FINAL REPORT[1]

New Pa.R.Crim.P. 150, Amendments to Pa.Rs.Crim.P. 536 and 543

PROCEDURES WHEN BENCH WARRANT IS ISSUED

On December 30, 2005, effective August 1, 2006, upon the recommendation of the Criminal Procedural Rules Committee, the Court adopted new Pa.R.Crim.P. 150 (Bench Warrants) and amended Pa.Rs.Crim.P. 536 (Procedures Upon Violation of Conditions: Revocation of Release and Forfeiture; Bail Pieces; Exoneration of Surety) and 543 (Disposition of Case at Preliminary Hearing). The changes establish the procedures to be followed after a bench warrant is executed in a court case.

I. INTRODUCTION

The Criminal Procedural Rules Committee undertook consideration of a separate bench warrant rule in response to the Committee's review of the bench warrant and arrest warrant forms being developed for use by the Common Pleas Case Management System (CPCMS) and some questions from the CPCMS Staff concerning bench warrants. In particular, they asked whether there should be a time limit on how long a defendant may be confined after being arrested on the bench warrant before being brought before a judge for a bench warrant hearing similar to what is occurring in some judicial districts. During this consideration, the members opined, based on their own experiences representing clients who have been the subject of bench warrants, that bench warrant practice is one area of criminal practice that is fraught with abuses, particularly with regard to the time the arrested individual spends in custody pending a bench warrant hearing. They have found that frequently the judge who issues the bench warrant is not given notice that the individual has been arrested on that bench warrant, there does not appear to be a procedure for scheduling the bench warrant hearing, and if there is a scheduling procedure, rarely does it provide for a prompt hearing. The members also noted because there are no statewide bench warrant rules,

[1] The Committee's *Final Reports* should not be confused with the official Committee *Comments* to the rules. Also note that the Supreme Court does not adopt the Committee's *Comments* or the contents of the Committee's explanatory *Final Reports*.

there has been a proliferation of local bench warrant rules and practices.[2]

The Committee also researched other states' rules and statutes to see whether there are any "model" bench warrant rules and what provisions these rules or statutes include. We found very few rules or statutes governing bench warrants specifically, with most only providing procedures for arrest warrants in general. The Committee also reviewed all the Pennsylvania Rules of Procedure and found that only Pa.R.C.P. 1910.13-1 (Failure or Refusal to Appear Pursuant to Order of Court. Bench Warrant) sets forth procedures following the issuance of a bench warrant.[3]

After completing our review and thoroughly discussing the issue, the Committee agreed there should be a new Rule of Criminal Procedure governing the procedures following the issuance of a bench warrant. The members also agreed the proposed new rule, as more fully explained below, should:

- apply both to defendants and witnesses, including investigating grand jury witnesses;

- make clear that magisterial district judges would proceed under this new rule only when handling court cases, otherwise they would proceed under the summary case bench warrant rule procedures, Rules 430 and 431;

- ensure the court receives notice when an individual is arrested on a bench warrant;

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[2] In many of these cases, in implementing the local rules and practices, the judicial districts have not complied with Rule 105 (Local Rules) making the local rules difficult to find and monitor.

[3] Rule 1910.13-1 provides, *inter alia*,

> (c) Upon appearance in court by a party on the matter underlying the bench warrant, the bench warrant shall be vacated forthwith and the notice shall be given to all computer networks into which the bench warrant has been entered.
>
> (d) The bench warrant shall direct that if the court is unavailable at the time of the party's arrest, the party shall be lodged in the county jail until such time as court is opened for business. The authority in charge of the county jail must promptly notify the sheriff's office and the director of the domestic relations section that defendant is being held pursuant to the bench warrant. Under no circumstances shall the party remain in the county jail longer than seventy-two hours prior to hearing.

