NOTICE TO THE BAR

SUPREME COURT MUNICIPAL COURT PRACTICE COMMITTEE REPORT ON PART VII COURT RULES NECESSARY TO IMPLEMENT THE BAIL REFORM AND SPEEDY TRIAL LAW – PUBLICATION FOR COMMENT

This notice publishes for written comment the May 13, 2016 **Report of the Supreme Court Municipal Court Practice Committee on Part VII Court Rules Necessary to Implement the Bail Reform and Speedy Trial Law.**

Please send any comments on this report and its rule recommendations in writing by **Monday, June 13, 2016** to:

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments on Bail Reform/Speedy Trial (Municipal)
Hughes Justice Complex; P.O. Box 037
Trenton, New Jersey 08625-0037

Comments may also be submitted via Internet e-mail to the following address: Comments.Mailbox@judiciary.state.nj.us.

Please note that while the comment period on this report will not close until June 13, 2016, the **rules hearing** scheduled for **June 1, 2016** on the reports of the Civil Practice Committee, Special Civil Part Practice Committee, and Tax Court Committee (see the Notice dated April 21, 2016) will also include this report of the Municipal Court Practice Committee. Thus, anyone wishing to speak on this report at that June 1 hearing should so indicate in writing to the above address.

The Supreme Court will not consider comments submitted anonymously. Thus, those submitting comments by mail should include their name and address (and those submitting comments by e-mail should include their name and e-mail address). Comments submitted are subject to public disclosure.

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: May 13, 2016

REPORT OF THE MUNICIPAL COURT PRACTICE COMMITTEE

ON

PART VII COURT RULES NECESSARY TO IMPLEMENT THE BAIL REFORM AND SPEEDY TRIAL LAW

May 13, 2016

TABLE OF CONTENTS

I. BACKGROUND

On August 11, 2014, Governor Christie signed S-946 into law as L. 2014, c. 31, referred to hereinafter as the *Bail Law*. That law contained provisions regarding pretrial release and pretrial detention. The law also contained a speedy trial provision for defendants who are detained. The *Bail Law* takes effect on January 1, 2017.

In November 2014, Judge Grant established several internal Judiciary working groups to address various areas of implementation of the *Bail Law*. One of those groups was charged with reviewing the rule and forms changes that were necessary in light of the new law.

The Bail Law Reform Rules and Speedy Trial Working Group divided its work into two areas: (1) review of the rules and forms necessary to implement the Supervised Pretrial Release aspects of the *Bail Law*, and (2) review of the rules necessary to implement the Speedy Trial provisions of the *Bail Law*. The focus of the present report is on the creation of the rules necessary to implement the *Bail Law* in the municipal courts. Separate reports are being created by the Criminal Practice Committee regarding the Part III Court Rules necessary to implement the *Bail Law* in the Criminal Division in the Superior Court.

The Working Group presented the suggested amendments to the Part VII Court Rules to the Conference of Presiding Judges – Municipal Courts and the Conference of Municipal Division Managers. The suggestions of the two conferences were either incorporated into the Working Group Report or included in the commentary to that report for further consideration by the Municipal Court Practice Committee ('Practice Committee').

This report represents the recommendations of the Practice Committee for new rules and amendments to existing rules that the Practice Committee believes are necessary to implement the *Bail Law.* Suggested deletions to the existing Court Rule language are indicated by [brackets] and additions by underlining.

II. BAIL REFORM RULES RECOMMENDED

Part VII Rules govern the practice and procedure in the municipal courts in all matters within their statutory jurisdiction, including disorderly and petty disorderly persons offenses; other non-indictable offenses not within the exclusive jurisdiction of the Superior Court; violations of motor vehicle and traffic, fish and game, and boating laws; proceedings to collect penalties where jurisdiction is granted by statute; violations of county and municipal ordinances; and all other proceedings in which jurisdiction is granted by statute. The rules in Part III govern the practice and procedure in indictable actions, and Rule 5:7A governs the practice and procedure in the issuance of temporary restraining orders pursuant to the Prevention of Domestic Violence Act of 1990. The Practice Committee is recommending revision and/or addition of the following rules contained in Part VII of the New Jersey Court Rules.

7:2-1. Contents of Complaint, [Arrest] Complaint-Warrant (CDR-2) and Summons

(a) Complaint: General. The complaint shall be a written statement of the essential facts constituting the offense charged made on a form approved by the Administrative Director of the Courts. Except as otherwise provided by paragraphs (f) (Traffic Offenses), (g) (Special Form of Complaint and Summons), and (h) (Use of Special Form of Complaint and Summons in Penalty Enforcement Proceedings), the complaining witness shall attest to the facts contained in the complaint by signing a certification or signing an oath before a judge or other person so authorized by N.J.S.A. 2B:12-21.

If the complaining witness is a law enforcement officer, the complaint may be signed by an electronic entry secured by a Personal Identification Number (hereinafter referred to as an electronic signature) on the certification, which shall be equivalent to and have the same force and effect as an original signature.

(b) Acceptance of Complaint. The municipal court administrator or deputy court administrator shall accept for filing every complaint made by any person.

(c) Summons: General. The summons shall be on a Complaint-Summons form (CDR-1) or other form prescribed by the Administrative Director of the Courts and shall be signed by the officer issuing it. An electronic signature of any law enforcement officer or any other person authorized by law to issue a Complaint-Summons shall be equivalent to and have the same force and effect as an original signature. The summons shall be directed to the defendant named in the complaint, shall require defendant's appearance at a stated time

and place before the court in which the complaint is made, and shall inform defendant that a[*n arrest*] bench warrant may be issued for a failure to appear.

(d) Complaint-Summons (CDR-1) with Conditions or Restraints. A law enforcement officer may, in accordance with guidelines issued by the Attorney General pursuant to N.J.S.A. 2A:162-16, request a judge to issue a summons with special pretrial conditions or restraints. The scope and procedure for such special pretrial conditions or restraints on summonses for indictable matters are governed by the Part III rules. In non-indictable matters, the judge may only authorize special conditions on a summons restraining the person from having any contact with an alleged victim of domestic violence, or imposing any other condition or restraint authorized by N.J.S.A. 2C:25-26 or any other provision of The Prevention of Domestic Violence Act when one or more of the immediate offenses constitutes a domestic violence offense under N.J.S.A. 2C:25-19; and (2) prohibiting the person from having any contact with an alleged sex offense victim, or imposing any other condition or restraint authorized by N.J.S.A. 2C:14-12 or any other provision of chapter 14 of Title 2C.

The law enforcement officer must demonstrate to the judge that sufficient grounds for imposing a special condition or restraint have been shown, taking into account the protection of the safety of any other person or the community. If the judge does not find justification for such conditions or restraints, the judge may issue a complaint in accord with Rule 7:2-2(b). The judge may, sua sponte, place conditions or restraints on a summons in accordance with this rule.

(e) Issuance of Complaint-Summons (CDR-1) with Conditions or Restraints by Electronic Communication. The law enforcement officer may make a request for a summons with a condition or restraint in person before a judge or may make such a request by electronic communication.

The law enforcement officer's affidavit or sworn oral testimony setting forth the grounds that establish probable cause and for imposing a special condition or restraint may be communicated to the judge by telephone, radio, or other means of electronic communication.

The judge shall administer the oath to the applicant. After taking the oath, the applicant must identify himself or herself and read verbatim the Complaint-Summons (CDR-1) and any supplemental affidavit that establishes probable cause for the issuance of the Complaint-Summons and grounds for imposing a special condition or restraint. If the facts necessary to establish probable cause are contained entirely on the Complaint-Summons (CDR1) and/or supplemental affidavit, the judge need not make a contemporaneous written or electronic recordation of the facts in support of probable cause. If the law enforcement applicant provides additional sworn oral testimony in support of probable cause, the judge shall contemporaneously record such sworn oral testimony by means of a recording device, if available; otherwise, adequate notes summarizing the contents of the law enforcement applicant's testimony shall be made by the judge. This sworn testimony shall be deemed to be an affidavit or a supplemental affidavit for the purposes of imposing special conditions or restraints.

If the judge is satisfied that probable cause exists for issuance of a Complaint-Summons and that sufficient grounds for imposing special condition(s) or restraint(s) have been shown, the judge shall memorialize the date, time, defendant's name, complaint number, the basis for the probable cause determination, and the specific special condition(s) or restraints(s). That memorialization shall be either by means of a recording device or by adequate notes.

If the judge has determined that a Complaint-Summons with conditions or restraints shall issue and has the ability to promptly access the Judiciary's computer system, the judge shall electronically issue the Complaint-Summons with conditions or restraints in the computer system.

If the judge has determined that a Complaint-Summons with conditions or restraints shall issue and does not have the ability to promptly access the Judiciary's computer system, the judge shall direct the applicant, pursuant to procedures prescribed by the Administrative Director of the Courts, to enter into the Judiciary computer system, for inclusion on the electronic complaint, the date and time of the probable cause and summons with conditions or restraints determinations. The judge shall also direct the applicant to complete the phrase: "I, Officer _____, certify that I have received telephonic or other approved electronic authorization from _____ (judge's name), _____ (title), for the issuance of the Complaint-Summons and the conditions or restraints identified herein." The judge shall then direct the law enforcement officer to electronically activate the Complaint-Summons with conditions or restraints in the computer

system. The court shall verify, as soon as practicable, any Complaint-Summons with conditions or restraints authorized under this subsection and activated by law enforcement.

(f) Length of Time for Condition(s) or Restraint(s). The special condition(s) or restraint(s) imposed on the summons for a non-indictable offense shall remain in force and effect until: 1) the court disposes of the complaint, or 2) a judge with authority to rescind or modify the condition(s) or restraint(s) does so, upon notice to the municipal or county prosecutor.

[(d)](g) [Arrest] Complaint-Warrant (CDR-2): General. The arrest warrant for an initial charge shall be made on a Complaint-Warrant (CDR-2) or other form prescribed by the Administrative Director of the Courts and shall be signed by the judge or, when authorized by the judge, by the municipal court administrator or deputy court administrator after a determination of probable cause. An electronic signature by the judge, authorized municipal court administrator, or deputy court administrator shall be equivalent to and have the same force and effect as an original signature. The warrant shall contain the defendant's name or, if unknown, any name or description that identifies the defendant with reasonable certainty. It shall be directed to any officer authorized to execute it. [and] A Complaint-Warrant (CDR-2) shall order that the defendant be arrested [and brought before the court issuing the warrant. The judicial officer issuing a warrant may specify therein the amount and conditions of bail, consistent with R. 7:4, required for defendant's release.] and remanded to the county jail pending a determination of conditions of pretrial release.

[(e)](h) [Arrest] Issuance of a Complaint-Warrant (CDR-2) by Electronic Communication. A judge, authorized municipal court administrator or authorized deputy municipal court administrator (judicial officer) may issue a[n arrest] Complaint-[w]Warrant (CDR-2) upon sworn oral testimony of a law enforcement applicant who is not physically present. Such sworn oral testimony may be communicated by the applicant to the [judge] judicial officer by telephone, radio, or other means of electronic communication.

