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Senate Bill 863 (Substitute S-2)  
Sponsor: Senator Phil Pavlov  
Committee: Judiciary

Date Completed: 9-9-14

### **CONTENT**

**The bill would amend Chapter V (Bail) of the Code of Criminal Procedure to do the following with respect to a defendant who had submitted to a preliminary roadside analysis that detected the presence of alcohol, a controlled substance, and/or other intoxicating substance:**

- **Authorize the court to release the defendant subject to conditions necessary for the protection of the public.**
- **Require the court order to be entered into the Law Enforcement Information Network (LEIN).**
- **Require the defendant to be informed that, as a condition of release, he or she could not operate a motor vehicle under the influence of alcohol, a controlled substance, and/or another intoxicating substance.**
- **Require the defendant to be informed that he or she would be subject to warrantless arrest and bail revocation if he or she violated that condition.**

**Also, with respect to a defendant who is released subject to conditions necessary for the protection of another person, the bill would require the judge or magistrate to direct the issuing court or a law enforcement agency (as currently required) to enter the order into LEIN.**

**In addition, the bill would include in the definition of "electronic monitoring device" an instrument used to monitor an individual's blood alcohol content.**

The bill would take effect 90 days after it was enacted. The bill is tie-barred to House Bill 5385, which would amend the Michigan Vehicle Code to replace provisions for a preliminary chemical breath analysis with provisions for a "preliminary roadside analysis". A preliminary roadside analysis would detect the presence of alcohol, a controlled substance, any other intoxicating substance, or any combination of those substances, in a driver's body.

The Code of Criminal Procedure authorizes a judge or district court magistrate to release a defendant subject to conditions reasonably necessary for the protection of one or more named people. The judge or magistrate must inform the defendant of the specific conditions imposed and that, if the defendant violates a condition of release, he or she will be subject to arrest without a warrant and may have his or her bail forfeited or revoked and new conditions of release imposed.

The bill also would allow a judge or district court magistrate to release a defendant subject to conditions reasonably necessary for the protection of the public if he or she had submitted to a preliminary roadside analysis that detected the presence of alcohol, a

controlled substance, or other intoxicating substance or any combination of them. The judge or magistrate would have to inform the defendant on the record, orally or by a writing that was personally delivered to the defendant, of both of the following:

- If the defendant were released under this provision, he or she could not operate a motor vehicle under the influence of alcoholic liquor, a controlled substance, or another intoxicating substance, or any combination of them, as a condition of release.
- If the defendant violated that condition of release, he or she would be subject to arrest without a warrant, his or her bail would be forfeited or revoked, and he or she would not be released from custody before arraignment.

The judge or district court magistrate immediately would have direct the issuing court or a law enforcement agency within the court's jurisdiction, in writing, to enter an order or amended order into LEIN. If the order or amended order were rescinded, the judge or magistrate immediately would have to order the issuing court or law enforcement agency to remove the order or amended order from LEIN. The issuing court or a law enforcement agency within its jurisdiction immediately would have to enter an order or amended order, or remove it if the order were rescinded or expired.

Currently, when a judge or district court magistrate releases a defendant subject to protective conditions, the judge or magistrate must immediately direct a law enforcement agency within the court's jurisdiction to enter the order or amended order into LEIN. If the order or amended order is rescinded, the judge or magistrate must order the law enforcement agency to remove the order from LEIN.

The bill, instead, would require the judge or magistrate to direct the issuing court or a law enforcement agency within the court's jurisdiction to enter the order into LEIN. If the order or amended order were rescinded, the court or law enforcement agency would have to remove it from LEIN.

Currently, if a defendant who is charged with a crime involving domestic violence or any other assaultive crime is released subject to a protective order, the judge or magistrate may order the defendant to wear an electronic monitoring device as a condition of release. As used in this provision, "electronic monitoring device" means "any electronic device or instrument that is used to track the location of an individual...". Under the bill, the term also would include an electronic device or instrument used to monitor an individual's blood alcohol content.

MCL 765.6b

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The requirements proposed by the bill for local courts' and State agencies' entry of data into the LEIN system would result in negligible costs to local units and State government, which could be assumed within their existing resources.

Fiscal Analyst: Bruce Baker  
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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.