

proposed minutes

Michigan Law Revision Commission (MLRC) Meeting

Wednesday, November 29, 2023 ▪ 12:00 noon
Legislative Council Conference Room
3rd Floor ▪ Boji Tower Building
124 W. Allegan ▪ Lansing, Michigan

Members Present:

Peter Ruddell, Chair
Lucius Vassar, Vice Chair
Trent Collier
Representative Kara Hope
Representative Tom Kuhn
Senator Jim Runestad
Senator Stephanie Chang

Members Absent and Excused:

Amy Murphy

Ms. Jennifer Dettloff serving as ex-officio to the Commission was in attendance.

I. Convening of Meeting

Chair Ruddell called the meeting to order at 12:05 p.m.

II. Roll Call

The Chair asked the clerk to call the roll. A quorum was present with one member absent and excused.

III. Approval of Agenda

The Chair asked for a motion to approve today's agenda. There were no changes to the agenda offered.

Representative Hope moved, supported by Commissioner Vassar, to approve today's meeting agenda. There was no further discussion. The motion prevailed by unanimous consent and the agenda was approved.

IV. Approval of MLRC September 29, 2021 Meeting Minutes

The Chair asked for a motion to approve the minutes of the September 29, 2021 MLRC meeting. No corrections or additions were offered. **Senator Chang moved, supported by Representative Hope, to adopt the proposed minutes of the September 29, 2021 Michigan Law Revision Commission meeting. There was no further discussion. The motion prevailed by unanimous consent and the minutes were approved.**

V. 2021-2022 Michigan Law Revision Commission Annual Report

A. Approval of Tribute Resolutions

The Chair reported tribute resolutions honoring Anthony Derezinski, George Ward, and Brian LaVictoire have been prepared for inclusion in the 2021-2022 MLRC Annual Report. Remarks complimenting former members were made by Ms. Wilensky, and Chair Ruddell.

B. Approval of 2021 Report on Recent Court Decisions Identifying Statutes for Legislative Actions and Recommendations to the Legislature

The Chair noted that the 2021 and 2022 Reports on Recent Court Decisions contain a total of 18 cases. In the interest of time, rather than describing each case, Ms. Wilensky selected a few cases of particular interest and presented those cases for discussion at the meeting.

People v Boshell, 2021 WL 1931983 (Mich. App. May 13, 2021)

This case involves a post-judgment challenge to a claim of improper venue. Defendant committed multiple crimes in Lapeer County and multiple crimes in Macomb County. The cases were consolidated for jury trial and defendant was convicted. On appeal, defendant argued that venue in Macomb County was improper. The Court of Appeals reviewed the statutory exceptions found in MCL 762.8 and 762.9 in light of the facts of this case and found that while venue in Lapeer County was proper, because there was not a miscarriage of justice or denial of a constitutional right, the error was harmless.

Judge Tukel concurred but wrote separately to urge the Legislature or the Court to adopt a statute or rule that requires defendants to raise a venue issue by interlocutory appeal. While in most cases, improper venue will not warrant reversal of a conviction, post-judgment cases are effectively unreviewable. Judge Tukel noted that Justice Corrigan raised this issue in *People v Houthoofd*, 487 Mich 568 (2010) but that the issue is still not resolved.

A discussion followed and the Commission recommends legislative review of this issue but makes no recommendation of specific legislative action.

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

Under MCL 712A.2(b), a provision of the Probate Code, a trial court has jurisdiction over juveniles under 18 years old when a parent "when able to do so, neglects or refuses to provide proper or necessary education, medical surgical or other care necessary" for a child and further provides for jurisdiction when a "home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent...is an unfit place for a juvenile to live in." In this case, a parent who was homeless and felt she could not provide the mental health services her child needed refused to pick him up from the hospital and had to relinquish custody of her child to obtain mental health services for him. The Court expressed concern for this mother who was labeled "unfit" and listed on a registry for persons who acted to harm their children when she was just trying to protect her child. The Court urged the Legislature to address this serious issue.

Ms. Wilensky introduced Brilliant Bao, University of Michigan Law School student and Research Assistant for the Commission. Ms. Bao is preparing a report for the Commission that reviews what other states have done in and outside of the child welfare system to create pathways to provide mental health services for children without their parents having to relinquish custody. The report will also include recommendations.

A discussion followed with Senator Runestad, Senator Chang and Representative Kuhn noting the importance of this issue and expressing appreciation for Ms. Bao's work on this report. The Commission will review and consider that report before making a recommendation in this case.

People v Johnson, 2021 WL 1325360 (Mich.App. Apr. 8, 2021)

This case raises a facial challenge to the constitutionality of MCL 769.1k(1)(b)(iii), which permits a trial court to impose court costs on a convicted defendant that are reasonably related to the actual costs incurred in processing a criminal case. The Court of Appeals held that the statute is not unconstitutional on its face, but acknowledged the growing consensus that Michigan's court financing scheme needs legislative reform. The Court noted that Trial Court Funding Commission's Interim Report contained recommendations that should be considered by the Legislature.

Ms. Wilensky updated the Commission on recent developments in this case. In 2023, the Supreme Court denied the application for leave to appeal in this case. Justice Bolden concurred in the denial but wrote separately to highlight her concerns with the statute. Under 2022 PA 199, this section sunsets on May 1, 2024. In light of the sunset provision, Justice Bolden called on the Legislature to reevaluate this section of the statute and implement the recommendations in the Trial Court Funding Commission Final Report.

A discussion followed with Senator Chang and Representative Hope noting that the Legislature is aware of the sunset provision and is working on this issue.

