



HOUSE BILL No. 4584

March 14, 1995, Introduced by Reps. Jersevic, Llewellyn, LeTarte, Bush, Hill, Hammerstrom, Horton, Brewer, Green, Bullard, Goschka, Perricone, London, Galloway, Jaye, Weeks, Kaza, McNutt, Gustafson, Rocca, Kukuk, Voorhees, Middleton, Dolan, Law, McBryde, Brackenridge, Bodem, Gernaat, Rhead, DeLange, Byl, Jamian, Randall, Oxender, Sikkema, Jellema, Geiger, Ryan and Gnodtke and referred to the Committee on Judiciary and Civil Rights.

A bill to amend chapter X of Act No. 175 of the Public Acts of 1927, entitled as amended

"The code of criminal procedure,"

as amended, being sections 770.1 to 770.12 of the Michigan Compiled Laws, by adding sections 16, 17, and 18.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Chapter X of Act No. 175 of the Public Acts of
2 1927, as amended, being sections 770.1 to 770.12 of the Michigan
3 Compiled Laws, is amended by adding sections 16, 17, and 18 to
4 read as follows:

5 **CHAPTER X**

6 **SEC. 16. (1) IMMEDIATELY AFTER IMPOSING SENTENCE FOR A CON-**
7 **VICTION BASED UPON A GUILTY OR NOLO CONTENDERE PLEA, THE COURT**
8 **SHALL ADVISE THE DEFENDANT OF ALL THE FOLLOWING ON THE RECORD:**

1 (A) THE DEFENDANT MAY FILE AN APPLICATION FOR LEAVE TO
2 APPEAL THE CONVICTION.

3 (B) IF THE DEFENDANT IS FINANCIALLY UNABLE TO RETAIN AN
4 ATTORNEY, THE DEFENDANT MAY REQUEST APPOINTMENT OF AN ATTORNEY TO
5 PREPARE AN APPLICATION FOR LEAVE TO APPEAL THE CONVICTION.

6 (C) THE REQUEST FOR AN ATTORNEY SHALL BE MADE TO THE COURT
7 OF APPEALS WITHIN 42 DAYS AFTER SENTENCING ON THE FORM PROVIDED
8 OR IN A LETTER SUBSTANTIALLY SIMILAR TO THE FORM PROVIDED.

9 (2) THE COURT SHALL ALSO GIVE THE DEFENDANT A FORM TO
10 REQUEST APPOINTMENT OF AN ATTORNEY. THE FORM SHALL CONTAIN AN
11 INSTRUCTION THAT THE DEFENDANT SHALL SEND THE COMPLETED FORM OR A
12 LETTER SUBSTANTIALLY SIMILAR TO THE COMPLETED FORM TO THE COURT
13 OF APPEALS WITHIN 42 DAYS AFTER SENTENCING.

14 (3) TRIAL COUNSEL MAY ADVISE DEFENDANT WHETHER OR NOT TO
15 SEEK APPOINTMENT OF APPELLATE COUNSEL.

16 SEC. 17. (1) AFTER RECEIVING A REQUEST FOR APPOINTMENT OF
17 AN ATTORNEY PURSUANT TO SECTION 16 OF THIS CHAPTER, THE COURT OF
18 APPEALS SHALL DIRECT THAT A TRANSCRIPT OF THE PLEA AND SENTENCING
19 PROCEEDINGS BE PREPARED AND FORWARDED TO THE COURT OF APPEALS
20 WITH THE TRIAL COURT FILE. FOLLOWING REVIEW, THE COURT OF
21 APPEALS SHALL DO 1 OF THE FOLLOWING:

22 (A) DENY THE REQUEST FOR APPOINTMENT OF AN ATTORNEY.