The [judge] judicial officer shall administer the oath to the applicant. [Subsequent to] After taking the oath, the applicant must identify himself or herself and read verbatim the Complaint-Warrant (CDR-2) and any supplemental affidavit that establishes probable cause for the issuance of a[n arrest warrant] Complaint-Warrant (CDR-2).

If the facts necessary to establish probable cause are contained entirely on the Complaint-Warrant (CDR-2) and/or supplemental affidavit, the [judge] judicial officer need not make a contemporaneous written or electronic recordation of the facts in support of probable cause. If the law enforcement applicant provides additional sworn oral testimony in support of probable cause, the [judge] judicial officer shall contemporaneously record such sworn oral testimony by means of a [tape-]recording device [or stenographic machine,] if [such are] available; otherwise, adequate [longhand] notes summarizing the contents of the law enforcement applicant's testimony shall be made by the [judge] judicial officer. This sworn testimony shall be deemed to be an affidavit or a supplemental affidavit for the purposes of issuance of an arrest warrant.

A[n arrest] Complaint-[w]Warrant (CDR-2) may issue if the [judge] judicial officer is satisfied that probable cause exists [for issuing the warrant.] and that there is also justification for the issuance of a Complaint-Warrant (CDR-2) pursuant to the factors identified in Rule 7:2-2(b). If the judicial officer does not find justification for a warrant under Rule 7:2-2(b), the judicial officer shall issue a summons.

If the judicial officer has determined that a warrant shall issue and has the ability to promptly access the Judiciary's computer system, the judicial officer shall electronically issue the Complaint-Warrant (CDR-2) in the computer system.

If the judicial officer has determined that a warrant shall issue and does not have the ability to promptly access the Judiciary's computer system, [Thereafter, the judge] the judicial officer shall direct the applicant, pursuant to procedures prescribed by the Administrative Director of the Courts, to enter into the Judiciary computer system, for inclusion on the electronic complaint, the date and time of the probable cause and warrant determinations. The judicial officer shall also direct the applicant to complete [followed by] the phrase: "[By] I, Officer _____, [per] certify that I have received telephonic or other approved electronic authorization [by] from _____ (judicial officer's name), _____ (judicial officer's title), for the issuance of [on] the Complaint-Warrant (CDR-2) [form]." [Within 48 hours, the applicant shall deliver to the judge either in person or via facsimile transmission the signed Complaint-Warrant (CDR-2) and supporting affidavit. The judge shall verify the accuracy of these documents by affixing his or her signature to the Complaint-Warrant (CDR-2).] The judicial officer shall then direct the law

enforcement officer to electronically activate the Complaint-Warrant (CDR-2) in the computer system.

Upon approval[, the] of a Complaint-Warrant (CDR-2), the [judge] judicial officer shall memorialize the date, time, defendant's name, complaint number, the basis for the probable cause determination, and any other specific terms of the authorization. That memorialization shall be either by means of a [tape-]recording device[, stenographic machine,] or by adequate [longhand] notes.

The court shall verify, as soon as practicable, any warrant authorized under this subsection and activated by law enforcement. Remand to the county jail and a pretrial release decision are not contingent upon completion of this verification.

Procedures authorizing issuance of restraining orders pursuant to N.J.S.A. 2C:35-5.7 ("Drug Offender Restraining Order Act of 1999") and N.J.S.A. 2C:14-12 ("Nicole's Law") by electronic communications are governed by R. 7:4-1[(c)](d).

[(f)](i) Traffic Offenses

(1) Form of Complaint and Process. The Administrative Director of the Courts shall prescribe the form of Uniform Traffic Ticket to serve as the complaint, summons or other process to be used for all parking and other traffic offenses. On a complaint and summons for a parking or other non-moving traffic offense, the defendant need not be named. It shall be sufficient to set forth the license plate number of the vehicle, and its owner or operator shall be charged with the violation.

(2) Issuance. The complaint may be made and signed by any person, but the summons shall be signed and issued only by a law enforcement officer or other person authorized by law to issue a Complaint-Summons, the municipal court judge, municipal court administrator or deputy court administrator of the court having territorial jurisdiction. An electronic signature of any law enforcement officer or other person authorized by law to issue a Complaint-Summons shall be equivalent to and have the same force and effect as an original signature.

(3) Records and Reports. Each court shall be responsible for all Uniform Traffic Tickets printed and distributed to law enforcement officers or others in its territorial jurisdiction, for the proper disposition of Uniform Traffic Tickets, and for the preparation of such records and reports as the Administrative Director of the Courts prescribes. The provisions of this subparagraph shall apply to the Chief Administrator of the Motor Vehicle Commission, the Superintendent of State Police in the Department of Law and Public Safety, and to the responsible official of any other agency authorized by the Administrative Director of the Courts to print and distribute the Uniform Traffic Ticket to its law enforcement personnel.

[(g)](j) Special Form of Complaint and Summons. A special form of complaint and summons for any action, as prescribed by the Administrative Director of the Courts, shall be used in the manner prescribed in place of any other form of complaint and process.

[(h)](k) Use of Special Form of Complaint and Summons in Penalty Enforcement Proceedings. The Special Form of Complaint and Summons, as prescribed by the Administrative Director of the Courts, shall be used for all penalty enforcement proceedings

in the municipal court, including those that may involve the confiscation and/or forfeiture of chattels. If the Special Form of Complaint and Summons is made by a governmental body or officer, it may be certified or verified on information and belief by any person duly authorized to act on its or the State's behalf.

Note: Source – Paragraph (a): R. (1969) 7:2, 7:3-1, 3:2-1; paragraph (b): R. (1969) 7:2, 7:3-1, 7:6-1, 3:2-2; paragraph (c): R. (1969) 7:2, 7:3-1, 7:6-1, 3:2-3; paragraph (d): R. (1969) 7:6-1; paragraph (e): R. (1969) 4:70-3(a); paragraph (f): new. Adopted October 6, 1997 to be effective February 1, 1998; paragraph (a) caption added, former paragraph (a) amended and redesignated as paragraph (a)(1), former paragraph (b) amended and redesignated as paragraph (a)(2), former paragraph (c) redesignated as paragraph (a)(3), former paragraph (d) redesignated as paragraph (b), former paragraph (e) caption and text amended and redesignated as paragraph (c), and former paragraph (f) redesignated as paragraph (d) July 12, 2002 to be effective September 3, 2002; caption for paragraph (a) deleted, former paragraphs (a)(1) and (a)(2) amended and redesignated as paragraphs (a) and (b), former paragraph (a)(3) redesignated as paragraph (c), new paragraph (d) adopted, former paragraph (b) amended and redesignated as paragraph (e), former paragraph (c) deleted, former paragraph (d) amended and redesignated as paragraph (f), and new paragraph (g) adopted July 28, 2004 to be effective September 1, 2004; paragraph (a) amended, new paragraph (b) adopted, former paragraphs (b), (c), (d), and (e) amended and redesignated as paragraphs (c), (d), (e), and (f), former paragraphs (f) and (g) redesignated as paragraphs (g) and (h) July 16, 2009 to be effective September 1, 2009; paragraph (e) caption and text amended July 9, 2013 to be effective September 1, 2013; paragraph (d) caption and text amended, former paragraph (d) redesignated as paragraph (g) and caption and text amended, paragraph (e) caption and text amended, former paragraph (e) redesignated as paragraph (h), caption and text amended, new paragraph (f) adopted, former paragraph (f) redesignated as paragraph (i), former paragraph (g) redesignated as paragraph (j), former paragraph (h) redesignated as paragraph (k) to be effective .

COMMENTARY

The Practice Committee is recommending amendments to R. 7:2-1 in several categories – procedures for the issuance of warrants and a procedure allowing judges to impose conditions on a summons in certain circumstances. The suggested rule modifications in both of these areas include references to the latest technological processes which allow for a streamlined and automated case processing, necessitated by the expedited timeline for pretrial release set forth in the *Bail Reform Law*.

Paragraph (g) of the Rule is being amended to provide that individuals arrested on a Complaint-Warrant (CDR-2) will be remanded to the county jail. The *Bail Law* in N.J.S.A. 2A:162-15 defines "eligible defendant" for the purposes of N.J.S.A. 2A:162-15 *et seq.* as "a person for whom a complaint-warrant is issued for an initial charge involving an indictable offense or a disorderly persons offense." Although defendants charged with petty disorderly persons offenses and municipal ordinances are not explicitly encompassed by the definition language of N.J.S.A. 2A:162-15, the statute provides that the provisions of the new law should be "liberally construed."

The report provides that all Complaint-Warrants (CDR-2) be part of the bail reform process. This inclusion will bring in a relatively small number of petty disorderly persons offenses (approximately 1800 annually), a high percentage (81%) of which are domestic violence related.

The purpose of the departure from the explicit statutory language to include petty disorderly persons in the bail reform process is twofold. First, it will help eliminate the

operational confusion that would occur by the creation of separate rules and procedures for the handling of Complaint-Warrants (CDR-2); specifically, one set of rules would need to be drafted to handle complaint-warrants for matters involving crimes and disorderly persons offenses, while another would need to be drafted to cover these same warrants when issued for petty disorderly persons offenses. Treating all CDR-2 warrants the same will help to eliminate confusion and mistakes. Second, it will ensure that these few defendants charged with a petty disorderly persons offense are afforded the same protections as other defendants arrested on an initial Complaint-Warrant (CDR-2), by having their release decision predicated on a validated risk instrument. This will particularly benefit the category of defendants with limited means who cannot make bail on even a petty disorderly persons offense and therefore must remain in jail under the current system. These individuals would likely now be released following a review of the risk assessment.

Increased training of court staff and police regarding the warrant determination process and use of a version of the risk assessment tool is anticipated. This will help ensure that when the warrant determination is made, warrants would be issued to those who have demonstrated -- through criminal history, prior failure to appear, and/or other factors – that they pose a risk of failure to appear, risk of harm to self or others, or risk of disrupting the judicial process (as indicated in the *Bail Law*). See, Commentary to Rule 7:2-2, "Issuance of Complaint-Warrant (CDR-2) or Summons."

The clarification of the different processes involving arrest warrants issued for an initial charge on a Complaint-Warrant (CDR-2) as discussed above and bench warrants (such as those issued for failure to appear or failure to pay) has been achieved by inserting

the descriptive "Complaint-Warrant (CDR-2)" in place of "arrest warrant" or "warrant", as needed, when only CDR-2 warrants are being referenced.

The Practice Committee is recommending the expansion of the existing authority of municipal court judges to issue an arrest warrant on sworn oral testimony of a law enforcement applicant who is not physically present (commonly referred to as "telephonic issuance,") as per R. 7:2-1(h), to include authorized municipal court administrators and authorized deputy municipal court administrators.

Currently, certain municipal court administrators and deputies, when authorized by their municipal court judge, are permitted to find probable cause and issue arrest warrants based on an in-person application, R. 7:2-1(d), or, during off-business hours, based upon supporting documentation from a law enforcement officer who is not physically present who has submitted the complaint to the court officer via facsimile (fax) transmission, as per R. 7:2-6, "Fax Transmission of Complaint-Warrants."

