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Legislative and Legal Update
presented by

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Why Do We Need to be Informed?
Why Do We Need to be Concerned?
Because Anything Can Happen Now!

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COMPETING ISSUES:

CONCERNS

POLICE REFORM



vs

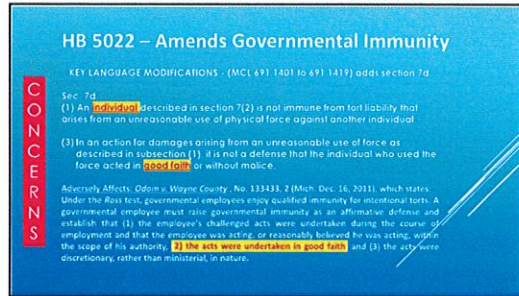
POLICE IMPROVEMENT



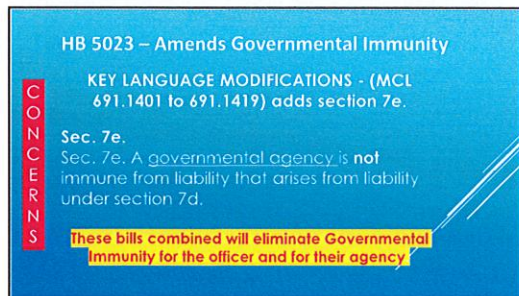
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SB479 – Execution of Search Warrants

Amended January 2017, SB 479, 2017, 140-0107


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Sec. 4 (3) The warrant must state whether or not the officer executing the warrant may enter the house or building or other location or place to be searched by force as described in section. If entry by force is authorized, the warrant must state the basis on which use of force is deemed necessary.

Sec. 4 (2) Any officer engaged in the execution of a search warrant must be in uniform or otherwise be clearly recognizable as a law enforcement officer.

Sec. 4 (3) Unless exigent circumstances exist justifying the use of a distraction device, the use of a flash bang, stun, or similar distraction device in the execution of a warrant is prohibited.

Legislate Tachy?



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SB480 – Duty to Intervene Act

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(1) Every law enforcement agency shall have the authority to adopt a written duty to intervene policy.

(2) The duty to intervene shall be adopted in accordance with the following:


(a) A law enforcement agency shall have the authority to adopt a written policy to **AFFIRMATIVE DUTY** to intervene verbally or physically to prevent an observed use of excessive force by another law enforcement officer. **Department forces shall be allowed to prevent.**

REJECTED

(b) A law enforcement agency shall take appropriate disciplinary actions against a law enforcement officer who observes the use of excessive force by another law enforcement officer and has the opportunity to intervene.

Who defines "appropriate"?

(c) Each law enforcement agency in this state shall provide a copy of the policy required under subsection (1) to a law enforcement officer in its employ. **Who has the policy for county juries?**



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HB5733 – Duty to Intervene Act – Part 2

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(1) A law enforcement officer has a duty to care. The duty to care means the officer has a duty to act to prevent harm to an individual by the use of excessive force by another law enforcement officer if both of the following apply:

(a) The officer observes or has reason to know that the other officer will use or is using excessive force.

(b) The officer has the opportunity and the means to prevent the harm to the individual.

(2) A law enforcement officer who breaches the duty to care under subsection (1) is **liable** to the individual harmed for damages that result from the harm.

A violation of this act is a **misdemeanor** punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both.



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OPTIMISTIC

Executive Order on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety
May 25, 2022

What it does not do:

1. Does not impact or alter *Graham v. Connor* and the "Objectively Reasonable Standard" regarding use of force by the police.
2. Does not impact or address Qualified Immunity

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CONCERNS

Executive Order on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety

What it does

1. Sec. 104. **Establishing a National Law Enforcement Accountability Database.** (a) The Attorney General shall continue to review the data in this order, update the National Law Enforcement Accountability Database, and disseminate the data to law enforcement agencies nationwide to enhance the national database of law enforcement officers who are subject to disciplinary action or conviction.
2. Sec. 105. **The Attorney General shall encourage State, Tribal, local, and territorial LEAs to contribute to and use the Accountability Database.**
3. Sec. 106. **Prohibits the use of chokeholds and carotid restraints except where the use of deadly force is authorized by law.**
4. Sec. 201. **Patterns or Practices Investigations.** The Attorney General shall cooperate with the DOJ Civil Rights Division and with State Attorneys General to hold lawful, relevant data submitted from the public and other where possible **to assist the DOJ's investigations of patterns or practices of misconduct by law enforcement officers.**

