

Rule Change #2000(21)

**The Colorado Rules of Criminal Procedure
Chapter 29. Colorado Rules of Criminal Procedure
For All Courts of Record In Colorado**

The following rules are amended as of September 12, 2000:

Rule 5 Preliminary Proceedings
Rule 7 The Indictment and Information

**Amended and Adopted by the Court, En Banc, September 12,
2000, effective January 1, 2001.**

BY THE COURT:

**Alex J. Martinez
Justice, Colorado Supreme Court**

Rule Change #2000(21)

The Colorado Rules of Criminal Procedure
Chapter 29. Colorado Rules of Criminal Procedure
For All Courts of Record In Colorado

Rule 5. Preliminary Proceedings

(a) Felony Proceedings.

(1) **Procedure Following Arrest.** If a peace officer or any other person makes an arrest, either with or without a warrant, the arrested person shall be taken without unnecessary delay before the nearest available county or district court. Thereafter, a felony complaint, information, or indictment shall be filed, if it has not already been filed, without unnecessary delay in the proper court and a copy thereof given to the defendant.

(2) **Appearance Before the Court.** At the first appearance of the defendant in court, it is the duty of the court to inform the defendant and make certain that the defendant understands the following:

(I) The defendant need make no statement and any statement made can and may be used against the defendant.

(II) The right to counsel;

(III) If indigent, the defendant has the right to request the appointment of counsel or consult with the public defender before any further proceedings are held;

(IV) Any plea the defendant makes must be voluntary and not the result of undue influence or coercion;

(V) The right to bail, if the offense is bailable, and the amount of bail that has been set by the court;

(VI) The nature of the charges;

(VII) The right to a jury trial;

(VIII) The right to demand and receive a preliminary hearing within a reasonable time to determine whether probable cause exists to believe that the offense charged was committed by the defendant.

(3) **Appearance in the Court not Issuing the Warrant.** If the defendant is taken before a court which did not issue the arrest warrant, the court shall inform the defendant of the matters set out in subsection (a)(2) of this Rule and, allowing time for travel, set bail returnable not less than ten days thereafter before the court which issued the arrest warrant, and shall transmit forthwith a transcript of the proceedings and all papers in the case to the court which issued the arrest warrant. In the event the defendant does not make bail within forty-eight hours, the sheriff of the county in which the arrest warrant was issued shall return the defendant to the court which issued the warrant.

(4) **Preliminary Hearing - County Court Procedures.** Every person accused of a class 1, 2, or 3 felony in a felony

complaint has the right to demand and receive a preliminary hearing to determine whether probable cause exists to believe that the offense charged in the felony complaint was committed by the defendant. In addition, only those persons accused of a class 4, 5, or 6 felony by felony complaint which felony requires mandatory sentencing or is a crime of violence as defined in section 16-11-309 or is a sexual offense under part 4 of article 3 of title 18, C.R.S., shall have the right to demand and receive a preliminary hearing to determine whether probable cause exists to believe that the offense charged in the felony complaint was committed by the defendant. However, any defendant accused of a class 4, 5, or 6 felony who is not otherwise entitled to a preliminary hearing may request demand and shall receive a preliminary hearing if the defendant is in custody for the offense for which the preliminary hearing is requested; except that, upon motion of either party, the court shall vacate the preliminary hearing if there is a reasonable showing that the defendant has been released from custody prior to the preliminary hearing. Any person accused of a class 4, 5, or 6 felony who is not entitled to a preliminary hearing shall, unless otherwise waived, participate in a dispositional hearing for the purposes of case evaluation and potential resolution. The following procedures shall govern the holding of a preliminary hearing:

(I) Within ten days after the defendant is brought before the county court, either the prosecutor or the defendant may request a preliminary hearing. Upon such request, the court forthwith shall set the hearing. The hearing shall be held within thirty days of the day of setting, unless good cause for continuing the hearing beyond that time is shown to the court. The clerk of the court shall prepare and give notice of the hearing, or any continuance thereof, to all parties and their counsel.

(II) The preliminary hearing shall be held before a judge of the county court in which the criminal action has been filed. The defendant shall not be called upon to plead. The defendant may cross-examine the prosecutor's witnesses and may introduce evidence. The prosecutor shall have the burden of establishing probable cause. The judge presiding at the preliminary hearing may temper the rules of evidence in the exercise of sound judicial discretion.

(III) If the county court determines such probable cause exists or if the case is not otherwise resolved pursuant to a dispositional hearing if no preliminary hearing was held, it shall order the defendant bound over to the appropriate court of record for trial. In appropriate cases, the defendant may be admitted to or continued on bail by the county court, but bond shall be made returnable in the trial court and at a day and time certain. All county court records, except the reporter's transcript notes, or recording, shall be

transferred forthwith by the clerk of the county court to the clerk of the appropriate court of record.

(IV) If from the evidence it appears to the county court that there is not probable cause to believe that the offense charged has been committed by the defendant, the county court shall dismiss the complaint and discharge the defendant. If the prosecutor believes the court erred in its finding of no probable cause, the prosecutor may appeal the ruling to the district court. Such error, if any, shall not constitute good cause for refileing.