The proposed amendment to R. 7:2-1(h) would permit authorized municipal court administrators and authorized municipal court deputies to find probable cause on a complaint and then authorize the issuance of an arrest warrant via electronic communication (at this point, by telephone), based upon sworn oral testimony of a law enforcement applicant who is not physically present. Currently, such authority to conduct this process telephonically resides only with the municipal court judge.

Expanding the authority for such warrant issuance to certain municipal court administrators and deputies will not change specific authorization required from the

municipal judge before such judicial employees are permitted to issue warrants under N.J.S.A. 2B:12-21(a) ("An administrator or deputy administrator of a municipal court, ***authorized by a judge of that court***, may exercise the power of the municipal court to administer oaths for complaints filed with the municipal court and to issue warrants and summonses.") (Emphasis added). See, State v. Ruotolo, 52 N.J. 508, 511-515 (1968) (discussing ability of municipal court clerks and deputy court clerks to make probable cause determinations and issue arrest warrants). Nor will the expansion of the authority to issue warrants telephonically or through other electronic communication increase the number of these authorized court employees who are currently permitted to issue warrants (now via in-person or fax application). Rather, expanding the authority to issue warrants through telephone or other electronic communication will simply streamline the technical process by which warrants may be issued by authorized judicial officers. Moreover, the Judiciary's computer system will include the ability to identify who approves each warrant. If it is found that a court administrator or deputy court administrator's decisions are problematic when viewed in light of the risk-assessment tool or any other analytical factors, then that individual's authority to authorize complaint warrants can be retracted by the municipal court judge.

Under the proposed rule amendment, the law enforcement officer who is not physically present will be permitted to present to the judicial officer using a telephone or other electronic means the information on the complaint warrant (and any supplemental information). Next, the judicial officer will make the determination of probable cause. If probable cause is found, then the judicial officer will next make the determination of

whether an arrest warrant can issue, utilizing the criteria in R. 7:2-2(b), and communicate this decision to the law enforcement officer.

Under the proposed amendment to R. 7:2-1(h), the law enforcement officer will then be permitted to activate the arrest warrant in the Judiciary's computer system. This activation will ensure that – after the judicial probable cause determination and judicial warrant determination – the complaint/arrest warrant process is streamlined, automated, and defendant may be transported without delay to the county jail and a pretrial release decision made within 48 hours, as is required by statute. N.J.S.A. 2A:162-16(b)(1). It is important to note that technical 'activation' of the warrant by law enforcement in the computer system is discrete from 'authorization' of the warrant by the judicial officer. See, State v. Ruotolo, 52 N.J. at 512 ("With regard to the issuance of a warrant, there is no doubt that if a determination of 'probable cause' is to have any meaning, it must be made by a neutral and detached court official who is immune from 'the often competitive enterprise of ferreting out crime.'" (citing, Johnson v. United States, 333 U.S. 10, 68 S. Ct. 367, 92 L. Ed. 436 (1947)).

The proposed procedure also removes the current process set forth in existing R. 7:2-1(e) of a manual validation/signature of a paper complaint by a judge who has issued a warrant via telephone (or other electronic means) within 48 hours. The removal of this paper-based verification is necessary to ensure that after the probable cause determination and warrant authorization by the judicial officer the electronic complaint/arrest warrant process allows defendants to be brought to county jail and then before a central judicial

processing judge for a determination of pretrial release within 48 hours, as required by the *Bail Law.* N.J.S.A. 2A:162-16(b)(1).

The Practice Committee is recommending that the Judiciary include a new procedural requirement that the court verify that the judicial officer actually engaged in the authorization of a warrant which had been issued telephonically.

The Practice Committee is also recommending the removal of R. 7:2-6, "Fax Transmission of Complaint-Warrants." It was determined that if arrest warrants may be issued by judges, authorized municipal court administrators and authorized municipal court deputies in both the electronic complaint system (eCDR) through the computer and telephonically (or via other electronic communication), then there is no need to retain a procedure based upon use of a fax machine.

The Practice Committee is further recommending amended subsections (d) and (e) of R. 7:2-1 along with the addition of new subsection (f) – these modifications deal with the issuance of a summons with conditions or restraints.

One of the major purposes of the *Bail Reform Law* is to release persons who can safely be released as soon as possible after arrest. The Practice Committee discussed the fact that currently, some defendants charged on warrants for offenses involving domestic violence are then often released on their own recognizance with certain conditions, such a prohibition against contact of the alleged victim. However, under the *Bail Reform Law*, defendants charged on disorderly persons offenses involving domestic violence will now need to be transported to the county jail for a risk assessment and subject to pretrial

release consideration. This is due largely to local practices in many counties requiring the issuance of an arrest warrant on most, if not all, domestic violence-related charges. There is presently no provision in the Court Rules for conditions to be placed on a summons. The Practice Committee is therefore recommending the addition of a new subsection (d) to R. 7:2-1, authorizing a judge to impose certain conditions or restraints on defendants who are charged on a complaint-summons involving non-indictable domestic-violence matters. Based on a recommendation from the Criminal Practice Committee, the Committee felt judges should also have the same opportunity to impose conditions/restraints on a summons for defendants charged with non-indictable matters covered in N.J.S.A. 2C:14-12 or any other provision of chapter 14 of Title 2C ("Nicole's Law").

The Practice Committee believes, based on current practice, that in the absence of such judicial authority, police and prosecutors would likely prepare complaint-warrants in those cases to achieve the objective of protecting alleged victims. While the Practice Committee's suggested amendments in this rule are based to a degree on the proposed, parallel Part III rule, R. 3:2-2, the scope of R. 7:2-1(g) is narrower than in Part III. Pursuant to the Part III scope rule (R. 3:1-1), indictable matters handled in municipal court are governed by Part III. Consequently, the conditions on a summons procedures are only delineated in Part VII to the extent they would apply to non-indictables and a clear cross-reference to Part III is inserted here.

Additionally, since these cases are placed on a summons, not a warrant, they do not fall within the scope of monitoring by the new pretrial services program.

The proposal proceeds on the assumption that the officer must provide the judge with the grounds for issuing restraints/conditions on a summons while under oath and

subject to the same recording requirements as if the officer were submitting a complaint-warrant for the court's review and approval. Accordingly, the proposal incorporates relevant procedural requirements that apply to an application for a warrant in accordance with R. 7:2-1(e) and an application for a temporary restraining order in accordance with R. 5:7A.

The rule provides that the determination of probable cause for issuance of conditions on a summons and the determination of what those conditions may be shall only be made by a judge – not by an authorized court administrator or deputy court administrator.

The Practice Committee's proposal provides that the law enforcement officer issuing the summons may contact the court electronically - a feature that is necessary for practical reasons. The procedures for issuance of Complaint-Summons (CDR-1) with conditions or restraints by electronic communication are drawn from the procedures for issuance of a Complaint-Warrant (CDR-2) by electronic communication as set forth in R. 7:2-1(h).

7:2-2. Issuance of [Arrest] Complaint-Warrant (CDR-2) or Summons

(a) Authorization for Process.

(1) Citizen Complaint. A[n] [arrest] Complaint-[w]Warrant (CDR-2) or a summons [on a complaint] charging any offense made by a private citizen may be issued only by a judge or, if authorized by the judge, by a municipal court administrator or deputy court administrator of a court with jurisdiction in the municipality where the offense is alleged to have been committed within the statutory time limitation. The [arrest] complaint-warrant (CDR-2) or summons may be issued only if it appears to the judicial officer from the complaint, affidavit, certification or testimony that there is probable cause to believe that an offense was committed, the defendant committed it, and a[n arrest warrant] Complaint-Warrant (CDR-2) or summons can be issued. The judicial officer's finding of probable cause shall be noted on the face of the summons or warrant and shall be confirmed by the judicial officer's signature issuing the [arrest warrant] Complaint-Warrant (CDR-2) or summons. If, however, the municipal court administrator or deputy court administrator finds that no probable cause exists to issue a[n arrest warrant] Complaint-Warrant (CDR-2) or summons, or that the applicable statutory time limitation to issue the [arrest warrant] Complaint-Warrant (CDR-2) or summons has expired, that finding shall be reviewed by the judge. A judge finding no probable cause to believe that an offense occurred or that the statutory time limitation to issue a[n arrest warrant] Complaint-Warrant (CDR-2) or summons has expired shall dismiss the complaint.

(2) Complaint by Law Enforcement Officer or Other Statutorily Authorized Person. A summons on a complaint made by a law enforcement officer charging any offense may be

issued by a law enforcement officer or by any person authorized to do so by statute without a finding by a judicial officer of probable cause for issuance. A law enforcement officer may personally serve the summons on the defendant without making a custodial arrest.

(3) Complaint by Code Enforcement Officer. A summons on a complaint made by a Code Enforcement Officer charging any offense within the scope of the Code Enforcement Officer's authority and territorial jurisdiction may be issued without a finding by a judicial officer of probable cause for issuance. A Code Enforcement Officer may personally serve the summons on the defendant. Otherwise, service shall be in accordance with these rules. For purposes of this rule, a "Code Enforcement Officer" is a public employee who is responsible for enforcing the provisions of any state, county or municipal law, ordinance or regulation which the public employee is empowered to enforce.

(b) Issuance of a Complaint-Warrant (CDR-2) Warrant or Summons

(1) Issuance of a summons. A summons may be issued on a complaint only if:

(i) a judge, authorized municipal court administrator or authorized deputy municipal court administrator (judicial officer) finds from the complaint or an accompanying affidavit or deposition, that there is probable cause to believe that an offense was committed and that the defendant committed it and notes that finding on the summons; or

(ii) the law enforcement officer or code enforcement officer who made the complaint, issues the summons.

(2) Issuance of a Warrant. A Complaint-Warrant (CDR-2) may be issued only if:

(i) a judicial officer finds from the complaint or an accompanying affidavit or deposition, that there is probable cause to believe that an offense was committed and that the defendant committed it and notes that finding on the Complaint-Warrant (CDR-2); and

(ii) a judicial officer finds that subsection (e), (f), or (g) of this rule allows a Complaint-Warrant (CDR-2) rather than a summons to be issued.

(c) Indictable Offenses. Complaints involving indictable offenses are governed by Part III, which addresses mandatory and presumed warrants for certain indictable offenses in Rule 3:3-1(e), (f).

(d) Offenses Where Issuance of a Summons is Presumed. A summons rather than a Complaint-Warrant (CDR-2) shall be issued when a defendant is charged with an offense other than one set forth in Rule 3:3-1(e), (f), unless issuance of a Complaint-Warrant (CDR-2) is authorized pursuant to subsection (e) of this rule.

