

Utah State Courts Rules - Published for Comment

2016-02-02

Rules of Criminal Procedure

URCrP 011. Pleas. Amend. Clarifies the warning judges must give to defendants in domestic violence cases.

URCrP 022. Sentence, judgment and commitment. Amend. Clarifies the warning judges must give to defendants in domestic violence cases. Also clarifies the circumstances under which a Rule 22 motion may be filed.

Posted by alisonap at 01:55 PM | Comments (0)

2014-11-19

Rules of Criminal Procedure

URCrP 002. Time. Amend. Changes the way time will be computed, marking time in calendar days, rather than business days. Includes a provision for counting times stated in hours.

URCrP 004. Prosecution of public offenses. Amend. Requires prosecutors to list the citation number on an information if a citation was previously issued in the case in order to ensure that cases can be consolidated when they are electronically filed. Makes technical changes.

URCrP 012. Motions. Amend. Conforms the computation of time to the approach of the Utah Rules of Civil Procedure. Deadlines of 30 days or less in several rules will be modified to a uniform 7/14/21/28 days.

URCrP 014. Subpoena. Amend. Conforms the computation of time to the approach of the Utah Rules of Civil Procedure. Deadlines of 30 days or less in several rules will be modified to a uniform 7/14/21/28 days.

URCrP 016. Discovery. Amend. Conforms the computation of time to the approach of the Utah Rules of Civil Procedure. Deadlines of 30 days or less in several rules will be modified to a uniform 7/14/21/28 days.

URCrP 017. The trial. Amend. Conforms the computation of time to the approach of the Utah Rules of Civil Procedure. Deadlines of 30 days or less in several rules will be modified to a uniform 7/14/21/28 days.

URCrP 021A. Presentence investigation reports; Restitution. Amend. Conforms the computation of time to the approach of the Utah Rules of Civil Procedure. Deadlines of 30 days or less in several rules will be modified to a uniform 7/14/21/28 days.

URCrP 022. Sentence, judgment and commitment. Amend. Conforms the computation of time to the approach of the Utah Rules of Civil Procedure. Deadlines of 30 days or less in several rules will be modified to a uniform 7/14/21/28 days.

URCrP 024. Motion for new trial. Amend. Conforms the computation of time to the approach of the Utah Rules of Civil Procedure. Deadlines of 30 days or less in several rules will be modified to a uniform 7/14/21/28 days.

URCrP 026. Written orders, judgments and decrees. Amend. Requires the court to prepare the final judgment and sentence. Requires litigants to submit motions and orders as separate documents. Makes technical changes.

URCrP 027. Stays of sentence pending appeals from courts of record. Amend. Conforms the computation of time to the approach of the Utah Rules of Civil Procedure. Deadlines of 30 days or less in several rules will be modified to a uniform 7/14/21/28 days.

URCrP 027B. Stays pending appeal from a court not of record - hearings de novo, DUI, and reckless driving cases. Amend. Conforms the computation of time to the approach of the Utah Rules of Civil Procedure. Deadlines of 30 days or less in several rules will be modified to a uniform 7/14/21/28

Rule 11. Pleas.

(a) Upon arraignment, except for an infraction, a defendant shall be represented by counsel, unless the defendant waives counsel in open court. The defendant shall not be required to plead until the defendant has had a reasonable time to confer with counsel.

(b) A defendant may plead not guilty, guilty, no contest, not guilty by reason of insanity, or guilty and mentally ill. A defendant may plead in the alternative not guilty or not guilty by reason of insanity. If a defendant refuses to plead or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

(c) A defendant may plead no contest only with the consent of the court.

(d) When a defendant enters a plea of not guilty, the case shall forthwith be set for trial. A defendant unable to make bail shall be given a preference for an early trial. In cases other than felonies the court shall advise the defendant, or counsel, of the requirements for making a written demand for a jury trial.

(e) The court may refuse to accept a plea of guilty, no contest or guilty and mentally ill, and may not accept the plea until the court has found:

(e)(1) if the defendant is not represented by counsel, he or she has knowingly waived the right to counsel and does not desire counsel;

(e)(2) the plea is voluntarily made;

(e)(3) the defendant knows of the right to the presumption of innocence, the right against compulsory self-incrimination, the right to a speedy public trial before an impartial jury, the right to confront and cross-examine in open court the prosecution witnesses, the right to compel the attendance of defense witnesses, and that by entering the plea, these rights are waived;

(e)(4)(A) the defendant understands the nature and elements of the offense to which the plea is entered, that upon trial the prosecution would have the burden of proving each of those elements beyond a reasonable doubt, and that the plea is an admission of all those elements;

(e)(4)(B) there is a factual basis for the plea. A factual basis is sufficient if it establishes that the charged crime was actually committed by the defendant or, if the defendant refuses or is otherwise unable to admit culpability, that the prosecution has sufficient evidence to establish a substantial risk of conviction;

(e)(5) the defendant knows the minimum and maximum sentence, and if applicable, the minimum mandatory nature of the minimum sentence, that may be imposed for each offense to which a plea is entered, including the possibility of the imposition of consecutive sentences;

(e)(6) if the tendered plea is a result of a prior plea discussion and plea agreement, and if so, what agreement has been reached;

(e)(7) the defendant has been advised of the time limits for filing any motion to withdraw the plea; and

(e)(8) the defendant has been advised that the right of appeal is limited.

These findings may be based on questioning of the defendant on the record or, if used, a written statement reciting these factors after the court has established that the defendant has read, understood, and acknowledged the contents of the statement. If the defendant cannot understand the English language, it will be sufficient that the statement has been read or translated to the defendant.

Unless specifically required by statute or rule, a court is not required to inquire into or advise concerning any collateral consequences of a plea.

(f) Failure to advise the defendant of the time limits for filing any motion to withdraw a plea of guilty, no contest or guilty and mentally ill is not a ground for setting the plea aside, but may be the ground for extending the time to make a motion under Section 77-13-6.

