

## ACLU of Michigan Legislative Docket: Due Process

The ACLU maintains a presence in Lansing that enables us to pass policies that expand civil liberties or prevent the passage of policies that are hostile to civil liberties. Through traditional lobbying techniques lobbying, advocacy, and advocacy the legislative program seeks to advance and protect our civil liberties.

The ACLU of Michigan's legislative program works on a breadth of issues. To give you an idea of what we've been up to, we have provided a brief summary, our position on the issue and where the bill is currently situation in the legislative process. We have stated our position on each bill using brief descriptors:

- **Actively Support/ Oppose:** *The ACLU considers this bill high priority and has taken direct action to support or opposing the bill. The bill has, more likely than not, seen movement in the Legislature during the current session.*
- **Support/Oppose:** *Based on its own policies, the ACLU supports or opposes the bill but has not taken an affirmative action OR the legislation has not moved through the legislature and therefore the ACLU has not needed to take direct action at this point.*
- **Remain Neutral:** *As written, the bill does include some civil liberties issues but the ACLU has taken no direct action to support or oppose the legislation.*

### Juvenile Life Without Parole: [Senate Bill 319](#)

Sponsor: Sen. Rick Jones (R-Grand Blanc)

ACLU Position: **Actively Opposed**

Status: Signed into law [PA 22 of 2014](#)

Reform to Michigan's overly harsh juvenile life without parole sentencing scheme has long been a priority for the ACLU of Michigan. Recently, the U.S. Supreme Court ruled that the sentencing of children to mandatory life without parole is unconstitutional. This decision required the Michigan Legislature to amend existing law. Unfortunately, reform fell short at guaranteeing any meaningful opportunity for review for young people serving life without parole sentences. Therefore, we were forced to actively oppose the legislation. Senate Bill 319 falls short because:

- **Young people under 18 could still be sentenced to life without parole** as long as specific mitigating and aggravating factors are considered during the hearing.
- **Minimum sentences for young people would still be extremely harsh**, even if a prosecutor doesn't seek life without parole.
- **Most shockingly, this bill would abandon over 350 people already sentenced to life without parole as children.**

## **Michigan Indigent Defense Commission Act – House Bill 4529**

Sponsor: Rep. Tom McMillin (R-Rochester Hills)

ACLU Position: **Actively Support**

Status: Signed into law, [Public Act 93](#) of 2013 on July 31, 2013

Created the Michigan Indigent Defense Commission Act. The act establishes a commission to develop and oversee the implementation of minimum standards for the effective representation of indigent adults by local indigent criminal defense systems. Each system would be required to pay a share towards providing indigent services that met the minimum standards, with the state picking up the balance for a local system if needed. The bill would provide mechanisms for resolving disputes between the Michigan Indigent Defense Commission and a local system regarding a system's plan and/or cost analysis to implement the required services and for when a system breaches its duty to provide the services. Every local unit of government and every trial court in the state would be required to comply with a system's approved plan.

For more information: <http://aclumich.org/issues/criminal-justice/2013-06/1845>

## **Indigent Defense Reform – Senate Bill 301**

Sponsor: Sen. Bruce Caswell (R-Hillsdale)

ACLU Position: **Actively Support**

Status: Signed into law, [Public Act 94](#) of 2013 on July 31, 2013

Amended the Code of Criminal Procedure to revise provisions pertaining to the appointment of counsel to conform to provisions within the Michigan Indigent Defense Commission Act created by House Bill 4529. Under this act, when a person charged with having committed a crime (rather than just a felony) appears before a magistrate without counsel, the person would have to be advised of the right to have counsel appointed. If the person states he or she is unable to procure counsel, the magistrate must appoint counsel, if the person is eligible for appointed counsel under the new act. (The bill would apply the appointment of counsel to all criminal cases, not just felonies.)

For more information: <http://aclumich.org/issues/criminal-justice/2013-06/1845>

## **Preliminary Exam Reform - [House Bill 5154](#) (Tie Barred with House Bill 5155)**

Sponsor: Rep. Tom Leonard (R-DeWitt Township)

Status: Passed by the House, Referred to Senate Committee on Judiciary

Position: **Support**

Amends the Code of Criminal Procedure to do the following:

