



Ohio Legislative Service Commission

Bill Analysis

Dennis M. Papp

Sub. H.B. 265

129th General Assembly
(As Passed by the House)

Reps. Slaby and O'Brien, Grossman, Huffman, Blessing, Blair, Stebelton, Amstutz, Uecker

BILL SUMMARY

- Authorizes prosecuting authorities to demand a jury trial in a felony case, notwithstanding a defendant's waiver of trial by jury and over a defendant's objection.

CONTENT AND OPERATION

Demand for jury trial by prosecuting attorney, village solicitor, city director of law, or similar chief legal officer

The bill permits the prosecuting attorney, a village solicitor, a city director of law, or a similar chief legal officer for a municipal corporation responsible for prosecuting a felony case before a municipal court, county court, or any other court of record to demand a jury trial in any felony case in which a defendant may demand a jury trial. The prosecuting attorney, village solicitor, city director of law, or similar chief legal officer may demand a jury trial in a felony case notwithstanding a defendant's failure to demand a jury trial in the case and over the objection of the defendant.¹

Existing law does not permit a prosecuting attorney, village solicitor, city director of law, or similar chief legal officer for a municipal corporation responsible for prosecuting a criminal case before a municipal court, county court, or any other court of record to demand a jury trial in the circumstance described above or in any other circumstance.

¹ R.C. 1901.24(C), 1907.29(C), and 2938.04(B).

Demand for jury trial by prosecuting attorney in juvenile court

The bill permits the prosecuting attorney in any felony case in which an adult has been charged with a felony in juvenile court to demand a trial by jury notwithstanding a defendant's failure to demand a trial by jury and over the objection of the defendant.² Existing law does not permit a prosecuting attorney to demand a trial by jury in juvenile court in this circumstance or in any other circumstance.

Waiver of trial by jury

Under existing law, a defendant in any criminal case pending in a court of record in this state may waive a trial by jury, in the manner provided in the Criminal Rules (see "**Background**," below), and be tried by the court without a jury. The bill repeals the language that specifies that a defendant who waives a jury trial is to be tried by the court without a jury and permits the prosecuting attorney, city director of law, village solicitor, or similar chief legal officer responsible for prosecuting a felony case to demand a trial by jury in any felony case pending in any such court in which a defendant may demand a trial by jury, notwithstanding the defendant's waiver of a trial by jury and over the objection of the defendant.³

Under existing law, in any case in which a defendant waives the right to trial by jury and elects to be tried by the court as described in the preceding paragraph, any judge of the court in which the case is pending must proceed to hear, try, and determine the cause in accordance with the rules and in like manner as if the case were being tried before a jury. Special rules apply in a capital case. The bill modifies this provision to specify that, if a defendant waives the right to trial by jury and elects to be tried by the court as described in the preceding paragraph, a judge of the court in which the cause is pending is to hear, try, and determine the cause only if the prosecuting attorney, city director of law, village solicitor, or similar chief legal officer responsible for prosecuting the case has not demanded a trial by jury in that case.⁴

Finally, existing law permits a defendant to withdraw a claim for a jury trial. The bill specifies that a demand for a jury trial by a prosecuting attorney, city director of law, village solicitor, or similar chief legal officer in a felony case is not affected by a defendant's withdrawal of a claim for a jury trial. If a defendant withdraws a claim for a jury trial and a jury has been summoned pursuant to the defendant's claim, the court

² R.C. 2152.67.

³ R.C. 2945.05(B).

⁴ R.C. 2945.06.

may require the defendant to pay all costs of mileage and fees of members of the venire for one day's service, notwithstanding the outcome of the case.⁵

Background – Criminal Rules

Criminal Rule 23(A) provides that, in "serious offense" cases (felonies, and misdemeanors for which the possible penalty includes confinement for more than six months), the defendant before commencement of the trial may knowingly, intelligently, and voluntarily waive in writing his or her right to trial by jury. The defendant also may make such a waiver during trial with the approval of the court and the consent of the prosecuting attorney. In "petty offense" cases (misdemeanors other than serious offenses), where there is a right of jury trial, the defendant is tried by the court unless he or she demands a jury trial. Such a demand must be in writing and filed with the clerk of court not less than ten days prior to the date set for trial, or on or before the third day following receipt of notice of the date set for trial, whichever is later. Failure to demand a jury trial as described in this paragraph is a complete waiver of the right to a jury trial. Criminal Rule 23(C) provides that, in a case tried without a jury, the court is to make a general finding.

HISTORY

ACTION	DATE
Introduced	06-14-11
Reported, H. Criminal Justice	01-25-12
Passed House (50-42)	03-28-12

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⁵ R.C. 2938.05.

