

# HOUSE BILL No. 6139

November 8, 1990, Introduced by Reps. Nye, Walberg, Strand and Willis Bullard and referred to the Committee on Judiciary.

A bill to amend section 3 of chapter X of Act No. 175 of the Public Acts of 1927, entitled as amended

"The code of criminal procedure,"

as amended by Act No. 205 of the Public Acts of 1981, being section 770.3 of the Michigan Compiled Laws; and to add section 35a to chapter VIII.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Section 3 of chapter X of Act No. 175 of the  
2 Public Acts of 1927, as amended by Act No. 205 of the Public Acts  
3 of 1981, being section 770.3 of the Michigan Compiled Laws, is  
4 amended and section 35a is added to chapter VIII to read as  
5 follows:

## CHAPTER VIII

1

2 SEC. 35A. (1) A COURT SHALL NOT ACCEPT A PLEA OF GUILTY OR  
3 NOLO CONTENDERE UNLESS, IN ADDITION TO ANY OTHER REQUIREMENT OF  
4 LAW, THE DEFENDANT WAIVES AN APPEAL OF RIGHT OF HIS OR HER CON-  
5 VICTION AS PROVIDED IN THIS SECTION.

6 (2) BEFORE ACCEPTING A PLEA OF GUILTY OR NOLO CONTENDERE,  
7 THE COURT SHALL DO ALL OF THE FOLLOWING:

8 (A) ADVISE THE DEFENDANT IN OPEN COURT OF HIS OR HER CONSTI-  
9 TUTIONAL RIGHT TO APPEAL AS OF RIGHT FROM A CRIMINAL CONVICTION.

10 (B) ADVISE THE DEFENDANT THAT IF THE DEFENDANT'S PLEA IS  
11 ACCEPTED, THE DEFENDANT GIVES UP THE RIGHT TO AN APPEAL AS OF  
12 RIGHT, EXCEPT AS TO THE ISSUE OF DEPARTURE FROM THE SENTENCING  
13 GUIDELINES.

14 (C) ADVISE THE DEFENDANT THAT IF THE PLEA IS ACCEPTED, THEN  
15 THE DEFENDANT RETAINS THE RIGHT TO FILE AN APPLICATION FOR LEAVE  
16 TO APPEAL TO A COURT OF COMPETENT JURISDICTION.

17 (D) ASCERTAIN, BY ADDRESSING THE DEFENDANT PERSONALLY, THAT  
18 THE DEFENDANT UNDERSTANDS THE RIGHT THAT HE OR SHE IS WAIVING AND  
19 THAT THE DEFENDANT VOLUNTARILY CHOOSES TO GIVE UP THAT RIGHT AND  
20 TO ENTER A PLEA OF GUILTY OR NOLO CONTENDERE.

21 (3) IF THE COURT FINDS THAT THE DEFENDANT VOLUNTARILY WAIVES  
22 AN APPEAL AS OF RIGHT, IN ADDITION TO ANY OTHER REQUIREMENTS  
23 UNDER THE LAW, THE COURT SHALL ACCEPT THE WAIVER OF THE APPEAL AS  
24 OF RIGHT. THE WAIVER OF THE APPEAL AS OF RIGHT SHALL BE IN WRIT-  
25 ING SIGNED BY THE DEFENDANT AND FILED IN THE CASE AND MADE A PART  
26 OF THE RECORD. A VERBATIM RECORD SHALL BE MADE OF THE WAIVER  
27 PROCEEDINGS CONDUCTED PURSUANT TO THIS SECTION.

