

Legislative Analysis



DRUG ANALYSIS FIELD TEST: ALLOW AS EVIDENCE IN PRELIM EXAMS

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4228 as introduced
Sponsor: Rep. Paul Condino
Committee: Judiciary

First Analysis (3-12-07)

BRIEF SUMMARY: The bill would allow the results of a test done in the field by law enforcement officers to be admissible in a preliminary examination to establish probable cause that the substance tested is a controlled substance.

FISCAL IMPACT: The bill would have no significant fiscal impact on the judiciary. The bill would have an indeterminate cost savings impact on the State Police by saving time and resources for lab analysis by allowing lab analysis staff to be shifted around to other areas that are needed and by reducing narcotics analysis backlogs.

THE APPARENT PROBLEM:

Law enforcement officers carry kits containing chemical reactants that can be used to test a substance believed to be a controlled substance. Currently, there are kits to test a substance for heroin, cocaine, methamphetamine, or marijuana. If an officer sees a suspicious substance during a traffic stop or in the course of a legal search, he or she can use one or more of the kits to identify the substance. A positive test result can lead to the person's arrest.

Reportedly, some county prosecutors will not issue an arrest warrant until the substance in question is analyzed more fully at the State Police laboratory. In addition, any case going to trial must have the substance fully analyzed by that laboratory. The result is a backlog of 24,000 cases waiting to be processed; the typical processing time is six to eight months.

One suggestion to alleviate the backlog is to amend current law regarding preliminary examinations. Preliminary examinations are used to determine if there is sufficient evidence that a crime has occurred and that there is probable cause to believe that the accused committed that crime. Based on the findings of the preliminary examination, charges are either dropped or the accused is bound over for trial. If the results of those tests on substances conducted in the field by law enforcement officers were allowed to be admissible as evidence in a preliminary examination that the substance was likely to be a controlled substance, it could reduce the number of samples sent to the lab for testing. If a case proceeded to trial, a full laboratory analysis would still be conducted. Proponents of the measure note that depending on the substance being tested, the field tests are 99.5-99.6 percent accurate.

THE CONTENT OF THE BILL:

The bill would add a new section to Chapter VI (Examination of Offenders) of the Code of Criminal Procedure to allow evidence of the results of drug analysis field testing to be admissible in a preliminary examination. The results would be admissible solely to establish

probable cause that a substance is a controlled substance as that term is defined under Section 7104 of the Public Health Code (MCL 333.7104).

MCL 766.11b

ARGUMENTS:

For:

The bill has the potential to increase the efficiency of the State Police laboratory that processes evidence in criminal cases. Allowing the results of the drug analysis field tests to be used to establish probable cause that the tested substance was a controlled substance in a preliminary examination will reduce the number of samples sent to the State Police lab for a full analysis. With fewer samples to analyze, the lab's resources can be directed toward doing DNA testing, processing evidence from other criminal cases going to trial, and catching up on the current backlog (24,000) of samples waiting to be analyzed for illegal drug content. Therefore, the bill may have some indirect cost savings for the state police by better utilizing its resources.

Moreover, the bill would not infringe on the due process rights of a person accused of a drug related crime. The purpose of a preliminary hearing isn't to establish the guilt of the defendant, but to establish that a crime has been committed and that there is probable cause that the defendant committed that crime. In that sense, the bill is in line with the intent of the preliminary examinations. The field test kits are very accurate: according to testimony offered by the department, the four available kits that test for heroin, cocaine, methamphetamine, or marijuana range in accuracy from 99.5 percent to 99.6 percent. The results could only be used as evidence that there was probable cause to believe that the substance tested was an illegal drug. If a case was advanced to trial, a full analysis of the substance would be conducted by the state police lab.

Response:

A question has been raised as to the appropriateness of specifying that the results of a drug analysis field test would be used to establish probable cause that the substance tested is a controlled substance. Typically, the term "probable cause" is used in relation to the alleged perpetrator; more specifically, evidence presented at a preliminary examination is used to determine whether a crime has been committed and whether there is "probable cause" to believe the defendant committed the crime. "Probable cause" does not usually attach to a piece of evidence, leaving some to feel the bill should be revised to correspond to the traditional understanding of "probable cause".

POSITIONS:

A representative of the Michigan Department of State Police testified in support of the bill. (3-7-07)

The Prosecuting Attorneys Association of Michigan (PAAM) supports the bill.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Viola Bay Wild
Jan Wisniewski

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