House
Legislative
Analysis
Section

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LIMIT CRIMINAL APPEALS

House Bill 4070 as enrolled
Public Act 374 of 1994

House Bill 4071 as enrolled
Public Act 375 of 1994

Sponsor: Rep. Michael E. Nye

Second Analysis (1-5-95)
House Committee: Judiciary
Senate Committee: Judiciary

THE APPARENT PROBLEM:

Ballot Proposal B, approved by a wide margin in the November 1994 election, amended the state constitution to limit the right to appeal for people who plead guilty or nolo contendere ("no-contest"). Under the amendment, the accused is to have an appeal as a matter of right, "except as provided by law an appeal by an accused who pleads guilty or nolo contendere shall be by leave of the court." (For further information on Proposal B, please refer to the House Legislative Analysis Section analysis of 1994 Ballot Proposal B, issued 10-14-94.)

Existing statute, however, continues to provide for an appeal as a matter of right in all criminal cases, as long as certain procedures are followed. Current statute must therefore be amended if appeals as a matter of right are to be eliminated for people who plead guilty or nolo contendere.

THE CONTENT OF THE BILLS:

The bills would amend statute to eliminate appeals by right and provide for appeals by leave in criminal cases where the accused had plead guilty or nolo contendere. Both bills would address appeals from the circuit or Detroit Recorder's court to the court of appeals, and from the district court to the circuit court. Both would take effect December 24, 1994, and would apply to criminal prosecutions for crimes committed on or after that date.

House Bill 4070 would amend the Code of Criminal Procedure (MCL 770.3 and 770.12), while House Bill 4071 would amend the Revised Judicature Act (MCL 600.308 et al.).

FISCAL IMPLICATIONS:

The Senate Fiscal Agency reported that passage of Proposal B would result in administrative savings to the court of appeals, although most of the savings are not quantifiable. The savings would be realized in filings, paperwork, space, and time; legal research; costs of appellate counsel; and retired judges' time. In calendar year 1993, over 13,000 cases were filed in the court of appeals. Of these, 4,084, or 31.4 percent, were cases in which the accused had pleaded guilty. Half of these cases were heard by 18 retired judges. If these cases were eliminated from the docket, retired judges could be used in other cases. Moreover, the removal of these cases would have no impact on revenues collected by the court since the $200 filing fee is waived for these cases.

The Senate Fiscal Agency also pointed out that on the other hand, it is possible that Proposal B could result in costs to the state if errors in sentencing calculations went uncorrected, or if convictions were not reversed or sentences reduced on appeal. Currently, the state's annual operating cost per prisoner is approximately $16,000. The state would incur additional costs of incarceration if some defendants had to serve time, or remain in prison longer, because they no longer had the right to appeal and they were denied leave to appeal. Since the court of appeals still could choose to grant leave to appeal if a defendant pleaded guilty or no contest, the potential cost to the state cannot be predicted. (9-12-94)

The SFA also has reported that according to the court of appeals clerk's office, costs would be reduced because the number of guilty pleas it had

to process would be reduced. In 1991, approximately 3,428 guilty plea cases were processed by the clerk's office. Guilty pleas in that year constituted 51 percent of its criminal case load and 28.4 percent of its total case load. The clerk's office estimated that it spent $660,000 on costs of processing guilty pleas in 1991. This cost was derived from reported staff time. (Although it is assumed that many, if not most, defendants who no longer had a right to appeal still would seek leave to appeal, applications for leave go to the commissioners' office, where the processing of cases entails less [cost] than at the clerk's office. The SFA has also said that local units should not see any significant reduction in costs because counsel for indigents (paid by counties) is assigned in both appeals of right and applications for leave. (12-1-94)

The court of appeals estimated that passage of the ballot proposal would generate administrative savings of between $1.0 and $1.5 million annually, based on the costs of processing guilty plea appeals, the expectation that fewer plea-based cases will be brought to the court, and the efficiencies allowed by reviewing applications for leave to appeal (which are accompanied by briefs as well as transcripts). The real savings, however, would be represented not so much by money as by staff and judicial time; under the proposed amendment, appeals court resources could be redirected to other needs. The court of appeals also reported that the number of appeals filed has been around 13,000 annually for the past few years; that the proportion of criminal appeals to civil appeals filed has been around 50:50 for this period; and that about 4,000 plea-based appeals (representing about two-thirds of criminal appeals, and about 30 percent of all appeals) are filed annually. (10-11-94)

In his crime message of April 29, 1992, the governor said that eliminating plea-based appeals would save over $2 million a year.

