

SENATE BILL No. 1587

November 5, 2008, Introduced by Senator CROPSEY and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending sections 1, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, and 17 of chapter VI (MCL 766.1, 766.4, 766.5, 766.6, 766.7, 766.8, 766.9, 766.10, 766.11, 766.13, 766.14, 766.15, 766.16, and 766.17), section 4 as amended by 1994 PA 167, section 9 as amended by 1988 PA 106, and section 14 as amended by 1998 PA 520, and by adding section 2.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER VI

1
2 Sec. 1. The state and accused ~~shall be~~ **ARE** entitled to a
3 ~~prompt examination and~~ **PROBABLE CAUSE** determination by the
4 examining magistrate in all ~~criminal causes and it is hereby made~~
5 ~~the duty of all courts and public officers having duties to perform~~

1 ~~in connection with such examination, to bring them to a final~~
2 ~~determination without delay except as it may be necessary to secure~~
3 ~~to the accused a fair and impartial examination~~ FELONY CASES.

4 SEC. 2. (1) THE CHIEF JUDGE OF THE DISTRICT COURT, THE COUNTY
5 PROSECUTING ATTORNEY, AND THE COUNTY SHERIFF MAY, BY UNANIMOUS
6 AGREEMENT IN WRITING, PROVIDE FOR PRELIMINARY EXAMINATION
7 CONFERENCES TO BE HELD IN THAT DISTRICT COURT AS PROVIDED IN THIS
8 SECTION BEFORE ANY PRELIMINARY EXAMINATIONS ARE CONDUCTED. THIS
9 SUBSECTION DOES NOT PROHIBIT THE COURT FROM CONDUCTING A
10 PRELIMINARY EXAMINATION CONFERENCE ABSENT AN AGREEMENT UNDER THIS
11 SUBSECTION, AND ANY PRELIMINARY EXAMINATION CONFERENCE AGREEMENT OR
12 POLICY ENACTED BEFORE JANUARY 1, 2009 REMAINS IN EFFECT UNTIL THAT
13 AGREEMENT OR POLICY EXPIRES OR OTHERWISE BECOMES INOPERABLE OR A
14 DIFFERENT AGREEMENT OR POLICY IS ADOPTED AS PROVIDED IN THIS
15 SUBSECTION.

16 (2) AN AGREEMENT ADOPTED UNDER THIS SECTION TO PROVIDE FOR
17 PRELIMINARY EXAMINATION CONFERENCES SHALL, AT A MINIMUM, ALLOW THE
18 COUNTY PROSECUTING ATTORNEY AND THE DEFENDANT AND HIS OR HER
19 ATTORNEY TO DISCUSS THE PROCEDURAL ASPECTS OF THE CASE, THE
20 OPPORTUNITY FOR BAIL, AND THE POSSIBILITY OF A PLEA AGREEMENT IN
21 ANY PRELIMINARY EXAMINATION CONFERENCE CONDUCTED UNDER THE
22 AGREEMENT. THE AGREEMENT SHALL NOT REQUIRE PROOF OF PROBABLE CAUSE
23 TO BELIEVE THAT A FELONY WAS COMMITTED AND THAT THE DEFENDANT
24 COMMITTED THAT FELONY. THE PROSECUTING ATTORNEY AND THE DEFENDANT
25 AND HIS OR HER ATTORNEY SHALL BE ORDERED BY THE COURT TO ATTEND THE
26 PRELIMINARY EXAMINATION CONFERENCE UNLESS THE CONFERENCE IS WAIVED
27 BY THE DEFENDANT. IN ACCORDANCE WITH THE WILLIAM VAN REGENMORTER

1 CRIME VICTIM'S RIGHTS ACT, 1985 PA 87, MCL 780.751 TO 780.834, THE
2 VICTIM SHALL BE NOTIFIED OF A PRELIMINARY EXAMINATION CONFERENCE
3 HELD UNDER THIS SECTION AND SHALL HAVE THE OPPORTUNITY TO DISCUSS
4 THE CONFERENCE WITH THE PROSECUTING ATTORNEY BEFORE THE CONFERENCE
5 IS HELD.

