



Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

COURT RECORDS: JUROR EXAMS

House Bill 5149 with committee
amendment
First Analysis (12-1-93)

Sponsor: Rep. Michael E. Nye
Committee: Judiciary

THE APPARENT PROBLEM:

A significant cost for many trial courts is the expense of preparing transcripts of the examination of prospective jurors in criminal trials. Although appeals can be brought over issues of whether jurors were questioned, excused, or seated inappropriately, it evidently is relatively rare for appeals to revolve around such issues. Some have proposed that courts be relieved of the burden of having to prepare transcripts of juror exams in certain situations.

THE CONTENT OF THE BILL:

The bill would amend the Code of Criminal Procedure to specify that a transcript of the examination of prospective jurors in a criminal trial would not have to be prepared, unless one of the following occurred: the defense used all of its peremptory challenges; either prosecution or defense challenged the entire array or panel of jurors; the defendant was sentenced to prison for life without parole; or, either the prosecution or defense moved to have a transcript prepared.

MCL 760.8a

FISCAL IMPLICATIONS:

The House Fiscal Agency says that based on savings estimated for Kent County, the bill might save the state roughly \$50,000 per year in transcript costs for the Wayne County trial courts (the state substantially funds Wayne County trial courts; any savings in other counties would tend to be local savings). (11-30-93)

ARGUMENTS:

For:

The bill would help to relieve trial courts of the financial burdens of unnecessarily preparing transcripts of juror examinations in criminal trials.

The potential savings for Kent County alone have been estimated to be \$15,000 to \$20,000 annually. While this may not seem like much, it would be an incremental improvement that could add up to substantial sums over the years. While many transcripts would continue to be prepared, waste would be avoided: under the bill, transcripts would not have to be prepared unnecessarily.

Against:

The bill would have little effect and could increase costs for counties and the state. Although some may be under the misconception that a judge could deny a request for a transcript, the plain English of the bill says that if prosecution or defense requested to have a transcript prepared, the court reporter would have to do so. To properly do his or her job, any appellate counsel would have to request a transcript so that it could be reviewed for any improprieties. Thus, very nearly as many transcripts would be prepared under the bill as are now, but with the added expense of attorney and court time to file and receive the motion necessary to make the request.

Against:

The bill, by saying that a request for a transcript must be by a motion brought in the trial court, may lead to confusion over its meaning. On the one hand, the bill says that a transcript need not be prepared unless requested by motion, suggesting that a transcript would be prepared upon request. On the other hand, by demanding that a motion be made, the bill suggests to some that a court would have the authority to deny a request for a transcript. It seems likely that judges will interpret the provision variously, and that eventually the question will be brought to the court of appeals for resolution--an expensive turn of events for a bill that is aimed at saving costs. The language of the bill should be clarified.

House Bill 5149 (12-1-93)

Against:

The supreme court has proposed, but not yet formally issued, new court rules on the provision of juror examination transcripts. Those rules would bar transcript preparation unless the defendant challenged the jury array, exhausted all peremptory challenges, was sentenced to serve a term of life imprisonment without parole, or showed good cause. The matter is one which rightfully should be left to court rule.

Response:

The court rule, by demanding that a defendant show good cause before he or she could receive a juror examination transcript, would be more restrictive than the bill. Appellate defense counsel must be able to review those transcripts in order to determine whether any errors occurred; however, the rule would raise an impediment by requiring counsel to convince the trial court of "good cause" without knowing what was in the transcript. The result would be that improprieties in jury selection could be overlooked.

POSITIONS:

The Michigan Association of Counties supports the bill. (11-30-93)

A representative of the Michigan Judges Association testified in support of the bill. (11-30-93)

The Prosecuting Attorneys Association of Michigan has no position on the bill. (11-30-93)

The State Appellate Defender's Office opposes the bill. (11-30-93)