

CLALLAM COUNTY PROSECUTING ATTORNEY

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What is a "72-Hour Hold"?

A "72-hour hold" is the period, not to exceed 72 hours, during which a person accused of a crime can be held - either in jail or released on conditions - following a judge's finding of probable cause but without formal charges being filed.

When a person is arrested, according to law, they must be seen in open court before the close of business on the next court day. This is mandated by Superior Court Criminal Rule CrR 3.2.1 (d) (1) which is based on Federal and State Constitutional principles. (The Criminal Rules for Courts of Limited Jurisdiction contain a similar rule, which is not addressed here.)

In circumstances where the prosecutor has not yet decided whether to file formal charges, they may request a 72-hour hold at the preliminary appearance hearing. The 72-hour period is mandated by CrR 3.2.1 (f) (1), which states:

- (1) Unless an information or indictment is filed or the affected person consents in writing or on the record in open court, an accused, shall not be detained in jail or subjected to conditions of release for more than 72 hours after the defendant's detention in jail or release on conditions, whichever occurs first. Computation of the 72 hour period shall not include any part of Saturdays, Sundays or holidays.

At the preliminary appearance hearing, the prosecutor will present evidence of probable cause to the judge and request the person be held in custody with a requirement to post bail or be released on personal recognizance with conditions. The judge must find probable cause to hold them in jail or impose conditions. If the judge does not find probable cause, the person is released without any conditions.

In circumstances where the person posts bail or is released on personal recognizance, the judge will usually impose conditions of release such as no contact with a victim, no use of controlled substances or alcohol, no possession of firearms, and a requirement to remain within the State. The Court will then require the person to appear on the second court day after the first appearance. (The 72-hour period does not include weekends. Therefore, if a person is arrested over a weekend, the 72-hour period will start at 12:01 AM Monday morning.) By that time, the prosecutor will have decided what charges, if any, will be filed. As a practical matter, this means that the prosecutor will have two court days to determine what the appropriate charge will be, if any. Often this time is needed for law enforcement to write reports, interview witnesses, contact victims, and supply the prosecutor with enough information to make an informed charging decision.

If no charge is filed within 72 hours of the arrest, the person will be exonerated from any condition of release, including any bail set. This does not mean that no charge can ever be filed. Sometimes it will take more than 72 hours for law enforcement to build a case. Any exoneration is therefore "without prejudice" meaning that charges may be filed at any time within the statute of limitations.

The following example illustrates how the 72-hour hold works: John Smith is arrested for felony assault on a Friday evening. He will need to have his first court appearance prior to the close of business on Monday, which is the next court day. In the Superior Court for Clallam County, where felony cases are heard, preliminary appearance hearings are held at 1:00 PM. If the prosecutor needs more time or police reports to make an informed charging decision, they will ask the judge to find probable cause. Provided the judge finds probable cause, the judge will either impose bail or release Smith on personal recognizance, likely with conditions, and require him to return to court at 1:00 PM Wednesday - within the 72-hour period which began Monday morning. By 1:00 PM Wednesday, the prosecutor will have either filed charges or decided not to file charges. If the prosecutor files charges, then the judge will set further court dates. If the prosecutor decides not to file charges, then Smith is exonerated as explained above.