



Ohio Legislative Service Commission

Bill Analysis

Andrea Holmes

H.B. 477

129th General Assembly
(As Introduced)

Reps. Slaby and Bubp, Terhar, Huffman, O'Brien

BILL SUMMARY

- Expands the list of municipal legal officers who may appeal as a matter of right any decision of a trial court in a criminal case, or any decision of a juvenile court in a delinquency case, which decision grants a motion to dismiss all or any part of an indictment, complaint, or information, a motion to suppress evidence, or a motion for the return of seized property or grants post conviction relief to include a chief legal officer of a municipal corporation that is similar to a village solicitor or city director of law.
- Specifies that the prosecuting attorney, village solicitor, city director of law, or similar chief legal officer of a municipal corporation or the Attorney General has the right to appeal any of the decisions listed in the preceding dot point immediately, and may appeal a motion to dismiss regardless of whether the motion to dismiss is with or without prejudice.
- Specifies that a prosecuting attorney, village solicitor, city director of law, or similar chief legal officer of a municipal corporation or the Attorney General may immediately appeal as a matter of right any other final appealable decision, order, or judgment of the trial court in a criminal case or of the juvenile court in a delinquency case.
- Specifies that no appeal of right lies if the double jeopardy clause of the Ohio Constitution or the United States Constitution prohibits further prosecution, provided that an appeal of right otherwise barred by double jeopardy may proceed if it addresses one or more issues that are capable of repetition but that otherwise would evade appellate review.
- Permits a prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a municipal corporation, or the Attorney General, to seek leave to

appeal from the court of appeals if the time for pursuing an appeal of right has expired.

- Permits a prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a municipal corporation, or the Attorney General, to cross-appeal as a matter of right if the defendant in a case is granted leave to pursue a delayed appeal.
- Requires the court to appoint the county public defender, joint county public defender, or other counsel to represent any person who is indigent, is not represented by counsel, and does not waive the person's right to counsel in any action brought pursuant to an appeal brought under any of the circumstances listed in the two preceding dot points.

CONTENT AND OPERATION

Appeal of motion to dismiss, motion to suppress evidence, motion for the return of seized property, or grant of post conviction relief

Under existing law, a prosecuting attorney, village solicitor, city director of law, or the Attorney General may appeal as a matter of right any decision of a trial court in a criminal case, or any decision of a juvenile court in a delinquency case, which decision grants a motion to dismiss all or any part of an indictment, complaint, or information, a motion to suppress evidence, or a motion for the return of seized property or grants post conviction relief.¹

The bill expands the list of individuals who may appeal as a matter of right any of the decisions listed in the preceding paragraph to include a chief legal officer of a municipal corporation that is similar to a village solicitor or city director of law. Additionally, the bill specifies that the prosecuting attorney, village solicitor, city director of law, or similar chief legal officer of a municipal corporation or the Attorney General has the right to appeal those decisions immediately and may appeal a motion to dismiss regardless of whether the motion to dismiss is with or without prejudice.²

Appeal of final appealable decision

Under existing law, a prosecuting attorney, village solicitor, city director of law, or the Attorney General may appeal *by leave of the court* to which the appeal is taken any other decision besides those described above under "**Appeal of motion to dismiss, motion to suppress evidence, motion for the return of seized property, or grant of**

¹ R.C. 2945.67(A).

² *Id.*

post conviction relief," *except the final verdict*, of the trial court in a criminal case or of the juvenile court in a delinquency case. The bill specifies that a prosecuting attorney, village solicitor, city director of law, or similar chief legal officer of a municipal corporation or the Attorney General may appeal *as a matter of right* any other *final appealable decision, order, or judgment* of the trial court in a criminal case or of the juvenile court in a delinquency case.³

Additionally, the bill specifies that no appeal of right may lie if the double jeopardy clause of the Ohio Constitution or the United States Constitution prohibits further prosecution, provided that an appeal of right otherwise barred by double jeopardy may proceed if it addresses one or more issues that are capable of repetition but that otherwise would evade appellate review.⁴

Expiration of time for pursuing an appeal of right

Under the bill, if the time for pursuing an appeal of right has expired, a prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a municipal corporation, or the Attorney General, may seek leave to appeal from the court of appeals. Such an appeal must be instituted by filing a notice of appeal in the trial court and by concurrently filing a motion for leave to appeal in the court of appeals. The motion must set forth the reasons for the failure of the appellant to perfect an appeal of right.⁵

If a defendant in a case is granted leave to pursue a delayed appeal pursuant to Appellate Rule 5, a prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a municipal corporation, or the Attorney General, may cross-appeal as a matter of right from the decision, order, or judgment from which the defendant is appealing. The cross-appeal must be filed within 30 days of the decision, order, or judgment granting the defendant leave to appeal.⁶ Appellate Rule 5 allows a defendant to take an appeal by leave of the court to which the appeal is taken in criminal proceedings, delinquency proceedings, and serious youthful offender proceedings.

Indigent persons

The bill requires the court to appoint the county public defender, joint county public defender, or other counsel to represent any person who is indigent, is not

³ *Id.*

⁴ *Id.*

⁵ R.C. 2945.67(B).

⁶ *Id.*

represented by counsel, and does not waive the person's right to counsel in any action brought pursuant to an appeal brought under any of the circumstances listed above under "**Expiration of time for pursuing an appeal of right.**"⁷

HISTORY

ACTION	DATE
Introduced	03-13-12

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⁷ R.C. 2945.67(C).

