

final minutes

Michigan Law Revision Commission (MLRC) Meeting

Wednesday, October 23, 2019 ▪ 11:30 a.m.

Legislative Council Conference Room

3rd Floor ▪ Boji Tower Building

124 W. Allegan ▪ Lansing, Michigan

Members Present:

Richard McLellan, Chair
Tony Derezinski, Vice Chair
Representative Ryan Berman
Senator Stephanie Chang
Jennifer Dettloff
Representative Brian K. Elder
Brian LaVictoire
Senator Peter J. Lucido

Members Absent and Excused:

George Ward

I. Convening of Meeting

Chair McLellan called the meeting to order at 11:35 a.m.

II. Roll Call

The Chair asked the clerk to call the roll. A quorum was present, and absent members were excused.

III. Approval of December 5, 2018 MLRC Meeting Minutes

The Chair asked for a motion to approve the minutes of the December 5, 2018 MLRC meeting. No corrections or additions were offered. **Representative Elder moved, supported by Senator Chang, to adopt the minutes of the December 5, 2018 Michigan Law Revision Commission meeting. There was no further discussion. The motion prevailed by unanimous consent and the minutes were approved.**

IV. 2018 Michigan Law Revision Commission Annual Report

1. Approval of Tribute Resolutions

The Chair directed members' attention to the tribute resolution honoring Senator Tonya Schuitmaker for her service on the Commission. **Senator Chang moved, supported by Commissioner Derezinski, to adopt the resolution honoring State Senator Tonya Schuitmaker. There was no further discussion. The motion prevailed by unanimous consent and the resolution was approved.**

The Chair directed members' attention to the tribute resolution honoring the Honorable William C. Whitbeck for his service on the Commission. **Commissioner Derezinski moved, supported by Commissioner LaVictoire, to adopt the resolution honoring Judge William C. Whitbeck. There was no further discussion. The motion prevailed by unanimous consent and the resolution was approved.**

The Chair noted the resolutions will be included in the 2018 Michigan Law Revision Commission Annual Report and the clerk will make the necessary arrangements to deliver the resolutions to Senator Schuitmaker and Judge Whitbeck.

2. Approval of Report: Recommendation that the Legislature Review and Consider the Report for Codifying Michigan's Choice-of-Law Rules.

The Chair then called on Ms. Wilensky to present a report that the Commission may want to include in the 2018 Michigan Law Revision Commission Annual Report. She proceeded with an overview of the Report to the Legislature on Recommendations for Codifying Michigan's Choice-of-Law Rules prepared by Christopher Schwartz and noted the report makes no recommendation, but it is included in the Annual Report for review and consideration by the Legislature. A discussion followed. **Commissioner Derezinski moved, supported by Senator Lucido, to approve the Report to the Legislature on Recommendations for Codifying Michigan's Choice-of-Law Rules and that it be included in the 2018 Michigan Law Revision Commission Annual Report. There was no further discussion. The motion prevailed by unanimous consent.**

3. Approval of 2018 Report on Recent Court Decisions Identifying Statutes for Legislative Action and Recommendations to the Legislature

The 2018 Report on Recent Court Decisions Identifying Statutes for Legislative Action and Recommendations to the Legislature was presented and discussed. Ms. Wilensky proceeded with a brief description of the three decisions identified as needing legislative action and the corresponding Commission's recommendations.

Brugger v Midland Cty. Bd. Of Rd. Commissioners, 324 Mich App 307; 920 NW2d 388 (2018)

Ms. Wilensky provided background on the first case pertaining to the confusion created by the Legislature's enactment of different time periods in two different statutes for presuit notice to county road commissions of intent to sue and noted that the question presented is should the Legislature clarify whether the Governmental Tort Liability Act, MCL 691.1404, or the County Road Law, MCL 224.21(3), governs presuit notices to county road commissions? A discussion of the enactment of inconsistent statutes followed. **Senator Lucido moved, supported by Commissioner Derezinski, to amend the recommendation to read: "The Commission recommends legislative review of this issue and recommends legislative action to resolve the inconsistencies in MCL 691.1404 and MCL 224.21(3)." There was no further discussion. The motion prevailed by unanimous consent and the amendment was adopted.**

McNeill-Marks v MidMichigan Med. Ctr.-Gratiot, 502 Mich 851; 912 NW2d 181, 194; reconsideration denied, 503 Mich 854; 915 NW2d 888 (2018)

