

Legislative Analysis



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Senate Bill 681 (Substitute H-1)
Sponsor: Sen. Deborah Cherry
House Committee: Criminal Justice
Senate Committee: Judiciary

First Analysis (2-19-04)

BRIEF SUMMARY: The bill would allow the testimony of a witness in a preliminary examination to be conducted by telephone, voice, or video conferencing.

FISCAL IMPACT: The bill would have no fiscal impact on the state and an indeterminate impact on local government.

THE APPARENT PROBLEM:

The purpose of a preliminary examination in a criminal case is to determine whether evidence is sufficient to establish that a felony-level crime has been committed and whether there is sufficient evidence to establish probable cause that a particular individual committed that crime. Currently, witnesses must appear at the preliminary examination. Reportedly, however, the majority of preliminary examinations do not take place as scheduled, but are rescheduled for a variety of reasons, such as needing to wait for lab reports and attorney conflicts. The result is that witnesses may spend a considerable amount of time traveling to and waiting at courthouses only to have to come back another day after the proceeding is cancelled. Apparently, it is not uncommon for a preliminary examination to be rescheduled multiple times over a period of several months. Each time the examination is scheduled, however, the witnesses must appear at the courthouse and be prepared to offer their testimony.

In 1994, state police forensic technicians were allowed to provide their testimony at preliminary examination via telephone or video conferencing. Some believe that the law should be changed so that expert witnesses could also conduct their testimony in this manner, and that other witnesses, including police officers, could do so upon a showing of good cause. Proponents of the measure argue that the change in the law would reduce the number of hours that law enforcement officers are taken away from their public safety duties and crime investigation, and that it would reduce hardship for those witnesses who because of distance, work responsibilities, age, or health have a difficult time making repeated trips.

THE CONTENT OF THE BILL:

The bill would add a new section to the Code of Criminal Procedure to allow a magistrate, on motion of either party, to permit an expert witness or, upon a showing of

good cause, any witness to be conducted by means of telephonic, voice, or video conferencing.

(The code defines “magistrate” as a judge of the district court or a judge of a municipal court, but does not include a district court magistrate, although a district court magistrate may exercise the powers, jurisdiction, and duties of a magistrate if specifically provided by law. The code states that this definition does not limit the power of a Supreme Court justice, a circuit judge, or a judge of a court of record having jurisdiction of criminal cases, or deprive him or her of the power to exercise the authority of a magistrate.)

MCL 766.11a

HOUSE COMMITTEE ACTION:

The committee substitute amended the bill to allow, upon a showing of good cause, any witness’s testimony to be conducted by telephone, voice, or video conferencing.

FISCAL INFORMATION:

The bill would have no fiscal impact on the state and an indeterminate impact on local government. To the extent that the bill would create court efficiencies, the bill could create savings for local units of government.

ARGUMENTS:

For:

Public Act 288 of 1993 allowed state police forensic technician’s testimony at a preliminary examination to be provided by video or voice communication equipment that permits the technician, the court, all parties, and counsel to hear and speak to each other in the court, chambers, or other suitable place. Senate Bill 681 would expand this practice to include expert witnesses. Reportedly, approximately 90 percent of preliminary examinations do not take place at the scheduled time. Delays in gathering witnesses, conducting forensic tests on evidence, and attorney conflicts result in the majority of examinations having to be rescheduled. This can be especially problematic for expert witnesses, who often have to travel significant distances. Allowing their testimony to be conducted via telephone or video conferencing, like the state police forensic technicians, will lessen unnecessary trips by expert witnesses and may therefore mitigate costs for the defense and prosecution who typically have to pay the expenses for expert witnesses.

Upon showing of good cause, a court could also allow testimony to be given by other witnesses such as law enforcement officers and eyewitnesses. According to testimony by a representative of the Michigan Chiefs of Police, many hours that could be spent by officers on patrol or investigating crimes are instead spent waiting around courtrooms only to have a preliminary examination be adjourned and rescheduled. In light of budget cuts which have reduced many law enforcement staffs, there simply isn’t the money to

pay for overtime hours for officers to cover those who are tied up unnecessarily waiting for hearings that never occur. An officer would still have to come off the road to a place where the video conferencing or telephone system was set up, but it is expected to shorten the time that the officer would be pulled away from his or her public safety duties and to lessen travel expenses for officers who would have to travel out of town.

As for other witnesses, a preliminary examination being cancelled and rescheduled repeatedly can pose a hardship for the elderly, those who must travel long distances, and those who have difficulty taking repeated days off work. Anecdotal stories told in testimony before the House Criminal Justice Committee related frustration on the part of one witness who had to come back seven times before the preliminary examination was finally conducted, and of a case in which the preliminary examination was rescheduled so many times that the witness finished college, moved out of state, and then had to return to Michigan on three different occasions. Such experiences can negatively impact witnesses so that they may be hesitant to come forward again should they witness another crime.

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 bill carries 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. Further, the bill raises a troubling issue of whether witnesses should be excused from testifying because of mere inconvenience; taken to its logical conclusion, the bill could open the way for all testimony to be provided over the telephone or by other electronic means. If testimony is needed, it should be provided in person.

Response:

It should be remembered that the bill 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. In some cases, when witnesses are called to testify at a preliminary examination (such as out-of-state witnesses), it may be simply a delaying tactic by the defense. The bill may reduce the ability to use such a tactic but would still preserve the ability of the defense to cross-examine a witness.

POSITIONS:

The Prosecuting Attorneys Association supports the bill. (2-18-04)

A representative of the Michigan Association Chiefs of Police testified in support of the bill. (2-18-04)

A representative of the Michigan District Judges Association indicated support for the bill. (2-18-04)

A representative of the Department of State Police indicated support for the bill. (2-18-04)

A representative of the Michigan Sheriffs Association indicated support for the bill. (2-18-04)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.