

**SUPREME COURT OF PENNSYLVANIA
CRIMINAL PROCEDURAL RULES COMMITTEE
NOTICE OF PROPOSED RULEMAKING**

Proposed Amendment of Pa.R.Crim.P. 431

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Rule 431 (Procedure When Defendant Arrested with Warrant) for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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Criminal Procedural Rules Committee
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All communications in reference to the proposal should be received by **no later than Friday, February 14, 2020**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

November 22, 2019

BY THE CRIMINAL PROCEDURAL RULES COMMITTEE:

*Brian W. Perry
Chair*

RULE 431. PROCEDURE WHEN DEFENDANT ARRESTED WITH WARRANT.

(A) When a warrant 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 an arrest 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; or

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

(2) When the police officer accepts fine and costs, or collateral under paragraphs (B)(1)(a) or (b), the officer shall issue a receipt to the defendant setting forth the amount of 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.

(3) When the defendant is taken before the issuing authority under paragraph (B)(1)(c),

(a) the defendant shall enter a plea; and

(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:

(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 issuing authority shall

release the defendant on recognizance unless the issuing authority has reasonable grounds to believe that the defendant will not appear, in which case, the issuing authority may fix the amount of collateral to be deposited to ensure the defendant's appearance on the new date and hour fixed for trial; or

- (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 issuing authority shall release the defendant on recognizance unless the issuing authority has reasonable grounds to believe that the defendant will not appear, in which case, the issuing authority may fix the amount of collateral to be deposited to ensure the defendant's appearance on the new date and hour fixed for trial, which shall be after the issuing authority's receipt of the required information.
- (iii) In determining whether it is necessary to set collateral and what amount of collateral should be set, the issuing authority shall consider the factors listed in Rule 523. The amount of collateral shall not exceed the full amount of the fine and costs.
- (iv) If collateral has been set, the issuing authority shall state in writing the reason(s) why any collateral other than release on recognizance has been set and the facts that support a determination that the defendant has the ability to pay monetary collateral.
- (v) If collateral is set and the defendant does not post collateral, the defendant shall not be detained without a trial longer than 72 hours or the close of the next business day if the 72 hours expires on a non-business day.

(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) **[.] ; or**
- (e) if the warrant was issued for a defendant who had failed to appear for execution of sentence as provided in Rules 430(B)(1)(b) and 454(F)(3), promptly take the defendant for a hearing on the bench warrant as provided in paragraph (C)(4).**

(2) When the defendant pays the restitution, fine, 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, fine, 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.

(4) When the defendant has been arrested for failure to appear for execution of sentence as provided in Rules 430(B)(1)(b) and 454(F)(3), the defendant promptly shall be taken before the issuing authority who issued the bench warrant 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, 517, and 518. See also the *Comment* to Rule 706 (Fines or Costs) that recognizes the authority of a common pleas court

judge to issue a bench warrant for the collection of fines and costs and provides for the execution of the bench warrant as provided in either paragraphs (C)(1)(c) or (C)(1)(d) and (C)(2) of this rule.

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*, 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 (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. § 1154 provides that the defendant may be housed for a period not to exceed 48 hours in "the borough and township lockups and county correctional institutions."

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 bench warrant may issue for a defendant's failure to pay restitution, a fine, or costs, see Rule 430(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.

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 appearance or waiver of counsel, see Rules 121 and 122.

For the procedures in summary cases within the jurisdiction of the Philadelphia Municipal Court and the Philadelphia Municipal Court Traffic Division, 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; *Comment* revised March 9, 2006, effective August 1, 2006; *Comment* revised May 7, 2014, effective immediately; amended April 10, 2015, effective July 10, 2015 [.]; **amended _____, 2019, effective _____, 2019.**

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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. 3911 (July 16, 2005).

Final Report explaining the March 9, 2006 Comment revision adding the cross-reference to Rule 706 published with the Court's Order at 36 Pa.B. 1396 (March 25, 2006).

