

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5154

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending sections 1, 4, 7, 11a, 11b, and 13 of chapter VI (MCL
766.1, 766.4, 766.7, 766.11a, 766.11b, and 766.13), section 4 as
amended by 1994 PA 167, section 11a as added by 2004 PA 20, and
section 11b as added by 2007 PA 89.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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CHAPTER VI

Sec. 1. The state and ~~accused shall be~~ **THE DEFENDANT 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~~ **AN** examination, to bring ~~them~~ **IT** to a final
determination without delay except as ~~it may be~~ necessary to secure

1 to the ~~accused~~ DEFENDANT a fair and impartial examination. A
2 DISTRICT COURT MAGISTRATE APPOINTED UNDER CHAPTER 85 OF THE REVISED
3 JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.8501 TO 600.8551,
4 SHALL NOT PRESIDE AT A PRELIMINARY EXAMINATION OR ACCEPT A PLEA OF
5 GUILTY OR NOLO CONTENDERE TO AN OFFENSE OR IMPOSE A SENTENCE EXCEPT
6 AS OTHERWISE AUTHORIZED BY SECTION 8511(A), (B), OR (C) OF THE
7 REVISED JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.8511.

8 Sec. 4. (1) Except as provided in section 4 of chapter XIIIA of
9 ~~Act No. 288 of the Public Acts of 1939, being section 712A.4 of the~~
10 ~~Michigan Compiled Laws, THE PROBATE CODE OF 1939, 1939 PA 288, MCL~~
11 ~~712A.4,~~ the magistrate before whom any person is arraigned on a
12 charge of having committed a felony shall set a ~~day~~ DATE FOR A
13 PROBABLE CAUSE CONFERENCE TO BE HELD NOT LESS THAN 7 DAYS OR MORE
14 THAN 14 DAYS AFTER THE DATE OF THE ARRAIGNMENT, AND A DATE for a
15 preliminary examination OF not exceeding ~~14~~ LESS THAN 5 DAYS OR
16 MORE THAN 7 days after the arraignment. DATE OF THE PROBABLE CAUSE
17 CONFERENCE. THE DATES FOR THE PROBABLE CAUSE CONFERENCE AND
18 PRELIMINARY EXAMINATION SHALL BE SET AT THE TIME OF ARRAIGNMENT.
19 THE PROBABLE CAUSE CONFERENCE SHALL INCLUDE THE FOLLOWING:

20 (A) DISCUSSIONS AS TO A POSSIBLE PLEA AGREEMENT AMONG THE
21 PROSECUTING ATTORNEY, THE DEFENDANT, AND THE ATTORNEY FOR THE
22 DEFENDANT.

23 (B) DISCUSSIONS REGARDING BAIL AND THE OPPORTUNITY FOR THE
24 DEFENDANT TO PETITION THE MAGISTRATE FOR A BOND MODIFICATION.

25 (C) DISCUSSIONS REGARDING STIPULATIONS AND PROCEDURAL ASPECTS
26 OF THE CASE.

27 (D) DISCUSSIONS REGARDING ANY OTHER MATTERS RELEVANT TO THE

1 CASE AS AGREED UPON BY BOTH PARTIES.

2 (2) THE PROBABLE CAUSE CONFERENCE MAY BE WAIVED BY AGREEMENT
3 BETWEEN THE PROSECUTING ATTORNEY AND THE ATTORNEY FOR THE
4 DEFENDANT. THE PARTIES SHALL NOTIFY THE COURT OF THE WAIVER
5 AGREEMENT AND WHETHER THE PARTIES WILL BE CONDUCTING A PRELIMINARY
6 EXAMINATION, WAIVING THE EXAMINATION, OR ENTERING A PLEA.

