[This is an entirely new rule.]

RULE 117. COVERAGE: ISSUING WARRANTS; PRELIMINARY ARRAIGNMENTS AND SUMMARY TRIALS; AND SETTING AND ACCEPTING BAIL.

(A) The president judge of each judicial district shall ensure sufficient availability of issuing authorities to provide the services required by the Rules of Criminal Procedure as follows:

(1) continuous coverage for the issuance of search warrants pursuant to Rule 203 and arrest warrants pursuant to Rule 513;

(2) coverage using one or a combination of the systems of coverage set forth in paragraph (B) to:

(a) conduct summary trials or set collateral in summary cases following arrests with a warrant issued pursuant to Rule 430(A) as provided in Rule 431(B)(3) and following arrests without a warrant as provided in Rule 441(C);

(b) conduct preliminary arraignments without unnecessary delay whenever a warrant of arrest is executed within the judicial district pursuant to Rule 516;

(c) set bail without unnecessary delay whenever an out-of-county warrant of arrest is executed within the judicial district pursuant to Rule 517(A);

(d) accept complaints and conduct preliminary arraignments without unnecessary delay whenever a case is initiated by an arrest without warrant pursuant to Rule 519(A)(1); and

(3) coverage during normal business hours for all other business.

(B) The president judge, taking into consideration the rights of the defendant and the judicial district's resources and coverage needs, by local rule promulgated pursuant to Rule 105, shall establish one or a combination of the following systems of coverage to provide the services enumerated in paragraph (A)(2):

(1) a traditional on-call system providing continuous coverage;

(2) an "after-hours court" or a "night court" staffed by an on-duty issuing authority and staff;

(3) a regional on-call system; or

(4) a schedule of specified times for after-hours coverage when the "duty" issuing authority will be available to conduct business.

(C) The president judge of each judicial district, by local rule promulgated pursuant to Rule 105, shall ensure that coverage is provided pursuant to Rule 520(B) to admit defendants to bail on any day and at any time in any case pending within the judicial district.

COMMENT: By this rule, the Supreme Court is clarifying the responsibility of president judges in supervising their respective judicial districts to ensure compliance with the statewide Rules of Criminal Procedure to prevent the violation of the rights of defendants caused by the lack of availability of the issuing authority. *See also* Rule 116 (General Supervisory Powers of President Judge) and Rule 131 (Location of Proceedings Before Issuing Authority).

Paragraph (A), derived from former Rule 132(A) (Continuous Availability), clarifies that it is the president judge's responsibility to make sure that there are issuing authorities available within his or her judicial district (1) on a continuous basis to issue search and arrest warrants, paragraph (A)(1); (2) pursuant to one or a combination of the systems of coverage enumerated in paragraph (B) to conduct summary trials and preliminary arraignments, and perform related duties, paragraph (A)(2); and (3) during normal business hours to conduct all other business of the minor judiciary, paragraph (A)(3). It is expected that the president judge will continue the established procedures in the judicial district or establish new procedures to ensure sufficient availability of issuing authorities consistent with this paragraph.

By providing the alternate systems of coverage in paragraph (B), this rule recognizes the differences in the geography and judicial resources the judicial districts.

An issuing authority is “available” pursuant to paragraph (A) when he or she is able to communicate in person or by using advanced communication technology (“ACT”) with the person requesting services pursuant to this rule. *See* Rule 103 for the definition of ACT. Concerning the use of ACT, see Rule 118 (Use of Two-Way Simultaneous Audio-Visual Communication in Criminal Proceedings). *See also* Rules 203, 513, 518, and 540 providing for the use of ACT to request and obtain warrants and conduct preliminary arraignments.

Nothing in this rule limits an issuing authority from exercising sound judicial discretion, within the parameters established by the president judge pursuant to paragraph (B), in deciding how to respond to a request for services outside normal business hours. *See, e.g.,* Rule 509, paragraphs (1) and (2), that authorize the use of summonses instead of warrants in certain court cases; and Rule 519(B) that requires the police officer to release a defendant arrested without a warrant in certain specified court cases.

In determining which system of coverage to elect, the president judge must consider the rights of the defendant, see, *e.g. Commonwealth v. Duncan*, 514 Pa. 395, 525 A.2d 1177 (1987), and the judicial district's resources and coverage needs, as well as the obligations of the police and attorney for the Commonwealth to ensure the defendant is brought before an issuing authority without unnecessary delay as required by law, see, *e.g.*, Rules 431, 441, 516, 517, and 519. *See also Commonwealth v. Perez*, 577 Pa. 360, 845 A.2d 779 (2004).

When the police must detain a defendant pursuant to these rules, 61 P.S. § 798 provides that the defendant may be housed for a period not to exceed 48 hours in “the borough and township lockups and city or county prisons.”

The proceedings enumerated in paragraph (A)(2) include (1) setting bail before verdict pursuant to Rule 520(A) and Rule 540, and either admitting the defendant to bail or committing the defendant to jail, and (2) determining probable cause

whenever a defendant is arrested without a warrant pursuant to Rule 540(C).

Pursuant to paragraph (C), the president judge also is responsible for making sure there is an issuing authority or other designated official available within the judicial district on a continuous basis to accept bail pursuant to Rule 520(B). The president judge, by local rule, may continue established procedures or establish new procedures for the after-hours acceptance of deposits of bail by an issuing authority, a representative of the office of the clerk of courts, or such other individual designated by the president judge. *See* Rule 535(A). Given the complexities of posting real estate to satisfy a monetary condition of release, posting of real estate may not be feasible outside normal business hours.

When the president judge designates another official to accept bail deposits, that official's authority is limited under this rule to accepting the bail deposit, and under Rule 525 to releasing the defendant upon execution of the bail bond. Pursuant to Rule 535(A), the official is authorized only to have the defendant execute the bail bond and to deliver the bail deposit and bail bond to the issuing authority or clerk of courts.

The local rule requirements in paragraphs (B) and (C): (1) ensure there is adequate notice of (a) the system of coverage, thereby providing predictability in the issuing authority's duty schedule, and (b) the official authorized to accept bail; (2) promote the efficient administration of justice; and (3) provide a means for the Supreme Court to monitor the times and manner of coverage in each judicial district.

The local rules promulgated pursuant to this rule should include other relevant information, such as what are the normal business hours of operation or any special locations designated by the president judge to conduct business, that will assist the defendants, defense counsel, attorneys for the Commonwealth, police, and members of the public.

Concerning other requirements for continuous coverage by issuing authorities in Protection from Abuse Act cases, see 23 Pa.C.S. § 6110 and Pa.R.C.P.D.J. 1203.

NOTE: Former Rule 117 adopted September 20, 2002, effective January 1, 2003; renumbered Rule 118 June 30, 2005, effective August 1, 2006. New Rule 117 adopted June 30, 2005, effective August 1, 2006.

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***COMMITTEE EXPLANATORY REPORTS:***

***Final Report explaining the provisions of the new rule published with the Court's Order at 35 Pa.B. ( , 2005).***

RULE **[117]** **118**. COURT FEES PROHIBITED FOR TWO-WAY SIMULTANEOUS AUDIO-VISUAL COMMUNICATION.

[NO CHANGES IN THE TEXT OR *COMMENT*.]

NOTE: New Rule 117 adopted September 20, 2002, effective January 1, 2003 **[.] ; renumbered Rule 118 June 30, 2005, effective August 1, 2006.**

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***COMMITTEE EXPLANATORY REPORTS:***

***Final Report explaining new Rule 117 published with the Court's Order at 32 Pa.B. 4815 (October 5, 2002.)***

***Final Report explaining the June 30, 2005 renumbering of Rule 117 as Rule 118 published with the Court's Order at 35 Pa.B. ( , 2005).***

RULE **[118] 119**. USE OF TWO-WAY SIMULTANEOUS AUDIO-VISUAL COMMUNICATION IN CRIMINAL PROCEEDINGS.

