

**SENATE BILL NO. 535**

May 27, 1997, Introduced by Senators BOUCHARD, NORTH,  
BULLARD, STALLINGS, MC MANUS, GOUGEON and BENNETT and  
referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled  
"The Michigan penal code,"  
by amending section 2167 (MCL 600.2167), as amended by 1993 PA  
288.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 2167. (1) In a preliminary examination or grand jury  
2 proceeding, a report of the findings of a technician of the divi-  
3 sion of the department of state police concerned with forensic  
4 science, signed by that technician, or a notarized copy of the  
5 report — may be received in evidence in place of the  
6 technician's appearance and testimony.  
7       (2) Before a preliminary examination at which the  
8 technician's report of findings will be introduced in evidence, 2  
9 copies of the report shall be furnished to the prosecuting  
10 attorney. The prosecuting attorney shall immediately furnish 1

1 copy of the technician's report to the defense attorney or, if an  
2 appearance or appointment of defense counsel has not been filed,  
3 to the defendant.

4 (3) ~~The prosecuting attorney, upon~~ UPON receiving copies  
5 of the technician's report, THE PROSECUTING ATTORNEY shall notify  
6 the court before which the preliminary examination will be held  
7 that copies of the technician's report are in the prosecutor's  
8 possession. If the prosecuting attorney fails to notify the  
9 court that he or she has received copies of the technician's  
10 report not less than 5 days before the day set for preliminary  
11 examination, the court shall adjourn the preliminary examination,  
12 UNLESS ALL PARTIES WAIVE THE ADJOURNMENT.

13 (4) ~~An accused person~~ A DEFENDANT or his or her attorney  
14 may request that the technician testify at the preliminary exami-  
15 nation on behalf of the state by serving written notice on the  
16 prosecuting attorney not more than 5 days after receiving a copy  
17 of the technician's report of findings from the prosecuting  
18 attorney. The technician may be sworn and testify by video or  
19 voice communication equipment. ~~that permits the witness, court,~~  
20 ~~all parties, and counsel to hear and speak to each other in the~~  
21 ~~court, chambers, or other suitable place.~~ A record of the testi-  
22 mony shall be taken in the same manner as for other testimony at  
23 the preliminary examination. If suitable video or voice communi-  
24 cation equipment is not available, the technician shall testify  
25 in person.

26 (5) In a preliminary examination, the prosecuting attorney  
27 may move in writing not less than 5 days before the date set for

1 the preliminary examination to permit a forensic pathologist or  
2 medical examiner to be sworn and testify by video or voice commu-  
3 nication equipment. ~~that permits the witness, court, all par-~~  
4 ~~ties, and counsel to hear and speak to each other in the court,~~  
5 ~~chambers, or other suitable place.~~ The court shall grant the  
6 motion for good cause shown. A record of the testimony shall be  
7 taken in the same manner as for other testimony at the prelimi-  
8 nary examination.

9 (6) NOT LESS THAN 7 DAYS BEFORE A PRELIMINARY EXAMINATION  
10 FOR A CRIME ALLEGING THE UNAUTHORIZED USE OR POSSESSION OF AN  
11 INDIVIDUAL'S FINANCIAL TRANSACTION DEVICE, TELECOMMUNICATIONS  
12 ACCESS DEVICE, MOTOR VEHICLE, OR OTHER PROPERTY, THE PROSECUTING  
13 ATTORNEY MAY DO EITHER OF THE FOLLOWING IF AT THE TIME OF THE  
14 PRELIMINARY EXAMINATION THE INDIVIDUAL WILL BE DOMICILED, RESID-  
15 ING, OR WORKING 50 MILES OR MORE FROM THE COURT AND THE  
16 INDIVIDUAL'S TESTIMONY IS NECESSARY ONLY TO ESTABLISH OWNERSHIP  
17 OR LACK OF AUTHORIZATION:

18 (A) NOTIFY THE COURT, DEFENDANT, AND THE DEFENDANT'S ATTOR-  
19 NEY THAT THE INDIVIDUAL WILL TESTIFY BY VIDEO OR VOICE COMMUNICA-  
20 TION EQUIPMENT.

21 (B) MOVE IN WRITING TO PERMIT A TRANSCRIPT OF THE  
22 INDIVIDUAL'S DEPOSITION TAKEN UNDER SUBSECTION (8) TO BE RECEIVED  
23 IN EVIDENCE IN PLACE OF THE INDIVIDUAL'S APPEARANCE AND  
24 TESTIMONY.

25 (7) IF THE PROSECUTING ATTORNEY PROVIDES NOTICE UNDER SUB-  
26 SECTION (6)(A), THE INDIVIDUAL MAY BE SWORN AND TESTIFY BY VIDEO  
27 OR VOICE COMMUNICATION EQUIPMENT. A RECORD OF THE TESTIMONY

1 SHALL BE TAKEN IN THE SAME MANNER AS FOR OTHER TESTIMONY AT THE  
2 PRELIMINARY EXAMINATION. IF SUITABLE VIDEO OR VOICE COMMUNICA-  
3 TION EQUIPMENT IS NOT AVAILABLE, THE INDIVIDUAL SHALL TESTIFY IN  
4 PERSON.

5 (8) IF THE COURT GRANTS THE MOTION FOR A DEPOSITION UNDER  
6 SUBSECTION (6)(B) FOR GOOD CAUSE SHOWN, THE PROSECUTING ATTORNEY  
7 SHALL PROVIDE A PERSON TO TRANSCRIBE THE DEPOSITION. THE DEPOSI-  
8 TION SHALL BE CONDUCTED BY VOICE COMMUNICATION EQUIPMENT THAT  
9 PERMITS THE INDIVIDUAL, PARTIES, COUNSEL, AND PERSON TRANSCRIBING  
10 THE DEPOSITION TO HEAR AND SPEAK TO EACH OTHER. THE INDIVIDUAL  
11 SHALL BE SWORN. A NOTARIZED OR CERTIFIED COPY OF THE TRANSCRIPT  
12 SHALL BE RECEIVED IN EVIDENCE IN PLACE OF THE INDIVIDUAL'S  
13 APPEARANCE AND TESTIMONY. IF THE COURT DENIES THE MOTION, THE  
14 INDIVIDUAL MAY BE SWORN AND TESTIFY BY VIDEO OR VOICE COMMUNICA-  
15 TION EQUIPMENT AS PROVIDED IN SUBSECTION (7).

16 (9) EXCEPT AS PROVIDED IN SUBSECTION (8), THE VIDEO OR VOICE  
17 COMMUNICATION EQUIPMENT DESCRIBED IN THIS SECTION SHALL PERMIT  
18 THE WITNESS, COURT, ALL PARTIES, COUNSEL, AND COURT REPORTER TO  
19 HEAR AND SPEAK TO EACH OTHER IN THE COURT, CHAMBERS, OR OTHER  
20 SUITABLE PLACE.

21 (10) AS USED IN THIS SECTION:

22 (A) "FINANCIAL TRANSACTION DEVICE" MEANS THAT TERM AS  
23 DEFINED IN SECTION 157M OF THE MICHIGAN PENAL CODE, 1931 PA 328,  
24 MCL 750.157M.

25 (B) "TELECOMMUNICATIONS ACCESS DEVICE" MEANS THAT TERM AS  
26 DEFINED IN SECTION 219A OF THE MICHIGAN PENAL CODE, 1931 PA 328,  
27 MCL 750.219A.