7 (3) A DISTRICT JUDGE HAS THE AUTHORITY TO ACCEPT A FELONY
8 PLEA. A DISTRICT JUDGE SHALL TAKE A PLEA TO A MISDEMEANOR OR FELONY
9 AS PROVIDED BY COURT RULE IF A PLEA AGREEMENT IS REACHED BETWEEN
10 THE PARTIES. SENTENCING FOR A FELONY SHALL BE CONDUCTED BY A
11 CIRCUIT JUDGE, WHO SHALL BE ASSIGNED AND WHOSE NAME SHALL BE
12 AVAILABLE TO THE LITIGANTS, PURSUANT TO COURT RULE, BEFORE THE PLEA
13 IS TAKEN.

14 (4) IF A PLEA AGREEMENT IS NOT REACHED AND IF THE PRELIMINARY
15 EXAMINATION IS NOT WAIVED BY THE DEFENDANT WITH THE CONSENT OF THE
16 PROSECUTING ATTORNEY, A PRELIMINARY EXAMINATION SHALL BE HELD AS
17 SCHEDULED UNLESS ADJOURNED OR WAIVED UNDER SECTION 7 OF THIS
18 CHAPTER. THE PARTIES, WITH THE APPROVAL OF THE COURT, MAY AGREE TO
19 SCHEDULE THE PRELIMINARY EXAMINATION EARLIER THAN 5 DAYS AFTER THE
20 CONFERENCE. UPON THE REQUEST OF THE PROSECUTING ATTORNEY, HOWEVER,
21 THE PRELIMINARY EXAMINATION SHALL COMMENCE IMMEDIATELY FOR THE SOLE
22 PURPOSE OF TAKING AND PRESERVING THE TESTIMONY OF A VICTIM IF THE
23 VICTIM IS PRESENT. FOR PURPOSES OF THIS SUBDIVISION, "VICTIM" MEANS
24 AN INDIVIDUAL WHO SUFFERS DIRECT OR THREATENED PHYSICAL, FINANCIAL,
25 OR EMOTIONAL HARM AS A RESULT OF THE COMMISSION OF A CRIME. IF THAT
26 TESTIMONY IS INSUFFICIENT TO ESTABLISH PROBABLE CAUSE TO BELIEVE
27 THAT THE DEFENDANT COMMITTED THE CHARGED CRIME OR CRIMES, THE

1 MAGISTRATE SHALL ADJOURN THE PRELIMINARY EXAMINATION TO THE DATE
2 SET AT ARRAIGNMENT. A VICTIM WHO TESTIFIES UNDER THIS SUBDIVISION
3 SHALL NOT BE CALLED AGAIN TO TESTIFY AT THE ADJOURNED PRELIMINARY
4 EXAMINATION ABSENT A SHOWING OF GOOD CAUSE.

5 (5) IF 1 OR MORE DEFENDANTS HAVE BEEN CHARGED ON COMPLAINTS
6 LISTING CODEFENDANTS WITH A FELONY OR FELONIES, THE PROBABLE CAUSE
7 CONFERENCE AND PRELIMINARY EXAMINATION FOR THOSE DEFENDANTS WHO
8 HAVE BEEN ARRESTED AND ARRAIGNED AT LEAST 72 HOURS BEFORE THAT
9 CONFERENCE ON THOSE CHARGES SHALL BE CONSOLIDATED, AND ONLY 1 JOINT
10 CONFERENCE OR 1 JOINT PRELIMINARY EXAMINATION SHALL BE HELD UNLESS
11 THE PROSECUTING ATTORNEY CONSENTS TO A SEVERANCE, A DEFENDANT SEEKS
12 SEVERANCE BY MOTION AND THE MAGISTRATE FINDS SEVERANCE TO BE
13 REQUIRED BY LAW, OR 1 OF THE DEFENDANTS IS UNAVAILABLE AND DOES NOT
14 APPEAR AT THE HEARING.

15 (6) At the preliminary examination, a magistrate shall examine
16 the complainant and the witnesses in support of the prosecution, on
17 oath and, except as provided in ~~section 2167 of the revised~~
18 ~~judicature act of 1961, Act No. 236 of the Public Acts of 1961,~~
19 ~~being section 600.2167 of the Michigan Compiled Laws,~~ **SECTIONS 11A**
20 **AND 11B OF THIS CHAPTER,** in the presence of the ~~accused,~~ **DEFENDANT,**
21 ~~in regard to~~ **CONCERNING** the offense charged and in regard to any
22 other matters connected with the charge that the magistrate
23 considers pertinent.

