CHAPTER 970

PRELIMINARY PROCEEDINGS

970.01 Initial appearance before a judge. (1) When any person is arrested he shall be taken within a reasonable time before a judge in the county in which the offense was alleged to have been committed.

(2) When a person is arrested without a warrant and brought before a judge, a complaint shall be filed forthwith.

It is not unreasonable to detain a person arrested on Saturday after the courthouse is closed until his arraignment Monday morning. Kain v. State, 48 W (2d) 212, 179 NW (2d) 777.

Where defendant confessed to 8 robberies within one half hour after arrest in the early morning and was not taken before a judge until the next day, the period of detention was not unreasonable. Quinn v. State, 50 W (2d) 101, 183 NW (2d) 64.

The fact that a defendant confesses between the time of arrest and appearance before a magistrate does not prove that the delay was unreasonable. Pinczkowski v. State, 51 W (2d) 249, 186 NW (2d) 203.

Where defendant was taken to jail in the evening on suspicion of murder, and questioning resumed at 8:30 the next morning and continued at intervals until 9:50 that evening, after defendant was given the warning and said he did not want an attorney, a delay until the following morning in taking him to court was not unreasonable, since the police needed time to check out various information supplied by defendant and others. State v. Hunt, 53 W (2d) 734, 193 NW (2d) 858.

970.02 Duty of a judge at the initial appearance. (1) At the initial appearance the judge shall inform the defendant:

(a) Of the charge against him and shall furnish the defendant with a copy of the complaint.

(b) Of his right to counsel and, in any case required by the U. S. or Wisconsin constitution, that an attorney will be appointed to represent him at county expense if he is financially unable to employ counsel.

(c) That he is entitled to a preliminary examination if charged with a felony, unless waived, or unless he has been returned to this state by extradition proceedings pursuant to ch. 976 or is a corporation.

(2) The judge shall admit the defendant to bail in accordance with ch. 969.

(3) Upon request of a defendant charged with a misdemeanor, the judge shall immediately set a date for the trial. If the judge does not have jurisdiction to try the case, he shall forthwith transfer the case to a court which has jurisdiction. Judges of courts of record in the county may adopt rules to facilitate such transfers.

(4) A defendant charged with a felony may waive preliminary examination, and upon such waiver, the judge shall bind him over for trial to either the circuit or county court.

(5) If the defendant does not waive preliminary examination, the judge shall forthwith transfer the action to the county court for a preliminary examination pursuant to s. 970.03. Judges of courts of record in the county may adopt rules to facilitate such transfers.

(6) The judge shall in all cases where required by the U. S. or Wisconsin constitution appoint counsel for defendants who are financially unable to employ counsel, unless waived, at the initial appearance. The judges of courts of record in each county shall establish procedures for the appointment of counsel in that county; except that in any county having a population of 500,000 or more in any case not triable in the county court, the judge before whom the defendant initially appears shall transfer the case to the circuit court for the county and the clerk shall assign it to one of the criminal branches of that court. In such counties, an initial appearance may be before the circuit court. A determination of whether the defendant is financially able to employ counsel shall thereupon be made, and counsel appointed, if necessary, and the case remanded to the county court for a preliminary examination. The defendant may waive preliminary examination and the case need not be remanded for such waiver.

Cross Reference: See 253.12 for provision as to the limits on criminal jurisdiction of the county court in Milwaukee county.

There is no need to appoint both a guardian ad litem and defense counsel unless it appears that prejudice would result from dual representation. Gibson v. State, 47 W (2d) 810, 177 NW (2d) 912.

An indigent defendant is not entitled to a substitution of appointed counsel when he is dissatisfied with the one appointed. Peters v. State, 50 W (2d) 682, 184 NW (2d) 826.

970.03 Preliminary examination. (1) A preliminary examination is a hearing before a court for the purpose of determining if there is probable cause to believe a felony has been committed by the defendant.

(2) The preliminary examination shall be commenced within 20 days after the initial appearance of the defendant if the defendant has been released from custody or within 10 days if the defendant is in custody and bail has been fixed in excess of $500. On stipulation of the parties or on motion and for cause, the court may extend such time.

