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BILL ANALYSIS

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House Bill 4310 (Substitute H-2 as reported without amendment)

Sponsor: Representative Nelson W. Saunders

House Committee: Judiciary

Senate Committee: Judiciary

Date Completed: 10-2-89

RATIONALE

Reportedly, organized crime rings often operate in more than one county. Criminal activities such as drug trafficking and auto theft/chop shop operations, for instance, may involve several elements at different locations. One useful investigative tool available to State and local law enforcement efforts, however, can be used only within a single county. Under Michigan law, a grand jury can consist of either a single judge or a panel of citizens, but in either case, the grand jury's jurisdiction is limited to the county in which it was formed. Although the subpoenas of a citizens grand jury have a statewide reach, its investigations must be confined to criminal activity within its jurisdiction. Since some types of criminal activity tend to cross county boundaries, several states have given multiple-county jurisdiction to some grand juries. In order to battle criminal activity more effectively, some feel that the law should specifically provide for the formation of grand juries with jurisdiction over more than one county.

CONTENT

The bill would amend the Code of Criminal Procedure to allow for the convening of a grand jury with jurisdiction over multiple counties. The bill would do all of the following:

- Allow either the Attorney General or a group of county prosecuting attorneys to petition the Court of

Appeals to convene a grand jury that would have jurisdiction over two or more counties.

- Specify the Court of Appeals' duties and responsibilities if it convened a multi-county grand jury.
- Allow for the expansion of a multi-county grand jury's jurisdiction to include additional counties.
- Provide for indictments by a multi-county grand jury.
- Make other provisions pertaining to a witness' right to legal counsel and the costs associated with convening a grand jury.

Multi-County Grand Jury: Petitioning and Convening

A petition to the Court of Appeals to convene a multi-county grand jury would have to include all of the following:

- The name and title of each petitioner.
- The name of each county over which the grand jury would have jurisdiction.
- A statement that set forth probable cause to believe that a crime or portion of a crime had been committed in two or more counties named in the petition.
- A statement that specified the reasons to convene a grand jury with multiple-county jurisdiction.
- The signature of the petitioner and the date of the petition.

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The Court of Appeals, acting in a three-judge panel, could convene a multi-county grand jury if a petition were filed properly and the petition established both that a crime or a portion of a crime had been committed in two or more of the named counties and that there was reason to believe that a multi-county grand jury could address the criminal activity more effectively than could a single-county grand jury.

Court of Appeals: Duties and Responsibilities

If the Court convened a multi-county grand jury, it would have to do all of the following:

- Designate a judge of the Circuit Court or Recorder's Court to preside.
- If the petition were filed by a group of county prosecutors, designate one of them to assist the grand jury.
- Designate the counties from which the jurors would have to be drawn, from among the counties over which the grand jury would have jurisdiction.
- Specify the number of jurors to be drawn and the number from each county.
- Designate the locations of the grand jury's proceedings.

The term of a grand jury could not exceed six months, unless the Court of Appeals ordered the term extended for an additional period for good cause shown. The additional period could not exceed six months. The grand jury's presiding judge would have to dismiss the jurors upon completion of the grand jury's functions regardless of whether the maximum term was completed. The jurors could be recalled by the presiding judge or the judge's successor at any time, however, in order to conclude business commenced during the grand jury's term of service.

Expanded Jurisdiction

If a multi-county grand jury were convened pursuant to the Attorney General's petition, and the Attorney General wished to expand the jury's jurisdiction, he or she would have file with the Court of Appeals a new petition that included the additional county or counties. Likewise, if a multi-county grand jury were convened pursuant to a petition filed by a group of county prosecutors, a new petition would have to be filed with the Court of

Appeals by the prosecuting attorneys of all the counties over which the grand jury would have jurisdiction. If a petition for expanded jurisdiction were granted, the Court of Appeals would have to convene a new grand jury and dismiss the existing one.

