

Proposed Amendments to Pa.R.Crim.P. 431, 452, 456, and 461

INTRODUCTION

The Criminal Procedural Rules Committee is considering recommending that the Supreme Court of Pennsylvania amend Rules 431 (Procedures When Defendant Arrested with Warrant), 452 (Collateral), and 461 (Stays) to provide guidance for the setting of collateral in summary cases and to amend Rule 456 (Default Procedures: Restitution, Fines, and Costs) to set a time limit for when a payment determination hearing must be held. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed amendments to the rules precedes the Report. Additions are shown in bold and are underlined; deletions are in bold and brackets.

We request that interested persons submit suggestions, comments, or objections concerning this proposal in writing to the Committee through counsel,

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no later than Friday, March 7, 2014.

January 21, 2014

BY THE CRIMINAL PROCEDURAL RULES COMMITTEE:

Thomas P. Rogers, Chair

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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 defendant shall be given the opportunity to deposit collateral for appearance on the new date and hour fixed for trial] the issuing authority shall release the defendant on recognizance when the issuing authority has reasonable grounds to believe that the defendant will appear or may fix the amount of collateral, if any, to be deposited to insure a 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 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.

(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, 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*, 507 Pa. 396, 490 A.2d 421 (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.

In determining whether it is necessary to set collateral and what amount of collateral should be set, the issuing authority must consider the factors listed in Rule 523. The amount of collateral may not exceed the full amount of the fine and costs. See also Rule 452.

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 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 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; *Comment* revised March 9, 2006, effective August 1, 2006 [.] ; **amended _____, 2014, effective _____, 2014.**

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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. (, 2006).

Report explaining the proposed amendment concerning the setting of collateral pending summary trial published for comment at 44 Pa.B. (, 2014).

RULE 452. COLLATERAL.

(A) The issuing authority shall release the defendant on recognizance when the issuing authority has reasonable grounds to believe that the defendant will appear.

(B) If the issuing authority does not have reasonable grounds to believe that the defendant will appear, [T]the issuing authority [shall] may fix the amount of collateral, if any, to be deposited to insure a defendant's appearance at the summary trial, which amount shall not exceed the full amount of the fine and costs.

(C) To request a lower amount of collateral or to be released on recognizance, the defendant must appear personally before the issuing authority to enter a plea, as provided in Rules 408, 413, and 423.

[(B)] (D) The collateral deposited shall be in United States currency or a cash equivalent.

[(C)] (E) The collateral deposited may be forfeited after conviction at the summary trial and applied to payment of the fine and costs.

COMMENT: In determining whether it is necessary to set collateral and what amount of collateral should be set, the issuing authority must consider the factors listed in Rule 523.

The term "collateral" is intended to convey the dual purpose of the amount of money that is deposited. First, the amount deposited is used as bail to secure the defendant's appearance at the summary trial. Second, the amount deposited is used as security, and may be forfeited in the event of a conviction to satisfy any fine and costs.

A defendant may not be penalized or denied a hearing because he or she cannot pay the full amount of the fine and costs as collateral.

[Although this rule permits an issuing authority to fix collateral in an amount up to the full amount of fine and costs the issuing authority is not required to fix collateral or any particular amount of collateral, and may set an amount less than the fine and costs. The issuing

authority may also release the defendant on recognizance when the issuing authority has reasonable grounds to believe that the defendant will appear or the defendant is without adequate resources to deposit collateral. To request a lower amount of collateral or to be released on recognizance, the defendant must appear personally before the issuing authority to enter a plea, as provided in Rules 408, 413, and 423.]

For the purpose of paragraph **[(B)] (D)**, any guaranteed arrest bond certificate issued by an automobile club or association pursuant to 40 P.S. § 837 (1959) would constitute a "cash equivalent."

NOTE: Rule 81 adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; *Comment* revised February 1, 1989, effective July 1, 1989; *Comment* revised May 14, 1999, effective July 1, 1999; renumbered Rule 452 and *Comment* revised March 1, 2000, effective April 1, 2001 **[.] ; amended , 2014, effective , 2014.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the May 14, 1999 Comment revisions 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).

Report explaining the amendment concerning the setting of collateral published for comment at 44 Pa.B. (, 2014).

RULE 456. DEFAULT PROCEDURES: RESTITUTION, FINES, AND COSTS.

