

SUBSTITUTE FOR
HOUSE BILL NO. 4796

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending sections 1 and 4 of chapter VI (MCL 766.1 and 766.4),
section 4 as amended by 1994 PA 167.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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CHAPTER VI

Sec. 1. (1) ~~The~~ **EXCEPT AS PROVIDED IN SUBSECTION (2), THE**
state and accused ~~shall be~~ **ARE** entitled to a prompt examination
and determination by the examining magistrate in all criminal
causes and ~~it is hereby made the duty of~~ all courts and public
officers having duties to perform in connection with such
examination, to bring them to a final determination without delay
except as it may be necessary to secure to the accused a fair and
impartial examination.

1 (2) THE ACCUSED IS NOT ENTITLED TO AN EXAMINATION UNDER
2 SUBSECTION (1) FOR A FELONY CHARGED ON OR AFTER AUGUST 1, 2006. THE
3 ACCUSED IS ENTITLED TO A CONFERENCE UNDER SUBSECTION (3) FOR A
4 FELONY CHARGED ON OR AFTER AUGUST 1, 2006.

5 (3) IF AN INDIVIDUAL IS CHARGED ON OR AFTER AUGUST 1, 2006
6 WITH COMMITTING A FELONY, THE COURT SHALL SET A DAY FOR A
7 CONFERENCE ON THE MATTER NOT EXCEEDING 14 DAYS AFTER ARRAIGNMENT TO
8 ALLOW AN OPPORTUNITY FOR THE PROSECUTING ATTORNEY AND THE DEFENDANT
9 AND HIS OR HER ATTORNEY TO REVIEW THE CHARGES, DISCUSS BAIL, AND
10 DETERMINE THE PROCEDURAL ASPECTS OF THE CASE. PROBABLE CAUSE IS NOT
11 REQUIRED TO BE SHOWN DURING THE CONFERENCE. THE PROSECUTING
12 ATTORNEY, THE DEFENDANT, AND THE DEFENDANT'S ATTORNEY SHALL BE
13 ORDERED TO ATTEND THE CONFERENCE UNLESS THE CONFERENCE IS WAIVED BY
14 THE DEFENDANT. IN ACCORDANCE WITH THE CRIME VICTIM'S RIGHTS ACT,
15 1985 PA 87, MCL 780.751 TO 780.834, THE VICTIM SHALL BE NOTIFIED OF
16 THE CONFERENCE AND HAVE AN OPPORTUNITY TO DISCUSS THE CONFERENCE
17 WITH THE PROSECUTING ATTORNEY BEFORE THE CONFERENCE IS HELD. THE
18 COURT MAY PRESIDE OVER THE CONFERENCE. IF THE COURT DOES NOT
19 PRESIDE OVER THE CONFERENCE, THE JUDGE SHALL BE AVAILABLE DURING
20 THE PERIOD IN WHICH THE CONFERENCE IS HELD TO DISPOSE OF ANY PLEA
21 AGREEMENT OR TO DETERMINE BAIL. SUBJECT TO SUBSECTION (5), THE
22 RULES OF EVIDENCE DO NOT APPLY TO A CONFERENCE HELD UNDER THIS
23 SUBSECTION, AND WITNESSES SHALL NOT BE PRESENTED. THE PROSECUTING
24 ATTORNEY SHALL PROVIDE THE DEFENDANT AND HIS OR HER ATTORNEY WITH
25 ALL OF THE FOLLOWING INFORMATION RELATING TO THE CASE BEFORE OR
26 DURING A CONFERENCE HELD UNDER THIS SUBSECTION AND, IF ADDITIONAL
27 INFORMATION IS OBTAINED AFTER THE CONFERENCE, PROMPTLY AFTER THAT

House Bill No. 4796 (H-6) as amended December 14, 2005
 1 INFORMATION IS OBTAINED:

2 (A) A COPY OF EACH INVESTIGATIVE REPORT PREPARED BY OR ON
 3 BEHALF OF LAW ENFORCEMENT.

