1)(c) to the following:

“(c) For public records provided to the requestor on nonpaper physical media, the actual and most reasonably economical cost of the computer discs, computer tapes, FLASH DRIVES, SECURE DIGITAL CARDS, or other digital or similar media. The requestor may stipulate that the public records be provided on nonpaper physical media, electronically mailed, or otherwise electronically provided to him or her in lieu of paper copies. This subdivision does not apply if a public body lacks the technological capability necessary to provide records on the particular nonpaper physical media stipulated in the particular instance.”

4. Clarify the Language of Section 11(2)

A. Background

MCL 15.241 reads in part:

“(1) A state agency shall publish and make available to the public all of the following:

- (a) Final orders or decisions in contested cases and the records on which they were made.
- (b) Promulgated rules.
- (c) Other written statements that implement or interpret laws, rules, or policy, including but not limited to guidelines, manuals, and forms with instructions, adopted or used by the agency in the discharge of its functions.

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

Subsection (2) does not explicitly mention publication by electronic means.

B. Question Presented

Should the Legislature amend Section 11(2) of FOIA, MCL 15.241(2), to explicitly include publication by electronic means?

C. Recommendation

The Commission recommends legislative review of this issue, and to explicitly include publication by electronic means in MCL 15.241(2).

III. AMENDING FOIA REGARDING CERTAIN PRIVATE ENTITIES THAT RECEIVE PUBLIC FUNDS

A. Background

Under MCL 15.232(h), the term “public body” includes any entity that “is created by state or local authority or which is primarily funded by or through state or local authority.” All public bodies are subject to FOIA.

In *Sclafani v. Domestic Violence Escape*, 255 Mich. App. 260; 660 N.W.2d 97 (2003), a nonprofit group that educates citizens about domestic violence and provides several services to victims, received sixty percent (60%) of its funding from multiple government sources. The Court of Appeals considered whether multiple government sources can be combined to constitute “primary funding” under this section. While noting that the language of the statute is somewhat ambiguous, the court held that the shelter was a public body, reasoning that any entity that

received fifty percent (50%) or more of its funding from grants from state or local government authorities was a public body. The court further held that funding from multiple government sources should be combined for determining whether fifty percent (50%) or more of a body's funds are from state or local government authorities.

Compared to several other states, this is a high threshold. For instance, in Texas, any entity that is supported by public funds is subject to Texas's Freedom of Information Act. TEX. GOV'T CODE § 552.003(xii) (LexisNexis, 2015). However, the Supreme Court of Texas has held this does not include funds from quid pro quo contracts with government entities. *Greater Houston P'ship v. Paxton*, 468 S.W.3d 51, 58 (Tex. 2015).

In Georgia, a non-profit is subject to Georgia's Freedom of Information Act where one-third (1/3rd) or more of its budget is from direct allocations of tax funds (not counting healthcare facilities' Medicaid reimbursements). GA. CODE ANN. § 50-18-70(b)(1) (LexisNexis, 2016). In Kansas, an entity that receives public funds, except in return for goods or services, is subject to the Kansas Freedom of Information Act. KAN. STAT. ANN. § 45-217(f) (LexisNexis, 2017). In Minnesota, non-profit community action agencies that receive public funding and non-profit social services agencies that contract with government agencies are subject to the Minnesota Freedom of Information Act. MINN. STAT. ANN. § 13.02, subd. 11 (LexisNexis, 2017). In North Dakota, all private entities that expend or are supported by public funds are subject to the North Dakota Open Records Statute. N.D. CENT. CODE § 44-04-17.1(12)(c) (LexisNexis, 2017). In South Carolina, public bodies subject to the South Carolina Freedom of Information Act include "any organization, corporation, or agency supported in whole or in part by public funds or expending public funds." S.C. CODE ANN. § 30-4-20(a) (LexisNexis, 2016). In Tennessee, "when a private entity's relationship with the government is so extensive that the entity serves as the functional equivalent of a governmental agency" it is subject to Tennessee's Freedom of Information Act. *Memphis Publ. Co. v. Cherokee Children & Family Servs.*, 87 S.W.3d 67, 78-79 (Tenn. 2002).

In Ohio, private non-profit and for-profit schools are subject to the Ohio Freedom of Information Act, regardless of whether the school receives public funds. OHIO REV. CODE ANN. § 149.43(A)(1) (LexisNexis, 2016). Other states beside Michigan that use a primary funding requirement include Virginia and West Virginia. VA. CODE ANN. § 2.2-3701 (LexisNexis, 2017); W. VA. CODE § 29B-1-2(4) (LexisNexis, 2016).

B. Question Presented

Should the Legislature review the phrase "primarily funded by or through state or local authority" under MCL 15.232(d)(iv), to expressly provide the percentage of a private entity's budget that must be made up of public funds to determine whether the entity is subject to FOIA?

