

Waiver of Preliminary Examination Checklist¹

- 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, appoint counsel if defendant is indigent, or allow defendant a reasonable opportunity to retain counsel, or obtain a waiver of the right to counsel. [MCL 767.42\(1\)](#).
 - Advise defendant that if he/she is going to retain counsel, this may be treated as “good cause” to adjourn the preliminary examination.
- If the defendant desires to waive counsel, the court must first:
 - 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.
- 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. [MCL 767.42\(1\)](#); [MCR 6.110\(A\)](#).

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

- Advise a juvenile defendant that he/she may not waive a preliminary examination unless represented by an attorney.
- Advise defendant:
 - That he/she and the prosecutor both have a right to a preliminary examination, which is a hearing where the prosecutor must show two things: (1) probable cause to believe that a felony or circuit court misdemeanor was committed; (2) probable cause to believe that he/she committed it.
 - That he/she will be bound over to circuit court on the charge(s) in the complaint and warrant if he/she waives the preliminary examination. [MCL 767.42\(1\)](#); [MCR 6.110\(A\)](#); [MCR 6.110\(E\)](#).
- Ask defendant if he/she wishes to waive the right to a preliminary examination. The waiver may be on the charge(s) in the complaint or amended complaint. [MCL 767.42\(1\)](#); [MCR 6.110\(A\)](#).
- Determine and state for the record that defendant's waiver of the preliminary examination is freely, understandingly, and voluntarily given. The court should make such a determination in every case, regardless of whether defendant is represented by counsel. [MCL 767.42\(1\)](#).
- Ask defendant (or defense counsel) and the prosecutor to state for the record:
 - Any plea agreement made in exchange for the waiver of the preliminary examination; and
 - Any promises made in exchange for the waiver.
- If desired, ask defendant (and defense counsel) to read and sign the form pertaining to waivers of preliminary examinations, [SCAO Form MC 200w](#), *Bindover/Transfer After Preliminary Examination Felony*. Although executing the form is optional for adult defendants, it is not optional for juvenile defendants.
- Verify the prosecutor's consent to the defendant's waiver of the preliminary examination. [MCR 6.110\(A\)](#).
- Accept defendant's waiver and, if a plea is not taken, bind him/her over to circuit court on the charge(s) contained in the complaint or amended complaint. [MCR 6.110\(E\)](#).

- If a plea agreement is reached between the parties, proceed to take the plea.² [NOTE: A district court magistrate may not accept a felony plea.³]
 - 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.
- Set, deny, continue, or revoke bail.
- Execute the bindover form, [SCAO Form MC 200w](#), *Bindover/Transfer After Preliminary Examination Felony*, if defendant is bound over for trial to the criminal division of circuit court. [MCR 6.110\(E\)](#).
- Schedule the arraignment in circuit court, or 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*, if defendant is bound over for trial. [MCR 6.110\(I\)](#).
- 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*.

² 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.*

³ See [MCL 766.1](#); [MCL 600.8511](#).

