

Order

Michigan Supreme Court
Lansing, Michigan

October 13, 2021

Bridget M. McCormack,
Chief Justice

ADM File No. 2019-06

Amendments of Rules
6.302 and 6.310 of the
Michigan Court Rules

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

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments of Rules 6.302 and 6.310 of the Michigan Court Rules are adopted, effective January 1, 2022.

[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 amendment of MCR 6.302 eliminates 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*, and continues to be required under that opinion in cases where the court knows that a defendant may be subject to consecutive sentencing. However, as many commenters have noted, the greater challenge is determining how to proceed when a court does not know when a plea is accepted that consecutive sentencing is a possibility. In such a case, the Court was faced with two options: advising defendant in every case that consecutive sentencing may apply, even though the number of cases subject to consecutive sentencing is a small subgroup of cases in general, or allowing the group most directly affected (those defendants who were not advised that consecutive sentencing was a possibility and who were in fact sentenced to consecutive sentences) to withdraw their plea. This court rule amendment rejects a meaningless advisement for the majority of defendants, while protecting against an unfair outcome for those who were not advised but who received consecutive sentences.

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.



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.

October 13, 2021

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

Clerk