

RULE CHANGE 2013(03)
COLORADO RULES OF CRIMINAL PROCEDURE
II. INITIATION OF PRELIMINARY FELONY PROCEEDINGS
Rule 5. Preliminary Proceedings.
Rule 7. The Indictment and the Information.

Rule 5. Preliminary Proceedings.

(a) Felony Proceedings.

(1) Through (3) [NO CHANGE].

(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 18-1.3-406](#) 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 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 7 days after the defendant is brought before the county court FOR OR FOLLOWING THE FILING OF THE FELONY COMPLAINT IN THAT 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 35 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~~ FELONY COMPLAINT 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) through (VIII) [NO CHANGE].

(4.5) [NO CHANGE].

(5) Procedure Upon Failure to Request Preliminary Hearing. If the defendant or prosecutor fails to request a preliminary hearing within 7 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 7-day period for requesting a preliminary hearing has expired. **OR THE PARTIES HAVE WAIVED THEIR RIGHTS TO A PRELIMINARY HEARING.** 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) through (c) [NO CHANGE].

Rule 7. The Indictment and the Information.

(a) through (g) [NO CHANGE].

(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~~ **CHARGING** 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 18-1.3-406 or is a sexual offense under part 4 of article 3 of title 18, C.R.S. **EITHER THE DEFENDANT OR THE PROSECUTOR** 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~~ EXCEPT UPON A FINDING OF GOOD CAUSE, THE request for a preliminary hearing MUST BE MADE WITHIN 7 DAYS AFTER THE DEFENDANT IS BROUGHT BEFORE THE COURT FOR OR FOLLOWING THE FILING OF THE INFORMATION IN THAT COURT AND PRIOR TO A PLEA. ~~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) through (5) [NO CHANGE].

(i) MOTION FOR REVERSE-TRANSFER HEARING UPON INDICTMENT. IN CASES COMMENCED BY INDICTMENT, ANY MOTION UNDER SECTION 19-2-517(3)(a), C.R.S., TO TRANSFER THE CASE TO JUVENILE COURT MUST BE FILED WITHIN 7 DAYS AFTER THE DEFENDANT IS BROUGHT BEFORE THE COURT FOR OR FOLLOWING THE FILING OF THE INDICTMENT IN THAT COURT AND PRIOR TO A PLEA, EXCEPT UPON A SHOWING OF GOOD CAUSE.

Amended and Adopted by the Court, En Banc, March 7, 2013, effective immediately.

By the Court:

Michael L. Bender
Chief Justice, Colorado Supreme Court