
Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA**BILL ANALYSIS**

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 535 (as introduced 5-27-97)
Sponsor: Senator Michael J. Bouchard
Committee: Judiciary

Date Completed: 10-14-97

CONTENT

The bill would amend the Revised Judicature Act to provide for certain witnesses in a preliminary examination to testify by video or voice communication equipment or to permit a transcript of the person's deposition in place of his or her appearance and testimony. The bill also would allow a preliminary examination to be waived, rather than adjourned, under certain circumstances.

Testimony

Under the bill, at least seven days before a preliminary examination for a crime alleging the unauthorized use or possession of a person's "financial transaction device", "telecommunications access device", motor vehicle, or other property, the prosecuting attorney could do either of the following, if the person would be domiciled or working at the time of the preliminary examination 50 miles or more from the court and his or her testimony were necessary only to establish ownership or lack of authorization:

- Notify the court, defendant, and the defendant's attorney that the person would testify by video or voice communication equipment.
- Move, in writing, to permit a transcript of the person's deposition to be received in evidence in place of his or her appearance and testimony.

If the prosecuting attorney notified the court of testimony by video or voice communication, the person could be sworn and testify by use of that equipment. A record of the testimony would have to be taken in the same manner as for other testimony conducted at the preliminary examination. If suitable video or voice communication equipment were not available, the individual would have to testify in person.

Video or voice communication equipment would have to permit the witness, court, all parties, counsel, and court reporter to hear and speak to each other in the court, chambers, or other suitable place.

If the court granted a motion to permit testimony by transcript of a deposition for good cause shown, the prosecuting attorney would have to provide a person to transcribe the deposition. The deposition would have to be conducted by voice communication equipment that permitted the individual, parties, counsel, and person transcribing the deposition to hear and speak to each other. The individual providing the deposition would have to be sworn. A notarized or certified copy of the transcript would have to be received in evidence in place of the person's appearance and testimony. If the court denied the motion, the person could be sworn and testify by video or voice

communication equipment, as otherwise allowed in the bill.

“Financial transaction device” would mean that term as defined in the Michigan Penal Code (MCL 750.157m): an electronic funds transfer card; a credit card; a debit card; a point-of-sale card; or any instrument, device, card, plate, code, account number, personal identification number, or other means of access to a credit account or deposit account, that can be used for any of the following purposes:

- Obtaining money, cash refund or credit account, credit, goods, services, or any other thing of value.
- Certifying or guaranteeing to a person or business the availability to the deviceholder of funds on deposit to honor a draft or check payable to the order of that person or business.
- Providing the deviceholder access to a deposit account for the purpose of making deposits, withdrawing funds, transferring funds between deposit accounts, obtaining information pertaining to a deposit account, or making an electronic funds transfer.

“Telecommunication access device” would mean that term as defined in the Michigan Penal Code (MCL 750.219a): an instrument, device, card, plate, code, telephone number, account number, personal identification number, electronic serial number, mobile identification number, counterfeit number, or financial transaction device that can acquire, intercept, provide, receive, use, or otherwise facilitate the use of a telecommunications device, counterfeit telecommunications device, or telecommunications service.

Exam Waiver

Upon receiving copies of a police technician’s report concerning forensic science, the prosecuting attorney must notify the court before which a preliminary examination is to be held that copies of the report are in the prosecutor’s possession. If the prosecuting attorney fails to notify the court at least five days before the day set for preliminary examination, the court must adjourn the preliminary examination. The bill would require that adjournment, unless all parties waived the adjournment.

MCL 600.2167

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would result in savings to local units of government regarding costs associated with preliminary examinations.

Fiscal Analyst: B. Bowerman

S9798\S535SA

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.