

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT)
OF SDCL 23A-4-3)

RULE 00-9

A hearing having been held on February 17, 2000, at Pierre, South Dakota, relating to the amendment of SDCL 23A-4-3, and the Court having considered the proposed amendment, the correspondence and oral presentations relating thereto, if any, and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 23A-4-3 be and it is hereby amended to read in its entirety as follows:

23A-4-3. Preliminary proceedings - (Rule 5 (c)) Advice to defendant at initial appearance on charge requiring preliminary hearing - Charges requiring preliminary hearing - Waiver or scheduling of hearing - Extension of time. If a charge against a defendant requires a preliminary hearing, he may not be called on to plead. The committing magistrate shall inform the defendant of the complaint against him and of any affidavit filed therewith, of his right to retain counsel, of his right to request assignment of counsel if he is unable to obtain counsel, and of the general circumstances under which he may secure pretrial release. He shall inform the defendant that he is not required to make a statement and that any statement made by him may be used against him. The committing magistrate shall also inform the defendant of his right to a preliminary hearing. He shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail in the amount set pursuant to § 23A-2-4 or chapter 23A-43, or as otherwise provided by law.

A defendant is entitled to a preliminary hearing, unless waived, when charged with an offense for which the maximum penalty exceeds a jail sentence of thirty days or a fine of two hundred dollars or both such fine and imprisonment. If the defendant waives the preliminary hearing, the committing magistrate shall forthwith hold him to answer in circuit court if the offense charged is a felony. If the offense charged is

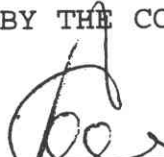
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a misdemeanor, and the circuit in which the offense is charged has a magistrate court presided over by a magistrate judge, the defendant shall be held to answer before the magistrate judge or the circuit court. If the defendant does not waive the preliminary hearing, the committing magistrate shall schedule a preliminary hearing. The hearing shall be held within a reasonable time, but in any event not later than fifteen days following the initial appearance if the defendant is in custody, and not later than forty-five days if he is not in custody. However, the preliminary hearing may not be held if the defendant is indicted before the date set for the preliminary hearing. With the consent of the defendant and with a showing of good cause, taking into account the public interest and the proper disposition of criminal cases, time limits specified in this section may be extended one or more times by the committing magistrate. In the absence of consent by the defendant, time limits may be extended by the committing magistrate only upon a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2000.

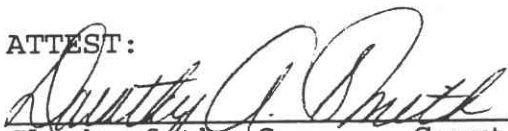
DATED at Pierre, South Dakota, this 10th day of March, 2000.

BY THE COURT:



Robert A. Miller, Chief Justice

ATTEST:



Clerk of the Supreme Court
(SEAL)

**SUPREME COURT
STATE OF SOUTH DAKOTA
FILED**

MAR 10 2000


Clerk