

**STATE BAR OF MICHIGAN
SECTION ANNUAL REPORT**

Bar Year: 2011-12

Section Name: Criminal Law

Mission Statement: The purposes of the Criminal Law Section of the State Bar of Michigan are: to study the criminal law and procedure of the State of Michigan, making recommendations to the State Bar of Michigan, elected officials, the Legislature, the judiciary, and the general public of this State concerning alterations, innovations, and improvements therein so as to promote justice and the efficient administration of justice, and to protect the public and the rights of each individual; to promote means of reducing the volume of crime in the State of Michigan; and to promote effective institutional and non-institutional correction and rehabilitation of individuals convicted of violating criminal laws of the State.

Officers and Council Members:

Officer	Name	Address	Telephone	E-mail
Chair	Stephen Taratuta	Detroit, MI	313.224.5770	staratut@co.wayne.mi.us
Chair-Elect	David Gilbert	Hastings, MI	269.948.2354	degilbert@ymail.com
Secretary	David Hoort	Ionia, MI	616.527.5336	dhoort@ioniacounty.org
Treasurer	Charles Marr	Northville, MI	248.596.1599	marrlaw@msn.com

Member	Term	Member	Term
Stephen Gobbo	9/30/2012	Heather Garretson	CII
Charles Marr	9/30/2012	David Leyton	PAAM
M. Jon Posner	9/30/2012	Kenneth Malkin	CDAM
Jonathan Sacks	9/30/2012	Lynn D'Orio	CLS
Graham Teall	9/30/2012	Thomas Rombach	SBM CL
Barbara Levine	9/30/2013	Hon. David Hoort	CJaP
Ward McDonough, Jr	9/30/2013	Hon. Paula Manderfield	MJA
Matthew Smith	9/30/2013	Michael Marutiak	PaCS
Stephen Taratuta	9/30/2013	Elaine Spiliopoulos	EDITOR
Kellie Podolsky	9/30/2013	Bruce Timmons	LEG
Opolla Brown	9/30/2014		
Hon. William Caprathe	9/30/2014		
David Gilbert	9/30/2014		
Sherrie Guess	9/30/2014		
Martin Krohner	9/30/2014		

Council Meeting Schedule:

Meeting Type	Date	Location
Annual/Council Meeting	September 16, 2011	Hyatt Regency, Dearborn, MI
Council Meeting	October 18, 2011	Lexington Hotel, Lansing, MI
Council Meeting	November 15, 2011	Lexington Hotel, Lansing, MI
Council Meeting	December 20, 2011	Troppo, Lansing, MI
Council Meeting	March 20, 2012	Copper, East Lansing, MI
Council Meeting	April 19, 2012	Copper, East Lansing, MI
Council Meeting	May 15, 2012	Copper, East Lansing, MI

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General Budget Information: For the seven months ending April 30, 2012 the Criminal Law Section had an ending Fund Balance of \$45,784.66. To conserve expenditures, the Council has changed from a written to an electronic newsletter, and from hard copy to disk drive for section related materials, when possible. In the 2011-12 section year, the Council approved a two year annual budget for the first time in section history.

Events and/or Seminars:

Please attach any additional information needed regarding events and/or seminars as an addendum.

Event or Seminar Title	Date	Location
Mackinac Island Policy Conf; Medical Marijuana Policy Rpt	June 18-19, 2011	Mackinac Island, MI
Monitoring Sex Offenders; How do we do it and does it work.	September 16, 2011	Hyatt Regency, Dearborn, MI
35 th Mid-Winter Ski Conf; Criminal Jury Instructions	February 18-20, 2012	Shanty Creek, Bellaire, MI

Legislation/Court Rule issues:

At the September meeting, the Criminal Law Section supported the efforts of the Supreme Court to expand discovery at the district court level and suggested that MCR 6.001(A) be amended to provide for discovery prior to preliminary examinations and that MCR 6.001(B) be amended to include 6.201 among rules applying to misdemeanor cases, and thereby provide discovery for misdemeanors in district court.

