

SUBSTITUTE FOR
HOUSE BILL NO. 6593

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending sections 1, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16,
and 17 of chapter VI (MCL 766.1, 766.4, 766.5, 766.6, 766.7, 766.8,
766.9, 766.10, 766.11, 766.13, 766.14, 766.15, 766.16, and 766.17),
section 4 as amended by 1994 PA 167, section 9 as amended by 1988
PA 106, and section 14 as amended by 1998 PA 520, and by adding
section 2.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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CHAPTER VI

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Sec. 1. The state and accused ~~shall be~~ **ARE** entitled to a

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~~prompt examination and~~ **PROBABLE CAUSE** determination by the

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examining magistrate in all ~~criminal causes and it is hereby made~~

1 ~~the duty of all courts and public officers having duties to perform~~
2 ~~in connection with such examination, to bring them to a final~~
3 ~~determination without delay except as it may be necessary to secure~~
4 ~~to the accused a fair and impartial examination~~ FELONY CASES.

5 SEC. 2. (1) THE CHIEF JUDGE OF THE DISTRICT COURT, THE COUNTY
6 PROSECUTING ATTORNEY, AND THE COUNTY SHERIFF MAY, BY UNANIMOUS
7 AGREEMENT IN WRITING, PROVIDE FOR PRELIMINARY EXAMINATION
8 CONFERENCES TO BE HELD IN THAT DISTRICT COURT AS PROVIDED IN THIS
9 SECTION BEFORE ANY PRELIMINARY EXAMINATIONS ARE CONDUCTED.

10 (2) AN AGREEMENT ADOPTED UNDER THIS SECTION TO PROVIDE FOR
11 PRELIMINARY EXAMINATION CONFERENCES SHALL, AT A MINIMUM, ALLOW THE
12 COUNTY PROSECUTING ATTORNEY AND THE DEFENDANT AND HIS OR HER
13 ATTORNEY TO DISCUSS THE PROCEDURAL ASPECTS OF THE CASE, THE
14 OPPORTUNITY FOR BAIL, AND THE POSSIBILITY OF A PLEA AGREEMENT IN
15 ANY PRELIMINARY EXAMINATION CONFERENCE CONDUCTED UNDER THE
16 AGREEMENT. THE AGREEMENT SHALL NOT REQUIRE PROOF OF PROBABLE CAUSE
17 TO BELIEVE THAT A FELONY WAS COMMITTED AND THAT THE DEFENDANT
18 COMMITTED THAT FELONY. THE PROSECUTING ATTORNEY AND THE DEFENDANT
19 AND HIS OR HER ATTORNEY SHALL BE ORDERED BY THE COURT TO ATTEND THE
20 PRELIMINARY EXAMINATION CONFERENCE UNLESS THE CONFERENCE IS WAIVED
21 BY THE DEFENDANT.

22 (3) THE COURT MAY PRESIDE OVER A PRELIMINARY EXAMINATION
23 CONFERENCE HELD UNDER THIS SECTION. IF THE COURT DOES NOT PRESIDE
24 OVER THE CONFERENCE, THE JUDGE SHALL BE AVAILABLE DURING THE PERIOD
25 IN WHICH THE CONFERENCE IS HELD TO DISPOSE OF ANY PLEA AGREEMENT OR
26 TO DETERMINE BAIL. THE RULES OF EVIDENCE DO NOT APPLY TO A
27 PRELIMINARY EXAMINATION CONFERENCE HELD UNDER THIS SECTION, AND

House Bill No. 6593 (H-1) as amended December 4, 2008

1 WITNESSES SHALL NOT BE PRESENTED. THE PROSECUTING ATTORNEY SHALL
2 PROVIDE THE DEFENDANT AND HIS OR HER ATTORNEY WITH ALL OF THE
3 FOLLOWING INFORMATION RELATED TO THE CASE BEFORE OR DURING THE
4 CONFERENCE HELD UNDER THIS SUBSECTION AND, IF ADDITIONAL
5 INFORMATION IS OBTAINED AFTER THE CONFERENCE, PROMPTLY AFTER THAT
6 INFORMATION IS OBTAINED:

7 (A) A COPY OF EACH AVAILABLE INVESTIGATIVE REPORT PREPARED BY
8 OR ON BEHALF OF LAW ENFORCEMENT.

