

Conducting a Preliminary Examination in Cases Arraigned in District Court Checklist¹

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, this may be treated as good cause to adjourn the preliminary examination. [MCR 6.005\(E\)](#); [MCR 6.110\(B\)\(1\)](#).
- If the defendant desires to waive counsel, the court must first:

¹ For more detailed information on this topic, see the Michigan Judicial Institute's [Criminal Proceedings Benchbook, Vol. 1](#).

- Advise defendant of the charge, the maximum possible penalties, any mandatory minimum sentence required by law, and the risk involved in self-representation; and
- Offer the defendant the opportunity to consult with a retained lawyer or, if the defendant is indigent, the opportunity to consult with an appointed lawyer. [MCR 6.005\(D\)](#).
- Advise defendant that he/she has a right to a preliminary examination and ask if he/she wishes to have a preliminary examination conducted or to waive the examination. [MCR 6.110\(A\)](#).
 - If the defendant wishes to waive the examination, ensure that the prosecutor has consented to the waiver. [MCR 6.110\(A\)](#). See the Michigan Judicial Institute's *Waiver of Preliminary Examination Checklist* for more information.
- If a plea agreement is reached between the parties, proceed to take the plea. A district judge has the authority to accept a felony plea and *must* take a plea as provided by court rule if a plea agreement is reached between the parties. [MCL 766.4\(3\)](#). However, “[s]entencing 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.” *Id.*
 - Note:** A district court magistrate may not accept a felony plea. See [MCL 766.1](#); [MCL 600.8511](#).
 - Verify that a circuit court judge has been assigned to the case for purposes of sentencing and other post-plea matters. [MCL 766.4\(3\)](#).
 - Verify that the parties know the identity of the assigned circuit court judge. [MCL 766.4\(3\)](#).
 - Proceed to take the plea. [MCL 766.4\(3\)](#).
- If defendant wishes to proceed with a preliminary examination:
 - Entertain any requested stipulations of the parties.
 - Ask the prosecutor to call witnesses for examination, subject to cross-examination by the defense. “On motion of either party, the [judge] 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." [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. *People v Anderson*, 501 Mich 175, 178 (2018). See also *People v Yost*, 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
 - 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 was “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\(C\)](#).
- 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](#).