(g) If the defendant pleads guilty, no contest, or guilty and mentally ill to a misdemeanor crime of domestic violence, as defined in Utah Code Section 77-36-1, the court shall advise the defendant orally or in writing that, if the case meets the criteria of 18 U.S.C. Section 921(a)(33) then pursuant to federal law, as a result of the plea, it is unlawful for the defendant to possess, receive or transport any firearm or ammunition. The failure to advise does not render the plea invalid or form the basis for withdrawal of the plea.

(h)(1) If it appears that the prosecuting attorney or any other party has agreed to request or recommend the acceptance of a plea to a lesser included offense, or the dismissal of other charges, the agreement shall be approved or rejected by the court.

(h)(2) If sentencing recommendations are allowed by the court, the court shall advise the defendant personally that any recommendation as to sentence is not binding on the court.

(i)(1) The judge shall not participate in plea discussions prior to any plea agreement being made by the prosecuting attorney.

(i)(2) When a tentative plea agreement has been reached, the judge, upon request of the parties, may permit the disclosure of the tentative agreement and the reasons for it, in advance of the time for tender of the plea. The judge may then indicate to the prosecuting attorney and defense counsel whether the proposed disposition will be approved.

(i)(3) If the judge then decides that final disposition should not be in conformity with the plea agreement, the judge shall advise the defendant and then call upon the defendant to either affirm or withdraw the plea.

(j) With approval of the court and the consent of the prosecution, a defendant may enter a conditional plea of guilty, guilty and mentally ill, or no contest, reserving in the record the right, on appeal from the judgment, to a review of the adverse determination of any specified pre-trial motion. A defendant who prevails on appeal shall be allowed to withdraw the plea.

(k) When a defendant tenders a plea of guilty and mentally ill, in addition to the other requirements of this rule, the court shall hold a hearing within a reasonable time to determine if the defendant is mentally ill in accordance with Utah Code Ann. § 77-16a-103.

(l) Compliance with this rule shall be determined by examining the record as a whole. Any variance from the procedures required by this rule which does not affect substantial rights shall be disregarded. Failure to comply with this rule is not, by itself, sufficient grounds for a collateral attack on a guilty plea.

Advisory Committee Notes

Rule 22. Sentence, judgment and commitment.

(a) Upon the entry of a plea or verdict of guilty or plea of no contest, the court shall set a time for imposing sentence which shall be not less than two nor more than 45 days after the verdict or plea, unless the court, with the concurrence of the defendant, otherwise orders. Pending sentence, the court may commit the defendant or may continue or alter bail or recognizance.

Before imposing sentence the court shall afford the defendant an opportunity to make a statement and to present any information in mitigation of punishment, or to show any legal cause why sentence should not be imposed. The prosecuting attorney shall also be given an opportunity to present any information material to the imposition of sentence.

(b) On the same grounds that a defendant may be tried in defendant's absence, defendant may likewise be sentenced in defendant's absence. If a defendant fails to appear for sentence, a warrant for defendant's arrest may be issued by the court.

(c)(1) Upon a verdict or plea of guilty or plea of no contest, the court shall impose sentence and shall enter a judgment of conviction which shall include the plea or the verdict, if any, and the sentence. Following imposition of sentence, the court shall advise the defendant of defendant's right to appeal and the time within which any appeal shall be filed.

(c)(2) If the defendant is convicted of a misdemeanor crime of domestic violence, as defined in Utah Code Section 77-36-1, the court shall advise the defendant orally or in writing that, as a result of the conviction if the current case meets the criteria of 18 U.S.C. Section 921(a)(33), then pursuant to federal law, it is unlawful for the defendant to possess, receive or transport any firearm or ammunition. The failure to advise does not render the plea invalid or form the basis for withdrawal of the plea.

(d) When a jail or prison sentence is imposed, the court shall issue its commitment setting forth the sentence. The officer delivering an illegal the defendant to the jail or prison shall deliver a true copy of the commitment to the jail or prison and shall make the officer's return on the commitment and file it with the court.

(e) At any time after sentencing, the court may correct a sentence ~~or a sentence imposed in an illegal manner, at any time when the sentence imposed:~~

(1) exceeds the statutorily-authorized maximums;

(2) is less than statutorily-required minimums;

(3) violates Double Jeopardy; or

(4) is ambiguous or internally contradictory.

(f) Upon a verdict or plea of guilty and mentally ill, the court shall impose sentence in accordance with Title 77, Chapter 16a, Utah Code. If the court retains jurisdiction over a mentally ill offender committed to the Department of Human Services as provided by Utah Code Ann. § 77-16a-202(1)(b), the court shall so specify in the sentencing order.



Brent Johnson <brentj@utcourts.gov>

Crim Rules

2 messages

Patrick Corum <PCorum@sllda.com>

Tue, Jan 5, 2016 at 3:32 PM

To: "Brent Johnson (General Counsel)" <brentj@utcourts.gov>

Brent,

Judge Blanch approached me last week and wanted the committee to address an issue. In Utah, Rule 18(g) allows for alternate jurors but states that those jurors must be excused when deliberations start – "Except in bifurcated proceedings, an alternate juror who does not replace a principal juror shall be discharged when the jury retires to consider its verdict." The corresponding Federal rule, 24(c)(3) allows the court to retain the alternates through deliberations should any problems occur – "*Retaining Alternate Jurors*. The court may retain alternate jurors after the jury retires to deliberate. The court must ensure that a retained alternate does not discuss the case with anyone until that alternate replaces a juror or is discharged. If an alternate replaces a juror after deliberations have begun, the court must instruct the jury to begin its deliberations anew."

Judge Blanch would like us to consider changing the Utah rule to mirror the Federal rule.

Best,

Patrick W. Corum

Assistant Director

Salt Lake Legal Defender Ass'n

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Brent Johnson <brentj@utcourts.gov>

Tue, Jan 5, 2016 at 3:45 PM

To: Patrick Corum <PCorum@sllda.com>

I will put it on the next agenda.

Thanks.

New Pre trial procedural rules.