(e) Grounds for Overcoming the Presumption of Charging by Complaint-Summons. Regarding a defendant charged on matters in which a summons is presumed, when a law enforcement officer requests the issuance of a Complaint-Warrant (CDR-2) rather than issues a complaint-summons, the judicial officer may issue a Complaint-Warrant (CDR-2) when the judicial officer finds that there is probable cause to believe that the defendant committed the offense, and the judicial officer has reason to believe, based on one or more of the following factors, that a Complaint-Warrant (CDR-2) is needed to reasonably assure a defendant's appearance in court when required, to protect the safety of any other person or

the community, or to assure that the defendant will not obstruct or attempt to obstruct the criminal justice process:

(1) the defendant has a history of failing to respond to a summons;

(2) there is reason to believe that the defendant is dangerous to self if released on a summons;

(3) there is reason to believe that the defendant will pose a danger to the safety of any other person or the community if released on a summons;

(4) there is one or more outstanding warrants for the defendant;

(5) the defendant's identity or address is not known and a warrant is necessary to subject the defendant to the jurisdiction of the court;

(6) there is reason to believe that the defendant will obstruct or attempt to obstruct the criminal justice process if released on a summons;

(7) there is reason to believe that the defendant will not appear in response to a summons.

The judicial officer shall consider the results of any available preliminary public safety assessment using a risk assessment instrument approved by the Administrative Director of the Courts pursuant to N.J.S.A. 2A:162-25, and shall also consider, when such information is available, whether within the preceding ten years the defendant as a juvenile was adjudicated delinquent for a crime involving a firearm, or a crime that if committed by an adult would be subject to the No Early Release Act (N.J.S.A. 2C:43-7.2), or an attempt to commit any of the foregoing offenses. The judicial officer shall also consider any additional relevant

information provided by the law enforcement officer or prosecutor applying for a Complaint-Warrant (CDR-2).

[(b) Determination Whether to Issue a Summons or Warrant. A summons rather than an arrest warrant shall issue if the defendant is a corporation, partnership or unincorporated association. If the defendant is an individual, a summons rather than an arrest warrant shall issue unless the judge or duly authorized municipal court administrator or deputy court administrator finds that:

(1) the defendant has failed to respond to a summons; or

(2) there is reason to believe that the defendant is dangerous to himself or herself, to others, or to property; or

(3) there is one or more outstanding arrest warrants for the defendant; or

(4) the address of the defendant is not known, and an arrest warrant is necessary to subject the defendant to the jurisdiction of the court; or

(5) the defendant cannot be satisfactorily identified; or

(6) there is reason to believe that the defendant will not appear in response to a summons]

(f) Charges Against Corporations, Partnerships, Unincorporated Associations. A summons rather than a Complaint-Warrant (CDR-2) shall issue if the defendant is a corporation, partnership, or unincorporated association.

[(c)](g) Failure to Appear After Summons. If a defendant who has been served with a summons fails to appear on the return date, a[n arrest] bench warrant may issue pursuant to

law and Rule 7:8-9 (Procedures on Failure to Appear). If a corporation, partnership or unincorporated association has been served with a summons and has failed to appear on the return date, the court shall proceed as if the [corporation] entity had appeared and entered a plea of not guilty.

[(d)](h) Additional [Arrest] Complaint-Warrant (CDR-2)s or Summonses. More than one [arrest] Complaint-Warrant (CDR-2) or summons may issue on the same complaint.

[(e)](i) Identification Procedures. If a summons has been issued or a[n arrest] Complaint-Warrant (CDR-2) executed charging either the offense of shoplifting or prostitution or on a complaint charging any non-indictable offense where the identity of the person charged is in question, the defendant shall submit to the identification procedures prescribed by N.J.S.A. 53:1-15. Upon the defendant's refusal to submit to any required identification procedures, the court may issue a[n arrest warrant] Complaint-Warrant (CDR-2).

Note: Source - R. (1969) 7:2, 7:3-1, 3:3-1. Adopted October 6, 1997 to be effective February 1, 1998; paragraphs (b) and (c) amended July 10, 1998 to be effective September 1, 1998; paragraph (a)(1) amended July 5, 2000 to be effective September 5, 2000; paragraph (a)(1) amended, new paragraph (b)(5) added, and former paragraph (b)(5) redesignated as paragraph (b)(6) July 12, 2002 to be effective September 3, 2002; paragraph (a)(1) amended, and paragraph (a)(2) caption and text amended July 28, 2004 to be effective September 1, 2004; paragraph (a)(1) amended and new paragraph (a)(3) adopted July 16, 2009 to be effective September 1, 2009; paragraph (a)(1) amended, new paragraphs (b), (c), (d), (e), (f) added, former paragraph (b) removed, former paragraph (c) amended and redesignated as paragraph (g), former paragraph (d) caption and text amended, redesignated as paragraph (h), former paragraph (e) amended, redesignated as paragraph (i), _____ to be effective _____.

COMMENTARY

The Practice Committee has recommended several changes throughout this rule to clarify when warrants issued by the court are either: 1) a Complaint-Warrant (CDR-2), or 2) a bench warrant. The term bench warrant refers to non-CDR-2 warrants issued by the court for compliance-type conduct such as failure to appear and failure to pay. This distinction is needed to eliminate confusion between warrants eligible and warrants not eligible for the bail reform process.

The rule revisions reflect changes, engendered by the *Bail Law*, to the analysis and the process involved in a court's decision whether to issue a warrant or summons. As provided in the *Bail Law*, judges and authorized judicial officials making the warrant decision now have available – and must use – the results of the statistically verified risk assessment tool provided by the Arnold Foundation. The results of this tool provide information on a defendant's likelihood for appearing in court, causing harm to other people or the community, and/or obstructing the judicial process.[1]

The section on the analytical process of evaluating whether a matter on a presumed summons should be put on a warrant directs the court to consider the results of any risk assessment available at the time the court is making the warrant/summons decision. This

[1] Revisions to this Part VII rule incorporate many of the modifications endorsed by the Criminal Practice Committee to the parallel Part III rule on the warrant/summons decision – R. 3:3-1. However, sections of the Part III rule which pertain only to indictable matters (those crimes which, under Part III, require mandatory issuance of a warrant or the presumed issuance of a warrant) are not included in the Part VII rule. See, R. 3:1-1 (scope). Rule 3:3-1 provides – in subsections (e), (f), and (g) -- a detailed listing of these mandatory/presumed warrant offenses and the analytical process for overcoming the presumption of a warrant for certain offenses. The section on presumed summons offenses is retained in Part VII, since this section refers to all offenses which are not otherwise classified as a mandatory or a presumed warrant. This presumed summons section would include non-indictables and certain indictables.

includes a discussion of the factors considered in the risk assessment.[2] It should be noted that in practice, a risk assessment that is generated at this point will not include factors resulting from a pretrial services interview and evaluation.

In terms of the existing factors listed in the current version of R. 7:2-2, the language conveys to some the impression that if any one of the warrant factors is met (even a single failure to appear for a minor traffic offense) then warrant issuance is required. It is suggested that this interpretation leads to more warrants being issued than may be necessary. Consequently, a sentence was added to emphasize the discretion which should be applied in these warrant determinations. This includes a reference to the language of the *Bail Law* as to the purpose of pretrial release, in order to provide some guiding objectives for the warrant determination process.

Finally, in R. 7:2-1(c), the term "bench" warrant is used for the first time, as a further way to differentiate these warrants from those that fall under the bail reform process.

[2] Rule 7:2-2 (e) which addresses the warrant/summons decision differs from R. 3:3-1 in the area of a court's consideration of a defendant's juvenile records. Rule 3:3-1 provides that the court shall consider, when available, certain prior juvenile records in the making of a warrant summons decision. The reference to juvenile adjudications for delinquency has been included in R. 7:2-2(e), but a juvenile's record of failure to appear (FTA) incidents is not included in this analysis, although this was included in the Part III rule. The Committee was advised that juvenile FTAs would likely not provide a consistently useful basis for assessing the likelihood of defendant's future appearance in a court proceeding. Relevant to this determination is that minors are frequently not in control of their own transportation and therefore should not be deemed fully responsible in all cases for a failure to appear at a court-related proceedings.

7:2-3. [Arrest] Warrants; Execution and Service: Return

(a) By Whom Executed; Territorial Limits. A[n arrest] warrant shall be executed by any officer authorized by law. The [arrest] warrant may be executed at any place within this State. This applies to all warrants issued by the municipal court, including Complaint-Warrants (CDR-2) and bench warrants that may be issued after the initial filing of the complaint. A bench warrant is any warrant, other than a Complaint-Warrant (CDR-2), that is issued by the court that orders a law enforcement officer to take the defendant into custody. [A law enforcement officer arresting a defendant outside the territorial jurisdiction of the court that issued the warrant shall take the defendant, without unnecessary delay, before the nearest committing judge authorized to admit to bail in accordance with R. 7:4-2(a) and any other applicable rule of court.]

(b) How Executed. The [arrest] warrant shall be executed by the arrest of the defendant. The law enforcement officer need not possess the warrant at the time of the arrest, but upon request, the officer shall show the warrant or a copy of an Automated Traffic System/Automated Complaint System (ATS/ACS) electronic record evidencing its issuance to the defendant as soon as possible. If the law enforcement officer does not have the actual warrant to show or does not have access to an ATS/ACS printer to produce a copy of the electronic record at the time of the arrest, the officer shall inform the defendant of the offense charged and that a[n arrest] warrant has been issued. Pursuant to R. 7:2-1(d), defendants arrested on an initial charge on a Complaint-Warrant (CDR-2) shall be remanded to the county jail pending a determination regarding conditions of pretrial release.

(c) Return. The law enforcement officer executing a[n arrest] warrant shall make prompt return of the [arrest] warrant to the court that issued the warrant. [If the arrested defendant is not admitted to bail,] [t]The arresting officer shall promptly notify the court issuing the [arrest] warrant by electronic communication through the appropriate Judiciary computer system of the date and time of the arrest. [and] If the defendant is incarcerated, the law enforcement officer shall promptly notify the court of the place of the defendant's incarceration.

Note: Source -- Paragraph (a): R. (1969) 7:2; 7:3-1, 3:3-3(a), (b), (c), (e); Paragraphs (b)(1), (2), (3): R. (1969) 7:3-1: Paragraph (b)(4): R. (1969) 7:2, 7:3-1, 3:3-3(e). Adopted October 6, 1997 to be effective February 1, 1998; caption amended, caption of former paragraph (a) deleted, caption and text of former paragraph (b) deleted and relocated to new Rule 7:2-4, former paragraphs (a)(1), (a)(2), and (a)(3) redesignated as paragraphs (a), (b), and (c) July 28, 2004 to be effective September 1, 2004; caption amended, paragraphs (a), (b), (c) amended _____ to be effective _____.

COMMENTARY

The Practice Committee is recommending modification to this court rule to provide additional clarification regarding the distinction between a Complaint-Warrant (CDR-2) and warrants issued ***after*** the initial complaint filing (e.g., warrants issued due to a failure to appear or a failure to pay). As noted previously, this distinction is important to provide clarity regarding the handling of warrants that fall within the bail reform process (CDR-2 complaint-warrants), and warrants which do not. For this reason, the word "arrest" was removed from the title and throughout the rules, as appropriate. Under the current rules, the word "arrest warrant" is not specifically defined, but it is closely tied to Complaint-Warrant (CDR-2)s. The revision of the rule also now includes a formal definition of the term "bench warrant." While this is a new term in the Part VII Court Rules, it provides a clear distinction between warrants eligible under the bail reform legislation (always referred to as "Complaint-Warrant (CDR-2)") and all other warrants issued by the municipal court.