- require that the magisterial district judge or common pleas court judge who issued the bench warrant is the judicial officer before whom the defendant or witness should be taken when arrested;

- provide a procedure for coverage when these "issuing authorities" are unavailable, and that should be accomplished by the president judge or the president judge's designee designating another magisterial district judge or common pleas court judge to provide coverage;

- make clear that only another magisterial district judge may cover for a magisterial district judge and only another common pleas court judge may cover for a common pleas court judge;

- require that individuals arrested on a bench warrant must be brought before the issuing magisterial district judge or common pleas court judge or designated magisterial district judge or common pleas court judge as soon as reasonably possible following the arrest and establish time limits on the detention of an individual without a bench warrant hearing;

- encourage the use of advanced communication technology for the bench warrant hearing, a tool that will be helpful in ensuring prompt bench warrant hearings;

- provide that the bench warrant be vacated at the conclusion of the bench warrant hearing;

- not address when bench warrants may be issued.[4]

II. DISCUSSION

A. Placement

The new bench warrant rule was placed in the general provisions section of the rules, Chapter 1, because the rule applies to bench warrants issued by both judges of the common pleas court in court cases and magisterial district judges when handling a court case. In order to accommodate warrants in this Chapter, a new subsection, Part E, has been created. This new subsection is titled "Miscellaneous Warrants." The

[4] In discussing this issue, the members noted there are so many instances when the judiciary issue bench warrants that it would be impossible to adequately address this in a rule. At the same time, some members expressed concerns that in some cases, bench warrants are being issued in inappropriate situations. Ultimately, after concluding that with the time limits being built into the new rule, judges will pay more attention to when they issue bench warrants, the Committee agreed the new rule should cover only the procedures once a bench warrant has been executed.

Committee reasoned the new section should not be limited to bench warrants, but should be broad enough in scope to address procedures related to other types of warrants that are not for instituting proceedings,[5] if such other rule procedures become necessary or desirable. The new bench warrant rule is the first rule in this new subsection, numbered Rule 150.

B. New Pa.R.Crim.P. 150

1. Scope

New Rule 150 applies to warrants in court cases that do not institute proceedings, called "bench warrants," and sets forth the procedures to follow after a bench warrant is executed.[6] In addition, the rule applies to bench warrants for both defendants and witnesses, including investigating grand jury witnesses. The rule, however, does not apply to bench warrants executed outside the Commonwealth, which are covered by the extradition procedures in 42 Pa.C.S. § 9101 *et seq.,* or to warrants issued in probation and parole proceedings.

2. Terminology

The Committee discussed, in the context of a bench warrant proceeding, how to refer to the magisterial district judges and common pleas court judges who would issue bench warrants and preside at bench warrant hearings. We considered and rejected using "issuing authority," because this term has a long history in the rules as being applicable to the judicial officer who either issues process to institute proceedings, issues search warrants, or presides over summary proceedings. Because some members expressed concern about the potential confusion using “issuing authority” in the Rule 150 bench warrant context would cause, the Committee agreed instead to use "judicial officer" to encompass the presiding magisterial district judge or common pleas court judge who issued the bench warrant or the magisterial district judge or common pleas court judge designated by the president judge to conduct the bench warrant hearings when either the presiding magisterial district judge or the presiding common

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[5] The procedures for instituting criminal proceedings by arrest warrant are governed by Rules 430 and 431 in summary cases and Rules 513-518 in court cases.

[6] *See* Rules 430(B) and 431(C) for the procedures for bench warrants in summary cases.

pleas court judge is unavailable. The use of “judicial officer” in Rule 150 is explained in paragraph (B).

3. Paragraph (A)

Paragraph (A) establishes the scope of the rule “when a bench warrant is executed,” and enumerates the procedures to follow after the execution of the bench warrant.

Paragraph (A)(1) requires that the individual arrested on a bench warrant be taken without unnecessary delay for a bench warrant hearing before the judicial officer who issued the bench warrant. To ensure there are prompt bench warrant hearings, paragraph (A)(1) also includes the requirement that the president judge, or the president judge’s designee, designate a "replacement" judicial officer to conduct the hearing if the issuing judicial officer is unavailable. The fifth paragraph of the *Comment* favorably acknowledges the practice in some judicial districts of permitting a judge who will be unavailable to make arrangements with another judge to handle his or her cases while the judge is unavailable.