(A) The court or issuing authority may use two-way simultaneous audio-visual communication at any criminal proceeding except:

(1) preliminary hearings;

(2) trials;

(3) sentencing hearings;

(4) parole, probation, and intermediate punishment revocation hearings; and

(5) any proceeding in which the defendant has a constitutional or statutory right to be physically present.

(B) The defendant may consent to any proceeding being conducted using two-way simultaneous audio-visual communication.

(C) When counsel for the defendant is present, the defendant must be permitted to communicate fully and confidentially with defense counsel immediately prior to and during the proceeding.

COMMENT: This rule was adopted in 2003 to make it clear that unless the case comes within one of the exceptions in paragraph (A), the court or issuing authority may use two-way simultaneous audio-visual communication in any criminal proceeding. Two-way simultaneous audio-visual communication is a type of advanced communication technology as defined in Rule 103.

Nothing in this rule is intended to limit any right of a defendant to waive his or her presence at a criminal proceeding in the same manner as the defendant may waive other rights. *See*, *e.g.*, Rule 602 *Comment*. Negotiated guilty pleas when the defendant has agreed to the sentence and probation revocation hearings are examples of hearings in which the defendant's consent to proceed using two-way simultaneous audio-visual communication would be required. Hearings on post-sentence motions, bail hearings,

**bench warrant hearings,** extradition hearings, and *Gagnon* I hearings are examples of proceedings that may be conducted using two-way simultaneous audio-visual communication without the defendant's consent. It is expected the court or issuing authority would conduct a colloquy for the defendant's consent when the defendant's constitutional right to be physically present is implicated.

Within the meaning of this rule, counsel is present when physically with the defendant or with the judicial officer conducting the criminal proceeding.

This rule does not apply to preliminary arraignments (Rule 540), arraignments (Rule 571), or to search warrant (Rule 203) and arrest warrant (Chapter 5 Part B(3)) procedures.

This rule is not intended to preclude the use of advanced communication technology for the preservation of testimony as permitted by Rules 500 and 501.

*See* Rule 542 for the procedures governing preliminary hearings.

*See* Chapter 6 for the procedures governing trials.

*See* Chapter 7 for the procedures governing sentencing hearings.

*See* Rule 708 for the procedures governing revocation of probation, intermediate punishment, and parole.

The paragraph (A)(4) reference to revocation hearings addresses *Gagnon* II-type probation (*Gagnon v. Scarpelli*, 411 U.S. 778 (1973)) and parole (*Morrissey v. Brewer*, 408 U.S. 471 (1972)) revocation hearings, and is not intended to prohibit the use of two-way simultaneous audio-visual communication in hearings to determine probable cause (*Gagnon* I).

NOTE: New Rule 118 adopted August 7, 2003, effective September 1, 2003 **[.] ; renumbered Rule 119 and *Comment* revised June 30, 2005, effective August 1, 2006.**

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***COMMITTEE EXPLANATORY REPORTS:***

***Final Report explaining new Rule 118 published with the Court's Order at 33 Pa.B.* 830 (August 30, 2003).**

***Final Report explaining the June 30, 2005 renumbering of Rule 118 as Rule 119 and the revision of the second paragraph of the Comment published at 35 Pa.B.( , 2005).***

RULE 131. LOCATION OF PROCEEDINGS BEFORE ISSUING AUTHORITY.

(A) An issuing authority within the magisterial district for which he or she is elected or appointed shall have jurisdiction and authority **[at all times]** to receive complaints, issue warrants, hold preliminary arraignments, set and receive bail, issue commitments to jail, and hold hearings and summary trials.

(1) Except as provided in paragraph (A)(2), all preliminary arraignments shall be held in the issuing authority's established office, a night court, or some other facility within the Commonwealth designated by the president judge, or the president judge's designee.

(2) Preliminary arraignments may be conducted using advanced communication technology pursuant to Rule 540. The preliminary arraignment in these cases may be conducted from any site within the Commonwealth designated by the president judge, or the president judge's designee.

(3) All hearings and summary trials before the issuing authority shall be held publicly at the issuing authority's established office. For reasons of emergency, security, size, or in the interests of justice, the president judge, or the president judge's designee, may order that a hearing or hearings, or a trial or trials, be held in another more suitable location within the judicial district.

(4) The issuing authority may receive complaints, issue warrants, set and receive bail, and issue commitments to jail from any location within the judicial district, or from an advanced communication technology site within the Commonwealth.

(B) When local conditions require, the president judge may establish procedures for preliminary hearings or summary trials, in all cases or in certain classes of cases, to be held at a central place or places within the judicial district at certain specified times. The procedures established shall provide either for the transfer of the case or the transfer of the issuing authority to the designated central place as the needs of justice and efficient administration require.

COMMENT: The 2002 amendments to paragraph (A) divided the paragraph into subparagraphs to more clearly distinguish between the locations for the different types of proceedings and business that an issuing authority conducts.

Paragraph (A)(3) permits the president judge, or the president judge's designee, to order that a hearing or hearings be held in

a location that is different from the issuing authority's established office. Nothing in this rule is intended to preclude the president judge, or the president judge's designee, from issuing a standing order for a change in location. For example, this might be done when a state correctional institution is located in the judicial district and the president judge determines that, for security reasons, all preliminary hearings of the state correctional institution's inmates will be conducted at that prison.

*See* Rule 540 and *Comment* for the procedures governing the use of advanced communication technology in preliminary arraignments.

*See* Rule 130 concerning the *venue* when proceedings are conducted by using advanced communication technology.

Paragraph (B) of this rule is intended to facilitate compliance with the requirement that defendants be represented by counsel at the preliminary hearing. *Coleman v. Alabama*, 399 U.S. 1 **[, 90 S.Ct. 1999]** (1970).

Paragraph (A)(4) permits issuing authorities to perform their official duties from an advanced communication technology site within the Commonwealth. The site may be located outside the magisterial district or judicial district where the issuing authority presides.

This rule allows the president judge of a judicial district the discretion to determine what classes of cases require centralized preliminary hearings or summary trials, and requires the president judge, or the president judge’s designee, to establish a schedule of central places within the Commonwealth to conduct such hearings or summary trials, and the hours for the hearings or trials at the central locations.

Ideally, this rule should minimize the inconvenience to defense counsel and the attorney for the Commonwealth by eliminating the necessity of travel at various unpredictable times to many different locations throughout the judicial district for the purpose of attending preliminary hearings or summary trials. Finally, this rule allows preliminary hearings

or summary trials for jailed defendants to be held at a location close to the place of detention.

NOTE: Formerly Rule 156, paragraph (a) adopted January 16, 1970, effective immediately; paragraph (a) amended and paragraph (b) adopted November 22, 1971, effective immediately; renumbered Rule 22 September 18, 1973, effective January 1, 1974; renumbered Rule 131 and amended March 1, 2000, effective April 1, 2001; amended March 12, 2002, effective July 1, 2002; amended May 10, 2002, effective September 1, 2002 **[.] ; amended June 30, 2005, effective August 1, 2006.**

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***COMMITTEE EXPLANATORY REPORTS:***

***Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).***

***Final Report explaining the March 12, 2002 amendments concerning centralized courts for summary trials published with the Court's Order at 32 Pa.B. 1630 (March 30, 2002).***

***Final Report explaining the May 10, 2002 amendments concerning advanced communication technology published with the Court's Order at 32 Pa. B. 2591 (May 25, 2002).***

***Final Report explaining the June 30, 2005 deletion in paragraph (A) of "at all times" published with the Court's Order at 35 Pa.B. ( , 2005).***

RULE 132. **[CONTINUOUS AVAILABILITY AND]** TEMPORARY ASSIGNMENT OF ISSUING AUTHORITIES.

**[(A) Continuous Availability]**

**[(1) The president judge of each judicial district shall be responsible for ensuring the availability at all times within the judicial district of at least one issuing authority.]**

**[(2) The issuing authority assigned to be on duty after business hours shall set bail as provided in Chapter 5 Part C, and shall accept deposits of bail in any case pending in any magisterial district within the judicial district.]**

**[(B) Temporary Assignment]**

**[(1)]** **(A)** The president judge may assign temporarily the issuing authority of any magisterial district to serve another magisterial district whenever such assignment is needed**:**

**[(a)]** **(1)** to satisfy the requirements of **[paragraph (A)(1)]** **Rule 117**;

**[(b)]** **(2)** to insure fair and impartial proceedings;

**[(c)]** **(3)** to conduct a preliminary hearing pursuant to Rule 544(B); or

**[(d)]** **(4)** otherwise for the efficient administration of justice.

One or more issuing authorities may be so assigned to serve one or more magisterial districts.

**[(2)]** **(B)** Whenever a temporary assignment is made under this rule, notice of such assignment shall be filed with the clerk of courts where it shall be available for police agencies and other interested persons.

**[(3)]** **(C)** A motion may be filed requesting a temporary assignment under **[paragraph (B)(1)]** **this rule** on the ground that the assignment is needed to insure fair and impartial proceedings. Reasonable notice and opportunity to respond shall be provided to the parties.

**[(4)]** **(D)** A motion shall be filed requesting a temporary assignment under paragraph **[(B)(1)(c)]** **(A)(3)** whenever the attorney for the Commonwealth elects to proceed under Rule 544(B) following the refiling of a complaint.

**COMMENT: [This rule is intended to impose the responsibility on the president judge to prevent the violation of the rights of defendants caused by the lack of availability of the issuing authority.]**

**The provisions of former paragraph (A) (Continuous Availability) were incorporated into new Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail) in 2005.**

**[Paragraph (A)(2) requires an issuing authority on duty after business hours to set bail, as provided by law, and to accept deposits of bail in any case pending in any magisterial district within the judicial district, so that a "defendant may be admitted to bail on any date and at any time." Rule 520(B).]**

**[Nothing in this rule is intended to preclude judicial districts from continuing established procedures or establishing new procedures for the after-hours acceptance of deposits of bail by a representative of the clerk of courts' office.]**

Paragraphs **[(B)(1)(b)]** **(A)(2)** and **[(3)]** **(C)** make explicit the authority of president judges to assign issuing authorities when necessary to insure fair and impartial proceedings, and to provide a procedure for a party to request such an assignment. Temporary assignment in this situation is intended to cover what might otherwise be referred to as "change of venue" at the **[district justice]** **magisterial district** level. *See, e.g., Sufrich v. Commonwealth*, **68 Pa.Cmwlth. 42,** 447 A.2d 1124 (**[Pa.Cmwlth.]**1982).

The motion procedure of paragraph **[(B)(3)]** **(C)** is intended to apply when a party requests temporary assignment to insure fair and impartial proceedings. The president judge

may, of course, order a response and schedule a hearing with regard to such a motion. However, this paragraph is not intended to require "a formal hearing...beyond the narrow context of a motion for temporary assignment of issuing authority to insure fair and impartial proceedings predicated upon allegations which impugn the character or competence of the assigned issuing authority and which seek the recusal of the assigned issuing authority." *See Commonwealth v. Allem*, **367 Pa.Super. 173,** 532 A.2d 845 (**[Pa.Super.]**1987) (filing and service of the written motion and answer, and allowance of oral argument were more than adequate to meet the rule's requirements).

Paragraphs **[(B)(1)(c)]** **(A)(3)** and **[(4)]** **(D)** govern those situations in which the attorney for the Commonwealth, after refiling the complaint following the withdrawal or dismissal of any criminal charges at, or prior to, a preliminary hearing, determines that the preliminary hearing should be conducted by a different issuing authority. *See also* Rule 544 (Reinstituting Charges Following Withdrawal or Dismissal). Under Rule 544, the president judge may designate another judge within the judicial district to handle reassignments.

The motion procedure is not intended to apply in any of the many other situations in which president judges make temporary assignments of issuing authorities; in all these other situations the president judges may make temporary assignments on their own without any motion, notice, response, or hearing.

NOTE: Formerly Rule 152, adopted January 16, 1970, effective immediately; amended and renumbered Rule 23 September 18, 1973, effective January 1, 1974; amended October 21, 1983, effective January 1, 1984; amended February 27, 1995, effective July 1, 1995; amended October 8, 1999, effective January 1, 2000; renumbered Rule 132 and amended March 1, 2000, effective April 1, 2001 **[.] ; amended June 30, 2005, effective August 1, 2006.**

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***COMMITTEE EXPLANATORY REPORTS:***

***Final Report explaining the February 27, 1995 amendments published with the Court's Order at 25 Pa.B. 936 (March 18, 1995).***

***Final Report explaining the October 8, 1999 amendments concerning motions for temporary assignment of issuing authority following the reinstitution of criminal charges published with the Court's Order at 29 Pa.B. 5509 (October 23, 1999).***

***Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).***

***Final Report explaining the June 30, 2005 changes to the rule correlative to the changes in procedure in new Rule 117 published with the Court's Order at 35 Pa.B. ( , 2005).***

RULE 430. ISSUANCE OF **[ARREST]** WARRANT.

(A) **ARREST WARRANTS INITIATING PROCEEDINGS**

A warrant for the arrest of the defendant shall be issued when:

**[(1) the defendant fails to respond to a citation or summons that was served upon the defendant personally or by certified mail return receipt requested; or]**

**[(2)]** **(1)** the citation or summons is returned undelivered; or

**[(3)]** **(2)** the issuing authority has reasonable grounds to believe that the defendant will not obey a summons.

**[(4) the defendant has failed to appear for the execution of sentence as required in Rule 454(E)(3).]**

**(B) BENCH WARRANTS**

**(1) A bench warrant shall be issued when:**

**(a) the defendant fails to respond to a citation or summons that was served upon the defendant personally or by certified mail return receipt requested; or**

**(b) the defendant has failed to appear for the execution of sentence as required in Rule 454(E)(3).**

**[(B)]** **(2)** A **bench** warrant **[for the arrest of the defendant]** may be issued when a defendant has entered a not guilty plea and fails to appear for the summary trial, if the issuing authority determines, pursuant to Rule 455(A), that the trial should not be conducted in the defendant's absence.

**[(C)]** **(3)** A **bench** warrant **[for the arrest of the defendant]** may be issued when:

**[(1)]** **(a)** the defendant has entered a guilty plea by mail and the money forwarded with the plea is less than the amount of fine and costs specified in the citation or summons; or

**[(2)]** **(b)** the defendant has been sentenced to pay restitution, a fine, or costs and has defaulted on the payment; or

**[(3)]** **(c)** the issuing authority has, in the defendant's absence, tried and sentenced the defendant to pay restitution, and/or to pay a fine and costs and the collateral deposited by the defendant is less than the amount of fine and costs imposed.

**[(D)]** **(4)** No warrant shall issue under paragraph **[(C)]** **(B)(3)** unless the defendant has been given notice in person or by first class mail that failure to pay the amount due or to appear for a hearing may result in the issuance of **[an arrest]** **a bench** warrant, and the defendant has not responded to this notice within 10 days. Notice by first class mail shall be considered complete upon mailing to the defendant's last known address.

COMMENT: Personal service of a citation under paragraph **[(A)]** **(B)**(1) is intended to include the issuing of a citation to a defendant as provided in Rule 400(A) and the rules of Chapter 4, Part B(1).

When the defendant is under 18 years of age, and the defendant has failed to respond to the citation, the issuing authority must issue a summons as provided in Rule 403(B)(4)(a). If the juvenile fails to respond to the summons, the issuing authority should issue **[an arrest]** **a** warrant as provided in **either** paragraph (A)(1) **[and (2)]** **or (B)(1)**.

**[An arrest]** **A bench** warrant may not be issued under paragraph **[(A)]** **(B)**(1) when a defendant fails to respond to a citation or summons that was served by first class mail. *See* Rule 451.

Rule 454 provides that the issuing authority is to direct any defendant who is sentenced to a term of imprisonment to appear for the execution of sentence on a date certain following the expiration of the 30-day stay required by Rule 461. Paragraph (A)(1)(d) was added in 2003 to make it clear that an issuing authority should issue a warrant for the arrest of any defendant who fails to appear for the execution of sentence.

Ordinarily, pursuant to Rule 455, the issuing authority must conduct a summary trial in the defendant's absence. However, if the issuing authority determines that there is a likelihood that the sentence will include imprisonment or that there is other good cause not to conduct the summary trial, the issuing authority may issue a **bench** warrant for the arrest of the defendant pursuant to paragraph (B)**(2)** in order to bring the defendant before the issuing authority for the summary trial.

The **[arrest] bench** warrant issued under paragraph **[(C)] (B)(3)** should state the amount required to satisfy the sentence.

When a defendant is arrested pursuant to paragraph **[(C)] (B)(3)**, the issuing authority must conduct a hearing to determine whether the defendant is able to pay the amount of restitution, fine, and costs that is due. *See* Rule 456.

If the defendant is under 18 years of age and has not paid the fine and costs, the issuing authority must issue the notice required by paragraph **[(D)] (B)(4)** to the defendant and the defendant's parents, guardian, or other custodian informing the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv). Thereafter, the case will proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act instead of these rules.

If the defendant is 18 years of age or older when the default in payment occurs, the issuing authority must proceed under these rules.

When contempt proceedings are also involved, see Chapter 1 Part D for the issuance of arrest warrants.

*See* Rule 431 for the procedures when a warrant of arrest is executed.

NOTE: Rule 75 adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; amended April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 430 and amended March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; *Comment* revised August 7, 2003, effective July 1, 2004; *Comment* revised April 1, 2005, effective October 1, 2005 **[.] ; amended June 30, 2005, effective August 1, 2006.**

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***COMMITTEE EXPLANATORY REPORTS:***

***Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).***

***Final Report explaining the April 18, 1997 amendments concerning arrest warrants when defendant fails to appear for trial published with the Court's Order at 27 Pa.B. 2117 (May 3, 1997).***

***Final Report explaining the October 1, 1997 amendments in paragraph (3) and the provisions of new paragraph (4) published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).***

***Final Report explaining the July 2, 1999 amendments to paragraph (3)(c) and the Comment concerning restitution published with the Court's Order at 29 Pa.B. 3718 (July 17, 1999).***

***Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).***

***Final Report explaining the February 28, 2003 amendments adding paragraph (A)(1)(d) published with the Court's Order at 33 Pa.B. 1326 (March 15, 2003).***

***Final Report explaining the August 7, 2003 new Comment language concerning failure to pay fines and costs by juveniles published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).***

***Final Report explaining the April 1, 2005 Comment revision concerning application of the Juvenile Court Procedural Rules published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).***

***Final Report explaining the June 30, 2005 changes distinguishing between warrants that initiate proceedings and bench warrants in summary cases published with the Court's Order at 35 Pa.B. ( , 2005).***

RULE 431. PROCEDURE WHEN DEFENDANT ARRESTED WITH WARRANT.

(A) **[A]** **When a** warrant **[of arrest]** **is issued pursuant to Rule 430 in a summary case, the warrant** shall be executed by a police officer as defined in Rule 103.

**(1) If the warrant is executed between the hours of 6 a.m. and 10 p.m., the police officer shall proceed as provided in paragraphs (B) or (C).**

**(2) If the warrant is executed outside the hours of 6 a.m. and 10 p.m., unless the time period is extended by the president judge by local rule enacted pursuant to Rule 105, the police officer shall call the proper issuing authority to determine when the issuing authority will be available pursuant to Rule 117.**

(B) **Arrest Warrants Initiating Proceedings**

**(1)** When a**n arrest** warrant **[of arrest]** is executed, the police officer shall either:

**[(1)] (a)** accept from the defendant a signed guilty plea and the full amount of the fine and costs if stated on the warrant;

**[(2)] (b)** accept from the defendant a signed not guilty plea and the full amount of collateral if stated on the warrant;

**[(3) accept from the defendant the amount of restitution, fine, and costs due as specified in the warrant if the warrant is for collection of restitution, fine, and costs after a guilty plea or conviction;]** or

**[(4)] (c) if the defendant is unable to pay,** cause the defendant to be taken without unnecessary delay before the proper issuing authority.

**[(C)] (2)** When the police officer accepts **[restitution,]** fine **[,]** and costs, or collateral under paragraphs (B)(1) **[(2),or (3),] (a) or (b)** the officer shall issue a receipt to the defendant setting forth the amount of **[restitution,]** fine **[,]** and costs, or collateral received and return a copy of the receipt, signed by the defendant and the police officer, to the proper issuing authority.

**[(D)] (3)** When the defendant is taken before the issuing authority under paragraph (B)**[(4)] (1)(c)**,

**[(1)] (a)** the defendant shall enter a plea; and

**[(2)]** **(b)** if the defendant pleads guilty, the issuing authority shall impose sentence. If the defendant pleads not guilty, the defendant shall be given an immediate trial unless:

**[(a)]** **(i)** the Commonwealth is not ready to proceed, or the defendant requests a postponement or is not capable of proceeding, and in any of these circumstances, the defendant shall be given the opportunity to deposit collateral for appearance on the new date and hour fixed for trial; **or**

**[(b)]** **(ii)** the defendant's criminal record must be ascertained prior to trial as specifically required by statute for purposes of grading the offense charged, in which event the defendant shall be given the opportunity to deposit collateral for appearance on the new date and hour fixed for trial, which shall be after the issuing authority's receipt of the required information**. [; or]**

**[(c) the warrant was issued for the collection of restitution, fine, and costs after a guilty plea or conviction, in which event the issuing authority shall proceed as specified in Rule 456.]**

**[(3)]** **(c)** If the defendant is under 18 years of age and cannot be given an immediate trial, the issuing authority promptly shall notify the defendant and defendant's parents, guardian, or other custodian of the date set for the summary trial, and shall release the defendant on his or her own recognizance.

**(C) Bench Warrants**

**(1) When a bench warrant is executed, the police officer shall either:**

**(a) accept from the defendant a signed guilty plea and the full amount of the fine and costs if stated on the warrant;**

**(b) accept from the defendant a signed not guilty plea and the full amount of collateral if stated on the warrant;**

**(c) accept from the defendant the amount of restitution, fine, and costs due as specified in the warrant if the warrant is for collection of restitution, fine, and costs after a guilty plea or conviction; or**

**(d) if the defendant is unable to pay, promptly take the defendant for a hearing on the bench warrant as provided in paragraph (C)(3).**

**(2) When the defendant pays the restitution, fines, and costs, or collateral pursuant to paragraph (C)(1), the police officer shall issue a receipt to the defendant setting forth the amount of restitution, fine, and costs received and return a copy of the receipt, signed by the defendant and the police officer, to the proper issuing authority.**

**(3) When the defendant does not pay the restitution, fines, and costs, or collateral, the defendant promptly shall be taken before the proper issuing authority when available pursuant to Rule 117 for a bench warrant hearing. The bench warrant hearing may be conducted using two-way simultaneous audio-visual communication.**

COMMENT: For the procedure in court cases following arrest with a warrant **initiating proceedings**, see Rules 516**,** **[and]** 517**, and 518**.

Section 8953 of the Judicial Code, 42 Pa.C.S. § 8953, provides for the execution of warrants of arrest beyond the territorial limits of the police officer's primary jurisdiction. *See also Commonwealth v. Mason*, **507 Pa. 396,** 490 A.2d 421 (**[Pa.]** 1985).

