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BILL ANALYSIS

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House Bill 4796 (Substitute H-6 as passed by the House)
House Bill 4799 (Substitute H-3 as passed by the House)
House Bill 4800 (Substitute H-3 as passed by the House)
Sponsor: Representative Bill McConico (H.B. 4796)
Representative William Van Regenmorter (H.B. 4799 & 4800)
House Committee: Judiciary
Senate Committee: Judiciary

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CONTENT

House Bills 4796 (H-6) and 4799 (H-3) would amend the Code of Criminal Procedure, and House Bill 4800 (H-3) would amend the Revised Judicature Act (RJA), to do all of the following:

- Specify that, for a felony charged on or after August 1, 2006, the accused would not be entitled to a preliminary examination (a hearing to determine whether there is sufficient evidence to prosecute an accused person).**
- Require a court to set a day for a conference, within 14 days after arraignment, for a person charged with a felony on or after August 1, 2006.**
- Specify requirements for conducting a conference and provide that a conference would allow an opportunity for the prosecution and defense to review the charges, discuss bail, and determine the procedural aspects of the case.**
- Require notice of a conference to be given to a victim.**
- Allow the prosecution or defense to petition the court to question witnesses at a conference.**
- Allow the court, upon motion of either party and for good cause, to order a preliminary examination if the maximum sentence for the underlying felony charge were imprisonment for 10 years or longer.**
- Specify that a prohibition against the filing of an information (a formal criminal charge made by a prosecutor without a grand jury indictment) until the accused has had a preliminary examination would apply only to a felony charged before August 1, 2006, and that an information could not be filed for a felony after that date until the accused had a conference.**
- Grant the district court jurisdiction over conferences and preliminary examinations beginning August 1, 2006.**

The bills are tie-barred and would take effect August 1, 2006.

House Bill 4796 (H-6)

Under Section 1 of Chapter VI (Examination of Offenders) of the Code of Criminal Procedure, 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 for a felony charged on or after August 1, 2006. For a felony charged on or after that date, the accused would be entitled to a conference under the bill.

If an individual were charged on or after August 1, 2006, with committing a felony, the court would have to set a day for a conference on the matter, within 14 days after arraignment. The conference would allow an opportunity for the prosecuting attorney and the defendant and his or her attorney to review the charges, discuss bail, and determine the procedural aspects of the case. Probable cause would not have to be shown during the conference. The prosecuting attorney, the defendant, and the defendant's attorney would have to be ordered to attend the conference unless it was waived by the defendant. In accordance with the Crime Victim's Rights Act, the victim would have to be notified of the conference and have an opportunity to discuss the conference with the prosecuting attorney before it was held.

The court could preside over a conference. If the court did not preside, the judge would have to be available during the period in which the conference was held to dispose of any plea agreement or to determine bail. Unless witnesses were to be examined as allowed under the bill, the rules of evidence would not apply to a conference and witnesses could not be presented. The prosecuting attorney would have to provide the defendant and his or her attorney with all of the following information relating to the case before or during a conference and, if additional information were obtained after the conference, promptly after that information was obtained:

- A copy of each investigative report prepared by or on behalf of law enforcement.
- A copy of each witness statement.
- A copy of each recorded confession and, if the confession were transcribed, a copy of the transcription.

Except as otherwise provided, the prosecuting attorney and the defendant would remain subject to the rules for discovery under the Michigan Rules of Court.

If an individual were charged with committing a felony for which a conference was to be held, the prosecuting attorney or the defendant could petition the court for an order allowing him or her to question any witness for the purpose of preserving the witness's testimony for the record. The court would have to grant the petition for good cause shown. It would be a rebuttable presumption that a request by the prosecuting attorney to preserve testimony was for good cause. If the court granted the petition, it would have to order the witness to be examined. The court would have to preside over the examination. The rules of evidence would apply and cross-examination of the witness would have to be allowed.

Upon a motion by either the prosecuting attorney or the accused, the court for good cause could order a preliminary examination if the statutory maximum sentence for the underlying felony were imprisonment for 10 years or more. A motion under this provision would have to be made no later than 14 days from the date of arraignment. The court would have to set the date for the examination.

House Bill 4799 (H-3)

Under Chapter VII (Grand Juries, Indictments, Informations and Proceedings Before Trial) of the Code, 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. Under the bill, that provision would apply to a felony charged before August 1, 2006, and an information could not be filed against any person for a felony charged on or after that date until he or she had a conference under Section 1 of Chapter VI (which House Bill 4796 (H-6) would amend), unless the person waived his or her statutory right to a conference or had a preliminary examination as allowed under Section 1 of Chapter VI.

House Bill 4800 (H-3)

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, the district court would have that jurisdiction for cases charged before August 1, 2006.

Beginning on August 1, 2006, the district court would have jurisdiction over conferences and preliminary examinations ordered under Section 1 of Chapter VI. The district court also would have jurisdiction, beginning on that date, over pleas in felony cases and misdemeanor cases for which the district court does not have trial jurisdiction that were made before the information was filed in circuit court. Sentencing for a plea taken under those circumstances, however, would have to be in the circuit court.

MCL 766.1 & 766.4 (H.B. 4796)
767.40 & 767.42 (H.B. 4799)
600.8311 (H.B. 4800)

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 to 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 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 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 12-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, the employee could spend more time on his or her 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 an 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 for inmates charged with a felony and could continue to use teleconferencing for the conferences required under the bills. 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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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.