(A) When a defendant advises the issuing authority that a default on a single remittance or installment payment of restitution, fines, or costs is imminent, the issuing authority may schedule a hearing on the defendant's ability to pay. If a new payment schedule is ordered, the order shall state the date on which each payment is due, and the defendant shall be given a copy of the order.

(B) If a defendant defaults on the payment of fines and costs, or restitution, as ordered, the issuing authority shall notify the defendant in person or by first class mail that, unless within 10 days of the date on the default notice, the defendant pays the amount due as ordered, or appears before the issuing authority to explain why the defendant should not be imprisoned for nonpayment as provided by law, a warrant for the defendant's arrest may be issued.

(C) If the defendant appears pursuant to the 10-day notice in paragraph (B) or following an arrest for failing to respond to the 10-day notice in paragraph (B), the issuing authority **immediately, but in no event later than 72 hours after the defendant appears,** shall conduct a hearing to determine whether the defendant is financially able to pay as ordered. **If the hearing cannot be held immediately, the issuing authority may release the defendant on recognizance or may set bail as provided in Chapter 5 Part C.**

(D) When a defendant appears pursuant to the notice in paragraph (B) or pursuant to an arrest warrant issued for failure to respond to the notice as provided in paragraph (C):

(1) **[U]**upon a determination that the defendant is financially able to pay as ordered, the issuing authority may impose any sanction provided by law.

(2) Upon a determination that the defendant is financially unable to pay as ordered, the issuing authority may order a schedule or reschedule for installment payments, or alter or amend the order as otherwise provided by law.

(3) At the conclusion of the hearing, the issuing authority shall:

(a) if the issuing authority has ordered a schedule of installment payments or a new schedule of installment payments, state the date on which each installment payment is due;

(b) advise the defendant of the right to appeal within 30 days for a hearing *de novo* in the court of common pleas, and that if an appeal is filed:

- (i) the execution of the order will be stayed and the issuing authority may set bail or collateral; and
- (ii) the defendant must appear for the hearing *de novo* in the court of common pleas or the appeal may be dismissed;

(c) 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

(d) issue a written order imposing sentence, signed by the issuing authority. The order shall include the information specified in paragraphs **[(C)(3)(a)] (D)(3)(a)** through **[(C)(3)(c)] (D)(3)(c)**, and a copy of the order shall be given to the defendant.

[(D)] (E) A defendant may appeal an issuing authority's determination pursuant to this rule by filing a notice of appeal within 30 days of the issuing authority's order. The appeal shall proceed as provided in Rules 460, 461, and 462.

COMMENT: The purpose of this rule is to provide the procedures governing defaults in the payment of restitution, fines, and costs.

Although most of this rule concerns the procedures followed by the issuing authority after a default occurs, paragraph (A) makes it clear that a defendant should be encouraged to seek a modification of the payment order when the defendant knows default is likely, but before it happens. For fines and costs, see 42 Pa.C.S. § 9730(b)(3).

An issuing authority may at any time alter or amend an order of restitution. See 18 Pa.C.S. § 1106(c)(2) and (3).

When a defendant defaults on a payment of restitution, fines, or costs, paragraph (B) requires the issuing authority to notify the defendant of the default, and to provide the defendant with an opportunity to pay the amount due or appear within 10 days to explain why the defendant should not be imprisoned for nonpayment. Notice by first class mail is considered complete upon mailing to the defendant's last known address. See Rule 430(B)(4).

Except in cases under the Public School Code of 1949, 24 P.S. § 1-102, *et seq.*, in which the defendant is at least 13 years of age but not yet 17, if the defendant is under 18 years of age, the notice in paragraph (B) must inform 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), and the case will proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act instead of these rules.

If the defendant is charged with a violation of the compulsory attendance requirements of the Public School Act of 1949, 24 P.S. § 1-102, *et seq.*; has attained the age of 13 but is not yet 17; and has failed to pay the fine, the issuing authority must issue the notice required by paragraph (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 may allege the defendant dependent under 42 Pa.C.S. § 6303(a)(1). Pursuant to 24 P.S. § 13-1333(b)(2), the defendant's failure to pay is not a delinquent act and the issuing authority would not certify notice of the failure to pay to the common pleas court.

