

Legislative Analysis



ELIMINATE PRELIMINARY EXAMINATION FOR SOME FELONY CRIMES

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House Bill 4796

Sponsor: Rep. Bill McConico

House Bill 4797

Sponsor: Rep. Kevin Elsenheimer

House Bills 4799 and 4800

Sponsor: Rep. William VanRegenmorter

Committee: Judiciary

Complete to 9-19-05

A SUMMARY OF HOUSE BILLS 4796-4797 AND 4799-4800 AS INTRODUCED 5-17-05

The legislation would eliminate preliminary examinations as a right for most felony offenses. Instead, preliminary examinations would be required only for specified offenses. Generally speaking, these would include crimes such as murder, criminal sexual conduct, arson, certain controlled substance violations, acts of terrorism, and crimes that result in death or serious injury to a victim. The bills are tie-barred to each other so that none could become law unless the others also were enacted.

The purpose of a preliminary examination is to determine whether or not a felony has been committed and whether or not probable cause exists to believe that the defendant committed it. (It is not to determine guilt or innocence.) Currently, under state law, a person charged with a felony offense has the right to a preliminary examination and one must be conducted unless the defendant waives that right

House Bill 4797 would amend Chapter IV of the Code of Criminal Procedure (MCL 764.1a) to allow a prosecutor, for all complaints alleging the commission of a felony filed after January 1, 2006, to file either a complaint for which an examination is to be provided or a complaint for which an examination is not to be provided. The provision would not prohibit a prosecutor from filing an indictment under Chapter VII (Grand Juries, Indictments, Informations and Proceedings Before Trial). On a complaint filed for which an examination would not be provided, the prosecutor would have to state that the requirements for an examination did not apply.

The bill lists numerous felonies for which a preliminary examination would have to be provided. As mentioned earlier, generally speaking, these include crimes such as murder, criminal sexual conduct, arson, certain controlled substance violations, acts of terrorism, and crimes that result in death or serious injury to a victim.

House Bill 4799 would amend Chapter VII of the Code of Criminal Procedure (MCL 767.40 and 767.42). Under existing law, an information (the same as an indictment except that it is presented by a prosecutor while an indictment is presented by a grand jury) cannot be filed against a person for a felony until the person has had a preliminary examination. The bill would apply this provision only to those cases where the prosecutor filed a complaint for which an examination is to be provided.

Moreover, the bill would specify that an accused is not entitled to an examination if the prosecuting attorney filed a complaint for which an examination is not to be provided under Section 1a(2) of Chapter IV (the provision that would be added by House Bill 4797). For these cases, the information could be filed in district court within seven days of arraignment. (In contrast, a preliminary hearing must be scheduled within 14 days of arraignment.)

In addition, the bill would eliminate the requirement that a proper return be filed by the examining magistrate and prosecuting attorney before an information can be filed in court. Instead all informations would have to be filed in the court having jurisdiction over the offense specified in the information.

House Bill 4796 would amend Chapter VI of the Code of Criminal Procedure (MCL 766.1 and 766.4) to specify that an accused is not entitled to an examination if the prosecuting attorney filed a complaint for which an examination is not to be provided under Section 1a(2) of Chapter IV (the provision that would be added by House Bill 4797). Currently, this chapter ensures that both the state and the accused are entitled to a prompt examination and determination by the examining magistrate in all criminal cases, and all courts and public officers in connection with such examinations are required to bring them to a final determination without delay.

House Bill 4800 would amend the Revised Judicature Act (MCL 600.8311) to reflect the proposed changes in House Bills 4797 and 4799. Currently, the provision gives jurisdiction to the district court for misdemeanors punishable by a fine or imprisonment of one year or less; ordinance and charter violations punishable by a fine and/or imprisonment; and preliminary examinations in all felony cases and misdemeanor cases that the district court does not jurisdiction over (i.e., a misdemeanor offense punishable by up to two years imprisonment). The bill would specify that those provisions would apply "except as otherwise provided by law."

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