

Supreme Court's Advisory Committee on the Rules of Criminal Procedure

Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114

*** Meeting will be in the Large Conference Room (A)**

November 13, 2012
12:00 p.m. - 2:00 p.m.

Agenda

1. Welcome and Approval of Minutes - Laura Dupaix
2. Crime Victims Clinic proposal - Heidi Nestel
3. Continued discussion of search warrants - Laura Dupaix
Patrick Corum
Brent Johnson
4. Rule 40 and GPS trackers - Vincent Meister
5. Rule 7, posting bonds in material witness situations - Laura Dupaix
Brent Johnson
6. Motions to quash bindovers
Judge Lyle Anderson email - Laura Dupaix
Brent Johnson
7. Reorganization of rules - Judge Brendan McCullagh
8. Rule 29 and venue - Judge Brendan McCullagh
9. Other business
10. Adjourn

Rule 40. Search Warrants

(a) Definitions.

As used in this rule:

(a)(1) "Daytime" means the hours beginning at 6 a.m. and ending at 10 p.m. local time.

(a)(2) "Recorded" or "recording" includes the original recording of testimony, a return or other communication or any copy, printout, facsimile, or other replication that is intended by the person making the recording to have the same effect as the original.

(a)(3) "Search warrant" is an order issued by a magistrate in the name of the state and directed to a peace officer, describing with particularity the thing, place, or person to be searched and the property or evidence to be seized and includes an original written or recorded warrant or any copy, printout, facsimile or other replica intended by the magistrate issuing the warrant to have the same effect as the original.

(b) Grounds for issuance.

Property or evidence may be seized pursuant to a search warrant if there is probable cause to believe it:

(b)(1) was unlawfully acquired or is unlawfully possessed;

(b)(2) has been used or is possessed for the purpose of being used to commit or conceal the commission of an offense; or

(b)(3) is evidence of illegal conduct.

(c) Conditions precedent to issuance.

(c)(1) A search warrant shall not issue except upon probable cause, supported by oath or affirmation, and shall particularly describe the person or place to be searched and the person, property, or evidence to be seized.

(c)(2) If the item sought to be seized is evidence of illegal conduct, and is in the possession of a person or entity for which there is insufficient probable cause shown to the magistrate to believe that such person or entity is a party to the alleged illegal conduct, no search warrant shall issue except upon a finding by the magistrate that the evidence sought to be seized cannot be obtained by subpoena, or that such evidence would be concealed, destroyed, damaged, or altered if sought by subpoena. If such a finding is made and a search warrant issued, the magistrate shall direct upon the warrant such conditions that reasonably afford protection of the following interests of the person or entity in possession of such evidence:

(c)(2)(A) protection against unreasonable interference with normal business;

(c)(2)(B) protection against the loss or disclosure of protected confidential sources of information; or

(c)(2)(C) protection against prior or direct restraints on constitutionally protected rights.

(d) Search warrant served in readable form.

A copy of a search warrant shall be served in a readable form upon the person or place to be searched.

(e) Time for service -- Officer may request assistance.

(e)(1) The magistrate shall insert a direction in the warrant that it be served in the daytime, unless the affidavit or recorded testimony states sufficient grounds to believe a search is necessary in the night to seize the property prior to its being concealed, destroyed, damaged, altered, or for other good reason; in which case the magistrate may insert a direction that it be served any time of the day or night.

(e)(2) The search warrant shall be served within ten days from the date of issuance. Any search warrant not executed within this time shall be void and shall be returned to the court or magistrate as not executed.

(e)(3) An officer may request other persons to assist in conducting the search.

(f) Receipt for property taken.

The officer, when seizing property pursuant to a search warrant, shall give a receipt to the person from whom it was seized or in whose possession it was found. If no person is present, the officer shall leave the receipt in the place where the property was found.

(g) Return -- Inventory of property taken.

The officer, after execution of the warrant, shall promptly make a signed return of the warrant to a magistrate of the issuing court and deliver a written or recorded inventory of anything seized, stating the place where it is being held.

(h) Safekeeping of property.

The officer seizing the property shall be responsible for its safekeeping and maintenance until the court otherwise orders.

(i) Magistrate to retain and file copies - Documents sealed for twenty days - Forwarding of record to court with jurisdiction.

(i)(1) At the time of issuance, the magistrate shall retain and seal a copy of the search warrant, the application and all affidavits or other recorded testimony on which the warrant is based and shall, within a reasonable time, file those sealed documents in court files which are secured against access by the public. Those documents shall remain sealed until twenty days following the issuance of the warrant unless that time is extended or reduced under Section (m). Unsealed search warrant documents shall be filed in the court record available to the public.

(i)(2) Sealing and retention of the file may be accomplished by:

(i)(2)(A) placing paper documents or storage media in a sealed envelope and filing the sealed envelope in a court file not available to the public;

(i)(2)(B) storing the documents by electronic or other means under the control of the court in a manner reasonably designed to preserve the integrity of the documents and protect them against disclosure to the public during the period in which they are sealed; or

(i)(2)(C) filing through the use of an electronic filing system operated by the State of Utah which system is designed to transmit accurate copies of the documents to the court file without allowing alteration to the documents after issuance of the warrant by the magistrate.

