

CRIMINAL JURISPRUDENCE & PRACTICE COMMITTEE
Respectfully submits the following position on:

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ADM File No. 2012-11

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The Criminal Jurisprudence & Practice Committee is comprised of members appointed by the President of the State Bar of Michigan.

The position expressed is that of the Criminal Jurisprudence & Practice Committee. The State Bar of Michigan has authorized the Criminal Jurisprudence & Practice Committee to advocate its position.

The State Bar of Michigan's position on this matter is to oppose.

The total membership of the Criminal Jurisprudence & Practice Committee is 15.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 15. The number who voted in favor to this position was 10. The number who voted opposed to this position was 0. The number who abstained was 1.

Report on Public Policy Position

Name of Committee:

Criminal Jurisprudence and Practice

Contact persons:

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Proposed Court Rule or Administrative Order Number:

[ADM File No. 2012-11 - Proposed Amendment of MCR 6.302](#)

This proposed amendment would add a harmless-error provision identical to that in FR Crim P 11(h).

Date position was adopted:

January 9, 2014

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:

16

Number who voted in favor and opposed to the position:

10 Voted for position

0 Voted against position

1 Abstained from vote

5 Did not vote

Position:

Oppose

Explanation of the position, including any recommended amendments:

The committee voted to oppose the proposed amendment to MCR 6.302 in agreement with those reasons listed by the Criminal Law Section:

...the rule would: (1) allow a potential retreat from important protections in the plea bargaining stage; (2) adopt a federal rule that did not apply well in a system with very different procedures in different counties and with a troubled indigent defense system; (3) adopt a federal rule when the federal system allows appeals by right for pleas whereas the state system only allows applications for leave to appeal.

Furthermore, guilty pleas are already protected against non-substantive errors made by the court during the plea process by the "substantial compliance" rule of *People v Saffold*, 465 Mich 268 (2001). Finally, under current case law, the imposition of the proposed rule would require a defendant to prove prejudice where there has been an error in the plea taking process upon which the State wishes to rely. As it stands setting aside a plea for error in the plea-taking process is a Herculean task. With the limited record created by a guilty plea, where there is no trial, a showing of the prejudice necessary to overcome a harmless error presumption is well-nigh impossible.

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/Court%20Rules/2012-11_2013-11-06_formatted%20order.pdf