

1           **Rule 7. Proceedings before magistrate.**

2           (a) When a summons is issued in lieu of a warrant of arrest, the defendant shall appear before  
3 the court as directed in the summons.

4           (b) When any peace officer or other person makes an arrest with or without a warrant, the  
5 person arrested shall be taken to the nearest available magistrate for setting of bail. If an  
6 information has not been filed, one shall be filed without delay before the magistrate having  
7 jurisdiction over the offense.

8           (c)(1) In order to detain any person arrested without a warrant, as soon as is reasonably  
9 feasible but in no event longer than 48 hours after the arrest, a determination shall be made as to  
10 whether there is probable cause to continue to detain the arrestee. The determination may be  
11 made by any magistrate, although if the arrestee is charged with a capital offense, the magistrate  
12 may not be a justice court judge. The arrestee need not be present at the probable cause  
13 determination.

14           (c)(2) A written probable cause statement shall be presented to the magistrate, although the  
15 statement may be verbally communicated by telephone, telefaxed, or otherwise electronically  
16 transmitted to the magistrate.

17           (c)(2)(A) A statement which is verbally communicated by telephone shall be reduced to a  
18 sworn written statement prior to submitting the probable cause issue to the magistrate for  
19 decision. The person reading the statement to the magistrate shall verify to the magistrate that the  
20 person is reading the written statement verbatim, and shall write on the statement that person's  
21 name and title, the date and time of the communication with the magistrate, and the  
22 determination the magistrate directs to be indicated on the statement.

23           (c)(2)(B) If a statement is verbally communicated by telephone, telefaxed, or otherwise  
24 electronically transmitted, the original statement shall, as soon as practicable, be filed with the  
25 court where the case will be filed.

26           (c)(3) The magistrate shall review the probable cause statement and from it determine  
27 whether there is probable cause to continue to detain the arrestee.

28           (c)(3)(A) If the magistrate finds there is not probable cause to continue to detain the arrestee,  
29 the magistrate shall order the immediate release of the arrestee.

30 (c)(3)(B) If the magistrate finds probable cause to continue to detain the arrestee, the  
31 magistrate shall immediately make a bail determination. The bail determination shall coincide  
32 with the recommended bail amount in the Uniform Fine/Bail Schedule unless the magistrate  
33 finds substantial cause to deviate from the Schedule.

34 (c)(4) The presiding district court judge shall, in consultation with the Justice Court  
35 Administrator, develop a rotation of magistrates which assures availability of magistrates  
36 consistent with the need in that particular district. The schedule shall take into account the case  
37 load of each of the magistrates, their location and their willingness to serve.

38 (c)(5) Nothing in this subsection (c) is intended to preclude the accomplishment of other  
39 procedural processes at the time of the determination referred to in paragraph (c)(1) above.

40 (d)(1) If a person is arrested in a county other than where the offense was committed the  
41 person arrested shall without unnecessary delay be returned to the county where the crime was  
42 committed and shall be taken before the proper magistrate under these rules.

43 (d)(2) If for any reason the person arrested cannot be promptly returned to the county and the  
44 charge against the defendant is a misdemeanor for which a voluntary forfeiture of bail may be  
45 entered as a conviction under Subsection 77-7-21(1), the person arrested may state in writing a  
46 desire to forfeit bail, waive trial in the district in which the information is pending, and consent to  
47 disposition of the case in the county in which the person was arrested, is held, or is present.

48 (d)(3) Upon receipt of the defendant's statement, the clerk of the court in which the  
49 information is pending shall transmit the papers in the proceeding or copies of them to the clerk  
50 of the court for the county in which the defendant is arrested, held, or present. The prosecution  
51 shall continue in that county.

52 (d)(4) Forfeited bail shall be returned to the jurisdiction that issued the warrant.

53 (d)(5) If the defendant is charged with an offense other than a misdemeanor for which a  
54 voluntary forfeiture of bail may be entered as a conviction under Subsection 77-7-21(1), the  
55 defendant shall be taken without unnecessary delay before a magistrate within the county of  
56 arrest for the determination of bail under Section 77-20-1 and released on bail or held without  
57 bail under Section 77-20-1.

58 (d)(6) Bail shall be returned to the magistrate having jurisdiction over the offense, with the

59 record made of the proceedings before the magistrate.

60 (e) The magistrate having jurisdiction over the offense charged shall, upon the defendant's  
61 first appearance, inform the defendant:

62 (e)(1) of the charge in the information or indictment and furnish a copy;

63 (e)(2) of any affidavit or recorded testimony given in support of the information and how to  
64 obtain them;

65 (e)(3) of the right to retain counsel or have counsel appointed by the court without expense if  
66 unable to obtain counsel;

67 (e)(4) of rights concerning pretrial release, including bail; and

68 (e)(5) that the defendant is not required to make any statement, and that the statements the  
69 defendant does make may be used against the defendant in a court of law.

70 (f) The magistrate shall, after providing the information under paragraph (e) and before  
71 proceeding further, allow the defendant reasonable time and opportunity to consult counsel and  
72 shall allow the defendant to contact any attorney by any reasonable means, without delay and  
73 without fee.

74 (g) If the charge against the defendant is a class B or C misdemeanor, the magistrate shall call  
75 upon the defendant to enter a plea.

76 (g)(1) If the plea is guilty, the defendant shall be sentenced by the magistrate as provided by  
77 law.

78 (g)(2) If the plea is not guilty, a trial date shall be set. The date may not be extended except  
79 for good cause shown. Trial shall be held under these rules and law applicable to criminal cases.

80 (h)(1) If a defendant is charged with a felony or a class A misdemeanor, the defendant shall  
81 be advised of the right to a preliminary examination. If the defendant waives the right to a  
82 preliminary examination, and the prosecuting attorney consents, the magistrate shall order the  
83 defendant bound over to answer in the district court.

84 (h)(2) If the defendant does not waive a preliminary examination, the magistrate shall  
85 schedule the preliminary examination. The examination shall be held within a reasonable time,  
86 but not later than ten days if the defendant is in custody for the offense charged and not later than  
87 30 days if the defendant is not in custody. These time periods may be extended by the magistrate

88 for good cause shown. A preliminary examination may not be held if the defendant is indicted.

89 (i)(1) Unless otherwise provided, a preliminary examination shall be held under the rules and  
90 laws applicable to criminal cases tried before a court. The state has the burden of proof and shall  
91 proceed first with its case. At the conclusion of the state's case, the defendant may testify under  
92 oath, call witnesses, and present evidence. The defendant may also cross-examine adverse  
93 witnesses.

94 (i)(2) If from the evidence a magistrate finds probable cause to believe that the crime charged  
95 has been committed and that the defendant has committed it, the magistrate shall order that the  
96 defendant be bound over to answer in the district court. The findings of probable cause may be  
97 based on hearsay in whole or in part. Objections to evidence on the ground that it was acquired  
98 by unlawful means are not properly raised at the preliminary examination.

99 (i)(3) If the magistrate does not find probable cause to believe that the crime charged has  
100 been committed or that the defendant committed it, the magistrate shall dismiss the information  
101 and discharge the defendant. The magistrate may enter findings of fact, conclusions of law, and  
102 an order of dismissal. The dismissal and discharge do not preclude the state from instituting a  
103 subsequent prosecution for the same offense.

104 (j) At a preliminary examination, the magistrate, upon request of either party, may exclude  
105 witnesses from the courtroom and may require witnesses not to converse with each other until the  
106 preliminary examination is concluded. On the request of either party, the magistrate may order all  
107 spectators to be excluded from the courtroom.

108 (k)(1) If the magistrate orders the defendant bound over to the district court, the magistrate  
109 shall execute in writing a bind-over order and shall transmit to the clerk of the district court all  
110 pleadings in and records made of the proceedings before the magistrate, including exhibits,  
111 recordings, and any typewritten transcript.

112 (k)(2) When a magistrate commits a defendant to the custody of the sheriff, the magistrate  
113 shall execute the appropriate commitment order.

114 (l)(1) When a magistrate has good cause to believe that any material witness in a pending  
115 case will not appear and testify unless bond is required, the magistrate may fix a bond with or  
116 without sureties and in a sum considered adequate for the appearance of the witness.

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117 (1)(2) If the witness fails or refuses to post the bond with the clerk of the court, the magistrate  
118 may commit the witness to jail until the witness complies or is otherwise legally discharged.

119 (1)(3) If the witness does provide bond when required, the witness may be examined and  
120 cross-examined before the magistrate in the presence of the defendant and the testimony shall be  
121 recorded. The witness shall then be discharged.

122 (1)(4) If the witness is unavailable or fails to appear at any subsequent hearing or trial when  
123 ordered to do so, the recorded testimony may be used at the hearing or trial in lieu of the personal  
124 testimony of the witness.