



# Prosecuting Attorneys Association of Michigan

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November 7, 2011

Mr. Corbin Davis  
Clerk, Michigan Supreme Court  
PO Box 30052  
Lansing, MI 48909

Re: ADM File No. 2010-14  
Proposed adoption of new rule MCR 6.202

Dear Mr. Davis and Justices of the Supreme Court:

On behalf of the Prosecuting Attorneys Association of Michigan I am writing to support in principle proposed MCR 6.202, a "notice and demand" rule that would permit the introduction of a report and certificate of an analyst of the Michigan State Police crime laboratory, or a laboratory with a contract with the Michigan State Police, without requiring the analyst to testify, unless objected to by the defendant.

As noted in the staff comment, the proposed rule is based on favorable comments by the United States Supreme Court in *Melendez-Diaz v Massachusetts*, 557 US \_\_\_; 129 S Ct 2527, 2541 (2009). The Supreme Court also spoke favorably of a notice and demand rule in its recent decision in *Bullcoming v New Mexico*, \_\_\_ US \_\_\_; 131 S Ct 2705 (2011). While those cases did not specifically involve notice and demand statutes, the Supreme Court has clearly signaled that it sees no constitutional problem in such statutes. We have two concerns with the proposal.

1. The rule as proposed would be placed right after the discovery rules of MCR 6.201, and titled as MCR 6.202. As such, it would not apply to District Courts, see MCR 6.001(B). But it is precisely in District Court where such a rule would have the most beneficial impact. There are many prosecutions for drunk driving where the suspect refuses to take the police requested test, and the suspect's blood is then drawn and analyzed. This rule would be beneficial if applied to those cases as well. But District Court cases move much faster than Circuit Court cases, and the 28-day time limit, while reasonable for Circuit Court, may be unreasonable for District Court cases.

Accordingly, we would request that the Court amend MCR 6.001(B), to make clear that MCR 6.202 applies to misdemeanor cases as well as to felony cases. And make the disclosure time for misdemeanor cases 14 days before trial, and give the defense 7 days to object.

2. Our crime lab is incredibly busy and suffers tremendous backlogs. In some cases, the report of the forensic scientist may not be ready 28 or 14 days before trial. Accordingly, we would recommend that you provide the trial court some flexibility with the time lines, and allow the trial court to craft shorter time periods for good cause shown.

Thank you for your consideration.

Sincerely yours,

Larry Burdick  
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