C. Recommendation

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

IV. PUBLICATION OF FOIA RESPONSES TO A GOVERNMENT WEBSITE AND EXPANSION OF MICHIGAN’S OPEN DATA PORTAL

1. Publish FOIA Responses to a Public Government Website

A. Background

Governments with FOIA and open records laws often get numerous duplicate requests. *See, e.g., FOIA Update: FOIA Counselor: Questions and Answers*, UNITED STATES DEPARTMENT OF JUSTICE (Oct. 16, 2018), <https://www.justice.gov/oip/blog/foia-update-foia-counselor-questions-answers-1>; *see also* Sandhya Kambhampati, *I’ve Sent Out 1,018 Open Records Requests, and This Is What I’ve Learned*, PRO PUBLICA (Oct. 16, 2018), <https://www.propublica.org/article/open-records-requests-illinois-foia-lessons>. Fulfilling several duplicate requests can be taxing on the time of public employees. Thus, under the federal FOIA, for example, a federal agency will provide an “electronic reading room” for records that are expected to have a high volume of requests or which have been requested at least three times. *See* 5 U.S.C. § 552(a)(2)(D) (2012).

The federal FOIA’s concept of an “electronic reading room” requirement can be expanded further. Rather than only post the responses to requests that have been requested at least three times or those records which are expected to have a high volume of requests, all FOIA responses (along with anonymized summaries of the requests) can be published to a public government website, organized by public body and topic. This would boost transparency and likely cut down on the number of duplicate FOIA requests.

B. Question Presented

Should the Legislature amend FOIA to require that responses to FOIA requests be published to a public government website?

C. Recommendation

The Commission recommends the legislature investigate requiring all FOIA responses (along with anonymized summaries of each request) to be published to a public government website.

2. Expand Michigan’s Open Data Portal to Include FOIA Requests

A. Background

According to the National Conference of State Legislatures, an open data law “aims to make nonconfidential government data available for public use in a format that is easily accessible. Open data formats allow government information to be combined, analyzed or presented in new ways by citizens, businesses and other organizations.” Open Government Data Legislation, NATIONAL CONFERENCE OF STATE LEGISLATURES (Feb. 7, 2017), <http://www.ncsl.org/research/telecommunications-and-information-technology/open-data-legislation.aspx>.

Michigan has already created an open data portal at <https://data.michigan.gov/>, which includes hundreds of open data sets. Many open data sets on the open data portal take the form of a spreadsheet containing tens of thousands of rows of anonymized data. For instance, the open data portal publishes an anonymized version of the 2018 results of the MME and M-STEP tests, showing how many students were in each of the proficiency categories in each district and school all over the state over a number of different metrics, including grade, ethnicity, gender, homelessness, and subject. *See Downloadable Data Files*, MICHIGAN DEPARTMENT OF EDUCATION, (Oct. 16, 2018), https://www.michigan.gov/mde/0,4615,7-140-22709_35150_47475---,00.html. This information allows academics, economists, statisticians, and the public to look for correlations between student proficiency and state policy to help keep government accountable.

Publishing responses to FOIA requests in an open data format would give the state and the public more information about which entities receive multiple FOIA requests and on what subjects, and would provide better-targeted, more accountable data-driven policies to increase transparency. For instance, if the Michigan Department of Transportation (MDOT) published information about its FOIA requests and responses, then you could see what information citizens were interested in but did not have access to in regard to transportation and infrastructure in the state. For example, if numerous citizens were using FOIA to request information about a specific new kind of road repair technique from MDOT, then MDOT would know that the public would benefit from a new webpage explaining the new kind of road repair technique.

As another example, if an open data set regarding FOIA request and responses kept track of denials, then the state and the public could have a better sense of which information the public wants to know the most about but is routinely being denied access to. This could aid the legislature and voters in deciding how to change exemptions under FOIA.

Several states have developed laws and policies to publish responses to freedom of information requests as open data. Utah requires various freedom of information requests to be published online in open format. UTAH CODE ANN. § 63A-3-403(10)-(11) (LexisNexis, 2016). In Hawaii, the state Office of Information Practices maintains three databases of responses to freedom of information requests: the first provides formal summaries, the second provides informal summaries, and the third contains information request responses. *See generally* State of Hawaii Office of Information Practices (Sept. 17, 2018), <https://oip.hawaii.gov/>.

B. Question Presented

Should the Legislature amend FOIA to require that responses to FOIA requests be published as open data?

C. Recommendation

The Commission recommends publishing FOIA requests and responses in an anonymized open data format.

V. CREATION OR DESIGNATION OF AN ENTITY TO MONITOR ACCESS TO INFORMATION UNDER FOIA

A. Background

Michigan currently lacks an entity to monitor access to information under FOIA. In other states there are entities that investigate FOIA complaints against public bodies, help mediate disputes over public records, and can either order public record disclosure or file suit in their own name to obtain public records. These entities can potentially resolve FOIA disputes in less time and for less money, thereby possibly reducing litigation.

