

Order

Michigan Supreme Court
Lansing, Michigan

June 5, 2019

Bridget M. McCormack,
Chief Justice

ADM File No. 2018-23

David F. Viviano,
Chief Justice Pro Tem

Proposed Alternative
Amendments of Rule
6.610 of the Michigan
Court Rules

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

On order of the Court, this is to advise that the Court is considering alternative amendments of Rule 6.610 of the Michigan Court Rules. Before determining whether either proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposals or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at [Administrative Matters & Court Rules page](#).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of either proposal in its present form.

[Additions to the text are indicated in underlining and
deleted text is shown by strikeover.]

ALTERNATIVE A

Rule 6.610 Criminal Procedure Generally

(A)-(D) [Unchanged.]

(E) Discovery in Misdemeanor Proceedings.

- (1) The provisions of MCR 6.201, except for MCR 6.201(A), apply in all misdemeanor proceedings.
- (2) MCR 6.201(A) only applies in misdemeanor proceedings, as set forth in this subrule, if a defendant elects to request discovery pursuant to MCR 6.201(A). If a defendant requests discovery pursuant to MCR 6.201(A) and the prosecuting attorney complies, then the defendant must also comply with MCR 6.201(A).

(E)-(H) [Relettered (F)-(I) but otherwise unchanged.]

ALTERNATIVE B

Rule 6.610 Criminal Procedure Generally

(A)-(E) [Unchanged.]

(F) Discovery

- (1) At any time before trial the prosecutor must, on request:
 - (a) permit the defendant or defense counsel to inspect the police investigatory reports; and
 - (b) provide the defendant or defense counsel any exculpatory information or evidence known to the prosecuting attorney.
- (2) Once a case is set for trial, the prosecutor must, on request, provide to defendant or defense counsel:
 - (a) a copy of the police investigatory reports, as well as copies of any dashcam, bodycam, or other video the prosecution intends to use at trial;
 - (b) any written or recorded statements by a defendant, codefendant, or accomplice pertaining to the case, even if that person is not a prospective witness at trial; and
 - (c) any affidavit, warrant, and return pertaining to a search or seizure in connection with the case.
- (3) Each party must, on request, provide the names and addresses of all lay and expert witnesses whom the party may call at trial; in the alternative, a party may provide the name of the witness and make the witness available to the other party for interview.
- (4) Any other discovery must be by consent of the parties or by motion to the court on good cause shown.
- (5) This rule is applicable only to proceedings under this subchapter.

(F)-(H) [Relettered (G)-(I) but otherwise unchanged.]

Staff Comment: The proposed alternative amendments of MCR 6.610 would allow discovery in misdemeanor proceedings in the district court. Alternative A would create a structure similar to the federal rules (FR Crim P 16[b]) in which a defendant's duty to provide certain discovery would be triggered only if defense counsel first requested discovery from the prosecution, and the prosecution complied. Alternative B is a proposal recommended by the Prosecuting Attorneys Association of Michigan in its comment on the original proposal published for comment in this file.

The staff comment is not an authoritative construction by the Court. In addition, adoption of an amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by October 1, 2019, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2018-23. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 5, 2019

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk