

Rule Change #1999 (17)

CHAPTER 29. COLORADO RULES OF CRIMINAL PROCEDURE  
II. INITIATION OF PRELIMINARY FELONY PROCEEDINGS  
Rule 7. The Indictment and the Information

(a) **The Indictment.** \* \* \* \* [NO CHANGE]

(b) **The Information.**

(1) and (2) \* \* \* \* [NO CHANGE]

(3) **Information After Preliminary Hearing ~~or~~ 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; ~~or~~

(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) and (5) \* \* \* \* [NO CHANGE]

(c) 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 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; 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) \* \* \* \* [NO CHANGE]

(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 refiling.

(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) \* \* \* \* [NO CHANGE]

**Amended and Adopted by the Court, En Banc, November 4, 1999, effective January 1, 2000.**

**BY THE COURT:**

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