

proposed minutes

Michigan Law Revision Commission (MLRC) Meeting

Monday, November 23, 2020 ▪ 11:30 a.m.

Legislative Council Conference Room

3rd Floor ▪ Boji Tower Building

124 W. Allegan ▪ Lansing, Michigan

Members Present:

Richard McLellan, Chair (East Lansing, Michigan)
Tony Derezinski, Vice Chair (Ann Arbor, Michigan)
Representative Ryan Berman (Commerce Township, Michigan)
Senator Stephanie Chang (Detroit, Wayne County, Michigan)
Jennifer Dettloff (Wheatfield Township, Ingham County, Michigan)
Brian LaVictoire (DeWitt Township, Clinton County, Michigan)
Senator Peter J. Lucido (Shelby Township, Macomb County, Michigan)

Members Absent and Excused:

Representative Brian K. Elder
George Ward

Due to COVID-19 concerns, all Commission members participated via web conference. Pursuant to Public Act 228 of 2020, each Commission member who participated in the meeting remotely made a public announcement indicating he or she was attending the meeting remotely and identified the physical location by stating the county, city, township, or village and state from which he or she was attending the meeting remotely as noted above.

Commissioner Derezinski joined the meeting at 12:41 p.m.

I. Convening of Meeting

Chair McLellan called the meeting to order at 11:32 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 MLRC October 23, 2019 Meeting Minutes

The Chair asked for a motion to approve the minutes of the October 23, 2019 MLRC meeting. No corrections or additions were offered. **Senator Lucido moved, supported by Representative Berman, to adopt the minutes of the October 23, 2019 Michigan Law Revision Commission meeting. There was no further discussion. The motion prevailed by unanimous consent and the minutes were approved.**

IV. 2019 Michigan Law Revision Commission Annual Report

1. Review of 2019 Report on Recent Court Decisions Identifying Statutes for Legislative Action and Recommendations to the Legislature

The 2019 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 seven decisions identified as needing legislative action and the corresponding Commission's recommendations.

In re: MGR, 504 Mich 852 (2019)

Ms. Wilensky provided background on the first case that involved decisions by the trial court that stayed petitioners' adoption until a subsequently-filed paternity action was resolved and noted that the question presented is what is the proper order for handling proceedings filed under the Adoption Code and Paternity Act? A discussion followed and the Commission recommends legislative review of this issue but makes no recommendation of specific legislative action. Senator Lucido suggested he and the other legislative members on the Commission work toward crafting legislation to address this issue.

People v Willis, 504 Mich 905 (2019)

Ms. Wilensky continued with a review of the second case that involved the age of consent in the child sexual abuse statutory scheme. She noted that the question presented is should the Legislature review the provisions of MCL 750.145c(2) and clarify and harmonize Michigan's child sexual abuse statutory scheme? A discussion followed and Senator Lucido, Senator Chang, and Representative Berman agreed that legislative intent should be clarified. The Commission recommends legislative review of this issue but makes no recommendation of specific legislative action.

People v Cameron, 504 Mich 927 (2019)

Ms. Wilensky noted this case involved court-imposed fines under the Code of Criminal Procedure. The question presented is should the Legislature review MCL 769.1k(1)(b)(iii) for possible conflict of interest, and review and consider the recommendations in the interim report of the Trial Court Funding Commission? Senator Chang suggested the proposed wording of the Commission's recommendation also include a sense of urgency for action. After discussion, the recommendation in the report was amended to read: "The Commission recognizes the urgency of this issue and notes that the Final Report of the Trial Court Funding Commission was issued on September 6, 2019. https://www.michigan.gov/documents/treasury/TCFC_Final_Report_9-6-2019_665923_7.pdf. The Commission recommends that the Legislature review this issue and consider the recommendations in this Report."

In re: Rippy, 330 Mich. App 350 (2019)

This case involved a mother's prenatal conduct in relation to termination of parental rights. Ms. Wilensky provided a review of the case and noted the question presented is can a mother's prenatal conduct constitute an "aggravated circumstance" under MCL 722.638 and MCL 712A.19a(2)? After discussion, the Commission recommends legislative review of this issue but makes no recommendation of specific legislative action. Senator Chang commented that she will explore whether the Department of Health and Human Services has any guidance in their rules about this issue.

