

**State Bar of Michigan
Criminal Law Section
Biennial Policy Conference; Pre-Trial Procedures in Criminal Cases
June 17 – 19, 2005
Grand Hotel – Mackinac Island**

Resolution 1

The assembled conferees commend the initiative of Michigan Attorney General Michael Cox and the prosecuting attorneys of Michigan, to examine pre-trial procedures in criminal cases and recommend changes in statutory provisions governing preliminary examinations. We support and join in the search for new ways to expedite the processing of criminal cases and to eliminate unnecessary costs, while retaining a system that is just and fair to all parties.

We support a change from the requirement of mandatory preliminary examinations in all felony criminal cases unless waived, to one providing for mandatory PRE-HEARING CONFERENCES, FULL AND OPEN DISCOVERY, and for PROBABLE CAUSE HEARINGS only if demanded by either the state or the defendant.

Alternative Proposal:

- Day 1 INITIAL ARRAIGNMENT
Bond decision
A DISCOVERY ORDER is entered by the court for all available information upon which the charging decision was based, including police reports and all audio/video recordings made of defendant in-custody statements.
A PRE-HEARING CONFERENCE is scheduled within ten (10) days
- Day 10 PRE-HEARING CONFERENCE
Discovery order must be complied with
Prosecutor and defendant/counsel meet
Options: 1. Plea
 2. Either party may file a written demand for a PROBABLE CAUSE HEARING
 3. Parties may waive time frames for further action or exercise of right to demand a PROBABLE CAUSE HEARING upon good cause show
Revisit the Bond Decision
- Day 14 If no PROBABLE CAUSE HEARING demand has been filed in writing by either party, the case is bound over to Circuit Court for appropriate action.
A not-guilty plea shall be entered
The information filed, a copy to defendant/counsel
Either party may request Circuit Court Arraignment in writing/fax

Day 28 Deadline for commencement of PROBABLE CAUSE HEARING if timely demand has been made by either party.

We call for a LEGISLATIVE PAUSE in the processing of proposals addressing the use of Preliminary Examinations in criminal cases to allow for legislatively-authorized PILOT TESTING of components of this proposal in selected jurisdictions. We seek to evaluate the use of PRE-HEARING CONFERENCES and FULL AND OPEN DISCOVERY in the effort to expedite the processing of criminal cases and the elimination of unnecessary costs, while maintaining a system that is just and fair to all parties.

Adopted by the Criminal Law Section, State Bar of Michigan, June 19, 2005

Resolution 2

WHEREAS, police interrogation of criminal suspects held in custody frequently prompts questions regarding what was said and done by both interrogators and suspects, and

WHEREAS, recording of interrogation interviews creates a permanent account of police treatment of suspects during questioning and the statements made by all parties present, and

WHEREAS, recording of interrogation interviews by either audio or video systems serves to protect suspects from police abuse and to protect police from unwarranted accusations of abuse, and

WHEREAS, recordings of interrogation can assure that statements made by suspects are accurately recalled at later criminal justice proceedings, and

WHEREAS, we are informed that hundreds of police departments in over 40 states now electronically record in-custody interrogation interviews in major felony cases and that less-costly technology is now available.

BE IT RESOLVED the Criminal Law Section of the State Bar of Michigan urges

- (1) all law enforcement agencies to consider requiring that in-custody interviews in major felony investigations be electronically recorded – from *Miranda* warnings to the conclusion of the interview, and
- (2) a Michigan study be undertaken for the purpose of consideration of legislation that may require recording of in-custody interrogation in major felony investigations conducted by police in Michigan.

Adopted by the Criminal Law Section, State Bar of Michigan, June 19, 2005