

Chapter 3 Security to Keep the Peace

77-3-1 Threatened offense -- Complaint.

A complaint that a person has threatened to commit an offense against the person or property of another, except in the case of stalking, may be made before any magistrate. Petitions alleging the commission of stalking shall be handled pursuant to Title 77, Chapter 3a, Stalking Injunctions.

Amended by Chapter 276, 2001 General Session

77-3-2 Examination of complainant and witnesses.

The magistrate shall examine, on oath, the complainant and any witnesses he may produce and may take their testimony in writing.

Enacted by Chapter 15, 1980 General Session

77-3-3 "Complaint" defined.

A complaint, within the meaning of this chapter, is a statement in writing setting forth the jurisdictional facts, specifying the threatened offense, and subscribed and sworn to by the complainant before the magistrate.

Enacted by Chapter 15, 1980 General Session

77-3-4 Warrant of arrest -- Temporary restraining order.

If the magistrate believes there is reasonable ground to fear the commission of the offense threatened, he may:

- (1) Issue a warrant directed generally to any peace officer, reciting the substance of the complaint and commanding the officer to immediately arrest the person complained of and bring him before the magistrate or in the case of his absence or inability to act before the nearest and most accessible magistrate of the county; and
- (2) Issue a temporary restraining order against the commission of the offense and order the person complained of to immediately appear before the magistrate for a hearing.

Enacted by Chapter 15, 1980 General Session

77-3-5 Defendant taken before different magistrate -- Procedure.

When the person arrested is taken before a magistrate other than the one who issued the warrant, the peace officer who executed the warrant shall deliver it to the issuing magistrate with his endorsed return. The complaint and written testimony, if any, on which the warrant was issued shall be sent to the magistrate before whom the person arrested is taken.

Enacted by Chapter 15, 1980 General Session

77-3-6 Change of venue.

When the person complained of is brought before the magistrate, a change of venue may be had for good cause shown.

Enacted by Chapter 15, 1980 General Session

77-3-7 Hearing -- Evidence -- Record.

At the time set for hearing, the magistrate shall take evidence. The hearing may be recorded or reduced to writing.

Enacted by Chapter 15, 1980 General Session

77-3-8 Findings and orders -- Discharge -- Undertaking -- Commitment.

- (1) If it appears there is no reasonable ground to fear the commission of the offense alleged to have been threatened, the person complained of shall be discharged. The complainant may be ordered to pay the costs of the proceedings if the magistrate believes the complaint was unfounded and frivolous.
- (2) If there is reasonable ground to fear the commission of an offense, the court may, in addition or as an alternative to other relief, enter an order permanently restraining the person from engaging in illegal conduct or acting in any manner that could result in illegal conduct or the person complained of may be required to enter into an undertaking in a sum not to exceed \$3,000, with one or more sufficient sureties, to keep the peace toward the people of this state and particularly toward the persons endangered. The conditions of the undertaking shall be in writing and shall be for a period of six months. It may be extended on good cause shown for a longer period or enlarged and a new undertaking may be required.
 - (a) If the undertaking is given, the party complained of shall be discharged.
 - (b) If the undertaking is not given, the magistrate shall commit the defendant to jail specifying in the warrant of commitment the requirement to give security, the amount thereof, and the effective period of time.
 - (c) A person committed for not giving the required undertaking may be discharged by any magistrate when he provides the undertaking.

Enacted by Chapter 15, 1980 General Session

77-3-9 Filing undertaking with district court clerk.

An undertaking shall be filed in the office of the clerk of the district court.

Amended by Chapter 68, 1995 General Session

77-3-10 Assault in presence of magistrate or court.

A person who, in the presence of the court or magistrate, assaults or threatens to assault another or to commit an offense against person or property, or who contends with another with threatening words, may be ordered by the court or magistrate to give security and if he refuses to do so, may be committed as provided in Subsection 77-3-8(2)(b).

Enacted by Chapter 15, 1980 General Session

77-3-11 Undertaking, when broken -- Prosecution.

- (1) The undertaking is broken if the person posting the bond violates the conditions set by the court.
- (2) If the undertaking is broken and the county attorney produces evidence of the violation to the district court where the undertaking was filed, the court shall order an action on the undertaking

to be commenced, and the county attorney shall commence an action in the name of the state against the principal sureties on the undertaking.

Enacted by Chapter 15, 1980 General Session

77-3-12 Record of conviction conclusive evidence -- Judgment on undertaking.

In an action filed by the county attorney to recover on an undertaking:

- (1) The offense shall be alleged as a breach of the undertaking stated in a record of conviction and a record of conviction is conclusive evidence thereof.
- (2) If the court finds the offense constitutes a breach of the undertaking, judgment for the amount of the undertaking shall be entered against the parties liable.

Enacted by Chapter 15, 1980 General Session