Indictments

The bill would allow a multi-county grand jury to indict a person for an offense committed in any county over which it had jurisdiction. The grand jury would have to specify in the indictment the county or counties in which the offense occurred. The foreperson of the grand jury would have to present the indictment to the court in the grand jury's presence. If a grand jury indicted a person, the presiding judge would have to return the indictment to a court that had proper jurisdiction over the offense; the indictment would have to remain with that court after it was certified and filed.

Other Provisions

Right of Witnesses to Legal Counsel. Currently, the Code specifies that a witness granted immunity "has the right to have counsel present at his side at all times at which he is being questioned concerning matters included within the order granting immunity". The bill would delete that provision and specifies that all witnesses called before a grand jury would be entitled to legal counsel. The witness and his or her counsel could discuss "any matter relating to the witness's part in the inquiry without being subject to citation for contempt". The bill further specifies that a witness would have the right to have legal counsel present in the room in which the inquiry was held and that all communications between the witness and his or her legal counsel would be subject to the Code's secrecy provision regarding the proceedings of a grand jury (MCL 767.19f). (That provision generally prohibits a person from publishing or divulging any testimony or exhibits obtained or used in connection with a grand jury inquiry.)

Costs. The bill specifies that, except as otherwise provided by law, the costs of a multi-county grand jury convened in response to a petition filed by the Attorney General would have to be borne by the State and paid from the State's General Fund. The costs of a

multi-county grand jury convened in response to a petition filed by a group of county prosecutors would have to be borne equally by each county over which the grand jury had jurisdiction.

MCL 767.9 et al.

FISCAL IMPACT

The bill would have an indeterminate impact on State and local units of government. Costs to the State would depend on the number of multi-county grand juries sought by the Attorney General. Possible administrative savings could occur at the county level due to the cost-sharing provision of the bill.

ARGUMENTS

Supporting Argument

Currently, a criminal investigation can be hindered by a grand jury's inability to follow when the investigation leads to criminal activity in another county. This problem has become more apparent in Michigan as the use of multi-county law enforcement task forces increases throughout the State. (Currently, there are 23 such regional forces in Michigan.) The Lansing area's Tri-County Metro Narcotics Squad, for instance, is involved in undercover drug crime operations in Ingham, Clinton, and Eaton Counties, yet a grand jury formed in any of those counties would have jurisdiction over only a limited number of the Squad's investigations. Also, it has been reported that a one-judge grand jury in Ingham County uncovered leads to solving crimes in other counties, but was unable to pursue those investigations because of the single-county limitation and the Code's secrecy provision with respect to grand juries' activities. Although another grand jury could be formed in another county, the secrecy provision precludes one grand jury from sharing information with another. By providing for multi-county grand juries, the bill would allow an effective investigatory tool to be used in pursuing criminal activity that crosses county lines. The bill thus would be particularly useful in combating such crimes as drug trafficking and car theft.

Supporting Argument

Forming one multi-county grand jury would be more economical than convening separate

grand juries in several counties. Cost-sharing and resource-sharing among the counties would contribute to making multi-county grand juries more cost-effective and less cumbersome and time consuming.

Response: The bill does not go far enough in this direction. In a single county, there is the option of convening a one-person grand jury, which, of course, is less expensive and cumbersome than a citizens grand jury. A one-person grand jury, as well as a citizens grand jury, should be permitted to have multiple-county jurisdiction.

Opposing Argument

Under the bill, counties participating in a multi-county grand jury would have to share equally the costs of that jury. This could impose a financial burden upon smaller counties that joined with larger counties, or low-crime counties that joined with high-crime counties in convening a grand jury. Some sort of pro-rated contribution to costs might be more equitable.

Response: It is difficult to predict exactly what circumstances might surround a multi-county grand jury. There could be a small county in which the bulk of the criminal activity occurred. In addition, nothing in the bill would require a county to join in a petition for a multi-county grand jury. A county would be responsible for an equal share of the costs only if its prosecutor had sought participation in the grand jury. The State would have to pay for multi-county grand juries formed upon the request of the Attorney General, so if cost-sharing would be burdensome, a county could seek to have the Attorney General petition the Court of Appeals to convene a multi-county grand jury.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.