

1 Second: The district attorney may, on approval of the county
2 judge or the district judge, issue subpoenas in felony cases and
3 call witnesses before him and have them sworn and their testimony
4 reduced to writing and signed by the witnesses at the cost of the
5 county. Such examination must be confined to some felony committed
6 against the statutes of the state and triable in that county, and
7 the evidence so taken shall not be receivable in any civil
8 proceeding. A refusal to obey such subpoena or to be sworn or to
9 testify may be punished as a contempt on complaint and showing to
10 the county court, or district court, or the judges thereof that
11 proper cause exists therefor.

12 Third: No preliminary information shall be filed without the
13 consent or endorsement of the district attorney, unless the
14 defendant be taken in the commission of a felony, or the offense be
15 of such character that the accused is liable to escape before the
16 district attorney can be consulted. If the defendant is discharged
17 and the information is filed without authority from or endorsement
18 of the district attorney, the costs must be taxed to the prosecuting
19 witness, and the county shall not be liable therefor.

20 Fourth: The convening and session of a grand jury does not
21 dispense with the right of the district attorney to file complaints
22 and informations, conduct preliminary hearings and other routine
23 matters, unless otherwise specifically ordered, by a written order

1 of the court convening the grand jury; made on the court's own
2 motion, or at the request of the grand jury.

3 Fifth: There shall be no preliminary examinations in
4 misdemeanor cases.

5 Sixth: A preliminary magistrate shall have the authority to
6 limit the evidence presented at the preliminary hearing to that
7 which is relevant to the issues of: (1) whether the crime was
8 committed, and (2) whether there is probable cause to believe the
9 defendant committed the crime. Once a showing of probable cause is
10 made the magistrate shall terminate the preliminary hearing and
11 enter a bindover order; provided, however, that the preliminary
12 hearing shall be terminated only if the state made available for
13 inspection law enforcement reports within the prosecuting attorney's
14 knowledge or possession at the time to the defendant five (5)
15 working days prior to the date of the preliminary hearing. The
16 district attorney shall determine whether or not to make law
17 enforcement reports available prior to the preliminary hearing. If
18 reports are made available, the district attorney shall be required
19 to provide those law enforcement reports that the district attorney
20 knows to exist at the time of providing the reports, but this does
21 not include any physical evidence which may exist in the case. This
22 provision does not require the district attorney to provide copies
23 for the defendant, but only to make them available for inspection by

1 defense counsel. In the alternative, upon agreement of the state
2 and the defendant, the court may terminate the preliminary hearing
3 once a showing of probable cause is made.

4 Seventh: A preliminary magistrate shall accept into evidence as
5 proof of prior convictions a noncertified copy of a Judgment and
6 Sentence when the copy appears to the preliminary magistrate to be
7 patently accurate. The district attorney shall make a noncertified
8 copy of the Judgment and Sentence available to the defendant no
9 fewer than five (5) days prior to the hearing. If such copy is not
10 made available five (5) days prior to the hearing, the court shall
11 continue the portion of the hearing to which the copy is relevant
12 for such time as the defendant requests, not to exceed five (5) days
13 subsequent to the receipt of the copy.

14 Eighth: The purpose of the preliminary hearing is to establish
15 probable cause that a crime was committed and probable cause that
16 the defendant committed the crime.

17 SECTION 2. This act shall become effective November 1, 2003.

18 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-11-03 - DO
19 PASS, As Coauthored.