In Iowa, for example, the Public Information Board provides informal assistance in settling open records complaints, investigates open records complaints, and can issue orders for public bodies to comply with the open records law. 2012 Iowa Acts, 84 G.A., ch. 1115, § 6. Similarly, in Hawaii, the Office of Information Practices can investigate and rule on complaints under the state's Uniform Information Practices Act (its FOIA equivalent). *See Opinions*, STATE OF HAWAII OFFICE OF INFORMATION PRACTICES (Sept. 17, 2018), <https://oip.hawaii.gov/laws-rules-opinions/opinions/>. In Connecticut, the Freedom of Information Commission has the power to investigate violations of Connecticut's Freedom of Information Act. CONN. GEN. STAT. § 1-205 (LexisNexis, 2016).

B. Question Presented

Should the Legislature create an entity or designate an existing entity to monitor access to information under FOIA?

C. Recommendation

The Commission recommends legislative action that specifically directs the Attorney General to monitor access to FOIA and help mediate disputes over public records.

2017 REPORT ON RECENT COURT DECISIONS IDENTIFYING STATUTES
FOR LEGISLATIVE ACTION AND
RECOMMENDATIONS TO THE LEGISLATURE

As part of its statutory charge to examine recent judicial decisions to discover defects and anachronisms in the law and to recommend needed reforms, the Michigan Law Revision Commission undertook a review of Michigan Supreme Court and Court of Appeals decisions issued from January 1 through December 31, 2017, urging legislative action. That review identified one decision for which the Commission makes no recommendation. The decision examined by the Commission is:

1. *People v Steanhouse*, 500 Mich. 453; 902 N.W.2d 327 (2017)
1. **Judicial Fact-Finding Requirement in Sentencing Guidelines Renders Them Unconstitutional and, Thus, Only Advisory**

A. Background

Under the criminal sentencing guidelines, MCL 769.34, trial court judges must engage in fact-finding regarding the characteristics of the offender and the offense in criminal sentencing to determine whether to increase the mandatory minimum sentence. In *People v Lockridge*, 498 Mich. 358, 399 (2015), the Michigan Supreme Court held the criminal sentencing guidelines unconstitutional because they violated the Sixth Amendment’s right to a jury trial. In *Lockridge*, the Court relied on *Alleyne v United States*, 570 U.S. 99, 103 (2013), in which the U.S. Supreme Court overruled *Harris v United States*, 536 U.S. 545 (2002), and held that facts that increase mandatory-minimum sentences for crimes are elements of the crime and not merely sentencing factors, and, thus, must be submitted to a jury or admitted by the defendant under the Sixth Amendment. The Michigan Supreme Court also cited *Apprendi v New Jersey*, 530 U.S. 466, 490 (2000), which stated that “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory minimum must be submitted to a jury, and proved beyond a reasonable doubt.” The Michigan Supreme Court additionally held that even though the sentencing guidelines are unconstitutional, the guidelines are still advisory for trial courts, *Lockridge*, 498 Mich. at 399, which is what the U.S. Supreme Court did regarding unconstitutional federal sentencing guidelines in *United States v Booker*, 543 U.S. 220, 222 (2005).

In *People v Steanhouse*, the defendant was convicted of assault with intent to commit murder and receiving and concealing stolen property. The defendant was sentenced to more than what the upper end of the sentencing guidelines prescribed, and appealed his sentence. *Id.* at 463. The Michigan Supreme Court reaffirmed *Lockridge*, and held that the state’s criminal sentencing guidelines were unconstitutional and, thus, only advisory. *Id.* At 466. The Court held that “sentences imposed by...trial court[s must] be proportionate to the seriousness of the circumstances surrounding the offense and the offender,” *Id.* At 474 (quoting *People v Milbourn*, 435 Mich. 630, 636 (1990), and should be reviewed for abuse of discretion. *Steanhouse*, 500 Mich. at 477.

In a concurring opinion joining the majority, Justice Larsen addressed the concerns raised by Justice Markman in the dissenting portion of his opinion. Justice Markman questioned whether the *Lockridge* remedy of rendering the sentencing guidelines advisory in all applications is the remedy that most reasonably reflects the Legislature’s intent or whether the remedy is too broad. Justice Larsen rejected this statement of the issue in this case, believing, rather, that the only questions before the Court are whether to follow the *Lockridge* remedy or to overrule *Lockridge*. Justice Larsen considered the “turbulence” that would result if the Court changed the *Lockridge* remedy and called for the Legislature to act if, in fact, the *Lockridge* result does not express the will of the Legislature with regard to the sentencing scheme that it feels is best for the state’s criminal justice system. *Id.*, at 482-483.