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CONCERNS

Executive Order on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety

What it does

5. Sec. 104. **Establishing Accreditation Standards.** (a) The Attorney General shall develop and maintain methods to promote State, Tribal, local, and territorial LEAs seeking accreditation by an authorized, independent accrediting body, including by determining what discretionary grants shall require that the LEA be accredited or in the process of obtaining accreditation.
6. Sec. 201. **Supporting Substantial Evidence Through a Process.** (a) Within 180 days of the date of this order, the Attorney General, the Secretary of DHS, and the Secretary of Homeland Security shall promptly review and exercise their authority, as appropriate and consistent with applicable law, **to award federal discretionary grants in a manner that supports and promotes the adoption of policies of this order by State, Tribal, local, and territorial governments and LEAs.**

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BAIL REFORM

HB 5436

CONCERNS

- requires that a person be released on **personal recognizance or bail that is not excessive.**
- New 121(b)(4) as proposed requires that a judge or magistrate, C.S.J., or clerk of court in Michigan counties with a clerk of court make a finding on the defendant's ability to pay bail, even when
- **for offenses in which bond can be granted:** the court is advised on the record that the defendant poses a danger to the community or public safety, the court may, at its discretion, or upon stipulation of the parties, impose a condition that a defendant is required to meet, the court may **impose the least restrictive nonmonetary condition or conditions of release** that reasonably reduce the risk subject to subsection (1) of this chapter, subsection (3) of this chapter, or subsection (3) of the Michigan Rules of Criminal Procedure.
- **THIS PROPOSED LAW DOES NOT REQUIRE THE USE OF AN ASSESSMENT TOOL.**

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New Washtenaw County prosecutor will stop seeking cash bail

[APR 3, 2021]

- Eli Savit, Washtenaw County's newly elected prosecutor, announced Monday that his office will no longer seek cash bail in criminal cases, saying it discriminates against poor people and perpetuates racial inequities in the justice system.
- According to the Prosecutor, the cash bail system, he said, has "caused ripple effects" that trap people in poverty. Proponents of ending cash bail say people are at risk of losing their jobs, their homes and custody of their children when they are not able to post bail because they can't afford it.
- Washtenaw County Chief Trial Court Judge Carol Kohrke said, "he's delighted that **Wavve's office will not seek cash bail.**"
- The concept of cash bail is "well ingrained" in the criminal justice system, she said, and it can be hard for longtime judges to break old habits. Judges can still decide to set cash bail, but Kohrke said she expects that to happen far less often without prosecutors arguing in favor of it.

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ACLU SETTLES LAWSUIT WITH THE 36TH DISTRICT COURT

CONCERNS

- ACLU states Michigan's 36th District Court is the first in the nation to collaborate and settle a lawsuit with civil rights advocates on significant cash bail reform. (10/2/21)
- The settlement includes an agreement that the court will release people without cash bail unless there is evidence they are a flight risk or danger to the public.
- a requirement for the court to set bail after determining how much a defendant can afford to pay,
- and an assumption that anyone with a household income that is 200% or less of the federal poverty level - \$55,000 for a family of four - can't afford to pay cash bail.
- Defendants who miss a hearing for most misdemeanor cases, for the first time, will automatically have their hearing rescheduled instead of the court issuing an arrest warrant.
- **Cash bail reform advocates say the Detroit settlement was not only a historic win but marks progress in their fight to change cash bail practices across the country that they say disproportionately impact poor people of color.**
- **The ACLU has filed seven other lawsuits across the U.S.**

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HB 4670 Sentence Reform

CONCERNS

- Accumulated productivity credits must be deducted from a prisoner's minimum and maximum sentence to determine his or her parole eligibility date and discharge date.
- **The department of corrections shall not award productivity credits in an amount greater than 20% of the prisoner's minimum sentence, or 2 years, whichever is the shorter amount of time.**
- This initiative is being pushed by out of state offender advocates that claim to have support from victim advocate groups.
- Runs completely contrary to the emotional responses that were shared at the National Crime Victim Rights Week at our Capitol in April 2022.
- We remind the stakeholders, reform has taken on an offender-centric approach when it should be more focused on victims of crime.

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HB4887: Juvenile Transport

- The bill would have enabled law enforcement to transport a juvenile with an adult, if :
 - the juvenile had been arrested with that same adult, and
 - the adult was under 25 years of age.
- Passed out of the House with bipartisan support: 79 – 27
- Passed out of the House on party line vote: 21 – 16 with 1 excused

Vetoed by the Governor on 7/1/22
Reasoning???

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SB 406 – Public Act 149 of 2022: Immediate Remand of Certain Offenders to the MDOC

- Require a court to enter an order committing a person convicted of first-degree murder to be committed, immediately following a conviction, to the Michigan Department of Corrections (MDOC) for incarceration in the State Penitentiary at Lansing, pending sentencing, unless a form completed by the State's Probation Administrative Office.
- Specify that the order would become effective if the sheriff agreed to transport the person for final sentencing, **only if the convicted persons were at least 18 years of age at the time he or she committed the offense for which he or she was convicted.**
- Require a court to hold a sentencing hearing within 45 days after the person was committed to the MDOC.

