

Felony Arraignment in District Court Checklist¹

- Identify case number and parties for the record.
- Ensure that a verbatim record is made of the arraignment. [MCR 6.104\(F\)](#).
- Inform defendant of the nature of the offense charged, and its maximum possible prison sentence and any mandatory minimum sentence required by law. [MCR 6.104\(E\)\(1\)](#). Inform defendant of:
 - The right to remain silent, and that anything the accused says orally or in writing can be used against the accused in court. [MCR 6.104\(E\)\(2\)\(a\)-\(b\)](#).
 - The right to a preliminary examination;
 - The right to a lawyer at all court proceedings, if the accused not represented by an attorney at the arraignment. [MCR 6.104\(3\)](#).
 - The right to have an attorney appointed at public expense if the accused is indigent; [MCR 6.104\(E\)\(2\)\(d\)](#).
 - The right to have a lawyer present during any questioning consented to. [MCR 6.104\(E\)\(2\)\(c\)](#).; and
 - The right to consideration of pretrial release. [MCR 6.104\(E\)\(5\)](#).
- Note:** If a defendant not represented by an attorney waives the preliminary examination, ascertain that the waiver is

¹ For more detailed information on this topic, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*.

freely, understandingly, and voluntarily given before accepting it

- Unless the parties agree to waive the probable cause conference,² set a date for the probable cause conference to be held not less than 7 days or more than 14 days after the date of the arraignment. [MCL 766.4\(1\)](#); [MCR 6.104\(E\)\(4\)](#).

- Consolidation for Codefendants:** In cases in which the complaint lists codefendants, a *joint* probable cause conference generally must be conducted for those defendants who have been arrested and arraigned at least 72 hours before the conference.³ [MCL 766.4\(5\)](#); [MCR 6.108\(E\)](#).

- Unless defendant waives a preliminary examination with the consent of the prosecutor, schedule the preliminary examination for a date not less than five days or more than seven days after the date of the probable cause conference. [MCL 766.4\(1\)](#); [MCR 6.104\(E\)\(4\)](#).

- Consolidation for Codefendants:** In cases in which the complaint lists codefendants, a *joint* preliminary examination generally must be conducted for those defendants who have been arrested and arraigned at least 72 hours before the conference.⁴ [MCL 766.4\(5\)](#); [MCR 6.110\(A\)](#).

- Immediate Commencement of Exam to Preserve Victim's Testimony:** If requested by the prosecutor, the preliminary examination must commence immediately at the date and time set for the probable cause conference for the sole purpose of taking and preserving the testimony of a victim if the victim is present, as long as the defendant is either present in the courtroom or has waived the right to be present. [MCL 766.4\(4\)](#); [MCR 6.110\(B\)\(2\)](#).

- If a plea agreement is reached between the parties, proceed to take the plea.⁵ [NOTE: A district court magistrate may not accept a felony plea.⁶]

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." [MCL 766.4\(2\)](#).

³ Consolidation is not required if "the prosecuting attorney consents to a severance, a defendant seeks severance by motion and the [judge] finds severance to be required by law, or 1 of the defendants is unavailable and does not appear at the hearing." [MCL 766.4\(5\)](#); see also [MCR 6.108\(E\)](#).

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- Verify that a circuit court judge has been assigned to the case for purposes of sentencing and other post-plea matters.
- Verify that the parties know the identity of the assigned circuit court judge.
- Proceed to take the plea. [MCL 766.4\(3\)](#).
- Determine whether pretrial release is appropriate and whether any conditions should be imposed on defendant's pretrial release. [MCL 766.5](#); [MCR 6.106](#).
- Confirm that defendant's biometric data has been collected⁷ as required by law. [MCL 28.243](#).

⁵ 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.*

⁶ See [MCL 766.1](#); [MCL 600.8511](#).

⁷ See [MCL 28.243](#) for information on the collection of biometric data, which includes fingerprints.

