Legislative Analysis

VENUE FOR FELONY PROSECUTIONS

Senate Bill 162 (Substitute S-1 as passed by the Senate)
Sponsor: Sen. Mike Nofs
House Committee: Judiciary
Senate Committee: Judiciary   *(Enacted as Public Act 128 of 2013)*

First Analysis (4-22-13)

BRIEF SUMMARY: The bill would allow a felony consisting of two or more acts to be prosecuted in any county in which the crime had an effect.

FISCAL IMPACT: The bill would potentially increase the number of felony prosecutions and convictions. Information is not available on the number of prosecutions and convictions that would occur in counties where the felonious act was intended to have an effect, rather than where it was committed. An increase in the number of felony prosecutions and convictions would result in increased costs on state and local correctional systems.

THE APPARENT PROBLEM:

For almost two decades, a statutory provision pertaining to venue in felony cases was interpreted by the courts to mean that if a felony consisted of two or more acts done in the perpetration of that felony, the case could be prosecuted in any of the counties in which any of the acts (crimes) had been committed *or had had or would have had an effect*. However, a recent Supreme Court decision reversed case law and ruled that the clear, unambiguous language of the statutory provision only allowed for prosecution in a county in which one or more of the acts actually had been committed. *People* v *Houthoofd*, 487 MICH 568; 790 NW2d 315 (2010).

In that same year, according to the Jackson County Prosecutor's office, an attorney who was involved in a civil suit in Jackson County traveled to the City of Plymouth in Wayne County and attempted to convince a witness in the civil case to commit perjury. When Wayne County declined to prosecute the attorney for soliciting perjury, the Jackson County Prosecutor's office wanted to prosecute the case on the basis that any false statements made by the witness would have impacted the litigation in that county. However, the *Houthoofd* decision prevented the prosecutor from doing so.

The decision in *Houthoofd* also may impact a statutory provision that allows prosecution of a crime in this state even if a part of the crime were committed in another state or jurisdiction. For example, under MCL 762.2, if a plan to commit fraud on residents in a town or city in Michigan was conceived or contemplated in Ohio, the suspects could be tried in Michigan.   Some feel the Supreme Court decision could prevent such prosecutions from going forward.

Legislation has been offered to address these concerns.

THE CONTENT OF THE BILL:

Currently, a felony consisting of two or more acts done in the perpetration of that felony may only be prosecuted in a county in which any one of those acts had been committed.

Senate Bill 162 would amend the Code of Criminal Procedure to also allow a felony consisting of two or more acts to be prosecuted in any county in which the defendant intended the felony or acts done in perpetration of the felony to have an effect. The bill would also make changes of an editorial nature in the current provision.

MCL 762.8

HOUSE COMMITTEE ACTION:

The bill was reported from the House Judiciary Committee without amendments.

ARGUMENTS:

For:

The main thing the bill would accomplish would be to overturn the portion of the *Houthoofd* decision relating to where a case could be prosecuted when a crime is committed in one county but the effects of that crime were intended or experienced in another. The bill would only affect a felony case that consisted of two or more acts (crimes) in perpetration of the felony. The bill would be particularly helpful in cases involving conspiracy. For example, it is not unusual for someone to cross county lines when hiring someone to commit murder, or to rob a house in one county but plan or obtain the weapons to commit that robbery in a different county. Basically, the bill returns the status quo to pre-*Houthoofd* days and gives county prosecutors the ability to prosecute a suspect even if the prosecutor in the county or counties in which the acts constituting the felony were committed declined to do so. Enactment would also ensure that a person who conspired or contemplated committing a crime in Michigan – while in a different state – could continue to be prosecuted in Michigan.

Against:

The bill may have an unintended consequence of encouraging "forum shopping," in which prosecutors or defendants attempt to have a case tried in the venue most advantageous to their interests.

Response:

That may be true to some extent. However, as some see it, a worse situation currently exists. As the law stands, a person can plan or commit some of the acts of a crime in a county the person feels is unlikely to prosecute just for conspiracy. For example, a county struggling with budget and personnel cuts is unlikely to expend precious resources to investigate and prosecute a person for an act that though committed in that county, did not result in any actual harm to a resident of that county. That may have been the situation in Wayne County when the prosecutor's office declined to bring charges against the attorney who intimidated, and solicited perjury from, a witness in a Jackson County

civil suit. If so, enactment of the bill should send a clear message that criminal penalties cannot be avoided by committing some acts in perpetration of a crime in a county the criminal thinks is unlikely to prosecute.

POSITIONS:

A representative of the Prosecuting Attorneys Association of Michigan and the Office of Prosecuting Attorney for the County of Jackson testified in support of the bill. (4-11-13)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.