6 (3) THE COURT MAY PRESIDE OVER A PRELIMINARY EXAMINATION
7 CONFERENCE HELD UNDER THIS SECTION. IF THE COURT DOES NOT PRESIDE
8 OVER THE CONFERENCE, THE JUDGE SHALL BE AVAILABLE DURING THE PERIOD
9 IN WHICH THE CONFERENCE IS HELD TO DISPOSE OF ANY PLEA AGREEMENT OR
10 TO DETERMINE BAIL. THE RULES OF EVIDENCE DO NOT APPLY TO A
11 PRELIMINARY EXAMINATION CONFERENCE HELD UNDER THIS SECTION, AND
12 WITNESSES SHALL NOT BE PRESENTED. THE PROSECUTING ATTORNEY SHALL
13 PROVIDE THE DEFENDANT AND HIS OR HER ATTORNEY WITH ALL OF THE
14 FOLLOWING INFORMATION RELATED TO THE CASE BEFORE OR DURING THE
15 CONFERENCE HELD UNDER THIS SUBSECTION AND, IF ADDITIONAL
16 INFORMATION IS OBTAINED AFTER THE CONFERENCE, PROMPTLY AFTER THAT
17 INFORMATION IS OBTAINED:

18 (A) A COPY OF EACH AVAILABLE INVESTIGATIVE REPORT PREPARED BY
19 OR ON BEHALF OF LAW ENFORCEMENT.

20 (B) A COPY OF EACH AVAILABLE WITNESS STATEMENT.

21 (C) A COPY OF EACH AVAILABLE RECORDED CONFESSION AND, IF THE
22 CONFESSION WAS TRANSCRIBED, A COPY OF EACH AVAILABLE TRANSCRIPTION.

23 (4) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3), THE
24 PROSECUTING ATTORNEY AND THE DEFENDANT REMAIN SUBJECT TO THE RULES
25 OF DISCOVERY UNDER THE MICHIGAN RULES OF COURT.

26 Sec. 4. (1) Except as provided in section 4 of chapter XIIIA of
27 ~~Act No. 288 of the Public Acts of 1939, being section 712A.4 of the~~

1 ~~Michigan Compiled Laws 1939 PA 288, MCL 712A.4~~, the magistrate
2 before whom any person is arraigned on a charge of having committed
3 a felony shall set a day for a preliminary examination not
4 exceeding 14 days after the arraignment. At the preliminary
5 examination, a magistrate shall examine ~~the complainant and the~~
6 witnesses in support of the prosecution ~~, on~~ **UNDER** oath and, except
7 as provided in section 2167 of the revised judicature act of 1961,
8 ~~Act No. 236 of the Public Acts of 1961, being section 600.2167 of~~
9 ~~the Michigan Compiled Laws 1961 PA 236, MCL 600.2167~~, in the
10 presence of the accused, in regard to the offense charged. ~~and in~~
11 ~~regard to any other matters connected with the charge that the~~
12 ~~magistrate considers pertinent.~~ **THE PRELIMINARY EXAMINATION SHALL**
13 **NOT BE USED FOR PURPOSES OF DISCOVERY.**

14 (2) IF 1 OR MORE DEFENDANTS HAVE BEEN CHARGED WITH A FELONY
15 ARISING OUT OF THE SAME TRANSACTION, THE PRELIMINARY EXAMINATIONS
16 FOR ALL THE DEFENDANTS WHO HAVE BEEN ARRESTED ON THOSE CHARGES
17 SHALL BE CONSOLIDATED, AND ONLY 1 JOINT PRELIMINARY EXAMINATION
18 SHALL BE HELD. UPON MOTION OF 1 OR MORE OF THE DEFENDANTS, THE
19 CONSOLIDATED PRELIMINARY EXAMINATIONS MAY BE SEVERED IF THE
20 DEFENDANT'S ATTORNEY CANNOT ATTEND A PRELIMINARY EXAMINATION WITHIN
21 14 DAYS AFTER THE ARRAIGNMENT OR FOR OTHER GOOD CAUSE SHOWN.

22 (3) IF THE PRELIMINARY EXAMINATION IS FOR A FELONY FOR WHICH
23 THE MAXIMUM POSSIBLE PENALTY IS IMPRISONMENT FOR LIFE OR ANY TERM
24 OF YEARS, THE RULES OF EVIDENCE APPLY AT THE PRELIMINARY
25 EXAMINATION.