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

Pursuant to paragraph (C), the issuing authority must conduct a default hearing when a defendant responds to the 10-day notice as provided in paragraph (B), or when the defendant is arrested for failing to respond to the 10-day notice. If the default hearing cannot be held immediately, the issuing authority may set bail as provided in Chapter 5 Part C. **However, the issuing authority should only set monetary bail conditions when he or she has determined that less restrictive conditions of release will not be effective in ensuring the defendant's appearance.**

Under paragraph ~~[(C)(1)]~~ (D)(1), when the issuing authority determines that a defendant is able to pay as ordered, the issuing authority may, as provided by law, impose imprisonment or other sanctions. In addition, delinquent restitution, fines, or court costs may be turned over to a private collection agency. See 42 Pa.C.S. §§ 9730(b)(2) and 9730.1(a).

When a defendant is in default of an installment payment, the issuing authority on his or her own motion or at the request of the defendant or the attorney for the Commonwealth must schedule a rehearing to determine the cause of the default. Before an issuing authority may impose a sentence of imprisonment as provided by law for nonpayment of restitution, fines, or costs, a hearing or rehearing must be held whenever a defendant alleges that his or her ability to pay has been diminished. See 42 Pa.C.S. § 9730(b). See *also* Rules 121 and 122 (dealing with **[the right to] appearance or waiver** of counsel).

When a rehearing is held on a payment schedule for fines or costs, the issuing authority may extend or accelerate the payment schedule, leave it unaltered, or sentence the defendant to a period of community service, as the issuing authority finds to be just and practicable under the circumstances. See 42 Pa.C.S. § 9730(b)(3).

This rule contemplates that when there has been an appeal pursuant to paragraph ~~[(D)]~~ (E), the case would return to the issuing authority who presided at the default hearing for completion of the collection process.

Nothing in this rule is intended to preclude an issuing authority from imposing punishment for indirect criminal contempt when a defendant fails to pay fines and costs in accordance with an installment payment order, 42 Pa.C.S. §§ 4137(a)(4), 4138(a)(3), and 4139(a)(3), or fails to pay restitution, 42 Pa.C.S. § 4137(a)(3). Separate Rules of Criminal Procedure govern contempt adjudications. See Chapter 1 Part D.

NOTE: Adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; *Comment* revised February 1, 1989, effective July 1, 1989; rescinded October 1, 1997, effective October 1, 1998. New Rule 85 adopted October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 456 and amended March 1, 2000, effective April 1, 2001; *Comment* revised August 7, 2003, effective July 1, 2004; amended March 3, 2004, effective July 1, 2004; *Comment* revised April 1, 2005, effective October 1, 2005; *Comment* revised September 21, 2012, effective November 1, 2012; *Comment* revised January 17, 2013, effective May 1, 2013[.]; amended , 2014, effective , 2014.

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COMMITTEE EXPLANATORY REPORTS:

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

Final Report explaining the July 2, 1999 amendments to paragraph (C) 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 the Comment concerning failure to pay and juveniles published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

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

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 September 21, 2012 Comment revision correcting the typographical error in the fourth paragraph published

with the Court's Order at 42 Pa.B. 6247 (October 6, 2012).

Final Report explaining the January 17, 2013 revisions of the Comment concerning the Public School Code of 1949 published with the Court's Order at 43 Pa.B. (, 2013).

Report explaining the proposed amendments clarifying that the results of a payment determination hearing apply when a defendant appears pursuant to an arrest warrant published for comment at 44 Pa.B. (, 2014).

RULE 461. STAYS.

(A) In all summary cases in which a sentence of imprisonment has been imposed, execution of sentence shall be stayed until the time for appeal expires.

(B) In any summary case in which a notice of appeal is filed, the execution of sentence shall be stayed.

(C) A defendant who is represented by counsel, or a defendant who has waived counsel as provided in Rule 121, may waive the stay. The waiver must be in writing, signed by the defendant and defendant's counsel, if any, and made a part of the record.

(D) Whenever the execution of sentence is stayed pursuant to this rule, the issuing authority may set collateral. **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 for that collateral.**

(E) During the 30-day appeal period, failure to pay fines and costs, or restitution, or the fail shall not be grounds for imprisonment, and shall not be grounds to preclude the taking of an appeal.

COMMENT: This rule is derived from former Rule 86(B) and (C).

