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BILL ANALYSIS

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Senate Bills 542 through 545 (as introduced 5-26-05)
Sponsor: Senator Alan L. Cropsey (S.B. 542 & 544)
Senator Bruce Patterson (S.B. 543 & 545)
Committee: Judiciary

Date Completed: 1-24-06

CONTENT

Senate Bills 542, 543, and 544 would amend the Code of Criminal Procedure, and Senate Bill 545 would amend the Revised Judicature Act (RJA), to do all of the following:

- **Allow a prosecuting attorney to file a criminal complaint without a preliminary examination (a hearing to determine whether there is sufficient evidence to prosecute an accused person), for some felony charges.**
- **Require a preliminary examination if the complaint alleged a felony listed in the legislation.**
- **Specify that a person accused of a felony would not be entitled to an examination if the prosecutor filed a complaint for which an examination was not to be provided.**
- **Specify that an information (a formal criminal charge made by a prosecutor without a grand jury indictment) could be filed within seven days of arraignment for cases in which an examination was not to be provided.**

Senate Bills 542, 543, and 545 are tied to each other and to Senate Bill 544.

Senate Bill 542

Under Chapter VII (Grand Juries, Indictments, Informations and Proceedings Before Trial) of the Code of Criminal Procedure, all informations must be filed in the court having jurisdiction of the criminal offense specified in the information "after

the proper return is filed by the examining magistrate and by the prosecuting attorney of the county as informant". The bill would delete the quoted language.

Also, Chapter VII prohibits an information from being filed against any person for a felony until he or she has had a preliminary examination before an examining magistrate, unless the person waives his or her statutory right to an examination. The bill specifies, however, that the accused would not be entitled to an examination if the prosecuting attorney filed a complaint for which an examination was not to be provided under Section 1a of Chapter IV of the Code (which Senate Bill 543 would amend).

The bill also states that an information could be filed within seven days of arraignment in district court against any person charged by a complaint for which an examination was not to be provided under Section 1a of Chapter IV.

Senate Bill 543

Under Section 1a of Chapter IV (Arrest) of the Code, a magistrate must issue a warrant upon presentation of a proper complaint alleging the commission of an offense and a finding of reasonable cause to believe that the individual accused in the complaint committed that offense. The complaint must be sworn to before a magistrate or clerk.

Under the bill, except as it otherwise provides (as described below), for all

complaints alleging the commission of a felony filed after January 1, 2006, the prosecuting attorney could file either a complaint for which an examination was to be provided under Section 1 of Chapter VI of the Code (which Senate Bill 544 would amend) or a complaint for which an examination was not to be provided under that section. If the prosecuting attorney filed a complaint for which an examination was not to be provided, the requirements for an examination under Chapter VI would not apply.

Except as provided in Chapter VII of the Code (which allows the filing of an information against a fugitive from justice without an examination), the bill would require a preliminary examination to be provided if the complaint alleged a violation listed in Table 1. (Those violations generally involve death or serious injury, major controlled substance offenses, sexual offenses, crimes against children or vulnerable adults, arson, assault, home invasion, explosives offenses, poisoning or adulteration of substances, terrorism, or rioting.)

The bill also specifies that it would not prohibit the prosecuting attorney from filing an indictment under Chapter VII of the Code.

Senate Bill 544

Under Section 1 of Chapter VI (Examination of Offenders) of the Code, the State and the accused are entitled to a prompt examination and determination by the examining magistrate in all criminal causes. The bill specifies, however, that the accused would not be entitled to an examination if the prosecuting attorney filed a complaint for which an examination was not to be provided under Section 1a of Chapter IV.

Senate Bill 545

Under the RJA, the district court has jurisdiction of preliminary examinations in all felony cases and in misdemeanor cases for which the district court does not have jurisdiction of the trial. Under the bill, that provision would apply except as otherwise provided by law.