9 (B) A COPY OF EACH AVAILABLE WITNESS STATEMENT.

10 (C) A COPY OF EACH AVAILABLE RECORDED CONFESSION AND, IF THE
11 CONFESSION WAS TRANSCRIBED, A COPY OF EACH AVAILABLE TRANSCRIPTION.

12 (4) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3), THE
13 PROSECUTING ATTORNEY AND THE DEFENDANT REMAIN SUBJECT TO THE RULES
14 OF DISCOVERY UNDER THE MICHIGAN RULES OF COURT.

15 Sec. 4. (1) Except as provided in ~~section~~ SECTIONS 2 AND 4 of
16 chapter XIIIA of ~~Act No. 288 of the Public Acts of 1939, being~~
17 ~~section 712A.4 of the Michigan Compiled Laws 1939 PA 288, MCL~~

18 712A.2 AND 712A.4, the magistrate before whom any person is
19 arraigned on a charge of having committed a felony shall set a day
20 for a preliminary examination not exceeding 14 days after the
21 arraignment OR, IF A PRELIMINARY EXAMINATION CONFERENCE AGREEMENT

22 IS IN PLACE UNDER SECTION 2(1) OF THIS CHAPTER, [THE PRELIMINARY

23 EXAMINATION CONFERENCE SHALL OCCUR NOT MORE THAN 14 DAYS AFTER THE
ARRAIGNMENT. IF THE CASE IS NOT DISPOSED OF AT THE PRELIMINARY
EXAMINATION CONFERENCE, THEN THE PRELIMINARY EXAMINATION SHALL OCCUR NOT
MORE THAN 7 DAYS AFTER THE PRELIMINARY EXAMINATION CONFERENCE.] At the

24 preliminary examination, a
magistrate shall examine ~~the complainant and the witnesses in~~

25 support of the prosecution ~~—on~~ UNDER oath and, except as provided

26 in section 2167 of the revised judicature act of 1961, ~~Act No. 236~~

27 ~~of the Public Acts of 1961, being section 600.2167 of the Michigan~~

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1 ~~Compiled Laws 1961 PA 236, MCL 600.2167, in the presence of the~~
2 ~~accused, in regard to the offense charged. and in regard to any~~
3 ~~other matters connected with the charge that the magistrate~~
4 ~~considers pertinent. THE PRELIMINARY EXAMINATION SHALL NOT BE USED~~
5 ~~FOR PURPOSES OF DISCOVERY.~~

6 (2) IF 1 OR MORE DEFENDANTS HAVE BEEN CHARGED WITH A FELONY
7 ARISING OUT OF THE SAME TRANSACTION, THE PRELIMINARY EXAMINATIONS
8 FOR ALL THE DEFENDANTS WHO HAVE BEEN ARRESTED ON THOSE CHARGES
9 SHALL BE CONSOLIDATED, AND ONLY 1 JOINT PRELIMINARY EXAMINATION
10 SHALL BE HELD. UPON MOTION OF 1 OR MORE OF THE DEFENDANTS, THE
11 CONSOLIDATED PRELIMINARY EXAMINATIONS MAY BE SEVERED IF THE
12 DEFENDANT'S ATTORNEY CANNOT ATTEND A PRELIMINARY EXAMINATION WITHIN
13 [THE APPLICABLE TIME LIMITATION PROVIDED IN SUBSECTION (1)].

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Sec. 5. If ~~it appears that a felony has been committed and~~
~~that~~ **THE COURT DETERMINES** there is probable cause to believe that
the accused ~~is guilty thereof~~ **COMMITTED A FELONY**, and if the
offense is bailable by the magistrate and the accused offers
sufficient bail, ~~it~~ **THAT BAIL** shall be ~~taken~~ **ACCEPTED** and the
prisoner discharged until trial. If sufficient bail is not offered
or the offense is not bailable by the magistrate, the accused shall
be committed to jail for trial. This section shall not prevent the
magistrate from releasing the accused on his **OR HER** own
recognizance ~~where~~ **IF** authorized by law.