(V) Dismissal of a felony complaint following a preliminary hearing or dismissal without a preliminary hearing being held shall not be a bar to a subsequent filing of a direct information in the district court charging the defendant with the same offense. If the prosecutor states an intention to refile, the bond executed by the defendant shall be continued and returnable in the district court at a day and time certain. If a bond has not been continued, the defendant shall be summoned into court without the necessity of making a new bond. The information shall be accompanied by a written statement from the prosecutor alleging facts which establish that evidence exists which for good cause was not presented by the prosecutor at the preliminary hearing. Within twenty days of defendant's first appearance following the direct filing the defendant may request an evidentiary hearing at which the prosecutor shall establish the existence of good cause for the filing of the direct information.

(4.5) A dispositional hearing is an opportunity for the parties to report to the court on the status of discussions toward disposition, including presenting any resolution pursuant to C.R.S. 16-7-302. The court shall set the dispositional hearing at a time that will afford the parties an opportunity for case evaluation and potential resolution.

(5) **Procedure Upon Failure to Request Preliminary Hearing.** If the defendant or prosecutor fails to request a preliminary hearing within ten days after the defendant has come before the court, the county court shall forthwith order the defendant bound over to the appropriate court of record for trial. In no case shall the defendant be bound over for trial to another court until the preliminary hearing has been held, or until the ten day period for requesting a preliminary hearing has expired. In appropriate cases, the defendant may be admitted to, or continued upon bail by the county court, but bond shall be made returnable in the trial court at a day and time certain. All court records in the case, except the reporter's transcript, notes, or recording shall be transferred forthwith by the clerk to the appropriate court of record.

(b) Bail in Absence of a County Judge. If no county judge is immediately available to set bond in the case of a person in custody for the commission of a bailable felony, any

available district judge may set bond, or such person may be admitted to bail pursuant to Rule 46-1.

(c) Misdemeanor and Petty Offense Proceedings.

(1) **Procedure Following Arrest.** If a peace officer or any other person makes an arrest, either with or without a warrant, the arrested person shall be taken without unnecessary delay before the nearest available county court. Thereafter a complaint or summons and complaint shall be filed, if it has not already been filed, immediately in the proper court and a copy thereof given to the defendant at or before arraignment. Trial may be held forthwith if the court calendar permits, immediate trial appears proper, and the parties do not request a continuance for good cause. Otherwise the case shall be set for trial as soon as possible.

(2) **Appearance Before the Court.** At the first appearance in the county court the defendant shall be advised in accordance with the provisions set forth in subparagraphs (a)(2)(I) through (VII) of this Rule-, except that the defendant shall be advised that an application for the appointment of counsel shall not be made until after the prosecuting attorney has spoken with the defendant as provided in C.R.S. 16-7-301(4)(a).

(3) **Appearance in the County Court not Issuing the Warrant.** If the defendant is taken before a county court which did not issue the arrest warrant, the court shall inform the defendant of the matters set out in subsection (a)(2)(I through VII) of this Rule and, allowing time for travel, set bail returnable not less than ten days thereafter before the court which issued the arrest warrant, and shall transmit forthwith a transcript of the proceedings and all papers in the case to the court which issued the arrest warrant. In the event the defendant does not make bail within forty-eight hours, the sheriff of the county in which the arrest warrant was issued shall return the defendant to the court which issued the warrant.

Rule 7. The Indictment and the Information.

(a) The Indictment.

(1) An indictment shall be a written statement presented in open court by a grand jury to the district court which charges the commission of any crime by an alleged offender.

(2) Requisites of the Indictment. Every indictment of the grand jury shall state the crime charged and essential facts which constitute the offense. It also should state:

(I) That it is presented by a grand jury;

(II) That the defendant is named/identified therein, either by name or by the defendant's patterned chemical structure of genetic information, or described as a person whose name is unknown to the grand jury;

(III) That the offense was committed within the jurisdiction of the court, or is triable therein;

(IV) That it is signed by the foreman of the grand jury, and the prosecutor.

(b) The Information.

(1) An information shall be a written statement, signed by the prosecutor and filed in the court having jurisdiction over the offense charged, alleging that a person committed the criminal offense described therein.

(2) **Requisites of the Information.** The information shall be deemed technically sufficient and correct if it can be understood therefrom:

(I) That it is presented by the person authorized by law to prosecute the offense;

(II) That the defendant is ~~named~~ identified therein, either by name or by the defendant's patterned chemical structure of genetic information, or described as a person whose name is unknown to the informant;

(III) That the offense was committed within the jurisdiction of the court, or is triable therein;

(IV) That the offense charged is set forth with such degree of certainty that the court may pronounce judgment upon a conviction.

(3) **Information After Preliminary Hearing Waiver or Dispositional Hearing.** An information may be filed, without consent of the trial court having jurisdiction, for any offense against anyone who has either:

(I) Failed to request a preliminary hearing in the county pursuant to Rule 5;

(II) Had a preliminary hearing or dispositional hearing and has been bound over by the county court to appear in the court having trial jurisdiction.