Attached are the proposed changes to Rules 4-7 of the Criminal Rules. I have redlined the new rule 4 against rule 4, and the new rule 6 against rule 6. I have also redlined my proposed group of rule 7's against the section of rule 7 they currently relate to.

The changes are needed because our current rules try to do too much within one rule. Leaving us with rules that one has to dive too deep into to find cogent procedures. Also, the rules have developed add ons over the years resulting in inconsistent rules or needless repetition among rules.

The proposals broaden the current rule 4 into three rules. Each concerned with a unique method of commencing a prosecution or criminal case. Each of these methods, information, citation and indictment need different procedures to get the case to the next step.

I propose eliminating current rule 5 as its substance is statutory and subsumed into rule 4 or 4A.

Rule 6 is amended to standardize the criteria a judge should use in deciding whether to allow a defendant charged by information or indictment to appear pursuant to a summons or a warrant.

Rule 7 contains the most changes.

The old rule 7 called proceedings before a magistrate sought to set procedure for events such as magistrate approval of pre charge detention, to post charge/arraignment procedure, to initial appearances, to preliminary hearings, to material witness procedures.

My proposals break these out into five separate rules.

New Rule 7 concerns a district court judge's (or arguably a justice court magistrate if used) responsibilities in handling an initial appearance in filed cases charging class A and felonies.

New Rule 7A concerns the same for petit misdemeanors, class b and below.

New Rule 7B concerns preliminary hearing procedures.

New Rule 7C concerns procedures for dealing with material witness issues

New Rule 8 clarifies and updates language concerning the appointment of counsel and contains cross references from rules 7 and 7A.

New rule 9 (recycling old repealed number) deals with an arresting officer or custodial authority seeking magistrate authority to continue holding a person who has been arrested without a warrant, and not yet charged.

New Rule 9A concerns procedures for getting persons arrested pursuant to warrant before the proper court as efficiently as possible.

I propose eliminating rule 9.5 by including it in the language for rules 4 and 4A concerning what information or indictment must contain.

Then current Rule 10 picks up with a defendant who was bound over in rule 7B.

These numbers are all placeholders for when we finally get around to reorganizing the rules, but for the moment the numbering seems to work.

There are legislative changes that are somewhat the impetus for these rule changes and are designed to work with them. The main bill is one of Sen. Hilyard's and it is currently awaiting final language out of legal research. As soon as it lands, I will forward it along to see how the two efforts coincide.

Rule 7. Initial Proceedings for Class A misdemeanors and Felonies.

- (a) At the defendant's first appearance, the court shall inform the defendant:
1. Of the charge in the information or indictment and furnish a copy;
 2. of any affidavit or recorded testimony given in support of the information and how to obtain them;
 3. of the right to retain counsel or have counsel appointed by the court without expense if unable to obtain counsel;
 4. of rights concerning pretrial release, including bail; and
 5. that the defendant is not required to make any statement, and that any statements the defendant does make may be used against the defendant in a court of law.
- (b) If defendant is present at the initial appearance without counsel, then the court shall determine if the defendant is capable of retaining the services of an attorney within a reasonable time. If the court determines the defendant has such resources, then the court shall allow the defendant that reasonable time and opportunity to retain and consult with counsel. If the court determines defendant is indigent, the court shall appoint counsel pursuant to Rule 8, unless defendant knowingly and intelligently such appointment.
- (c) LANGUAGE ABOUT PRETRAIL RELEASE WITH COUNSEL PRESENT AND ENSURING IT IS DE NOVO.
- (d) The defendant shall be advised of the right to a preliminary examination and the times for holding such hearing. If the defendant waives the right to a preliminary examination, and the prosecuting attorney consents, the court shall order the defendant bound over for trial.
- (e) If the defendant does not waive a preliminary examination, the court shall schedule the preliminary examination. The examination shall be held within a reasonable time, but not later than 14 days if the defendant is in custody for the offense charged and not later than 28 days if the defendant is not in custody. These time periods may be extended by the magistrate for good cause shown. Upon consent of the parties, the court may schedule the case for other proceedings before scheduling a preliminary hearing.
- (f) A preliminary examination may not be held if the defendant is indicted.

Rule 7A. Procedures for Arraignment on Class B or C misdemeanors, or infractions.

(a) The court, at a defendant's initial appearance shall inform the defendant:

1. Of the charge in the information or indictment and furnish a copy;
2. of any affidavit or recorded testimony given in support of the information and how to obtain them;
3. of the right to retain counsel or have counsel appointed by the court without expense if unable to obtain counsel;
4. of rights concerning pretrial release, including bail; and
5. that the defendant is not required to make any statement, and that any statements the defendant does make may be used against the defendant in a court of law.

(b) If defendant is present at the initial appearance without counsel, then the court shall determine if the defendant is capable of retaining the services of an attorney within a reasonable time. If the court determines the defendant has such resources, then the court shall allow the defendant that reasonable time and opportunity to retain and consult with counsel. If the court determines defendant is indigent, the court shall appoint counsel pursuant to Rule 8, unless defendant knowingly and intelligently such appointment.

(c) If defendant is prepared with counsel, or if counsel is waived, the court shall call upon a defendant to enter a plea.

1. If the plea is guilty, the defendant shall be sentenced by the court as provided by law.
2. If the plea is not guilty, the court shall set the matter for trial or a pretrial conference within a reasonable time. Such time shall be no longer than ____days if defendant is in custody, or ____if defendant is not in custody.
3. If the court has appointed counsel; defendant does not desire to enter a plea, or for other good cause, the court may administratively enter a not guilty plea for the defendant. The court shall then schedule a pretrial conference.

(d). LANGUAGE ABOUT PRETRIAL

RULE 7B. Preliminary Hearings

a. 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.

b. If from the evidence the 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 for trial. 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.

c. 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.

d. 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.**

e. If the magistrate orders the defendant bound over for trial, the magistrate shall execute a bind-over order and shall include any written findings in the case record.

RULE 7C. Material Witnesses- Procedure for Bond or Warrants

a. 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.

b. 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 three days or, upon a showing of good cause, within a reasonable period of time after being notified of the arrest.

c. 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.

d. 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.