The third sentence of subsection (a) was recommended for modification. The language as written mirrors Part III; however, Superior Court judges have statewide jurisdiction, whereas municipal court judges do not. A municipal court's jurisdiction generally extends only as far as the municipal boundaries. R. 7:8-2(a); N.J.S.A. 2B:12-16. Hence this sentence does not reflect proper municipal court practice. Further, the third sentence of R. 7:2-3(a), as it is currently written, would conflict with amended procedure subsection (b), which states that an arrested defendant must be taken to jail. Therefore, the final two sentences have been removed.

In subsection (b), the following sentence was added: "Defendants arrested on an initial Complaint-Warrant (CDR-2) shall be remanded to the county jail pending a determination of conditions of pretrial release." Please note the Commentary following the revisions to R. 7:2-1 regarding defendants eligible for the pretrial risk assessment procedure.

In subsection (c), the first clause of the second sentence was suggested for removal since it does not comport with current practice, in that law enforcement notifies courts (through the warrant execution feature of the ATS/ACS computer system) of the date and time of arrest of ***all*** defendants (not just non-bail defendants). As written, the current rule does not require that law enforcement officers notify the court of the arrest date and time for defendants who are released on bail. The change is meant to correct that oversight, and encompass all scenarios of warrant execution. Additionally, the rule provides that law enforcement will notify the court of the date and time of the defendant's arrest using electronic communication through the Judiciary's computer system. This is to direct that police execute the warrant in the municipal court computer system which will quickly notify the court of the arrest – rather than police contacting the court via email, phone, or other means. These other methods of communication would slow down the process and fail to provide any reliable electronic record of the event.

Additionally, notification to the court of the location where the defendant is incarcerated is currently not an automated process, so direction in this area was included as a separate sentence in that same section. At present, it is not common for a defendant to be housed in a county jail on a warrant issued by a court from another county –

additionally, county jails will often refuse to admit defendants arrested on warrants from other counties. It is possible, once bail reform begins, that this practice may change, in that more out-of-county defendants will be temporarily detained. The new language accounts for that possibility.

R. 7:2-6. "Fax Transmission of Complaint-Warrants." [Deleted]

Note: Adopted July 28, 2004 to be effective September 1, 2004; rule deleted ____ to be effective _____.

COMMENTARY

The Practice Committee recommended the removal of 7:2-6, "Fax Transmission of Complaint Warrants." The Committee believes this rule is no longer necessary since under the amendments recommended to R. 7:2-1, arrest warrants may be issued by judges, authorized municipal court administrators and authorized municipal court deputies in both the electronic complaint system (eCDR) through the computer or other electronic device as well as telephonically (or via other electronic communication). Moreover, given the strict timelines involved in bail reform, the warrant application procedure must be conducted expeditiously and electronically. The fax process in R. 7:2-6 is an outdated, manual procedure.

7:3-1. Procedure After Arrest

(a) First Appearance; Time; Defendants Not in Custody. Following the filing of a complaint and service of process upon the defendant, the defendant shall be brought, without unnecessary delay, before the court for a first appearance.

(b) First Appearance; Time; Defendants Committed to Jail. All [If the] defendants who are [remains] in custody[,] shall [be] have the first appearance conducted within [72] 48 hours of their commitment to jail. For defendants incarcerated on an initial charge on a Complaint-Warrant (CDR-2), the first appearance shall be conducted at a centralized location and by a judge designated by the Assignment Judge, as provided in Rule 3:26. For all other incarcerated defendants who require a first appearance, the first appearance shall be conducted by a judge authorized to set bail or other conditions of release. [after arrest by a judge with authority to set bail for the offenses charged in the complaint. If defendant's bail was not set when the arrest warrant on a complaint was issued, bail or other conditions of release shall be set without unnecessary delay, but in no event later than 12 hours after arrest.]

[(b)] (c) Custodial Arrest Without Warrant.

(1) Preparation of a Complaint and Summons or Warrant. A law enforcement officer making a custodial arrest without a Complaint-[w]Warrant (CDR-2) shall take the defendant to the police station where a complaint shall be immediately prepared. The complaint shall be prepared on a complaint-summons form (CDR-1 or Special Form of Complaint and Summons), unless the law enforcement officer determines that one or more of the factors

in R. 7:2-2(b) applies. Upon such determination, the law enforcement officer [shall] may prepare a [c]Complaint-[w]Warrant (CDR-2) rather than a complaint summons.

(2) Probable Cause; Issuance of Process. [; Bail]. If a [c]Complaint-[w]Warrant (CDR-2) is prepared, the law enforcement officer shall, without unnecessary delay, but in no event later than 12 hours after arrest, present the matter to a judge, or in the absence of a judge, to a municipal court administrator or deputy court administrator who has been granted authority to [set bail for the offense charged.] determine whether a Complaint-Warrant (CDR-2) or summons will issue. The judicial officer shall determine whether there is probable cause to believe that the defendant has committed an offense. If probable cause is found, a summons or Complaint-[w]Warrant (CDR-2) may issue, but if the judicial officer determines that the defendant will appear in response to a summons, a summons shall be issued consistent with the standard prescribed by R. 7:2-2(b). If a Complaint-[w]Warrant (CDR-2) is issued, [bail shall be set without unnecessary delay, but in no event later than 12 hours after arrest] the defendant shall be remanded to the county jail pending a determination of conditions of pretrial release. The finding of probable cause shall be noted on the face of the summons or Complaint-[w]Warrant (CDR-2). If no probable cause is found, no process shall issue and the complaint shall be dismissed by the judge.

(3) Summons. If a complaint-summons form (CDR-1 or Special Form of Complaint and Summons) has been prepared, or if a judicial officer has determined that a summons shall issue, the summons shall be served and the defendant shall be released after completion of post-arrest identification procedures required by law and pursuant to R. 7:2-2(e).

[(c)] (d) Non-Custodial Arrest. A law enforcement officer charging any offense may personally serve a complaint-summons (Special Form of Complaint and Summons) at the scene of the arrest without taking the defendant into custody.

(e) Arrest Following Bench Warrant. If a defendant is arrested on a bench warrant on an initial summons and monetary bail was not set at warrant issuance, bail must be set without unnecessary delay and no later than 12 hours after arrest. If the defendant is unable to post bail, the court shall review that bail promptly. The defendant may file an application with the court seeking a bail reduction; such bail reduction motion shall be heard in an expedited manner.

Note: Source -- R. (1969) 7:2, 7:3-1, 3:4-1. Adopted October 6, 1997 to be effective February 1, 1998; paragraphs (b)(1) and (b)(2) amended July 12, 2002 to be effective September 3, 2002; paragraph (b) caption amended, paragraphs (b)(1) and (b)(2) amended, and new paragraph (c) adopted July 28, 2004 to be effective September 1, 2004; paragraph (a), caption amended, new paragraph (b) added, former paragraph (b) amended, redesignated as paragraph (c), former paragraph (c) redesignated as paragraph (d), new paragraph (e) added, _____ to be effective _____.

COMMENTARY

The Practice Committee recommends dividing the original subsection (a) into two subsections for clarity -- (a) and (b). This will better define the procedures for handling first appearances for the three different types of defendants who require a first appearance.

The first type of defendant is the individual who is not in custody. Section (a) stipulates the timeframe and procedure for providing a first appearance to these defendants. The "without unnecessary delay" language mirrors the current rule language.

The second type of defendant is the individual who is charged on a Complaint-Warrant (CDR-2) and eligible for the bail reform process. This defendant is to receive his/her first appearance at a centralized location before a judge authorized by the Assignment Judge, consistent with the language under R. 3:4-2.

The third type of defendant is the individual who is initially released on a summons but who failed to appear or engaged in other conduct which then resulted in a bench warrant being issued. This defendant is now in jail, but has not yet had his/her first appearance. Consistent with the current Court Rule and practice, the first appearance can be before any judge authorized to set bail.

In terms of time frame for first appearances - as in Part III, it is recommended that a first appearance for a defendant who remains in custody be held within 48 hours of a defendant's commitment to jail, rather than 72 hours as the current rule provides. See, R. 3:4-2. The *Bail Law* requires that a risk assessment be conducted and a judge set

conditions of release for eligible defendants (those charged on a Complaint-Warrant (CDR-2)) within 48 hours. See, N.J.S.A. 2A:162-17.

For eligible defendants, the purpose for this 48 hour recommendation is threefold. First, it will eliminate the need for two court events; i.e., a judge setting conditions of release within 48 hours and then having a first appearance at 72 hours. Second, it will create a single court event at which: the defendant is informed of the charges against him or her, advised of his or her rights, the judge can set conditions of pretrial release, and the prosecutor has an opportunity to move for pretrial detention. Note that the only municipal court defendants who are subject to preventative detention are those who are charged with disorderly persons offenses involving domestic violence. N.J.S.A. 2A:162-18, N.J.S.A. 2A:162-19. Third, the 48 hour limitation will minimize the time defendants spend in jail. See, Commentary to R. 3:4-2.

The current version of this rule also includes a sentence which establishes a timeframe for the setting of bail if bail was not set at issuance of a warrant: "If a defendant's bail was not set when the arrest warrant on a complaint was issued, bail or other conditions of release shall be set without unnecessary delay, but in no event later than 12 hours after arrest." R. 7:3-1(a). As discussed, the Bail Reform Law provides a new procedure for eligible defendants charged on a Complaint-Warrant (CDR-2) – these defendants are remanded to the jail and temporarily detained for a risk assessment. This sentence therefore would only pertain to the third category of defendants discussed above – those who were initially released on a summons but who failed to appear or (for some other reason) then were subject to a bench warrant issued by the court. N.J.S.A. 2A:162-

16(d)(2)(a) provides a procedure for the setting of bail on defendants in this category who are arrested for failure to appear:

> If a defendant who was released from custody after being charged on a complaint-summons pursuant to paragraph (1) of this subsection is subsequently arrested on a warrant for failure to appear in court when required, that defendant shall be eligible for release on personal recognizance or release on bail by sufficient sureties at the discretion of the court. If monetary bail was not set when an arrest warrant for the defendant was issued, the defendant shall have monetary bail set without unnecessary delay, but in no case later than 12 hours after arrest. Pursuant to the Rules of Court, if the defendant is unable to post monetary bail, the defendant shall have that bail reviewed promptly and may file an application with the court seeking a bail reduction, which shall be heard in an expedited manner.

It should be noted that this section of the statute contains within it a slight modification of the section of R. 7:3-1(a) discussed above. The two excerpts are provided below for comparison:

N.J.S.A. 2A:162-16(d)(2)(a): "If monetary bail was not set when an arrest warrant for the defendant was issued, the defendant shall have monetary bail set without unnecessary delay, but in no case later than 12 hours after arrest."

Rule 7:3-1(a): "If the defendant's bail was not set when the arrest warrant on a complaint was issued, bail or other conditions of release shall be set without unnecessary delay, but in no event later than 12 hours after arrest."