MCL 767.40 & 767.42 (S.B. 542)
764.1a (S.B. 543)

766.1 & 766.4 (S.B. 544)
600.8311 (S.B. 545)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government. In 2004, there were 81,535 new felony cases filed in district court. According to the State Court Administrative Office Annual Reports, from 1999-2001, 75% of preliminary examinations were waived.

The bills would create administrative efficiencies for the courts by leaving time and resources available for other court functions. Also, the local court funding units would have reduced costs related to fees and mileage reimbursement paid to witnesses at preliminary exams. If a reduction in the number of required preliminary exams as provided under the bills did not increase the number of trials that otherwise would be required, certain cost savings and efficiencies could be achieved. To the extent that cases would go to trial that otherwise would have ended at a preliminary exam, additional costs would be incurred.

Within the local prosecuting attorney offices, the bills would result in the reallocation of resources. The offices would be required to generate fewer subpoenas. The Saginaw County Prosecuting Attorney's Office reports that, over a twelve month period, 10,000 subpoenas were issued for preliminary exams. Only 14% of the preliminary exams actually were held.

Additionally, if the bills did not increase the number of trials, they would affect State and local law enforcement agencies in two basic ways, one of which would be of a fiscal nature. First, the bills could provide certain efficiencies for law enforcement agencies. If the time required to attend preliminary exams during an employee's work shift were reduced, those employees could spend more time on their regular duties. Second, the bills could reduce the amount of overtime required to be paid by law enforcement agencies to their employees. Most agencies pay overtime wages to officers and other personnel required to attend a preliminary hearing if that time does not fall within that employee's regular shift. The Department

of State Police has made a rough estimation that, for FY 2004-05, it paid \$657,000 in overtime costs for employees' attendance at preliminary hearings. Local law enforcement personnel also spend considerable time at preliminary exam hearings. The Jackson Police Department reports that, in 2003, its personnel spent 286 hours at preliminary exams and six hours testifying. All law enforcement agencies that serve subpoenas for preliminary exams could find a reduced need for this activity under the bills.

According to the Department of Corrections (DOC), the bills would have little or no impact on the corrections budget. Many people under the jurisdiction of the DOC participate in preliminary examinations by teleconferencing. Insofar as unsentenced jail inmates would be discharged from jail earlier as a result of the bills, local units could save on jail costs, which vary by county. According to the Attorney General, county jails in the State of Michigan spend a total of \$193,000 per day to house unsentenced felons.

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Table 1

Violations Requiring a Preliminary Exam
under Senate Bill 543

- Moving violation causing death of a person in a work zone (MCL 257.601b).
- Moving violation causing death of an operator of an implement of husbandry (MCL 257.601c).
- First- or second-degree fleeing and eluding (MCL 257.602a).
- Using a signal preemption device causing serious impairment or death (MCL 257.616a).
- Failure to stop at the scene of an accident resulting in death when at fault (MCL 257.617).
- Operating a vehicle while intoxicated or impaired causing death (MCL 257.625).
- Operating a vehicle while intoxicated or impaired causing death to emergency personnel (MCL 257.653a).
- Operating a vehicle while license is suspended, revoked, or denied, causing death (MCL 257.904).