26 (4) IF THE PRELIMINARY EXAMINATION IS FOR AN ASSAULTIVE
27 FELONY, THE PROSECUTING ATTORNEY MAY PRESENT THE TESTIMONY OF THE

1 VICTIM OR VICTIMS OF THE FELONY TO ESTABLISH PROBABLE CAUSE TO
2 BELIEVE THAT A CHARGED FELONY WAS COMMITTED AND THAT THERE IS
3 PROBABLE CAUSE TO BELIEVE THAT THE DEFENDANT COMMITTED THE CHARGED
4 FELONY. THE RULES OF EVIDENCE APPLY TO THE TESTIMONY OF EACH
5 VICTIM. IF THE VICTIM TESTIFIES AT THE PRELIMINARY EXAMINATION,
6 REGARDLESS OF WHETHER THE DECLARANT IS AVAILABLE AS A WITNESS,
7 HEARSAY FROM A LAW ENFORCEMENT OFFICER INVOLVED IN THE
8 INVESTIGATION IS ADMISSIBLE AND THE COURT SHALL ALLOW THE
9 PROSECUTING ATTORNEY TO PRESENT HEARSAY TESTIMONY FROM THAT LAW
10 ENFORCEMENT OFFICER TO ESTABLISH PROBABLE CAUSE TO BELIEVE THAT A
11 CHARGED FELONY WAS COMMITTED AND THAT THERE IS PROBABLE CAUSE TO
12 BELIEVE THAT THE DEFENDANT COMMITTED THAT FELONY. THE COURT MAY
13 ALLOW ANY CHARGES BASED ON OR SUPPORTED BY HEARSAY EVIDENCE FROM A
14 LAW ENFORCEMENT OFFICER TO BE AMENDED UNDER SECTION 13 OF THIS
15 CHAPTER OR UNDER ANY OTHER APPLICABLE LAW IN THE SAME MANNER AS
16 CHARGES THAT ARE NOT SUPPORTED BY HEARSAY EVIDENCE FROM A LAW
17 ENFORCEMENT OFFICER MAY BE AMENDED. OTHER THAN THE HEARSAY
18 TESTIMONY OF A LAW ENFORCEMENT OFFICER INVOLVED IN THE
19 INVESTIGATION, THE RULES OF EVIDENCE APPLY TO THE TESTIMONY OF EACH
20 WITNESS. IF THE VICTIM DOES NOT TESTIFY AT THE PRELIMINARY
21 EXAMINATION, THE RULES OF EVIDENCE APPLY TO ALL WITNESSES.

22 (5) IN ALL OTHER CASES, REGARDLESS OF WHETHER THE DECLARANT OR
23 VICTIM IS AVAILABLE AS A WITNESS, HEARSAY FROM A LAW ENFORCEMENT
24 OFFICER INVOLVED IN THE INVESTIGATION IS ADMISSIBLE AND THE COURT
25 SHALL ALLOW THE PROSECUTING ATTORNEY TO PRESENT HEARSAY TESTIMONY
26 FROM THAT LAW ENFORCEMENT OFFICER TO ESTABLISH PROBABLE CAUSE TO
27 BELIEVE THAT A CHARGED FELONY WAS COMMITTED AND THAT THERE IS

1 PROBABLE CAUSE TO BELIEVE THAT THE DEFENDANT COMMITTED THE CHARGED
2 FELONY. THE COURT MAY ALLOW ANY CHARGES BASED ON OR SUPPORTED BY
3 HEARSAY EVIDENCE FROM A LAW ENFORCEMENT OFFICER TO BE AMENDED UNDER
4 SECTION 13 OF THIS CHAPTER OR UNDER ANY OTHER APPLICABLE LAW IN THE
5 SAME MANNER AS CHARGES THAT ARE NOT SUPPORTED BY HEARSAY EVIDENCE
6 FROM A LAW ENFORCEMENT OFFICER MAY BE AMENDED. OTHER THAN THE
7 HEARSAY TESTIMONY OF A LAW ENFORCEMENT OFFICER INVOLVED IN THE
8 INVESTIGATION, THE RULES OF EVIDENCE APPLY TO THE TESTIMONY OF EACH
9 WITNESS.

10 (6) EACH PARTY MAY SUBPOENA WITNESSES, OFFER PROOFS, AND
11 EXAMINE AND CROSS-EXAMINE WITNESSES AT THE PRELIMINARY EXAMINATION.
12 EXCEPT AS OTHERWISE PROVIDED BY LAW, THE COURT MUST CONDUCT THE
13 EXAMINATION IN ACCORDANCE WITH THE RULES OF EVIDENCE. A VERBATIM
14 RECORD MUST BE MADE OF THE PRELIMINARY EXAMINATION.

