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House Bill 5154 (Substitute H-1 as passed by the House)
House Bill 5155 (as passed by the House)
Sponsor: Representative Tom Leonard (H.B. 5154)
Representative John Walsh (H.B. 5155)
House Committee: Judiciary
Senate Committee: Judiciary

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CONTENT

House Bill 5154 (H-1) would amend Chapter 6 (Examination of Offenders) of the Code of Criminal Procedure to do the following:

- **Require a district court judge, after a person had been arraigned on a felony charge, to schedule a probable cause conference that would take place before a preliminary examination.**
- **Specify issues to be discussed at the conference, including a plea agreement.**
- **Allow the prosecutor and the defendant to agree to waive the conference.**
- **Authorize a district court judge to accept a felony plea.**
- **Require a preliminary exam to be held as scheduled if a plea agreement were not reached and the defendant did not waive the exam with the consent of the prosecutor.**
- **Require a consolidated probable cause conference and a consolidated preliminary exam for codefendants, under certain circumstances.**
- **Require the judge to permit a witness to testify by telephonic, voice, or video conferencing, subject to exceptions for certain witnesses.**
- **Provide that the rules of evidence would apply at preliminary exams but make several exceptions to the rule against hearsay.**
- **Require the judge either to discharge the defendant or to reduce the charge to an offense cognizable by the district court, if the judge determined at the conclusion of the preliminary exam that a felony had not been committed or that there was not probable cause to charge the defendant with a felony.**
- **Authorize the judge to conduct the circuit court arraignment as provided by court rule.**

House Bill 5155 would amend the Revised Judicature Act (RJA) to give the district court jurisdiction of probable cause conferences, as well as circuit court arraignments. The bill also would give district court magistrates jurisdiction to conduct probable cause conferences.

House Bill 5154 (H-1) would apply to cases in which the defendant was arraigned in the district court on or after September 1, 2014. House Bill 5155 would apply to cases in which the defendant was arraigned in the district court or the municipal court on or after that date.

The bills are tie-barred.

House Bill 5154 (H-1)

Probable Cause Conference

Under Michigan law, when a person is charged with a crime, he or she first must appear in court for an arraignment. At the arraignment, the judge explains the charge to the defendant, and determines whether the defendant can be released on bond. After an arraignment on a felony charge, the judge must schedule a preliminary examination for a date between seven and 14 days after the arraignment.

(After the preliminary exam, if the judge determines that an offense has been committed and that there is probable cause to believe the defendant committed it, the defendant must be "bound over" to the circuit court for trial.

Although the statute refers to a "magistrate" in the provisions for a preliminary exam, the Code defines "magistrate" as a judge of the district court or a judge of a municipal court. The Code specifies that the term does not include a district court magistrate, although a district court magistrate has the powers, jurisdiction, and duties of a magistrate if specifically provided in the Code, the RJA, or another statute.)

Under the bill, the judge before whom a person was arraigned on a felony charge would have to set a date for a probable cause conference between seven and 14 days after the arraignment. The judge also would have to set a date for a preliminary examination between five and seven days after the probable cause conference. The dates would have to be set at the time of the arraignment.

The probable cause conference would have to include discussions regarding the following:

- A possible plea agreement among the prosecutor, the defendant, and the defense attorney.
- Bail and the opportunity for the defendant to petition the judge for a bond modification.
- Stipulations and procedural aspects of the case.
- Any other matters relevant to the case as agreed upon by both parties.

The prosecutor and the defense attorney could agree to waive the probable cause conference. The parties would have to notify the court of the waiver agreement and whether they would be conducting a preliminary exam, waiving the exam, or entering a plea.

The district judge would have the authority to accept a felony plea. The judge would be required to take a plea to a misdemeanor or felony as provided by court rule if the parties reached a plea agreement. Sentencing for a felony would have to be conducted by a circuit judge, who would have to be assigned and whose name would have to be available to the litigants, pursuant to court rule, before the plea was taken.

Preliminary Exam

Under the bill, if a plea agreement were not reached and if the defendant did not waive the preliminary exam with the consent of the prosecutor, a preliminary exam would have to be held as scheduled, unless adjourned or waived. The bill would allow a defendant to waive the preliminary exam with the consent of the prosecutor.

With the approval of the court, the parties could agree to schedule the preliminary exam earlier than five days after the probable cause conference. Upon the request of the prosecutor, however, the preliminary exam would have to begin immediately for the sole purpose of taking and preserving the testimony of a victim if he she were present. If that

testimony were insufficient to establish probable cause to believe that the defendant committed the crime or crimes charged, the judge would have to adjourn the preliminary exam to the date set at arraignment. A victim who testified under this provision could not be called again to testify at the adjourned preliminary exam absent a showing of good cause. (For this purpose, "victim" would mean an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime.)