- Require a district court judge, after a person had been arraigned on a felony charge, to schedule a probable cause conference (rather than a preliminary examination) between seven and 14 days after the arraignment, and to set a date for a preliminary examination between five and seven days after the probable cause conference.
- Specify issues to be discussed at the conference, including a plea agreement.
- Allow the prosecutor and the defendant to agree to waive the conference.
- Authorize a district court judge to accept a felony plea.
- Require a preliminary exam to be held as scheduled if a plea agreement were not reached and the defendant did not waive the exam with the consent of the prosecutor.
- Require a consolidated probable cause conference and a consolidated preliminary exam for codefendants, under certain circumstances.
- Require the judge to permit a witness (except a complaining witness, an alleged eyewitness, or a law enforcement officer to whom the defendant allegedly made an incriminating statement) to testify by telephonic, voice, or video conferencing.
- Provide that testimony taken by video conferencing would be admissible in any subsequent trial or hearing as otherwise permitted by law.
- Provide that the rules of evidence would apply at preliminary exams, but make exceptions to the rule against hearsay for certain reports or records (described below).
- Require the judge either to discharge the defendant or to reduce the charge to an offense that is not a felony, if the judge determined at the conclusion of the preliminary exam that a felony had not been committed or that there was not probable cause to charge the defendant with a felony.
- Authorize the judge to conduct the circuit court arraignment as provided by court rule.

The following reports or records could be admitted despite the rule against hearsay, and without the testimony of the author or record-keeper or additional information:

- A report of the results of properly performed drug analysis field testing to establish that the substance tested was a controlled substance.
- A certified copy of any written or electronic order, judgment, decree, docket entry, register of actions, or other record of any court or governmental agency of the State.
- A report other than a law enforcement report that was made or kept in the ordinary course of business.
- A report prepared by a law enforcement officer or other public agency, except for the police investigative report.

## **Preliminary Exam Reform - [House Bill 5155](#) (Tie Barred with HB 5154)**

Sponsor: Rep. John J. Walsh

Status: Passed by the House, Referred to Senate Committee on Judiciary

Position: **Support**

Would Amend the Revised Judicature Act to do the following:

- requiring a probable cause conference to be held after arraignment but before the preliminary examination
- allow a defendant to waive a preliminary examination with the prosecution's consent
- allow a magistrate judge to conduct the circuit court arraignment for felony charges
- allow a magistrate judge to reduce to a felony charge to a misdemeanor charge if it cannot be determined that a felony has been committed no probable cause exists
- expanding the categories of witnesses for which testimony can be given via telephone, voice or video conferencing and allowing such evidence to be admissible in a subsequent trial or hearing
- allow a prosecutor or defense attorney to call a witness who provided hearsay testimony in the preliminary hearing on a showing of the relevance of the live testimony in determining probable cause that a felony has been committed and the defendant committed the felony
- expand the hearsay exemption rule to allow certain documents as admissible at preliminary examination

These bills are a step towards ensuring that the preliminary examination process serves its function and purpose as efficiently and impartially as possible. While there are some concerns about the rights of defendants under this process, the bills as presented do advance the overall effectiveness and fairness of preliminary examinations. Absent a meaningful preliminary examination there will be fewer resolutions at that stage which equates to inefficiency as cases remain open for longer periods, more trials are demanded, more people remain in jail for longer periods while awaiting trial and negotiated resolutions occur much later in the process than they could be.

### **Due Process Vote Counts**

## **Juvenile Life Without Parole, [Senate Bill 319](#) – **Opposed****

### **House Vote**

**Yeas—62**

Bolger	Graves	Lori	Potvin
Bumstead	Haines	Lund	Price
Callton	Haveman	Lyons	Pscholka
Cotter	Heise	MacGregor	Rendon
Crawford	Hooker	MacMaster	Rogers

Daley	Jacobsen	McBroom	Schmidt
Denby	Jenkins	McCready	Schor
Dianda	Johnson	McMillin	Shirkey
Faris	Kelly	Muxlow	Somerville
Farrington	Kesto	Nesbitt	Stamas
Forlini	Kivela	O'Brien	VerHeulen
Foster	Kowall	Outman	Victory
Franz	Kurtz	Pagel	Walsh
Genetski	LaFontaine	Pettalia	Yonker
Gardon	Lauwers	Poleski	Zorn
Goike	Leonard		

**Nays—48**

Abed	Durhal	Lane	Segal
Banks	Geiss	LaVoy	Singh
Barnett	Greimel	Lipton	Slavens
Brinks	Haugh	McCann	Smiley
Brown	Hobbs	Nathan	Stallworth
Brunner	Hovey-Wright	Oakes	Stanley
Cavanagh	Howrylak	Olumba	Switalski
Clemente	Irwin	Phelps	Talabi
Cochran	Kandrevas	Roberts	Tlaib
Darany	Knezek	Robinson	Townsend
Dillon	Kosowski	Rutledge	Yanez
Driskell	Lamonte	Santana	Zemke

**Senate Vote****Yeas—28**

Booher	Hansen	Kahn	Pavlov
Brandenburg	Hildenbrand	Kowall	Proos
Casperson	Hune	Marleau	Richardville
Caswell	Hunter	Meekhof	Robertson
Colbeck	Jansen	Moolenaar	Rocca
Emmons	Johnson	Nofs	Schuitmaker
Green	Jones	Pappageorge	Walker

