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SFA**BILL ANALYSIS**

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House Bill 4625 (Substitute H-2 as passed by the House)
Sponsor: Representative Judson Gilbert II
House Committee: Criminal Law and Corrections
Senate Committee: Judiciary

Date Completed: 10-18-99

CONTENT

The bill would amend the Code of Criminal Procedure to specify that, except as explicitly allowed, a defendant who pleaded guilty, guilty but mentally ill, or nolo contendere (no contest) could not have appellate counsel appointed for review of the defendant's conviction or sentence.

The bill would require that the trial court appoint appellate counsel for an indigent defendant who pleaded guilty, guilty but mentally ill, or no contest if any of the following applied:

- The prosecuting attorney sought leave to appeal.
- The defendant's sentence exceeded the upper limit of the recommended minimum sentence range of the applicable sentencing guidelines.
- The Court of Appeals or the Supreme Court granted the defendant's application for leave to appeal.
- The defendant sought leave to appeal a conditional plea under Michigan Court Rule 6.301 (C)(2) or its successor rule. (That rule provides that a defendant, with the consent of the court and the prosecutor, may enter a conditional plea of guilty, no contest, guilty but mentally ill, or not guilty by reason of insanity, that preserves for appeal a specified pretrial ruling or rulings and entitles the defendant to withdraw the plea if a specified pretrial ruling is overturned on appeal.)

The bill also specifies that a trial court could appoint appellate counsel for an indigent defendant who pleaded guilty, guilty but mentally ill, or no contest if all of the following applied:

- The defendant sought leave to appeal a sentence based on an alleged improper sentencing guidelines scoring of an offense variable or a prior record variable.
- The defendant objected to the scoring or otherwise preserved the matter for appeal.
- The sentence imposed by the court constituted an upward departure from the sentencing guidelines upper limit of the minimum sentence range that the defendant alleged should have been scored.

Proposed MCL 770.3a

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have an indeterminate impact on the State and local units of government. The State Appellate Defender Office (SADO) is statutorily required to handle 25% of the total criminal defense appellate assignments for indigents pending before the Court of Appeals. Indigent appeals not handled by SADO are assigned to the private bar, with costs funded by local units of government. In 1998 there were 3,984 appellate assignments. Of that number, 2,299 were guilty plea cases.

Savings to the State (Appellate Defender, Court of Appeals, and Prosecuting Attorney's Appellate Service) and local units of government (appellate assigned counsel and local prosecutor's office) would depend on the number of cases that would not qualify for appointed appellate counsel under the bill. Potential costs to the correctional system cannot be estimated, and would depend on the number of cases in which sentencing might

have been reduced on appeal.

Fiscal Analyst: B. Bowerman

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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.