

SENATE BILL No. 880

September 30, 2009, Introduced by Senator SWITALSKI and referred to the Committee on Judiciary.

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 to chapter VI.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER VI

Sec. 1. The state and accused ~~shall be~~ **ARE** entitled to a
~~prompt examination and~~ **PROBABLE CAUSE** 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~~

1 ~~in connection with such examination, to bring them to a final~~
2 ~~determination without delay except as it may be necessary to secure~~
3 ~~to the accused a fair and impartial examination~~ FELONY CASES.

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

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

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

1 PROVIDE THE DEFENDANT AND HIS OR HER ATTORNEY WITH ALL OF THE
2 FOLLOWING INFORMATION RELATED TO THE CASE BEFORE OR DURING THE
3 CONFERENCE HELD UNDER THIS SUBSECTION AND, IF ADDITIONAL
4 INFORMATION IS OBTAINED AFTER THE CONFERENCE, PROMPTLY AFTER THAT
5 INFORMATION IS OBTAINED:

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

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

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

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

14 Sec. 4. (1) Except as provided in ~~section~~ SECTIONS 2 AND 4 of
15 chapter XIIIA of ~~Act No. 288 of the Public Acts of 1939, being~~
16 ~~section 712A.4 of the Michigan Compiled Laws 1939 PA 288, MCL~~
17 712A.2 AND 712A.4, the magistrate before whom any person is
18 arraigned on a charge of having committed a felony shall set a day
19 for a preliminary examination not exceeding 14 days after the
20 arraignment OR, IF A PRELIMINARY EXAMINATION CONFERENCE AGREEMENT
21 IS IN PLACE UNDER SECTION 2(1) OF THIS CHAPTER, THE PRELIMINARY
22 EXAMINATION CONFERENCE SHALL OCCUR NOT MORE THAN 14 DAYS AFTER THE
23 ARRAIGNMENT. IF THE CASE IS NOT DISPOSED OF AT THE PRELIMINARY
24 EXAMINATION CONFERENCE, THEN THE PRELIMINARY EXAMINATION SHALL
25 OCCUR NOT MORE THAN 7 DAYS AFTER THE PRELIMINARY EXAMINATION
26 CONFERENCE. At the preliminary examination, a magistrate shall
27 examine ~~the complainant and the~~ witnesses in support of the

1 prosecution ~~, on~~ **UNDER** oath and, except as provided in section 2167
2 of the revised judicature act of 1961, ~~Act No. 236 of the Public~~
3 ~~Acts of 1961, being section 600.2167 of the Michigan Compiled Laws~~
4 **1961 PA 236, MCL 600.2167**, in the presence of the accused, in
5 regard to the offense charged. ~~and in regard to any other matters~~
6 ~~connected with the charge that the magistrate considers pertinent.~~

7 **THE PRELIMINARY EXAMINATION SHALL NOT BE USED FOR PURPOSES OF**
8 **DISCOVERY.**

9 (2) IF 1 OR MORE DEFENDANTS HAVE BEEN CHARGED WITH A FELONY
10 ARISING OUT OF THE SAME TRANSACTION, THE PRELIMINARY EXAMINATIONS
11 FOR ALL OF THOSE DEFENDANTS SHALL BE CONSOLIDATED, AND ONLY 1 JOINT
12 PRELIMINARY EXAMINATION SHALL BE HELD. UPON MOTION OF 1 OR MORE OF
13 THE DEFENDANTS, THE CONSOLIDATED PRELIMINARY EXAMINATIONS MAY BE
14 SEVERED IF THE DEFENDANT'S ATTORNEY CANNOT ATTEND A PRELIMINARY
15 EXAMINATION WITHIN THE APPLICABLE TIME PERIOD SET FORTH IN
16 SUBSECTION (1).

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

27 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~~
 admitted to bail. An adjournment, continuance, or delay of a
SCHEDULED preliminary examination **SHALL BE GRANTED PROVIDED THE**
PRELIMINARY EXAMINATION IS COMMENCED WITHIN 14 DAYS OF THE
ARRAIGNMENT OR WITHIN 21 DAYS OF ARRAIGNMENT IN CASES WHERE A
PRELIMINARY EXAMINATION CONFERENCE WAS HELD. IN ALL OTHER CASES, AN
ADJOURNMENT, CONTINUANCE, OR DELAY OF A PRELIMINARY EXAMINATION
 shall not be granted ~~by a magistrate except for good cause shown OR~~
BY AGREEMENT OF THE PARTIES. A magistrate shall not adjourn,
~~continue, or delay the examination of any cause by the consent of~~
~~the prosecution and accused unless in his discretion it shall~~
~~clearly appear by a sufficient showing to the magistrate to be~~
~~entered upon the record that the reasons for such consent are~~
~~founded upon strict necessity and that the examination of the cause~~
~~cannot then be had, or a manifest injustice will be done. An action~~
~~on the part of the magistrate in adjourning or continuing any case,~~
~~shall~~ **ADJOURNMENT OR CONTINUANCE DOES** not cause the magistrate to

1 lose jurisdiction of the case.

