

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

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

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

8 (c)(1) In order to detain any person arrested without a warrant, as soon as
9 is reasonably feasible but in no event longer than ~~48~~24 hours after the arrest,
10 a determination shall be made as to whether there is probable cause to
11 continue to detain the arrestee. The determination may be made by any
12 magistrate, although if the arrestee is charged with a capital offense, the
13 magistrate may not be a justice court judge. The arrestee need not be present
14 at the probable cause determination.

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

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

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

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

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

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

38 (c)(4) If a probable cause statement is presented to the magistrate more
39 than 24 hours after the arrest, the magistrate shall order the release of the
40 arrestee unless the probable cause statement establishes that the delay was
41 caused by a bona fide emergency or other extraordinary circumstances.

42 (c)(5) The presiding district court judge shall, in consultation with the
43 Justice Court Administrator, develop a rotation of magistrates which assures
44 availability of magistrates consistent with the need in that particular district.
45 The schedule shall take into account the case load of each of the magistrates,
46 their location and their willingness to serve.

47 (c)(~~5~~6) Nothing in this subsection (c) is intended to preclude the
48 accomplishment of other procedural processes at the time of the
49 determination referred to in paragraph (c)(1) above.

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

54 (d)(2) If for any reason the person arrested cannot be promptly returned to
55 the county and the charge against the defendant is a misdemeanor for which
56 a voluntary forfeiture of bail may be entered as a conviction under Subsection
57 77-7-21(1), the person arrested may state in writing a desire to forfeit bail,
58 waive trial in the district in which the information is pending, and consent to
59 disposition of the case in the county in which the person was arrested, is held,
60 or is present.

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

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

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

73 (d)(6) Bail shall be returned to the magistrate having jurisdiction over the
74 offense, with the record made of the proceedings before the magistrate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

132 (k)(1) If the magistrate orders the defendant bound over to the district
133 court, the magistrate shall execute in writing a bind-over order and shall

134 transmit to the clerk of the district court all pleadings in and records made of
135 the proceedings before the magistrate, including exhibits, recordings, and any
136 typewritten transcript.

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

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

143 (l)(2) If the witness fails or refuses to post the bond with the clerk of the
144 court, the magistrate may issue a warrant and commit the witness to jail until
145 the witness complies or is otherwise legally discharged. If the witness is
146 arrested on a warrant issued by the magistrate, the custodial authority shall
147 notify the issuing magistrate before the end of the next business day, and the
148 magistrate shall provide a hearing for the witness within ~~seventy-two~~
149 ~~hours~~ three days or, upon a showing of good cause, within a reasonable
150 period of time after being notified of the arrest.

151 (l)(3) If the witness does provide bond when required, the witness may be
152 examined and cross-examined before the magistrate in the presence of the
153 defendant and the testimony shall be recorded. The witness shall then be
154 discharged.

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

158 [Advisory Committee Notes](#)