24 Sec. 7. A magistrate may adjourn a preliminary examination for
25 a felony to a place in the county as the magistrate ~~deems~~
26 **DETERMINES IS** necessary. The ~~accused~~ **DEFENDANT** may in the meantime
27 be committed either to the county jail or to the custody of the

1 officer by whom he **OR SHE** was arrested or to any other officer; or,
2 unless ~~he~~**THE DEFENDANT** is charged with treason or murder, ~~he~~**THE**
3 **DEFENDANT** may be admitted to bail. **THE DEFENDANT MAY WAIVE THE**
4 **PRELIMINARY EXAMINATION WITH THE CONSENT OF THE PROSECUTING**
5 **ATTORNEY.** An adjournment, continuance, or delay of a preliminary
6 examination ~~shall not~~**MAY** be granted by a magistrate ~~except~~**WITHOUT**
7 **THE CONSENT OF THE DEFENDANT OR THE PROSECUTING ATTORNEY** for good
8 cause shown. A magistrate ~~shall not~~**MAY** adjourn, continue, or delay
9 the examination of any cause ~~by~~**WITH** the consent of the ~~prosecution~~
10 ~~and accused unless in his discretion it shall clearly appear by a~~
11 ~~sufficient showing to the magistrate to be entered upon the record~~
12 ~~that the reasons for such consent are founded upon strict necessity~~
13 ~~and that the examination of the cause cannot then be had, or a~~
14 ~~manifest injustice will be done.~~ **DEFENDANT AND PROSECUTING**
15 **ATTORNEY.** An action on the part of the magistrate in adjourning or
16 continuing any case ~~, shall~~**DOES** not cause the magistrate to lose
17 jurisdiction of the case.

18 Sec. 11a. On motion of either party, the magistrate ~~may~~**SHALL**
19 permit the testimony of an ~~expert witness or, upon a showing of~~
20 ~~good cause,~~ any witness, **EXCEPT THE COMPLAINING WITNESS, AN ALLEGED**
21 **EYEWITNESS, OR A LAW ENFORCEMENT OFFICER TO WHOM THE DEFENDANT IS**
22 **ALLEGED TO HAVE MADE AN INCRIMINATING STATEMENT,** to be conducted by
23 means of telephonic, voice, or video conferencing. **THE TESTIMONY**
24 **TAKEN BY VIDEO CONFERENCING SHALL BE ADMISSIBLE IN ANY SUBSEQUENT**
25 **TRIAL OR HEARING AS OTHERWISE PERMITTED BY LAW.**

26 Sec. 11b. (1) **THE RULES OF EVIDENCE APPLY AT THE PRELIMINARY**
27 **EXAMINATION EXCEPT THAT THE FOLLOWING ARE NOT EXCLUDED BY THE RULE**

House Bill No. 5154 as amended March 27, 2014

1 AGAINST HEARSAY AND SHALL BE ADMISSIBLE AT THE PRELIMINARY
2 EXAMINATION WITHOUT REQUIRING THE TESTIMONY OF THE AUTHOR OF THE
3 REPORT, KEEPER OF THE RECORDS, OR ANY ADDITIONAL FOUNDATION OR
4 AUTHENTICATION:

5 (A) ~~(1) Evidence~~ A REPORT of the results of properly performed
6 drug analysis field testing ~~is admissible in a preliminary~~
7 ~~examination solely to establish that the substance tested is a~~
8 controlled substance.

