

CRIMINAL LAW SECTION

Respectfully submits the following position on:

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ADM File No. 2014-42

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The Criminal Law Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Criminal Law Section only and is not the position of the State Bar of Michigan.

The State Bar position on this matter is to support the amendments to 6.006, 6.104, 6.110, and 6.111 and the adoption of 6.108 with three recommended amendments.

The total membership of the Criminal Law Section is 2,809.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 25. The number who voted in favor to this position was 21. The number who voted opposed to this position was 0.

Report on Public Policy Position

Name of Section:

Criminal Law Section

Contact person:

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Proposed Court Rule or Administrative Order Number:

[2014-42 - Amendments of MCR 6.006, 6.104, 6.110, and 6.111 and adoption of new MCR 6.108](#)

The amendments of MCR 6.006, 6.104, 6.110, and 6.111 and adoption of new Rule 6.108 create procedural rules for conducting probable cause conferences and amend current provisions of the preliminary examination court rules to coordinate with 2014 PA 123 and 124.

Date position was adopted:

January 20, 2015

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting.

Number of members in the decision-making body:

25

Number who voted in favor and opposed to the position:

21 Voted for position

0 Voted against position

0 Abstained from vote

4 Did not vote (absent)

Position:

Support with Recommended Amendments

Explanation of the position, including any recommended amendments:

The Criminal Law Section agreed with the Criminal Jurisprudence & Practice Committee's recommended amendments as listed below:

1. The removal of the term "felony" from MMCR 6.108(B).
2. The further amendment to MCR 6.110(B)(2):

Upon the request of the prosecuting attorney, the preliminary examination shall commence immediately at the date and time set for the probable cause conference for the sole purpose of taking and preserving the testimony of the victim, if the victim is present in accordance with

6.006(B). If victim testimony is taken as provided under this rule, the preliminary examination may proceed at the date originally set for that event.

3. The re-inclusion of “Except as otherwise provided by law, the court must conduct the examination in accordance with the rules of evidence” as found in MCR 6.110(C).

The Criminal Law Section was generically concerned with the manner in which the hearings will be conducted in various jurisdictions with a hope that there will be some similarity among the jurisdictions, at least as far as participants go, because there were significant discrepancies under the former preliminary examination conferences.

The Section was concerned that the proposal seemed to eliminate the need for the Rules of Evidence to apply (see strikethrough in draft), but has been assured that this was an unintentional omission in the draft that has already been corrected.

Lastly, the Section was concerned that the Rule impliedly allowed a magistrate to take a plea outside of their statutory jurisdiction under MCL 600.8511 by allowing felony pleas. There did not seem to be much concern about the taking of misdemeanor pleas.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

http://courts.mi.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Adopted/2014-42_2014-12-22_formatted%20order.pdf