



**House
Legislative
Analysis
Section**

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**LIMIT APPOINTED COUNSEL
FOLLOWING GUILTY OR NOLO
CONTENDERE PLEAS**

House Bill 4584

Sponsor: Rep. Roland Jersevic

Committee: Judiciary and Civil Rights

Complete to 8-9-95

A SUMMARY OF HOUSE BILL 4584 AS INTRODUCED 3-14-95

The bill would amend the Code of Criminal Procedure by adding sections limiting the scope of appellate legal assistance for indigent defendants who had been convicted as the result of a guilty or nolo contender plea. The bill would allow the trial court to appoint an attorney to a defendant who had been convicted on the basis of a guilty or nolo contender plea, for the purpose of making an appeal where the defendant had entered a conditional plea or the prosecution had been granted leave to appeal. Otherwise the defendant would have to apply to the court of appeals for the appointment of an attorney.

The bill would require the trial court to inform the defendant on the record at the time of his or her sentencing hearing that:

- 1) He or she could file an application for leave to appeal his or her conviction;
- 2) If the defendant lacked the financial resources to retain an attorney, the defendant could request that one be appointed to assist him or her with the preparation of an application for leave to appeal the conviction; and
- 3) The defendant's request for an attorney would have to be made to the court of appeals within 42 days after the sentencing hearing and be made on the form provided by the court or in a substantially similar letter.

The trial court would also have to provide the defendant with a form to request the appointment of an attorney for the purpose of making an appeal, and with instructions that he or she would have to send the completed form or a letter substantially similar to the form to the court of appeals within 42 days after the sentencing. The bill would specify that the defendant's trial counsel could advise the defendant as to whether or not to seek appointment of appellate counsel.

After receiving a request for the appointment of appellate counsel, the court of appeals would have to obtain copies of the transcripts of the plea and sentencing hearings along with the trial court file. After reviewing these materials, the court of appeals could grant or deny the defendant's request, or treat the request as an application for leave to appeal and grant or deny it as such.

House Bill 4584 (8-9-95)

If the court of appeals granted the defendant's request, it could order the trial court to appoint an attorney to prepare the defendant's application for leave to appeal on those issues which the court of appeals specified in its order or allow for the appointed attorney to bring a post-conviction motion in the trial court as permitted by court rules. If the court of appeals concluded that the defendant's sentence exceeded the sentencing guidelines, the court of appeals would be required to grant the defendant's request and order the trial court to appoint an attorney to prepare his or her application for leave to appeal.

If the court of appeals treated the defendant's request as an application for leave to appeal and granted it, the court of appeals would be required to order the trial court to appoint an attorney to represent the defendant on appeal. If the court of appeals concluded that the defendant's sentence exceeded the sentencing guidelines, the court of appeals could treat the request as an application for leave to appeal and, upon granting such a request, order the trial court to appoint an attorney to represent the defendant on appeal.

In deciding whether to grant a defendant's request for appointment of an attorney to prepare the defendant's application for leave to appeal, the court of appeals would have to consider all of the following:

- 1) The trial court's jurisdiction to impose the sentence;
- 2) Whether the sentence was in violation of law;
- 3) Whether the sentence was imposed in violation of a plea agreement that had been made on the record;
- 4) Whether the sentence resulted from an incorrect application of the sentencing guidelines;
- 5) Whether the sentence was disproportionate;
- 6) Whether the trial court abused its discretion in denying a motion for relief from the sentence;
- 7) Whether the trial court substantially complied with the court rules regarding the taking of pleas; and
- 8) The interests of justice.

MCL 770.16 - 770.18