

Report on Public Policy Position**Name of committee:**

Criminal Jurisprudence & Practice Committee

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Proposed Court Rule or Administrative Order Number:

[2008-36 - Proposed Amendment of Rule 7.202 of the Michigan Court Rules and Proposed Adoption of Administrative Order No. 2011-XX](#)

Alternative A, the proposed amendment of MCR 7.202 would establish that an order suppressing material and substantial evidence is considered a final order, and therefore subject to an appeal by right. By contrast, Alternative B, a proposed administrative order, would establish a right to a mandatory stay while a prosecutor pursues interlocutory appeal of a trial court's decision to suppress a prosecutor's evidence. These proposals were prompted by the Court's decision in *People v Richmond*, 486 Mich 29 (2010), in which the Court held that a prosecutor's decision to move to dismiss the prosecutor's case makes the case moot on appeal.

Date position was adopted:**Process used to take the ideological position:**

Position adopted after discussion and electronic vote

Number of members in the decision-making body:**Number who voted in favor and opposed to the position:**

Voted for position

Voted against position

Abstained from vote

Did not vote

Position:

Oppose

Explanation of the position, including any recommended amendments:

The committee feels that neither alternative is needed. Under Michigan law there is already a procedure in place for the prosecutor to file an application for leave to appeal and request a stay. If the trial court and the Court of Appeals wrongfully deny a stay, the Supreme Court can easily reverse and grant a stay pending the appeal.

Alternative A changes Michigan law by its re-definition of a 'final judgment' or 'final order' and affords the prosecutor rights not similarly available to the defense. Alternative B bypasses established appellate rules and also affords to the prosecutor a right not similarly available to the defense. Both alternatives also eliminate the discretion by the trial court and Court of Appeals, as needed, to grant or deny a stay of proceedings.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report. http://courts.michigan.gov/supremecourt/Resources/Administrative/2008-36_06-14-11_formatted%20order.pdf