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BILL ANALYSIS

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House Bill 4228 (Substitute H-1 as reported without amendment)
Sponsor: Representative Paul Condino
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 6-4-07

RATIONALE

Police officers on patrol typically carry a small kit to test suspected controlled substances, such as heroin, cocaine, methamphetamine, and marijuana. An officer who discovers a suspicious substance in the course of a legal search may use the kit to conduct a field test in order to make an initial identification of the substance. The officer does this by applying a chemical and observing the reaction. If the field test indicates that the substance is an illegal drug, the officer may arrest the person in possession of the material on controlled substance charges. The substance then is turned over to a laboratory—usually the State Police crime lab—for a more complete chemical analysis.

When a person is arrested on a controlled substance charge, a laboratory analysis of the suspected controlled substance typically is requested for purposes of a preliminary examination. A preliminary exam is conducted before a trial to determine whether there exists probable cause to believe a crime was committed and that the person charged committed that crime. A person arrested on felony charges is entitled to a preliminary examination within 14 days of arraignment on the charge. If a controlled substance must be analyzed, expedited lab work may be required, the preliminary exam might have to be adjourned until the lab results are ready, or the prosecutor might delay charging the defendant until the lab analysis is completed. It has been suggested that statutorily allowing the use of a drug analysis field test at the preliminary exam would expedite controlled substance prosecutions and allow court and law

enforcement resources to be used more efficiently.

CONTENT

The bill would amend the Code of Criminal Procedure to specify that evidence of the results of properly performed drug analysis field testing would be admissible in a preliminary examination solely to establish that the substance tested was a controlled substance. Evidence of the results of such testing would be sufficient to establish that the substance tested was a controlled substance for purposes of a preliminary examination.

These provisions would apply to preliminary examinations that began on or after the bill's effective date. The bill would take effect 90 days after its enactment.

Proposed MCL 766.11b

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 allowing evidence of the results of a properly performed field drug analysis to be admitted in a preliminary examination for the purpose of establishing that the substance tested was a controlled substance, the bill would create greater efficiency in the criminal justice system and bring uniformity to the way Michigan courts deal with drug analysis field testing. The decision of whether to pursue criminal

charges against an individual is made by the prosecuting attorney. In the case of an alleged controlled substance violation, the prosecutor's decision will be based on the analysis and identification of the substance, which generally is accomplished first through a field test and then confirmation of the field test with a laboratory analysis. According to written testimony submitted to the Senate Judiciary Committee by an assistant prosecutor from Van Buren County, the decision on when to charge an offender with a controlled substance violation varies from county to county. Some prosecuting attorneys may wait several weeks for a lab analysis before filing charges, while others issue charges quickly, but then must seek an adjournment or drop the charges and refile them at a later date, if the lab analysis is not completed by the date set for a preliminary exam. Either of these scenarios can be problematic because a suspect may be prematurely returned to the community while lab testing occurs and might be difficult to locate at a later date. Also, if other criminal charges (such as resisting arrest) arise out of the same incident, either all charges will be delayed or the various charges will move through the court system at a different pace. Also, in some areas of the State, prosecutors, the defense bar, and courts evidently operate under a tacit agreement that a field test is sufficient for identifying a substance for purposes of a preliminary exam, even though there is no statutory basis for that practice.

The bill would allow preliminary examinations in controlled substance cases to proceed in a timely manner, and implement a consistent system throughout the State for using drug analysis field testing at the preliminary exam stage of a prosecution. In addition, the bill would reduce the need for overburdened crime labs to perform expedited analyses of suspected controlled substances, and for lab personnel to devote time to testifying at preliminary exams.

Supporting Argument

The bill would allow the smooth pursuit of justice in controlled substance cases, without infringing on defendants' rights. Under the bill, drug analysis field testing could be used to identify a substance only for purposes of the preliminary exam; laboratory analysis of the substance still would be needed at the trial stage. While

field testing has not been used in most State courts to identify a substance, the tests reportedly are very accurate. In his written testimony, the Van Buren County assistant prosecutor stated that "scientific studies have demonstrated the efficacy of field tests to be more than 95% accurate when compared to subsequent laboratory verification of the same substance". Evidently, the field test kits use generally accepted principles of chemistry to identify unknown substances and the tests are very easy to perform, requiring no special scientific expertise. Laboratory analysis of the substance, conducted by highly trained and qualified chemists, would continue to be done and those results, not the field test conducted by a police officer, would be introduced in evidence at trial.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. To the extent that offenders were held in jail for fewer days before their preliminary examination as a result of the bill, local governments would incur decreased costs of incarceration. Additionally, if more offenders were sentenced to jail instead of prison due to the availability of jail beds, the Michigan Department of Corrections (MDOC) potentially would incur decreased costs of incarceration. If these offenders were eligible for the County Jail Reimbursement Program, the MDOC would reimburse the local governments \$43.50 per day. To the extent that fewer cases would go to trial as a result of the bill, courts could see some savings in time and resources.

Fiscal Analyst: Bruce Baker

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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.