- Operating or serving as crew of an aircraft while under the influence, causing death (MCL 259.185).
- Owning a dangerous animal that causes death (MCL 287.323).
- Knowingly releasing pollutants causing death or serious bodily injury (MCL 324.5531).
- Willfully setting fire to forest land or placing object to cause fire to forest land (MCL 324.51512).
- Failure to stop at the scene of a marine accident causing death when at fault (MCL 324.80134a).
- Operating a vessel, off-road vehicle, or snowmobile under the influence causing death (MCL 324.80176, 324.81134, 324.82127).
- Delivering or manufacturing certain Schedule 1 or 2 controlled substances in the amount of 1,000 or more grams; 450 or more but less than 1,000 grams; 50 or more but less than 450 grams; or less than 50 grams (MCL 333.7401).
- Delivering or manufacturing 3,4-methylenedioxymethamphetamine or methamphetamine (MCL 333.7401).
- Operating or maintaining a controlled substance laboratory in the presence of a minor; involving hazardous waste; near a residence, business, school, or house of worship; involving possession, placement, or use of a firearm or other harmful device; or involving methamphetamine (MCL 333.7401c).
- Possessing certain Schedule 1 or 2 controlled substances in the amount of 1,000 or more grams; 450 or more but less than 1,000 grams; or 50 or more but less than 450 grams (MCL 333.7403).
- Possessing, generating, or disposing of waste with extreme indifference to human life (MCL 333.13738).
- Adulterating, misbranding, removing, or substituting a drug or device causing death or selling or manufacturing for sale an adulterated or misbranded drug or device causing death (MCL 333.17764).
- Employing a child in sexually abusive activity (MCL 409.122).
- Selling or furnishing alcohol to a minor causing death (MCL 436.1701).
- Derailing or attempting to derail a train or endangering railroad workers or passengers (MCL 462.257).
- Operating a locomotive under the influence or while impaired causing death (MCL 462.353).

- Obstructing a track or street railway or endangering a passenger causing injury (MCL 472.36).
- Taking a woman and compelling her to marry (MCL 750.11).
- Enticing a female under 16 for immoral purposes (MCL 750.13).
- Administering a drug to procure a miscarriage, causing the death of a pregnant woman (MCL 750.14).
- Adulterating, misbranding, removing, or substituting a drug or medicine resulting in death (MCL 750.16).
- Mixing a color, stain, or powder in a drug or medicine that affects quality or potency resulting in death, or selling or manufacturing for sale such a drug causing death (MCL 750.18).
- Inciting a fighting animal causing death (MCL 750.49).
- Fighting an animal attacking without provocation, causing death (MCL 750.49).
- Burning of a dwelling house (MCL 750.72).
- Setting fire to a mine or mining material (MCL 750.80).
- Assaulting, resisting, or obstructing certain people, causing death (MCL 750.81).
- Assault with intent to murder, to do great bodily harm less than murder, to maim, to commit a felony, to commit unarmed robbery, or to rob while armed (MCL 750.83, 750.84, & 750.86-750.89).
- Sexual intercourse under the pretext of medical treatment (MCL 750.90).
- Assault against a pregnant woman causing death to embryo or fetus (MCL 750.90a).
- Assault or gross negligence against a pregnant woman resulting in miscarriage, stillbirth, or death or great bodily harm to embryo or fetus (MCL 750.90b & 750.90c).
- Operating a vehicle under the influence or while impaired causing miscarriage, stillbirth, or death to embryo or fetus (MCL 750.90d).
- Performing a procedure on live infant with intent to cause death (MCL 750.90g).
- Attempted murder (MCL 750.91).
- First- or second-degree home invasion (MCL 750.110a).
- Burglary with explosives (MCL 750.112).
- Juror intimidation by committing a crime or threatening to kill or injure or to cause property damage or retaliation against a juror (MCL 750.120a).
- Intimidating a witness by committing a crime or threatening to kill or injure or retaliating against a witness (MCL 750.122).
- Exposing children with intent to injure or abandon (MCL 750.135).
- First-degree child abuse (MCL 750.136).
- Buying or selling an individual (MCL 750.136c).
- Enticing a child under 16 for immoral purposes (MCL 750.145a).
- Accosting a child under 16 for immoral purposes, with a prior conviction (MCL 750.145b).
- Producing child sexually abusive activity or materials (MCL 750.145c).
- First-degree vulnerable adult abuse (MCL 750.145n).
- Conspiracy or solicitation to commit murder (MCL 750.157a & 750.157b).
- Harmful device causing personal injury or serious impairment (MCL 750.200i).
- Irritant or irritant device causing personal injury or serious impairment (MCL 750.200j).
- Manufacturing, possessing, transporting, or using irritant device causing death (MCL 750.200j).
- Sending an explosive with intent to frighten, injure, or kill or to damage or destroy property (MCL 750.204).
- Sending an explosive causing physical injury or serious impairment (MCL 750.204).
- Placing an explosive with intent to frighten, injure, or kill or to damage or destroy property (MCL 750.207).
- Placing an explosive causing physical injury or serious impairment (MCL 750.207).
- Placing an offensive or injurious substance causing physical injury or serious impairment (MCL 750.209).
- Possessing or carrying an explosive or combustible substance with intent to frighten, injure, or kill or to damage or destroy property (MCL 750.210).
- Possessing or carrying an explosive or combustible substance causing physical injury (MCL 750.210).
- Possessing an explosive or combustible substance causing serious impairment (MCL 750.210).
- Manufacturing or possessing an explosive or combustible substance with intent to frighten, injure, or kill or to damage or destroy property (MCL 750.211).
- Manufacturing or possessing an explosive or incendiary device causing physical

