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BILL ANALYSIS

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House Bill 4796 (Substitute S-4 as reported by the Committee of the Whole)

Sponsor: Representative Bill McConico

House Committee: Judiciary

Senate Committee: Judiciary

CONTENT

The bill would amend the Code of Criminal Procedure to provide for probable cause hearings in felony cases, rather than preliminary examinations in all criminal cases; and to provide for the admission of the hearsay testimony of a law enforcement officer involved in the investigation, regardless of the declarant's availability as a witness.

The bill specifies that the State and the accused in a criminal trial would be entitled to a probable cause determination by the examining magistrate in all felony cases. This would replace a provision under which the State and the accused are entitled to a prompt examination and determination by the examining magistrate in all criminal causes. Under the Code, a magistrate must examine the complainant and the prosecution witnesses, under oath, in the presence of the accused, in regard to the offense charged and any other matters connected with the charge that the magistrate considers pertinent. The bill instead would require the magistrate to examine the prosecution witnesses, under oath, and in the presence of the accused, in regard to the offense charged for the exclusive purpose of determining whether there was probable cause to believe that a charged felony was committed and that the defendant committed it. A probable cause hearing could not be used for purposes of discovery.

Under the bill, if one or more defendants were charged with a felony arising out of the same transaction, the probable cause hearings for all the defendants would have to be consolidated. Upon the motion of one or more of the defendants, the probable cause hearing could be severed if the defense attorney could not attend a hearing within 14 days after the arraignment or for other good cause shown.

If a probable cause hearing were for a felony for which the maximum possible penalty was imprisonment for life or any term of years, the rules of evidence would apply at the hearing.

If a probable cause hearing were for an assaultive felony, the prosecuting attorney could present the testimony of the victim or victims to establish probable cause. The rules of evidence would apply to the testimony of each victim. If a victim testified, the court would have to allow the prosecuting attorney to present hearsay testimony from a law enforcement officer involved in the investigation to establish probable cause, regardless of whether the declarant was available as a witness. Other than hearsay testimony of a law enforcement officer involved in the investigation, the rules of evidence would apply to the testimony of each witness. If the victim did not testify at the probable cause hearing, the rules of evidence would apply to all witnesses.

In all other cases, regardless of whether the declarant or victim was available as a witness, the court would have to allow the prosecuting attorney to present hearsay testimony from a law enforcement officer involved in the investigation to establish probable cause. Otherwise, the rules of evidence would apply to the testimony of each witness.

The bill would take effect on January 1, 2008, and is tie-barred to House Bill 4800, which would provide for district court jurisdiction of probable cause hearings.

MCL 766.1 et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. In 2005, there were 83,271 new felony cases filed in district court. According to the State Court Administrative Office Annual Reports, from 1999 to 2001, approximately 75% of preliminary examinations were waived.

The bill 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 the bill 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 that otherwise would have ended at a preliminary exam instead would go to trial, additional costs would be incurred.

Within the local prosecuting attorney offices, the bill 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 12-month period, 10,000 subpoenas were issued for preliminary exams. Only 14% of the preliminary exams actually were held.

According to the Department of Corrections (DOC), the bill would have little or no impact on the corrections budget. Many people under the jurisdiction of the DOC participate in preliminary examinations by teleconferencing for inmates charged with a felony and could continue to use teleconferencing for the hearings required under the bill. Insofar as unsentenced jail inmates would be discharged from jail earlier as a result of the bill, 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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