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BILL ANALYSIS

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Senate Bill 681 (as enrolled)
Sponsor: Senator Deborah Cherry
Senate Committee: Judiciary
House Committee: Criminal Justice

PUBLIC ACT 20 of 2004

Date Completed: 1-4-05

RATIONALE

The purpose of a preliminary examination in a criminal case is to determine whether sufficient evidence exists to establish that a felony has been committed and whether there is probable cause to believe that the person charged with the crime committed it. Preliminary examinations often are delayed or postponed, and sometimes are eventually waived by the defendant after rescheduling. With a limited exception enacted in 1993 (described below), witnesses generally have been required to appear in person at preliminary examinations, and the delays may impose significant demands on their time and require unnecessary travel. This is particularly true for expert witnesses, such as forensic science technicians, but also applies to other witnesses, including police officers and crime victims. It was suggested that expert witnesses in preliminary examinations be allowed to testify by video or voice conferencing and that, upon a showing of good cause, any witness be allowed to testify in that manner.

CONTENT

The bill amended the Code of Criminal Procedure to allow a magistrate, on motion of either party, to permit the testimony of an expert witness or, upon a showing of good cause, any witness, in a preliminary examination to be conducted by means of telephonic, voice, or video conferencing.

(Under the Code, "magistrate" means 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

BACKGROUND

Public Act 288 of 1993 amended the Revised Judicature Act (RJA) to allow preliminary examination testimony by a State Police forensic science technician, a forensic pathologist, or a medical examiner by video or voice technology under some circumstances.

Under the RJA, in a preliminary examination or grand jury proceeding, a report of a State Police forensic science technician's findings, signed by the technician, or a notarized copy of the report, may be received in evidence in place of the technician's appearance and testimony. Before a preliminary examination at which a technician's report will be introduced in evidence, two copies of the report must be furnished to the prosecuting attorney, who must immediately give one copy to the defense. The prosecuting attorney also must notify the court that he or she has copies of the report. If the prosecuting attorney fails to notify the court within five days of the scheduled preliminary examination, the court must adjourn the proceeding.

An accused person, or his or her attorney, may request that the technician testify at

the preliminary examination by serving written notice on the prosecuting attorney within five days after receiving a copy of the technician's report. The technician may be sworn and testify by video or voice communication equipment that permits the witness, court, all parties, and counsel to hear and speak to each other in the court, chambers, or other suitable place. If suitable video or voice communication equipment is not available, the technician must testify in person.

In addition, the 1993 amendment to the RJA allows the prosecuting attorney to move in writing not less than five days before a preliminary examination to permit a forensic pathologist or medical examiner to be sworn and testify at that examination by video or voice communication equipment. The court must grant the motion for good cause shown.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill improves and expands upon provisions in law that allow testimony by video or voice conferencing in preliminary examinations. Lining up witnesses to appear in court for an accused person's preliminary examination can be difficult, especially since approximately 90% of preliminary examinations reportedly do not take place as originally scheduled. Delaying and postponing these proceedings can result in scheduling difficulties for expert witnesses, such as forensic science technicians, and demands on the time and travel of other witnesses.

Police lab technicians often have several court appearances scheduled on the same day in different parts of the State. Although Public Act 288 allows a State Police forensic science technician's written report to be introduced as evidence and provides for testimony to be given through the use of video or voice communication equipment, the Department of State Police testified before the Senate Judiciary Committee that the five-day notice requirements in the 1993 legislation pose problems. State Police lab technicians reportedly have over 1,000 court appearances a year, 15% to 20% of which

are preliminary examinations. Often, the technicians have traveled considerable distances only to find that a preliminary examination was waived. Other expert witnesses evidently have had similar experiences.

In addition, other witnesses, such as police officers pulled off of patrol duties to testify in court, and victims or eyewitnesses, must deal with the difficulties associated with preliminary examination delays and postponements. A victim or other witness who must take time off of work and travel to court may be repeatedly inconvenienced by having to appear in person at a preliminary examination.

By more broadly allowing expert witnesses to testify from remote locations by video or voice technology, the bill will alleviate some of the burdens placed on lab technicians and others who have been required to appear in courts throughout the State. By permitting other witnesses to testify in that manner, for good cause shown, the bill also may allow police officers to spend more time patrolling the streets and investigating crimes and less time traveling to and testifying in court. It also may ease burdens upon victims and witnesses who otherwise would have to take time off of work, arrange child care, and travel to court to testify in a preliminary examination, perhaps on several occasions.

Supporting Argument

According to testimony before the Senate Judiciary Committee by the Eaton County Prosecuting Attorney, even though the 1993 statute allows some written reports to be used for expert testimony and provides for some video or voice testimony, many courts simply do not have the equipment to facilitate remote testimony. Allowing video or voice testimony at a preliminary examination for any witness could encourage courts to acquire the technology equipment necessary for video or audio testimony.

Opposing Argument

The bill erodes the right of the defendant to confront his or her accusers. Without in-person testimony, the attorneys, judge, and accused may not be able to observe the demeanor of the witness in the same manner they would if the witness were present in the courtroom. A preliminary examination is an important step in the

criminal justice process and, if witness testimony is needed for the prosecution to make its case, that testimony should be provided in person.

Response: A preliminary examination is not a constitutionally required hearing, and 38 states reportedly do not even use this procedure. The purpose of a preliminary examination is merely to determine probable cause that a crime was committed and that the accused committed the crime. It is not a trial to determine guilt or innocence. Since the bill applies only to testimony at a preliminary examination, all the protections and rights that are given to a defendant at trial are unaffected by the bill.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill will have no fiscal impact on the State and an indeterminate fiscal impact on local government. To the extent that it creates court efficiencies, the bill may create savings for local units of government.

Fiscal Analyst: Bethany Wicksall

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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.