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**Testimony of Alison Hirschel, Director, Michigan Elder Justice Initiative
before the Michigan House Judiciary Committee
in Opposition to Senate Bill 110 (S-1)**

October 21, 2019

Good Morning, Chairman Filler and members of the Committee. I appreciate the opportunity to provide these comments today, outlining our concerns regarding Senate Bill (SB) 110 (S-1). The Michigan Elder Justice Initiative (MEJI) provides free legal, ombudsman, and advocacy services to primarily low income older adults and people with disabilities.

SB 110 is intended to address a problem that arises frequently in our work: caregivers with custody of incapacitated adults sometimes isolate them from other important people in their lives. Many of these situations arise as the result of long-standing family tensions and sometimes create heartbreaking situations in which concerned family members and vulnerable adults have no access to each other. We are grateful for the Sponsor's efforts to address this common scenario. Unfortunately, we have significant concerns and questions about SB 110.

We would like to acknowledge that one of our concerns was addressed by the Sponsor in the Senate Committee. As introduced, SB 110 only addressed relatives who are being denied access to an incapacitated older adult. However, other individuals, including significant others and friends, might be important to the incapacitated older adult and may play a valuable role in advocating for the individual. This one concern was addressed by the Sponsor and the S-1 version includes a mechanism for important non-family members to gain access consistent with the incapacitated person's preferences and best interests.

While we appreciate this change, MEJI continues to have the following concerns with the bill:

- MEJI strongly supports less restrictive alternatives than guardianship when they can be effective. SB 110 proposes a limited guardianship for the purpose of "supervising access with a relative." While we appreciate the limited nature of the guardianship, we believe there may be less restrictive alternatives such as mediation that could resolve some of these disputes. We suggest the bill encourage the use of these options before permitting the appointment of a guardian.

- We also suggest more specificity to clarify what kinds of contact—including in-person visits and telephonic and electronic communications—are covered by the bill.
- In addition, it is unclear if the bill covers caregivers who isolate vulnerable adults in facility settings or if it only pertains to home settings. Since isolation occurs in both settings, we would suggest the bill be clarified to cover both situations.
- We suggest the bill include standards or expectations regarding how the limited guardian should supervise access to the individual. Once the guardian is appointed, on what basis and for how long can he or she modify or deny access? In addition, we think the bill should include language that the limited guardian must promote access consistent with the incapacitated person's wishes and welfare?
- We also question how the proposal would work. Once a court determines by clear and convincing evidence that the individual who is being isolated is incapacitated and that a guardian is appropriate, would a probate court feel comfortable addressing only the access issue?
- We are not clear if the bill anticipates that a family member who was previously denied access would be the most likely person to be appointed as the limited guardian to supervise access to the individual? If so, in situations that are already tense, it is likely that once the limited guardian gains access to the individual, that guardian will be dissatisfied with the actions of the individual with care and control and will end up back in probate court seeking broader powers or other intervention. Moreover, we fear the limited guardian might simply impose restrictions on other people's access to the individual.
- If the bill anticipates a neutral party will be appointed limited guardian solely for the purpose of supervising access to the individual, different challenges would arise. Many professional guardians, some of whom have hundreds of cases and are unable to give individual attention to each one, will be hard-pressed and unwilling to referee visitation between warring relatives and/or caregivers.
- Finally, we suggest in cases in which a court declines to bar restrictions on access to the individual, the court must document with specificity why the restrictions are appropriate and that no less restrictive alternative exists.

While we appreciate the Sponsor's intent on addressing elder isolation, because of these questions and concerns, we are unable to support SB 110 at this time. MEJI stands ready to work with members of this committee, other concerned lawmakers and stakeholders to address this important issue. Thank you for your consideration of our views. Please do not hesitate to contact me with any questions or concerns at (517) 394-2985 ext. 231 or at hirschel@meji.org.