At the October meeting, the Criminal Law Section supported changes to MCR 2.602 which would allow for use of a forensic report in the probate, district and circuit courts in lieu of the examining expert for both prosecution and defense with certain delineated safeguards. The section also voted to oppose AO #2011-XX and the proposed amendment of MCR 7.202. The section believed that neither alternative was needed. Under Michigan law there is already a procedure in place for the prosecutor to file an application for leave to appeal and request a stay.

At the November meeting, the Criminal Law Section voted to oppose proposed MCR 6.302 which would insert a requirement that a court advise a defendant who pleads guilty of the possible consequences if a habitual offender notice is filed within the 21 days allowed by statute after arraignment, and instead recommended that MCR 6.310(B) be amended to allow a plea to be withdrawn before sentencing if there is a subsequent sentence enhancement. The section also voted to support proposed MCR 6.005 which would require trial counsel to make a defendant's file available to an appellate lawyer and would require the file to be retained for at least five years.

At the December meeting, the Criminal Law Section voted to support ADM file No. 2010-25 which would amend MCR 7.210 to require trial courts to become the depository for documentary, photographic, video or audio exhibits offered into evidence (whether those exhibits are admitted or not) until expiration of the time for filing a claim of appeal. The council believed that the proposed amendment would sufficiently address existing problems experienced by appellants in reviewing and preserving the record. Because the requirement on the trial court did not include physical evidence and is limited in time, the council believed the proposed amendment to be appropriate. The Council also voted to oppose proposed HB 5214 and SB 880 but support in concept expanding the upper age requirement for persons eligible for HYTA status. The concern was that the legislation would minimize or eliminate judicial discretion by the mandatory requirements relating to tether, costs, community service, etc. The council also expressed concerns with community service being allowed to be performed for private 501(C)(3) entities. Community service is also not appropriate for all offenses or offenders. e.g. sexual or assault related convictions.

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At the March meeting, the Criminal Law Section voted to support HB 5191 which would require beginning 1/1/2013 that to be appointed a magistrate one must be admitted to the practice of law in this state. The council believed that the proposed legislation is appropriate in response to the increasing judicial duties required of magistrates in criminal and civil matters. The Council took into consideration existing and upcoming court reform and the reduction in judges. The Council voted to oppose HB 5050 which would create a penalty for lying to police during an investigation. HB 5050 requires that the police inform the person that the officer is conducting a criminal investigation, and makes the penalty for lying to the police related to the crime being investigated. The council believed that the proposed legislation allowed undue discretion to police officers in making the charge and determining the degree of penalty. The Council also expressed concerns whether the legislation would pass constitutional muster, and that the proposed legislation had the potential to affect the criminal justice system through significantly increased charges, forcing plea agreements, and taxing the financial well being of the related jurisdictional entities. The Council also voted to support the policy position of the Prison and Corrections Section calling for legislation or court rule enactment that would require appointment of counsel to indigents in prosecutor appeals of parole decisions. The council believed that it is unfair to allow the prosecutor and victim to appeal parole board decisions while denying the same right to the prisoner. In the absence of legislative reform, due process requires that an indigent prisoner be provided counsel if the prosecutor or victim appeals a parole board decision. Without this representation, the unequal position of the parties effectively denies one's access to the courts. The Council also voted to support in principal to apply due process standards to judge decision making regarding parole for life offenders. Existing legislation provides that if the original sentencing or successor judge objects in writing within 30 days to the possible grant of parole, the parole board loses jurisdiction to grant parole and the scheduled public hearing is canceled. The judge does not have to state any reason for objecting and the decision is not subject to appellate review.

At the April meeting, the Criminal Law Section voted to support ADM File #2006-47, in principle, excluding garnishments, with allowance for paper filings when appropriate. The Council believed that the proposed amendments to make the court rules less 'paper' focused are appropriate as a cost savings and efficient use of resources. The concerns expressed by the Section were that we need to consider the needs of indigent or other persons lacking access to or skills in the use of computers. Also, that the self-help website may have an unintended consequence of encouraging non-lawyers when counsel is appropriate or the unauthorized practice of law. The Council also voted to support the SBM Special Committee on Defining the Practice of Law initiative in principle. The Council agreed that the initiative, in conjunction with existing authority, would establish a more uniform definition of the practice of law.