B. Question Presented

Should the Legislature amend the criminal sentencing guidelines, MCL 769. 34 (2) and (3), to eliminate judicial fact-finding requirements (excepting criminal convictions) that increase the defendant’s mandatory minimum sentence?

C. Recommendation

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

PRIOR ENACTMENTS PURSUANT TO
MICHIGAN LAW REVISION COMMISSION RECOMMENDATIONS

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

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
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

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

1969 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Access to Adjoining Property	1968, p. 19	55
Recognition of Acknowledgments	1968, p. 64	57
Dead Man's Statute Amendment	1966, p. 29	63
Notice of Change in Tax Assessments	1968, p. 30	115
Antenuptial and Marital Agreements	1968, p. 27	139
Anatomical Gifts	1968, p. 39	189
Administrative Procedures Act	1967, p. 11	306
Venue for Civil Actions	1968, p. 17	333

1970 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Land Contract Foreclosures	1967, p. 55	86
Artist-Art Dealer Relationships	1969, p. 41	90
Minor Students' Capacity to Borrow Act	1969, p. 46	107
Warranties in Sales of Art	1969, p. 43	121
Appeals from Probate Court	1968, p. 32	143
Circuit Court Commissioner Powers of Magistrates	1969, p. 57	238

1971 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
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

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Summary Proceeding for Possession of Premises	1970, p. 16	120
Interest on Judgments	1969, p. 59	135
Business Corporations	1970, Supp.	284
Constitutional Amendment re Juries of 12	1969, p. 60	HJR "M"

1973 Legislative Session

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

1974 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Venue in Civil Actions Against Non-Resident Corporations	1971, p. 63	52
Choice of Forum	1972, p. 60	88
Extension of Personal Jurisdiction in Domestic Relations Cases	1972, p. 53	90
Technical Amendments to the Michigan General Corporations Act	1973, p. 37	140
Technical Amendments to the Revised Judicature Act	1971, p. 7	297
Technical Amendments to the Business Corporation Act	1974, p. 30	303
Amendment to Dead Man's Statute	1972, p. 70	305
Attachment and Collection Fees	1968, p. 22	306
Contribution Among Joint Tortfeasors	1967, p. 57	318
District Court Venue in Civil Actions	1970, p. 42	319
Due Process in Seizure of a Debtor's Property (Elimination of Pre-Judgment Garnishment)	1972, p. 7	371

1975 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Hit-Run Offenses	1973, p. 54	170
Equalization of Income Rights of Husband and Wife in Entirety Property	1974, p. 12	288
Disposition of Community Property Rights at Death	1973, p. 50	289
Insurance Policy in Lieu of Bond	1969, p. 54	290
Child Custody Jurisdiction	1969, p. 23	297

1976 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Due Process in Seizure of a Debtor's Property (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

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Juvenile Obscenity	1975, p. 133	33
Multiple Party Deposits	1966, p. 18	53
Amendment of Telephone and Messenger Service Company Act	1973, p. 48	63
Elimination of References to Abolished Courts:		
a. Township Bylaws	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
Plats	1976, p. 58	367
Amendments to Article 9 of the Uniform Commercial Code	1975, Supp.	369

1980 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Condemnation Procedures	1968, p. 8	87
Technical Revision of the Code of Criminal Procedure	1978, p. 37	506

1981 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Elimination of Reference to the Justice of the Peace:		
Sheriff's Service of Process	1976, p. 74	148
Court of Appeals Jurisdiction	1980, p. 34	206

1982 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Limited Partnerships	1980, p. 40	213
Technical Amendments to the Business Corporation Act	1980, p. 8	407

Interest on Probate Code Judgments	1980, p. 37	412
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1983 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
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Elimination of References to Abolished Courts:		
Police Courts and County Board of Auditors	1979, p. 9	87
Federal Lien Registration	1979, p. 26	102

1984 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
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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 Revised Judicature Act for Legislative Immunity	1983, p. 14	29
Disclosure of Treatment Under the Psychologist/Psychiatrist- Patient Privilege	1978, p. 28	362

1986 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
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Amendments to the Uniform Limited Partnership Act	1983, p. 9	100
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1987 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
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Amendments to Article 8 of the Uniform Commercial Code	1984, p. 97	16
Disclosure in the Sale of Visual Art Objects Produced in Multiples	1981, p. 57	40, 53, 54

1988 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Repeal of M.C.L. § 764.9	1982, p. 9	113
Statutory Rule Against Perpetuities	1986, p. 10	417, 418
Transboundary Pollution		
Reciprocal Access to Courts	1984, p. 71	517

