Rule 4. Procedure upon Arrest With a Warrant Following a Complaint or Without a Warrant

4.01 Arrest With a Warrant

A defendant arrested with a warrant must be taken before a judge as directed in the warrant.

4.02 Arrest Without a Warrant

Following an arrest without a warrant:

Subd. 1. Release by Arresting Officer. If the arresting officer or the officer's superior determines that further detention is not justified, the arrested person must be immediately released.

Subd. 2. Citation or Tab Charge. The arresting officer or the officer's superior may issue a citation and release the arrested person, and must release the arrested person if ordered by the prosecutor or by a judge of the district court where the alleged offense occurred. The arresting officer or the officer's superior may issue a citation or tab charge and continue to detain the arrested person if any of the circumstances in Rule 6.01, subd. 1(a)(1)-(3) exist.

Subd. 3. Notice to Prosecutor. The arresting officer or the officer's superior must notify the prosecutor of the arrest as soon as practicable.

Subd. 4. Release by Prosecutor. The prosecutor may order the arrested person released from custody.

Subd. 5. Appearance Before Judge.

(1) Before Whom and When. An arrested person who is not released must be brought before the nearest available judge of the county where the alleged offense occurred. The defendant must be brought before a judge without unnecessary delay, and not more than 36 hours after the arrest, exclusive of the day of arrest, Sundays, and legal holidays, or as soon as a judge is available. In misdemeanor cases, a defendant who is not brought before a judge within the 36-hour limit must be released upon citation, as provided in Rule 6.01, subd. 1.

(2) Complaint Filed; Order of Detention; Felonies and Gross Misdemeanors Not Charged as Designated Gross Misdemeanors Under Rule 1.04(b). A complaint must be presented to the judge before the appearance under Rule 4.02, subd. 5(1). The complaint must be filed promptly, except as provided by Rule 33.04, and an order for detention of the defendant may be issued, provided: (1) the complaint contains the written approval of the prosecutor or the certificate of the judge as provided by Rule 2.02; and (2) the judge determines from the facts presented in writing in or with the complaint, and any supporting documents or supplemental sworn testimony, that probable cause exists to believe that an offense has been committed and that defendant committed it. Otherwise, the defendant must be released.

(3) Complaint, Tab Charge, or Citation; Misdemeanors; Designated Gross Misdemeanors. If no complaint is filed by the time of the defendant's first appearance in court as required by this rule for a misdemeanor charge or a gross misdemeanor charge for offenses designated under Rule 1.04(b), a citation or tab charge must be filed. However, in a misdemeanor case, if the judge orders, or if requested by the person charged or defense counsel, a complaint must be filed.

In a designated gross misdemeanor case commenced by a tab charge or citation, the complaint must be served and filed within 48 hours of the defendant's appearance if the defendant is in custody, or within ten days of the appearance if the defendant is not in custody, provided that the complaint must be served and filed before the court accepts a guilty plea to any designated gross misdemeanor. Service of a gross misdemeanor complaint must be as provided by Rule 33.02.

In a misdemeanor case, the complaint must be filed within 48 hours after demand if the defendant is in custody, or within 30 days of the demand if the defendant is not in custody.

If no complaint is filed within the time required by this rule, the defendant must be discharged.

A complaint is valid when it: (1) complies with the requirements of Rule 2; and (2) the judge has determined from the complaint and any supporting documents or supplemental sworn testimony that probable cause exists to believe that an offense has been committed and that the defendant committed it.

Upon the filing of a valid complaint in a misdemeanor case, the defendant must be arraigned. When a charge has been dismissed for failure to file a valid complaint, and the prosecutor later files a valid complaint, a warrant must not be issued on that complaint unless a summons has been issued first and either could not be served, or, if served, the defendant failed to appear in response.

(Amended effective October 1, 2016.)

4.03 Probable Cause Determination

Subd. 1. Time Limit. When a person arrested without a warrant is not released under this rule or Rule 6, a judge must make a probable cause determination without unnecessary delay, and in any event within 48 hours from the time of the arrest, including the day of arrest, Saturdays, Sundays, and legal holidays. If the Court determines that probable cause does not exist or does not make a determination as to probable cause within the time provided by this rule, the person must be released immediately.

Subd. 2. Application and Record. The facts establishing probable cause to believe that an offense has been committed, and that the person arrested committed it, must be submitted under oath, either orally or in writing, or signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116. The oath may be administered by the court administrator or notary public for any facts submitted in writing. If oral testimony is taken, the oath must be administered by a judge, but it may be administered by telephone or other electronic means. Any oral testimony must be recorded by reporter or recording instrument and must be retained by the court or by the judge's designee.

The person requesting a probable cause determination must advise the reviewing judge of any prior request for a probable cause determination on this same incident, or of any prior release of the arrested person on this same incident, for failure to obtain a probable cause determination within the time limit as provided by this rule.

Subd. 3. Prosecutor. No request for determination of probable cause may proceed without the approval of the prosecutor authorized to prosecute the matter, or by affirmation of the applicant that the applicant contacted the prosecutor and the prosecutor approved the request, or unless the judge reviewing probable cause certifies in writing that the prosecutor is unavailable and the determination of probable cause should not be delayed. A complaint complying with Rule 2, approved by the court, satisfies the probable cause requirement of this rule.

Subd. 4. Determination. If the information presented satisfies the court that probable cause exists to believe that an offense has been committed and the person arrested committed it, the court may set bail or other conditions of release, or release the arrested person without bail, under Rule 6. If probable cause is not found, the arrested person must be released immediately. The court's finding of probable cause must be in writing, and must indicate the offense, whether oral testimony

was received, and the amount of any bail or other conditions of release the court may set. A written notice of the court's determination must be provided promptly to the arrested person.

(Amended effective July 1, 2015; amended effective July 1, 2026.)

Comment - Rule 4

It is anticipated that complaints will be requested by defendants in only a small percentage of misdemeanor cases because discovery is permitted under Rule 9.04, and most defendants will not wish to make an additional appearance to receive the complaint.

Where a charge has been dismissed by the court for failure of the prosecutor to file a valid, timely complaint (Rule 4.02, subd. 5(3)) as required, and the prosecutor subsequently files a valid complaint, a summons must issue instead of a warrant. If it is impossible to locate the defendant to serve the summons or if the defendant fails to respond to the summons, a warrant may be issued. See also Rule 3.01. This restriction is necessary because it is unfair to subject a defendant to a possibly unnecessary arrest when the defendant has appeared in court once to answer the minor charge, and, through no fault of the defendant, a complaint was not issued.

Rule 4.03 is based upon the constitutional requirement as set forth in County of Riverside v. McLaughlin, 500 U.S. 44 (1991) for a prompt judicial determination of probable cause following a warrantless arrest. Pursuant to that case and Rule 4.03, subd. 1, the determination must occur without unreasonable delay and in no event later than 48 hours after the arrest. There are no exclusions in computing the 48-hour time limit. Rule 6.01 provides for the mandatory and permissive issuance of citations and an arrested person released on citation prior to the 48-hour time limit need not receive a probable cause determination pursuant to Rule 4.03.

Under Rule 4.03, subd. 2 the facts submitted to the court to establish probable cause may be either by written affidavit, under penalty of perjury, or sworn oral testimony. See Form 44, Application for Judicial Determination of Probable Cause to Detain, following these rules.

Rule 4.03, subd. 4, sets out the elements to be included in the court's written determination of probable cause. See Form 45, Judicial Determination of Probable Cause to Detain, following these rules.