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THE 'AARON' RULE: DELAYED RIGHT TO APPEAL

House Bill 4802
Sponsor: Rep. Ed Vaughn
Committee: Judiciary

Complete to 10-27-97

A SUMMARY OF HOUSE BILL 4802 AS INTRODUCED 5-20-97

The bill would amend the Code of Criminal Procedure to extend to a person convicted of first degree murder before the Michigan Supreme Court's decision in *People v Aaron* [409 Mich 672; 299 NW2d 304 (1980)] a delayed right of appeal under certain circumstances, and to require resentencing of that individual under current sentencing laws, court rules, and case law.

The 1975 edition of the Michigan Standard of Criminal Jury Instructions reportedly included two different felony murder instructions for judges to choose from: (1) that a death in the perpetration of a felony was, by fact, a first degree murder, or (2) that each individual defendant must have done a wrongful act equivalent to murder before being convicted of felony murder. In 1980, the state supreme court (in its *Aaron* decision) threw out the first instruction, but applied the decision prospectively. Thus most prior felony murder convictions under the first instruction were left standing. The bill would allow individuals sentenced for felony murder under the first set of instructions to appeal if they met certain conditions, and would require resentencing.

More specifically, the bill would allow an individual convicted of first degree murder the right to appeal that conviction to the court of appeals, regardless of any other appeal, if he or she met three conditions:

** The individual had been convicted before November 25, 1980, of murder committed in the perpetration of (or attempt to perpetrate) arson, rape, first- or third-degree criminal sexual conduct, robbery, burglary, breaking and entering of a dwelling, larceny, extortion, or kidnaping;

** The individual's intention to kill, intention to do great bodily harm, or wanton and willful disregard of the likelihood that the natural tendency of his or her behavior was to cause death or great bodily harm was not submitted to the jury or considered by the judge sitting as trier of fact; and

** If the individual was convicted of murder as described above by aiding and abetting, his or her knowledge of the principal's intention to kill, intention to do great bodily harm, or wanton and willful disregard of the likelihood that the natural tendency of the principal's behavior was to cause death or great bodily harm was not submitted to the jury or considered by the judge sitting as trier of fact.

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If the court of appeals determined that an individual met all of the above conditions, it would be required to vacate his or her first degree murder conviction and remand the case to the trial court. The court of appeals would have to determine an appeal under the bill within 270 days after the appeal was filed.

The trial court would be required (a) to enter a conviction of second degree murder or of a lesser included offense (based on the transcript and other evidence in the record), (b) conduct a sentencing hearing, and (c) sentence the individual on that conviction. The sentencing would have to comply with all current sentencing statutes, court rules, and case law, and someone sentenced under the bill would receive credit for time served on the vacated first degree murder conviction.

MCL 770.13

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.