At the May meeting, the Criminal Law Section voted to support the proposed amendment to MCR 7.205 to expand the time period for delayed applications from 6 months to 12 months. The council believed that the proposed amendment is appropriate to allow defendants to fully exercise their constitutional right to appeal. In those cases with arguable appellate issues, the six month time period is too limiting in scope to allow for meaningful and effective review by appellate counsel.

Recommendations for next Council: The Criminal Law Section is committed to expanding its outreach to new lawyers, including but not limited to educational opportunities, diversity and inclusion on the Council. The Council has and continues to consider using a lobbyist for advancement of section related issues, and increasing attendance and participation at CLS educational events.

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Other Information:

At the September Annual meeting, the Criminal Law Section approved by-laws for the section, with the following noted changes:

Increase annual dues from \$20.00 to \$25.00.

Automatically include new members of the SBM as members of the CLS for two years.

Allow all Council officers full voting privileges.

Allow for ascension of officers to the office of Chair irrespective of term limits.

Allow for a nominating committee of not more than five section members.

Allow for the ascension of officers without having to run for election.

Allow for voting by mail, telephone, facsimile or electronic mail.

Provide that the Council shall designate a seminar coordinator, responsible for editing the newsletter, and other duties as assigned by the Council, as a paid position.

Allow for advertising in the discretion of the Council.

Allow for the removal of officers for inappropriate activities.

Allow for amendment of the bylaws, with electronic publication.

At the Mackinac Island Policy Conference the Council adopted a Public Policy Position on Medical Marijuana, a copy of which is attached. The Public Policy Position utilized legislation from Colorado to address the needs of qualifying patients, caregivers, public and law enforcement concerns. The Section Colorado model included significant rules and regulations addressing such issues as health and safety, safeguards to law enforcement, clarification of a bona fide physician patient relationship with medical and legal input, the ability to generate tax revenue, create jobs, and create a self sustaining, regulated business type distribution model that is centralized and open to produce revenue sufficient to insure self sustainability. The Section recommended additional safeguards to control resale, with a database of usage, users and providers, and marijuana should be reclassified from a schedule I to a schedule III drug to allow for research and further development, and to recognize the medicinal benefits of medical marijuana. Local municipalities should be granted home rules status so that they could regulate or opt out of allowing distribution centers within their respective communities. The above Policy Position adopted by the Section was made with the support of law enforcement, prosecutors, judicial, defense and public representatives.

At the SBM Annual meeting in 2011 the Section presented a joint program with the Prisons and Corrections Section "Monitoring Sex Offenders; How do we do it and does it work".

At the 2012 Mid-Winter Conference the Section presented a panel discussion on the new Criminal Jury Instruction court rules, a Criminal Law Update, and presentations on Voir dire and Technology in the courtroom.

In 2012 the Section hosted a research and educational trip to Cuba which included meeting with Cuban judges and lawyers, government officials and experiencing Cuba's educational and cultural institutions.

In the 2011-12 section year the Section distributed Judge Kolenda's newly updated book, Potentially Dispositive Pre-Trial Motions (2011 ed) authored exclusively for the CLS. Past editions were then donated by the Section to correctional facilities through out the State of Michigan.

In the 2011-12 section year the Section supported educational presentations by the Prison and Corrections Section on Presentence Investigation Reports & Risk Assessment Tools, and the MSP Forensic Science Division on the CSI Effect and Forensic Evidence.

In the 2011-12 section year the Section offered testimony and supported efforts by the Michigan Campaign for Justice and the Governor's Indigent Defense Advisory Committee to reform the system for appointing counsel to indigent defendants. The Section is also supporting the efforts of the Criminal Issues Initiative Section work on collateral consequences in criminal matters and the possible enactment of a Uniform Consequences of Criminal Conviction Act. The Section also supports efforts by the Citizens Alliance on Prisons and Public Spending to apply due process standards to judicial objections regarding parole for life offenders.

In the 2011-12 section year the Section was represented on the SBM Eyewitness task force and SCAO Michigan Court Forms Committee-Criminal Work Group.