Johnson v Ziyadeh, 2019 Mich App LEXIS 2477 (2019), No. 340866

Ms. Wilensky presented the background of this case which involved the necessity of the "locality rule." She noted the question presented is should the Legislature revise or repeal the "locality rule" found in MCL 600.2912a? After discussion, the recommendation in the report was amended to read: "The Commission recommends that the Legislature repeal or, based on the information provided, revise "the locality rule" found in MCL 600.2912a."

Cooper v Trinity Health-Michigan, 2019 Mich App LEXIS 231 (2019), No. 337702

Ms. Wilensky noted this case involved reliance on affidavits submitted by experts when litigation is filed to support a motion for summary disposition brought after discovery and the question presented is should an expert who has provided an affidavit of merit under MCL 600.2912d(1) be required to submit a subsequent affidavit at the summary disposition phase, MCR 2.116(G)(5), that considers additional materials revealed through discovery? Senator Lucido suggested the recommendation be directed toward the Supreme Court for a change in court rules. After further discussion, the recommendation in the report was amended to read: "The Commission makes no recommendation of specific legislative action, rather, the Commission recommends that the Supreme Court consider modification or expansion of the relevant court rule."

People v Thornton, 2019 Mich App LEXIS 6111 (2019), No. 347561

Ms. Wilensky presented the last case that involved the display requirements for temporary registration markers. The question presented is should the Legislature clarify the display requirements for temporary registration markers? A discussion followed and the Commission deleted this case from the report.

Senator Lucido moved, supported by Representative Berman, to amend the 2019 Report on Recent Court Decisions Identifying Statutes for Legislative Action and Recommendations to the Legislature as proposed and to include the amended report in the 2019 Michigan Law Revision Commission Annual Report. There was no further discussion. The motion prevailed by unanimous consent and the motion was adopted.

V. New Business

1. Report Regarding the Criminalization of Decisions by State Officials and Recommendation that the Legislature Enact a Statute Regarding Misconduct in Public Office

The Chair then called on Ms. Wilensky to present a report that the Commission may want to include in the 2019 Michigan Law Revision Commission Annual Report. She proceeded with an overview of the Report Regarding the Criminalization of Decisions by State Officials and Recommendation that the Legislature Enact a Statute Regarding Misconduct in Public Office. A discussion followed. The wording of the Commission's proposed recommendation was discussed further and amended to read as follows: "The Commission recommends that the Legislature consider enacting a statute to codify the common law crime of misconduct in office. An example of a statute is provided." In addition, the reference to the Michigan Supreme Court in the paragraph citing the Waterstone case will be corrected to the Michigan Court of Appeals. **Senator Lucido moved, supported by Representative Berman, to approve the Report Regarding the Criminalization of Decisions by State Officials and Recommendation that the Legislature Enact a Statute Regarding Misconduct in Public Office as amended and that it be included**

in the 2019 Michigan Law Revision Commission Annual Report. There was no further discussion. The motion prevailed by unanimous consent.

The Chair laid before the Commission the proposed 2019 Michigan Law Revision Commission Annual Report as amended to include the 2019 Report on Recent Court Decisions Identifying Statutes for Legislative Action and Recommendations to the Legislature as amended and the Report Regarding the Criminalization of Decisions by State Officials and Recommendation that the Legislature Enact a Statute Regarding Misconduct in Public Office as amended. **Representative Berman moved, supported by Commissioner Derezinski, to approve the proposed 2019 Michigan Law Revision Commission Annual Report as amended. The motion prevailed by unanimous consent and the 2019 Michigan Law Revision Commission Annual Report as amended was approved.**

The Chair noted the discussed revisions will be made and the 2019 Michigan Law Revision Commission Annual Report will be printed and distributed.

VI. Other Business

There was no other business to discuss.

VII. Comments from Commissioners

The Chair asked for comments from the Commissioners. Senator Lucido commented that he has enjoyed being a part of the Commission while he has been in both the House and the Senate and encouraged legislative members to serve on the Commission. Commissioner Derezinski apologized for his delay in joining the meeting and looks forward to the next few meetings.

VIII. Public Comment

The Chair asked if there were any public comments. There were no public comments.

IX. Adjournment

Having no further business, the Chair adjourned the meeting at 1:08 p.m.