

Report on Public Policy Position

Name of section:

Criminal Law Section

Contact person:

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Proposed Court Rule or Administrative Order Number:

[2010-14 - Proposed Adoption of New Rule 6.202 of the Michigan Court Rules](#)

The intent of this proposed new rule is to create a “notice and demand” rule that would allow forensic reports to be admitted into evidence without the forensic analyst’s presence if the defendant does not object. The proposed rule is based on favorable discussion by the United States Supreme Court in *Melendez-Diaz v Massachusetts*, 557 US ___; 129 S Ct 2527 (2009). Although the Supreme Court struck down the Massachusetts procedure for admitting forensic evidence without attendance by the forensic analyst, it noted that some states have adopted “notice and demand” provisions that create a procedure by which forensic reports may be admitted into evidence if the defendant does not object to the report’s entry.

Date position was adopted:

October 18, 2011

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:

21

Number who voted in favor and opposed to the position:

16 Voted for position

2 Voted against position

0 Abstained from vote

3 Did not vote

Position:

Support and Amend

Explanation of the position, including any recommended amendments:

The concerns expressed by the Section were that the proposed court rule should apply to all trials in the district, probate and circuit court and that there should be a good cause exception to allow rescission of the otherwise assumed waiver of a defendant’s rights under the Confrontation Clause. The other concerns were that this court

rule not circumvent the prosecutor's mandatory obligation to furnish forensic reports to the defense or allow courts to admit evidence in violation of the Confrontation Clause.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report. http://courts.michigan.gov/supremecourt/Resources/Administrative/2010-14_07-07-11_formatted%20order.pdf