**Nothing in paragraph (A) is intended to preclude the issuing authority when issuing a warrant pursuant to Rule 430 from authorizing in writing on the warrant that the police officer may execute the warrant at any time and bring the defendant before that issuing authority for a hearing under these rules.**

**For what constitutes a "proper" issuing authority, see Rule 130.**

Delay of trial under paragraph **[(D)(2)(b)]** **(B)(3)(b)(ii)** is required by statutes such as 18 Pa.C.S. § 3929 (pretrial fingerprinting and record-ascertainment requirements).

Although the defendant's trial may be delayed under this rule, the requirement that an arrested defendant be taken

without unnecessary delay before the proper issuing authority remains unaffected.

**When the police must detain a defendant pursuant to this rule, 61 P.S. § 798 provides that the defendant may be housed for a period not to exceed 48 hours in "the borough and township lockups and city or county prisons."**

In cases in which a defendant who is under 18 years of age has failed to "comply with a lawful sentence" imposed by the issuing authority, the Juvenile Act requires the issuing authority to certify notice of the failure to comply to the court of common pleas. *See* the definition of "delinquent act," paragraph (2)(iv), in 42 Pa.C.S. § 6302. Following the certification, the case is to proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act instead of these rules.

**If the defendant is 18 years of age or older when the default in payment occurs, the issuing authority must proceed under these rules.**

For the procedures required before a **[n arrest]** **bench** warrant may issue for a defendant's failure to pay restitution, a fine, or costs, see Rule 430**[(D)]** **(B)(4)**. When contempt proceedings are also involved, see Chapter 1 Part D for the issuance of arrest warrants.

**For the procedures when a bench warrant is issued in court cases, see Rule 150.**

**[For what constitutes a "proper" issuing authority, see Rule 130.]**

**Concerning an issuing authority's availability, see Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail). Pursuant to Rule 117(B), when establishing the system of coverage best suited for the judicial district, the president judge may require defendants arrested on summary case bench warrants after hours to be taken to the established night court**

**where the defendant would be given a notice to appear in the proper issuing authority's office the next business day or be permitted to pay the full amount of fines and costs.**

Concerning the defendant's right to counsel and waiver of counsel, see Rules 121 and 122.

For the procedures in summary cases within the jurisdiction of Philadelphia Traffic Court or Philadelphia Municipal Court, see Chapter 10.

NOTE: Rule 76 adopted July 12, 1985, effective January 1, 1986; *Comment* revised September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; *Comment* revised January 31, 1991, effective July 1, 1991; amended August 9, 1994, effective January 1, 1995; amended October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 431 and amended March 1, 2000, effective April 1, 2001; amended August 7, 2003, effective July 1, 2004; *Comment* revised April 1, 2005, effective October 1, 2005 **[.] ; amended June 30, 2005, effective August 1, 2006.**

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***COMMITTEE EXPLANATORY REPORTS:***

***Report explaining the January 31, 1991 revision published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).***

***Final Report explaining the August 9, 1994 amendments published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).***

***Final Report explaining the October 1, 1997 amendments published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).***

***Final Report explaining the July 2, 1999 amendments to paragraphs (B)(3) and (C) concerning restitution published with the Court's Order at 29 Pa.B. 3718 (July 17, 1999).***

***Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).***

***Final Report explaining the August 7, 2003 changes to paragraph (D) and Comment concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).***

***Final Report explaining the April 1, 2005 Comment revision concerning application of the Juvenile Court Procedural Rules published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).***

***Final Report explaining the June 30, 2005 changes distinguishing between procedures for warrants that initiate proceedings and bench warrants procedures in summary cases published with the Court's Order at 35 Pa.B. ( , 2005).***

RULE 441. PROCEDURE FOLLOWING ARREST WITHOUT WARRANT.

(A) When a defendant has been arrested without a warrant, the defendant shall be either released from custody pursuant to paragraph (B) or taken before the proper issuing authority under paragraph (C).

(B) When a defendant has been arrested without a warrant, the arresting officer **[may, when the officer deems it appropriate,]** **shall** promptly release the defendant from custody when the following conditions have been met:

**[(1) the defendant is a resident of the Commonwealth;]**

**[(2)]** **(1)** the defendant poses no threat of immediate physical harm to any other person or to himself or herself; **and**

**[(3)]** **(2)** the arresting officer has reasonable grounds to believe that the defendant will appear as required**. [; and]**

**[(4) the defendant does not demand to be taken before an issuing authority.]**

A citation shall be issued to the defendant at the time of release and thereafter the case shall proceed in accordance with Rules 405-409 as if the proceedings had been instituted by issuing a citation to the defendant.

(C) When the defendant has not been released from custody under paragraph (B),

**(1)** the defendant shall be taken without unnecessary delay before the issuing authority **when available pursuant to Rule 117** where a citation shall be filed against the defendant, and

**[(1)]** **(a)** the defendant shall enter a plea.

**[(2)]** **(b)** If the defendant pleads guilty, the issuing authority shall impose sentence. If the defendant pleads not guilty, the defendant shall be given an immediate trial unless:

**[(a)]** **(i)** the Commonwealth is not ready to proceed, or the defendant requests a postponement or is not capable of proceeding, and in any of these circumstances, the defendant shall be given the opportunity to deposit collateral for appearance on the new date and hour fixed for trial; or

**[(b)]** **(ii)** the defendant's criminal record must be ascertained before trial as specifically required by statute for purposes of grading the offense charged, in which event the defendant shall be given the opportunity to deposit collateral for appearance on the new date and hour fixed for trial, which shall be after the issuing authority's receipt of the required information.

**[(3)]** **(2)** If the defendant is under 18 years of age and cannot be given an immediate trial, the issuing authority promptly shall notify the defendant and defendant's parents, guardian, or other custodian of the date set for the summary trial, and shall release the defendant on his or her own recognizance.

COMMENT: This rule **[provides]** **was amended in 2005 to require** the arresting police officer **[with a choice to be made based upon the criteria set forth in paragraph (B). Under the rule, the police will either]** **to** promptly arrange for the defendant's release **if the two criteria set forth in paragraph (B) are met.** **[or, if it is necessary to detain the defendant, provide for immediate trial. Prompt release allows for the completion of any post-arrest procedures authorized by law.]**

**"Reasonable grounds" as used in paragraph (B)(2) would include such things as concerns about the validity of the defendant's address, the defendant's prior contacts with the criminal justice system, and the police officer's personal knowledge of the defendant.**

Delay of trial under paragraph **[(C)(2)(b)]** **(C)(1)(b)(ii)** is required by statutes such as 18 Pa.C.S. § 3929 (pretrial fingerprinting and record-ascertainment requirements). Although the defendant's trial may be delayed under this paragraph, the requirement that the defendant be taken without unnecessary delay before the proper issuing authority remains unaffected. *See also* Rules 408, 413, and 423.

On the defendant's right to counsel and waiver of counsel, see Rules 121 and 122.

With regard to the "proper" issuing authority as used in these rules, see Rule 130.

For the procedure in court cases initiated by arrest without warrant, see Rule 518.

