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## LAB TECHNICIAN TESTIMONY

House Bills 4225 and 4226 with committee  
amendments  
First Analysis (2-24-93)

Sponsor: Rep. Michael Goschka  
Committee: Judiciary

### ***THE APPARENT PROBLEM:***

State police forensic technicians, employed in seven laboratories across the state, reportedly perform all the forensic science work for all police departments in the state except for the Detroit Police Department. Much of their work is in drug analysis, but they also analyze paint, ink, fingerprints, blood samples, fibers, and other substances. In addition to their laboratory work, technicians are often called upon to testify about their results. Although the law allows a technician's written report to be received in evidence at a preliminary examination, the defense may demand that the person appear and testify in person. This requirement evidently has severely strained dwindling personnel and budget resources: according to the state police, it is not unusual for a technician to be called to six or eight preliminary examinations on the same day, and two dozen on the same day is not unheard of. Many doubt the necessity of in-person testimony on lab results at the preliminary examination, which is a hearing on probable cause, and not a trial. To relieve state police crime labs of this burden, it has been proposed that state police forensic technicians be allowed to testify by electronic means.

### ***THE CONTENT OF THE BILLS:***

House Bill 4226 would amend the Revised Judicature Act (MCL 600.2167) to allow a state police forensic technician's testimony at a preliminary examination to be provided by video or voice communication equipment that permitted the technician, the court, all parties, and counsel to hear and speak to each other in the court, chambers, or other suitable place. A record of the testimony would be taken in the same manner as for other testimony at the preliminary examination. If suitable equipment was not available, the technician would have to testify in person (providing that the defense had requested testimony).

House Bill 4225 would amend the Code of Criminal Procedure (MCL 766.4) to exempt video or telephone testimony under House Bill 4226 from a requirement for preliminary examination witnesses to be examined in the presence of the accused.

The bills would take effect October 1, 1993. Neither bill could take effect unless both were enacted.

### ***FISCAL IMPLICATIONS:***

Fiscal information is not available. However, with regard to substantially similar bills considered in the 1991-92 legislative session, the Senate Fiscal Agency said that the legislation would have an indeterminate fiscal impact on state government, and that there would be no fiscal impact at the local level. At that time, state police expenditures for all court appearances (including both preliminary examination and trial appearances) by forensic technicians were reported to be about \$115,000 to \$200,000 annually. (2-19-92)

### ***ARGUMENTS:***

#### ***For:***

The bills would allow for more efficient use of state police lab technicians' time, without harming the defense. At present, a technician sometimes spends all day in court, often waiting through recesses for his or her turn to testify. With the bills, testimony could be given electronically, reducing travel costs and wasted time, while still giving the defense the opportunity to question results and probe the facts. The bills could enable the Department of State Police to save tens of thousands of dollars per year in travel costs alone; additional economies would be gained through the efficiency of granting lab technicians more time to do laboratory work.

House Bills 4225 and 4226 (2-24-93)

***Response:***

State police lab technicians are not the only professionals upon whom the burdens of testifying fall disproportionately. A similar case can be made for excusing medical examiners from having to provide testimony in-person, and the legislation should be extended to apply to them.

***Against:***

The bills would erode the right to confront witnesses. A telephone conversation simply is not the same as a face-to-face confrontation, but the bills carry an underlying assumption that it is. Without in-person testimony, important nuances of meaning or clues to the truth could be lost, and matters that should be dismissed could end up going to trial, with accompanying cost. This would be particularly true when a sketchy written report was offered for complicated forensic work such as that involving blood sample analysis or arson investigation, or even handwriting analysis, which is more of an art than a science. Further, the bills raise a troubling issue of whether witnesses should be excused from testifying because of mere inconvenience; taken to their logical conclusion, the bills would open the way for all testimony to be provided over the telephone. If testimony is needed, it should be provided in person.

***Response:***

It should be remembered that the bills would affect only preliminary examinations, not trials. A preliminary examination is simply to determine whether there is probable cause to believe that a crime was committed, and that the defendant was the person who committed it; if the answer to both questions is yes, then the defendant goes to trial. All the protections and rights that are given to a defendant at trial would be unaffected. Moreover, a technician's contribution at a preliminary examination generally is a routine thing, easily accommodated by submitting a written report, and certainly fulfilled by allowing questioning by electronic means. When a technician is called to testify at a preliminary examination, it may be simply a delaying tactic by the defense.

***POSITIONS:***

The Department of State Police supports the bills.  
(2-23-93)

The Fraternal Order of Police supports the bills.  
(2-23-93)

The Prosecuting Attorneys Association of Michigan supports the bills. (2-24-93)

The Michigan District Judges Association has taken the position that the laboratory report should be sufficient at a preliminary examination, which is a probable cause hearing, but if the legislature sees fit to require testimony, then testifying by video or voice communication equipment should be allowed.  
(2-23-93)