

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

\* \* \* \*

IN THE MATTER OF THE AMENDMENT)

SDCL 23A-4-3

)

RULE 06-72

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A hearing was held on October 3, 2006, at Sioux Falls, 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 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:

**SDCL 23A-4-3. (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, the defendant may not be called on to plead. The committing magistrate shall inform the defendant of the complaint against the defendant and of any affidavit filed therewith, of the defendant's right to retain counsel and to request assignment of counsel if the defendant is unable to obtain counsel, and of the general circumstances under which the defendant may secure pretrial release. The committing magistrate shall inform the defendant that the defendant is not required to make a statement and that any statement made by the defendant may be used against the defendant. The committing magistrate shall also inform the defendant of the defendant's right to a preliminary hearing. The committing magistrate 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.

No defendant is entitled to a preliminary hearing unless charged with an offense punishable as a felony or class 1 misdemeanor. If the defendant waives the preliminary hearing, the committing magistrate shall forthwith hold the defendant to answer in circuit court if the offense charged is a felony.

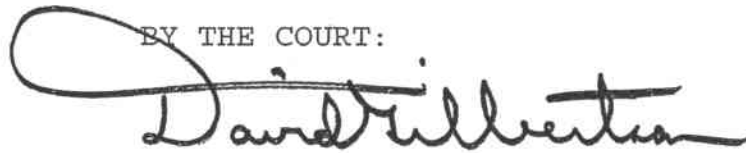
Rule 06-72

If the offense charged is a class 1 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 the defendant 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 January 1, 2007.

DATED at Pierre, South Dakota, this 18th day of October, 2006.

BY THE COURT:



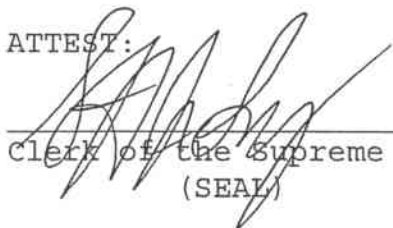
David Gilbertson, Chief Justice

SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

OCT 18 2006

  
Clerk

ATTEST:

  
Clerk of the Supreme Court  
(SEAL)