The stay of the sentence of imprisonment in summary cases recognizes the limited length of the terms of imprisonment. However, there may be situations when the defendant would want the sentence to begin to run immediately following the conviction, and forego the benefits of the stay. To accommodate these extraordinary cases, this rule was amended in 2003 to permit a defendant who is represented by counsel, or who has waived counsel, to waive the stay of the execution of sentence. The waiver of the stay in no way is to be construed as a waiver of the right to appeal.

When a defendant has waived the stay of execution of sentence under this rule, the issuing authority has discretion to determine the date to set for the beginning of the sentence of imprisonment.

Under paragraph (B), the stay applies to all "sentences" imposed after conviction, including sentences of imprisonment, fines and costs, or restitution, and sentences of imprisonment for defaults in payment pursuant to Rule 456.

Paragraph (D) permits an issuing authority to require the defendant to post collateral during the stay pending appeal. However, given the potentially short sentences in summary cases, imprisoning a defendant during the stay period for failure to post collateral is contrary to the intent of the stay provision of this rule and should only be ordered as a last resort in extraordinary cases. In determining whether it is necessary to set collateral and what amount of collateral should be set, the issuing authority should consider the factors listed in Rule 523 as well as the length of sentence in relation to the length of the stay.

NOTE: Formerly Rule 86(B) and (C), adopted October 1, 1997, effective October 1, 1998; rescinded March 1, 2000, effective April 1, 2001, and paragraphs (B) and (C) replaced by Rule 461. New Rule 461 adopted March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003[.] ; **amended , 2014, effective , 2014.**

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COMMITTEE EXPLANATORY REPORTS:

FORMER RULE 86(B) AND (C):

Final Report explaining the October 1, 1997 addition of paragraphs (B) and (C) to Rule 86 published with the Court's Order at 27 Pa.B. 5408 (October 18, 1997).

NEW RULE 461:

Final Report explaining the reorganization and renumbering of the rules and the provisions of Rule 461 published at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the February 28, 2003 amendment concerning the addition of paragraph (C) published with the Court's Order at 33 Pa.B. (, 2003).

Report explaining the proposed amendment concerning the requirement for the issuing authority to state in writing the reasons for ordering collateral other than ROR published for comment at 44 Pa.B. (, 2014).

REPORT

Proposed amendment to Pa.Rs.Crim.P. 431, 452, 456, and 461

INCARCERATION FOR FAILURE TO POST SUMMARY CASE COLLATERAL

Background

The Committee has recently received a number of reports from various sources raising concerns regarding the practice of issuing authorities incarcerating defendants for failure to post collateral while awaiting summary trials or payment determination hearings. The reports suggest that this practice is increasing and has resulted in hardship for defendants in relatively minor cases, such as parking violation cases.

The Committee recognizes that the increased use of incarceration for failure to post collateral results from the frustration of the courts with scofflaw defendants, both for failing to appear for summary trials and for failing to pay appropriately awarded fines and costs. Nonetheless, the Rules of Criminal Procedure have always reflected the view that summary cases, because of their relatively minor nature, are not deserving of extended imprisonment, especially when the incarceration is the result of financial obligations that the defendant may not have the financial ability to pay. The proposed amendments therefore attempt to more equitably balance the interests of the courts in ensuring that a defendant meets his or her obligations with the need to avoid unduly harsh methods of enforcement.

Collateral in Pre-Disposition Summary Cases

While the rules generally permit an issuing authority to set collateral in a summary case to the full amount of fines and costs to ensure a defendant's appearance at summary trial, the preference under the rules always has been that less restrictive alternatives, such as release on recognizance (ROR), are preferable. As the current *Comment* to Rule 452 notes, ROR release is appropriate when the issuing authority has reasonable grounds to believe that the defendant will appear for trial.

The Committee is proposing to move the Rule 452 *Comment* language expressing this policy into the rule itself to give it greater weight. The "default setting"

for a defendant's release, contained in a new paragraph (A), would be that the defendant must be released on recognizance when the issuing authority has reasonable grounds to believe that the defendant will appear. The language of current paragraph (A) would become paragraph (B) and provide that, where there is no reasonable ground to believe the defendant will appear, collateral may be set. The remainder of the substance of the third paragraph of the *Comment*, relating to requests to modify collateral, would be contained in new paragraph (C). Also, language would be added to that effect to Rule 431 (B)(3)(b)(i).