RULE 7D Magistrate Availability

The presiding district court judge shall, in consultation with the Justice Court Administrator, develop a rotation of magistrates that 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.

RULE 9. Proceedings for persons arrested on suspicion of a crime (without warrant).

(a) A person arrested and delivered to a correctional facility for an offense other than a misdemeanor for which a voluntary remittance of fine may be entered as a conviction under Subsection 77-7-21(1), shall be presented without unnecessary delay before a magistrate for the determination of probable cause and the denial of pretrial release, or the setting of pretrial release conditions under Section 77-20-1.

(b) When a person is arrested without a warrant, the arresting officer, custodial authority, or prosecutor with authority over the most serious offense for which defendant was arrested shall, as soon as reasonably feasible but in no event longer than 24 hours after the arrest present to a magistrate a sworn statement that contains:

1. the facts known to support probable cause to believe the defendant has committed a crime.
2. The statement shall also contain any facts known to the affiant that are relevant to determining, the appropriateness of precharge release, or the conditions thereof.
3. If available, the magistrate should also be presented the results of a validated pretrial risk assessment tool.

(c) The information required in subsection (a) may be:

1. Presented to any magistrate, although if the judicial district has adopted a magistrate rotation pursuant to rule 7D, the presentment should be in accord with that schedule or rotation. However, if the arrestee is charged with a capital offense, the magistrate may not be a justice court judge.
 2. Verbally communicated by telephone, or electronically transmitted to the magistrate.
 - A. A statement which is verbally communicated by telephone shall be reduced to a sworn written statement prior to presentment to the magistrate.
 - B. 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 any determination the magistrate directs to be indicated on the statement.
 - C. A copy shall be retained by the submitting authority and the original statement shall, as soon as practicable, be delivered to the magistrate who made the determination.

(d) The arrestee need not be present at the probable cause determination.

(e) The magistrate shall review the information provided and determine:

1. If probable cause exists to believe the defendant committed the offense or offenses described.

2. If the magistrate finds there is probable cause, then the magistrate shall also determine if the person is eligible for pretrial release pursuant to 77-20-1, and what if any conditions on that release are reasonably necessary to:

- A. ensure the appearance of the accused at future court proceedings;
- B. ensure the integrity of the judicial process, including prevent direct or indirect contact with witnesses or victims by the accused, if appropriate; and
- C. ensuring the safety of the public and the community.

3. If the magistrate finds the statement does not support probable cause to support the charges filed, the magistrate may determine what if any charges are supported, and proceed under subsection (2). If no probable cause is articulated for any charge, the magistrate shall return the statement to the submitting authority indicating such.

(e) Nothing in this rule is intended to preclude the accomplishment of other procedural processes at the time of the determination referred to in subsection (b).

(f) If a person is arrested in a county other than where the offense was alleged to have been committed, the arresting authority may present the person to a magistrate in the location arrested, or in the county where the crime was committed.

(d)(5)

[If an information has not been filed, one shall be filed without delay before the magistrate having jurisdiction over the offense.]

Rule 9A Procedures for persons arrested pursuant to warrant

(a) When any peace officer or other person makes an arrest with a warrant and the arrested person cannot provide any condition or security required by the judge or magistrate issuing the warrant, the person arrested shall without unnecessary delay be taken before the proper court under these rules.

(b) If the arrested person meets the conditions, or provides the necessary security required by the warrant, the person shall be released and instructed to appear as required in the issuing court.

(c) Any posted security shall be forwarded to the court issuing the warrant.

~~(e) The magistrate having jurisdiction over the offense charged shall,~~
~~UPON~~ Rule 7. Initial Proceedings for Class A misdemeanors and Felonies.

(a) At the defendant's first appearance, the court shall inform the defendant:

~~(e)(1) of.~~ 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~~ any

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.~~

(b) ~~(h)(1) If a defendant is charged with a felony~~ If defendant is present at the initial appearance without counsel, then the court shall determine if the defendant is capable of retaining the services of an attorney within a reasonable time. If the court determines the defendant has such resources, then the court shall allow the defendant that reasonable time and opportunity to retain and consult with counsel. If the court determines defendant is indigent, the court shall appoint counsel pursuant to Rule 8, unless defendant knowingly and intelligently such appointment.

(c) If counsel are present and prepared, the court shall address whether the defendant is entitled to pretrial release pursuant to 77-20-1, and if so, what if any conditions the court will impose to reasonably ensure the continued appearance of the defendant; integrity of the judicial process; and safety of the community. The court shall utilize the least restrictive conditions needed to meet those goals.

(d) If defense counsel is not present or not yet prepared, the court shall allow up to a 7 day continuance of the hearing to allow for preparation.

(e) The determination of pretrial release eligibility and conditions, may be reviewed and modified upon application by either party based on a ~~class A misdemeanor, the~~ material change in circumstances, or other good cause.

(f) The defendant shall be advised of the right to a preliminary examination; and the times for holding such hearing. If the defendant waives the right to a preliminary examination, and the prosecuting attorney consents, the ~~magistrate~~ court shall order the defendant bound over ~~to answer in the district court~~ for trial.

(g) ~~(h)(2)~~ If the defendant does not waive a preliminary examination, the ~~magistrate~~ court shall schedule the preliminary examination. The examination shall be held within a reasonable time, but not later than ~~ten~~ 14 days if the defendant is in custody for the offense charged and

not later than ~~30~~28 days if the defendant is not in custody. These time periods may be extended by the magistrate for good cause shown. Upon consent of the parties, the court may schedule the case for other proceedings before scheduling a preliminary hearing.

(h) A preliminary examination may not be held if the defendant is indicted.

Rule 7A. Procedures for Arraignment on Class B or C misdemeanors, or infractions.

~~(a)~~ The ~~magistrate~~ having jurisdiction over the offense charged shall, upon the defendant's first court, at a defendant's initial appearance, shall 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~~ any

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~~ (b) If defendant is present at the initial appearance without counsel, then the court shall determine if the defendant is capable of retaining the services of an attorney within a reasonable time. If the court determines the defendant has such resources, then the court shall allow the defendant that reasonable time and opportunity to retain and consult with counsel. If the court determines defendant is indigent, the court shall appoint counsel pursuant to Rule 8, unless defendant knowingly and intelligently such appointment.

