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SFA BILL ANALYSIS

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Senate Bill 536 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Michael J. Bouchard
Committee: Judiciary

Date Completed: 1-28-98

RATIONALE

Under the Code of Criminal Procedure, unless a person requests physical presence before a court, criminal arraignments and bail-setting procedures may be conducted by two-way closed circuit television between a court facility and a prison, jail, or other place of imprisonment or detainment. The two-way closed circuit television system must enable the accused and the judge or district court magistrate to see, hear, and communicate with each other simultaneously, and allow the defense counsel and prosecutor to be heard by and to communicate with the accused, the judge or magistrate, and opposing counsel. While this authority was granted to promote greater efficiency and security in pretrial court proceedings, some people believe that those benefits could be more easily obtained if proceedings also could be conducted by means of telephone or other interactive electronic communication.

In addition, some people believe that an arraignment by mail or the filing of a document should be allowed if charges were filed against a person who was incarcerated or detained in a facility outside of the arraigning court's jurisdiction.

CONTENT

The bill would amend the Code of Criminal Procedure to allow certain court proceedings by telephone or other interactive electronic communication and others by mail.

Currently, unless a person requests physical presence before the court, a judge or district court magistrate may conduct initial criminal arraignments and set bail by two-way closed circuit television between a court facility and a prison, jail, or other place of imprisonment or detainment. The bill would delete "initial" from that authority and expand the provision to include communication by telephone or other interactive electronic communication medium. A telephone system would have to enable the accused, judge or magistrate, defense counsel, and prosecuting attorney to hear and communicate with each other simultaneously. An interactive electronic communication system would have to enable the accused and the judge or magistrate to see, hear, or otherwise communicate with each other simultaneously, and enable the defense counsel and the prosecutor to communicate simultaneously with the accused, the judge or magistrate, and opposing counsel.

The bill also specifies that, if a criminal charge were filed against a person imprisoned or detained in a jail or correctional facility outside the jurisdiction of the court in which the action was filed, a judge or magistrate could arraign the person by a form mailed or filed with the court, unless the person requested a physical appearance before the court. If an arraignment were conducted by mail or a filed document, the court would have to set a date and time for further proceedings. The State Court Administrator would have to develop forms for this use. A copy of any document used for the proceedings would have to be available to the prosecutor, the accused, and his or her attorney.

MCL 767.37a et al.

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

By including the use of a telephone or other interactive electronic communication in the Code's current provision for conducting an arraignment and setting bail by means of two-way closed circuit

television, the bill would increase court efficiency in carrying out those proceedings. The use of electronic means to conduct these pretrial proceedings also would reduce security costs for courts and transportation costs for local law enforcement agencies, because potentially dangerous defendants would not have to be transported from a jail or other place of detainment to the court. Similarly, allowing arraignment by mail for a prisoner or jail inmate who was charged with a crime in another jurisdiction would reduce travel and security costs and allow the court to proceed unhindered by the logistical concerns of arranging the prisoner's appearance before the court.

The bill would preserve the right of the defendant to face his or her accusers, however, because simultaneous communication would be required, in the case of proceedings conducted by electronic means, and, for both electronic and mailed court proceedings, the accused would have the option of requesting physical presence before the court.

Opposing Argument

As introduced, the bill would have added plea takings to the proceedings that may be conducted by closed circuit television and included plea takings in the proposed extension of that provision to proceedings by telephone. It also would have allowed plea takings by mail, for someone incarcerated in a different jurisdiction from that in which he or she was charged. These provisions should have remained in the bill.

Response: Although technological advances are allowing courts to use more efficient means of communication to conduct some proceedings, it is crucial for a judge to see and hear the accused in the court's presence for purposes of taking a plea, particularly in the case of guilty plea. The court must assess the voluntary nature of a guilty plea, and that could be difficult to accomplish over the telephone or from a mailed form.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have an indeterminate, yet potentially cost-saving, fiscal impact on State and local government. For a State prisoner to be escorted to court, depending upon security level, one or two guards are assigned. In addition to regular pay, guards are provided meals and paid overtime for working more than eight hours. Also, the State provides a vehicle and mileage to get the prisoner to court. Based on figures from the Department of Corrections, transporting a prisoner to court for a day with one guard and without overtime, costs about $200. In 1996, about 4,600 prisoners were released to court on writ for pleadings, for trial, and as witnesses. If one assumes that 5% of these releases were for a prisoner entering a plea in an arraignment, the cost-savings could be approximately $46,000. With less distance to court, requiring less overtime and mileage costs, local governments could expect a lower level of cost-savings.

Fiscal Analyst: K. Firestone

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