The Committee considered draft language stating that the issuing authority should release the defendant if he or she is without adequate resources to deposit collateral. However, the Committee believed that this restriction should not be absolute and instead are suggesting the addition of a cross-reference to Rule 523 for factors that the issuing authority should consider in making the determination as to whether to set collateral and, if so, what amount the collateral should be. These would include "the defendant's employment status and history, and financial condition," as provided in Rule 523 (A)(2), which should address the defendant's ability to deposit the collateral.

Collateral in Pre-Payment Determination Hearing Cases

Another problem the Committee considered was the lengthy periods of time that it takes in some cases for a payment determination hearing to be held, during which a defendant who fails to post collateral is incarcerated. The current Rule 456 *Comment* requires that a payment determination hearing be held "immediately." When first adopted, the Committee's assumption was that there should not be a significant delay between the defendant's arrest and the default hearing. The Committee did not place a specific time limit on when the hearing must be held because of the concern that the time limit would become the normal period for the holding of such hearings and the Committee did not want to preclude earlier hearings.

Since the reports suggest that there are often lengthy periods of delay in holding the payment determination hearing, the Committee agreed to place a specific outer time limit of 72 hours for when this hearing should be held. A 72-hour the time limit would be consistent with the time limit for a bench warrant hearing under Rule 150. The rule would also state directly that ROR is the preferred form of release when the defendant

does not pose a flight risk. A cross-reference to the Rule 523 factors would also be added here similar to the one proposed for Rule 452.

Additionally, the Committee concluded that current Rule 456 does not make it clear that the same procedures related to collateral that are followed after the issuance of a notice of payment hearing should be followed when a warrant is issued. Therefore, it is proposed that the rule be amended to include a new (D) that would precede the current subparagraphs (1) through (3) that follow current paragraph (C) to indicate that the procedures apply to both "when a defendant appears pursuant to the notice in paragraph (B) or pursuant to an arrest warrant issued for failure to respond to the notice as provided in paragraph (B)."

Incarceration Pending Appeal from Payment Determination Hearing

The Committee also considered the situation when the defendant has been sentenced to incarceration after a payment determination hearing but does not waive the appeal of that order and then is ordered to post bail/collateral during the automatic stay period for the appeal pursuant to Rule 461. In some cases, when the defendant is unable to post this collateral, he or she is incarcerated for the entire period of the stay. This practice seems to be the result of the Court's Magisterial District Judge System (MDJS) not permitting a sentence of incarceration to begin until the stay period ends. As a result, it appears that the defendants in some cases are being incarcerated for periods longer than the period for which they have been sentenced.

The Committee concluded that there is no reason why a defendant should be held for a longer period than the original sentence pending the appeal and that the MDJS should permit the period when the defendant is being held for failing to post collateral to end when the full period of incarceration ends. Even with that correction however, this process renders the right to appeal and its associated stay moot. The defendant may win the appeal, by, for example, being found to have not been able to pay, but has still served the period of incarceration.

Furthermore, when the stay provisions of Rule 461 were adopted, the Committee did not consider that it would be a regular practice to incarcerate a defendant pending such an appeal and the stay provision contemplates that the defendant would remain at liberty pending the appeal. However, the Committee recognized that there may be the

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occasional case in which assurances of the defendant's presence would be necessary and therefore the Committee is not recommending a complete prohibition of setting collateral at this stage. However, to ensure that there is demonstrated rationale for setting collateral in these situations, the Rule 461(D) provision that permits the setting of collateral has been amended to require the issuing authority to state in writing why collateral other than ROR has been set. As with the other proposed amendments, a cross-reference to the factors in Rule 523 for setting bail should be used as a model in determining whether and what amount of collateral should be set. Additionally, the factors to be considered would also include the length of the potential sentence.

Counsel Rules Reference

The Committee also discussed whether the rules should address the issue of the right to counsel for payment determination hearings. The Committee concluded that this question was more amenable to definition by caselaw. However, it was noted that the Rule 456 *Comment* contains this language, "See *also* Rules 121 and 122 (dealing with the right to counsel)." The Committee concluded that this was a misleading statement since neither of those rules deal with the right to counsel but rather provide for the appearance and waiver of counsel. The *Comment* language would therefore be revised to provide a correct description.