9 ~~(2) Evidence of the results of properly performed drug~~
10 ~~analysis field testing is sufficient to establish that the~~
11 ~~substance tested is a controlled substance for purposes of a~~
12 ~~preliminary examination.~~

13 (B) A <<CERTIFIED>> COPY OF ANY WRITTEN OR ELECTRONIC ORDER,
14 JUDGMENT,
15 DECREE, DOCKET ENTRY, REGISTER OF ACTIONS, OR OTHER RECORD OF ANY
16 COURT OR GOVERNMENTAL AGENCY OF THIS STATE.

17 (C) A REPORT OTHER THAN A LAW ENFORCEMENT REPORT THAT IS MADE
18 OR KEPT IN THE ORDINARY COURSE OF BUSINESS.

19 (D) EXCEPT FOR THE POLICE INVESTIGATIVE REPORT, A REPORT
20 PREPARED BY A LAW ENFORCEMENT OFFICER OR OTHER PUBLIC AGENCY.
21 REPORTS PERMITTED UNDER THIS SUBDIVISION INCLUDE, BUT ARE NOT
22 LIMITED TO, A REPORT OF THE FINDINGS OF A TECHNICIAN OF THE
23 DIVISION OF THE DEPARTMENT OF STATE POLICE CONCERNED WITH FORENSIC
24 SCIENCE, A LABORATORY REPORT, A MEDICAL REPORT, A REPORT OF AN
25 ARSON INVESTIGATOR, AND AN AUTOPSY REPORT.

26 (2) THE MAGISTRATE SHALL ALLOW THE PROSECUTING ATTORNEY OR THE
27 DEFENSE TO SUBPOENA AND CALL A WITNESS FROM WHOM HEARSAY TESTIMONY
WAS INTRODUCED UNDER THIS SECTION ON A SATISFACTORY SHOWING TO THE

House Bill No. 5154 as amended May 8, 2014

1 MAGISTRATE THAT LIVE TESTIMONY WILL BE RELEVANT TO THE MAGISTRATE'S
 2 DECISION WHETHER THERE IS PROBABLE CAUSE TO BELIEVE THAT A FELONY
 3 HAS BEEN COMMITTED AND PROBABLE CAUSE TO BELIEVE THAT THE DEFENDANT
 4 COMMITTED THE FELONY.

5 (3) As used in this section, "controlled substance" means that
 6 term as defined under section 7104 of the public health code, 1978
 7 PA 368, MCL 333.7104.

8 ~~———— (4) This section applies to preliminary examinations that~~
 9 ~~begin on or after the effective date of the amendatory act that~~
 10 ~~added this section.~~

11 Sec. 13. If ~~it shall appear to the~~ magistrate **DETERMINES** at
 12 the conclusion of the preliminary examination ~~either that an~~
 13 ~~offense~~ **A FELONY** has not been committed or that there is not
 14 probable cause for charging the defendant ~~therewith, he shall~~ **WITH**
 15 **COMMITTING A FELONY, THE MAGISTRATE SHALL EITHER** discharge ~~such~~ **THE**
 16 defendant **OR REDUCE THE CHARGE TO AN OFFENSE THAT IS NOT A FELONY.**
 17 If ~~it shall appear to the~~ magistrate **DETERMINES** at the conclusion
 18 of the preliminary examination that a felony has been committed and
 19 **THAT** there is probable cause for charging the defendant ~~therewith,~~
 20 **WITH COMMITTING A FELONY,** the magistrate shall forthwith bind the
 21 defendant to appear **WITHIN 14 DAYS FOR ARRAIGNMENT** before the
 22 circuit court of ~~such~~ **THAT** county, or ~~other court having~~
 23 ~~jurisdiction of the cause, for trial.~~ **THE MAGISTRATE MAY CONDUCT THE**
 24 **CIRCUIT COURT ARRAIGNMENT AS PROVIDED BY COURT RULE.**

25 Enacting section 1. This amendatory act applies to cases in
 26 which the defendant is arraigned in district court or municipal
 27 court on or after ~~<<January 1, 2015>>.~~

1 Enacting section 2. This amendatory act does not take effect
2 unless House Bill No. 5155 of the 97th Legislature is enacted into
3 law.