

# Order

Michigan Supreme Court  
Lansing, Michigan

April 14, 2021

Bridget M. McCormack,  
Chief Justice

ADM File No. 2019-06

Proposed Amendments of  
Rules 6.302 and 6.310 of  
the Michigan Court Rules

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Brian K. Zahra  
David F. Viviano  
Richard H. Bernstein  
Elizabeth T. Clement  
Megan K. Cavanagh  
Elizabeth M. Welch,  
Justices

On order of the Court, this is to advise that the Court is considering amendments of Rules 6.302 and 6.310 of the Michigan Court Rules. Before determining whether the 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 proposal 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](#).

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

## Rule 6.302 Pleas of Guilty and Nolo Contendere

- (A) [Unchanged.]
- (B) An Understanding Plea. Speaking directly to the defendant or defendants, the court must advise the defendant or defendants of the following and determine that each defendant understands:
  - (1) [Unchanged.]
  - (2) the maximum possible prison sentence for the offense, ~~including, if applicable, whether the law permits or requires consecutive sentences,~~ and any mandatory minimum sentence required by law, including a requirement for mandatory lifetime electronic monitoring under MCL 750.520b or 750.520c;
  - (3)-(5) [Unchanged.]

The requirements of subrules (B)(3) and (B)(5) may be satisfied by a writing on a form approved by the State Court Administrative Office. If a court uses a writing, the court shall address the defendant and obtain from the defendant orally on the record a statement that the rights were read and understood and a waiver of those rights. The waiver may be obtained without repeating the individual rights.

(C)-(F) [Unchanged.]

#### Rule 6.310 Withdrawal or Vacation of Plea

(A) [Unchanged.]

(B) Withdrawal After Acceptance but Before Sentence. Except as provided in subsection (3), after acceptance but before sentence,

(1) [Unchanged.]

(2) the defendant is entitled to withdraw the plea if

(a) [Unchanged.]

(b) the plea involves a statement by the court that it will sentence to a specified term or within a specified range, and the court states that it is unable to sentence as stated; the trial court shall provide the defendant the opportunity to affirm or withdraw the plea, but shall not state the sentence it intends to impose; or

(c) a consecutive sentence will be imposed and the defendant was not advised at the time of his or her plea that the law permits or requires consecutive sentencing in his or her case.

(3) [Unchanged.]

(C)-(E) [Unchanged.]

*Staff Comment:* The proposed amendment of MCR 6.302 would eliminate the Court's previously-adopted language requiring a trial court to advise defendant whether the law permits or requires the court to sentence defendant consecutively. This language was added following the Court's opinion in *People v Warren*. However, in considering the practical application of that language, it may be more appropriate to allow a defendant to withdraw a plea under MCR 6.310 if such advisement is not given rather than require an advisement in all cases. Thus, the proposal would add language providing for such an outcome in MCR 6.310 instead of imposing an advisement in all cases under MCR 6.302.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or 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 amendment may be sent to the Supreme Court Clerk in writing or electronically by August 1, 2021, at P.O. Box 30052, Lansing, MI 48909, or [ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov). When filing a comment, please refer to ADM File No. 2019-06. 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.

April 14, 2021

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

Clerk