- (i) If counsel are present and prepared, the court shall address whether the defendant is entitled to pretrial release pursuant to 77-20-1, and if so, what if any conditions the court will impose to reasonably ensure the continued appearance of the defendant; integrity of the judicial process; and safety of the community. The court shall utilize the least restrictive conditions needed to meet those goals.
- (j) If defense counsel is not present or C misdemeanor, the magistrate not yet prepared, the court shall allow up to a 7 day continuance of the hearing to allow for preparation.
- (k) The determination of pretrial release eligibility and conditions, may be reviewed and modified upon application by either party based on a material change in circumstances, or other good cause.

~~(d) If defendant is prepared with counsel, or if counsel is waived, the court shall call upon the~~ defendant to enter a plea.

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

~~(g)(2)~~ If the plea is not guilty, ~~a~~ the court shall set the matter for trial date shall be set. The date may not or a pretrial conference within a reasonable time. Such time should be extended except for good cause shown. Trial shall be held under these rules

~~and law applicable to criminal cases~~ no longer than _____ days if defendant is in custody, or
_____ if defendant is not in custody.

3. If the court has appointed counsel; defendant does not desire to enter a plea, or for other
good cause, the court may administratively enter a not guilty plea for the defendant. The court shall
then schedule a pretrial conference.

~~(i)(1)~~ **RULE 7B. Preliminary Hearings**

a. 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)~~b. If from the evidence ~~a~~the 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.~~for trial. 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)~~c. 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.

~~(i)~~d. 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)~~e. If the magistrate orders the defendant bound over ~~to the district court~~for trial, 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~~include any ~~typewritten transcript.~~written findings in the case record.

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

RULEs 7C and 7D no change in language from original language

RULE 7C. Material Witnesses- Procedure for Bond or Warrants

a. 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.

b. 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 three days or, upon a showing of good cause, within a reasonable period of time after being notified of the arrest.

c. 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.

d. 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.

RULE 7D Magistrate Availability

The presiding district court judge shall, in consultation with the Justice Court Administrator, develop a rotation of magistrates that 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.

RULE 9 Arrest Without warrant

~~(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~~**RULE 9. Proceedings for persons arrested on suspicion of a crime (without warrant).**

(a) A person arrested and delivered to a correctional facility for an offense other than a misdemeanor for which a voluntary remittance of fine may be entered as a conviction under Subsection 77-7-21(1), shall be presented without unnecessary delay before a magistrate for the determination of probable cause and the denial of pretrial release, or the setting of pretrial release conditions under Section 77-20-1.

(b) When a person is arrested without a warrant, the arresting officer, custodial authority, or prosecutor with authority over the most serious offense for which defendant was arrested shall, as soon as is reasonably feasible but in no event longer than 24 hours after the arrest, a determination shall be made as present to a magistrate a sworn statement that contains:

1. the facts known to whether there is support probable cause to continue believe the defendant has committed a crime.
2. The statement shall also contain any facts known to detain the arrestee. affiant that are relevant to determining, the appropriateness of precharge release, or the conditions thereof.
3. If available, the magistrate should also be presented the results of a validated pretrial risk assessment tool.

(c) The ~~determination~~ information required in subsection (a) may be made by:

1. Presented to any magistrate, although if the judicial district has adopted a magistrate rotation pursuant to rule 7D, the presentment should be in accord with that schedule or rotation. However, 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.

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

- A. ~~(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~~ presentment to the magistrate ~~for decision.~~ .
 - B. 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~~ any determination the magistrate directs to be indicated on the statement. .
 - C. ~~(c)(2)(B) If a statement is verbally communicated~~ A copy shall be retained by telephone, telefaxed, or otherwise electronically transmitted, ~~the submitting authority and~~ the original statement shall, as soon as practicable, be ~~filed with the court where~~ delivered to the ~~case will be filed~~ magistrate who made the determination.
- (d) The arrestee need not be present at the probable cause determination. ~~(c)(3)~~
- (e) The magistrate shall review the ~~probable cause statement and from it~~ information provided and determine ~~whether there is~~ .
1. If probable cause ~~to continue~~ exists to ~~detain the arrestee~~ believe the defendant committed the offense or offenses described.
 2. ~~(c)(3)(A)~~ If the magistrate finds there is ~~not~~ probable cause ~~to continue to detain the arrestee,~~ then the magistrate shall ~~order the immediate~~ also determine if the person is eligible for pretrial release ~~of the arrestee~~ pursuant to 77-20-1, and what if any conditions on that release are reasonably necessary to:
 - A. ~~(c)~~ ensure the appearance of the accused at future court proceedings;
 - B. ensure the integrity of the judicial process, including prevent direct or indirect contact with witnesses or victims by the accused, if appropriate; and
 - C. ensuring the safety of the public and the community.
- 3) ~~(B)~~ . If the magistrate finds the statement does not support 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 support the charges filed, the magistrate ~~finds substantial cause to deviate from the Schedule.~~
- ~~(c)(4)~~ may determine what if any charges are supported, and proceed under subsection (2).
- If ~~a~~ no probable cause ~~statement is presented to~~ is articulated for any charge, 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~~ shall return the statement to the submitting authority indicating such.

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

(f) If a person is arrested in a county other than where the offense was alleged to have been committed, the arresting authority may present the person to a magistrate in the location arrested, or in the county where the crime was committed.

(d)(5)

[If an information has not been filed, one shall be filed without delay before the magistrate having jurisdiction over the offense.]

RULE 9A

~~(d)(1) If a person is~~Rule 9A Procedures for persons arrested in a county other than where the offense was committed~~pursuant to warrant~~

~~(a) When any peace officer or other person makes an arrest with a warrant and the arrested person cannot provide any condition or security required by the judge or magistrate issuing the warrant, 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~~court 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.~~

~~(b) If the arrested person meets the conditions, or provides the necessary security required by the warrant, the person shall be released and instructed to appear as required in the issuing court.~~

~~(c) Any posted security shall be forwarded to the court issuing the warrant.~~

Rule 4.- Prosecution ~~of public offenses~~ by information.

