

24.2. Return of Warrant to Magistrate Court

Once arrest of the defendant is effectuated, the original warrant shall be returned to the magistrate court or its designee for transfer to the appropriate prosecuting agency.

24.3. Assessment of Costs – Criminal (Reserved)

Reserved effective May 11, 2017.

Rule 25. Initial Appearance/Commitment Hearings

25.1. Initial Appearance Hearing

Immediately following any arrest but no later than 48 hours if the arrest was without a warrant, or 72 hours following an arrest with a warrant, unless the accused has made bond in the meantime, the arresting officer or the law officer having custody of the accused shall present the accused in person before a magistrate or other judicial officer for first appearance.

At the first appearance, the judicial officer shall:

- (1) Inform the accused of the charges;
- (2) Inform the accused of the right to the presence and advice of an attorney, either retained or appointed, of the right to remain silent, and that any statement made may be used against him or her;
- (3) Determine whether or not the accused desires and is in need of an appointed attorney and, if appropriate, advise the accused of the necessity for filing a written application;
- (4) Inform the accused of the right to a pre-indictment commitment hearing, that the hearing will be postponed if the accused requests additional time to obtain counsel or subpoena witnesses or if the state requests additional time to prepare its case, and inform the accused that giving a bond returnable to arraignment or trial shall be a waiver of the right to a commitment hearing although a magistrate may in his or her discretion hold a commitment hearing pursuant to Rule 25.2(A);
- (5) Schedule a commitment hearing if authorized and if requested by the defendant and so notify the prosecuting attorney and the law officer having custody of the accused;
- (6) In cases of warrantless arrest, unless a subsequent determination of probable cause has been made, make a fair and independent determination of probable cause for the arrest;
- (7) Inform the accused of the right to grand jury indictment in felony cases, to accusation in misdemeanor cases, to uniform traffic citation in traffic cases, and the right to trial by jury, and, in felony cases, when the next grand jury will convene; in felony cases subject to OCGA § 17-7-70.1 (involving violations of OCGA §§ 16-8-2, 16-8-14, 16-8-18, 16-9-1, 16-9-20, 16-9-31, 16-9-33, 16-9-37, 16-10-52, and 40-5-58), inform the accused that if the commitment hearing is expressly waived or the accused is bound over after the commitment hearing, the district attorney may prepare an accusation or seek an indictment;
- (8) Inform the accused that the accused or his or her attorney may waive the right to a commitment hearing; and
- (9) Consider and announce a bail decision, if the offense is not one bailable only by a superior court judge, or so inform the accused if it is.

Amended June 1, 2017.

25.2. Commitment Hearing

A. A magistrate, in his or her discretion, may hold a commitment hearing even though the defendant has posted a bail bond as provided in Rule 23.

B. At the commitment hearing by the court of inquiry, the judicial officer shall perform the following duties:

- (1) Explain the probable cause purpose of the hearing;
- (2) Repeat to the accused the rights explained at the first appearance;
- (3) Determine whether the accused waives the commitment hearing;
- (4) If the accused waives the hearing, the court shall immediately bind the entire case over to the court having jurisdiction of the most serious offense charged;
- (5) If the accused does not waive the hearing, the court shall immediately proceed to conduct the commitment hearing unless, for good cause shown, the hearing is continued to a later scheduled date;
- (6) The judicial officer shall bind the entire case over to the court having jurisdiction of the most serious offense for which probable cause has been shown by sufficient evidence and dismiss any charge for which probable cause has not been shown;
- (7) On each case which is bound over, a memorandum of the commitment shall be entered on the warrant by the judicial officer. The warrant, bail bond, and all other papers pertaining to the case shall be forwarded to the clerk of the appropriate court having jurisdiction over the offense for delivery to the prosecuting attorney.

Each bail bond shall contain the full name, residence, business and mailing address and telephone number of the accused and any surety;

- (8) A copy of the record of any testimony and the proceedings of the first appearance and the commitment hearing, if available, shall be provided to the proper prosecuting officer and to the accused upon payment of the reasonable cost for preparation of the record;
- (9) A judicial officer, conducting a commitment hearing, is without jurisdiction to make final disposition of the case or cases at the hearing by imposing any fine or punishment, except where the only charge arising out of the transaction at issue is the violation of a county or state authority ordinance.

C. At the commitment hearing, the following procedures shall be utilized:

- (1) The rules of evidence shall apply except that hearsay may be allowed;
- (2) The prosecuting entity shall have the burden of proving probable cause; and may be represented by a law enforcement officer, a district attorney, a solicitor, a private attorney or otherwise as is customary in that court;
- (3) The accused may be represented by an attorney or may appear pro se; and
- (4) The accused shall be permitted to introduce evidence.

25.3. Private Citizen Warrant Application Hearings

A. Upon the filing of an application for an arrest warrant by a person other than a peace officer or law enforcement officer, and if the court determines that a hearing is appropriate pursuant to OCGA § 17-4-40, the court shall give notice of the date, time and location of the hearing to the applicant and to the person whose arrest is sought by personal service or by first class mail to the person's last known address or by any other means which is reasonably calculated to notify the person of the date, time and location of the hearing.