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

11 Sec. 9. (1) Upon the motion of any party, the ~~examining~~
12 magistrate may close to members of the general public the
13 preliminary examination of a person charged with criminal sexual
14 conduct in any degree, assault with intent to commit criminal
15 sexual conduct, sodomy, gross indecency, or any other offense
16 involving sexual misconduct if all of the following conditions are
17 met:

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

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

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

26 (2) In determining whether closure of the preliminary
27 examination is necessary to protect a victim or witness, the

1 magistrate shall consider all of the following:

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

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

4 (c) The desire of the victim or witness to have the

5 **PRELIMINARY** examination closed to the public.

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

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

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

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

27 Sec. 11. (1) Witnesses may be compelled to appear before the

1 magistrate by subpoenas issued by the magistrate, or by an officer
 2 of the court authorized to issue subpoenas, in the same manner, ~~and~~
 3 with the same effect, and subject to the same penalties for
 4 disobedience ~~—~~or for refusing to be sworn or to testify, as in
 5 cases of trials in the circuit court.

6 (2) Unless otherwise provided by law, the evidence given by
 7 the witnesses examined in a municipal court shall be taken down in
 8 shorthand by a county stenographer where one has been appointed
 9 under the provision of a local act of the legislature or by the
 10 county board of commissioners of the county in which the
 11 **PRELIMINARY** examination is held, or the magistrate, for cause
 12 shown, may appoint some other suitable stenographer at the request
 13 of the prosecuting attorney of the county **AND** with the consent of
 14 the respondent or the respondent's attorney, to act as official
 15 stenographer pro tempore for the court ~~of the magistrate to take~~
 16 down in shorthand the testimony ~~of an~~ **PRESENTED AT THE PRELIMINARY**
 17 examination. ~~A~~ **AN APPOINTED** stenographer ~~so appointed~~ shall take
 18 the constitutional oath as the official stenographer and ~~shall be~~
 19 **IS** entitled to ~~the following fees:~~ **A FEE OF** \$6.00 for each day and
 20 \$3.00 for each half day while ~~so employed in~~ **AS THE OFFICIAL**
 21 **STENOGRAPHER** taking down the testimony, and 10 cents per folio for
 22 ~~typewriting~~ **WORD PROCESSING** the testimony taken down in shorthand,
 23 or other compensation and fees as ~~shall be fixed by the county~~
 24 board of commissioners ~~appointing~~ **THAT APPOINTED** the stenographer.
 25 The fees may be allowed and paid out of the treasury of the county
 26 in which the testimony is taken. ~~It shall not be necessary for a~~ **A**
 27 witness ~~or witnesses~~ whose testimony is taken in shorthand by the

1 stenographer **IS NOT REQUIRED** to sign the testimony. Except as
 2 provided in section 15 of this chapter, the testimony ~~so~~ taken
 3 under this subsection ~~, shall be typewritten~~ **WORD PROCESSED**,
 4 certified, received, and filed in the court to which the accused is
 5 held for trial.

6 (3) Testimony taken by a stenographer appointed ~~pursuant to~~
 7 **UNDER** subsection (2) or taken by shorthand or recorded by a court
 8 stenographer or district court recorder as provided by law, when
 9 transcribed, ~~shall be considered~~ **IS** prima facie evidence of the
 10 testimony of the witness or witnesses at the **PRELIMINARY**
 11 examination.

12 Sec. 13. If it ~~shall appear to~~ the magistrate **DETERMINES** at
 13 the conclusion of the preliminary examination either that an
 14 offense has not been committed or that there is not probable cause
 15 for charging the defendant ~~therewith~~ **WITH ANY OFFENSE**, ~~he~~ **THE**
 16 **MAGISTRATE** shall discharge ~~such~~ **THE** defendant. If it ~~shall appear~~
 17 ~~to the magistrate~~ **DETERMINES** at the conclusion of the preliminary
 18 examination that a felony has been committed and there is probable
 19 cause for charging the defendant ~~therewith~~ **WITH A FELONY**, the
 20 magistrate shall ~~forthwith~~ **PROMPTLY** bind the defendant to appear
 21 before the circuit court of ~~such~~ **THAT** county ~~, or other court~~
 22 ~~having jurisdiction of the cause,~~ for trial.

