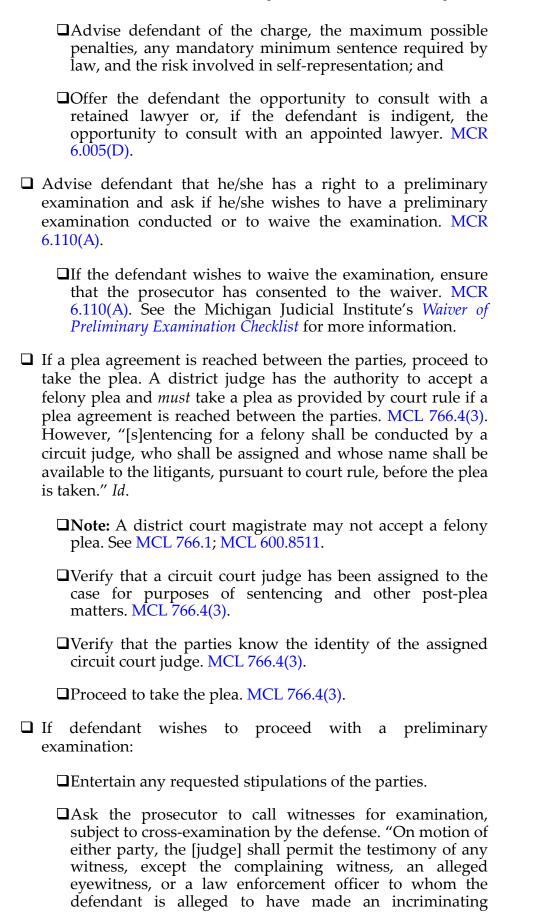
## Conducting a Preliminary Examination in Cases Arraigned in District Court Checklist<sup>1</sup>

**NOTE:** The following requirements apply to cases in which the defendant is arraigned in district court **on or after January 1, 2015**. For a chart outlining the differences in procedures before and after January 1, 2015, as a result of statutory reforms concerning probable cause conferences, preliminary examinations, and felony pleas, see SCAO Memorandum, July 23, 2014. MCL 766.1 *et seq.*; MCR 6.110.

- □ Ensure that a verbatim record is made of the preliminary examination. MCR 6.110(C).
  □ Call the case and ask for oral (or written) appearances of the prosecutor, defendant, and defense attorney (if present).
  □ If defendant is not represented by counsel:
  □ Advise defendant of the right to an attorney at public expense if defendant is indigent.
  □ If defendant requests counsel, refer the defendant to the local indigent criminal defense system's appointing authority for the appointment of counsel if defendant is indigent, or allow defendant a reasonable opportunity to retain counsel, or obtain a waiver of the right to counsel.
  □ Advise defendant that if he/she is going to retain counsel,
- ☐ If the defendant desires to waive counsel, the court must first:

this may be treated as good cause to adjourn the preliminary examination. MCR 6.005(E); MCR 6.110(B)(1).

<sup>&</sup>lt;sup>1</sup> For more detailed information on this topic, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol.* 1.



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." MCL 766.11a.
□Ask the defense if they have any witnesses to call for examination, subject to cross-examination by the prosecution.
□Apply the Rules of Evidence to evidentiary issues, with the exception of certain hearsay reports and records that may be admissible without live foundation testimony under MCL 766.11b. MCR 6.110(D).
□Consider all the evidence presented, including the credibility of the witnesses' testimony, and determine on that basis whether there is probable cause to believe that the defendant committed a crime, i.e., whether the evidence presented is sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the accused's guilt. <i>People v Anderson</i> , 501 Mich 175, 178 (2018). See also <i>People v Yost</i> , 468 Mich 122, 126 (2003).
☐ Determine and state the basis for determining whether the evidence establishes:
☐Probable cause that a felony or circuit court misdemeanor has been committed;
☐Probable cause that defendant committed the felony or circuit court misdemeanor; and
$\Box$ That venue is proper. MCR 6.110(E).
☐ At the end of the preliminary examination, if probable cause is not established, do ONE of the following:
□Discharge defendant, if there is no probable cause to believe that a felony or circuit court misdemeanor has been committed or that defendant committed it, or if venue has not been established. MCR 6.110(F).
□Reduce the charge to an offense that is not a felony and set case for pretrial conference (or trial) in district court, if there is no probable cause to believe that a felony or circuit court misdemeanor has been committed or that defendant committed it. MCR 6.110(F).
☐Transfer the case to the family division of circuit court, if there is no probable cause to believe that defendant committed a specified juvenile violation but there is

probable cause to believe that defendant committed another crime. See MCR 6.110(E). □Adjourn the preliminary examination to the date set at arraignment, if preliminary examination "commence[d] immediately" at the probable cause conference under MCL 766.4(4) for purposes of preserving the victim's testimony, and if that testimony is insufficient to establish probable cause to believe that defendant committed the charged crime or crimes. The victim "shall not be called again to testify at the adjourned preliminary examination absent a showing of good cause." MCL 766.4(4). ☐ At the end of the preliminary examination, if there is probable cause to believe that a felony or circuit court misdemeanor has been committed and that defendant committed it, and if venue has been established, do ONE of the following: ☐Bind defendant over to appear within 14 days for arraignment before the circuit court, and execute the bindover form, SCAO Form MC 200w, Bindover/Transfer *After Preliminary Examination Felony.* MCR 6.110(I). □Conduct the circuit court arraignment as provided by court rule. MCR 6.111. ☐ Have defendant execute a written waiver of circuit court arraignment, SCAO Form CC 261, Waiver of Arraignment and Election to Stand Mute or Enter Not Guilty Plea. MCR 6.113(C).  $\square$  Set, continue, deny, or revoke bail. MCR 6.106(E). ☐ Order the defendant to undergo venereal disease, hepatitis B, hepatitis C, and HIV testing in appropriate cases, SCAO Form MC 234, Order for Counseling and Testing for Disease/Infection. MCL 333.5129; MCL 333.5131.