**Nays—10**

Ananich	Gregory	Smith	Whitmer
Anderson	Hood	Warren	Young
Bieda	Hopgood		

# Indigent Defense Reform, [Senate Bill 301](#) – **Actively Support**

## House Vote

### **Yeas – 102**

Abed	Gardon	Leonard	Robinson
Banks	Goike	Lipton	Rogers
Barnett	Graves	Lori	Rutledge
Bolger	Greimel	Lund	Santana
Brinks	Haines	Lyons	Schmidt
Brown	Haugh	MacGregor	Schor
Brunner	Haveman	MacMaster	Segal
Bumstead	Heise	McBroom	Shirkey
Callton	Hobbs	McCann	Singh
Cavanagh	Hooker	McCready	Smiley
Clemente	Hovey-Wright	McMillin	Somerville
Cochran	Howrylak	Muxlow	Stallworth
Cotter	Irwin	Nathan	Stamas
Crawford	Jacobsen	Nesbitt	Stanley
Daley	Jenkins	O'Brien	Switalski
Darany	Johnson	Oakes	Talabi
Denby	Kesto	Olumba	Tlaib
Dianda	Kivela	Outman	Townsend
Dillon	Knezek	Pettalia	VerHeulen
Driskell	Kosowski	Poleski	Victory
Durhal	Kowall	Potvin	Walsh
Faris	LaFontaine	Price	Yanez
Farrington	Lamonte	Pscholka	Yonker
Forlini	Lane	Rendon	Zemke
Foster	Lauwers	Roberts	Zorn
Genetski	LaVoy		

### **Nays – 7**

Franz	Kandrevas	Kurtz	Slavens
Geiss	Kelly	Pagel	

## Senate Vote

### **Yeas – 36**

Ananich	Green	Kahn	Richardville
Anderson	Gregory	Kowall	Robertson
Bieda	Hansen	Marleau	Rocca

Booher	Hildenbrand	Meekhof	Schuitmaker
Brandenburg	Hopgood	Moolenaar	Smith
Casperson	Hunter	Nofs	Walker
Caswell	Jansen	Pappageorge	Warren
Colbeck	Johnson	Pavlov	Whitmer
Emmons	Jones	Proos	Young

**Nays – 1**

Hune

**Excused – 1**

Hood

## **Indigent Defense Commission Act, [House Bill 4529](#) – Actively Support**

**House Vote****Yeas – 101**

Abed	Gardon	Leonard	Robinson
Banks	Goike	Lipton	Rogers
Barnett	Graves	Lori	Rutledge
Bolger	Greimel	Lund	Santana
Brinks	Haugh	Lyons	Schmidt
Brown	Haveman	MacGregor	Schor
Brunner	Heise	MacMaster	Segal
Bumstead	Hobbs	McBroom	Shirkey
Callton	Hooker	McCann	Singh
Cavanagh	Hovey-Wright	McCready	Smiley
Clemente	Howrylak	McMillin	Somerville
Cochran	Irwin	Muxlow	Stallworth
Cotter	Jacobsen	Nathan	Stamas
Crawford	Jenkins	Nesbitt	Stanley
Daley	Johnson	O'Brien	Switalski
Darany	Kesto	Oakes	Talabi
Denby	Kivela	Olumba	Tlaib
Dianda	Knezek	Outman	Townsend
Dillon	Kosowski	Pettalia	VerHeulen
Driskell	Kowall	Poleski	Victory

Durhal	LaFontaine	Potvin	Walsh
Faris	Lamonte	Price	Yanez
Farrington	Lane	Pscholka	Yonker
Forlini	Lauwers	Rendon	Zemke
Foster	LaVoy	Roberts	Zorn
Genetski			

**Nays – 6**

Franz	Kelly	Pagel	Slavens
Kandrevas	Kurtz		

**Senate Vote**

**Yeas – 33**

Ananich	Hansen	Kowall	Robertson
Anderson	Hildenbrand	Marleau	Rocca
Bieda	Hood	Moolenaar	Schuitmaker
Booher	Hopgood	Nofs	Smith
Casperson	Hunter	Pappageorge	Walker
Caswell	Jansen	Pavlov	Warren
Colbeck	Johnson	Proos	Whitmer
Emmons	Jones	Richardville	Young
Gregory			

**Nays – 4**

Green	Hune	Kahn	Meekhof
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**Not Voting – 1**

Brandenburg

**Preliminary Exam Reform [House Bill 5154](#) – Support**

**House Vote**

Unanimous House Vote in Support



# Preliminary Exam Reform [House Bill 5155](#) – Supports

## House Vote

Unanimous House Vote