Codefendants; Consolidation

Under the bill, if one or more defendants had been charged on complaints listing codefendants with a felony or felonies, the probable cause conference and preliminary exam for those defendants who had been arrested and arraigned at least 72 hours before that conference on those charges would have to be consolidated. Only one joint conference or one joint preliminary exam would have to be held unless the prosecutor consented to a severance, a defendant sought severance by motion and the judge found it to be required by law, or one of the defendants were unavailable and did not appear at the hearing.

Adjournment, Continuance, or Delay

Currently, a judge may not grant an adjournment, continuance, or delay of a preliminary exam except for good cause shown. A judge also may not adjourn, continue, or delay the examination of any cause with the consent of the prosecutor and the defendant unless there is a sufficient showing that the reasons for the consent are founded upon strict necessity and the exam cannot be held at that time or a manifest injustice will be done. The bill would delete these provisions.

The bill would authorize a judge to grant an adjournment, continuance, or delay of a preliminary exam without the consent of the defendant or the prosecutor for good cause shown. A judge also could adjourn, continue, or delay the examination of any cause with the consent of the defendant and the prosecutor.

Testimony

Currently, on either party's motion, the judge may permit the testimony of an expert witness or, upon a showing of good cause, any witness to be conducted by telephonic, voice, or video conferencing.

The bill, instead, would require the judge to permit the testimony of any witness, except the complaining witness, an alleged eyewitness, or a law enforcement officer to whom the defendant allegedly made an incriminating statement, to be conducted by telephonic, voice, or video conferencing. Testimony taken by video conferencing would be admissible in any subsequent trial or hearing as otherwise permitted by law.

Rules of Evidence; Hearsay Exceptions

The bill specifies that the rules of evidence would apply at a preliminary exam, except that the following would not be excluded by the rule against hearsay and would be admissible at the preliminary exam without the testimony of the author of the report, keeper of the records, or any additional information:

- A report of the results of properly performed drug analysis field testing to establish that the substance tested was a controlled substance.
- A copy of any written or electronic order, judgment, decree, docket entry, register of actions, or other record of any court or governmental agency of the State, duly authenticated by a representative of the court or agency.

-- A report prepared by a law enforcement officer or other public agency, except for the police investigative report.

Reports permitted under the third provision could include, but not be limited to, a report of the findings of a technician of the division of the Department of State Police concerned with forensic science, a laboratory report, a medical report, a report of an arson investigator, and an autopsy report.

The judge would have to allow the prosecutor or the defense to subpoena and call a witness from whom hearsay testimony was introduced, upon a satisfactory showing that live testimony would be relevant to the judge's decision as to whether there was probable cause to believe that a felony had been committed and probable cause to believe that the defendant committed it.

(The Michigan Rules of Evidence define "hearsay" as a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Hearsay is not admissible except as provided in the rules.)

Currently, evidence of the results of properly performed drug analysis field testing is admissible in a preliminary hearing, and such evidence is sufficient to establish that the substance tested is a controlled substance for purposes of a preliminary exam. The bill would delete this language.

Conclusion of Preliminary Exam

Currently, if it appears to the judge at the conclusion of the preliminary exam that an offense has not been committed or that there is not probable cause for charging the defendant with the offense, the judge must discharge the defendant. If it appears to the judge that a felony has been committed and that there is probable cause for charging the defendant with it, the judge must bind the defendant to appear before the circuit court of that county, or another county having jurisdiction of the cause, for trial.

Under the bill, instead, if the judge determined at the conclusion of the preliminary exam that a felony had not been committed or that there was not probable cause for charging the defendant with committing a felony, the judge would have to either discharge the defendant or reduce the charge to an offense cognizable by the district court. If the judge determined that a felony had been committed and there was probable cause for charging the defendant with committing a felony, the judge would have to bind the defendant to appear within 14 days for arraignment before the circuit court of that county. The judge could conduct the circuit court arraignment as provided by court rule.

District Court Magistrate

The bill would prohibit a district court magistrate appointed under Chapter 85 of the RJA from presiding at a preliminary examination or accepting a plea of guilty or no contest to an offense or imposing a sentence except as otherwise authorized by Section 8511(a), (b), and (c) of the Act.

(Chapter 85 provides for the appointment of one or more district court magistrates in a county or district. In first and second class districts, magistrates must be appointed by district court judges, subject to the approval of the county board of commissioners. In a third class district, the judges may appoint one or more magistrates subject to the approval of the district control unit or units that contain more than 50% of the district's population. In a first or second class district, the judges may appoint a clerk or deputy clerk as a magistrate. Magistrates have the jurisdiction and duties set forth in Chapter 85, including those in Section 8511.

