

REVISED MARCH 2, 2006



## Report on Public Policy Position

**Name of Section:**

Judicial Conference

**Contact Person:**

Judge Milton Mack

**Email:**

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**Bill Numbers:**

**HB 4796** (McConico) Criminal procedure; preliminary examination; right to preliminary examination for certain crimes; eliminate. Amends secs. 1 & 4, ch. VI of 1927 PA 175 (MCL 766.1 & 766.4).

**HB 4797** (Elsenheimer) Criminal procedure; preliminary examination; right to preliminary examination for certain crimes; eliminate. Amends sec. 1a, ch. IV of 1927 PA 175 (MCL 764.1a). TIE BAR WITH HB 4796, HB 4799, HB 4800

**HB 4799** (Van Regenmorter) Criminal procedure; preliminary examination; right to preliminary examination for certain crimes; eliminate. Amends secs. 40 & 42, ch. VII of 1927 PA 175 (MCL 767.40 & 767.42). TIE BAR WITH: HB 4796, HB 4797, HB 4800

**HB 4800** (Van Regenmorter) Criminal procedure; preliminary examination; right to preliminary examination for certain crimes; eliminate. Amends sec. 8311 of 1961 PA 236 (MCL 600.8311). TIE BAR WITH: HB 4796, HB 4797, HB 4799.

**SB 542** (Cropsey) Criminal procedure; preliminary examination; right to preliminary examination for certain crimes; eliminate. Amends secs. 40 & 42, ch. VII of 1927 PA 175 (MCL 767.40 & 767.42). TIE BAR WITH: SB 0543, SB 0544, SB 0545

**SB 543** (Patterson) Criminal procedure; preliminary examination; right to preliminary examination for certain crimes; eliminate. Amends sec. 1a, ch. IV of 1927 PA 175 (MCL 764.1a). TIE BAR WITH: SB 0542, SB 0544, SB 0545

**SB 544** (Cropsey) Criminal procedure; preliminary examination; right to preliminary examination for certain crimes; eliminate. Amends secs. 1 & 4, ch. VI of 1927 PA 175 (MCL 766.1 & 766.4).

**SB 545** (Patterson) Criminal procedure; preliminary examination; right to preliminary examination for certain crimes; eliminate. Amends sec. 8311 of 1961 PA 236 (MCL 600.8311). TIE BAR WITH: SB 0542, SB 0543, SB 0544

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**Date position was adopted:**

March 2, 2006

**Process used to take the ideological position:**

Via an electronic vote of the Judicial Conference

**Number of members in the decision-making body:**

27

**Number who voted in favor and opposed to the position:**

20 in favor, 0 opposed

**Position:**

**Judicial Conference Position on Preliminary Examinations**

The Judicial Conference unanimously supports elimination of the current right to a preliminary examination in favor of a procedure that preserves the benefits of preliminary examinations. The Judicial Conference recommends the following procedure:

- Require a pre-hearing conference within 14 days of the arraignment.
- On request of either party, and a showing of good cause, the court shall set a date for a probable cause hearing. A request for a probable cause hearing must be made by the close of the pre-hearing conference, or it will be deemed to have been waived, and the matter bound over to Circuit Court.
- The probable cause hearing would be held within 28 days of the arraignment.
- Good cause may include:
  - a) Preservation of testimony,
  - b) Assessing the credibility of witnesses,
  - c) Testing the sufficiency and strength of the evidence,
  - d) Evidentiary questions.

District Courts have long recognized that setting every felony case for preliminary examination results in wasted resources, not only by the courts, but also for the police, witnesses and parties. Under this proposal, if no one demands a probable cause hearing, neither party will need to prepare for the hearing, resources will not be wasted and the Court will not have to issue subpoenas for witnesses. At a pre-exam conference, discovery can be exchanged and bond can be addressed, but no witnesses need to be subpoenaed. In those cases where either the prosecutor or defendant feels the need for a preliminary exam, that right is preserved.

The proposed legislation would simply eliminate the right to preliminary examinations in most felony cases. This would not only profoundly affect the rights of the accused, but it will seriously impede the processing of criminal cases in the District and Circuit Courts of this state. Currently, the practical use of preliminary examinations is to test the strength of a case at an early stage of the proceedings. The scheduling of a preliminary exam will show whether witnesses will appear, the strength of their testimony and whether all the elements of the crime can be proved. This process allows the prosecutor to determine whether they want to proceed with a case, whether there are sufficient weaknesses to recommend a reduction of charges, or, if

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witnesses will not appear, or elements cannot be proved, a dismissal of the charges. It is not uncommon for the prosecutor to learn at the time of exam that there is sufficient evidence to warrant an increase in the charges. The process also allows the defendant to assess the strength of the prosecutor's case, and often leads to a decision that a guilty plea is the best means of resolving the case. Frequently the fact that a witness has appeared will lead the defendant to plead.

Without a probable cause review early in the case, those questionable cases that are now being resolved at the District Court level will be pushed onto the Circuit Court trial docket, as that will be the only forum for resolving these issues.

The District Courts are structured to handle a high volume of cases, at a fairly rapid rate of speed. Because the preliminary exam is heard by a judge and not a jury, District Courts routinely hear multiple cases in a single morning or afternoon. If that same case cannot be resolved until it is placed on the Circuit Court docket, the amount of time necessary to resolve the case, which in all likelihood would include evidentiary hearings and jury selection, would be dramatically increased. This will affect not only the workload of the Circuit Courts, but will increase the time police officers and other witnesses are required to spend in court. The delay can also increase the amount of time some defendants will be incarcerated, adding significant costs for taxpayers.

The proposed legislation, which draws a distinction between more and less serious offenses, ignores the very practical nature of a preliminary exam. The fact that 90% of all cases will result in a guilty plea is in large part because those questionable cases have been tested at the preliminary exam stage. Our experience as judges shows that there is no apparent correlation between the severity of the crime and the amount of time the courts will have to spend resolving it. Simple traffic offenses can take longer to hear than a serious violent crime. The severity of the crime does not impact on the use of judicial resources as courts are bound to hear every case, regardless of severity. Preliminary examinations are a practical tool for resolving cases, regardless of their severity. For this reason, the right to exam should be preserved regardless of the severity of the crime.

**The text (may be provided by hyperlink) of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report:**

<http://www.legislature.mi.gov/mileg.asp?page=getObject&objName=2005-HB-4796>

<http://www.legislature.mi.gov/mileg.asp?page=getObject&objName=2005-HB-4797>

<http://www.legislature.mi.gov/mileg.asp?page=getObject&objName=2005-HB-4799>

<http://www.legislature.mi.gov/mileg.asp?page=getObject&objName=2005-HB-4800>

<http://www.legislature.mi.gov/mileg.asp?page=getObject&objName=2005-SB-0542>

<http://www.legislature.mi.gov/mileg.asp?page=getObject&objName=2005-SB-0543>

<http://www.legislature.mi.gov/mileg.asp?page=getObject&objName=2005-SB-0544>

<http://www.legislature.mi.gov/mileg.asp?page=getObject&objName=2005-SB-0545>