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Briefly Speaking

AG: Scrap Most Preliminary Exams

Attorney General Mike Cox wants to eliminate probable cause hearings from most felony cases to give police more time on the streets and ease jail overcrowding.

Cox told The Associated Press in an interview that letting prosecutors avoid preliminary exams in less-serious cases would have a "huge impact" on local governments trying to cope with crowded county jails and fewer state revenue sharing dollars.

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The change also would help police officers escape unnecessary, time-consuming court appearances and instead be out patrolling their communities, he said. He noted that St. Clair Shores narcotics officers waited nearly 2,500 hours to testify at preliminary exams in 2004 but spent only four hours testifying. State police troopers in Wayne and Oakland counties waited 579 hours to give 34 hours of testimony.

Cox's proposal would do away with about 85 percent of the preliminary exams for felony cases each year. In Oakland County, for instance, judges scheduled 6,126 preliminary exams last year but only 840 would be held if Cox's idea is adopted.

Usually the preliminary exam "doesn't really add anything to a person's constitutional protection," Cox said.

Defendants waive the preliminary exam in three of every four cases but usually not until everyone shows up for the hearing, according to Cox's office.

He hopes to have his plan — dubbed the "More Cops on the Street Proposal" — introduced soon in the Legislature, where it could face opposition from defense attorneys.

Marshall Tauber, president of the Criminal Defense Attorneys of Michigan, said in many cases it isn't in the defendant's best interest to have a preliminary exam, since witnesses are likely to better recollect what they saw then rather than months later at trial.

"Nevertheless, we don't want to eliminate it," he said. "It's another erosion of the rights of the accused. The exam is inconvenient, but so is issuing the charge. That's the price we pay in a fair society for giving everybody an opportunity to be heard."

There is no constitutional right to a preliminary hearing, but state law has allowed defendants the right since at least 1927.

Cox, a former Wayne County prosecutor, argues the change wouldn't curtail civil liberties.

"We're not talking about doing away with someone's constitutional right to a trial," he said.

Defendants would retain the right to a preliminary exam if charged with more serious offenses: murder, manslaughter, assault, kidnapping, mayhem, criminal sexual conduct, carjacking and major drug violations. Those crimes carry a likely prison sentence.

In less-serious cases, defendants usually get probation or are ordered to pay restitution or do community service, or perhaps serve a lighter jail term, Cox says.

In very few cases — 200 per year according to Cox's office — do judges rule there isn't enough evidence for trial. Defendants would retain the right to trial and a bond hearing if incarcerated.

But defense lawyers aren't persuaded defendants wouldn't lose some legal protections.

F. Martin Tieber, a criminal defense attorney and former deputy director of the State Appellate Defender Office, agreed preliminary exams can burden law enforcement. But he said there are ways to address the problem without eliminating the exams.

Eaton County has what is called a pre-exam conference, where only the prosecution and defense meet to see if the case can be resolved without having a preliminary exam. In many cases, an exam isn't needed, saving law enforcement resources.

Cox thinks lawmakers will like his proposal because of what it could do to reduce police time in courtrooms and jail overcrowding. In 2002 and 2003, at least 10 sheriffs declared overcrowding emergencies at least 73 times.

About 4,300 people awaiting sentencing are sitting in Michigan jails, costing counties approximately \$193,000 per day. In addition, jails must hold defendants who can't post bail. Some of those defendants must wait up to two weeks in jail until their preliminary exams.

"If we can get to where they get to circuit court with a case actually solved or resolved, to me it'd make a lot more sense to get to that point quicker," Cox said.

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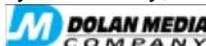
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