

HOUSE BILL No. 5154

November 14, 2013, Introduced by Reps. Leonard and Walsh and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending sections 4, 7, 11a, 11b, and 13 of chapter VI (MCL 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:

CHAPTER VI

Sec. 4. (1) Except as provided in section 4 of chapter XIIIA of Act No. 288 of the Public Acts of 1939, being section 712A.4 of the Michigan Compiled Laws, **THE PROBATE CODE OF 1939, 1939 PA 288, MCL 712A.4**, the magistrate before whom any person is arraigned on a charge of having committed a felony shall set a ~~day~~ **DATE FOR A PROBABLE CAUSE CONFERENCE TO BE HELD NOT LESS THAN 7 DAYS OR MORE**

1 THAN 14 DAYS AFTER THE DATE OF THE ARRAIGNMENT, AND A DATE for a
2 preliminary examination OF not ~~exceeding 14~~ LESS THAN 5 DAYS OR
3 MORE THAN 7 days after the arraignment. DATE OF THE PROBABLE CAUSE
4 CONFERENCE. THE DATES FOR THE PROBABLE CAUSE CONFERENCE AND
5 PRELIMINARY EXAMINATION SHALL BE SET AT THE TIME OF ARRAIGNMENT.
6 THE PROBABLE CAUSE CONFERENCE SHALL INCLUDE THE FOLLOWING:

7 (A) DISCUSSIONS AS TO A POSSIBLE PLEA AGREEMENT AMONG THE
8 PROSECUTING ATTORNEY, THE DEFENDANT, AND THE ATTORNEY FOR THE
9 DEFENDANT.

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

12 (C) DISCUSSIONS REGARDING STIPULATIONS AND PROCEDURAL ASPECTS
13 OF THE CASE.

14 (D) DISCUSSIONS REGARDING ANY OTHER MATTERS RELEVANT TO THE
15 CASE AS AGREED UPON BY BOTH PARTIES.

16 (E) TESTIMONY FROM A VICTIM IF REQUESTED BY THE PROSECUTING
17 ATTORNEY AND IF THE VICTIM IS PRESENT. FOR PURPOSES OF THIS
18 SUBDIVISION, "VICTIM" MEANS THAT TERM AS DEFINED IN SECTION 31 OF
19 THE WILLIAM VAN REGENMORTER CRIME VICTIM'S RIGHTS ACT, 1985 PA 87,
20 MCL 780.781.

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

26 (3) A DISTRICT JUDGE HAS THE AUTHORITY TO ACCEPT A FELONY
27 PLEA. A DISTRICT JUDGE SHALL TAKE A PLEA TO A MISDEMEANOR OR FELONY

1 AS PROVIDED BY COURT RULE IF A PLEA AGREEMENT IS REACHED BETWEEN
2 THE PARTIES. SENTENCING FOR A FELONY SHALL BE CONDUCTED BY A
3 CIRCUIT JUDGE, WHO SHALL BE ASSIGNED AND WHOSE NAME SHALL BE
4 AVAILABLE TO THE LITIGANTS, PURSUANT TO COURT RULE, BEFORE THE PLEA
5 IS TAKEN.

6 (4) IF A PLEA AGREEMENT IS NOT REACHED AND IF THE PRELIMINARY
7 EXAMINATION IS NOT WAIVED BY THE DEFENDANT WITH THE CONSENT OF THE
8 PROSECUTING ATTORNEY, A PRELIMINARY EXAMINATION SHALL BE HELD AS
9 SCHEDULED UNLESS ADJOURNED OR WAIVED UNDER SECTION 7 OF THIS
10 CHAPTER. THE PARTIES, WITH THE APPROVAL OF THE COURT, MAY AGREE TO
11 SCHEDULE THE PRELIMINARY EXAMINATION EARLIER THAN 5 DAYS AFTER THE
12 CONFERENCE.

13 (5) IF 1 OR MORE DEFENDANTS HAVE BEEN CHARGED ON COMPLAINTS
14 LISTING CODEFENDANTS WITH A FELONY OR FELONIES, THE PROBABLE CAUSE
15 CONFERENCE AND PRELIMINARY EXAMINATION FOR THOSE DEFENDANTS WHO
16 HAVE BEEN ARRESTED AND ARRAIGNED AT LEAST 72 HOURS BEFORE THAT
17 CONFERENCE ON THOSE CHARGES SHALL BE CONSOLIDATED, AND ONLY 1 JOINT
18 CONFERENCE OR 1 JOINT PRELIMINARY EXAMINATION SHALL BE HELD UNLESS
19 THE PROSECUTING ATTORNEY CONSENTS TO A SEVERANCE OR 1 OF THE
20 DEFENDANTS IS UNAVAILABLE AND DOES NOT APPEAR AT THE HEARING.

