



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

Michigan Hall of Justice

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Jennifer Warner
Director

MEMORANDUM

DATE: July 23, 2014

TO: All Judges
Court Administrators

FROM: Bobbi Morrow

RE: 2014 Public Acts 123 and 124
Probable Cause Conferences and Preliminary Examination Reform

Effective January 1, 2015, several statutory amendments will require all district courts to conduct probable cause conferences on felony cases.¹ Additionally, changes to the manner in which preliminary examinations are conducted will also take effect, including amendments regarding the time requirements for scheduling, waiver, consolidation, admissibility of hearsay testimony, and video testimony.² The statutory changes will also expand the jurisdiction of the district court to: (1) require all district court judges to take misdemeanor or felony pleas if an agreement is reached between the parties;³ (2) allow district court judges to conduct circuit court arraignments;⁴ and (3) allow district court magistrates to conduct probable cause conferences when authorized by the chief judge.⁵

Attached is a chart that outlines the many statutes affected by 2014 PA 123 and 124. The first column indicates the current manner in which probable cause conferences and preliminary examinations are conducted and the second column indicates what will change effective January 1, 2015. Even though the statutory changes do not take effect until January 1, 2015, courts should begin to develop a procedure for how to address these statutory amendments.

If you have any questions, please contact Bobbi Morrow at morrowb@courts.mi.gov or 517-373-2173, Julia Norton at nortonj@courts.mi.gov or 517-373-3756, Stacy Westra at westras@courts.mi.gov or 517-3739574, or Jim Inloes at inloesj@courts.mi.gov or 517-373-0122.

¹ MCL 766.4

² MCL 766.4, 766.7, 766.11a, 766.11b, 766.13

³ MCL 766.4(3)

⁴ MCL 766.13

⁵ [MCL 600.8511(h)]

PROBABLE CAUSE CONFERENCES (PCC), PRELIMINARY EXAMS (PE), and MAGISTRATE AUTHORITY

Procedures affected by 2014 PA 123 and 124

Applies to cases arraigned in the district court after January 1, 2015

CURRENT	AFTER JANUARY 1, 2015
District court magistrates cannot conduct preliminary exams or accept felony pleas	District court magistrates cannot conduct preliminary exams, accept felony pleas or impose felony sentence. MCL 766.1 and MCL 600.8511(h).
The date of the Preliminary Examination (PE) must be set at the time of arraignment. MCL 766.4(1)	The date of the Probable Cause Conference (PCC) and the Preliminary Examination (PE) must be set at the time of arraignment. MCL 766.4(1)
Voluntary Probable Cause Conferences (PCC)	Mandatory Probable Cause Conferences (PCC) <ul style="list-style-type: none"> • Held not <7 or >14 days after arraignment • Between prosecutor, defense attorney, & defendant. • Can be waived by the parties • The parties must discuss: plea negotiations, bond modifications, stipulations regarding the case, etc. MCL 766.4(1)-(2)
District court magistrates have no authority to conduct PCC.	When authorized by the chief district court judge, district court magistrates have authority to conduct PCC and all matters allowed at PCC except for the taking of felony pleas and felony sentencings. MCL 600.8511(h)
Preliminary Exam must be set within 14 days after arraignment	Preliminary Exam must be set not < 5 or >7 days after the PCC unless the parties agree to an earlier date. MCL 766.4(1), (4)
District court judge has authority to take felony pleas pursuant to MCR 6.111(A) with consent of the parties and by SCAO assignment as a circuit judge (e.g. case assignment, concurrent jurisdiction, etc.)	District court judge has authority to take felony pleas and <u>must</u> take a misdemeanor or felony plea if an agreement is reached between the parties. The circuit court sentencing judge must be assigned and known to the parties before the plea is taken. MCL 766.4(3)
District court judge cannot adjourn the PE unless good cause shown	District court judge may adjourn the PE <u>without consent</u> of the parties for good cause shown OR may adjourn the PE <u>with consent</u> of the parties without a showing of good cause. MCL 766.7
No provision regarding the preservation of victim testimony at PE	PE must commence immediately (upon the request of prosecutor) for the sole purpose of preserving testimony of a victim. MCL 766.4(4)
No requirement to consolidate co-defendant cases for purpose of PCC or PE	Co-defendants must be consolidated with only 1 PCC and 1 PE held if the co-defendants were arraigned at least 72 hours before the PCC (unless prosecutor consents to severance). MCL 766.4(5)

Defendant may waive the PE	Defendant may waive the PE <u>with the consent of the prosecutor</u> . MCL 766.7
Judge <u>may</u> allow a witness to testify by telephone or video conferencing	Judge <u>must</u> allow witness to testify by telephone or video, on a motion of either party, except the: <ul style="list-style-type: none"> • Complaining witness • Alleged eyewitness • Law enforcement officer to whom the defendant made an incriminating statement. MCL 766.11a
Rules of Evidence apply during PE – parties must lay foundation, authenticate documents, and require testimony of the author. <ul style="list-style-type: none"> - Except at PE, the notarized report from a forensic scientist <u>may</u> be received in evidence in place of the technician’s appearance. MCL 600.2167 	Rules of Evidence apply during PE but the following will be admissible <u>without requiring the testimony of the author of the report, any foundation laid, or authentication</u> : <ol style="list-style-type: none"> 1. Results of drug field test 2. Certified copy of judgment, ROA, government agency record 3. Reports (other than law enforcement) kept in ordinary course of business 4. Forensic science reports 5. Lab reports 6. Medical reports 7. Arson reports 8. Autopsy reports MCL 766.11b NOTE: Judge must allow prosecutor/defendant to subpoena & call witnesses from whom hearsay testimony was introduced on a <u>satisfactory showing</u> that live testimony will be relevant. MCL 766.11b
If at the end of PE, the judge decides there is no probable cause for charging defendant with a felony: <ul style="list-style-type: none"> - Judge must discharge the defendant. MCR 6.110(F) OR <ul style="list-style-type: none"> - If judge determines the offense is not a felony, shall proceed as if it had initially been charged as an offense that is not a felony. MCL 766.14 	If at the end of PE, the judge decides there is no probable cause for charging defendant with a felony: <ul style="list-style-type: none"> - Judge must discharge the defendant OR <ul style="list-style-type: none"> - Reduce the charge to an offense that is not a felony [but see MCR 6.301(D)]. MCL 766.13
If probable cause exists, district court judge binds over to circuit court for arraignment on the information.	If probable cause exists, the district court judge binds over to circuit court to appear within 14 days for circuit court arraignment. MCL 766.13
District court judge has authority to take felony pleas pursuant to MCR 6.111(A) with consent of the parties and by SCAO assignment as a circuit judge (e.g. case assignment, concurrent jurisdiction)	District court judge has authority to conduct all circuit court arraignments as provided by court rule (presumably MCR 6.113 and 6.302). MCL 766.13