1990 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Elimination of Reference to Abolished Courts:		
a. Procedures of Justice Courts and Municipal Courts	1985, p. 12; 1986, p. 125	217
b. Noxious Weeds	1986, p. 128; 1988, p. 154	218
c. Criminal Procedure	1975, p. 24	219
d. Presumption Concerning Married Women	1988, p. 157	220
e. Mackinac Island State Park	1986, p. 138; 1988, p. 154	221
f. Relief and Support of the Poor	1986, p. 139; 1988, p. 154	222
g. Legal Work Day	1988, p. 154	223
h. Damage to Property by Floating Lumber	1988, p. 155	224

1991 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Elimination of Reference to Abolished Courts:		
a. Land Contracts	1988, p. 157	140
b. Insurance	1988, p. 156	141
c. Animals	1988, p. 155	142
d. Trains	1986, pp. 153, 155; 1987, p. 80; 1988, p. 152	143
e. Appeals	1985, p. 12	144
f. Crimes	1988, p. 153	145
g. Library Corporations	1988, p. 155	146
h. Oaths	1988, p. 156	147
i. Agricultural Products	1986, p. 134; 1988, p. 151	148
j. Deeds	1988, p. 156	149
k. Corporations	1989, p. 4; 1990, p. 4	150
l. Summer Resort Corporations	1986, p. 154; 1988, p. 155	151
m. Association Land	1986, p. 154; 1988, p. 155	152
n. Burial Grounds	1988, p. 156	153
o. Posters, Signs, and Placecards	1988, p. 157	154

p. Railroad Construction	1988, p. 157; 1988, p. 156	155
q. Work Farms	1988, p. 157	156
r. Recording Duties	1988, p. 154	157
s. Liens	1986, pp. 141, 151, 158; 1988, p. 152	159

1992 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Determination of Death Act	1987, p. 13	90

1993 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Condemnation Procedures of Home Rule Villages	1989, p. 17	32
Condemnation Procedures Regarding Railroads	1989, p. 25	354
Condemnation Procedures Regarding Railroad Depots	1989, p. 26	354

1995 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Condemnation Procedures Regarding Inland Lake Levels	1989, p. 24	59
Condemnation Procedures of School Districts	1989, p. 24	289

1996 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Felony Murder and Arson	1994, p. 179	20, 21

1998 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Condemnation Procedures of General Law Villages	1989, p. 16	254
Repeal of Article 6 of the Uniform Commercial Code	1994, p. 111; 1997, p. 131	489
Uniform Fraudulent Transfer Act	1988, p. 13	434
Uniform Trade Secrets Act	1993, p. 7	448
Revisions to Lemon Law (recommendation to include leased vehicles)	1995, p. 7	486

2002 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Guilty but Mentally Ill - Burden of Proof	2000, p. 85	245

2003 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Anatomical Gifts	1993, p. 53	62, 63

2004 Legislative Session

<u>Subject</u>	<u>Commission Report</u>	<u>Act No.</u>
Governor's Power to Remove Public Officials from Office (recommendation on school board and intermediate school board members)	2003, p. 21	234

BIOGRAPHIES OF COMMISSION MEMBERS AND STAFF

RICHARD D. McLELLAN

Richard D. McLellan is Chair of the Michigan Law Revision Commission, a position he has filled since 1986 following his appointment as a public member of the Commission in 1985.

McLellan is a practicing attorney and business consultant in Lansing, Michigan. In 2007, Mr. McLellan retired as a lawyer with the law firm of Dykema Gossett PLLC where he served as the Member-in-Charge of the firm's Lansing Office and as the leader of the firm's Government Policy Department.

He is a member of the Board of Directors of ITC Holdings (NYSE: ITC) and is an Independent Trustee of the JNL Series Trust, a \$50 billion variable annuity fund managed by the Jackson National Life Insurance Company. He also serves as Chairman of Africa Continental Holdings, LLC.

By appointment of the Supreme Court, Mr. McLellan served two terms as a Member of the Board of Commissioners of the State Bar of Michigan.

Mr. McLellan started his career as an administrative assistant to Governor William G. Milliken and as Acting Director of the Michigan Office of Drug Abuse.

Following the 1990 Michigan elections, Mr. McLellan was named Transition Director to then Governor-elect John Engler. In that capacity, he assisted in the formation of Governor Engler's Administration and conducted a review of state programs. He was also appointed by the Governor as Chairman of the Corrections Commission, a member of the Michigan Export Development Authority, a member of the Michigan International Trade Authority, a member of the Library of Michigan Board of Trustees, a member of the Michigan Jobs Commission, a member of the McPherson Commission on Charter Schools, and Chairperson of the Michigan Film Advisory Commission.

During the administration of President Gerald Ford, Mr. McLellan served as an advisor to the Commissioner of the Food and Drug Administration and as a member of the National Advisory Food and Drug Committee of the U.S. Department of Health, Education and Welfare.