15 (7) AS USED IN THIS SECTION, "ASSAULTIVE FELONY" MEANS A
16 FELONY OFFENSE AGAINST A PERSON IN VIOLATION OF SECTION 81, 81A,
17 81C, 81D, 82, 84, 86, 87, 88, 90B, 397, 411H, 411I, 520C, 520D,
18 520E, 520G, 530, OR 543A TO 543Z OF THE MICHIGAN PENAL CODE, 1931
19 PA 328, MCL 750.81, 750.81A, 750.81C, 750.81D, 750.82, 750.84,
20 750.86, 750.87, 750.88, 750.90B, 750.397, 750.411H, 750.411I,
21 750.520C, 750.520D, 750.520E, 750.520G, 750.530, AND 750.543A TO
22 750.543Z.

23 Sec. 5. If ~~it appears that a felony has been committed and~~
24 ~~that~~ THE COURT DETERMINES there is probable cause to believe that
25 the accused is ~~guilty thereof~~ COMMITTED A FELONY, and if the
26 offense is bailable by the magistrate and the accused offers
27 sufficient bail, ~~it~~ THAT BAIL shall be ~~taken~~ ACCEPTED and the

1 prisoner discharged until trial. If sufficient bail is not offered
2 or the offense is notailable by the magistrate, the accused shall
3 be committed to jail for trial. This section shall not prevent the
4 magistrate from releasing the accused on his **OR HER** own
5 recognizance ~~where~~**IF** authorized by law.

6 Sec. 6. Any magistrate to whom complaint is made, or before
7 whom any prisoner is brought, may associate with ~~himself~~ 1 or more
8 other magistrates of the same county, and they may together execute
9 the powers and duties conferred ~~upon such magistrates respectively~~
10 by this chapter, but no fees shall be taxed for ~~such~~**THOSE OTHER**
11 associates.

12 Sec. 7. A magistrate may adjourn a preliminary examination for
13 a felony to a place in the county as the magistrate ~~deems~~
14 **DETERMINES IS** necessary. The accused may in the meantime be
15 committed either to the county jail or to the custody of the
16 officer by whom he **OR SHE** was arrested or to any other officer +
17 or, unless he **OR SHE** is charged with treason or murder, ~~he~~ may be
18 admitted to bail. An adjournment, continuance, or delay of a
19 preliminary examination shall not be granted ~~by a magistrate except~~
20 for good cause shown **OR BY AGREEMENT OF THE PARTIES**. A magistrate
21 ~~shall not adjourn, continue, or delay the examination of any cause~~
22 ~~by the consent of the prosecution and accused unless in his~~
23 ~~discretion it shall clearly appear by a sufficient showing to the~~
24 ~~magistrate to be entered upon the record that the reasons for such~~
25 ~~consent are founded upon strict necessity and that the examination~~
26 ~~of the cause cannot then be had, or a manifest injustice will be~~
27 ~~done. An action on the part of the magistrate in adjourning or~~

1 ~~continuing any case, shall~~ **ADJOURNMENT OR CONTINUANCE DOES** not
2 cause the magistrate to lose jurisdiction of the case.

3 Sec. 8. The person accused may be committed as provided in ~~the~~
4 ~~preceding~~ section 7, by the verbal order of the magistrate, or by a
5 warrant ~~under his hand~~ **ISSUED BY THE MAGISTRATE**, stating that he
6 **THE ACCUSED** is committed for ~~such~~ further examination on a day to
7 be named in the warrant. ~~; and on the day therein specified, he may~~
8 ~~be brought~~ **THE ACCUSED SHALL APPEAR** before the magistrate ~~by his~~
9 ~~verbal order to the same officer by or to whose custody he was~~
10 ~~committed, or by an order in writing to a different officer~~ **AS**
11 **ORDERED OR AS SPECIFIED IN THE WARRANT.**

12 Sec. 9. (1) Upon the motion of any party, the ~~examining~~
13 magistrate may close to members of the general public the
14 preliminary examination of a person charged with criminal sexual
15 conduct in any degree, assault with intent to commit criminal
16 sexual conduct, sodomy, gross indecency, or any other offense
17 involving sexual misconduct if all of the following conditions are
18 met:

19 (a) The magistrate determines that the need for protection of
20 a victim, a witness, or the defendant outweighs the public's right
21 of access to the **PRELIMINARY** examination.

