

# Legislative Analysis



## REVISE CRIMINAL PROCEDURES TO CONFORM WITH COURT RULES AND COURT DECISIONS

Mitchell Bean, Director  
Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

### House Bill 5135

Sponsor: Rep. William Van Regenmorter

Committee: Judiciary

Complete to 10-4-05

### A SUMMARY OF HOUSE BILL 5135 AS INTRODUCED 9-7-05

House Bill 5235 would amend the Code of Criminal Procedure so that it would conform with recent court decisions and current court rules.

Currently under the law, a defendant who is put on trial for an **offense that is not punishable by death or life in prison** is allowed to challenge peremptorily five of the people drawn to serve as jurors. If the case involves two or more defendants being jointly tried for such an offense, each defendant has five peremptory challenges. In addition, the prosecutor also is entitled to five preemptory challenges for each defendant. House Bill 5235 would retain and rewrite this provision, and clarify that the prosecutor would be entitled to challenge five jurors peremptorily if a defendant is being tried alone or, if defendants were being tried jointly, would be allowed the total number of peremptory challenges to which all the defendants were entitled.

Further, the bill specifies that on motion and a showing of good cause, the court could grant one or more of the parties an increased number of peremptory challenges. The number of additional peremptory challenges granted could cause the various parties to have unequal numbers of challenges.

Currently under the law, each defendant who is put on trial for **an offense that is punishable by death or life in prison** is allowed to challenge peremptorily 20 of the people drawn to serve as jurors, and the prosecutor is allowed to challenge 15 people. House Bill 5235 would reduce the number of peremptory challenges for both the defendant and prosecutor to 12.

In addition, the bill specifies that in a case punishable by death or imprisonment for life that involves two or more defendants, a defendant would be allowed the following number of peremptory challenges:

- Two defendants—10 each;
- Three defendants—9 each;
- Four defendants—8 each; and,
- Five defendants—7 each.

Under the bill, in these cases, the prosecutor would be allowed 12 preemptory challenges if a defendant was being tried alone, and if defendants were being tried jointly, would be allowed the total number of preemptory challenges to which all the defendants were entitled.

On motion and a showing of good cause, the court could grant one or more of the parties an increased number of preemptory challenges. The number of additional preemptory challenges granted could cause the various parties to have unequal numbers of challenges.

Currently under the law, a defendant may, at his or her own expense, or if indigent, at the expense of the county, secure an independent psychiatric evaluation by a clinician of his or her choice on the issue of his or her insanity at the time an alleged offense was committed. Under House Bill 5135, the entitlement is revised to specify that if the defendant is indigent, the court could, upon showing of good cause, order that the county pay for an independent psychiatric evaluation.

Currently under the law, in the case where people are convicted of felonies or multiple felonies, the court imposes a sentence of imprisonment for a term of years, and must fix the length of both the minimum and maximum sentence within any specified limits in terms of years or a fraction of a year; that sentence is considered to be an indeterminate sentence. House Bill 5135 would retain this provision but add that the court would be prohibited from fixing a maximum sentence that was *less than* the maximum term for a first conviction.

Finally, the law specifies that if sentencing is deferred in the circuit court, the court must require that the individual pay a supervision fee, the minimum state costs, and also may impose the conditions of probation. House Bill 5135 would make these requirements apply if entry of judgment is deferred. Current law specifies that if sentencing is delayed or deferred in the district court, or in a municipal court, the court must require that the individual pay the minimum state costs, and may also impose the conditions of probation. House Bill 5135 would make these requirements apply if sentencing is delayed, or if entry of judgment is deferred.

MCL 768.12 et al

#### **FISCAL IMPACT:**

Because it apparently codifies current practice, the bill likely would have no significant fiscal impact on the state or local units of government.

Legislative Analyst: J. Hunault  
Fiscal Analyst: Marilyn Peterson

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