It should be noted that from a technologic perspective, the municipal computer system requires that bail (including zero dollar bail) must be set prior to the issuance of the bench warrant. However, the computer system should not drive policy. This rule language codifies the requirement that bail must be set within 12 hours if it was not set at warrant

issuance. Since N.J.S.A. 2A:162-15(d)(2)(a) also delineates additional procedures for individuals who are initially issued a summons then later arrested on a failure to appear, these procedures were included at this point in the rule as well. As noted, these added procedures are:

1. if defendant is unable to post bail, defendant shall have that bail reviewed promptly;

2. defendant may file an application with the court seeking a bail reduction;

3. such bail reduction motion shall be heard in an expedited manner.

While these procedures have been available in the municipal courts in practice, they are not currently delineated in the Part VII Rules. R. 7:8-9 is entitled "Procedures on Failure to Appear." This rule presently includes guidance on the municipal court's response to an individual's failure to appear: the decision on issuance of a warrant, the reporting of an individual's failure to appear to the Motor Vehicle Commission, and the handling of unexecuted warrants, and dismissal of matters. However, the rule does not currently address the timeliness of a bail hearing and other procedures set forth in N.J.S.A. 2A:162-15(d)(2)(a).

7:4-1. Right to [Bail] Pretrial Release

(a) Defendants Charged on Complaint-Warrant (CDR-2). Except as otherwise provided by R. 3:4A (pertaining to preventative detention), defendants charged on an initial Complaint-Warrant (CDR-2) shall be released before conviction on the least restrictive non-monetary conditions that, in the judgment of the court, will reasonably ensure their presence in court when required, the protection of the safety of any other person or the community, and that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process, pursuant to Rule 3:26-2. As indicated in Part III, monetary bail may be set for a defendant arrested on an initial Complaint-Warrant (CDR-2) only when it is determined that no other conditions of release will reasonably assure the eligible defendant's appearance in court when required. For defendants arrested on an initial Complaint-Warrant (CDR-2), the court shall make a pretrial release determination no later than 48 hours after a defendant's commitment to the county jail; the court shall consider the Pretrial Services Program's risk assessment and recommendations on conditions of release before making a release decision.

(b) Defendants Issued a Bench Warrant. Every defendant brought before the court on a bench warrant for failure to appear or other violation shall have a right to bail before conviction on such terms as, in the judgment of court, will insure the defendant's presence when required, having regard for the defendant's background, residence, employment and family status and, particularly, the general policy against unnecessary sureties and detention. In its discretion, the court may order defendant's release on defendant's own recognizance and may impose terms or conditions appropriate to such release.

Defendants issued a bench warrant who were charged on an initial Complaint-Warrant (CDR-2) may also be subject to reconsideration of conditions of release pursuant to Rule 7:4-9.

[(b)]**(c) Domestic Violence; Conditions of Release.** When a defendant is charged with a crime or offense involving domestic violence, the court authorizing the release may, as a condition of release, prohibit the defendant from having any contact with the victim. The court may impose any additional limitations upon contact as otherwise authorized by N.J.S.A. 2C:25-26.

[(c)]**(d) Issuance of Restraining Orders By Electronic Communication.**

(1) Temporary Domestic Violence Restraining Orders. Procedures authorizing the issuance of temporary domestic violence restraining orders by electronic communication are governed by R.5:7A(b).

(2) N.J.S.A. 2C:35-5.7 and N.J.S.A. 2C:14-12 Restraining Orders. A judge may as a condition of release issue a restraining order pursuant to N.J.S.A. 2C:35-5.7 ("Drug Offender Restraining Order Act of 1999") or N.J.S.A. 2C:14-12 ("Nicole's Law") upon sworn oral testimony of a law enforcement officer or prosecuting attorney who is not physically present. Such sworn oral testimony may be communicated to the judge by telephone, radio, or other means of electronic communication. The judge shall contemporaneously record such sworn oral testimony by means of a tape-recording device or stenographic machine if such are available; otherwise the judge shall make adequate longhand notes summarizing what is said. Subsequent to taking the oath, the law enforcement officer or prosecuting attorney must identify himself or herself, specify the purpose of the request,

and disclose the basis of the application. This sworn testimony shall be deemed to be an affidavit for the purposes of issuance of a restraining order. Upon issuance of the restraining order, the judge shall memorialize the specific terms of the order. That memorialization shall be either by means of a tape-recording device, stenographic machine, or by adequate longhand notes. Thereafter, the judge shall direct the law enforcement officer or prosecuting attorney to memorialize the specific terms authorized by the judge on a form, or other appropriate paper, designated as the restraining order. This order shall be deemed a restraining order for the purpose of N.J.S.A. 2C:35-5.7 ("Drug Offender Restraining Order Act of 1999") and N.J.S.A. 2C:14-12 ("Nicole's Law"). The judge shall direct the law enforcement officer or prosecuting attorney to print the judge's name on the restraining order. A copy of the restraining order shall be served on the defendant by any officer authorized by law. Within 48 hours, the law enforcement officer or prosecuting attorney shall deliver to the judge, either in person, by facsimile transmission, or by other means of electronic communication, the signed restraining order along with a certification of service on the defendant. The certification of service shall be in a form approved by the Administrative Director of the Courts and shall include the date and time that service on the defendant was made or attempted to be made. The judge shall verify the accuracy of these documents by affixing his or her signature to the restraining order.

(3) Certification of Offense Location for Drug Offender Restraining Orders. When a restraining order is issued by electronic communication pursuant to N.J.S.A. 2C:35-5.7 ("Drug Offender Restraining Order Act of 1999") where the law enforcement officer or prosecuting attorney is not physically present at the same location as the court, the law enforcement officer or prosecuting attorney must provide an oral statement describing the

location of the offense. Within 48 hours thereafter the law enforcement officer or prosecuting attorney shall deliver to the judge, either in person, by facsimile transmission, or by other means of electronic communication, a certification describing the location of the offense.

Note: Source-R. (1969) 7:5-1, 3:26-1(a). Adopted October 6, 1997 to be effective February 1, 1998.; text designated as paragraph (a), paragraph (a) caption adopted, new paragraphs (b) and (c) adopted July 9, 2013 to be effective September 1, 2013[.], paragraph (a) amended, text designated as paragraph (b), paragraph (b) caption adopted, text amended, former paragraph (b) redesignated as paragraph (c), former paragraph (c) redesignated as paragraph (d), effective _____.

COMMENTARY

Paragraph (a) formerly set forth the proposition that all persons were bailable. This section is recommended for amendment to set forth the proposition that all defendants are entitled to pretrial release except those for whom the court has ordered preventive detention.

This rule was reorganized into two subsections for clarity and to differentiate between the pretrial release options available to a defendant charged on an initial Complaint-Warrant (CDR-2) and defendants subject to a bench warrant. As noted previously, Part III governs procedures on indictables (e.g., first appearances) handled in the municipal court; consequently, a reference to Part III is included for clarity. See, R. 3:1-1.

Under the *Bail Law*, when a defendant is charge on a Complaint-Warrant (CDR-2) and remanded to the county jail, unless a prosecutor seeks preventive detention and the court orders a defendant detained, a defendant is eligible for pretrial release on such terms as, in the judgment of the court, will ensure his or her presence in court when required, the protection of the safety of any other person or the community, that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process, and that the eligible defendant will comply with all conditions of release. Monetary bail may be set for an eligible defendant only when it is determined that no other conditions of release will reasonably assure the eligible defendant's appearance in court when required. Paragraph (a) sets forth these parameters and notes that defendants who are detained pretrial in

accord with R. 3:3-4A will not be able to avail themselves of these pretrial release conditions.

It is recommended that a separate subsection on the right to pretrial release for defendants subject to bench warrants also be added, since these individuals are all governed by the procedures that exist currently (bail or release on own recognizance). See, N.J.S.A. 2A:162-16d(2)(a) ("If a defendant who was released from custody after being charged on a complaint- summons pursuant to paragraph (1) of this subsection is subsequently arrested on a warrant for failure to appear in court when required, that defendant shall be eligible for release on personal recognizance or release on bail by sufficient sureties at the discretion of the court."). See also, recommended amendment and commentary to R. 7:2-3, "[Arrest] Warrants; Execution and Service: Return," which discusses differentiation between Complaint-Warrant (CDR-2) and bench warrants, and recommended amendment and commentary to R. 7:3-1, "Arrest Following Bench Warrant."

Certain defendants issued a bench warrant may also at that time be out on pretrial release, having been originally issued a Complaint-Warrant (CDR-2) and released in accord with R. 3:26-2. In these matters, while such defendants are entitled to monetary bail or R.O.R. for the bench warrant, the fact of their failure to appear or other such violation could be considered by the court to constitute a "material change in circumstances" as per R. 7:4-9(b) or a "violation of conditions of release" as per R. 7:4-9(c). As such, these defendants brought in on a bench warrant may also have the terms of their original pretrial release (e.g., a reporting requirement, a restriction on possessing a firearm) reviewed and modified by the judge under R. 7:4-9.

7:4-2. Authority to Set Bail or Conditions of Pretrial Release

(a) Authority to [Admit to Initial Bail] Set Initial Conditions of Pretrial Release on Complaint-Warrants (CDR-2). Initial conditions of pre[-]trial release on an initial charge on a Complaint-Warrant (CDR-2) may be set by a judge designated by the Assignment Judge, pursuant to R. 3:26 as part of a first appearance at a centralized location, pursuant to R: 3:4-2.

(b) Authority to Set Bail for Bench Warrants. Setting bail [Conditions of pre[-]trial release, including bail,] for bench warrants may be [set] done by a judge sitting regularly in or as acting or temporary judge of the jurisdiction in which the offense was committed, or by a vicinage Presiding Judge of the Municipal Courts, or as authorized by any other rule of court. [A judge who has fixed the amount of bail may designate the taking of the recognizance by the municipal court administrator or any other person authorized by law to take recognizances, other than the law enforcement arresting officer.] In the absence of the judge, and to the extent consistent with N.J.S.A. 2B:12-21[,]and R. 1:41-3(f) [a defendant, arrested and charged with a non-indictable offense that may be tried by the judge, may be admitted to bail by the duly authorized municipal court administrator or deputy court administrator], a duly authorized municipal court administrator or deputy court administrator may set bail on defendants issued a bench warrant. [In the absence of the judge, the municipal court administrator, and deputy court administrator, the defendant may be admitted to bail by any person authorized by law to admit to bail.] The authority of the municipal court administrator, deputy court administrator or other authorized persons shall,

however, be exercised only in accordance with bail schedules promulgated by the Administrative Office of the Courts or the municipal court judge.

(c) Authority to Take a Recognizance. Any judge who has set bail and/or conditions of pretrial release may designate the taking of the recognizance by the municipal court administrator or any other person authorized by law to take recognizances, other than the law enforcement arresting officer.

[(b)] (d) [Bail] Revisions of Bail or Conditions of Pretrial Release. A municipal court judge may modify bail or any other condition of pretrial release on any non-indictable offense at any time during the course of the municipal court proceedings[.], consistent with R. 7:4-9, except as provided by law.