Section 8511(a) authorizes a district court magistrate to arraign and sentence upon guilty or no contest pleas for violations of the following, or substantially corresponding local ordinances, when authorized by the chief judge of the district, if the maximum permissible punishment does not exceed 90 days in jail and/or a fine:

- Part 5 (General Powers and Duties) of the Natural Resources and Environmental Protection Act (NREPA).
- Part 89 (Littering) of NREPA.
- Part 401 (Wildlife Conservation) of NREPA.
- Part 435 (Hunting and Fishing Licensing) of NREPA.
- Part 487 (Sport Fishing) of NREPA.
- Part 731 (Recreational Trespass) of NREPA.
- Part 801 (Marine Safety) of NREPA.
- The Motor Carrier Act.
- The Motor Carrier Safety Act.
- The Dog Law.
- Chapter 85 (Trespass) of the Michigan Penal Code.
- Section 703 of the Michigan Liquor Control Code (which prohibits minors from possessing, purchasing, or consuming alcoholic liquor).
- Section 915 of the Liquor Control Code (which prohibits the consumption of alcohol on the public highways, and the possession or consumption of alcohol in certain public places).

Section 8511(b) authorizes a district court magistrate to arraign and sentence upon guilty or no contest pleas for violations of the Michigan Vehicle Code, or a substantially corresponding local ordinance, except for Sections 625 and 625m of the Code (which prescribe penalties for driving under the influence of, or while impaired by, alcohol or a controlled substance), if authorized by the chief judge of the circuit court and if the maximum permissible punishment does not exceed 93 days in jail and/or a fine. The chief judge, however, may authorize the magistrate to arraign defendants and set bond for violations of Sections 625 and 625m of the Vehicle Code.

Section 8511(c) authorizes a district court magistrate to arraign and sentence upon guilty or no contest pleas for violations of Part 811 (Off Road Vehicles) or Part 821 (Snowmobiles) of NREPA, or a substantially corresponding local ordinance, with certain exceptions, if authorized by the chief judge of the district and if the maximum permissible punishment does not exceed 93 days in jail and/or a fine.)

House Bill 5155

District Court Jurisdiction

The bill would give the district court jurisdiction of probable cause conferences in all felony cases and misdemeanor cases not cognizable by the district court and all matters allowed at the probable cause conference under Section 4 of Chapter 6 of the Code of Criminal Procedure (pursuant to House Bill 5154 (H-1)).

The court's jurisdiction currently includes jurisdiction of preliminary examinations in all felony cases and misdemeanor cases not cognizable by the district court, although there may not be a preliminary exam for any misdemeanor to be tried in a district court. Under the bill, the district court also would have jurisdiction of all matters allowed at the preliminary examinations under Chapter 6 of the Code of Criminal Procedure.

In addition, the bill would give the district court jurisdiction of circuit court arraignments in all felony cases and misdemeanor cases not cognizable by the district court under Section 13 of Chapter 6 of the Code (pursuant to House Bill 5154 (H-1)). The bill specifies that

sentencing for felony cases and misdemeanor cases not cognizable by the district court would have to be conducted by a circuit judge.

District Court Magistrates

The bill would give district court magistrates the jurisdiction and duty to conduct probable cause conferences and all matters allowed at such conferences, except the taking of pleas and sentencing, under Section 4 of Chapter 6 of the Code of Criminal Procedure, when authorized to do so by the chief district court judge.

Repeal

The bill would repeal Section 2167 of the RJA. (That section provides that, in a preliminary examination or grand jury proceeding, a report of the findings of a technician of the Forensic Science Division of the Department of State Police may be received in evidence in place of the technician's appearance and testimony, although a defendant or defense attorney may request that the technician testify at a preliminary exam. In addition, the prosecuting attorney may move to permit a forensic pathologist or medical examiner to testify in a preliminary exam by video or voice communication equipment.)

MCL 766.1 et al. (H.B. 5154)
600.8311 & 600.8511 (H.B. 5155)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills would modify the existing process for preliminary examinations in criminal cases. Mainly, the bills would establish a probable cause conference and allow district courts to arraign felony cases. In addition, the bills would expand the use of telephonic, voice, and video conferencing for use in giving testimony in preliminary examinations. The fiscal costs at the State and local government levels from these bills would result from an additional request for technology improvement for expanded remote testimony. Also, an increased fiscal cost for the courts could result from a rebalancing of caseload with the probable cause and district felony arraignments.

Fiscal Analyst: John Maxwell

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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.