Recognizing the importance this issue, the Commission recommends that the Legislature review this issue and consider the recommendations in the Final Report of the Trail Court Funding Commission that was issued on September 6, 2019.

https://www.michigan.gov/documents/treasury/TCFC_Final_Report_9-6-2019_665923_7.pdf

C. Approval of 2022 Report on Recent Court Decisions Identifying Statutes for Legislative Actions and Recommendations to the Legislature

Ms. Wilensky stated that three cases in the Report concern filing deadlines in Michigan election law. In each case, Justice Zara urged the Legislature to amend Michigan election laws to provide more time for review by the Courts.

Johnson v Bd of State Canvassers, 509 Mich 1015 (2022)

Promote the Vote 2022 v Bd of State Canvassers, 979 NW2d 188 (Mich, Sept 8, 2022)

Reproductive Freedom for All v Bd of State Canvassers, 978 NW2d 854 *Mich, Sept 8, 2022)

The Chair provided background about this issue. Michigan is one of 13 states that require candidates for office to submit petition signatures. The offices that require petition signatures are Governor, U.S. Senate, Congress and non-incumbent judges. Noting that the need to file petitions can put time constraints on both clerks and the judiciary, the Chair proposed recommending a bifurcated system of filing deadlines for candidates who must submit petitions and "fee only" candidates.

Senator Chang agreed this is worth looking into noting there have been recent changes to election law and that she would like to confer with clerks in reference to deciding on deadlines. Senator Chang expressed support for a recommendation to the Legislature to make the deadline for candidates requiring petition signatures earlier without a suggested time. Representative Hope agreed. The Chair asked for a motion to approve a recommendation to the Legislature to examine a bifurcated system where petition candidates have an earlier filing deadline than fee only candidates.

Senator Chang so moved, supported by Representative Hope. The motion prevailed by unanimous consent.

The Chair moved to agenda item VI to discuss including this topic in the Commission's Annual Report.

VI. Old Business

A. Update on Review of past Commission Reports about Freedom of Information Act and Open Meetings Act.

Introducing this issue, the Chair noted that at its last meeting, the Commission identified updating the Freedom of Information Act (FOIA) as a subject for Commission review. The Commission then solicited comments about updating the 2017 Commission Report about FOIA. Comments were received from the Attorney General's office. And recently, the Mackinac Center issued a comprehensive report suggesting amendments to FOIA.

The Chair presented a number of proposed amendments to update the FOIA. These included: (1) requiring production of public records; (2) expanding the definition of "public body"; (3) modifying the definition of "public record"; (4) modifying the definition of "writing"; (5) requiring acknowledgement of written requests; (6) establishing reading rooms when multiple requests for similar information are received; and (7) for state agencies only, publishing certain public records on the agency's official internet presence.

Senator Chang expressed concern about the staff capacity needed for producing public records. Senator Runestad and Representative Kuhn agreed with expanding the definition of public body to include elected officials and employees. Discussion followed about the length of time required to fulfill a written request. Senator Chang suggested that rather than recommending a specific period of time, the recommendation should provide that documents must be produced in a reasonable amount of time as determined by the Legislature. The Commission agreed. The Commission also discussed the creation of an oversight body to oversee the application and administration of the FOIA. The Chair noted that this was not included in the proposed amendments because of the competing recommendations about where that body would be located. Representative Kuhn suggested adding a recommendation for an oversight body at a location to be determined by the Legislature. Senator Chang said that she is interested in this issue and proposed that rather than recommending the creation of an oversight body, the Commission recommend that the Legislature review the concept of an oversight body. The Commission agreed.

The Commission unanimously agreed that the Proposed FOIA Amendments as presented by the Chair, with the two changes described, should be included in the Commission's 2021-2022 Annual Report.

The Chair laid before the Commission the proposed 2021-2022 Michigan Law Revision Commission Annual Report that includes the tribute resolutions to Anthony Derezinski, George Ward, and Brian LaVictoire, the 2021 Report on Recent Court Decisions Identifying Statutes for Legislative Action and Recommendations to the Legislature, the 2022 Report on Recent Court Decisions Identifying Statutes for Legislative Action and Recommendations to the Legislature as amended, and the Commission's recommendations on FOIA changes as amended. **Commissioner Vassar moved, supported by Commissioner Collier, to approve the proposed 2021-2022 Michigan Law Revision Commission Annual Report. The motion prevailed by unanimous consent and the 2021-2022 Michigan Law Revision Commission Annual Report was approved.**

VII. New Business

A. Artificial Intelligence

The Chair identified Artificial Intelligence as an emerging issue for study by the Commission. The National Council of State Legislatures has focused on this issue and many states have passed legislation dealing with different aspects of AI. Ms. Wilensky introduced Matthew Weiner, a University of Michigan law student who has written a note for the Law Review about AI generated photos or videos (deepfakes) that try to influence elections and the need to regulate deepfakes. He will prepare a report for the Commission that examines recent state and federal statutes, and court cases to identify issues and potential problems for AI legislation.

Senator Chang asked about the timeline for the report. Ms. Wilensky said that the report will be finished before his graduation this spring. The Chair suggested that the Commission meet again in the spring to review the reports produced by Mr. Weiner and Ms. Bao.

VIII. Comments from Commissioners

The Chair asked for comments from the Commissioners. There were none.

IX. Public Comment

The Chair asked for comments from the Commissioners. There were none.

X. Adjournment

Having no further business, the meeting was adjourned at 1:13 p.m. with no objection.