Sec. 6. Any magistrate to whom complaint is made, or before
whom any prisoner is brought, may associate with ~~himself~~ 1 or more
other magistrates of the same county, and they may together execute
the powers and duties conferred ~~upon such magistrates respectively~~
by this chapter, but no fees shall be taxed for ~~such~~ **THOSE OTHER**
associates.

Sec. 7. A magistrate may adjourn a preliminary examination for
a felony to a place in the county as the magistrate ~~deems~~
DETERMINES IS necessary. The accused 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 he **OR SHE** is charged with treason or murder, ~~he~~ may be

1 admitted to bail. An adjournment, continuance, or delay of a
2 **SCHEDULED** preliminary examination **SHALL BE GRANTED PROVIDED THE**
3 **PRELIMINARY EXAMINATION IS COMMENCED WITHIN 14 DAYS OF THE**
4 **ARRAIGNMENT OR WITHIN 21 DAYS OF ARRAIGNMENT IN CASES WHERE A**
5 **PRELIMINARY EXAMINATION CONFERENCE WAS HELD. IN ALL OTHER CASES, AN**
6 **ADJOURNMENT, CONTINUANCE, OR DELAY OF A PRELIMINARY EXAMINATION**
7 shall not be granted ~~by a magistrate except for good cause shown OR~~
8 **BY AGREEMENT OF THE PARTIES.** ~~A magistrate shall not adjourn,~~
9 ~~continue, or delay the examination of any cause by the consent of~~
10 ~~the prosecution and accused unless in his discretion it shall~~
11 ~~clearly appear by a sufficient showing to the magistrate to be~~
12 ~~entered upon the record that the reasons for such consent are~~
13 ~~founded upon strict necessity and that the examination of the cause~~
14 ~~cannot then be had, or a manifest injustice will be done. An action~~
15 ~~on the part of the magistrate in adjourning or continuing any case,~~
16 ~~shall~~ **ADJOURNMENT OR CONTINUANCE DOES** not cause the magistrate to
17 lose jurisdiction of the case.

18 Sec. 8. The person accused may be committed as provided in the
19 ~~preceding~~ section 7, by the verbal order of the magistrate, or by a
20 warrant ~~under his hand~~ **ISSUED BY THE MAGISTRATE**, stating that he
21 **THE ACCUSED** is committed for ~~such~~ further examination on a day to
22 be named in the warrant. ~~; and on the day therein specified, he may~~
23 ~~be brought~~ **THE ACCUSED SHALL APPEAR** before the magistrate ~~by his~~
24 ~~verbal order to the same officer by or to whose custody he was~~
25 ~~committed, or by an order in writing to a different officer~~ **AS**
26 **ORDERED OR AS SPECIFIED IN THE WARRANT.**

27 Sec. 9. (1) Upon the motion of any party, the examining

1 magistrate may close to members of the general public the
2 preliminary examination of a person charged with criminal sexual
3 conduct in any degree, assault with intent to commit criminal
4 sexual conduct, sodomy, gross indecency, or any other offense
5 involving sexual misconduct if all of the following conditions are
6 met:

7 (a) The magistrate determines that the need for protection of
8 a victim, a witness, or the defendant outweighs the public's right
9 of access to the **PRELIMINARY** examination.

10 (b) The denial of access to the **PRELIMINARY** examination is
11 narrowly tailored to accommodate the interest being protected.

12 (c) The magistrate states on the record the specific reasons
13 for his or her decision to close the **PRELIMINARY** examination to
14 members of the general public.

15 (2) In determining whether closure of the preliminary
16 examination is necessary to protect a victim or witness, the
17 magistrate shall consider all of the following:

18 (a) The psychological condition of the victim or witness.

19 (b) The nature of the offense charged against the defendant.

20 (c) The desire of the victim or witness to have the
21 **PRELIMINARY** examination closed to the public.

22 (3) The magistrate may close a preliminary examination to
23 protect the right of a party to a fair trial only if both of the
24 following apply:

25 (a) There is a substantial probability that the party's right
26 to a fair trial will be prejudiced by publicity that closure would
27 prevent.

