

**Report on Public Policy Position****Name of section:**

Criminal Law Section

**Contact person:**

Hon. David A. Hoort

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**Proposed Court Rule or Administrative Order Number:**

[2010-20 - Proposed Amendment of Rule 6.302 of the Michigan Court Rules](#)

This proposed amendment of MCR 6.302 would reinsert a requirement that a court advise a defendant who pleads guilty that the defendant's maximum possible prison sentence may be longer than the maximum possible prison sentence for a particular offense if the defendant falls within the parameters of the habitual offender statute (MCL 769.13). The statute allows a prosecutor to notify the defendant that the prosecutor intends to seek an enhanced sentence after the defendant pleads guilty. Thus, the sentence range given by the court may not take into account any sentence enhancement at the plea hearing.

**Date position was adopted:**

November 15, 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:**

18 Voted for position

1 Voted against position

0 Abstained from vote

3 Did not vote

**Position:**

Oppose and Amend

**Explanation of the position, including any recommended amendments:**

The proposed amendment of MCR 6.302 by the Supreme Court would reinsert a requirement that a court advise a defendant who pleads guilty of the possible consequences if a habitual offender notice is filed within the 21 days allowed by statute after arraignment. The concerns expressed by the section were that in fairness a defendant should be allowed to withdraw his/her plea if (s)he was not accurately informed of any mandatory minimum or maximum penalty at the time of the plea. The section thereby voted to oppose the proposed court rule and that

instead MCR 6.310(B) be amended to allow a plea to be withdrawn before sentencing if there is a subsequent sentence enhancement.

**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/2010-2011-09-28\\_formatted%20order\\_1.pdf](http://courts.michigan.gov/supremecourt/Resources/Administrative/2010-2011-09-28_formatted%20order_1.pdf)

**List any arguments against the position:**

The argument against the position is that section's recommendation would allow a defendant, with prior convictions unknown to the prosecutor, to knowingly and voluntarily enter a plea, and then withdraw the plea if the prosecutor discovers the prior convictions within the statutorily allowed 21 day period for the filing of the habitual offender notice.