Paragraph (A)(2) encourages the use of "two-way simultaneous audio-visual communication" to conduct the bench warrant hearing. This technology is another means of ensuring prompt bench warrant hearings, especially in situations in which an individual is arrested on a bench warrant in another county. The second paragraph of the *Comment* explains the two-way simultaneous audio-visual communication is a form of “advanced communication technology” as defined in Rule 103.

Paragraphs (A)(3) and (A)(4) set forth procedures when the individual is arrested on the bench warrant. When the arrest is made in the county of issuance, paragraph (A)(3) requires that the arrested individual be lodged in the county jail pending the hearing and the authority in charge of the jail promptly must notify the court of the arrest and detention. If the individual is arrested outside the county of issuance, paragraph (A)(4) requires that the authority in charge of the county jail in which the individual is lodged promptly notify the proper authorities in the county of issuance.

Although ideally all bench warrant hearings should be conducted promptly after the individual is arrested, the Committee recognized the demands on the courts do not always afford this opportunity. At the same time, the Committee noted that, under current practices, frequently, when a hearing cannot be conducted “promptly after the

arrest," arrested individuals remain incarcerated for long periods of time without receiving a bench warrant hearing. Based on our research, the members' own experiences in practice, and the other information we gathered, the Committee concluded that some time limits on the post-bench warrant arrest detention should be established. In considering what kind of time limits to establish, the Committee extensively debated the impact of any time limits on these cases, noting in particular the differences between cases in which the individual is arrested within the county of issuance and cases in which the individual is arrested outside the county of issuance. Taking note of the scheduling demands in the judicial districts, as well as the fact that the 72-hour time limit in Pa.R.C.P. 1910.13-1(d), to our knowledge, has not created an undue burden on the judicial districts, the Committee agreed this time limit is reasonable in the cases in which the individual is arrested within the county of issuance. The Committee also discussed at length whether to accommodate the scenario in which the 72 hours ends on a holiday or weekend. Although concerned about building into the rule any unnecessary delay, the Committee realized judicial resources would not be able to provide adequate coverage during these time periods, and ultimately agreed the 72-hour limit would be extended to the next business day when the 72 hours expires on a non-business day. *See* paragraph (A)(5)(b).

A more complicated issue concerned the situation when the individual is arrested outside the judicial district of issuance. The members expressed concern that the 72-hour time limit was unrealistic given the difficulties in some cases of retrieving an individual from another judicial district, particularly when the judicial district of arrest is a great distance away from the judicial district of issuance. Initially, the Committee considered a 144-hour time limit would be reasonable and would provide sufficient time for the judicial district of issuance to make arrangements for the individual's return without unnecessarily prolonging the individual's detention. Ultimately, after a lengthy debate and after reviewing the publication responses questioning the practicality of such a provision, the Committee determined that the 72-hour time-limit should apply to both in-county and out-of-county bench warrant arrests, but in out-of-county bench warrant arrests, the time would begin to run from the time the individual is lodged in the jail of the county of issuance. *See* paragraph (A)(5)(b).

In response to some publication comments, the Committee examined the

practices of the multi-county and statewide investigating grand juries. The correspondents had noted that the supervising judge is rarely available when the grand jury is not in session and rarely is from the judicial district in which the grand jury is convened. In addition, given the nature of the investigating grand jury and the confidentiality of its proceedings, it would be inappropriate to have a substitute judge designated the judge to conduct these bench warrant hearings. In view of these considerations, the Committee agreed to exempt the multi-county and statewide investigating grand juries from the 72-hour time limit in Rule 150, but to require that the bench warrant hearing be conducted expeditiously after the supervising judge is available. *See* paragraph (A)(5)(a). Further elaboration concerning grand juries and bench warrants is set forth in the sixth paragraph of the *Comment*.