**For the procedures in summary cases within the jurisdiction of Philadelphia Traffic Court or Philadelphia Municipal Court, see Chapter 10.**

**Concerning an issuing authority's availability, see Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail).**

**When the police must detain a defendant pursuant to this rule, 61 P.S. § 798 provides that the defendant may be housed for a period not to exceed 48 hours in "the borough and township lockups and city or county prisons."**

NOTE: Rule 71 adopted July 12, 1985, effective January 1, 1986; *Comment* revised September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; amended August 9, 1994, effective January 1, 1995; amended May 14, 1999, effective July 1, 1999; renumbered Rule 441 and amended March 1, 2000, effective April 1, 2001; amended August 7, 2003, effective July 1, 2004 **[.] ; amended June 30, 2005, effective August 1, 2006.**

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***COMMITTEE EXPLANATORY REPORTS:***

***Report explaining the August 9, 1994 amendments published at 22 Pa.B. 6 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).***

***Final Report explaining the May 14, 1999 amendments to paragraph (C)(1) and the Comment published with the Court's Order at 29 Pa.B. 2775 (May 29, 1999).***

***Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).***

***Final Report explaining the August 7, 2003 changes the Comment concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).***

***Final Report explaining the June 30, 2005 changes concerning release of defendant following arrest and procedures when defendant is not released published with the Court's Order at 35 Pa.B. ( , 2005).***

RULE 509. USE OF SUMMONS OR WARRANT OF ARREST IN COURT CASES.

If a complaint charges an offense **[which]** **that** is a court case, the issuing authority with whom it is filed shall:

(1) issue a summons and not a warrant of arrest in cases in which the **most serious** offense charged is **[punishable by a sentence to imprisonment of not more than one year]** **a misdemeanor of the second degree or a misdemeanor of the first degree in cases arising under 75 Pa.C.S. § 3802**, except as set forth in paragraph (2);

(2) issue a warrant of arrest when:

(a) **[the offense charged is punishable by a sentence to imprisonment of more than five years]** **one or more of the offenses charged is a felony or murder**; or

(b) the issuing authority has reasonable grounds for believing that the defendant will not obey a summons; or

**(c) the issuing authority has reasonable grounds for believing that the defendant poses a threat of physical harm to any other person or to himself or herself; or**

**[(c)]** **(d)** the summons has been returned undelivered; or

**[(d)]** **(e)** a summons has been served and disobeyed by a defendant; or

**[(e)]** **(f)** the identity of the defendant is unknown **[;]** **or**

(3) issue a summons or a warrant of arrest, within the issuing authority's discretion, when the offense charged does not fall within any of the categories specified in paragraphs (1) or (2)**.** **[; or]**

**[(4) when a defendant is charged with more than one offense and one of such offenses is punishable by a sentence to imprisonment for more than five years, issue a warrant of arrest.]**

COMMENT: This rule provides for the mandatory use of a summons instead of a warrant in court cases except in **the**

special circumstances **enumerated in paragraphs (2) and (3). [as specified therein.]**

Before a warrant may be issued pursuant to paragraph (2) **[(c)] (d)** when a summons is returned undelivered, the summons must have been served as provided in Rule 511(A), and both the certified mail and the first class mail must have been returned undelivered.

**When a defendant has been released pursuant to Rule 519(B), the issuing authority must issue a summons.**

***See* Rule 1003 (Procedure in Non-Summary Municipal Court Cases), paragraph (C), for the procedures for issuing a summons and a warrant in Philadelphia.**

**It is expected when a case meets the requirements for the issuance of a summons, the police officer will proceed during the normal business hours of the proper issuing authority except in extraordinary circumstances. *See* Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail).**

The procedure in paragraph (3) allows the issuing authority to exercise discretion in whether to issue a summons or an arrest warrant depending on the circumstances of the particular case. Appropriate factors for issuing a summons rather than an arrest warrant will, of course, vary. Among the factors that may be taken into consideration are the severity of the offense, the continued danger to the victim, the relationship between the defendant and the victim, the known prior criminal history of the defendant, *etc*. However, in all cases in which the defendant has been released pursuant to Rule **[518] 519**(B), a summons shall be issued.

NOTE: Original Rule 108 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 108 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 102 and amended September 18, 1973, effective January 1, 1974; amended December 14, 1979, effective April 1, 1980; *Comment*

revised April 24, 1981, effective July 1, 1981; amended October 22, 1981, effective January 1, 1982; renumbered Rule 109 and amended August 9, 1994, effective January 1, 1995; renumbered Rule 509 and amended March 1, 2000, effective April 1, 2001; *Comment* revised August 24, 2004, effective August 1, 2005 **[.] ; amended June 30, 2005, effective August 1, 2006.**

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***COMMITTEE EXPLANATORY REPORTS:***

***Report explaining the August 9, 1994 amendments published at 22 Pa.B. 6 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).***

***Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).***

***Final Report explaining the August 24, 2004 Comment revision adding a new second paragraph elaborating on paragraph (2)(c) published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).***

***Final Report explaining the June 30, 2005 amendments concerning in which cases a summons or a warrant are issued published with the Court's Order at 35 Pa.B. ( , 2005).***

RULE 519. PROCEDURE IN COURT CASES INITIATED BY ARREST WITHOUT WARRANT.

(A) PRELIMINARY ARRAIGNMENT

(1) Except as provided in paragraph (B), when a defendant has been arrested without a warrant in a court case, a complaint shall be filed against the defendant and the defendant shall be afforded a preliminary arraignment by the proper issuing authority without unnecessary delay.

(2) When a preliminary arraignment is conducted by advanced communication technology pursuant to Rule 540(A), the defendant shall be taken to an advanced communication technology site that, in the judgment of the arresting officer, is most convenient to the place of arrest without regard to the boundary of any magisterial district or judicial district.

(B) RELEASE

(1) **[When the arresting officer deems it appropriate, t]** **T**he **arresting** officer **[may]** **shall** promptly release from custody a defendant who has been arrested without a warrant, rather than taking the defendant before the issuing authority, when the following conditions have been met:

(a) the most serious offense charged is a misdemeanor of the second degree **or a misdemeanor of the first degree in cases arising under 75 Pa.C.S. § 3802**;

**[(b) the defendant is a resident of the Commonwealth;]**

**[(c)]** **(b)** the defendant poses no threat of immediate physical harm to any other person or to himself or herself; **and**

**[(d)]** **(c)** the arresting officer has reasonable grounds to believe that the defendant will appear as required**. [; and]**

**[(e) the defendant does not demand to be taken before an issuing authority.]**

(2) When a defendant is released pursuant to paragraph (B)(1), a complaint shall be filed against the defendant within 5 days of the defendant's release. Thereafter, **the issuing authority shall issue** a summons, not a warrant of arrest**, [shall be issued and the case]** **and** shall proceed as provided in Rule 510.

COMMENT: ***See* Rule 1003 (Procedure in Non-Summary Municipal Court Cases) for procedures in Philadelphia Municipal Court.**

Paragraph (A) requires that the defendant receive a prompt preliminary arraignment. *See* Rule 540 (Preliminary Arraignment).

Under paragraph (A), following arrest, the officer may file the complaint with the issuing authority using advanced communication technology.

Paragraph (A) is intended to permit the use of advanced communication technology (including two-way simultaneous audio-visual communication equipment and closed circuit television) in preliminary arraignments. *See* Rule 540 and *Comment* for the procedures governing the use of advanced communication technology in preliminary arraignments.

Paragraph (A)(2) permits a defendant to be transported to an advanced communication technology site that is located outside the judicial district of arrest for preliminary arraignment. The arresting officer should determine which site is the most convenient to the place of arrest without regard to the boundary of any magisterial district or judicial district.

Paragraph (B)(1) **[provides an exception to the requirement that a defendant be afforded a preliminary arraignment after a warrantless arrest. It permits an]** **requires the** arresting officer, in specified circumstances, to release a defendant rather than take the defendant before an issuing authority for preliminary arraignment. **[Prior to 1994, this exception applied to all DUI cases, but in other cases was only available at the election of individual judicial districts. With the 1994 amendments, the exception is now an option available to arresting officers statewide and]** **Prior to the 2005 amendments, the release provision in paragraph (B) was optional. With the 2005 amendments, release is mandatory if the three criteria are met, and this requirement** may not be **[prohibited]** **modified** by local rule.