23 (B) GRANT THE REQUEST AND ORDER THE TRIAL COURT TO APPOINT
24 AN ATTORNEY TO PREPARE AN APPLICATION FOR LEAVE TO APPEAL THOSE
25 ISSUES SPECIFIED IN THE ORDER OR TO BRING A POSTCONVICTION MOTION
26 IN THE TRIAL COURT AS SPECIFIED BY COURT RULE. EXCEPT AS
27 PROVIDED IN SUBDIVISION (C), IF THE COURT OF APPEALS DETERMINES

1 UPON REVIEW THAT THE SENTENCE IMPOSED EXCEEDED THE SENTENCING
2 GUIDELINES RANGE AS SCORED BY THE TRIAL COURT, THE COURT OF
3 APPEALS SHALL GRANT THE REQUEST AND ORDER THE TRIAL COURT TO
4 APPOINT AN ATTORNEY TO PREPARE AN APPLICATION FOR LEAVE TO
5 APPEAL.

6 (C) CONSIDER THE REQUEST FOR APPOINTMENT OF AN ATTORNEY AS
7 AN APPLICATION FOR LEAVE TO APPEAL AND GRANT OR DENY THE
8 APPLICATION. IF THE COURT OF APPEALS GRANTS THE APPLICATION, IT
9 SHALL ORDER THE TRIAL COURT TO APPOINT AN ATTORNEY TO REPRESENT
10 THE DEFENDANT ON APPEAL AS DIRECTED BY THE COURT OF APPEALS. IF
11 THE COURT OF APPEALS DETERMINES UPON REVIEW THAT THE SENTENCE
12 IMPOSED EXCEEDED THE SENTENCING GUIDELINES RANGE AS SCORED BY THE
13 TRIAL COURT, THE COURT OF APPEALS MAY TREAT THE REQUEST AS AN
14 APPLICATION FOR LEAVE TO APPEAL. IF THE COURT GRANTS THE APPLI-
15 CATION, IT SHALL ORDER THE TRIAL COURT TO APPOINT AN ATTORNEY TO
16 REPRESENT THE DEFENDANT ON APPEAL AS DIRECTED BY THE COURT OF
17 APPEALS.

18 (2) IN MAKING ITS DETERMINATION UNDER SUBSECTION (1), THE
19 COURT OF APPEALS SHALL CONSIDER ALL OF THE FOLLOWING:

20 (A) WHETHER THE TRIAL COURT HAD JURISDICTION TO IMPOSE
21 SENTENCE.

22 (B) WHETHER THE SENTENCE IMPOSED WAS IN VIOLATION OF LAW.

23 (C) WHETHER THE TRIAL COURT IMPOSED THE SENTENCE IN VIOLA-
24 TION OF A PLEA AGREEMENT ON THE RECORD.

25 (D) WHETHER THE SENTENCE IMPOSED RESULTED FROM AN INCORRECT
26 APPLICATION OF THE SENTENCING GUIDELINES.

1 (E) WHETHER THE SENTENCE IMPOSED IS DISPROPORTIONATE.

2 (F) WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING
3 A MOTION FOR RELIEF FROM THE JUDGMENT OF SENTENCE.

4 (G) WHETHER THE TRIAL COURT SUBSTANTIALLY COMPLIED WITH THE
5 COURT RULES GOVERNING TAKING A PLEA.

6 (H) WHAT THE INTERESTS OF JUSTICE REQUIRE.

7 SEC. 18. A DEFENDANT SENTENCED FOR A CONVICTION BASED UPON
8 A GUILTY OR NOLO CONTENDERE PLEA WHO IS FINANCIALLY UNABLE TO
9 RETAIN AN ATTORNEY IS ENTITLED TO HAVE THE TRIAL COURT APPOINT AN
10 ATTORNEY ON APPEAL IF EITHER OF THE FOLLOWING APPLIES:

11 (A) THE DEFENDANT HAS ENTERED A CONDITIONAL PLEA.

12 (B) THE PROSECUTION IS GRANTED LEAVE TO APPEAL.