



**House  
Legislative  
Analysis  
Section**

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**PROSECUTORS' APPEALS**

**House Bill 4719 (Substitute H-1)**  
**First Analysis (12-16-87)**

**RECEIVED**

**Sponsor: Rep. Frank M. Fitzgerald**  
**Committee: Judiciary**

**FEB 04 1988**

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***THE APPARENT PROBLEM:***

In People v. Cooke (419 Mich. 420, 355 N.W. 2d. 88; 1984), the Michigan Supreme Court ruled that appeals by the people are allowed only in specific instances set forth in the code of criminal procedure; while the Constitution gives a defendant in a criminal case the right of appeal, the people may appeal only to the extent provided by statute. The court's analysis of statutory changes made between the time it decided People v. Blachura (390 Mich. 326, 212 N.W.2d. 182) and related cases in the mid-seventies and the time it decided Cooke in 1984 led it to overrule those earlier decisions to the extent that they could be read as authorizing an appeal other than as provided by Section 12 of the Code of Criminal Procedure.

Prior to Cooke, the court had decided People v. Coles (417 Mich. 523, 399 N.W. 2d. 440; 1983) in which it held that appellate courts must, "upon a defendant's request, review the trial court's exercise of discretion in sentencing, but may afford relief to defendant only if appellate court finds that trial court abused its discretion to the extent that it shocks conscience of appellate court."

Prosecutors and others assert that Cooke and Coles combined put the people, whom the prosecutor represents in a criminal case, at a disadvantage. They note that Cooke placed new limits on the ability of the prosecutor to appeal, and Coles granted defendants the right to appeal sentencing decisions. Many believe that in order to make for a more impartial and even-handed administration of justice, prosecutors should be able to appeal sentencing decisions and other matters when it is believed the court has made an error. Amendments to effect this aim have been proposed to the Code of Criminal Procedure.

***THE CONTENT OF THE BILL:***

The Code of Criminal Procedure at present limits prosecutorial appeals in criminal cases to appeals from certain decisions based on the invalidity or construction of a statute, and appeals from a decision or judgment sustaining a special plea in bar, when the defendant had not been put in jeopardy, or from another order of the court concerning admission of evidence or other proceedings that occurred before a defendant was put in jeopardy.

The bill would replace these provisions with provisions allowing prosecutors to appeal judgments and orders in criminal cases as long as the constitutional protections against double jeopardy would not bar further proceedings against the defendant. A prosecutor could take an appeal of right from either of the following:

- a final judgment or final order of the circuit court or recorder's court, except a judgment or order on appeal from another court; and
- a final judgment or order of a court or tribunal from which appeal of right has been established by law.

The bill would allow a prosecutor to take an appeal by leave in a criminal case from any of the following:

- a judgment or order of the circuit or recorder's court which was not a final judgment appealable of right;
- a final judgment entered by the circuit or recorder's court on appeal from any other court;
- any other judgment or order appealable by law or rule;
- a judgment or order when an appeal of right could have been taken but was not timely filed.

MCL 770.12

***FISCAL IMPLICATIONS:***

Fiscal information is not available. (12-15-87)

***ARGUMENTS:***

***For:***

The bill basically would ensure that the people have the same right to appeal that a defendant has, within the limits of constitutional prohibitions against double jeopardy. This could be especially important with regard to sentencing decisions, such as the probation imposed for the beating death of Vincent Chin, which shock the public conscience. Because the bill would allow appeals by right of final judgments or final orders of the court, and the Coles decision said that sentences are final judgments or final orders, the bill should enable prosecutors to seek appellate review of outrageously mild sentences, as well as other judicial errors. As noted by the Citizens' Commission to Improve Michigan Courts, "the prosecutor's duty is to seek justice, not merely convictions," and "where the prosecutor believes that a trial court has committed an error of law, an appeal should be available." As the commission said, "the people's attorney should have the access to the appellate courts on approximately the same terms as a defense attorney."

***Against:***

It is wrong to assert that justice demands that the government have the same procedural considerations as defendants. The government has available to it resources and power that dwarf those of ordinary people. As a consequence, our system of justice has many features that may be unfavorable to prosecutors but help to ensure fairness; among these are the presumption of innocence and the "double jeopardy" prohibition against prosecutorial appeals of acquittals. The bill would make Michigan one of only two states that allowed unlimited sentence appeal by the prosecution. Any problem with individual judges should be resolved through avenues other than granting prosecutors broad statutory appeal powers. The bill not only would give prosecutors undue advantages, but could carry enormous costs in the form of increased court and attorney expenses, more clogged appellate dockets, and worsened prison overcrowding. The bill would not decrease crime, but rather increase the opportunity for expensive punishment.

H.B. 4719 (12-16-87)

***POSITIONS:***

The Prosecuting Attorneys Association of Michigan supports the bill. (12-15-87)

A representative of the Greater Detroit Chamber of Commerce testified in support of the bill. (11-17-87)

The Michigan Council on Crime and Delinquency opposes the bill. (12-15-87)

The State Appellate Defender's Office opposes the bill. (12-16-87)