(3) A plea shall not be accepted in any case in which a preliminary examination is required until the defendant has been bound over following preliminary examination or waiver thereof.

(4) If the defendant is accused of a crime against chastity or morality or decency, the judge may exclude from the hearing all persons not officers of the court or otherwise required to attend.

(5) All witnesses shall be sworn and their testimony reported by a phonographic reporter. The defendant may cross-examine witnesses against him, and may call witnesses on his own behalf who then are subject to cross-examination.

(6) During the preliminary examination, the court may exclude witnesses until they are called to testify, may direct that persons who are expected to be called as witnesses be kept separate until called and may prevent them from communicating with one another until they have been examined.

(7) If the court finds probable cause to believe that a felony has been committed by the defendant, it shall bind him over for trial to either the circuit or county court.

(8) If the court finds that it is probable that only a misdemeanor has been committed by the defendant, it shall amend the complaint to conform to the evidence. The action shall then proceed as though it had originated as a misdemeanor action.

(9) If the court does not find probable cause to believe that a crime has been committed by the defendant, it shall order the defendant discharged forthwith.

(10) In multiple count complaints, the court shall order dismissed any count for which it finds there is no probable cause. The facts arising out of any count ordered dismissed shall not be the basis for a count in any information filed pursuant to ch. 971. Section 970.04 shall apply to any dismissed count.

While hearsay relied upon in support of a criminal complaint requires some basis for crediting its reliability whether the informants are named or not, that requirement is satisfied where the hearsay is based upon observation of the informants. State ex rel. Cullen v. Ceci, 45 W (2d) 432, 173 NW (2d) 175.

There is no obligation on the magistrate to conduct an investigation to verify the contents of a criminal complaint, for this is the duty of the state, and if the latter fails to put sufficient facts before the magistrate to show probable cause, the complaint must fail even though clews and leads that could provide such information are revealed therein. State ex rel. Cullen v. Ceci, 45 W (2d) 432, 173 NW (2d) 175.

At the preliminary defendant is entitled to cross-examine witnesses who identified him thereat and who also identified him at a lineup, because if the lineup was unfair the identification evidence might be suppressed. Hayes v. State, 46 W (2d) 93, 175 NW (2d) 625.

A ruling on admissibility of evidence at a preliminary hearing is not res adjudicata at the trial. Meunier v. State, 46 W (2d) 271, 174 NW (2d) 277.

A failure to comply with the procedural requirements of 954.05 (1), Stats. 1967, affects only the court's jurisdiction over the person and is waived by a guilty plea. Crummel v. State, 46 W (2d) 348, 174 NW (2d) 517.

It was not error for the magistrate and trial court to fail to sequester witnesses without motion by the defendant, especially in the absence of a showing of prejudice. Abraham v. State, 47 W (2d) 44, 176 NW (2d) 349.

A bindover is not invalid because the judge stated it was "for the purpose of accepting a plea". Dolan v. State, 48 W (2d) 696, 180 NW (2d) 623.

A defendant is not entitled to call witnesses for pretrial discovery or to shake the credibility of the state's witness. State v. Knudson, 51 W (2d) 270, 187 NW (2d) 321.

Where a defendant has been indicted by a grand jury he is not entitled to a preliminary examination. State ex rel. Welch v. Waukesha Co. Cir. Court, 52 W (2d) 221, 189 NW (2d) 417.

970.04 Second examination. If a preliminary examination has been had and the defendant has been discharged, the district attorney may file another complaint if he has or discovers additional evidence.

970.05 Testimony at preliminary examination. The testimony at the preliminary examination shall be transcribed if requested by the district attorney or the defendant or ordered by the judge to whom the trial is assigned. The reporter shall file such transcript with the clerk within 10 days after it is requested. When a transcript is requested, the county shall pay the cost of the original and any additional copies shall be paid for at the statutory rate by the party requesting such copies.

Counsel is not entitled to a free copy of the transcript if the original is reasonably available for his use. State v. Schneidewind, 47 W (2d) 110, 176 NW (2d) 303.