~~(a) Unless otherwise provided, all offenses shall be prosecuted by indictment or information sworn to by a person having reason to believe the offense has been committed.~~

(a) A prosecution may be commenced by the filing of an information. The information shall be filed in a format and according to the rules of the judicial council.

(b) An ~~indictment or~~ information shall ~~charge the offense for which the defendant is being prosecuted~~ contain:

1. The defendant's name, date of birth, and last known address. Other identifying information may be provided in accordance with rules of the Judicial Council concerning electronic filing, as long as the actual information document does not include non-public records. If the name of the defendant is not known, the prosecution shall identify the defendant as John or Jane Doe, and include any identifying information known.

2. ~~Numbered counts stating offenses~~ by using the name given to the offense by ~~common law or by~~ statute or ordinance, or by stating in concise terms the definition of the offense sufficient to give the defendant notice of the charge. ~~If issued, the information shall include the citation number. Failure to include the number will not affect the court's jurisdiction.~~

(i) An information can allege alternative theories of the same offense in a single count or in multiple counts.

3. The names of any adult witnesses on whose evidence the information is based.

ii. Failure to include those names does not render an information invalid.

iii Upon request of the defendant, except when relieved by the court for good cause, the prosecution shall provide those names.

4. A booking number if the defendant was arrested and detained on charges related to this information. Any pretrial release information shall also be included, such as:

i. any monetary bail or other pretrial release conditions set by a magistrate when determining probable cause at arrest;

ii. whether the defendant was denied pretrial release;

iii. whether the defendant was released to a pretrial supervision agency;

iv. whether the defendant is currently in custody.

(c) An information may contain or be accompanied by a statement of facts sufficient to make out probable cause to sustain the offense charged where appropriate. Such things as time, place, means, intent, manner, value and ownership need not be alleged unless necessary to charge the offense. Such things as money, securities, written instruments, pictures, statutes and judgments may be described by any name or description by which they are generally known or by which they may be identified without setting forth a copy. However, details concerning such things may be obtained through a bill of particulars. Neither presumptions of law nor matters of judicial notice need be stated.

~~(c) The court may strike any surplus or improper language from an indictment or information.~~

(d) If the prosecution requests the court issue a warrant pursuant to rule 6, the information shall include the statement described in subsection (c).

(e) The court may strike any surplus or improper language from an indictment or information.

(f) The court may ~~permit-permit~~ an ~~information-information~~ to be amended at any time before trial has commenced so long as the substantial rights of the defendant are not prejudiced. ~~-~~ If an additional or different offense is charged, the defendant has the right to a preliminary hearing on that offense as provided under these rules and any continuance as necessary to meet the amendment. ~~-~~

~~-~~ The court may permit an ~~indictment-or~~ information ~~to~~ be amended after the trial has commenced but before verdict if no additional or different offense is charged and the substantial rights of the defendant are not prejudiced. After verdict, an ~~indictment-or~~ information may be amended so as to state the offense with such particularity as to bar a subsequent prosecution for the same offense upon the same set of facts.

~~(e)(g)~~ When facts not set out in an information ~~or indictment~~ are required to inform a defendant of the nature and cause of the offense charged, so as to enable him to prepare his defense, the defendant may file a written motion for a bill of particulars. The motion shall be filed at ~~arraignment~~ initial appearance or within ~~14~~ ten days thereafter, or at such later time as the court may permit. The court may, on its own motion, direct the filing of a bill of particulars. A bill of

particulars may be amended or supplemented at any time subject to such conditions as justice may require. The request for and contents of a bill of particulars shall be limited to a statement of factual information needed to set forth the essential elements of the particular offense charged.

~~(f)(h)~~ An ~~indictment or~~ information shallis not ~~be held~~ invalid because any name contained therein may be incorrectly spelled or stated.

~~(g); nor because a disjunctive clause is used instead of the conjunctive.~~ It shall not be necessary to negate any exception, excuse or proviso contained in the statute creating or defining the offense.

~~(h) Words and phrases used are to be construed according to their usual meaning unless they are otherwise defined by law or have acquired a legal meaning.~~

~~(i) Use of the disjunctive rather than the conjunctive shall not invalidate the indictment or information.~~

~~(j) The names of witnesses on whose evidence an indictment or information was based shall be endorsed thereon before it is filed. Failure to endorse shall not affect the validity but endorsement shall be ordered by the court on application of the defendant. Upon request the prosecuting attorney shall, except upon a showing of good cause, furnish the names of other witnesses he proposes to call whose names are not so endorsed.~~

~~(k) If the defendant is a corporation, a summons shall issue directing it to appear before the magistrate. Appearance may be by an officer or counsel. Proceedings against a corporation shall be the same as against a natural person.~~

(i) Upon filing, an information shall be reviewed by a judge of the court in which it is filed for sufficiency. If the judge determines from the information, or from any supporting affidavits filed with the information that there is probable

cause to believe the offenses have been committed and that the accused committed it, the judge shall proceed under Rule 6. If the judge determines there is not probable cause, the judge shall return the information to the prosecutor and dismiss the case without prejudice if a sufficient information is not filed within two weeks.

Rule 6. Warrant of arrest or summons.