Note: Source-Paragraph (a): R. (1969) 7:5-3; paragraph (b): R. (1969) 7:5-1, 3:26-2(c). Adopted October 6, 1997 to be effective February 1, 1998; paragraphs (a) and (b) amended July 10, 1998, to be effective September 1, 1998; title amended, paragraph (a) caption and text amended and portion redesignated as paragraphs (b) and (c), paragraph (b) redesignated as paragraph (d), caption and text amended _____ effective _____.

COMMENTARY

The Practice Committee determined that all Complaint-Warrants (CDR-2) should be part of the bail reform process (involving transport to the county jail for a risk assessment). This language is clarified in R. 7:4-2(a). It should be noted that according to AOC records, each year there are very few petty disorderly persons and municipal ordinances placed on a Complaint-Warrant (CDR-2). See, Commentary under R. 7:2-1.

R. 7:4-2(b) has been drafted to account for all non-CDR-2 complaint-warrants; most notably failure to appear and failure to pay warrants. As noted above in the revised R. 7:2-3 and the related commentary, these are referred to as bench warrants within the rules. Additionally, a reference has been made to R. 1:41-3(f) which sets forth the requirement that only certified, conditionally accredited, or fully accredited municipal court administrators or deputy municipal court administrators may perform quasi-judicial duties in a court, if so authorized by the municipal court judge. Setting bail is one such quasi-judicial responsibility.

R. 7:4-2(c) provides a judge with the authority to designate an authorized municipal court administrator, deputy court administrator or other person so authorized by law to take recognizances.

R. 7:4-2(d) currently provides municipal court judges with the authority to modify bail or other conditions of release on any matter within their court's jurisdiction. This section cross-references R. 7:4-9. R. 7:4-9 delineates several procedures and limits on modification of conditions of release – including the basis for considering a modification

(material change in circumstance or violation of conditions), and the fact that preventative detention can only be imposed by a Superior Court Judge.

7:4-3. Form and Place of Deposit; Location of Real Estate; Record of Recognizances, Discharge and Forfeiture

(a) [Deposit of Bail]. **Execution of Recognizance.** A defendant admitted to bail and/or released on conditions, shall, together with the sureties, if any, sign and execute a recognizance before the person authorized to take monetary bail or, if the defendant is in custody, the person in charge of the place of confinement. The recognizance shall contain the terms set forth in R. 1:13-3(b) and shall be conditioned upon the defendant's appearance at all stages of the proceedings until the final determination of the matter, unless otherwise ordered by the court. The total recognizance may be satisfied by more than one surety, if necessary. Cash may be accepted, and in proper cases, within the court's discretion, the posting of security may be waived. A corporate surety shall be one approved by the Commissioner of Insurance. A corporate surety shall execute the recognizance under its duly acknowledged corporate seal, and shall attach to its bond written proof of the corporate authority and qualifications of the officers or agents executing the recognizance. Real estate offered as security for bail for non-indictable offenses shall be approved by and deposited with the clerk of the county in which the offense occurred and not with the municipal court administrator.

(b) Limitation on Individual Surety. Unless the court for good cause otherwise permits, no surety, other than an approved corporate surety, shall enter into a recognizance if there remains any previous undischarged recognizance or bail that was undertaken by that surety.

(c) Real Estate in Other Counties. Real estate owned by a surety located in a county other than the one in which the bail is taken may be accepted, in which case the municipal court administrator of the court in which the bail is taken shall certify and transmit a copy of the recognizance to the clerk of the county in which the real estate is situated, and it shall be there recorded in the same manner as if taken in that county.

(d) Record of Recognizance. In municipal court proceedings, the record of the recognizance shall be entered by the municipal court administrator or designee in the manner required by the Administrative Director of the Courts to be maintained for that purpose.

(e) Record of Discharge; Forfeiture. When any recognizance shall be discharged by court order on proof of compliance with the conditions thereof or by reason of the judgment in any matter, the municipal court administrator or deputy court administrator shall enter the word "discharged" and the date of discharge at the end of the record of such recognizance. When any recognizance is forfeited, the municipal court administrator or deputy court administrator shall enter the word "forfeited" and the date of forfeiture at the end of the record of such recognizance and shall give notice of such forfeiture by ordinary mail to the municipal attorney, the defendant and any surety or insurer, bail agent or agency whose names appear in the bail recognizance. Notice to any insurer, bail agent or agency shall be sent to the address recorded in the Bail Registry maintained by the Clerk of the Superior Court pursuant to R. 1:13-3. When real estate of the surety located in a county other than the one in which the bail was taken is affected, the municipal court administrator or deputy court administrator in which such recognizance is given shall immediately send notice of

the discharge or forfeiture and the date thereof to the clerk of the county where such real estate is situated, who shall make the appropriate entry at the end of the record of such recognizance.

(f) Cash Deposit. When a person other than the defendant deposits cash in lieu of bond, the person making the deposit shall file an affidavit or certification explaining the lawful ownership thereof, and on discharge, such cash shall be returned to the owner named in the affidavit or certification, unless otherwise ordered by the court.

(g) Ten Percent Cash Bail. Unless otherwise specified in the order setting the bail, bail may be satisfied by the deposit in court of cash in the amount of ten percent of the amount of bail fixed together with defendant's executed recognizance for the remaining ninety percent. No surety shall be required, unless specifically ordered by the court. If a ten percent bail is made by cash owned by one other than the defendant, the owner shall charge no fee for the cash deposited, other than lawful interest, and shall submit an affidavit or certification with the deposit detailing the rate of interest, confirming that no other fee is being charged, and listing the names of any other persons for whom the owner has deposited bail. A person making the ten percent deposit who is not the owner, shall file an affidavit or certification identifying the lawful owner of the cash, and, on discharge, the cash deposit shall be returned to the owner named in the affidavit or certification, unless otherwise ordered by the court.

Note: Source - R. (1969) 7:5-1, 3:26-4. Adopted October 6, 1997 to be effective February 1, 1998; subsection (e) amended December 8, 1998 to be effective January 15, 1999; caption amended, and paragraphs (e), (f), and (g) amended July 28, 2004 to be effective September 1, 2004; paragraph (a) caption and text amended _____ to be effective _____.

COMMENTARY

The issue of whether a recognizance would be used in instances in which a defendant is released on terms other than monetary bail is still an open question. The proposed changes to R. 7:4-3 reflect the use of the recognizance in all forms of pretrial release; if it is determined that the recognizance form will not be used for bail reform defendants or defendants who have charges placed on a summons and are released on conditions as per R. 7:2-1(d), then these changes would not be needed and R. 7:4-3 would remain in its current form.

7:4-9 Changes in Conditions of Release for Defendants Charged on an Initial Complaint-Warrant (CDR-2)

(a) Monetary Bail Reductions. If a defendant is unable to post monetary bail, the defendant shall have the monetary bail reviewed promptly and may file an application with the court seeking a monetary bail reduction which shall be heard in an expedited manner by a court with jurisdiction over the matter.

(b) Review of Conditions of Release. For defendants charged on an initial Complaint-Warrant (CDR-2) and released pretrial, a judge with jurisdiction over the matter may review the conditions of release on his or her own motion, or upon motion by the prosecutor or the defendant, alleging that there has been a material change in circumstance that necessitates a change in conditions. Upon a finding that there has been a material change in circumstance that necessitates a change in conditions, the judge may set new conditions of release.

(c) Violations of Conditions of Release. A judge may impose new conditions of release, including monetary bail, when a defendant charged and released on an initial Complaint-Warrant (CDR-2) violates a restraining order or condition of release. These conditions should be the least restrictive condition or combination of conditions that the court determines will reasonably assure the eligible defendant's appearance in court when required, protect the safety of any other person or the community, or reasonably assure that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process.

(d) Motions for Pretrial Detention. All prosecutor motions for pretrial detention must be made in Superior Court, as provided in Rule 3:4A.

Note: Adopted _____ to be effective _____.

COMMENTARY

Rule 7:4-9 is a new rule. It was drafted to parallel the Part III rule, with modifications to reflect municipal practice. It provides guidance on the handling of conditions of release.

Regarding the question of which court (Superior or Municipal) should handle changes in conditions for eligible defendants who are part of bail reform, it is recommended that the municipal judge handling the case following the initial release decision should be responsible for modifying the conditions of release (except for a motion for pretrial detention). While the judge appointed by the Assignment Judge in a centralized location would make the initial decision regarding pretrial release of eligible defendants following a risk assessment (see, R. 3:26-2; R. 7:4-2), cases falling within the jurisdiction of the municipal court would revert to the originating municipal court. It is recommended that in terms of procedural clarity/efficiency and jurisdictional integrity, the municipal court handling the matter would be most appropriate to modify the conditions of release, rather than sending the case back to the central location for modification of release terms.

In subsection (b), the term "Judge" (instead of "court") was used in order to emphasize that review of conditions of release is not to be conducted by anyone but a judge. Thus, authorized municipal court administrators and deputies are specifically precluded from modifying conditions of release for defendants charged on a Complaint-Warrant (CDR-2).

Section (c) provides the judge with the authority to modify the conditions of release for defendants who violated a restraining order or their conditions of release. The judge may set new conditions, which are the least restrictive to assure the person's appearance,

that protects the safety of other people and the community, and that reasonably assures the person will not obstruct or attempt to obstruct the criminal justice process. This language mirrors that of the bail reform legislation.

Consistent with the new Part III rule regarding pretrial detention, R. 3:4A, only a Superior Court Judge may order preventive detention. The language in section (d) reinforces this unique authority. As such, all prosecutor motions for pretrial detention for eligible municipal court defendants are to be made in Superior Court. See, N.J.S.A. 2A:162-18; N.J.S.A. 2A:162-19; N.J.S.A. 162-24.

7:8-9. Procedures on Failure to Appear

(a) Warrant or Notice.

(1) Non-Parking Motor Vehicle Cases. If a defendant in any non-parking case before the court fails to appear or answer a complaint, the court may either issue a[n arrest] bench warrant for the defendant's arrest in accordance with R. 7:2-2(c) or issue and mail a failure to appear notice to the defendant on a form approved by the Administrative Director of the Courts. If a failure to appear notice is mailed to the defendant and the defendant fails to comply with its provisions, a[n arrest] bench warrant may be issued in accordance with R. 7:2-2(c).

(2) Parking Cases. In all parking cases, a[n arrest] bench warrant shall only be issued if the defendant has failed to respond to two or more pending parking tickets within the jurisdiction. A bench warrant shall not issue when the pending tickets have been issued on the same day or otherwise within the same 24-hour period.

(b) Driving Privileges; Report to Motor Vehicle Commission.