1 (4) THE WAIVER OF AN APPEAL AS OF RIGHT SHALL BE ON A FORM  
2 SUPPLIED BY THE COURT AND IN SUBSTANCE AS FOLLOWS:

3 "I \_\_\_\_\_, DEFENDANT, IN THE ABOVE CASE, HEREBY VOLUN-  
4 TARILY WAIVE AND RELINQUISH MY RIGHT TO AN APPEAL AS OF RIGHT TO  
5 MY CRIMINAL CONVICTION, EXCEPT AS TO THE ISSUE OF DEPARTURE FROM  
6 THE SENTENCING GUIDELINES. I FULLY UNDERSTAND THAT I AM NOT  
7 REQUIRED TO ENTER A PLEA OF GUILTY OR NOLO CONTENDERE, AND THAT I  
8 RETAIN ALL RIGHTS TO APPEAL MY CRIMINAL CONVICTION BY APPLICATION  
9 FOR LEAVE TO APPEAL TO A COURT OF COMPETENT JURISDICTION."

10 CHAPTER X

11 Sec. 3. (1) Subject to the limitations imposed by  
12 SECTION 35A OF CHAPTER VIII AND section 12 of this chapter, an  
13 aggrieved party shall have a right of appeal from a final judg-  
14 ment or trial order as follows:

15 (a) In a felony or misdemeanor case tried in the circuit  
16 court or recorder's court of the city of Detroit, there shall be  
17 a right of appeal to the court of appeals, within 60 days after  
18 the entry of judgment or after the entry of an order appointing  
19 appellate counsel for an indigent defendant pursuant to supreme  
20 court rule, or within 60 days after the entry of an order denying  
21 a motion for new trial where the motion is timely filed as pre-  
22 scribed in section 2(1) of this chapter.

23 (b) In a misdemeanor or ordinance violation case tried in  
24 the district court in districts other than the thirty-sixth dis-  
25 trict, there shall be a right of appeal to the circuit court in  
26 the county in which the misdemeanor or ordinance violation was  
27 committed, within 20 days after the entry of judgment, or within

1 20 days after entry of an order denying a motion for new trial  
2 where the motion is timely filed as prescribed in section 2(2) of  
3 this chapter.

4 (c) In a misdemeanor or ordinance violation case tried in  
5 the district court in the thirty-sixth district, or in a felony  
6 case over which the district court in the thirty-sixth district  
7 has jurisdiction before trial, there shall be a right of appeal  
8 to the recorder's court of the city of Detroit within 20 days  
9 after the entry of judgment, or within 20 days after entry of an  
10 order denying a motion for a new trial where the motion is timely  
11 filed as prescribed in section 2(2) of this chapter.

12 (d) In a misdemeanor or ordinance violation case tried in a  
13 municipal court, there shall be a right of appeal as provided in  
14 chapter XIV.

15 (2) An appeal from an interlocutory judgment or order in a  
16 felony, misdemeanor, or ordinance violation may be taken, in the  
17 manner provided by supreme court rule, by application for leave  
18 to appeal to the same court of which a final judgment in that  
19 case would be appealable as a matter of right under subsection  
20 (1).

21 (3) After expiration of the period prescribed in subsection  
22 (1) for timely appeal, the appellate court may grant leave to  
23 appeal from any order or judgment from which timely appeal would  
24 have been available as of right, or by leave, upon conditions  
25 prescribed by supreme court rule.

26 (4) Further appellate review of matters appealed to the  
27 circuit court under subsection (1)(b), (1)(d), or (2) may be had

1 only upon application for leave to appeal granted by the court of  
2 appeals.

3 (5) Further appellate review of matters appealed to the  
4 recorder's court under subsection (1)(c) may be had only upon  
5 application for leave to appeal granted by the court of appeals.

6 (6) Further review of any matter appealed to the court of  
7 appeals under this section may be had only upon application for  
8 leave to appeal granted by the supreme court.

9 (7) An appeal as of right and an appeal by application for  
10 leave to appeal provided for in this section shall be taken pur-  
11 suant to and within the time prescribed by supreme court rule.

12 Section 2. This amendatory act shall not take effect unless  
13 Senate Bill No. \_\_\_\_\_ or House Bill No. 6140 (request  
14 no. 05198'90 a) of the 85th Legislature is enacted into law.