

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

Proposed Amendment of Pa.Rs.Crim.P. 117 and 456

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail) and Rule 456 (Default Procedures: Restitution, Fines, and Costs) 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:

*Jeffrey M. Wasileski, Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
601 Commonwealth Avenue, Suite 6200
Harrisburg, PA 17106-2635
fax: (717) 231-9521
e-mail: criminalrules@pacourts.us*

All communications in reference to the proposal should be received by **no later than Friday, August 30, 2019**. 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.

June 18, 2019

BY THE CRIMINAL PROCEDURAL RULES COMMITTEE:

*Brian W. Perry
Chair*

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 bench 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), **and release defendants on recognizance or set collateral following arrests with a warrant issued pursuant to Rule 430(B)(3)(b) or Rule 456(B) as provided in Rule 456(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 of 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(E).

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; *Comment* revised July 31, 2012, effective November 1, 2012 [.] ; amended _____, 2019, effective _____, 2019.

* * * * *

COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the provisions of the new rule published with the Court's Order at 35 Pa.B. 3911 (July 16, 2005).

Final Report explaining the July 31, 2012 revision of the Comment changing the citation to Rule 540(C) to Rule 540(E) published with the Court's Order at 42 Pa.B. 5333 (August 18, 2012).

Report explaining the proposed amendment adding proceedings related to Rule 456 warrant to paragraph (A)(2)(a) published for comment at 49 Pa.B. (_____, 2019).

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 **bench** 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 shall conduct a hearing immediately to determine whether the defendant is financially able to pay as ordered.

(1) If the hearing cannot be held immediately, 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 set collateral as provided in Rule 523.

(2) If collateral is 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.

(3) If collateral is set and the defendant does not post collateral, the defendant shall not be detained without a hearing longer than 72 hours or the close of the next business day if the 72 hours expires on a non-business day.

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

(1) 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 (D)(3)(a) through (D)(3)(c), and a copy of the order shall be given to the defendant.

(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 15 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 Code of 1949, 24 P.S. § 1-102, *et seq.*; has attained the age of 15 but is not yet 17; and has failed to pay the fine, the issuing authority must issue the notice required by paragraph (B) 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 refer the defendant for commencement of dependency proceedings under 42 Pa.C.S. § 6303(a)(1). See 24 P.S. §13-1333.3(f)(2) that provides for the adoption of a local policy for the referral of a case where a child has failed to satisfy a fine or costs to a juvenile probation officer for the commencement of dependency proceedings.

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 collateral as provided in Rule 523. However, the issuing authority should only set monetary collateral when he or she has determined that less restrictive conditions of release will not be effective in ensuring the defendant's appearance.

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 warrants issued pursuant to this rule after hours to be taken to the established night court, on-call, or duty issuing authority for a determination whether the defendant should be released on recognizance or be required to post collateral for release. If released, the defendant will be given a notice to appear in the proper issuing authority's office the next business day. The defendant will also be permitted to pay the full amount of fines and costs.

Under paragraph (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). No defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded at trial. See *Alabama v. Shelton*, 535 U.S. 654 (2002) and *Scott v. Illinois*, 440 U.S. 367 (1979). See also *Commonwealth v. Farmer*, 466 A.2d 677 (Pa. Super. 1983) (Whenever there is a likelihood in a proceeding that imprisonment will be imposed, counsel must be assigned) and (*Commonwealth v. Spontarelli*, 791 A.2d 1254 (Pa. Cmmw. 2002) (defendant is entitled to appointed counsel when tried for violation of municipal ordinance that permits imprisonment upon default of payment of the fine). See also Rules 121 and 122 (dealing with 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 (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 April 10, 2015, effective July 10, 2015; *Comment* revised December 21, 2018, effective April 1, 2019 **[.] amended _____, 2019, effective _____, 2019.**

* * * * *

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. 654 (February 2, 2013).

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

Final Report explaining the December 21, 2018 revision of the Comment concerning commencement of dependency proceedings published with the Court's Order at 49 Pa.B. 190 (January 12, 2019).

Report explaining the proposed amendment concerning execution of warrants after normal business hours published for comment at 49 Pa.B. (_____, 2019).

REPORT

Proposed Amendment of Pa.Rs.Crim.P. 117 and 456

RULE 117 AVAILABILITY AND PAYMENT DETERMINATION HEARINGS

The Committee has recently received inquiries related to the handling of delays in payment determination hearings when the defendant is arrested after normal business hours. In particular, the question was whether a “duty issuing authority,” as provided under Rule 117, may conduct a hearing to determine release upon recognizance or to set collateral for a defendant arrested pursuant to Rule 456 (Default Procedures: Restitution, Fines, and Costs). The question arose because Rule 456 does not contain the statements regarding how after-hours arrests should be handled such as are contained in Rule 431 (Procedures When Defendant Arrested with Warrant).