1 (b) Reasonable alternatives to closure cannot adequately
2 protect the party's right to a fair trial.

3 Sec. 10. **AS PROVIDED IN SECTION 24 OF ARTICLE I OF THE STATE**
4 **CONSTITUTION OF 1963, THE VICTIM HAS THE RIGHT TO ATTEND THE**
5 **PRELIMINARY EXAMINATION AND SHALL NOT BE SEQUESTERED.** The
6 magistrate while conducting ~~such~~ **A PRELIMINARY** examination may
7 exclude from the place of the **PRELIMINARY** examination all **OF** the
8 **OTHER** witnesses who have not been examined. ~~and he~~ **THE MAGISTRATE**
9 may also, if requested or if he ~~sees~~ **OR SHE DETERMINES THAT THERE**
10 **IS** cause, ~~direct the~~ **REQUIRE ANY** witnesses ~~whether for or against~~
11 ~~the prisoner,~~ to be kept separate so that they cannot converse with
12 each other until they shall have been examined. ~~And such~~ **THE**
13 magistrate may ~~in his discretion,~~ also exclude from the place of
14 examination any ~~or all~~ minors during the **PRELIMINARY** examination of
15 ~~such~~ **THOSE** witnesses.

16 Sec. 11. (1) Witnesses may be compelled to appear before the
17 magistrate by subpoenas issued by the magistrate, or by an officer
18 of the court authorized to issue subpoenas, in the same manner, ~~and~~
19 with the same effect, and subject to the same penalties for
20 disobedience ~~or~~ for refusing to be sworn or to testify, as in
21 cases of trials in the circuit court.

22 (2) Unless otherwise provided by law, the evidence given by
23 the witnesses examined in a municipal court shall be taken down in
24 shorthand by a county stenographer where one has been appointed
25 under the provision of a local act of the legislature or by the
26 county board of commissioners of the county in which the
27 **PRELIMINARY** examination is held, or the magistrate, for cause

1 shown, may appoint some other suitable stenographer at the request
 2 of the prosecuting attorney of the county **AND** with the consent of
 3 the respondent or the respondent's attorney, to act as official
 4 stenographer pro tempore for the court ~~of the magistrate to take~~
 5 down in shorthand the testimony ~~of an~~ **PRESENTED AT THE PRELIMINARY**
 6 examination. ~~A~~ **AN APPOINTED** stenographer ~~so appointed~~ shall take
 7 the constitutional oath as the official stenographer and ~~shall be~~
 8 **IS** entitled to ~~the following fees:~~ **A FEE OF** \$6.00 for each day and
 9 \$3.00 for each half day while ~~so employed in~~ **AS THE OFFICIAL**
 10 **STENOGRAPHER** taking down the testimony, and 10 cents per folio for
 11 ~~typewriting~~ **WORD PROCESSING** the testimony taken down in shorthand,
 12 or other compensation and fees as ~~shall be fixed by the county~~
 13 board of commissioners ~~appointing~~ **THAT APPOINTED** the stenographer.
 14 The fees may be allowed and paid out of the treasury of the county
 15 in which the testimony is taken. ~~It shall not be necessary for a~~ **A**
 16 witness ~~or witnesses~~ whose testimony is taken in shorthand by the
 17 stenographer **IS NOT REQUIRED** to sign the testimony. Except as
 18 provided in section 15 of this chapter, the testimony ~~so taken~~
 19 under this subsection ~~, shall be typewritten~~ **WORD PROCESSED**,
 20 certified, received, and filed in the court to which the accused is
 21 held for trial.

22 (3) Testimony taken by a stenographer appointed ~~pursuant to~~
 23 **UNDER** subsection (2) or taken by shorthand or recorded by a court
 24 stenographer or district court recorder as provided by law, when
 25 transcribed, ~~shall be considered~~ **IS** prima facie evidence of the
 26 testimony of the witness or witnesses at the **PRELIMINARY**
 27 examination.