Final Report explaining the May 7, 2014 Comment revision changing the cross-reference to the Philadelphia Traffic Court to the Traffic Division of the Philadelphia Municipal Court published with the Court's Order at 44 Pa.B. 3067 (May 24, 2014).

Final Report explaining the April 10, 2015 amendment concerning the setting of collateral pending summary trial published with the Court's Order at 45 Pa.B. 2040 (April 25, 2015).

Report explaining the proposed amendment concerning bench warrant hearing for defendants who have failed to appear for execution of sentence published for comment at 49 Pa.B. _____ (_____, 2019).

REPORT

Proposed Amendment of Pa.R.Crim.P. 431

EXECUTION OF BENCH WARRANTS ISSUED FOR EXECUTION OF SENTENCE IN SUMMARY CASES

The Committee has recently been presented with the question regarding whether a bench warrant hearing is required when a defendant is arrested pursuant to a bench warrant issued for a defendant who has failed to appear for execution of sentence of incarceration in a summary case. Rule 430(B) provides the authority for the issuance of bench warrants in summary cases. Paragraph (B)(1)(b) permits the issuance of a bench warrant when "...the defendant has failed to appear for the execution of sentence as required in Rule 454(F)(3). Rule 454(F)(3) states that at the time of sentencing, the issuing authority shall:

(3) if a sentence of imprisonment has been imposed, direct the defendant to appear for the execution of sentence on a date certain unless the defendant files a notice of appeal within the 30-day period, and advise that, if the defendant fails to appear on that date, a warrant for the defendant's arrest will be issued...

Rule 431(C) provides procedures for the execution of a summary bench warrant. However, most of these relate to the situation in which the defendant only owes case fines and costs and includes provision for the payment of these assessments to the arresting officer. The rule does not address the situation where the defendant is being arrested for failure to appear for execution of sentence.

The Committee has learned that the practice in some counties has been that a defendant in such circumstances is taken directly to the prison to begin sentencing without first being presented to the issuing authority for a bench warrant hearing. The argument in favor of not having bench warrant hearings in these circumstances is that there is nothing for the issuing authority to determine at such a hearing because the defendant has already been sentenced. In other words, what exactly would take place at such a hearing, other than perhaps allowing the defendant to explain to the issuing

authority why they failed to present themselves for execution of their sentence, which would have no effect on the existing sentence.

The Committee reviewed the history of the development of these summary bench warrant provisions. The *Final Report* when the current version of Rule 431(C) was adopted seems to contemplate only the situation when case assessments are owed. See 35 Pa.B. 3911 (July 16, 2005). It would be unusual for the Committee to intend an exception to the general requirement of having bench warrants hearings and for such an exception to be mentioned specifically in the rules or *Comments*.

The Committee considered the potential problems of permitting the execution of a bench warrant in these circumstances without holding a bench warrant hearing. There is no danger that a defendant who had been tried and sentenced *in absentia* would be incarcerated in these circumstances without a hearing since Rule 455(A) precludes trials *in absentia* in summary cases when the issuing authority “determines that there is a likelihood that the sentence will be imprisonment...” Nonetheless, there may be circumstances when taking an arrestee directly to prison is problematic. It is possible that a case of mistaken identity, identity theft, or administrative or other error could result in the incorrect person being arrested. The prison might not be in the position to correctly identify such an error whereas the issuing authority who had more familiarity with the case and more extensive case records would be in a better position.

The Committee concluded that the better practice would be to follow the normal bench warrant procedures, *i.e.* taking the defendant before the issuing authority for a bench warrant hearing, when arrested for failure to appear for execution of sentence. However, because the concerns, such as mistaken identity, in this situation would best be rectified by a magistrate familiar with the case, the rule would require that the defendant be taken before the issuing authority who originally had issued the bench warrant.

Therefore, a new paragraph (C)(1)(e) would be added to Rule 431 that specifically would require the defendant to be taken for a bench warrant hearing if arrested for failure to appear for execution of sentence. Additionally, a new paragraph (C)(4) would provide that the defendant be taken before the original issuing authority when for bench warrant hearing in these types of arrest situations.