Information provided by the sponsor of Senate Joint Resolution D (which became Proposal B) stated that passage of the proposal could save taxpayers about $3 million a year at the state level, based on court of appeals caseload estimates. (9-27-94)

Data assembled by the Michigan Appellate Assigned Counsel System suggested that correction of errors in criminal appeals assigned to counsel in 1990 reduced prison and jail sentences by a total of 1,220.4 years. At $25,000 per year (the figure customarily used as the state's per prisoner cost), this would be equivalent to about $30.5 million in costs of incarceration. For about 40 percent of the prisoners in the sample examined, relief did not directly translate into years of incarceration saved, because some were resentenced to the same amount of time, while others were serving longer concurrent sentences on other charges. However, relief reduced sentences in 22 (or 13.8 percent) of the 288 cases making up the random sample (the sample represented 1/18, or 5.6 percent of cases assigned to the appellate assigned counsel system). For appeals from pleas, the relief rate was 12.5 percent; for appeals from trials, the relief rate was 16.5 percent. Actual sentence reductions for the sample amounted to a collective reduction of 67.8 years, of which 29.9 years stemmed from plea appeals. (10-11-93)

About 17 percent of criminal appeals are handled by the State Appellate Defender's Office (SADO), rather than the appellate assigned counsel system. SADO estimates based on its cases put the proportion of pleas appealed at 5.8 percent, the relief rate at 47 percent, and the estimated additional costs of incarceration under the proposal at $25 million per year. (10-11-93)

ARGUMENTS:

For:

The bills would, in effect, implement Proposal B, eliminating the right to appeal for people who plead guilty or no-contest, and instead allowing such appeals only by leave of the appellate court. The bills thus would give full expression to the will of the voters in the 1994 general election, who overwhelmingly approved the ballot proposal and the constitutional amendment it presented.

Against:

The constitutional amendment may be read to allow exceptions "as provided by law" to the general premise that appeals from guilty pleas would be allowed only by leave of the appellate court. The bills thus miss the opportunity to tailor statute to eliminate inappropriate guilty plea appeals while preserving the right to appeal in certain situations where guilty pleas were made. Of great concern are cases where there was lower court error in the form of coercion or undue pressure on a defendant to plead guilty, where the defendant was inadequately informed of the consequences of pleading guilty, or

where the accused suffered from incompetent or ineffective counsel. In addition, the state bar has pointed out that "the overwhelming majority of guilty pleas involve sentencing issues only," which suggests that reforms of the right to appeal should focus on this category of plea-based appeals. State bar recommendations were to eliminate the appeal by right where the court informed a defendant pleading guilty of the sentence that would be imposed; others have suggested that the right to appeal be preserved in situations where the sentencing judge departed from sentencing guidelines. Without provisions that continued to allow appeals by right in certain situations, there would be inadequate protection against various unacceptable practices.

Response:

If exceptions were made that retained appeal by right in certain situations, those situations would become the new "catch-all" categories under which frivolous appeals were brought. People who plead guilty are and would continue to be protected by procedural safeguards imposed by Michigan court rules that forbid a court from accepting a guilty plea or no-contest plea unless it is convinced that the plea is made with understanding, and is voluntary and accurate. Court rules also require a judge to question a defendant on these points and related matters, and to speak directly to the defendant and explain certain consequences of the plea. Under the bills, defendants who plead guilty could seek leave to appeal; this would be protection enough for the rights of admitted criminals.