

## **804.21 Initial appearance before magistrate required exceptions arrest by warrant.**

1. A person arrested in obedience to a warrant shall be taken without unnecessary delay before the nearest or most accessible magistrate. The officer shall at the same time deliver to the magistrate the warrant with the officer's return endorsed on it and subscribed by the officer with the officer's official title. However, this section, and sections 804.22 and 804.23, do not preclude the release of an arrested person within the period of time the person would otherwise remain incarcerated while waiting to be taken before a magistrate if the release is pursuant to pretrial release guidelines or a bond schedule promulgated by the judicial council, unless the person is charged with manufacture, delivery, possession with intent to manufacture or deliver, or distribution of methamphetamine. If, however, a person is released pursuant to pretrial release guidelines, a magistrate must, within twenty-four hours of the release, or as soon as practicable on the next subsequent working day of the court, either approve in writing of the release, or disapprove of the release and issue a warrant for the person's arrest.

2. Where the offense is bailable, the magistrate shall fix bail giving due consideration to the bail endorsed on the warrant or other conditions stipulated on the warrant for the defendant's appearance in the court which issued the warrant; if such person is not released on bail, the magistrate must redeliver the warrant to the officer, and the officer shall retain custody of the arrested person until the person's removal to appear before the magistrate who issued the warrant.

3. If the magistrate who issued the warrant is absent or unable to act, the arrested person shall be taken to the nearest or most accessible magistrate in the judicial district where the offense occurred or a magistrate in an approved judicial district, and all documents on which the warrant was issued must be sent to such magistrate, or if they cannot be procured, the informant and the informant's witnesses must be subpoenaed to make new affidavits. For purposes of this subsection, an "*approved judicial district*" means, as to any particular arrest of a person described in this subsection, any judicial district in this state in which the chief judge of that judicial district and the chief judge of the judicial district in which the offense occurred have previously entered an order permitting a person arrested or described in this subsection to be taken to a magistrate from any judicial district subject to the order.

4. When the court is not in session, a person arrested and placed in jail may be released on the person's own recognizance with or without other conditions, by the verbal or written order of a judge or magistrate. The verbal order may be communicated by telephone. The judge or magistrate may issue such order of release only upon the request of an attorney or person believed by the judge or magistrate to be reliable.

5. *a.* The judicial council shall promulgate rules and bond levels to be contained within a bond schedule for the release of an arrested person.

*b.* The bond schedule shall not be used unless both the following conditions are met:

(1) The person was arrested for a crime other than a forcible felony, and

(2) The courts are not in session.

6. This section does not prevent the release of the arrested person pending initial appearance upon the furnishing of bail in the amount endorsed on the warrant. The initial appearance of a person so released shall be scheduled for a time not more than thirty days after the date of release.

[C51, § 28312836; R60, § 45394544, 4565; C73, § 41914196, 4217; C97, § 51875192, 5207; C24, 27, 31, 35, 39, § **1348013487**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, § 757.1757.8; C79, 81, § 804.21]

83 Acts, ch 50, § 2, 3, 7; 83 Acts, ch 51, § 5, 9; 89 Acts, ch 83, §85; 98 Acts, ch 1115, § 18; 2000 Acts, ch 1032, §4; 2005 Acts, ch 15, §7, 14; 2005 Acts, ch 174, §21, 25

