

**TWENTY-THIRD NORTHERN MARIANAS COMMONWEALTH  
LEGISLATURE**

**IN THE HOUSE OF REPRESENTATIVES**

\_\_\_\_\_ Regular Session, 2023

\_\_\_\_\_ H. B. 23- **42** \_\_\_\_\_

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**A BILL FOR AN ACT**

To amend procedures for a preliminary hearing in a criminal case.

**BE IT ENACTED BY THE 23<sup>RD</sup> NORTHERN MARIANAS  
COMMONWEALTH LEGISLATURE:**

1           **Section 1. Purpose.** The purpose of the Act is to clarify the procedure for  
2 conducting a preliminary hearing. In order to arrest a person, law enforcement  
3 officials must have probable cause to believe that the person has committed a crime.  
4 Following arrest, a court must review the information collected by law enforcement  
5 and determine whether the information, assuming it is believed, supports the  
6 conclusion that there is probable cause to believe that person committed a crime.  
7 Babauta v. Superior Court, 4 NMI 309, 310 (1995). At the preliminary hearing, the  
8 court does not conduct a trial, hear motions, decide credibility or facts or do  
9 anything other than decide probable cause.

10           Frequently, law enforcement establishes probable cause by filing an  
11 affidavit describing the information collected during an investigation. That affidavit  
12 can support an application for a warrant or the formal charging instrument, such as

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1 a complaint or information. The court must review the affidavit and determine  
2 whether there is sufficient information to establish probable cause. This process  
3 accomplishes the same purpose for holding a preliminary hearing.

4 A preliminary hearing, therefore, should only be held if there has not yet  
5 been any probable cause review by a court and the defendant continues to face some  
6 form of serious confinement. The changes addressed in this bill conforms the law  
7 to these standards, thereby protecting a defendant's constitutional right to a  
8 probable cause determination without unnecessarily delaying justice.

9 Currently, procedures for conducting a preliminary hearing are found in  
10 both CNMI statute and Supreme Court rules, as both the Legislature and the  
11 Supreme Court share authority to determine criminal procedures. See CNMI Const.  
12 art. II, § 1 ("The legislative power of the Commonwealth shall extend to all rightful  
13 subject of legislation..."); CNMI Const. art. IV, § 9 (describing Supreme Court  
14 rule-making authority, subject to legislative disapproval); Analysis of the  
15 Constitution of the CNMI (1976), p. 102 ("This section [authorizing Supreme Court  
16 rule-making authority] does not limit the legislature's authority to enact laws on  
17 this subject."). This division of procedures has created some legal conflicts and  
18 needs to be clarified. This Act unifies the preliminary hearing procedures into a  
19 single statute.

20 **Section 2. Amendment.** Title 6 § 6303. Pretrial Procedure is hereby  
21 amended to read as follows:

1           “(a) A preliminary hearing has the sole purpose of determining whether  
 2 there is probable cause to believe a defendant has committed a crime in order to  
 3 confine that defendant pending trial. A defendant who is substantially deprived of  
 4 liberty is entitled to a preliminary examination, unless waived or unless an  
 5 information has been filed and there has been a previous finding of probable cause  
 6 by a court following review of an affidavit. A person is substantially deprived of  
 7 liberty only if currently confined in a corrections facility or under house arrest. If a  
 8 preliminary hearing is required ~~the arrested person does not waive preliminary~~  
 9 ~~examination, the court official shall hear the evidence within a reasonable time but~~  
 10 no later than 14 days following initial appearance.

11           (b) A reasonable continuance shall be granted at the request of the  
 12 defendant. In the absence of such request by the defendant, time limits may be  
 13 extended by the court only upon a showing that extraordinary circumstances exist  
 14 and that delay is indispensable to the interests of justice. ~~arrested person or the~~  
 15 ~~prosecution to permit preparation of evidence. The arrested person has the right to~~  
 16 ~~be released on bail as provided by law during the period of a continuance.~~

17           (c) The defendant ~~arrested person~~ may cross-examine adverse witnesses and  
 18 may introduce evidence in his or her own behalf but has no right to discovery or  
 19 pretrial motions before a preliminary hearing. The judge shall not make any  
 20 credibility or factual determinations but merely decide whether the prosecution has

1 met its burden to show evidence, assuming it is believed, that suffices as a matter  
2 of law to establish probable cause.

3 (d) ~~If the arrested person waives preliminary examination, or~~ Following a  
4 preliminary hearing, if from the evidence it appears to the court official that there  
5 is probable cause to believe that a criminal offense has been committed and that the  
6 ~~arrested person~~ defendant committed it, the court official shall forthwith:

7 (1) Hold the defendant ~~arrested person~~ to answer in court;

8 (2) Fix, continue, or alter the bail as provided by law; and

9 (3) If bail is not provided, or a personal recognizance accepted, commit the  
10 person to jail to await trial.

11 (e) If during the preliminary examination it appears to the court official that  
12 ~~the warrant of arrest, complaint or other statements of the charge or charges does~~  
13 not properly name or describe the person arrested or that although not guilty of the  
14 offense specified there is probable cause to believe the person arrested has  
15 committed some other offense, the court official may not discharge the person but  
16 shall forthwith hold the person to answer for the offense shown by the evidence.

17 (f) ~~If the arrested person does not waive preliminary examination and from~~  
18 ~~the evidence~~ Following a preliminary hearing, if it does not appear to the court  
19 ~~official~~ that there is probable cause to believe that a criminal offense has been  
20 committed and that the defendant ~~arrested person~~ committed it, the court official  
21 shall discharge the defendant ~~arrested person~~.

1 (g) Notwithstanding any other law, this section shall control the procedures  
2 for a preliminary hearing.”

3 **Section 3. Severability.** If any provisions of this Act or the application of  
4 any such provision to any person or circumstance should be held invalid by a court  
5 of competent jurisdiction, the remainder of this Act or the application of its  
6 provisions to persons or circumstances other than those to which it is held invalid  
7 shall not be affected thereby.

8 **Section 4. Savings Clause.** This Act and any repealer contained herein  
9 shall not be construed as affecting any existing right acquired under contract or  
10 acquired under statutes repealed or under any rule, regulation, or order adopted  
11 under the statutes. Repealers contained in this Act shall not affect any proceeding  
12 instituted under or pursuant to prior law. The enactment of the Act shall not have  
13 the effect of terminating, or in any way modifying, any liability, civil or criminal,  
14 which shall already be in existence on the date this Act becomes effective.

15 **Section 5. Effective Date.** This Act shall take effect upon its approval by  
16 the Governor, or it becoming law without such approval.

Prefiled: April 11, 2023

Date:

Introduced by:

  
Rep. Marissa R. Flores

Reviewed for Legal Sufficiency by:

  
House Legal Counsel