1 Sec. 13. If ~~it shall appear to the~~ magistrate **DETERMINES** at
2 the conclusion of the preliminary examination either that an
3 offense has not been committed or that there is not probable cause
4 for charging the defendant ~~therewith~~ **WITH ANY OFFENSE**, ~~he~~ **THE**
5 **MAGISTRATE** shall discharge ~~such~~ **THE** defendant. If ~~it shall appear~~
6 ~~to the~~ magistrate **DETERMINES** at the conclusion of the preliminary
7 examination that a felony has been committed and there is probable
8 cause for charging the defendant ~~therewith~~ **WITH A FELONY**, the
9 magistrate shall ~~forthwith~~ **PROMPTLY** bind the defendant to appear
10 before the circuit court of ~~such~~ **THAT** county ~~, or other court~~
11 ~~having jurisdiction of the cause,~~ for trial.

12 Sec. 14. (1) If the court determines at the conclusion of the
13 preliminary examination of a person charged with a felony that the
14 offense charged is not a felony or that an included offense that is
15 not a felony has been committed, the accused shall not be dismissed
16 but the magistrate shall proceed in the same manner as if the
17 accused had initially been charged with an offense that is not a
18 felony.

19 (2) If at the conclusion of the preliminary examination of a
20 juvenile the magistrate finds that ~~a specified juvenile violation~~
21 ~~did not occur or that~~ there is not probable cause to believe that
22 the juvenile committed ~~the~~ **A SPECIFIED JUVENILE** violation, but that
23 there is probable cause to believe that some other offense occurred
24 and that the juvenile committed that other offense, the magistrate
25 shall transfer the case to the family division of circuit court of
26 the county where the offense is alleged to have been committed.

27 (3) A transfer under subsection (2) does not prevent the

1 family division of circuit court from waiving jurisdiction over the
2 juvenile under section 4 of chapter XIIA of 1939 PA 288, MCL
3 712A.4.

4 (4) As used in this section, "specified juvenile violation"
5 means any of the following:

6 (a) A violation of section 72, 83, 86, 89, 91, 316, 317, 349,
7 520b, 529, 529a, or 531 of the Michigan penal code, 1931 PA 328,
8 MCL 750.72, 750.83, 750.89, 750.91, 750.316, 750.317, 750.349,
9 750.520b, 750.529, 750.529a, and 750.531.

10 (b) A violation of section 84 or 110a(2) of the Michigan penal
11 code, 1931 PA 328, MCL 750.84 and 750.110a, if the juvenile is
12 armed with a dangerous weapon. As used in this subdivision,
13 "dangerous weapon" means 1 or more of the following:

14 (i) A loaded or unloaded firearm, whether operable or
15 inoperable.

16 (ii) A knife, stabbing instrument, brass knuckles, blackjack,
17 club, or other object specifically designed or customarily carried
18 or possessed for use as a weapon.

19 (iii) An object that is likely to cause death or bodily injury
20 when used as a weapon and that is used as a weapon or carried or
21 possessed for use as a weapon.

22 (iv) An object or device that is used or fashioned in a manner
23 to lead a person to believe the object or device is an object or
24 device described in subparagraphs (i) to (iii).

25 (c) A violation of section 186a of the Michigan penal code,
26 1931 PA 328, MCL 750.186a, regarding escape or attempted escape
27 from a juvenile facility, but only if the juvenile facility from

1 which the individual escaped or attempted to escape was 1 of the
2 following:

3 (i) A high-security or medium-security facility operated by the
4 family independence agency or a county juvenile agency.

5 (ii) A high-security facility operated by a private agency
6 under contract with the family independence agency or a county
7 juvenile agency.

8 (d) A violation of section 7401(2)(a)(i) or 7403(2)(a)(i) of
9 the public health code, 1978 PA 368, MCL 333.7401 and 333.7403.

10 (e) An attempt to commit a violation described in subdivisions
11 (a) to (d).

12 (f) Conspiracy to commit a violation described in subdivisions
13 (a) to (d).

14 (g) Solicitation to commit a violation described in
15 subdivisions (a) to (d).

16 (h) Any lesser included offense of a violation described in
17 subdivisions (a) to (g) if the individual is charged with a
18 violation described in subdivisions (a) to (g).