22 (b) The denial of access to the **PRELIMINARY** examination is
23 narrowly tailored to accommodate the interest being protected.

24 (c) The magistrate states on the record the specific reasons
25 for his or her decision to close the **PRELIMINARY** examination to
26 members of the general public.

27 (2) In determining whether closure of the preliminary

1 examination is necessary to protect a victim or witness, the
2 magistrate shall consider all of the following:

3 (a) The psychological condition of the victim or witness.

4 (b) The nature of the offense charged against the defendant.

5 (c) The desire of the victim or witness to have the

6 **PRELIMINARY** examination closed to the public.

7 (3) The magistrate may close a preliminary examination to
8 protect the right of a party to a fair trial only if both of the
9 following apply:

10 (a) There is a substantial probability that the party's right
11 to a fair trial will be prejudiced by publicity that closure would
12 prevent.

13 (b) Reasonable alternatives to closure cannot adequately
14 protect the party's right to a fair trial.

15 Sec. 10. ~~The~~ **CONSISTENT WITH THE WILLIAM VAN REGENMORTER CRIME**
16 **VICTIM'S RIGHTS ACT, 1985 PA 87, MCL 780.751 TO 780.834, THE**
17 magistrate while conducting ~~such~~ **A PRELIMINARY** examination may
18 exclude from the place of the **PRELIMINARY** examination all the
19 witnesses who have not been examined. ~~and he~~ **THE MAGISTRATE** may
20 also, if requested or if he ~~sees~~ **OR SHE DETERMINES THAT THERE IS**
21 cause, ~~direct the~~ **REQUIRE ANY** witnesses ~~whether for or against the~~
22 ~~prisoner,~~ to be kept separate so that they cannot converse with
23 each other until they shall have been examined. ~~And such~~ **THE**
24 magistrate may ~~in his discretion,~~ also exclude from the place of
25 examination any ~~or all~~ minors during the **PRELIMINARY** examination of
26 ~~such~~ **THOSE** witnesses.

27 Sec. 11. (1) Witnesses may be compelled to appear before the

1 magistrate by subpoenas issued by the ~~magistrate, or by an officer~~
 2 ~~of the court authorized to issue subpoenas~~ **COURT**, in the same
 3 manner, ~~and~~ with the same effect, and subject to the same penalties
 4 for disobedience ~~,~~ or for refusing to be sworn or to testify, as in
 5 cases of trials in the circuit court.

6 (2) Unless otherwise provided by law, the evidence given by
 7 the witnesses examined in a municipal court shall be taken down in
 8 shorthand by a county stenographer where one has been appointed
 9 under the provision of a local act of the legislature or by the
 10 county board of commissioners of the county in which the
 11 **PRELIMINARY** examination is held, or the magistrate, for cause
 12 shown, may appoint some other suitable stenographer at the request
 13 of the prosecuting attorney of the county **AND** with the consent of
 14 the respondent or the respondent's attorney, to act as official
 15 stenographer pro tempore for the court ~~of the magistrate to take~~
 16 down in shorthand the testimony ~~of an~~ **PRESENTED AT THE PRELIMINARY**
 17 examination. ~~A~~ **AN APPOINTED** stenographer ~~so appointed~~ shall take
 18 the constitutional oath as the official stenographer and ~~shall be~~
 19 **IS** entitled to ~~the following fees:~~ **A FEE OF** \$6.00 for each day and
 20 \$3.00 for each half day while ~~so employed in~~ **AS THE OFFICIAL**
 21 **STENOGRAPHER** taking down the testimony, and 10 cents per folio for
 22 ~~typewriting~~ **WORD PROCESSING** the testimony taken down in shorthand,
 23 or other compensation and fees as ~~shall be fixed by the county~~
 24 board of commissioners ~~appointing~~ **THAT APPOINTED** the stenographer.
 25 The fees may be allowed and paid out of the treasury of the county
 26 in which the testimony is taken. ~~It shall not be necessary for a~~ **A**
 27 witness ~~or witnesses~~ whose testimony is taken in shorthand by the

1 stenographer **IS NOT REQUIRED** to sign the testimony. Except as
2 provided in section 15 of this chapter, the testimony ~~so~~-taken
3 under this subsection ~~, shall be typewritten~~ **WORD PROCESSED**,
4 certified, received, and filed in the court to which the accused is
5 held for trial.

