

Act No. 123
Public Acts of 2014
Approved by the Governor
May 20, 2014
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**STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2014**

Introduced by Reps. Leonard and Walsh

ENROLLED HOUSE BILL No. 5154

AN ACT to amend 1927 PA 175, entitled “An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to establish a sentencing commission and to prescribe its powers and duties; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act,” 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:

CHAPTER VI

Sec. 1. The state and the defendant are entitled to a prompt examination and determination by the examining magistrate in all criminal causes and it is the duty of all courts and public officers having duties to perform in connection with an examination, to bring it to a final determination without delay except as necessary to secure to the defendant a fair and impartial examination. A district court magistrate appointed under chapter 85 of the revised judicature act of 1961, 1961 PA 236, MCL 600.8501 to 600.8551, shall not preside at a preliminary examination or accept a plea of guilty or nolo contendere to an offense or impose a sentence except as otherwise authorized by section 8511(a), (b), or (c) of the revised judicature act of 1961, 1961 PA 236, MCL 600.8511.

Sec. 4. (1) Except as provided in section 4 of chapter XIIA of 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 date for a probable cause conference to be held not less than 7 days or more than 14 days after the date of the arraignment, and a date for a preliminary examination of not less than 5 days or more than 7 days after the date of the probable cause conference. The dates for the probable cause conference and preliminary examination shall be set at the time of arraignment. The probable cause conference shall include the following:

(a) Discussions as to a possible plea agreement among the prosecuting attorney, the defendant, and the attorney for the defendant.

(b) Discussions regarding bail and the opportunity for the defendant to petition the magistrate for a bond modification.

(c) Discussions regarding stipulations and procedural aspects of the case.

(d) Discussions regarding any other matters relevant to the case as agreed upon by both parties.

(2) The probable cause conference may be waived by agreement between the prosecuting attorney and the attorney for the defendant. The parties shall notify the court of the waiver agreement and whether the parties will be conducting a preliminary examination, waiving the examination, or entering a plea.

(3) A district judge has the authority to accept a felony plea. A district judge shall take a plea to a misdemeanor or felony as provided by court rule if a plea agreement is reached between the parties. Sentencing for a felony shall be conducted by a circuit judge, who shall be assigned and whose name shall be available to the litigants, pursuant to court rule, before the plea is taken.

(4) If a plea agreement is not reached and if the preliminary examination is not waived by the defendant with the consent of the prosecuting attorney, a preliminary examination shall be held as scheduled unless adjourned or waived under section 7 of this chapter. The parties, with the approval of the court, may agree to schedule the preliminary examination earlier than 5 days after the conference. Upon the request of the prosecuting attorney, however, the preliminary examination shall commence immediately for the sole purpose of taking and preserving the testimony of a victim if the victim is present. For purposes of this subdivision, "victim" means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime. If that testimony is insufficient to establish probable cause to believe that the defendant committed the charged crime or crimes, the magistrate shall adjourn the preliminary examination to the date set at arraignment. A victim who testifies under this subdivision shall not be called again to testify at the adjourned preliminary examination absent a showing of good cause.

(5) If 1 or more defendants have been charged on complaints listing codefendants with a felony or felonies, the probable cause conference and preliminary examination for those defendants who have been arrested and arraigned at least 72 hours before that conference on those charges shall be consolidated, and only 1 joint conference or 1 joint preliminary examination shall be held unless the prosecuting attorney consents to a severance, a defendant seeks severance by motion and the magistrate finds severance to be required by law, or 1 of the defendants is unavailable and does not appear at the hearing.

(6) At the preliminary examination, a magistrate shall examine the complainant and the witnesses in support of the prosecution, on oath and, except as provided in sections 11a and 11b of this chapter, in the presence of the defendant, concerning the offense charged and in regard to any other matters connected with the charge that the magistrate considers pertinent.

Sec. 7. A magistrate may adjourn a preliminary examination for a felony to a place in the county as the magistrate determines is necessary. The defendant may in the meantime be committed either to the county jail or to the custody of the officer by whom he or she was arrested or to any other officer; or, unless the defendant is charged with treason or murder, the defendant may be admitted to bail. The defendant may waive the preliminary examination with the consent of the prosecuting attorney. An adjournment, continuance, or delay of a preliminary examination may be granted by a magistrate without the consent of the defendant or the prosecuting attorney for good cause shown. A magistrate may adjourn, continue, or delay the examination of any cause with the consent of the defendant and prosecuting attorney. An action on the part of the magistrate in adjourning or continuing any case does not cause the magistrate to lose jurisdiction of the case.

Sec. 11a. On motion of either party, the magistrate shall permit the testimony of any witness, except the complaining witness, an alleged eyewitness, or a law enforcement officer to whom the defendant is alleged to have made an incriminating statement, to be conducted by means of telephonic, voice, or video conferencing. The testimony taken by video conferencing shall be admissible in any subsequent trial or hearing as otherwise permitted by law.

Sec. 11b. (1) The rules of evidence apply at the preliminary examination except that the following are not excluded by the rule against hearsay and shall be admissible at the preliminary examination without requiring the testimony of the author of the report, keeper of the records, or any additional foundation or authentication:

(a) A report of the results of properly performed drug analysis field testing to establish that the substance tested is a controlled substance.

(b) A certified copy of any written or electronic order, judgment, decree, docket entry, register of actions, or other record of any court or governmental agency of this state.

(c) A report other than a law enforcement report that is made or kept in the ordinary course of business.

(d) Except for the police investigative report, a report prepared by a law enforcement officer or other public agency. Reports permitted under this subdivision include, but are not limited to, a report of the findings of a technician of the division of the department of state police concerned with forensic science, a laboratory report, a medical report, a report of an arson investigator, and an autopsy report.

(2) The magistrate shall allow the prosecuting attorney or the defense to subpoena and call a witness from whom hearsay testimony was introduced under this section on a satisfactory showing to the magistrate that live testimony will be relevant to the magistrate's decision whether there is probable cause to believe that a felony has been committed and probable cause to believe that the defendant committed the felony.

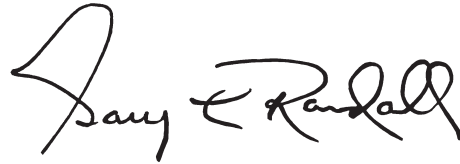
(3) As used in this section, "controlled substance" means that term as defined under section 7104 of the public health code, 1978 PA 368, MCL 333.7104.

Sec. 13. If the magistrate determines at the conclusion of the preliminary examination that a felony has not been committed or that there is not probable cause for charging the defendant with committing a felony, the magistrate shall either discharge the defendant or reduce the charge to an offense that is not a felony. If the magistrate determines at the conclusion of the preliminary examination that a felony has been committed and that there is probable cause for charging the defendant with committing a felony, the magistrate shall forthwith bind the defendant to appear within 14 days for arraignment before the circuit court of that county, or the magistrate may conduct the circuit court arraignment as provided by court rule.

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

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor