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Justices of the Michigan Supreme Court
Hall of Justice
P.O. Box 20052
Lansing, MI 48909

ADM File No. 2026-09

Honorable Justices,

We write in support of the proposed amendment to MCR 6.201, following this Court's decision in *People v Madison*, __ Mich __ (2026). Consistent with *Madison* and Michigan law, the State Appellate Defender Office (SADO) strongly supports the admissibility of evidence that a person's mental illness or intellectual disability prevented them from developing the requisite intent to be convicted of an offense. SADO also supports a notice requirement, such as that proposed by this Court, akin to the notice required when presenting other expert testimony. SADO does not support the addition of anything beyond a notice requirement.

The complexities of seeking to admit evidence about a person's diminished capacity will almost invariably require expert testimony, but the necessity of an expert witness is not unique to diminished capacity. The Michigan Court Rules already provide the notice that must be provided regarding expert witnesses. MCR 6.201(A)(3). The addition of MCR 6.201(B) is a rational and limited extension of the existing notice requirements for expert testimony.

We write to discourage this Court from adopting the suggestion of the Wayne County Prosecutor's Office that would place similar obligations on the defense when presenting evidence of diminished capacity as those required in cases involving legal insanity. This Court's opinion in *Madison* correctly found that diminished capacity is distinct from a legal insanity defense, highlighting the *Carpenter* majority's erroneous understanding of the plain language of MCL 768.21a and 768.36. See *Madison*, __ Mich at __; slip op at 15-16. Further amendment to our court rules to implement similar requirements as to when a person raises an affirmative defense of insanity would again blur the same lines that the majority in *Carpenter* did, and undermine the distinction described by this Court in *Madison*.

A defense of legal insanity and evidence of a person's diminished capacity are different things. Not guilty by reason of insanity is an affirmative defense that

"admits the doing of the act charged, but seeks to justify, excuse or mitigate it." *People v Lemons*, 454 Mich 234, 246 n 15 (1997). Diminished capacity is different; in raising diminished capacity, a person on trial is saying they did not have the requisite intent to satisfy one of the elements of the crime. *Madison*, __ Mich at __; slip op at 15-16. As such, evidence of a person's diminished capacity should not procedurally be treated the same as a legal insanity defense. Rather, because diminished capacity evidence aims to present the jury with reasonable doubt as to one of the elements of the charged offense, it should be treated the same as other expert testimony presented for the same reason.

The proposed amendment from the Wayne County Prosecutor's Office would also likely increase the procedural delays and court congestion our trial courts face, a concern raised by Justice Hood in his concurring opinion. *Madison*, __ Mich at __; slip op at 5-6 (Hood, J., concurring). By requiring people to submit to additional forensic examinations after filing the required diminished capacity notice, trials could be delayed even further, and the backlog at the Center for Forensic Psychiatry would only increase.[1]

Also, this Court should adopt the suggestion of the State Bar of Michigan Children's Law Section and create a similar court rule applicable to juvenile delinquency proceedings. As children going through juvenile delinquency proceedings have the same constitutional rights as if they were being criminally prosecuted, including the right to present defenses, it makes sense to add a court rule to help navigate the presentation of diminished capacity evidence at juvenile proceedings.

Accordingly, SADO encourages this Court to adopt the proposed changes to MCR 6.201(B). Thank you for your consideration.

Respectfully,



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Deputy Director, Public Defender Division

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[1] See, e.g., Anna *Liz Nichols, Michigan mental competency exam orders double in a decade, cause 'huge problem*,' The Detroit News, (March 6, 2023), available at https://www.detroitnews.com/story/news/local/michigan/2023/03/06/michigan-mental-competency-exam-orders-double-in-a-decade-huge-problem/69885390007/?gnt-cfr=1&gca-cat=p&gca-uir=true&gca-epti=z116275e116275v002731d--30--b--30--&gca-ft=201&gca-ds=sophi.