~~(a) Upon the return of an indictment the magistrate shall cause to issue either a warrant for the arrest or a summons for the appearance of the accused.~~

~~Upon the filing of an information, if it appears from the information, or from any affidavit filed with the information, that there is probable cause to believe that an offense has been committed and that the accused has committed it, the magistrate shall cause to issue either a warrant for the arrest or a summons for the appearance of the accused.~~

- (a) ~~(b) If it appears to the magistrate that the accused will appear on a summons and there is no substantial danger of a breach of the peace, or injury to persons or property, or danger to the community, a summons may issue in lieu of a warrant of arrest to require the appearance of the accused. If the defendant is a corporation, a summons shall issue. Upon the filing of an information or an indictment, a judge of the court in which it is filed shall set the case for an initial appearance or arraignment as appropriate. The judge shall then cause to issue a summons directing the defendant to appear for that hearing, except as described below in subsection (c).~~
- (b) The summons shall inform the defendant of the date and time and the location of the courthouse for initial appearance or arraignment. The summons may be mailed to the defendant's last known address; or served by anyone authorized to serve a summons in a civil action.
- (c) For a defendant that is not a corporation, a judge may issue a warrant of arrest instead of a summons if, from information contained in filings with the court it appears that the defendant:
 - 1. does not have a known address; or will not otherwise appear on a summons; and/or
 - 2. there is substantial danger of a breach of the peace, injury to persons or property, or danger to the community.

(d) A warrant of arrest ~~may~~shall issue in cases where the defendant has failed to appear in response to a summons ~~or citation or thereafter when required by the court.~~

(e) When a warrant of arrest is issued, the ~~magistrate~~judge shall state on the warrant:

~~(1) the amount of bail; and~~

~~(2) if the magistrate determines that the accused must appear in court, the name of the law enforcement agency in the county or municipality with jurisdiction over the offense charged.~~

~~(c) (1) The warrant shall be executed by a peace officer. The summons may be served by a peace officer or any person authorized to serve a summons in a civil action.~~

(1) ~~(2) The warrant~~Whether the defendant is denied pretrial release under the authority of 77-20-1. The court shall indicate the basis for the denial.

(2) What if any conditions of pretrial release, the court requires of the defendant, including monetary bail.

(3) In determining any amount of monetary bail, the judge shall set the lowest amount reasonably calculated to ensure the defendant's appearance at court.

(4) If the defendant's appearance is required before the court, or whether the defendant may remit the monetary amount to satisfy any obligation to the court pursuant to 77-7-21.

(5) From what geographic area the issuing court will guarantee transport pursuant to _____.

(f) The clerk of the court shall cause the warrant to be listed on the state warrant system.

(g) Service, Execution and return of the warrant

(1) The warrant shall be served by a peace officer. It may be executed ~~or the summons may be served~~ at any place within the state.

~~(32)~~ The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of the arrest, but upon request shall show the warrant to the defendant as soon as practicable. If the officer does not have the warrant in his possession at the time of the arrest, he shall then inform the defendant of the offense charged and of the fact that the warrant has been issued. The summons shall be served as in civil actions, or by mailing it to the defendant's last known address.

(43) The person executing a warrant or serving a summons shall make return thereof to the magistrate as soon as practicable. ~~At the request of the prosecuting attorney, any unexecuted warrant shall be returned to the magistrate for cancellation.~~

(h) Unexecuted warrants may be periodically reviewed by the court for recall.

(i) If a defendant, for whom a pre-arraignment warrant has issued under this section, voluntarily appears before the court at or prior to the initial appearance/arraignment scheduled in subsection (a), the court shall recall a warrant with a monetary bail amount, provided a defendant agrees to any other pre-trial conditions listed in the original warrant. Warrants issued denying pretrial release shall be reviewed as described in Rule 7.

Rule 4. Prosecution by information.

(a) A prosecution may be commenced by the filing of an information. The information shall be filed in a format and according to the rules of the judicial council.

(b) An information shall contain:

1. The defendant's name, date of birth, and last known address. Other identifying information may be provided in accordance with rules of the Judicial Council concerning electronic filing, as long as the actual information document does not include non-public records. If the name of the defendant is not known, the prosecution shall identify the defendant as John or Jane Doe, and include any identifying information known.

2. Numbered counts stating offenses by using the name given to the offense by statute or ordinance, or by stating in concise terms the definition of the offense sufficient to give the defendant notice of the charge.

(i) An information can allege alternative theories of the same offense in a single count or in multiple counts.

3. The names of any adult witnesses on whose evidence the information is based.

ii. Failure to include those names does not render an information invalid.

lii Upon request of the defendant, except when relieved by the court for good cause, the prosecution shall provide those names.

4. A booking number if the defendant was arrested and detained on charges related to this information. Any pretrial release information shall also be included, such as:

i. any monetary bail or other pretrial release conditions set by a magistrate when determining probable cause at arrest;

ii. whether the defendant was denied pretrial release;

iii. whether the defendant was released to a pretrial supervision agency;

iv. whether the defendant is currently in custody.

(c) An information may contain or be accompanied by a statement of facts sufficient to make out probable cause to sustain the offense charged where appropriate. Such things as time, place, means, intent, manner, value and ownership need not be alleged unless necessary to charge the offense. Such things as money, securities, written instruments, pictures, statutes and judgments may be described by any name or description by which they are

generally known or by which they may be identified without setting forth a copy. However, details concerning such things may be obtained through a bill of particulars. Neither presumptions of law nor matters of judicial notice need be stated.

(d) If the prosecution requests the court issue a warrant pursuant to rule 6, the information shall include the statement described in subsection (c).

(e) The court may strike any surplus or improper language from an indictment or information.

(f) The court may permit an information to be amended at any time before trial has commenced so long as the substantial rights of the defendant are not prejudiced. If an additional or different offense is charged, the defendant has the right to a preliminary hearing on that offense as provided under these rules and any continuance as necessary to meet the amendment. The court may permit an information be amended after the trial has commenced but before verdict if no additional or different offense is charged and the substantial rights of the defendant are not prejudiced. After verdict, an information may be amended so as to state the offense with such particularity as to bar a subsequent prosecution for the same offense upon the same set of facts.

(g) When facts not set out in an information are required to inform a defendant of the nature and cause of the offense charged, so as to enable him to prepare his defense, the defendant may file a written motion for a bill of particulars. The motion shall be filed at initial appearance or within ten days thereafter, or at such later time as the court may permit. The court may, on its own motion, direct the filing of a bill of particulars. A bill of particulars may be amended or supplemented at any time subject to such conditions as justice may require. The request for and contents of a bill of particulars shall be limited to a statement of factual information needed to set forth the essential elements of the particular offense charged.