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PENSIONS AND THE ISSUE OF RETENTION

- Law enforcement is on the verge of a crisis associated with the inability to meet staffing needs.
- Agencies are experiencing difficulties in the areas of recruitment and retention.
- Recruiting is likely being impacted by factors outside of the control of most agencies.
- Monetary fixes do not appear to be sufficient to overcome the societal issues that are associated with not enough people wanting to pursue a career in law enforcement.
- The Michigan Sheriffs' Association (MSA) believes that one way to deal with the staffing issue is to incentivize individuals to continue employment during the "post-retirement" time frame of their lives.

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PENSIONS AND THE ISSUE OF RETENTION

MCL 46.12	MERS
<ul style="list-style-type: none">• Places limits on retired employees returning to work for the entity from which they retired.• Returning employees are capped at 1,000 hours of work in any 12-month period, or they face a pension penalty.• Solution: Legislatively eliminate the 1,000-hour restriction for those entities that choose to pursue this option – Local Control.	<ul style="list-style-type: none">• Places limits on retired employees returning to work for the entity from which they retired.• Returning employees are generally capped at 1,000 hours of work in any 12-month period, or they face a pension penalty, however, exemptions have been granted.• Note: Retirees may work an unrestricted # of hours for another entity participating in MERS.• Solution: Allow local units of government to institute DROP of their choosing.

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Amicus Briefs

Michigan v Cara Christine Bowden

- Court of Appeals No. 319717
- Issue: Investigate by the State Police, and submit
- That the Court of Appeals conclude that a properly trained and certified ORE may be qualified to provide opinion testimony on impairment, and the cause or causes of impairment?

Estate of Lake Jacobson, Deceased, by Mark Jacobson v Hornbeck, Bradley, & Sakstrup Towing

- Driver went off the road and into a ditch.
- Private tow was involved as officers stood by.
- Driver drove away, went left of center, hit Lake head on and killed her and himself in crash.
- COA reversed trial court and granted summary judgment to the defendant police officers. (Used Public Duty Doctrine AND determined that Governmental Immunity applied because the officers were on "THE" proximate cause of the accident's deaths).
- Plaintiffs appealed, and LE groups filed an amicus brief with the Michigan Supreme Court.
- Question: Are the police protected by the Public Duty Doctrine or do they have a duty to the individual?

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US Supreme Court and Vega v Tekoh

- Terence Tekoh worked as a hospital worker in Los Angeles. After a patient accused him of sexual assault, hospital staff reported the allegation to the Los Angeles Sheriff's Department.
- Deputy Vega questioned Tekoh at the hospital. Miranda Warnings were not given to Tekoh.
- Tekoh's confession was admitted at his jury trial.
- Tekoh was found not guilty.
- Tekoh sued for a violation of 42USC§1983 – for not being given Miranda Warnings.
- Question posed to the USSC:
Is the use of an un-Mirandized statement in a criminal case sufficient to support a 42USC§1983 action? (Is Miranda a right or a prophylactic?)
- Conclusion:
➔ A violation of Miranda rules does not provide a basis for a Claim.
- Decision was 6-3. Dissenters: Kagan, Sotomayor, and Breyer. Ruling: June 23, 2022.

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Michigan Supreme Court: Johnson v Vanderkooi

- Grand Rapids had a Picture and Print (P&P) policy that regularly resulted in the taking of the picture and fingerprints of persons that were being investigated.
- Plaintiffs in two separate incidents were P&P'd. Neither had ID at the time.
- Both plaintiffs filed suit. The COA ultimately ruled on both on July 2022.
- Because the P&P policy impermissibly exceeds both the scope and duration of a Terry stop neither of the searches considered here falls within the stop-and-look exception to the warrant requirement. Therefore, fingerprinting violated the 4th Amendment.
 1. Terry Stops are based on "reasonable suspicion," not probable cause.
 2. The taking of fingerprint unnecessarily prolongs a stop for a purpose that is not related to the justification for the initial stop – if an actual crime has not been established.
- The taking of fingerprints amounts to a search and seizure. The search is not reasonable per the Trespass Doctrine.
- ➔ To fingerprint, in general, you must have probable cause, a warrant, or an applicable warrant exception.
- Note: Neither case addressed the taking of photographs.

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Risk Mitigation: Our Mutual Issue

- ✓ MSA rejects the notion that law enforcement requires reform because that implies it is flawed.
- ✓ MSA supports the concept that, in any service-related industry, improvement is a necessity for survival.
- ✓ As such, MSA embraces methods of police improvements designed to support the core mission of law enforcement.
- ✓ MSA acknowledges that risk reduction is a byproduct of improvement.
- ✓ MSA requests all stakeholders to join in their efforts to support police improvement and to reject the concept of police reform.

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