

“MORE COPS ON THE STREET,” BUT AT WHAT COST?

On May 17, 2005, State Representative Kevin Elsenheimer introduced House Bill 4797 (A/K/A “More Cops on the Street”) which would eliminate a defendant’s right to a preliminary examination for most felony charges.¹ The felonies excluded from the bill would include more serious crimes such as murder and criminal sexual conduct which carry stiffer penalties.

The purpose of a preliminary exam is to determine whether or not a felony has been committed and whether or not probable cause exists to believe that the defendant committed it. Currently, Michigan law entitles a person charged with a felony to hold a preliminary examination within 14 days of the arraignment unless waived by the defendant. The obvious benefits of preliminary examinations are that they afford both the prosecutor and the defense attorney the opportunity to preserve evidence, and assess the merits of the case and the credibility of the witnesses who will be potentially testifying at trial. More importantly, the preliminary exam may reveal that the prosecutor does not have sufficient evidence to establish probable cause which would afford the opportunity for a dismissal at an early stage of a criminal proceeding.

Proponents² of the bill, and its counterparts, contend that thousands of taxpayers’ dollars are wasted each year to pay police officers overtime to appear at preliminary examination hearings which are often waived by defendants. According to a recent study conducted by the office of the attorney general, preliminary exams are waived approximately 75% of the time for the type of felony offenses this bill is designed to cover.³ Therefore, theoretically, eliminating preliminary examinations would free up time and money for police agencies to spend elsewhere. Proponents further claim that the exam is a waste of time for prosecutors, courts, victims and witnesses.

Opponents⁴ argue the exam affords important protections that should not be compromised when less drastic solutions to remedy the inefficiencies of these hearings are available. For example, a better approach may be to require pre-exam conferences, whereby defense attorneys are given discovery and then allowed to demand the preliminary exam within a certain number of days after the conference. Since the number of preliminary examinations actually held is relatively low, the potential inconvenience to prosecutors, courts, victims and witnesses would be minimal. Further, the ability to hold a preliminary examination gives defense attorneys some leverage at the district court level which helps resolve cases there as opposed to having every felony automatically bound over to circuit court.

¹ This Bill is also supported by Representatives Van Regenmorter, Taub, David Law, McConio and Newell.

² Include; Michigan Attorney General Mike Cox, Michigan Assoc. of Police, Prosecuting Attorneys Assoc. of Michigan, Michigan Municipal League, Michigan Assoc. of Police Organizations, Fraternal Order of Police and Michigan Assoc. of Counties, as amended.

³ House Fiscal Agency

⁴ Include; Criminal Defense Attorneys of Michigan, American Civil Liberties Union, Justice Caucus of the ACLU, Michigan Judges Assoc., and Michigan District Judges Assoc.

Both advocates for and against the bill seem to be in agreement that the manner in which preliminary examinations are now held is inefficient in that officers, witnesses and victims are subpoenaed to court, but rarely required to testify. Putting “more cops on the street” is an important agenda, but should not outweigh the preservation of well established judicial rights and due process now afforded to defendants charged with less serious felonies.