6 (3) Testimony taken by a stenographer appointed ~~pursuant to~~
7 **UNDER** subsection (2) or taken by shorthand or recorded by a court
8 stenographer or district court recorder as provided by law, when
9 transcribed, ~~shall be considered~~ **IS** prima facie evidence of the
10 testimony of the witness or witnesses at the **PRELIMINARY**
11 examination.

12 Sec. 13. If it ~~shall appear to~~ the magistrate **DETERMINES** at
13 the conclusion of the preliminary examination either that an
14 offense has not been committed or that there is not probable cause
15 for charging the defendant ~~therewith~~ **WITH THAT OFFENSE**, ~~he~~ **THE**
16 **MAGISTRATE** shall discharge ~~such~~ **THE** defendant. If it ~~shall appear~~
17 ~~to~~ the magistrate **DETERMINES** at the conclusion of the preliminary
18 examination that a felony has been committed and there is probable
19 cause for charging the defendant ~~therewith~~ **WITH THAT FELONY**, the
20 magistrate shall ~~forthwith~~ **PROMPTLY** bind the defendant to appear
21 before the circuit court of ~~such~~ **THAT** county ~~, or other court~~
22 ~~having jurisdiction of the cause,~~ for trial.

23 Sec. 14. (1) If the court determines at the conclusion of the
24 preliminary examination of a person charged with a felony that the
25 offense charged is not a felony or that an included offense that is
26 not a felony has been committed, the accused shall not be dismissed
27 but the magistrate shall proceed in the same manner as if the

1 accused had initially been charged with an offense that is not a
2 felony.

3 (2) If at the conclusion of the preliminary examination of a
4 juvenile the magistrate finds that ~~a specified juvenile violation~~
5 ~~did not occur or that~~ there is not probable cause to believe that
6 the juvenile committed ~~the~~ **A SPECIFIED JUVENILE** violation, but that
7 there is probable cause to believe that some other offense occurred
8 and that the juvenile committed that other offense, the magistrate
9 shall transfer the case to the family division of circuit court of
10 the county where the offense is alleged to have been committed.

11 (3) A transfer under subsection (2) does not prevent the
12 family division of circuit court from waiving jurisdiction over the
13 juvenile under section 4 of chapter XIIIA of 1939 PA 288, MCL
14 712A.4.

15 (4) As used in this section, "specified juvenile violation"
16 means any of the following:

17 (a) A violation of section 72, 83, 86, 89, 91, 316, 317, 349,
18 520b, 529, 529a, or 531 of the Michigan penal code, 1931 PA 328,
19 MCL 750.72, 750.83, 750.89, 750.91, 750.316, 750.317, 750.349,
20 750.520b, 750.529, 750.529a, and 750.531.

21 (b) A violation of section 84 or 110a(2) of the Michigan penal
22 code, 1931 PA 328, MCL 750.84 and 750.110a, if the juvenile is
23 armed with a dangerous weapon. As used in this subdivision,
24 "dangerous weapon" means 1 or more of the following:

25 (i) A loaded or unloaded firearm, whether operable or
26 inoperable.

27 (ii) A knife, stabbing instrument, brass knuckles, blackjack,

1 club, or other object specifically designed or customarily carried
2 or possessed for use as a weapon.

3 (iii) An object that is likely to cause death or bodily injury
4 when used as a weapon and that is used as a weapon or carried or
5 possessed for use as a weapon.

6 (iv) An object or device that is used or fashioned in a manner
7 to lead a person to believe the object or device is an object or
8 device described in subparagraphs (i) to (iii).

9 (c) A violation of section 186a of the Michigan penal code,
10 1931 PA 328, MCL 750.186a, regarding escape or attempted escape
11 from a juvenile facility, but only if the juvenile facility from
12 which the individual escaped or attempted to escape was 1 of the
13 following:

14 (i) A high-security or medium-security facility operated by the
15 family independence agency or a county juvenile agency.

16 (ii) A high-security facility operated by a private agency
17 under contract with the family independence agency or a county
18 juvenile agency.

19 (d) A violation of section 7401(2)(a)(i) or 7403(2)(a)(i) of
20 the public health code, 1978 PA 368, MCL 333.7401 and 333.7403.

21 (e) An attempt to commit a violation described in subdivisions
22 (a) to (d).

23 (f) Conspiracy to commit a violation described in subdivisions
24 (a) to (d).

25 (g) Solicitation to commit a violation described in
26 subdivisions (a) to (d).