4 (B) A COPY OF EACH WITNESS STATEMENT.

5 (C) A COPY OF EACH RECORDED CONFESSION AND, IF THE CONFESSION
 6 WAS TRANSCRIBED, A COPY OF THAT TRANSCRIPTION.

7 (4) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3), THE
 8 PROSECUTING ATTORNEY AND THE DEFENDANT REMAIN SUBJECT TO THE RULES
 9 FOR DISCOVERY UNDER THE MICHIGAN RULES OF COURT.

10 (5) IF AN INDIVIDUAL IS CHARGED WITH COMMITTING A FELONY FOR
 11 WHICH A CONFERENCE IS TO BE HELD UNDER THIS SECTION, THE
 12 PROSECUTING ATTORNEY OR THE DEFENDANT MAY PETITION THE COURT FOR AN
 13 ORDER ALLOWING HIM OR HER TO QUESTION ANY WITNESS FOR THE PURPOSE
 14 OF PRESERVING THE WITNESS'S TESTIMONY FOR THE RECORD. THE COURT
 15 SHALL GRANT THE PETITION FOR GOOD CAUSE SHOWN. IT IS A REBUTTABLE
 16 PRESUMPTION THAT A REQUEST BY THE PROSECUTING ATTORNEY TO PRESERVE
 17 TESTIMONY IS FOR GOOD CAUSE. IF THE COURT GRANTS THE PETITION, THE
 18 COURT SHALL ORDER THE WITNESS TO BE EXAMINED UNDER THIS SUBSECTION.
 19 THE COURT SHALL PRESIDE OVER THE EXAMINATION. THE RULES OF EVIDENCE
 20 SHALL APPLY TO THE EXAMINATION, AND CROSS-EXAMINATION OF THE
 21 WITNESS SHALL BE ALLOWED.

[(6) UPON A MOTION BY EITHER THE PROSECUTING ATTORNEY OR THE
 ACCUSED, THE COURT FOR GOOD CAUSE MAY ORDER A PRELIMINARY EXAMINATION
 WHERE THE STATUTORY MAXIMUM FOR THE UNDERLYING FELONY IS IMPRISONMENT FOR
 10 YEARS OR MORE. A MOTION UNDER THIS SUBSECTION SHALL BE MADE NO LATER
 THAN 14 DAYS FROM THE DATE OF ARRAIGNMENT. THE COURT SHALL SET THE DATE
 FOR THE EXAMINATION.]

22 Sec. 4. Except as OTHERWISE provided in SECTION 1 OF THIS
 23 CHAPTER AND section 4 of chapter XIIA of ~~Act No. 288 of the Public~~
 24 ~~Acts of 1939, being section 712A.4 of the Michigan Compiled Laws~~
 25 THE PROBATE CODE OF 1939, 1939 PA 288, MCL 712A.4, the magistrate
 26 before whom any person is arraigned on a charge of having committed
 27 a felony shall set a day for a preliminary examination not

1 exceeding 14 days after the arraignment. At the preliminary
2 examination, a magistrate shall examine the complainant and the
3 witnesses in support of the prosecution, on oath and, except as
4 provided in section 2167 of the revised judicature act of 1961,
5 ~~Act No. 236 of the Public Acts of 1961, being section 600.2167 of~~
6 ~~the Michigan Compiled Laws~~ **1961 PA 236, MCL 600.2167**, in the
7 presence of the accused, in regard to the offense charged and in
8 regard to any other matters connected with the charge that the
9 magistrate considers pertinent.

10 Enacting section 1. This amendatory act takes effect August 1,
11 2006.

12 Enacting section 2. This amendatory act does not take effect
13 unless all of the following bills of the 93rd Legislature are
14 enacted into law:

15 (a) House Bill No. 4799.

16 (b) House Bill No. 4800.