**"Reasonable grounds" as used in paragraph (B)(1)(c) would include such things as concerns about the validity of the defendant's address, the defendant's prior contacts with the criminal justice system, and the police officer's personal knowledge of the defendant.**

Pursuant to paragraph (B), the police will either promptly arrange for the defendant's release or, if it is necessary to detain the defendant, **[provide a preliminary arraignment] proceed pursuant to paragraph (A). *See* Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail).**

Prompt release allows, of course, for the administration of any sobriety tests pursuant to the Vehicle Code, 75 Pa.C.S. § 1547, and for the completion of any **[post-arrest]** procedures authorized by law.

With respect to "necessary" delay, see, *e.g.*, *Commonwealth v. Williams*, **484 Pa. 590,** 400 A.2d 1258 (**[Pa.]** 1979).

**[Appropriate circumstances for following the procedure under paragraph (B)(1) may vary. Among the factors that may be taken into account are whether the defendant resides in the Commonwealth, and whether he or she can safely be released without danger to self or others.]**

By statute, **a defendant may not be released but must be brought before the issuing authority for a preliminary arraignment when a police officer has arrested the defendant for failure to comply with the registration requirements for sexual offenders, see 18 Pa.C.S. § 4915(E)(2), or** when a police officer has arrested **[a] the** defendant in a domestic violence case, **[the defendant may not be released but must be brought before the issuing authority for preliminary arraignment.] [*See*] see** 18 Pa.C.S. § 2711. *See also* 23 Pa.C.S. § 6113(c) of the Protection from Abuse Act.

With reference to the provisions of paragraph (B)(2) relating to the issuance of a summons, see also Part B(2) of this Chapter, Summons Procedures.

For procedures in summary cases initiated by an arrest without warrant, see Rule 441.

NOTE: Original Rule 118 and 118(a) adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970. New Rule 118 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 130 September 18, 1973, effective January 1, 1974; amended December 14, 1979, effective April 1, 1980; amended April 24, 1981, effective July 1, 1981; amended January 28, 1983, effective July 1, 1983; *Comment* revised July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; renumbered Rule 102 and amended August 9, 1994, effective January 1, 1995; *Comment* revised September 26, 1996, effective immediately; renumbered Rule 518 and amended March 1, 2000, effective April 1, 2001; renumbered Rule 519 and amended May 10, 2002, effective September 1, 2002 **[.] ; amended June 30, 2005, effective August 1, 2006.**

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***COMMITTEE EXPLANATORY REPORTS:***

***Report explaining the August 9, 1994 amendments published at 22 Pa.B. 6 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).***

***Report explaining the September 26, 1996 Comment revision published with the Court's Order at 26 Pa.B. 4894 (October 12, 1996).***

***Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).***

***Final Report explaining the May 10, 2002 renumbering and amendments concerning advanced communication technology published with the Court's Order at 32 Pa. B. 2591 (May 25, 2002).***

***Final Report explaining the June 30, 2005 amendments concerning in which cases a defendant must be promptly released published with the Court's Order at 35 Pa.B. ( , 2005).***

RULE 520. BAIL BEFORE VERDICT.

(A) Bail before verdict shall be set in all cases as permitted by law. Whenever bail is refused, the bail authority shall state in writing or on the record the reasons for that determination.

(B) A defendant may be admitted to bail on any day and at any time.

COMMENT: Article I, § 14 of the Pennsylvania Constitution was amended in 1998 to read: "All prisoners shall be bailable by sufficient sureties, unless for capital offenses or for offenses for which the maximum sentence is life imprisonment or unless no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community when the proof is evident or presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion the public safety may require it."

For the minor judiciary's authority to set bail, see the Judicial Code, 42 Pa.C.S. §§ 1123(a)(5), 1143(a)(1), and 1515(a)(4).

*See* Pa.R.J.C.P. 396, which provides that, at the conclusion of a transfer hearing, the juvenile court judge is to determine bail pursuant to these bail rules for a juvenile whose case is ordered transferred to criminal proceedings.

*See Commonwealth v. Truesdale*, **449 Pa. 325,** 296 A.2d 829 (**[Pa.]** 1972), concerning the bail authority's discretion to refuse bail under paragraph (A).

Under paragraph (A), whenever the bail authority is a judicial officer in a court not of record, that officer must set forth in writing his or her reasons for refusing bail, and the written reasons must be included with the docket transcript.

**Rule 117(C) requires the president judge to ensure coverage is provided to satisfy the requirements of paragraph (B).**

NOTE: Former Rule 4001 adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4002; amended January 28, 1983, effective July 1, 1983; *Comment* revised September 23, 1985, effective January 1, 1986; rescinded September 13, 1995, effective January 1, 1996, and replaced by present Rule 4001. Present Rule 4001 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; *Comment* revised September 3, 1999, effective immediately renumbered Rule 520 and *Comment* revised March 1, 2000, effective April 1, 2001; *Comment* revised April 1, 2005, effective October 1, 2005 **[.] ; *Comment* revised June 30, 2005, effective August 1, 2006.**

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***COMMITTEE EXPLANATORY REPORTS:***

***Final Report explaining the provisions of the new rule published with the Court's Order at 25 Pa.B. 4116 (September 30, 1995).***

***Final Report explaining the September 3, 1999 Comment revision concerning the 1998 constitutional amendment providing for preventive detention published with the Court's Order at 29 Pa.B. 4862 (September 18, 1999).***

***Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B 1478 (March 18, 2000).***

***Final Report explaining the April 1, 2005 Comment revision concerning the Rules of Juvenile Court Procedure published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).***

***Final Report explaining the June 30, 2005 revision of the Comment adding a cross-reference to Rule 117(C) published with the Court's Order at 35 Pa.B. ( , 2005).***

RULE 525. BAIL BOND.

(A) A bail bond is a document **[executed by a defendant, and, when applicable, one or more sureties,]** whereby the defendant agrees that while at liberty after being released on bail, he or she will appear at all subsequent proceedings as required and comply with all the conditions of the bail bond.

**(B) At the time the bail is set, the bail authority shall**

**(1) have the bail bond prepared; and**

**(2) sign the bail bond verifying the conditions the bail authority imposed.**

**(C) If the defendant is unable to post bail at the time bail is set, when the bail authority commits the defendant to jail, he or she shall send the prepared and verified bail bond and the other necessary paperwork with the defendant to the place of incarceration.**

**(D) When the defendant is going to be released, the defendant, and, when applicable, one or more sureties, shall sign the bail bond. The official who releases the defendant also shall sign the bail bond witnessing the defendant's signature.**

**[(B)] (E)** The bail bond shall set forth the type or combination of types of release, the conditions of release ordered by the bail authority, the conditions of the bail bond set forth in Rule 526(A), and the consequences of failing to appear or failing to comply with all the conditions of the bail bond.

**[(C)] (F)** The defendant shall not be released until he or she **[executes] signs** the bail bond.

**[(D)] (G) After the defendant signs the bail bond, [A] a** copy of the bail bond shall be given to the defendant, and the original shall be included in the record.

COMMENT: For the types of release and the conditions of release, see Rule 524.

**Paragraph (G) requires the court official who accepts a deposit of bail and has the defendant sign the bail bond to include the original of the bail bond in the record of the case. *See* Rule 535(A) for the other**

**contents of the record in the context of the bail deposit.**

For some of the consequences when a defendant fails to appear or fails to comply as required, see the Crimes Code, 18 Pa.C.S. § 5124. *See also* Rule 536.

The form of the bail bond was deleted from the bail rules in 1985 with the expectation that the Court Administrator of Pennsylvania will continue to design and publish such forms pursuant to Rule 104.

NOTE: Former Rule 4004 adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4005; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4002. Present Rule 4004 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective date**s** extended to July 1, 1996; renumbered Rule 525 and amended March 1, 2000, effective April 1, 2001**[.] ; amended June 30, 2005, effective August 1, 2006.**

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***COMMITTEE EXPLANATORY REPORTS:***

***Final Report explaining the provisions of the new rule published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).***

***Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).***

***Final Report explaining the June 30, 2005 changes clarifying the bail authority's responsibility concerning the preparation of the bail bond published with the Court's Order at 35 Pa.B. ( , 2005).***

RULE 535. RECEIPT FOR DEPOSIT; RETURN OF DEPOSIT.