In 1990, Mr. McLellan was appointed by President George Bush as a Presidential Observer to the elections in the People's Republic of Bulgaria. The elections were the first free elections in the country following 45 years of Communist rule. In 1996, he again acted as an observer for the Bulgarian national elections. And again, in February 1999, he acted as an observer for the Nigerian national elections with the International Republican Institute.

Mr. McLellan is a member of the Board of Governors of the Cranbrook Institute of Science, one of Michigan's leading science museums. He helped establish and served for ten years as president of the Library of Michigan Foundation. He helped establish and served as both President and Chairman of the Michigan Japan Foundation, the private foundation providing funding for the Japan Center for Michigan Universities.

Mr. McLellan has served as a member of the Board of Trustees of Michigan State University Detroit College of Law and is a member of the Advisory Board for MSU's James H. and Mary B. Quello Center for Telecommunication Management and Law. He also serves as an adjunct professor in MSU's College of Communications Arts.

Mr. McLellan is a former Chairman of the Board of Directors of the Michigan Chamber of Commerce and is a member of the Board of Directors of the Mackinac Center for Public Policy, the Oxford Foundation, and the Cornerstone Foundation.

Mr. McLellan served as a member of the Board of Directors of the Mercantile & General Life Reassurance Company of America and the Crown America Life Insurance Company. He also served as Chairman of the Michigan Competitive Telecommunications Providers Association and as Chairman of the Information Technology Association of Michigan.

Mr. McLellan has been active in matters concerning persons with disabilities. He is a former President of the Arthritis Foundation, Michigan Chapter, a former member of the National Advocacy Committee of the Arthritis Foundation, and a former member of the National Research Committee, Arthritis Foundation.

He is a graduate of the Michigan State University Honors College and the University of Michigan Law School. He has served as an adjunct professor of international studies at Michigan State University.

ANTHONY DEREZINSKI

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

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

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

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

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

GEORGE E. WARD

Mr. Ward is a public member of the Michigan Law Revision Commission and has served since his appointment in August 1994.

Mr. Ward was the Chief Assistant Prosecuting Attorney in Wayne County in the administration of the Honorable John D. O’Hair. Earlier in his career, he clerked for Justice Theodore Souris of the Michigan Supreme Court and for 20 years was in private civil practice in the City of Detroit. In 2001, Mr. Ward returned to private practice in Wayne County.

He is a graduate of the University of Detroit, and the University of Michigan Law School. He and his wife Margaret, parents of five adult children and grandparents of nine, live in Canton.

Mr. Ward is an Adjunct Professor at Michigan State College of Law, Wayne State University Law School, and the University of Detroit Mercy School of Law, and a Wayne County Public Administrator. He is a board member of Community Social Services of Wayne County; a consultant to the Macomb County Home Rule Charter Commission in 2008; past President of the Incorporated Society of Irish American Lawyers; a former President of the Board of Control of Saginaw Valley State University; a former commissioner of the State Bar of Michigan; the former President of the Wayne County Home Rule Charter Commission; the former Executive Secretary of the 1971-1972 City of Detroit Charter Revision Commission; and a former member of the Board of Directors of Wayne Center.

WILLIAM C. WHITBECK

Judge William C. Whitbeck is a public member of the Michigan Law Revision Commission and has served since his appointment in January 2000.

Judge Whitbeck was born on January 17, 1941, in Holland, Michigan, and was raised in Kalamazoo, Michigan. His undergraduate education was at Northwestern University, where he received a McCormack Scholarship in Journalism. He received his J.D. from the University of Michigan Law School in 1966, and was admitted to the Michigan Bar in 1969.

Judge Whitbeck has held a variety of positions with the state and federal governments, including serving as Administrative Assistant to Governor George Romney from 1966 to 1969, Special Assistant to Secretary George Romney at the U.S. Department of Housing and Urban Development from 1969 to 1970, Area Director of the Detroit Area Office of the U.S. Department of Housing and Urban Development from 1970 to 1973, Director of Policy of the Michigan Public Service Commission from 1973 to 1975 and Counsel to Governor John Engler for Executive Organization/Director of the Office of the State Employer from 1991 to 1993. He served on the Presidential Transition Team of President-Elect Ronald Reagan in 1980, and as Counsel to the Transition Team of Governor-Elect John Engler in 1990.

In private practice, Judge Whitbeck was a partner in the law firm of McLellan, Schlaybaugh & Whitbeck from 1975 to 1982, a partner in the law firm of Dykema, Gossett, Spencer, Goodnow and Trigg from 1982 to 1987, and a partner in the law firm of Honigman Miller Schwartz and Cohn from 1993 to 1997.

Judge Whitbeck is a member of the State Bar of Michigan, the American Bar Association, the Ingham County Bar Association, and the Castle Park Association, and has served as Chair of the Michigan Historical Commission. He is a Fellow of both the Michigan State Bar Foundation and the American Bar Foundation.

