

# HOUSE BILL No. 4799

May 17, 2005, Introduced by Reps. Van Regenmorter, Vander Veen, David Law, Newell, Jones, Hansen, Steil, Condino, McConico, Nofs, Stakoe, Huizenga, Stahl, Meisner and Lipsey and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled  
"The code of criminal procedure,"  
by amending sections 40 and 42 of chapter VII (MCL 767.40 and  
767.42), section 40 as amended by 1986 PA 46.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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CHAPTER VII

Sec. 40. All informations shall be filed in the court having  
jurisdiction of the offense specified in the information. ~~after~~  
~~the proper return is filed by the examining magistrate and by the~~  
~~prosecuting attorney of the county as informant.~~ The information  
shall be subscribed by the prosecuting attorney or in his or her  
name by an assistant prosecuting attorney.

1           Sec. 42. (1) ~~An~~ **EXCEPT AS PROVIDED IN SUBSECTION (3), AN**  
2 information shall not be filed against any person for a felony  
3 until ~~such~~ **THE** person has had a preliminary examination ~~therefor~~  
4 **FOR THAT FELONY BEFORE AN EXAMINING MAGISTRATE**, as provided by law,  
5 ~~before an examining magistrate,~~ unless that person waives his **OR**  
6 **HER** statutory right to an examination. If ~~any~~ **A** person waives his  
7 **OR HER** statutory right to a preliminary examination without having  
8 had the benefit of counsel at the time and place of the waiver,  
9 upon proper and timely application by the person or his counsel,  
10 before trial or plea of guilty, the court having jurisdiction of  
11 the cause ~~, in its discretion,~~ may remand the case to a  
12 magistrate for a preliminary examination.

13           **(2) AN INFORMATION MAY BE FILED WITHIN 7 DAYS OF ARRAIGNMENT**  
14 **IN DISTRICT COURT AGAINST ANY PERSON CHARGED BY COMPLAINT FOR WHICH**  
15 **AN EXAMINATION IS NOT TO BE PROVIDED UNDER SECTION 1A(2) OF CHAPTER**  
16 **IV.**

17           **(3) THE ACCUSED IS NOT ENTITLED TO AN EXAMINATION UNDER**  
18 **SUBSECTION (1) IF THE PROSECUTING ATTORNEY FILES A COMPLAINT FOR**  
19 **WHICH AN EXAMINATION IS NOT TO BE PROVIDED UNDER SECTION 1A(2) OF**  
20 **CHAPTER IV.**

21           **(4) ~~(2)~~** An information may be filed without a preliminary  
22 examination against a fugitive from justice, and any fugitive from  
23 justice against whom an information shall be filed may be demanded  
24 by the governor of this state or the executive authority of any  
25 other state or territory, or of any foreign government, in the same  
26 manner and the same proceedings may be had thereon as provided by  
27 law in like cases of demand upon indictment filed.

1           Enacting section 1. This amendatory act does not take effect  
2 unless all of the following bills of the 93rd Legislature are  
3 enacted into law:

4           (a) Senate Bill No.\_\_\_\_ or House Bill No. 4797(request no.  
5 01425'05).

6           (b) Senate Bill No.\_\_\_\_ or House Bill No. 4800(request no.  
7 01425'05 a).

8           (c) Senate Bill No.\_\_\_\_ or House Bill No. 4796(request no.  
9 03553'05).