Rule 117 requires that each president judge must ensure coverage by issuing authorities for various vital magisterial functions. Paragraph (A)(1) mandates continuous coverage, *i.e.*, 24 hours-a-day, for the issuance of search and arrest warrants. Paragraph (A)(2) provides that the president judge may establish a system of coverage to ensure that other functions such as preliminary arraignments and the setting of bail are accomplished without unnecessary delay. Paragraph (B) provides for the types of systems that may be utilized, including on-call, night court, and duty magistrate options.

Rule 431 provides the procedures following the execution of arrest and bench warrants in summary cases that are issued pursuant to Rule 430.¹ Rule 431(C) establishes the procedures that follow the execution of a bench warrant. A defendant’s first option is to pay the amount owed on the summary case to the police officer executing the warrant. Paragraph (C)(3) provides that, if the defendant cannot pay the

¹ Rule 430 (B)(3) provides for the issuance of bench warrants when (a) the defendant pleads guilty by mail and the money forwarded with the plea is less than the amount of the fine and costs in the citation, (b) the defendant has been sentenced to pay case assessments and has defaulted on the payment, or (c) the issuing authority has tried and sentenced the defendant *in absentia* to pay case assessments and the collateral deposited by the defendant is less than the amount of the assessments imposed.

police officer, he or she shall be taken before the “proper issuing authority when available pursuant to Rule 117 for a bench warrant hearing.” The *Comment* to Rule 431 refers to Rule 130 (Venue) for the meaning of “proper issuing authority.” The *Comment* further states:

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.

Rule 456 contains the procedures when a defendant defaults on payment of summary case assessments and includes the option of issuing a warrant when the defendant fails respond to the 10-day notice to appear before the issuing authority to explain the reason for the default. Rule 456(C) provides the procedures for payment determination hearings when the defaulting defendant responds to a 10-notice or has been arrested pursuant to the warrant issued for failing to respond to the 10-day notice. Paragraph (C) states that a hearing to determine whether the defendant is financially able to pay be held “immediately.” Paragraph (C)(1) recognizes that, if a hearing cannot be held immediately, the issuing authority should release the defendant on recognizance or, if believed necessary, may set collateral. Paragraph (C)(3) provides that if the defendant cannot post collateral, the defendant may be held no longer than 72 hours without a payment determination hearing being held. Although Rule 456 does not use the term “proper issuing authority,” the rule and the *Final Report* when these provision were adopted, 35 Pa.B. 3911 (July 16, 2005), clearly contemplates that these actions will be taken by the issuing authority who had issued the 10-day notice and the warrant.

Rule 456 does not specifically provide that a judicial officer other than the one that issued the warrant may hold the recognizance/collateral hearing.² Similarly, Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail) does not include payment determination hearings or recognizance/collateral hearings under Rule 456 as functions mandated for continuous coverage systems. This is complicated by the fact that Rule 456 does not provide for a specific time limit for the holding of a recognizance/collateral determination.

This has resulted in the interpretation in some jurisdictions, which utilize duty magisterial district judge (MDJ) systems, that a duty MDJ cannot make a recognizance/collateral determination under Rule 456 and that the only time limitation in this entire process is the 72-hour limit on incarceration contained in Paragraph (C)(3).

It was suggested that Rule 117 be amended to clarify this point by adding payment determination hearings and collateral/recognizance determinations to the list of functions contained in Rule 117(A)(2)(a) that can be undertaken by a duty MDJ. It also was suggested that the *Comment* to Rule 456 be revised to cross-reference to this proposed language in Rule 117.

The Committee concluded that a duty magistrate should be able to conduct the recognizance/collateral determination so as to not detain a defendant unduly. Therefore, a clarification in this area would be beneficial and has been added to Rule 117(A)(2)(a). However, the Committee believes that the payment determination hearings should not be included since this may result in a defendant having their payment determination hearing held by an MDJ who had not been the sentencing judge who would not have the same familiarity with the case and the defendant's circumstances.

Additionally, the Committee believes that, rather than a simple cross-reference to Rule 117 being added to the Rule 456 *Comment*, additional detail would be helpful. Therefore, language would be added to the *Comment* to Rule 456 to more clearly state

² Rule 150 that provides procedures for bench warrants issued in court cases is also clear that, upon arrest, the defendant must be brought before the judicial officer who issued the warrant or "another judicial officer designated by the president judge... to conduct bench warrant hearings."

that the duty or night court issuing authority could make the recognizance/collateral determination and provide notice that the defendant must appear before the proper issuing authority on the next business day. This language is derived from the *Comment* to Rule 430 noted above. This would be added in conjunction with the proposed change to Rule 117.

Generally, the rules have termed warrants issued to initiate a case as “arrest warrants” and all other warrants as “bench warrants. Rule 456 is somewhat vague regarding the nature of the warrant being issued. The Committee concluded that such warrants fall within the definition of a bench warrant and bench warrant procedures would be applicable in these situations. Therefore, this terminology would be clarified in the text of Rule 456.