**(A) Any deposit of cash in satisfaction of a monetary condition of bail shall be given to the issuing authority, the clerk of courts, or another official designated by the president judge by local rule pursuant to Rule 117(C). The issuing authority, clerk, or other official who accepts the deposit shall give the depositor an itemized receipt, and shall note on the bail bond the amount deposited and the name of the person who made the deposit. The defendant shall sign the bail bond, and be given a copy of the signed bail bond.**

**[(A) The issuing authority or the clerk of courts who accepts a deposit of cash in satisfaction of a monetary condition of bail shall give the depositor an itemized receipt, and shall note on the transcript or in the list of docket entries and the bail bond the amount deposited and the name of the person who made the deposit.]**

> **(1)** When the issuing authority accepts **[such]** a deposit **of bail**, **the issuing authority shall note on the docket transcript the amount deposited and the name of the person who made the deposit. The issuing authority shall have** the deposit, the docket transcript, and a copy of the bail bond **[shall be]** delivered to the clerk of courts.
>
> **(2) When another official is designated by the president judge to accept a bail deposit, that official shall deliver the deposit and the bail bond to either the issuing authority, who shall proceed as provided in paragraph (A)(1), or the clerk of courts, who shall proceed as provided in paragraph (A)(3).**
>
> **(3) When the clerk of courts accepts the deposit, the clerk shall note in the list of docket entries the amount deposited and the name of the person who made the deposit, and shall place the bail bond in the criminal case file.**

(B) When the deposit is the percentage cash bail authorized by Rule 528, the depositor shall be notified that by signing the bail bond, the depositor becomes a surety for the defendant and is liable for the full amount of the monetary condition in the event the defendant fails to appear or comply as required by these rules.

(C) The clerk of courts shall place all cash bail deposits in a bank or other depository approved by the court and shall keep records of all deposits.

(D) Within 20 days of the full and final disposition of the case, the deposit shall be returned to the depositor, less any bail-related fees or commissions authorized by law, and the reasonable costs, if any, of administering the percentage cash bail program.

(E) When a case is transferred pursuant to Rule 130(B) or Rule 555, the full deposit shall be promptly forwarded to the transfer judicial district, together with any bail-related fees, commissions, or costs paid by the depositor.

COMMENT: This rule is not intended to change current practice.

**When the president judge has designated another official to accept the bail deposit as provided in Rule 117, the other official's authority under Rule 117 and this rule is limited to accepting the deposit, having the defendant sign the bail bond, releasing the defendant, and delivering the bail deposit and bail bond to the issuing authority or the clerk of courts.**

A deposit of cash to satisfy a defendant's monetary bail condition that is made by a person acting as a surety for the defendant may not be retained to pay for the defendant's court costs and/or fines. *See Commonwealth v. McDonald*, **476 Pa. 217,** 382 A.2d 124 (**[Pa.]** 1978).

**Given the complexities of posting real estate to satisfy a monetary condition of release, posting of real estate may not be feasible outside the normal business hours.**

Paragraph (B) requires the issuing authority or the clerk of courts who accepts a percentage cash bail deposit to explain to the person who deposits the money the consequences of acting as a surety. There will be cases in which a person merely deposits the money for the defendant to post, and is not acting as the defendant's surety. In this situation, the defendant is the depositor and should receive the receipt pursuant to paragraph (A). *See* Rule 528.

When cash bail that is deposited in a bank pursuant to paragraph (C) is retained by a county in an interest-bearing account, case law provides that the county retains the earned interest. *See Crum v. Burd*, **131 Pa.Cmwlth. 550,** 571 A.2d 1 (**[Pa. Commw.]** 1989), *allocatur* denied **525 Pa. 649,** 581 A.2d 574 (**[Pa.]** 1990).

The full and final disposition of a case includes all avenues of direct appeal in the state courts. Therefore, the return of any deposits would not be required until after either the expiration of the appeal period or, if an appeal is taken, after disposition of the appeal. *See* Rule 534.

Any fees, commissions, or costs assessed pursuant to paragraph (D) must be reasonably related to the county's actual bail administration costs. Each county should establish local procedures to ensure adequate notice and uniform application of such fees, commissions, or costs. *See, e.g., Buckland v. County of Montgomery*, 812 F.2d 146 (3rd Cir. 1987).

When a case is transferred pursuant to Rules 130(B) and 555, paragraph (E) and Rules 130(B) and 555 require that any bail-related fees, commissions, or costs collected pursuant to paragraph (D) be forwarded to the transfer judicial district. Fees, commissions, or costs that have been assessed but not paid at the time of transfer may not be collected in the transferring judicial district.

When bail is terminated upon acceptance of the defendant into an ARD program, such action constitutes a "full and final disposition" for purposes of this rule and Rule 534 (Duration of Obligation). *See* Rule 313.

NOTE: Former Rule 4015, previously Rule 4009, adopted November 22, 1965, effective June 1, 1966; renumbered Rule 4015, former paragraph (b) integrated into paragraph (a) and new paragraph (b) adopted July 23, 1973, effective 60 days hence; rescinded September 13, 1995, effective January 1, 1996, and replaced by present Rule 4015. Present Rule 4015 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 535 and amended March 1, 2000, effective April 1, 2001; amended April 20, 2000, effective July 1, 2000; amended March 3, 2004, effective July 1, 2004 **[.]** **; amended June 30, 2005, effective August 1, 2006.**

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***COMMITTEE EXPLANATORY REPORTS:***

***Final Report explaining the provisions of the new rule published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).***

***Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).***

***Final Report explaining new paragraph (E) concerning the interplay with Rules 130(B) (former Rule 21(B)) and 555 (former Rule 300) published with Court's Order at 30 Pa.B. 2219 (May 6, 2000).***

***Final Report explaining the March 3, 2004 changes to paragraph (A) published with Court's Order at 34 Pa.B. 1561 (March 20, 2004).***

***Final Report explaining the June 30, 2005 changes to the rule correlative to new Rule 117 published with the Court's Order at 35 Pa.B. ( , 2005).***

RULE 1000. SCOPE OF RULES.

(A) The rules in this chapter govern all proceedings in the Philadelphia Municipal Court, including summary cases; Municipal Court cases, as defined in Rule 1001(A); the filing of appeals from Municipal Court cases; the filing of petitions for writs of *certiorari*; and the preliminary proceedings in criminal cases charging felonies.

(B) Any procedure that is governed by a statewide **[r]** **R**ule of **[c]** **C**riminal **[p]** **P**rocedure **[, but which]** **that** is not specifically covered in Chapter 10 **or by a Philadelphia local rule adopted pursuant to Rule 105** **[,]** shall be governed by the relevant statewide rule.

COMMENT: The 2004 amendments make it clear that, except as otherwise provided in the rules, Chapter 10 governs all proceedings in the Philadelphia Municipal Court, including the procedures for instituting criminal cases charging felonies, preliminary arraignments, and preliminary hearings. *See* 42 Pa.C.S. § 1123 (Jurisdiction and Venue).

NOTE: Rule 6000 adopted December 30, 1968, effective January 1, 1969; amended March 28, 1973, effective March 28, 1973; amended July 1, 1980, effective August 1, 1980; renumbered Rule 1000 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005 **[.]** **; amended June 30, 2005, effective August 1, 2006.**

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***COMMITTEE EXPLANATORY REPORTS:***

***Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).***

***Final Report explaining the August 24, 2004 amendments clarifying the scope of Chapter 10 published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).***

***Final Report explaining the June 30, 2005 amendments to paragraph (B) concerning local rules published with the Court's Order at 35 Pa.B. ( , 2005).***