

THE CODE OF CRIMINAL PROCEDURE (EXCERPT)
Act 175 of 1927

766.4 Probable cause conference and preliminary examination; dates; scope; waiver; acceptance of plea agreement; scheduling and commencement of preliminary examination; testimony of victim; definition; codefendants; examination by magistrate.

Sec. 4.

(1) Except as provided in section 4 of chapter XA of the probate code of 1939, 1939 PA 288, MCL 712A.4, the magistrate before whom any person is arraigned on a charge of having committed a felony shall set a date for a probable cause conference to be held not less than 7 days or more than 14 days after the date of the arraignment, and a date for a preliminary examination of not less than 5 days or more than 7 days after the date of the probable cause conference. The dates for the probable cause conference and preliminary examination shall be set at the time of arraignment. The probable cause conference shall include the following:

(a) Discussions as to a possible plea agreement among the prosecuting attorney, the defendant, and the attorney for the defendant.

(b) Discussions regarding bail and the opportunity for the defendant to petition the magistrate for a bond modification.

(c) Discussions regarding stipulations and procedural aspects of the case.

(d) Discussions regarding any other matters relevant to the case as agreed upon by both parties.

(2) The probable cause conference may be waived by agreement between the prosecuting attorney and the attorney for the defendant. The parties shall notify the court of the waiver agreement and whether the parties will be conducting a preliminary examination, waiving the examination, or entering a plea.

(3) A district judge has the authority to accept a felony plea. A district judge shall take a plea to a misdemeanor or felony as provided by court rule if a plea agreement is reached between the parties. Sentencing 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.

(4) If a plea agreement is not reached and if the preliminary examination is not waived by the defendant with the consent of the prosecuting attorney, a preliminary examination shall be held as scheduled unless adjourned or waived under section 7 of this chapter. The parties, with the approval of the court, may agree to schedule the preliminary examination earlier than 5 days after the conference. Upon the request of the prosecuting attorney, however, the preliminary examination shall commence immediately for the sole purpose of taking and preserving the testimony of a victim if the victim is present. For purposes of this subdivision, "victim" means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime. If that testimony is insufficient to establish probable cause to believe that the defendant committed the charged crime or crimes, the magistrate shall adjourn the preliminary examination to the date set at arraignment. A victim who testifies under this subdivision shall not be called again to testify at the adjourned preliminary examination absent a showing of good cause.

(5) If 1 or more defendants have been charged on complaints listing codefendants with a felony or felonies, the probable cause conference and preliminary examination for those defendants who have been arrested and arraigned at least 72 hours before that conference on those charges shall be consolidated, and only 1 joint conference or 1 joint preliminary examination shall be held unless the prosecuting attorney consents to a severance, a defendant seeks severance by motion and the magistrate finds severance to be required by law, or 1 of the defendants is unavailable and does not appear at the hearing.

(6) At the preliminary examination, a magistrate shall examine the complainant and the witnesses in support of the prosecution, on oath and, except as provided in sections 11a and 11b of this chapter, in the presence of the defendant, concerning the offense charged and in regard to any other matters connected with the charge that the magistrate considers pertinent.

History: 1927, Act 175, Eff. Sept. 5, 1927 ;-- CL 1929, 17196 ;-- CL 1948, 766.4 ;-- Am. 1970, Act 213, Imd. Eff. Oct. 4, 1970 ;-- Am. 1974, Act 63, Eff. May 1, 1974 ;-- Am. 1988, Act 64, Eff. Oct. 1, 1988 ;-- Am. 1993, Act 287, Eff. Mar. 1, 1994 ;-- Am. 1994, Act 167, Eff. Oct. 1, 1994 ;-- Am. 2014, Act 123, Imd. Eff. May 20, 2014

Compiler's Notes: Section 2 of Act 63 of 1974 provides: "Effective date. "Section 2. To give judges, prosecutors, and defense counsel a reasonable opportunity to become aware of and familiar with the time periods and sequence prescribed in this amendatory act and the effects of noncompliance, sections 20 and 21 of chapter 8 of Act No. 175 of the Public Acts of 1927, being sections 768.20 and 768.21 of the Michigan Compiled Laws, as amended by this amendatory act shall take effect May 1, 1974, and apply to cases in which the arraignment on an information occurs on or after that date. The other provisions of this amendatory act shall take effect May 1, 1974 and apply to offenses committed on or after that date." Section 3 of Act 64 of 1988 provides: "This amendatory act shall take effect June 1, 1988." This section was amended by Act 175 of 1988 to read as follows: "This amendatory act shall take effect October 1, 1988." Enacting section 1 of Act 123 of 2014 provides: "Enacting section 1. This amendatory act applies to cases in which the defendant is arraigned in district court or municipal court on or after January 1, 2015."

Former Law: See section 13 of Ch. 163 of R.S. 1846, being CL 1857, § 5989; CL 1871, § 7855; How., § 9466; CL 1897, § 11850; and CL 1915, § 15677.