(j) Findings required for service without notice. If the magistrate finds upon proof, under oath, that the object of the search may be quickly destroyed, disposed of, or secreted, or that physical harm may result to any person if notice were given, the magistrate may direct that the officer need not give notice of authority and purpose before entering the premises to be searched.

(k) Violation of health, safety, building, or animal cruelty laws or ordinances -- Warrant to obtain evidence.

In addition to other warrants provided by this rule, a magistrate, upon a showing of probable cause to believe a state, county, or city law or ordinance, has been violated in relation to health, safety, building, or animal cruelty, may issue a warrant for the purpose of obtaining evidence of a violation. A warrant may be obtained from a magistrate upon request of a peace officer or state, county, or municipal health, fire, building, or animal control official only after approval by a prosecuting attorney. A search warrant issued under this section shall be directed to any peace officer within the county where the warrant is to be executed, who shall serve the warrant. Other concerned personnel may accompany the officer.

(l) Remotely communicated search warrants.

(l)(1) Means of communication. When reasonable under the circumstances, a search warrant may be issued upon sworn or affirmed testimony of a person who is not in the physical presence of the magistrate, provided the magistrate is satisfied that probable cause exists for the issuance of the warrant. All communication between the magistrate and the peace officer or prosecuting attorney requesting the warrant may be remotely transmitted by voice, image, text, or any combination of those, or by other means.

(l)(2) Communication to be recorded. All testimony upon which the magistrate relies for a finding of probable cause shall be on oath or affirmation. The testimony and content of the warrant shall be recorded. Recording shall be by writing or by mechanical, magnetic, electronic, photographic storage or by other means.

(l)(3) Issuance. If the magistrate finds that probable cause is shown, the magistrate shall issue a search warrant.

(l)(4) Signing warrant. Upon approval, the magistrate may direct the peace officer or the prosecuting attorney requesting a warrant from a remote location to sign the magistrate's name on a warrant at a remote location.

(l)(5) Filing of warrant and testimony. The warrant and recorded testimony shall be retained by and filed with the court pursuant to Section (i). Filing may be by writing or by mechanical, magnetic, electronic, photographic storage or by other means.

(l)(6) Usable copies made available. Except as provided in Sections (i) and (m) of this rule, any person having standing may request and shall be provided with a copy of the warrant and a copy of the recorded testimony submitted in support of the application for the warrant. The copies shall be provided in a reasonably usable form.

(m) Sealing and Unsealing of Search Warrant Documents

(m)(1) Application for sealing of documents related to search warrants. A prosecutor or peace officer may make a written or otherwise recorded application to the court to have documents or records related to search warrants sealed for a time in addition to the sealing required by Subsection (i)(1). Upon a showing of good cause, the court may order the following documents to be sealed:

(m)(1)(A) applications for search warrants;

(m)(1)(B) search warrants;

(m)(1)(C) affidavits or other recorded testimony upon which the search warrant is based;

(m)(1)(D) the application, affidavits or other recorded testimony and order for sealing the documents.

(m)(2) Sealing of search warrant documents. Search warrant documents are public record that may be sealed in entirety or in part and not placed in the public file if all or part of the information in them would:

(m)(2)(A) cause a substantial risk of harm to a person's safety;

(m)(2)(B) pose a clearly unwarranted invasion of or harm to a person's reputation or privacy; or

(m)(2)(C) pose a serious impediment to the investigation.

Sealed documents shall be maintained in a file not available to the public. If a document is not sealed in its entirety, the court may order a copy of the document with the sealed portions redacted to be placed in the public file and an un-redacted copy to be placed in the sealed file. Except as required by Section (i), no document may be designated as "Filed under Seal" or "Confidential" unless it is accompanied by a court order sealing the document.

(m)(3) Unsealing of documents. Any person having standing may file a motion to unseal search warrant documents with notice to the prosecutor and law enforcement agency. If the prosecutor or law enforcement agency files an appropriate and timely objection to the unsealing, the court may hold a hearing on the motion and objection. Where no objection to unsealing the documents is filed, the defendant may prepare an order for entry by the court. The court may order the unsealing of the documents or order copies of the documents to be delivered to a designated person without unsealing the documents and require the person receiving the documents not to disclose the contents to any other person without the authorization of the court.

(m)(4) Length of time documents may remain sealed. The documents may remain sealed ~~until the court finds, for good cause, that the records should be unsealed.~~ for a period of up to 6 months. Prior to the end of the 6 month period, the prosecutor may file a motion asking the court to seal the documents for an additional period of up to 6 months. Upon a finding that the original conditions for sealing remain, the court may order the documents to remain sealed for up to 6 additional months. The prosecutor may seek, and the court may grant, additional 6 month extensions provided the original conditions for sealing remain.

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 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) 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) 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 set~~ bail, 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~~ bail 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 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.

(1)(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

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 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) 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) 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~~ might refuse to appear and testify ~~unless bond is required~~, the magistrate may issue a warrant and fix a bond ~~bail~~, 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 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.

(1)(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