Paragraph (A)(6) is taken from Civil Rule 1910.13-1(c), and requires that the bench warrant be vacated at the conclusion of the bench warrant hearing following the disposition of the matter. The Committee agreed a comparable provision in the Criminal Rules' bench warrant rule that would require the judicial officer to dispose of the bench warrant proceeding as well as vacate the warrant makes sense in view of the ongoing problems concerning adequate warrant controls and ensuring defunct warrants are removed from the national computer systems. The *Comment* reiterates that once the bench warrant is executed and the individual is taken into custody, the bench warrant is no longer valid. In addition, the *Comment* recognizes the existing practice in some judicial districts of having the clerk of courts cancel the bench warrant when he or she receives a return of service, but cautions in these circumstances, the clerk promptly must provide notice of the return of service to the judge who issued the warrant.

Another issue the Committee had some difficulty with concerned what should occur when the time limits in paragraph (A)(5)(b) expire. The Committee majority agreed that, to have any "teeth," the rule should include an automatic release from custody at the expiration of the time limit, and to accomplish this, the rule should provide that the bench warrant expires by operation of law. *See* paragraph (A)(7). A related issue that concerned the members was how to ensure the court knows the individual is eligible for release and is released promptly when the time limit expires. The Committee agreed it is the responsibility of someone in the court system -- judge, court administrator, clerk of courts, or even counsel -- to monitor the time and make sure the

jail is told to release the individual. This point is emphasized in the eighth paragraph of the *Comment*.

Finally, the *Comment* also includes (1) cross-references to the summary case bench warrant rules, Rules 430(B) and 431(C); to the summary case and court case rules governing arrest warrants that initiate proceedings to clearly distinguish those procedures from the new bench warrant procedures; and to Chapter 5 Part B concerning violation of the conditions of bail; and (2) an explanation that "court" as used in Rule 150 is not limited to courts of record but also includes magisterial district judge courts.

III. CORRELATIVE CHANGES

A. Rule 536

As the Committee was working on Rule 150, the issue of bail frequently arose, with the members concerned about how Rule 150 would work in conjunction with Rule 536 (Procedures Upon Violation of Conditions: Revocation of Release and Forfeiture; Bail Pieces; Exoneration of Surety). Of particular concern was Rule 536(A)(1)(b) and (d), which provide, *inter alia*, that the bail authority may issue a warrant for the defendant's arrest and the defendant would not be released except upon order of the issuing bail authority or, if unavailable, the order of the president judge or the president judge's designee. The Committee reviewed the rule history. In the January 1973 Submission Statement to the Court, the Committee explained

> Rule 4016 [now 536] authorizes the issuing authority or court to issue "appropriate process" *e.g.*; a warrant, to bring the defendant before it, an aspect of procedure entirely overlooked by the present Rules. The term "bench warrant" was explicitly avoided by your Committee and use made of "appropriate process" because it was felt that the term "bench warrant" might be thought by some as applicable only to the power of judges of courts of record. This is only a point of nomenclature, however, and there is no question that the effect of any such warrant or process would be the same.

In view of this rule history and the fact that Rule 150 makes it clear the bench warrant may be issued by both magisterial district judges and judges of the courts of common pleas in court cases, Rule 536(A)(1)(b) has been amended to make it clear that the warrant being issued is a bench warrant. In addition, a second sentence has been added to paragraph (A)(1)(b) explaining that "when the bench warrant is executed, the

bench warrant proceedings shall be pursuant to Rule 150."

Because Rule 150(A)(1) sets forth the requirements that the issuing judge or a designated issuing judge must conduct the bench warrant hearing, Rule 536(A)(1)(d) has been deleted as no longer necessary.

B. Rule 543

Rule 543 provides the procedures when a defendant fails to appear for a preliminary hearing. Paragraph (D)(2)(c) requires the issuing authority to "issue a warrant for the arrest of the defendant." This warrant is a bench warrant within the context of Rule 150. Accordingly, all the references to "warrants" in Rule 543 have been changed to "bench warrants." In addition, a cross-reference to Rule 150 has been added to the Rule 543 *Comment*.