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BILL ANALYSIS

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Senate Bill 273 (as reported without amendment)**Sponsor:** Senator Rudy J. Nichols**Committee:** Judiciary**Date Completed:** 11-12-87**RATIONALE**

While the Constitution of the United States guarantees criminal defendants the right to a jury trial, there is no equivalent guarantee for the prosecutor, nor does the Constitution address a defendant's right to waive trial by jury. Under the Federal Rules of Criminal Procedure, however, and in a majority of the states, a defendant's waiver requires the consent of the prosecutor, the court, or both; this requirement operates to grant prosecutors the right to a jury trial. Michigan, on the other hand, gives the defendant an unconditional right to waive the jury. It has now been proposed that Michigan, too, should give the prosecutor — on behalf of the people of the State — the right to a jury trial. A rule to that effect has been recommended by an ad hoc committee appointed by the Michigan Supreme Court to propose rules of criminal procedure.

CONTENT

The bill would amend the Code of Criminal Procedure to require the consent of the prosecutor and approval of the court or magistrate of a defendant's waiver of his or her right to a jury trial.

MCL 763.3 et al.

BACKGROUND

The criminal defendant's right to a jury trial has its roots in early English law, which perceived trial by jury as a protection for the defendant — especially a politically unpopular one — from judges who might be subservient to the crown. This right was incorporated into the United States Constitution and, until the 1930s, the prevailing view was that neither the defendant nor the prosecutor could waive a jury. In the 1930s, however, the United States Supreme Court held that waiver was permissible but added that waiver was appropriate only in exceptional cases and required the consent of the prosecutor. As a result, in 1946 Federal Rule of Criminal Procedure 23(a) was adopted, granting the prosecutor the right to trial by jury by requiring the prosecutor to consent to the defendant's waiver. When the rule was challenged in the 1960s, the Supreme Court rejected a claim that the prosecutor's refusal to consent to the defendant's waiver of jury trial violated the defendant's constitutional rights. Today, the majority of the states follow the Federal approach. Only a minority of states give the defendant an unconditional right to trial without a jury, some do not permit waiver in felony cases, and some do not permit it in capital cases.

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. The number of additional jury trials that could occur as a result of this bill cannot be estimated.

ARGUMENTS**Supporting Argument**

Trial by jury is recognized in our society as the most reliable and trustworthy method of determining guilt or innocence. In some cases, especially those that may be politically charged, the public's confidence in the conviction or acquittal is actually enhanced by the fact that it was a jury that decided the facts. While virtually everyone would agree that most judges are above reproach, the jury trial still serves its original common law interest of protecting the defendant from a potentially biased judge. Further, the mere existence of a prosecutor's right to trial by jury could serve as a deterrent to judicial impropriety.

Supporting Argument

The defendant is not the only one who is entitled to a fair trial: the people of the State — who are represented by the prosecutor — also have a legitimate interest in having the truth ascertained by an impartial tribunal. In addition, prosecutors represent the victim, too, and granting the prosecutor the right to a jury trial would be consistent with the Crime Victim's Rights Act enacted in this State in 1985. Senate Bill 273 would balance the scales of justice.

Response: The defendant's and prosecutor's comparative rights are meant not to be equal, but to be fair. If they were equal, there would be no presumption of innocence.

Opposing Argument

The bill is not in the best interests of the State, which cannot simply swallow such a major change in the administration of justice without some significant consequences. The most apparent effect, which the court system would experience within six months of the bill's passage, would be delays. While waiver cases in the Detroit Records Court, for example, take approximately one day or less to complete, jury cases take an average of three days. Obviously, if prosecutors were given the right to a jury trial, more jury trials would be demanded. As the number of jury trials increased, so would the length of the trial track. In the Records Court, it now takes 91 days between the time of arrest and the trial; even a 10% increase in the number of jury trials would add another 51 days to the trial track. Already, the 91-days is slipping to 105 days as the result of a sharp increase in cases brought by the prosecutor for trial. Further, longer trial tracks result in more crimes being committed: statistics show that one out of five defendants out on bond for six months commits additional crimes.

More jury trials and longer delays not only would inconvenience the court, the prosecutor, the defense, the public, and the victim, they also would result in considerable expense. Oakland County, for example, now

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spends about \$500,000 each year just for juror fees and mileage. On top of this, the county spends approximately \$1 million annually for indigent defendants' defense fees, which are paid by the day for cases in trial. Increased costs also could be experienced at the appellate level, since jury trials involve more arguments, longer transcripts, and issues of prejudice.

The bill's inevitable impact on the jail population and prison system also cannot be ignored. In Wayne County, not only are the jails filled to capacity, but recently some 40 people per week have had to be released just to reduce the population. Whenever one person is put in jail the county must literally let someone else out. And, because there is no space in the county jail for short-term commitments, the rate of prison commitments from the Recorders Court has risen from 28% to 44% over the past year alone.

Response: The bill's potential cost and inconvenience are factors to consider, but they are not dispositive. What would be fair and just for the State and the people of Michigan is the prevailing consideration. The experience of the Federal court system and the states that conform to the Federal rule simply does not support the claim that jury trials would increase more than marginally under the bill. While it might be reasonable to expect a small rise, it must be remembered that prosecutors share the concern of the courts over docket movement and crowded correctional facilities. It is important that prosecutors have the right to a jury trial, however, for the small number of cases in which they believe that the public's interest would not be served by a bench trial. In addition, it already has been suggested that a statewide database be compiled and an annual analysis be performed to determine the bill's impact, and that a contingency fund be created to help those courts that showed a significant increase in workload.

Finally, the court system actually may have gone too far in the direction of bench trials: figures from the Detroit area show that the number of trials by jury fell from 65% in 1976 to 24% in 1986.

Opposing Argument

A jury trial is not always in the best interests of the defendant, and the defense should retain the power to opt for a bench trial. There are situations in which it is far more difficult for a jury than a trained judicial officer to compartmentalize the issues — for example, in a case in which the defendant's long history of prior convictions has a bearing on the question of credibility but not on the question of guilt. A bench trial also may be preferable when the crime and the defendant are very unsavory, but there is a very good defense. Also, in an emotionally charged case, the defendant needs the right to a bench trial because of the difficulty of getting a change of venue.

Response: At the heart of this argument is the accusation that a jury either is incompetent or cannot be impartial. This position is diametrically opposed to the historic concept that a jury is necessary to protect the defendant. As the United States Supreme Court has pointed out, if the court or the prosecutor refuses to consent to a defendant's waiver, the result is simply that the defendant is subject to an impartial trial by jury — the very thing that the Constitution guarantees.

Furthermore, a number of safeguards besides change of venue are available to the defendant, including challenging jurors for cause, peremptory (without cause) challenges, the rule that prosecutors cannot use peremptories on racial grounds, jury instructions, and the sequestration of jurors.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.