- injury or serious impairment (MCL 750.211a).
- Explosives violation involving a vulnerable target causing death or injury (MCL 750.212a).
- Setting a spring gun causing death (MCL 750.236).
- Possessing or using a firearm while under the influence or while impaired causing death (MCL 750.237).
- Counterfeiting coins or possessing five or more counterfeit coins (MCL 750.260).
- First- or second-degree murder (MCL 750.316 & 750.317).
- Manslaughter (MCL 750.321).
- Willful killing of an unborn quick child (MCL 750.322).
- Abortion resulting in death (MCL 750.323).
- Death due to explosives on vehicle or vessel, or in or near a building (MCL 750.327 & 750.328).
- Pointing a firearm with intent but not malice causing death (MCL 750.329).
- Indecent exposure by a sexually delinquent person (MCL 750.335a).
- Kidnapping (MCL 750.349).
- Prisoner taking a person as hostage (MCL 750.349a).
- Carrying or enticing away a child with intent to conceal from parent or guardian (MCL 750.350).
- Larceny from the person (MCL 750.357).
- Larceny from a car or people detained or injured by an accident (MCL 750.365).
- Throwing or dropping a dangerous object at a vehicle causing death (MCL 750.394).
- Mayhem (MCL 750.397).
- Placing a harmful object or substance in food (MCL 750.397a).
- Aggravated stalking of a minor (MCL 750.411i).
- Hazing resulting in death (MCL 750.411t).
- Perjury in a capital crime (MCL 750.422).
- Poisoning food, drink, medicine, or water supply causing injury (MCL 750.436).
- Assaulting or obstructing certain officials causing serious impairment or death (MCL 750.479).
- First- or second-degree fleeing and eluding (MCL 750.479a).
- Taking a firearm from the lawful possession of a peace or corrections officer (MCL 750.479b).
- Interfering with a police investigation by committing a crime or threatening to kill or injury (MCL 750.483a).
- Concealing objects in trees or wood products causing death (MCL 750.495a).
- Attempting to wreck a train or to endanger the safety of its passengers (MCL 750.511).
- First-, second-, third-, or fourth-degree criminal sexual conduct (CSC) (MCL 750.520b-750.520e).
- Assault with intent to commit CSC involving sexual penetration (MCL 750.520g).
- Armed robbery (MCL 750.529).
- Carjacking (MCL 750.529a).
- Unarmed robbery (MCL 750.530).
- Bank robbery (MCL 750.531).
- Terrorism without causing death (MCL 750.543f).
- Hindering the prosecution of terrorism by providing criminal assistance to act of terrorism (MCL 750.543h).
- Riot or riot at a State correctional facility (MCL 750.541 & 750.542a).
- Soliciting or providing material support for terrorism or a terrorist act (MCL 750.543k).
- Perjury during an investigation by subpoena (MCL 767A.9).

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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.