19 (i) Any other violation arising out of the same transaction as
20 a violation described in subdivisions (a) to (g) if the individual
21 is charged with a violation described in subdivisions (a) to (g).

22 Sec. 15. (1) Except as provided in subsection (2) or (3), all
23 **PRELIMINARY** examinations and recognizances taken by a magistrate
24 ~~pursuant to UNDER~~ this chapter shall be immediately certified and
25 returned by the magistrate to the clerk of the court before which
26 the party charged is bound to appear. If that magistrate refuses or
27 neglects to return the ~~same~~ **CERTIFIED HEARING OR RECOGNIZANCE**, the

1 magistrate may be compelled immediately by order of the court, and
2 in case of disobedience may be proceeded against as for a contempt
3 by an order to show cause or a bench warrant.

4 (2) A written transcript of the testimony of a preliminary
5 examination need not be prepared or filed except upon written
6 demand of the prosecuting attorney, defense attorney, or defendant
7 if the defendant is not represented by an attorney, or as ordered
8 ~~sua sponte~~ by the trial court. A written demand to prepare and file
9 a written transcript is timely made if filed within 2 weeks
10 following the arraignment on the information or indictment. A copy
11 of a demand to prepare and file a written transcript shall be filed
12 with the trial court, all attorneys of record, and the court ~~which~~
13 **THAT** held the preliminary examination. Upon ~~sua sponte~~ order of the
14 trial court or timely written demand of an attorney, a written
15 transcript of the preliminary examination or a portion ~~thereof~~ **OF**
16 **THAT TRANSCRIPT** shall be prepared and filed with the trial court.

17 (3) If a written demand is not timely made as provided in
18 subsection (2), a written transcript need not be prepared or filed
19 except upon motion of an attorney or a defendant who is not
20 represented by an attorney, upon cause shown, and when granting of
21 the motion would not delay the start of the trial. When the start
22 of the trial would otherwise be delayed, upon good cause shown to
23 the trial court, in lieu of preparation of the transcript or a
24 portion ~~thereof~~ **OF THAT TRANSCRIPT**, the trial court may direct that
25 the defense and prosecution ~~shall~~ have an opportunity before trial
26 to listen to any electronically recorded testimony, a copy of the
27 recording tape or disc, or a stenographer's notes being read back.

1 Sec. 16. If the person recognized according to the provisions
2 of this chapter ~~shall~~**DOES** not appear before the magistrate at the
3 time appointed for his **OR HER** further ~~examination~~**HEARING**, the
4 magistrate shall record the default, and shall certify the
5 recognizance, with the record of ~~such~~**THAT** default, to the court to
6 which the accused might otherwise have been held for trial. ~~, and~~
7 ~~the like proceedings~~**THE FAILURE TO APPEAR** shall be ~~had thereon as~~
8 ~~upon the~~**TREATED AS A** breach of the condition of a recognizance ~~for~~
9 ~~appearance~~**TO APPEAR** before ~~such~~**THAT** court.

10 Sec. 17. ~~Whenever no~~**IF** sufficient bail is ~~offered~~**NOT**
11 **PROVIDED**, and the prisoner is committed to jail, the magistrate
12 before whom the ~~examination~~**HEARING** was had, shall certify upon the
13 mittimus issued by him **OR HER**, the sum for which bail was required.
14 ~~, and if~~**IF** the prisoner ~~shall offer sufficient~~**OFFERS** bail ~~for~~
15 ~~such sum~~**IN THE AMOUNT SPECIFIED** to the clerk of the court ~~wherein~~
16 **IN WHICH** the prisoner was committed for trial, ~~it~~**THAT BAIL** shall
17 be ~~taken~~**ACCEPTED** by ~~said~~**THE** clerk and the prisoner shall be
18 discharged.

19 Enacting section 1. This amendatory act takes effect January
20 1, 2009 and applies to probable cause hearings commenced on or
21 after that date. A preliminary examination commenced before January
22 1, 2009 shall be continued until completion under the law in effect
23 on the date that the preliminary examination began.

24 Enacting section 2. This amendatory act does not take effect
25 unless House Bill No. 6592 of the 94th Legislature is enacted into
26 law.