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The Honorable Graham Filler, Chair, House Committee on Judiciary
Members of the House Committee on Judiciary

Statement Regarding

SB 1047 (Irwin) (S-3) - Criminal procedure: warrants; procedures related to the issuance of bench warrants for failure to appear and for other processes related to arrest warrants.
SB 1048 (Santana) (S-2)- Criminal procedure: sentencing; rebuttable presumption for nonjail and nonprobationary sentences in certain misdemeanor cases; create.

For the record, I retired at the end of 2012 after a 45-year career in various legal and policy positions with the Michigan Legislature, including 2 years in the LSB Legal Division and the last 30 years as Legal Counsel and Policy Advisor for the House Republican Policy Office. The drafting questions I raise below are matters with which I dealt during my career.

Regarding **SB 1047 (S-3)**:

In (S-3) new MCL **764.6f**, page 9, would require protocols between court and jail for swift processing of individuals detained on another county's warrant and a hearing protocol for the same individuals that must include use of 2-way interactive video technology, "when appropriate".

"**Sec. 6f. (1) Each district court and county jail shall establish as communication protocol to enable the swift processing of individuals detained on a warrant of arrest that originated in another county**." Sub(2) is similar for the hearing protocol.

There is a drafting problem with both subsections in Sec. 6f. These provisions imply that there are multiple district courts in Michigan; there are not. There is only one statewide District Court, MCL 600.8401, and the drafting of legislation should accurately reflect that.

I can find no other phrase like it in the Michigan Compiled Laws – for good reason.

Neither subsection accommodates the four municipal courts in the Grosse Pointes.

There is already a definition of "judicial district" in the statute being amended, **MCL 761.1(i),** that can accommodate the intention of Sec. 9f accurately.

I respectfully recommend the **following 'amendments** to eliminate the implication in the bill that there are multiple district court**s** and to include municipal courts:

1. Amend page 9, line 18, after "**(1)"** by striking out the balance of the line through "**protocol**" on line 19 and inserting "**In each judicial district the district court or municipal court shall establish a communications protocol with the county jail**".

2. Amend page 9, line 22, after "**(2)"** by striking out "**Each district court**" and inserting "**In each judicial district the district court or municipal court**".

There is a secondary issue with this same provision, regarding the protocol between court and jail: Should this protocol be with the "jail", or should it be with the sheriff? (I was not aware that a "jail" had independent authority.)

Regarding **SB 1048 (S-2):**

This bill, in subsection (3), would create a rebuttable presumption that the court shall sentence a defendant convicted of a misdemeanor, other than a "serious misdemeanor", to "a fine, community service, or other nonjail or non-probation sentence", page 2, lines 5-6. A departure is allowed upon "reasonable grounds" stated on the record. →

What about state minimum costs (MCL 769.1j), restitution (MCL 769.1a or 780.826), crime victim rights assessment (MCL 780.905), reimbursements (MCL 769.1f), or "costs" (MCL 769.1k)?

Is it the intention of the Joint Task Force proposals to override these sanctions (some mandatory) in other parts of the Code of Criminal Procedure (and CVRA re restitution) – which the singular reference to "fine" suggests – and thereby 'defund' the services each provides, especially restitution and crime victim rights?

Subsection (5) deals with noncompliance with a court sentence, subject to contempt.

In subsection (6), the bill references for the first time what Subsection (3) does not – imposing, in event of contempt for failure to comply, additional sanctions for "nonpayment of fines, costs, or other legal financial obligations", provided the individual is capable of paying and has not made a good-faith effort to comply.

It is a bit unusual to imply broader sanctions for noncompliance than the stated parameters of the original sentence in the limited terms of subsection (3).

I respectfully recommend clarification to avoid confusion and unnecessary litigation later.

Further Drafting Observations on the Joint Task Force proposals:

Legislation is not just about setting public policy – it is also about drafting an act correctly.

HB 5853 (S-1), awaiting concurrence and enrollment, primarily intended to decriminalize Vehicle Code misdemeanor and designate them as (traffic) civil infractions, has 20 drafting errors that were made known weeks ago and have not been corrected. The most egregious defect is the phrase on page 19, lines 25-28, Sec. **907(2)(A)** prescribing the default civil fine for traffic civil infractions as follows:

"the person **shall be ordered** to pay a civil fine of **not more** than $100.00".

Is this "shall" in essence still "may", so the "shall" is a false directive?

Or is this wording intended to pressure judges and magistrates to impose higher civil fines? If so, it would run counter to two purposes of companion bills that are designed to replace mandatory minimum sanctions with judicial discretion and lessen financial sanctions.

Sec. 907(2) for 41 years has provided for a discretionary civil fine not exceeding $100.

Note: A search of the Michigan Vehicle Code and the entire MCL database shows not a single instance of the use of the phrase "shall be ordered to pay not more than". If enacted as passed by the Senate, HB 5853 will add one of the most inane provisions in Michigan law.

HB 5851, also awaiting enrollment, would eliminate the suspension and revocation of a driver license as a sanction for certain controlled substances offenses. This bill is supposed to be tiebarred to a concurrent resolution, but in violation of House Rule 21, the bill passed with a blank tiebar. The bill passed the Senate with the tiebar still blank. If enrolled in current form, the bill could never take effect because the condition cannot be met. Legislative staff is responsible for the omission, not LSB.

HB 5846 (S-2) is designed to eliminate driver license suspension from non-moving violations, but there are three necessary Vehicle Code sections that were overlooked and not included – MCL 257.743, 257.744, and 257.748. A clean-up bill next year could also correct 257.907.

For decades we on staff worked as a team to get bills worded correctly and welcomed the fresh pair of eyes that saw what others missed – and made the corrections. Dare I say that the press releases to herald the passage of these bills will be flyspecked more carefully than these bills?