Ms. Wilensky provided background on the second case pertaining to the meaning of the terms "report" and "public body" in the Michigan Whistleblower Protection Act and noted that the question presented is should the Legislature reexamine the definition of "public body" and clarify the definition of "report" under the Michigan Whistleblower Protection Act? A discussion of the different definitions of "public body" used in other statutes and the idea of coming up with one definition that could be applied to all statutes followed. **Senator Lucido moved, supported by Representative Berman, to amend the recommendation to read: "The Commission recommends legislative review of this issue to clarify the definition of 'public body' in the Michigan Whistleblower Protection Act and to expand review of the definition of 'public body' in other statutes." There was no further discussion. The motion prevailed by unanimous consent and the amendment was adopted.**

People v Sharpe, 502 Mich 313, 338 n 6; 918 NW2d 504, 517 n 6 (2018)

Ms. Wilensky provided background on the third case pertaining to the definition of "sexual conduct" under the rape-shield statute and noted that the question presented is should the Legislature amend the rape-shield statute, MCL 750.520j, to clarify the meaning of the term "sexual conduct"? A discussion of the court case and the interpretations that have divided the justices of the Supreme Court followed. **Senator Lucido moved, supported by Commissioner LaVictoire, to approve the recommendation as presented in the report that reads: "The Commission recommends legislative review of this issue but makes no recommendation of specific legislative action." There was no further discussion. The motion prevailed by unanimous consent and the recommendation as presented in the report was approved.**

The Chair laid before the Commission the proposed final 2018 annual report with the amendments that have been discussed.

Senator Lucido moved, supported by Commissioner LaVictoire, to approve the proposed 2018 Michigan Law Revision Commission Annual Report as amended. The motion prevailed by unanimous consent and the 2018 Michigan Law Revision Commission Annual Report as amended was approved.

The Chair announced the discussed revisions will be made and the 2018 Michigan Law Revision Commission Annual Report will be printed and distributed.

V and VI. New Business and Other Business

Jane Wilensky provided an update on two issues discussed at the Commission's last meeting. The first is regarding an article that the Chair had written for Crain's Business concerning the use of common law principles to regulate the conduct of state officials. She reported that the Commission's previous student intern began preliminary research and the Commission's new student intern will continue to look into the criminal misconduct in office issue. The second issue considered by the Commission was the issuance of driver's licenses to undocumented immigrants. She noted that Susan Reed of the Michigan Immigrant Rights Center had prepared a report on the subject for the Commission in 2015 and the Commission organized a forum discussion among several constituencies. She noted that the Commission did not take a position on the report at the time but did include the report in the Commission's 2015 annual report. Senator Chang was then called upon to provide an update on a bill she is working on that would

reverse the requirement that an individual provide legal presence to obtain a driver's license. A discussion followed and Senator Lucido raised questions regarding the approximate number of undocumented individuals currently driving in Michigan and how reciprocity is handled between other states that do provide licenses.

New ideas on topics the Commission should review in 2020 followed. The Chair asked members to bring any ideas to Ms. Wilensky's attention.

VII. Comments from Commissioners

The Chair asked for comments from the Commissioners. Senator Lucido encouraged an expansion of the sources used to identify issues that need to be studied by the Commission including making direct inquiry to the judiciary and the State Bar. **Commissioner LaVictoire moved, supported by Senator Lucido, that the Commission investigate how it can proactively solicit input on issues that need to be studied by the Commission. There was no further discussion. The motion prevailed by unanimous consent and the motion was approved.** Commissioner LaVictoire proposed an area the Commission may want to review is the Public Employee Retirement System Investment Act that provides specific investment limitations with respect to public retirement systems. He noted that the vast majority of states have removed these restrictions, which were once common practice, and adopted a more comprehensive fiduciary standard to dictate the actions of various retirement boards. Senator Chang brought forward the issue that it is illegal for an unmarried man and woman to cohabitate and suggested the Commission may want to review this and other anachronisms and antiquated laws still in statute. Representative Elder commented that he is happy to be on the Commission as one of his missions is to seek input from attorneys and judges on areas that do not make sense and need to be updated. Commissioner Derezinski is interested in the Commission looking into ways of finding legislative intent and interpreting statutes in Michigan. Senator Lucido added requiring the Governor to provide a written reason for any veto should be explored. There were no other Commissioner comments.

VIII. Public Comment

The Chair asked if there were any public comments. Mr. Bruce Timmons commented that the Commission may want to investigate the inconsistencies in the restitution provisions of the crime victims' rights act and the code of court procedures and a portion of the juvenile code. He also commented on the practicality of coming up with a single definition of "public body." There were no other public comments.

IX. Adjournment

Having no further business, the Chair adjourned the meeting at 1:05 p.m.

(Minutes approved at November 23, 2020 Michigan Law Revision Commission meeting.)