27 (h) Any lesser included offense of a violation described in

1 subdivisions (a) to (g) if the individual is charged with a
2 violation described in subdivisions (a) to (g).

3 (i) Any other violation arising out of the same transaction as
4 a violation described in subdivisions (a) to (g) if the individual
5 is charged with a violation described in subdivisions (a) to (g).

6 Sec. 15. (1) Except as provided in subsection (2) or (3), all
7 **PRELIMINARY** examinations and recognizances taken by a magistrate
8 ~~pursuant to~~ **UNDER** this chapter shall be immediately certified and
9 returned by the magistrate to the clerk of the court before which
10 the party charged is bound to appear. If that magistrate refuses or
11 neglects to return the ~~same~~ **CERTIFIED HEARING OR RECOGNIZANCE**, the
12 magistrate may be compelled immediately by order of the court, and
13 in case of disobedience may be proceeded against as for a contempt
14 by an order to show cause or a bench warrant.

15 (2) A written transcript of the testimony of a preliminary
16 examination need not be prepared or filed except upon written
17 demand of the prosecuting attorney, defense attorney, or defendant
18 if the defendant is not represented by an attorney, or as ordered
19 ~~sua sponte~~ by the trial court. A written demand to prepare and file
20 a written transcript is timely made if filed within 2 weeks
21 following the arraignment on the information or indictment. A copy
22 of a demand to prepare and file a written transcript shall be filed
23 with the trial court, all attorneys of record, and the court ~~which~~
24 **THAT** held the preliminary examination. Upon ~~sua sponte~~ order of the
25 trial court or timely written demand of an attorney, a written
26 transcript of the preliminary examination or a portion ~~thereof~~ **OF**
27 **THAT TRANSCRIPT** shall be prepared and filed with the trial court.

1 (3) If a written demand is not timely made as provided in
 2 subsection (2), a written transcript need not be prepared or filed
 3 except upon motion of an attorney or a defendant who is not
 4 represented by an attorney, upon cause shown, and when granting of
 5 the motion would not delay the start of the trial. When the start
 6 of the trial would otherwise be delayed, upon good cause shown to
 7 the trial court, in lieu of preparation of the transcript or a
 8 portion thereof ~~OF THAT TRANSCRIPT~~, the trial court may direct that
 9 the defense and prosecution ~~shall~~ have an opportunity before trial
 10 to listen to any electronically recorded testimony, a copy of the
 11 recording tape or disc, or a stenographer's notes being read back.

12 Sec. 16. If the person recognized according to the provisions
 13 of this chapter ~~shall~~ **DOES** not appear before the magistrate at the
 14 time appointed for his **OR HER** further ~~examination~~ **HEARING**, the
 15 magistrate shall record the default, and shall certify the
 16 recognizance, with the record of ~~such~~ **THAT** default, to the court to
 17 which the accused might otherwise have been held for trial. ~~and~~
 18 ~~the like proceedings~~ **THE FAILURE TO APPEAR** shall be had thereon as
 19 ~~upon the~~ **TREATED AS A** breach of the condition of a recognizance ~~for~~
 20 ~~appearance~~ **TO APPEAR** before ~~such~~ **THAT** court.

21 Sec. 17. ~~Whenever no~~ **IF** sufficient bail is ~~offered~~ **NOT**
 22 **PROVIDED**, and the prisoner is committed to jail, the magistrate
 23 before whom the ~~examination~~ **HEARING** was had, shall certify upon the
 24 mittimus issued by him **OR HER**, the sum for which bail was required.
 25 ~~and if~~ **IF** the prisoner ~~shall offer sufficient~~ **OFFERS** bail ~~for~~
 26 ~~such sum~~ **IN THE AMOUNT SPECIFIED** to the clerk of the court ~~wherein~~
 27 **IN WHICH** the prisoner was committed for trial, ~~it~~ **THAT BAIL** shall

1 be ~~taken~~**ACCEPTED** by ~~said~~**THE** clerk and the prisoner shall be
2 discharged.

3 Enacting section 1. This amendatory act takes effect January
4 1, 2009 and applies to probable cause hearings commenced on or
5 after that date. A preliminary examination commenced before January
6 1, 2009 shall be continued until completion under the law in effect
7 on the date that the preliminary examination began.

8 Enacting section 2. This amendatory act does not take effect
9 unless Senate Bill No. ____ or House Bill No. ____ (request no.
10 03671'07 *) of the 94th Legislature is enacted into law.