21 (6) At the preliminary examination, a magistrate shall examine
22 the complainant and the witnesses in support of the prosecution, on
23 oath and, ~~except as provided in section 2167 of the revised~~
24 ~~judicature act of 1961, Act No. 236 of the Public Acts of 1961,~~
25 ~~being section 600.2167 of the Michigan Compiled Laws, SECTIONS 11A~~
26 ~~AND 11B OF THIS CHAPTER,~~ in the presence of the accused, ~~DEFENDANT,~~
27 ~~in regard to~~ **CONCERNING** the offense charged and in regard to any

1 other matters connected with the charge that the magistrate
2 considers pertinent.

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

24 Sec. 11a. On motion of either party, the magistrate ~~may~~-**SHALL**
25 permit the testimony of an ~~expert witness or, upon a showing of~~
26 ~~good cause,~~ any witness, **EXCEPT THE COMPLAINING WITNESS, AN ALLEGED**
27 **EYEWITNESS, OR A LAW ENFORCEMENT OFFICER TO WHOM THE DEFENDANT IS**

1 ALLEGED TO HAVE MADE AN INCRIMINATING STATEMENT, to be conducted by
2 means of telephonic, voice, or video conferencing. THE TESTIMONY
3 TAKEN BY THESE MEANS IS ADMISSIBLE IN ANY SUBSEQUENT TRIAL OR
4 HEARING AS PROVIDED BY THE MICHIGAN RULES OF EVIDENCE. THE
5 TESTIMONY MAY INCLUDE HEARSAY TESTIMONY AS PROVIDED IN SECTION 11B
6 OF THIS CHAPTER.

7 Sec. 11b. (1) THE RULES OF EVIDENCE APPLY AT THE PRELIMINARY
8 EXAMINATION EXCEPT THAT THE FOLLOWING ARE NOT EXCLUDED BY THE RULE
9 AGAINST HEARSAY AND SHALL BE ADMISSIBLE AT THE PRELIMINARY
10 EXAMINATION WITHOUT REQUIRING THE TESTIMONY OF THE AUTHOR OF THE
11 REPORT, KEEPER OF THE RECORDS, OR ANY ADDITIONAL FOUNDATION OR
12 AUTHENTICATION:

13 (A) ~~Evidence~~ A REPORT of the results of properly performed
14 drug analysis field testing ~~is admissible in a preliminary~~
15 ~~examination solely to establish that the substance tested is a~~
16 controlled substance.

17 ~~—— (2) Evidence of the results of properly performed drug~~
18 ~~analysis field testing is sufficient to establish that the~~
19 ~~substance tested is a controlled substance for purposes of a~~
20 ~~preliminary examination.~~

21 (B) A COPY OF ANY WRITTEN OR ELECTRONIC ORDER, JUDGMENT,
22 DECREE, DOCKET ENTRY, REGISTER OF ACTIONS, OR OTHER RECORD OF ANY
23 COURT OR GOVERNMENTAL AGENCY OF THIS STATE, DULY AUTHENTICATED BY A
24 REPRESENTATIVE OF THE COURT OR AGENCY.

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

27 (D) EXCEPT FOR THE POLICE INVESTIGATIVE REPORT, A REPORT

1 PREPARED BY A LAW ENFORCEMENT OFFICER OR OTHER PUBLIC AGENCY.
2 REPORTS PERMITTED UNDER THIS SUBDIVISION INCLUDE, BUT ARE NOT
3 LIMITED TO, A REPORT OF THE FINDINGS OF A TECHNICIAN OF THE
4 DIVISION OF THE DEPARTMENT OF STATE POLICE CONCERNED WITH FORENSIC
5 SCIENCE, A LABORATORY REPORT, A MEDICAL REPORT, A REPORT OF AN
6 ARSON INVESTIGATOR, AN AUTOPSY REPORT, AND A REPORT OF A LOSS
7 PREVENTION OFFICER.

8 (2) ~~(3)~~ As used in this section, "controlled substance" means
9 that term as defined under section 7104 of the public health code,
10 1978 PA 368, MCL 333.7104.

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

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

1 **RULE.**

2 Enacting section 1. This amendatory act does not take effect
3 unless Senate Bill No. ____ or House Bill No. ____ (request no.
4 04030'13) of the 97th Legislature is enacted into law.