(1) Non-Parking Motor Vehicle Cases. If the court has not issued a[n arrest] bench warrant upon the failure of the defendant to comply with the court's failure to appear notice, the court shall report the failure to appear or answer to the Chief Administrator of the Motor Vehicle Commission on a form approved by the Administrative Director of the Courts within 30 days of the defendant's failure to appear or answer. The court shall then mark the case as closed on its records, subject to being reopened pursuant to subparagraph (e) of this

rule. If the court elects, however, to issue a[n arrest] bench warrant, it may simultaneously report the failure to appear or answer to the Motor Vehicle Commission on a form approved by the Administrative Director of the Courts. If the court does not simultaneously notify the Motor Vehicle Commission and the warrant has not been executed within 30 days, the court shall report the failure to appear or answer to the Motor Vehicle Commission on a form approved by the Administrative Director of the Courts. Upon the notification to the Motor Vehicle Commission, the court shall then mark the case as closed on its records subject to being reopened pursuant to subparagraph (e) of this rule.

(2) All Other Cases. In all other cases, whether or not a[n arrest] bench warrant is issued, the court may order the suspension of the defendant's driving privileges or of defendant's nonresident reciprocity privileges or prohibit the person from receiving or obtaining driving privileges until the pending matter is adjudicated or otherwise disposed of. The court shall then mark the case as closed on its records, subject to being reopened pursuant to subparagraph (e) of this rule.

(c) Unexecuted [Arrest] Bench Warrant. If a bench warrant is not executed, it shall remain open and active until the court either recalls, withdraws or discharges it. If bail has been posted after the issuance of the [arrest] bench warrant and the defendant fails to appear or answer, the court may declare a forfeiture of the bail, report a motor vehicle bail forfeiture to the Motor Vehicle Commission and mark the case as closed on its records subject to being reopened pursuant to subparagraph (e) of this rule. The court may set aside any bail forfeiture in the interest of justice.

(d) Parking Cases; Unserved Notice. In parking cases, no [arrest] bench warrant may be issued if the initial failure to appear notice is returned to the court by the Postal Service marked to indicate that the defendant cannot be located. The court then may order a suspension of the registration of the motor vehicle or of the defendant's driving privileges or defendant's nonresident reciprocity privileges or prohibit the person from receiving or obtaining driving privileges until the pending matter is adjudicated or otherwise disposed of. The court shall forward the order to suspend to the Motor Vehicle Commission on a form approved by the Administrative Director of the Courts. The court shall then mark the case as closed on its records, subject to being reopened pursuant to subparagraph (e) of this rule.

(e) Reopening. A case marked closed shall be reopened upon the request of the defendant, the prosecuting attorney or on the court's own motion.

(f) Dismissal of Parking Tickets. In any parking case, if the municipal court fails, within three years of the date of the violation, to either issue a bench warrant for the defendant's arrest or to order a suspension of the registration of the vehicle or the defendant's driving privileges or the defendant's non-resident reciprocity privileges or prohibit the person from receiving or obtaining driving privileges, the matter shall be dismissed and shall not be reopened.

Note: Source – Paragraphs (a), (b), (c), (d), (e): R. (1969) 7:6-3; paragraph (f): new. Adopted October 6, 1997 to be effective February 1, 1998; paragraph (a) text deleted, and new paragraphs (a)(1) and (a)(2) adopted July 28, 2004 to be effective September 1, 2004; paragraph (b) caption amended, paragraphs (b)(1), (c), (d) and (f) amended July 16, 2009 to be effective September 1, 2009; paragraph (a) amended _____ to be effective _____

COMMENTARY

To further stress the distinction between warrants eligible under the bail reform process (i.e., Complaint-Warrants (CDR-2)) and other warrants, the term "bench" has been included, as appropriate, whenever a warrant for failure to appear is referenced.

7:9-1. Sentence

(a) Imposition of Sentence; Bail; Conditions of Release. If the defendant has been convicted of or pleaded guilty to a non-indictable offense, sentence shall be imposed immediately, unless the court postpones sentencing in order to obtain a presentence report or for other good cause. Pending sentence, the court may commit the defendant, or establish, continue, or modify monetary bail, or continue or modify conditions of release as appropriate. [or continue or modify the bail.] Before imposing sentence the court shall afford the defendant and defense counsel an opportunity to make a statement on defendant's behalf and to present any information in mitigation of punishment. Where a sentence has been opened and vacated, the defendant shall be resentenced immediately, except where a new trial is granted.

(b) Statement of Reasons – Criminal Code Cases. In disorderly and petty disorderly cases and indictable fourth degree cases within the jurisdiction of the municipal court, at the time sentence is imposed the court shall state its reasons for imposing the sentence, including its findings respecting the criteria prescribed by N.J.S.A. 2C:44-1 to 2C:44-3 for withholding or imposing imprisonment, fines or restitution and pursuant to N.J.S.A. 2C:51-2 for ordering or denying forfeiture of public office, position, or employment. The court shall also state its factual basis for its finding of particular aggravating or mitigating factors affecting sentence.

(c) Statement of Reasons – Non-Criminal Code Cases. In non-criminal code cases involving a consequence of magnitude, at the time the sentence is imposed the court shall

state its reasons for imposing sentence, including the findings for withholding or imposing imprisonment, driver's license suspension, fines, or restitution.

(d) Probation. The court, at the time of sentencing, shall inform a defendant sentenced to probation of the penalties that may be imposed upon revocation of probation for failure to adhere to the conditions of probation.

(e) Probation and Suspended Sentence. After conviction, unless otherwise provided by law, the court may suspend the imposition of a sentence or place the defendant on probation. The order shall require the defendant to comply with standard conditions of probation adopted by the court and filed with the municipal court administrator, as well as such special conditions, including a term of imprisonment pursuant to N.J.S.A. 2C:45-1(c), as the court imposes. As a condition of probation the court may also impose a term of community-related service to be performed by the defendant under such terms and conditions as the court may determine. A copy of the order, together with the standard and special conditions, shall be furnished to the defendant and read and explained to the defendant by the probation officer. The defendant and the probation officer shall sign a joint statement, to be filed with the municipal court administrator, as to the officer's compliance with the reading and explanation requirements of this rule. If the defendant refuses to sign the statement, the defendant shall be resentenced. At any time before termination of the period of suspension or probation, the court may revoke a suspension or probation pursuant to N.J.S.A. 2C:45-3.

Note: Source-Paragraph (a): R. (1969) 7:4-6(a); paragraph (b): R. (1969) 7:4-6(c); paragraph (c): R. (1969) 3:21-4(c); paragraph (d): R. (1969) 7:4-6(e) and R. (1969) 3:21-7. Adopted October 6, 1997 to be effective February 1, 1998; paragraph (b) caption and text amended, new paragraph (c) adopted, former paragraphs

(c) and (d) redesignated as paragraphs (d) and (e) July 21, 2011 to be effective September 1, 2011; paragraph (a) caption and text amended _____ to be effective _____.

COMMENTARY

The Practice Committee is recommending changes to this Rule to allow a judge to modify existing conditions of pretrial release after conviction pending sentence. While R. 7:9-1 references bail pending sentence, it may be construed that if bail survives conviction, bail and/or conditions of release may survive from a determination of guilt until sentencing. This would support the modification of R. 7:9-1 with the added language regarding conditions of release. See, R. 3:21-4(a) as modified.

B. Part VII Limitations on Pretrial Incarceration Rule Recommended

7:8-11. Limitations on Pretrial Incarceration

a) Defendants Subject to Limitations on Pretrial Incarceration. This rule applies to a defendant for whom a Complaint-Warrant (CDR-2) has been issued and who: (1) has been charged with any offense involving domestic violence and is detained pursuant to R. 3:4A, or (2) is detained in jail due to an inability to post monetary bail on the initial offense charged on a Complaint-Warrant (CDR-2). This rule only applies to a defendant who is arrested on or after January 1, 2017, regardless of when the offense giving rise to the arrest was allegedly committed.

b) **Limitation on Pretrial Incarceration.** A defendant as described in subsection (a) above may not be incarcerated for a time period longer than the maximum period of incarceration for which the defendant could be sentenced for the initial offense charged on the Complaint-Warrant (CDR-2).

c) Time Period of Pretrial Incarceration. This time period of incarceration starts on the day the defendant was initially taken into custody.

d) Release. If a defendant is detained pursuant to subsection (a) of this rule and the maximum period of incarceration is reached pursuant to subsection (b) of this rule, the court shall establish conditions of pretrial release pursuant to R. 3:26 and release the defendant. For matters in which the defendant was issued a Complaint-Warrant (CDR-2), was charged with any offense involving domestic violence, and was detained pursuant to

R. 3:4A, a Judge of the Superior Court shall conduct a release hearing and make the release decision. In matters in which the defendant has been issued a Complaint-Warrant (CDR-2) and detained in jail due to an inability to post monetary bail on the initial offense charged, a judge with authority to modify the conditions of release shall make the release decision.

Note: Adopted _____ to be effective _____.

COMMENTARY

Proposed new R. 7:8-11 entitled "Limitations on Pretrial Incarceration" is designed to implement the "speedy trial" time periods set forth in N.J.S.A. 2A:16-22 which govern when a trial must commence for an eligible defendant who is detained. The Practice Committee is recommending including reference to the speedy trial provisions of the Bail Reform Law in Part VII even though the speedy trial provisions of the law apply to a very small subset of municipal court defendants. N.J.S.A. 2A:162-18 and 19 provide that only defendants who are charged on a complaint-warrant for a disorderly persons offense involving domestic violence are eligible for pretrial detention. It is anticipated that only an extremely small number of municipal defendants each year would likely be subject to pretrial detention by meeting these criteria: 1) charged with a disorderly persons offense, 2) which involves domestic violence, and 3) for which a prosecutor has made a pretrial detention motion, and 4) for which a judge has granted such a motion. Individuals who are charged on a Complaint-Warrant (CDR-2) and who are then unable to make bail are presumed to be a small subset as well, since the monetary bail is a condition of pretrial release which, according to the statute, is to be used only after other pretrial release conditions have been considered and found to be inappropriate.

In terms of the time frame from detention to trial, there is a certain lack of statutory clarity about this time frame as applied to defendants who are detained on disorderly persons offenses involving domestic violence. Once a defendant is detained, N.J.S.A. 2A:162-22 links the speedy trial time frames to the return of an indictment and the time to

commence trial after an indictment is returned or unsealed. The right to an indictment does not apply to disorderly persons offenses. N.J.S.A. 2C:1-4b. However, the inclusion of these individuals within the larger scope of the bail reform law provides a basis for the interpretation that the overarching intent of the statute was to include these defendants in speedy trial and that procedures should be developed which are consistent with the statute.

The Practice Committee also concluded that it may be deemed unfair to omit procedures which would then allow defendants charged on disorderly persons offenses and petty disorderly persons offenses to be detained pretrial and to potentially remain incarcerated for longer than the total time they would have served if found guilty.

Consistent with Rule 3:4A, only a Superior Court judge can make a decision regarding pretrial detention. Following that logic, the Practice Committee felt that only a Superior Court judge should make a determination on a defendant who has been released following pretrial detention and drafted subsection (d) accordingly.

Consequently, the Practice Committee is recommending that a defendant may not be detained pretrial longer than the time period for which that defendant may be incarcerated if found guilty of the offense charged. The time frame for calculation of that period starts on the day the defendant was initially taken into custody. The Practice Committee members concluded that any longer period of pretrial detention would be unjust.