(4) When a defendant has been bound over to the trial court pursuant to Rule 5(a)(4)(III), the felony complaint when transferred to the trial court shall be deemed to be an information if it contains the requirements of an information.

(c) Direct Information. The prosecutor may file a direct information if:

(1) The prosecutor obtains the consent of the court having trial jurisdiction and no complaint was filed against the accused person in the county court pursuant to Rule 5; or

(2) Either a preliminary hearing was held and the court found probable cause did not exist or the case was dismissed without a preliminary hearing being held. If the prosecutor states an intention to refile, the bond executed by the defendant shall be continued and returnable in the district court at a day and time certain. If a bond has not been continued, the defendant shall be summoned into court without the necessity of making a new bond. The information shall be accompanied by a written statement from the prosecutor alleging facts which establish that evidence exists which for

good cause was not presented by the prosecutor at the preliminary hearing. Within twenty days of defendant's first appearance following the direct filing the defendant may request an evidentiary hearing at which the prosecutor shall establish the existence of good cause for the filing of the direct information; or

(3) The prosecutor obtains the consent of the court having trial jurisdiction and the complaint upon which the preliminary hearing was held and the other records in the case have not been delivered to the clerk of the proper trial court.

(d) Repealed.

(e) Amendment of Information. The court may permit an information to be amended as to form or substance at any time prior to trial; the court may permit it to be amended as to form at any time before the verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

(f) Surplusage. The court, on motion of the defendant or the prosecutor, may strike surplusage from the information or indictment.

(g) Bill of Particulars. The court may direct the filing of a bill of particulars. A motion for a bill of particulars may be made only within ten days after arraignment or at such other time before or after arraignment as may be prescribed by rule or order. A bill of particulars may be amended at any time subject to such conditions as justice requires.

(h) Preliminary Hearing - District Court Procedures.

(1) In cases in which a direct information was filed pursuant to Rule 7(c), either the defendant, or the prosecutor, if accused of a class 1, 2, or 3 felony or a class 4, 5, or 6 felony if such felony requires mandatory sentencing or is a crime of violence as defined in section 16-11-309 or is a sexual offense under part 4 of article 3 of title 18, C.R.S. may request a preliminary hearing to determine whether probable cause exists to believe that the offense charged in the information has been committed by the defendant. However, any defendant accused of a class 4, 5, or 6 felony who is not otherwise entitled to a preliminary hearing may request a preliminary hearing if the defendant is in custody for the offense for which the preliminary hearing is requested; except that, upon motion of either party, the court shall vacate the preliminary hearing if there is a reasonable showing that the defendant has been released from custody prior to the preliminary hearing. Any person accused of a class 4, 5, or 6 felony who may not request a preliminary hearing shall participate in a dispositional hearing unless otherwise waived for the purposes of case evaluation and potential resolution. The request for a preliminary hearing shall be made prior to plea together with any motions filed pursuant to Rule 12(b). The trial court may permit a request for a preliminary hearing

to be made after a plea only upon a showing of good and sufficient cause. No request for a preliminary hearing may be filed in a case which is to be tried upon indictment.

(2) Upon the making of such a request, or if a dispositional hearing is required, the district court shall set the hearing which shall be held within thirty days of the day of the setting, unless good cause for continuing the hearing beyond that period is shown to the court. The clerk of the court shall prepare and give notice of the hearing, or any continuance thereof, to all parties and their counsel.

(3) The defendant shall not be called upon to plead at the preliminary hearing. The defendant may cross-examine the prosecutor's witnesses and may introduce evidence. The prosecutor shall have the burden of establishing probable cause. The presiding judge at the preliminary hearing may temper the rules of evidence in the exercise of sound judicial discretion.

(4) If, from the evidence, it appears to the district court that no probable cause exists to believe that the offense charged has been committed by the defendant, the court shall discharge the defendant and dismiss the information; otherwise, or subsequent to a dispositional hearing, it shall set the case for arraignment or trial. If the prosecutor believes the court erred in its finding of no probable cause, this ruling may be appealed pursuant to Colorado Appellate Rules. Such a ruling shall not constitute good cause for refileing.

(4.5) A dispositional hearing is an opportunity for the parties to report to the court on the status of discussions toward disposition, including presenting any resolution pursuant to C.R.S. 16-7-302. The court shall set the dispositional hearing at a time that will afford the parties an opportunity for case evaluation and potential resolution.

(5) If a request for preliminary hearing has not been filed within the time limitations of subsection (h)(1) of this Rule, such a request shall not thereafter be heard by the court, nor shall the court entertain successive requests for preliminary hearing. The order denying a dismissal of the information after a preliminary hearing shall be final and not subject to review on appeal. The granting of such a dismissal shall not be a bar to further prosecution of the accused person for the same offense. The procedures to be followed upon such a refileing are set forth in subsection (c)(2) of this Rule.