Rule 7. Proceedings before magistrate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Advisory Committee Notes