

Senate Fiscal Agency  
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**SFA**



**BILL ANALYSIS**

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Senate Bill 535 (Substitute S-2 as passed by the Senate)  
Sponsor: Senator Michael J. Bouchard  
Committee: Judiciary

Date Completed: 7-9-98

### **RATIONALE**

Public Act 288 of 1993 amended the Revised Judicature Act to allow a State Police forensic technician's testimony at a preliminary examination to be provided by video or voice communication. A preliminary examination is a court hearing in a criminal matter to determine whether there is enough evidence to warrant a trial; it is not a proceeding to determine an accused's guilt or innocence. Since forensic technicians may be involved with laboratory examination of evidence in many different criminal cases and since preliminary examinations sometimes are delayed and often are eventually waived, it was felt that the technicians' time and abilities would be better served if these individuals could offer preliminary examination testimony via video or voice communication. Some people believe that, in certain property offenses, a victim's preliminary examination testimony also should be allowed to be submitted by voice or video communication or by a transcript of the person's deposition, if he or she will be at least 50 miles away from the location of the hearing and his or her testimony is needed only to establish ownership or lack of authorization for the accused's use of the property.

### **CONTENT**

**The bill would amend the Revised Judicature Act to provide for certain witnesses in a preliminary examination to testify by video or voice communication equipment or to permit a transcript of the person's deposition in place of his or her appearance and testimony. The bill also would allow a preliminary examination to be held, rather than adjourned, under certain circumstances.**

#### Testimony

Under the bill, at least seven days before a preliminary examination for a crime alleging the

unauthorized use or possession of a person's "financial transaction device", "telecommunications access device", motor vehicle, or other property, the prosecuting attorney could do either of the following, if the person would be domiciled or working at the time of the preliminary examination 50 miles or more from the court and his or her testimony were necessary only to establish ownership or lack of authorization:

- Notify the court, defendant, and the defendant's attorney that the person would testify by video or voice communication equipment.
- Move, in writing, to permit a transcript of the person's deposition to be received in evidence in place of his or her appearance and testimony.

Upon motion and for good cause shown, however, the court could require the witness to testify in person.

If the prosecuting attorney notified the court of testimony by video or voice communication, the person could be sworn and testify by use of that equipment. A record of the testimony would have to be taken in the same manner as for other testimony conducted at the preliminary examination. If suitable video or voice communication equipment were not available, the individual would have to testify in person.

Video or voice communication equipment would have to permit the witness, court, all parties, counsel, and court reporter to hear and speak to each other in the court, chambers, or other suitable place.

If the court granted a motion to admit the transcript of a deposition for good cause shown, the prosecuting attorney would have to provide a

person to transcribe the deposition. The deposition would have to be conducted by voice communication equipment that permitted the individual, parties, counsel, and person transcribing the deposition to hear and speak to each other. The individual transcribing the deposition would have to be sworn. A notarized or certified copy of the transcript would have to be received in evidence in place of the person's appearance and testimony. If the court denied the motion, the witness could be sworn and testify by video or voice communication equipment, as otherwise allowed in the bill.

"Financial transaction device" would mean that term as defined in the Michigan Penal Code (MCL 750.157m): an electronic funds transfer card; a credit card; a debit card; a point-of-sale card; or any instrument, device, card, plate, code, account number, personal identification number, or other means of access to a credit account or deposit account, that can be used for any of the following purposes:

- Obtaining money, cash refund or credit account, credit, goods, services, or any other thing of value.
- Certifying or guaranteeing to a person or business the availability to the device holder of funds on deposit to honor a draft or check payable to the order of that person or business.
- Providing the device holder access to a deposit account for the purpose of making deposits, withdrawing funds, transferring funds between deposit accounts, obtaining information pertaining to a deposit account, or making an electronic funds transfer.

"Telecommunication access device" would mean that term as defined in the Michigan Penal Code (MCL 750.219a): an instrument, device, card, plate, code, telephone number, account number, personal identification number, electronic serial number, mobile identification number, counterfeit number, or financial transaction device that can acquire, intercept, provide, receive, use, or otherwise facilitate the use of a telecommunications device, counterfeit telecommunications device, or telecommunications service.

#### Exam Waiver

Upon receiving copies of a forensic technician's report, the prosecuting attorney must notify the court before which a preliminary examination is to

be held that copies of the report are in the prosecutor's possession. If the prosecuting attorney fails to notify the court at least five days before the day set for preliminary examination, the court must adjourn the preliminary examination. The bill would require that adjournment, unless all parties waived the adjournment.

MCL 600.2167

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

The bill would provide for greater efficiency in certain preliminary examination proceedings, with less interruption to the lives of witnesses. If a person's testimony were needed only to establish his or her ownership of property involved in a criminal case, or the lack of the accused's authority to use that property, and if the witness's home or work site were 50 miles or more from the proceeding, the witness could give testimony by video or voice communication or a transcript of the witness's deposition could be admitted in place of testimony. Technology available to the courts today, and in use for the preliminary examination testimony of forensic technicians, could facilitate witness testimony under the bill. At the same time, the bill would ensure that the accused's rights were protected: Use of video or voice equipment would have to allow interaction between all parties and, in the case of a transcript of a witness's deposition, the bill would require that it be conducted by voice communication equipment that allowed all parties to hear and speak to each other and that a notarized or certified copy of the transcript be received in evidence.

#### **Opposing Argument**

The purpose of a preliminary examination is to test the weight of the evidence in the case and assess the credibility of a witness. A genuine issue of whether a person had authority to use the property in question can arise at a preliminary examination and it is important that the court be able to judge a witness's statement as to whether use of the property was authorized. Use of video or voice communication or written transcripts could hinder a judge in making that determination. Personal appearance of a witness should continue to be the practice in preliminary examinations.

**Response:** The bill would allow a court to compel a witness's personal appearance, rather

than allowing testimony by video or voice communication or admitting a deposition transcript. The bill explicitly states that, upon motion and for good cause shown, a court could require a person to testify in person.

Legislative Analyst: P. Affholter

**FISCAL IMPACT**

The bill would result in savings to local units of government regarding costs associated with preliminary examinations.

Fiscal Analyst: B. Bowerman

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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.