

# Probable Cause Conference 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.<sup>2</sup> 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.

- The probable cause conference must include all of the following:
  - Discussions as to a possible plea agreement among the prosecuting attorney, the defendant, and the attorney for the defendant. [MCL 766.4\(1\)\(a\)](#); [MCR 6.108\(C\)](#).
  - Discussions regarding bail and the opportunity for the defendant to petition for a bond modification. [MCL 766.4\(1\)\(b\)](#); [MCR 6.108\(C\)](#).
  - Discussions regarding stipulations and procedural aspects of the case. [MCL 766.4\(1\)\(c\)](#).
  - Discussions regarding any other matters relevant to the case as agreed upon by both parties. [MCL 766.4\(1\)\(d\)](#).
- If requested by the prosecuting attorney, and if a victim<sup>3</sup> is present, immediately commence the preliminary examination for the sole purpose of taking and preserving the victim's testimony. [MCL 766.4\(4\)](#). [NOTE: A district court magistrate may not conduct a preliminary examination.<sup>4</sup>]

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

<sup>2</sup> See 2014 PA 123, enacting section 1, and 2014 PA 124, enacting section 2, both effective May 20, 2014.

<sup>3</sup> *Victim* "means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime." [MCL 766.4\(4\)](#).

- Immediately conduct the preliminary examination. [MCL 766.4\(4\)](#). See the Michigan Judicial Institute's *Conducting a Preliminary Examination Checklist* for more information.
- If the victim's testimony is insufficient to establish probable cause to believe that the defendant committed the charged crime or crimes, adjourn the preliminary examination to the date set at arraignment.<sup>5</sup> [MCL 766.4\(4\)](#).
- If a plea agreement is reached between the parties, proceed to take the plea.<sup>6</sup> [MCL 766.4\(3\)](#). [NOTE: A district court magistrate may not accept a felony plea.<sup>7</sup>]
  - 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.

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<sup>4</sup> See [MCL 766.1](#); [MCL 600.8511](#). However, "[w]hen authorized by the chief judge of the district and whenever a district judge is not immediately available, a district court magistrate may conduct the first appearance of a defendant before the court in all criminal and ordinance violation cases, including acceptance of any written demand or waiver of preliminary examination and acceptance of any written demand or waiver of jury trial." [MCL 600.8513\(1\)](#).

<sup>5</sup> The victim "shall not be called again to testify at the adjourned preliminary examination absent a showing of good cause." [MCL 766.4\(4\)](#).

<sup>6</sup> 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.*

<sup>7</sup> See [MCL 766.1](#); [MCL 600.8511](#).