(h) An information is not invalid because any name contained therein may be incorrectly spelled or stated; nor because a disjunctive clause is used instead of the conjunctive. It shall not be necessary to negate any exception, excuse or proviso contained in the statute creating or defining the offense.

(i) Upon filing, an information shall be reviewed by a judge of the court in which it is filed for sufficiency. If the judge determines from the information, or from any supporting affidavits filed with the information that there is probable cause to believe the offenses have been committed and that the accused committed it, the judge shall proceed under Rule 6. If the judge determines there is not probable cause, the judge shall return the information to the

prosecutor and dismiss the case without prejudice if a sufficient information is not filed within two weeks.

Rule 4A. Prosecution by indictment.

- (a) A prosecution may be commenced by the filing of an indictment. The indictment shall be filed in a format and according to the rules of the judicial council.
- (b) The filing shall include the defendant's name, date of birth, and last known address. Other identifying information may be provided in accordance with rules of the Judicial Council concerning electronic filing, as long as the actual indictment document does not include non-public records. If the name of the defendant is not known, the prosecution shall identify the defendant as John or Jane Doe, and include any identifying information known.
- (c) An indictment shall charge the offense for which the defendant is being prosecuted by using the name given to the offense by common law or by statute or by stating in concise terms the definition of the offense sufficient to give the defendant notice of the charge.
- (d) The court may strike any surplus or improper language from an indictment.
- (e) The court may permit an indictment to be amended after the trial has commenced but before verdict if no additional or different offense is charged and the substantial rights of the defendant are not prejudiced. After verdict, an indictment may be amended so as to state the offense with such particularity as to bar a subsequent prosecution for the same offense upon the same set of facts.
- (f) When facts not set out in the indictment are required to inform a defendant of the nature and cause of the offense charged, so as to enable him to prepare his defense, the defendant may file a written motion for a bill of particulars. The motion shall be filed no later than ten days after arraignment unless allowed by the court. The court may, on its own motion, direct the filing of a bill of particulars. A bill of particulars may be amended or supplemented at any time subject to such conditions as justice may require. The request for and contents of a bill of particulars shall be limited to a statement of factual information needed to set forth the essential elements of the particular offense charged.

- (g) The names of any adult witnesses on whose evidence the indictment was based shall be listed on the indictment before it is filed.
- (h) Failure to include those names does not invalidate the indictment. Similarly, misspelled names or the use of a disjunctive clause instead of a conjunctive does not invalidate the indictment. Upon request of the defense, the prosecuting attorney shall, except upon a showing of good cause, furnish the names of the witnesses whose names are not so endorsed.

RULE 4B. Case Commenced by Citation

- (a) If a case commences with the filing of a citation pursuant to 77-7-18, that requires a personal appearance by the defendant before the court, the following procedures apply.
- (b) If the citation did not specify a time certain for the defendant to appear, the court may schedule a time to appear before the court and provide notice to the defendant by mail, or other means of contact provided with the citation.
- (c) If the defendant timely appears, the court shall proceed under Rule 7D.
- (d) If the defendant fails to timely appear, as required by the court or the terms of the citation, the court may issue a bench warrant for the defendant's arrest. In addition contempt proceedings may commence pursuant to 78B-6-301(14)
- (e) After a defendant's failure to appear, the court may instruct the prosecutor to file an information that complies with rule 4. However, the information need not contain the statement described in Rule 4(c). It shall however, include the Citation number originally issued the defendant.
- (f)

Rule 6. Warrant of arrest or summons.

- (a) Upon the filing of an information or an indictment, a judge of the court in which it is filed shall set the case for an initial appearance or arraignment as appropriate. The judge shall then cause to issue a

summons directing the defendant to appear for that hearing, except as described below in subsection (c).

- (b) The summons shall inform the defendant of the date and time and the location of the courthouse for initial appearance or arraignment. The summons may be mailed to the defendant's last known address; or served by anyone authorized to serve a summons in a civil action.
- (c) For a defendant that is not a corporation, a judge may issue a warrant of arrest instead of a summons if, from information contained in filings with the court it appears that the defendant:
 - 1. does not have a known address; or will not otherwise appear on a summons; and/or
 - 2. there is substantial danger of a breach of the peace, injury to persons or property, or danger to the community.
- (d) A warrant of arrest shall issue in cases where the defendant has failed to appear in response to a summons.
- (e) When a warrant of arrest is issued, the judge shall state on the warrant:
 - (1) Whether the defendant is denied pretrial release under the authority of 77-20-1. The court shall indicate the basis for the denial.
 - (2) What if any conditions of pretrial release, the court requires of the defendant, including monetary bail.
 - (3) In determining any amount of monetary bail, the judge shall set the lowest amount reasonably calculated to ensure the defendant's appearance at court.
 - (4) If the defendant's appearance is required before the court, or whether the defendant may remit the monetary amount to satisfy any obligation to the court pursuant to 77-7-21.
 - (5) From what geographic area the issuing court will guarantee transport pursuant to _____.
- (f) The clerk of the court shall cause the warrant to be listed on the state warrant system.
- (g) Service, Execution and return of the warrant
 - (1) The warrant shall be served by a peace officer. It may be executed at any place within the state.

(2) The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of the arrest, but upon request shall show the warrant to the defendant as soon as practicable. If the officer does not have the warrant in his possession at the time of the arrest, he shall then inform the defendant of the offense charged and of the fact that the warrant has been issued.

(3) The person executing a warrant or serving a summons shall make return thereof to the magistrate as soon as practicable.

(h) Unexecuted warrants may be periodically reviewed by the court for recall.

(i) If a defendant, for whom a pre-arraignment warrant has issued under this section, voluntarily appears before the court at or prior to the initial appearance/arraignment scheduled in subsection (a), the court shall recall a warrant with a monetary bail amount, provided a defendant agrees to any other pre-trial conditions listed in the original warrant. Warrants issued denying pretrial release shall be reviewed as described in Rule 7.