23 Sec. 14. (1) If the court determines at the conclusion of the
 24 preliminary examination of a person charged with a felony that the
 25 offense charged is not a felony or that an included offense that is
 26 not a felony has been committed, the accused shall not be dismissed
 27 but the magistrate shall proceed in the same manner as if the

1 accused had initially been charged with an offense that is not a
2 felony.

3 (2) If at the conclusion of the preliminary examination of a
4 juvenile the magistrate finds that ~~a specified juvenile violation~~
5 ~~did not occur or that~~ there is not probable cause to believe that
6 the juvenile committed ~~the~~ **A SPECIFIED JUVENILE** violation, but that
7 there is probable cause to believe that some other offense occurred
8 and that the juvenile committed that other offense, the magistrate
9 shall transfer the case to the family division of circuit court of
10 the county where the offense is alleged to have been committed.

11 (3) A transfer under subsection (2) does not prevent the
12 family division of circuit court from waiving jurisdiction over the
13 juvenile under section 4 of chapter XIIIA of 1939 PA 288, MCL
14 712A.4.

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

17 (a) A violation of section 72, 83, 86, 89, 91, 316, 317, 349,
18 520b, 529, 529a, or 531 of the Michigan penal code, 1931 PA 328,
19 MCL 750.72, 750.83, **750.86**, 750.89, 750.91, 750.316, 750.317,
20 750.349, 750.520b, 750.529, 750.529a, and 750.531.

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

25 (i) A loaded or unloaded firearm, whether operable or
26 inoperable.

27 (ii) A knife, stabbing instrument, brass knuckles, blackjack,

1 club, or other object specifically designed or customarily carried
2 or possessed for use as a weapon.

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

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

9 (c) A violation of section 186a of the Michigan penal code,
10 1931 PA 328, MCL 750.186a, regarding escape or attempted escape
11 from a juvenile facility, but only if the juvenile facility from
12 which the individual escaped or attempted to escape was 1 of the
13 following:

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

16 (ii) A high-security facility operated by a private agency
17 under contract with the family independence agency or a county
18 juvenile agency.

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

21 (e) An attempt to commit a violation described in subdivisions
22 (a) to (d).

23 (f) Conspiracy to commit a violation described in subdivisions
24 (a) to (d).

25 (g) Solicitation to commit a violation described in
26 subdivisions (a) to (d).

27 (h) Any lesser included offense of a violation described in

1 subdivisions (a) to (g) if the individual is charged with a
2 violation described in subdivisions (a) to (g).

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

6 Sec. 15. (1) Except as provided in subsection (2) or (3), all
7 **PRELIMINARY** examinations and recognizances taken by a magistrate
8 ~~pursuant to~~ **UNDER** this chapter shall be immediately certified and
9 returned by the magistrate to the clerk of the court before which
10 the party charged is bound to appear. If that magistrate refuses or
11 neglects to return the ~~same~~ **CERTIFIED HEARING OR RECOGNIZANCE**, the
12 magistrate may be compelled immediately by order of the court, and
13 in case of disobedience may be proceeded against as for a contempt
14 by an order to show cause or a bench warrant.

15 (2) A written transcript of the testimony of a preliminary
16 examination need not be prepared or filed except upon written
17 demand of the prosecuting attorney, defense attorney, or defendant
18 if the defendant is not represented by an attorney, or as ordered
19 ~~sua sponte~~ by the trial court. A written demand to prepare and file
20 a written transcript is timely made if filed within 2 weeks
21 following the arraignment on the information or indictment. A copy
22 of a demand to prepare and file a written transcript shall be filed
23 with the trial court, all attorneys of record, and the court ~~which~~
24 **THAT** held the preliminary examination. Upon ~~sua sponte~~ order of the
25 trial court or timely written demand of an attorney, a written
26 transcript of the preliminary examination or a portion ~~thereof~~ **OF**
27 **THAT TRANSCRIPT** shall be prepared and filed with the trial court.

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

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

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

1 be ~~taken~~**ACCEPTED** by ~~said~~**THE** clerk and the prisoner shall be
2 discharged.

3 Enacting section 1. This amendatory act takes effect January
4 1, 2010 and applies to probable cause hearings commenced on or
5 after that date. A preliminary examination commenced before January
6 1, 2010 shall be continued until completion under the law in effect
7 on the date that the preliminary examination began.