Governor John Engler appointed Judge Whitbeck to the Court of Appeals effective October 22, 1997, to a term ending January 1, 1999. Judge Whitbeck was reelected to six-year terms in 1998, 2004, and 2010. Judge Whitbeck retired from the Court on November 21, 2014. Chief Judge Richard Bandstra designated Judge Whitbeck as Chief Judge Pro Tem of the Court of Appeals effective January 1, 1999. The Supreme Court appointed Judge Whitbeck Chief Judge of the Michigan Court of Appeals three times and he served in that position from January 1, 2002 to December 31, 2007.

Judge Whitbeck and his wife Stephanie reside in downtown Lansing in a 125-year-old historic home that they have completely renovated. They are members of St. Mary Cathedral.

Judge Whitbeck is the author of a work of fiction, *To Account for Murder*, a courtroom drama set in Michigan in 1945-1946.

BRIAN K. ELDER

Representative. Brian Elder is a legislative member of the Michigan Law Revision and has served since February of 2017. He is serving his first term representing the 96th House District, which includes the cities of Bay City and Essexville and Bangor, Frankenlust, Hampton, Kawkawlin, Merritt, Monitor and Portsmouth townships in Bay County.

Representative Elder comes from three generations of autoworkers and is the first member of his family to attend college, having worked his way through Wayne State University, graduating Summa Cum Laude and Phi Beta Kappa with a Bachelor's degree in History. He graduated from the UCLA School of Law earning a Juris Doctorate, with honors in Property Law and Oral Advocacy.

Representative Elder has practiced law in Mid-Michigan since 1998 and currently owns Brian K. Elder, P.L.C., a general civil law practice. He has represented dozens of municipalities over his career, as well as labor unions, union members and individuals in the areas of estate planning and Elder law.

Representative Elder served eight years as a Bay County Commissioner and served as the Chairman of the Bay County Board of Commissioners. As a County Commissioner, he was an acknowledged leader in economic development, creating and Chairing Bay Future, Inc., Bay County's premiere public-private economic development partnership. Representative Elder was Bay County's lead negotiator on the Fabiano Bros. multi-million dollar facility project that resulted in the expansion of the Monitor DDA and led to an additional \$400,000.00 of tax revenue per year to local Bay County governments.

Of course, Representative Elder's favorite accomplishment as a County Commissioner may be the creation of "Central Bark", Bay County's only dog park.

Representative Elder lives in Bay City and is married to Susan Elder, a German teacher at Bay City Central High School and Handy Middle School. Brian and Susan have three children in the Bay City Public School System.

BERT JOHNSON

State Senator Bert Johnson is a legislative member of the Michigan Law Revision Commission and has served on the Commission since January 2015.

A lifelong resident with a 100-plus year family history in Detroit, Bert Johnson grew up in Russell Woods, on the city's west side, the son of a postal employee and an attorney. He attended the University of Detroit Jesuit High School and Academy and the University of Detroit – Mercy.

Senator Johnson went on to manage his family's law firm for a decade before serving as then-State Representative Bill McConico's Chief of Staff for five years. When Representative McConico was unable to run for reelection due to term limits, Senator Johnson, with strong grassroots and community support, ran to succeed him in the Legislature in 2006. A leader with the skills and experience to advance a progressive, forward-thinking agenda, Senator Johnson quickly established himself as a go-to person when it comes to passing legislation.

Senator Johnson's work on behalf of Michigan's citizens has been recognized with various awards and honors, which include a "Men of Excellence" Award from the *Michigan Chronicle*, a "Great Expectations" Award from the Detroit Branch NAACP, a "Humane Legislator of the Year" Award from the Humane Society of the United States, a "Friend of the MAC" Award from the Michigan Association of Counties, and a "Cancer Prevention" Award from the national organization, Less Cancer, in honor of his work to establish Cancer Prevention Day in Michigan. His passions and legislative focus issues include educational access for all, civil rights, regional mass transit, foreclosure relief, improved and more affordable healthcare, addressing the expansion of the prison-industrial complex, environmental responsibility, and economic development and investment.

In the 2009-2010 legislative session, only Senator Johnson's second term in the Michigan House, he solidified his reputation as a problem-solver. As a two-term Detroit Caucus Chair and serving as one of only two African-American committee chairs in the Michigan government, he held the gavel for the powerful Regulatory Reform committee. Senator Johnson passed more laws that session than any other Democratic or Republican member in the House or the Senate. His performance led former Senate Democratic Floor Leader Buzz Thomas to call him, "Detroit's most effective legislator."

Today, Senator Johnson is able to drive a statewide discussion despite serving in the 'super-minority' in the Senate, while still achieving real results for his constituents. He was a lead sponsor of legislation that established a regional transit authority in southeastern Michigan and authored the bill that eliminated the egregious charges associated with the draconian Driver's Responsibility Fee.

