

Department of Legislative Services
 Maryland General Assembly
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FISCAL AND POLICY NOTE
 Revised

House Bill 178
 Judiciary

(Delegate Alston, *et al.*)

Judicial Proceedings

Criminal Procedure - Right of Appeal from Final Judgments - Conditional Guilty Plea

This bill authorizes a criminal defendant to appeal a final judgment entered following a “conditional plea of guilty” in circuit court in accordance with the Maryland Rules. A “conditional plea of guilty” is a guilty plea with which the defendant preserves in writing any pretrial issues that the defendant intends to appeal.

Fiscal Summary

State Effect: Potential minimal decrease in transcript expenditures for the Office of the Public Defender (OPD) as a result of the limited scope of appeals from conditional guilty pleas. Though the bill is not anticipated to affect the caseload of the Judiciary, any change in caseload as a result of the bill can be handled with existing resources.

Local Effect: Potential minimal decrease in circuit court expenditures if defendants who would otherwise plead not guilty opt for conditional guilty pleas.

Small Business Effect: None.

Analysis

Current Law: The Maryland Rules require a criminal defendant to plead not guilty, guilty, or, with permission of the court, *nolo contendere*. A defendant may also enter a plea of not criminally responsible by reason of insanity. The court may not accept a plea of guilty until the court conducts an examination of the defendant on the record in open court and determines and announces on the record that (1) the defendant is pleading voluntarily and understands the nature of the charge and the consequences of the plea; and (2) there is a factual basis for the plea. The court may accept the plea of guilty even

though the defendant does not admit guilt. If the court refuses to accept the guilty plea, the court must enter a plea of not guilty.

The Maryland Rules also authorize a defendant and a State's Attorney to submit to a judge for consideration a plea agreement proposing a particular sentence, disposition, or other judicial action. Defense counsel and the State's Attorney must advise the judge of the terms of the agreement when the defendant enters his/her plea. The judge may accept or reject the plea, and if the plea is accepted, may approve the agreement or defer a decision on approval or rejection of the agreement until after presentence proceedings and further investigation. The plea agreement is not binding on the court until the judge to whom the agreement was presented approves it. If the judge approves the agreement, the judge must embody the agreed terms in the judgment or, with the consent of the parties, enter a disposition more favorable to the defendant than that provided for in the agreement.

A criminal defendant generally has the right to an appeal of a final judgment entered in a criminal case, even if imposition or execution of the sentence has been suspended. However, several exceptions to this general rule exist. One exception is that a criminal defendant who pleads guilty in circuit court does not have the right to a direct appeal following final judgment. Instead, the appeal is discretionary and the defendant has to file an application for leave to appeal with the Court of Special Appeals. In general, this application must be filed within 30 days after entry of the judgment or order being appealed.

An *Alford* plea is a specialized type of guilty plea in which a defendant does not admit to guilt, but acknowledges that sufficient evidence exists for the prosecution to convince a judge or jury beyond a reasonable doubt that the defendant committed the crime. Defendants typically enter *Alford* pleas to avoid the threat of greater punishment. For purposes of the right to appeal from a final judgment, an *Alford* plea is treated as the functional equivalent of a guilty plea. Therefore, a criminal defendant who enters an *Alford* plea in circuit court does not have the right to a direct appeal and must file an application for leave to appeal with the Court of Special Appeals. *Ward v. State*, 83 Md. App. 474, 575 A.2d 771 (1990)

Background: Under the Federal Rules of Criminal Procedure, a defendant may enter a conditional plea of guilty or *nolo contendere* with the consent of the court and the government. The conditional plea reserves (in writing) the right of the defendant to have an appellate court review an adverse determination of a specified pretrial motion. If the defendant prevails in the appellate court, the defendant may then withdraw the plea. Some courts have imposed an additional requirement that conditional guilty pleas be limited to issues dispositive to the case. In other instances, federal appellate courts have refused to honor conditional guilty plea agreements unless all of the issues preserved for

appeal in the agreement are dispositive to the case. *See United States v. Bundy*, 392 F.3d. 641 (4th Cir. 2004); *United States v. Yasak*, 884 F.2d 996, 999 (7th Cir. 1989); *United States v. Wong Ching Hing*, 867 F.2d 754, 758 (2d Cir. 1989).

State Expenditures: Appeals from conditional guilty pleas are limited to issues outlined in the plea agreement, whereas appeals from other types of pleas can be based on a multitude of issues. As a result, general fund expenditures for OPD transcripts may decrease minimally, since OPD would not have to order extensive transcripts for an appeal that is limited to a few previously determined issues.

Criminal defendants who plead guilty currently have to obtain permission to appeal to the Court of Special Appeals through an application for leave to appeal. The court reviews the application and determines whether to grant or deny the application. The bill's only change to the appellate process is to allow a defendant who makes a conditional guilty plea to appeal to the Court of Special Appeals without obtaining permission first. Therefore, the bill eliminates one step in the appellate process for a limited group of defendants without altering the pool of defendants eligible for appeal.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Public Defender, State's Attorneys' Association, American Bar Association, National Association of Federal Defenders, Department of Legislative Services

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