Senator Johnson is a board member for Michigan Youth in Government and regularly addresses their conventions at the Capitol. He has been Treasurer of the Michigan Legislative Black Caucus and has served with defense and prosecuting attorneys, judges, justice advocates and others on the statewide Indigent Defense Advisory Commission, tasked with making recommendations on improving Michigan's public defender system.

Senator Johnson represents the 2nd Senate District, which includes northeast Detroit, Highland Park, Hamtramck, Harper Woods and the five Grosse Pointe Communities. He serves on the Regulatory Reform Committee, the Insurance Committee, and as Minority Vice-Chair of the Outdoor Recreation and Tourism Committee and Families, Seniors and Human Services Committee. He is devoted to raising his children in a loving and stable home with the same values of hard work and humanitarianism his parents instilled in him.

PETER J. LUCIDO

State Representative Peter J. Lucido is a legislative member of the Michigan Law Revision Commission and has served on the Commission since January 2015. He was first elected to serve the 36th District in November 2014. The district covers part of Macomb County including Bruce, Washington and part of Shelby townships and the Village of Romeo.

Representative Lucido serves as vice chair of the House Law & Justice Committee, as well as a member of the Tax Policy, Transportation and Infrastructure, and Financial Liability Reform committees. He earned an associate degree from Macomb Community College, a bachelor's degree in Public Administration and Business from Oakland University, a master's in Business from Central Michigan University and a Juris Doctor from Detroit College of Law (now Michigan State University School of Law).

Representative Lucido has practiced law for over 30 years and was the founder, president and managing partner of one of Macomb County's largest law firms. He was also the founder and publisher of *Macomb Now Magazine*, and is currently the publisher emeritus. Additionally, he is a licensed attorney, insurance agent, realtor and security register representative.

Representative Lucido has been involved in the community as a member of the Knights of Columbus, Macomb County Chamber of Commerce, Greater Romeo-Washington Chamber of Commerce, Michigan Farm Bureau, Italian American Cultural Center, Italian American Chamber of Commerce, Board of Trustees for De La Salle Collegiate, Oakland University Presidents Council, Ambassador Club of St. Joseph Mercy Macomb (now known as Henry Ford Macomb Hospitals) and as a former board member for St. Joseph Mercy Macomb.

He and his wife have been married for over 25 years and have three children.

TONYA SCHUITMAKER

State Senator Tonya Schuitmaker is a legislative member of the Michigan Law Revision Commission and has served on the Commission since January 2009. She was elected to the Michigan House in November 2004 and was first elected to the Michigan Senate in November 2010, following three terms in the House of Representatives.

Senator Schuitmaker holds a B.A. in business administration from Michigan State University and graduated Cum Laude from the Detroit College of Law. Before her election to the Michigan House of Representatives, Senator Schuitmaker was a partner in the law firm of Schuitmaker, Cooper and Schuitmaker. She began practicing law in 1993 with a concentration in family, probate, real estate, and municipal law.

Senator Tonya Schuitmaker has advocated for vulnerable individuals, such as senior citizens and children, and crime victims through various legislative initiatives. In addition to her role as President Pro Tempore of the Michigan Senate, Senator Schuitmaker serves on the Appropriations Committee as Chair of the Subcommittee of Higher Education and as a member of the Capital Outlay, Community Colleges, and Judiciary appropriations subcommittees. She also serves as Vice Chair of the Judiciary Committee and is a member of the Committee on Energy and Technology.

Actively involved in professional associations, Senator Schuitmaker serves as a member of the Uniform Law Commission, The Federalist Society, Van Buren County Bar Association, and the American Bar Association. She recently completed the Aspen Institute-Rodel Fellowship in Public Leadership. Senator Schuitmaker has previously served on the State of Michigan Board of Medicine, Van Buren County Communications Corrections Advisory Board, and the State of Michigan Board of Real Estate Brokers and Salespersons.

Senator Schuitmaker resides in Lawton with her husband, Steve, and their two children, Jordan and Savina.

JENNIFER DETTLOFF

Jennifer Dettloff serves as an ex-officio member of the Michigan Law Revision Commission since her appointment as the Legislative Council Administrator on November 9, 2016. As Legislative Council Administrator, she is responsible for the supervision and oversight of the following agencies: Legislative Service Bureau, Legislative Corrections Ombudsman, Michigan Veterans' Facility Ombudsman, Criminal Justice Policy Commission (staff), Joint Committee on Administrative Rules (staff), Michigan Law Revision Commission, State Drug Treatment Court Advisory Committee, and the Michigan Commission on Uniform State Laws.

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

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

Ms. Dettloff and her husband Robert Snyder live in Williamston, Michigan with their triplets, Madeline, Jack and William.

JANE O. WILENSKY

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

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