



STATE OF DELAWARE
THE JUSTICE OF THE PEACE COURT

5 E. PINE STREET
GEORGETOWN, DELAWARE 19947
TELEPHONE: (302) 856-5871
FAX: (302) 856-5919

ALAN G. DAVIS
CHIEF MAGISTRATE

2 PENNS WAY
SUITE 100 B
NEW CASTLE, DELAWARE 19720
TELEPHONE: (302) 323-4530

POLICY DIRECTIVE 11-242 (4th Supplement)

TO: ALL JUSTICE OF THE PEACE COURT EMPLOYEES

FROM: ALAN G. DAVIS *AGD*
CHIEF MAGISTRATE

DATE: JULY 22, 2021

**RE: BAIL REFORM: SENATE BILL NO. 7; MODIFIED DELPAT AND
WORKSHEETS FOR THE DECISION-MAKING PROCESS**

SCOPE

Policy Directive 11-242 (4th Supplement) discusses the most recent legislative changes to Title 11, Chapter 21, and their effects on the bail-setting process. It also introduces a modified DELPAT and Bail & Disposition Worksheet and a significantly reworked Judicial Responses to DELPAT Initial Recommended Response worksheet, now titled the Judicial Action on DELPAT Recommendation worksheet. The Judicial Action on DELPAT Recommendation worksheet gives both the defense and the prosecution more information on judges' reasoning and decisions and provides judges with reminders of statutory provisions pertaining to bail. This supplement includes instructions on how the updated Judicial Action on DELPAT Recommendation and Bail & Disposition worksheets shall be used by judges.

JUSTICE OF THE PEACE COURT POLICY

It continues to be the policy of the Justice of the Peace Court that judges shall apply the Supreme Court Rules when making pretrial release decisions in response to the numerical scores assigned by the DELPAT for all initial cases that include any of the following charges: any Title

11 offense; any Title 16 offense, except for civil offenses; and any 21 *Del. C.* § 4177 offense.
This policy is for use with adult defendants only.

The following paragraphs state additional policies of the Justice of the Peace Court ensuing from the legislative changes and the Court's institution of the Judicial Action on DELPAT Recommendation and modified Bail & Disposition (B & D) worksheets:

- 1) **For every case, with the exceptions of when judges order conditions of release as indicated by the DELPAT Matrix and when judges are required to write an Order to Override**, judges shall document their reasoning for the level, or type, of bail by checking off Mitigating and/or Aggravating Factors determined to be relevant to the bail decision on the Judicial Action on DELPAT Recommendation worksheet and shall document their reasoning for the amount of any monetary bail on the B & D worksheet;
- 2) **If ordering conditions of release as indicated by the DELPAT Matrix**, judges shall document their reasoning for the amount of any unsecured monetary bail on the B & D worksheet;
- 3) **If ordering more intensive conditions of release than the initial recommended response indicated by the Matrix with an Order to Override**, judges shall document their reasoning for the level, or type of bail, and their reasoning for the amount of any monetary bail in the **Order to Override**;
- 4) **If ordering a conditions of release bond guaranteed by Cash Only** financial terms (whether the judge has written an Order to Override or checked off Aggravating Factors,) judges shall document their reasoning as to why secured bail insufficiently addresses the defendant's risk factors on the Judicial Action on DELPAT Recommendation worksheet.

EFFECTIVE DATE

This policy shall take effect on July 28, 2021.

POLICIES AFFECTED

PD 11-242 (3rd Supplement) "Bail Reform: Implementation of House Bill 204, with DELPAT and Decision-Making Process." Some of the instructional material contained in the 3rd Supplement is modified or updated in this 4th Supplement.

DISCUSSION

➤ SENATE BILL NO. 7

Senate Substitution No. 1 for Senate Bill No. 7 (SB 7,) amending 11 *Del. C.* § 2107, passed the Delaware legislature on June 24, 2021, and was signed into law by Governor Carney on June 30, 2021. It becomes effective on July 30, 2021.

Chapter 21 of Title 11 of the Delaware Code is considered to be the “bail chapter.” The four (4) pertinent subsections of § 2107 “Determining the amount of bail,” that are amendments or new subsections are:

- (1) **§ 2107(c)** “Notwithstanding any provision of this title to the contrary, for a defendant charged with committing a violent felony involving a firearm or with committing a violent felony while on probation or pretrial release, the presumption is that a conditions of release bond guaranteed by financial terms secured by cash only will be set.”

This section has been deleted and replaced with “Notwithstanding any provision of this title to the contrary, for a defendant charged with committing: [any charge and circumstance listed in the Modified Interim Supreme Court Rule Schedule 5.2B Signal Offenses¹], the presumption is that the court will set a conditions of release bond guaranteed by financial terms in an amount within or above the guidelines published by the Delaware Sentencing Accountability Commission (SENTAC)² for that offense and **secured by cash only.**”

The legislature adopted the list presented in a draft Modified Interim Supreme Court Rule Schedule 5.2B (Signal Offenses) to create the list in SB 7. The following is a user-friendly version of the list of charges and circumstances enumerated in 11 *Del. C.* § 2107(c) for which a cash bail presumption is codified:

- (1) Any Title 11 Class A felony;
- (2) Any of the following other Title 11 felonies:
 - § 606: Abuse of a Pregnant Female in the First Degree;
 - § 607: Strangulation;
 - § 612: Assault in the Second Degree;
 - § 613: Assault in the First Degree;
 - § 632: Manslaughter;
 - § 633: Murder of a Child by Abuse or Neglect in the Second Degree;

¹ The Modified Interim Supreme Court Rule has yet to be approved by the Chief Justice. Information on the Modified Interim Supreme Court Rule will be forthcoming in PD 11-242 (5th Supplement).

² SENTAC (the Delaware Sentencing Accountability Commission) adopted the Justice of the Peace Court Recommended Monetary Ranges for the amount of bail (updated on March 1, 2013.)

§ 770(a)(1) and (a)(3): Rape in the Fourth Degree;
 § 771: Rape in the Third Degree;
 § 772: Rape in the Second Degree;
 § 776: Continuous Sexual Abuse of a Child;
 § 777A: Sex Offender Unlawful Sexual Conduct Against a Child;
 § 778: Sexual Abuse of a Child by a Person in a Position of Trust, Authority, or Supervision in the First Degree;
 § 783A: Kidnapping in the First Degree;
 § 787(b)(1) – (b)(3): Trafficking an Individual, Forced Labor, and Sexual Servitude
 § 803: Arson in the First Degree;
 § 826: Burglary in the First Degree;
 § 832: Robbery in the First Degree;
 § 1103B: Child Abuse in the First Degree;
 § 1108: Sexual Exploitation of a Child;
 § 1109: Unlawfully Dealing in Child Pornography;
 § 1112A(h): Sexual Solicitation of a Child;
 § 1112B(g): Promoting Sexual Solicitation of a Child;
 § 1253: Escape After Conviction;
 § 1312: Stalking;
 § 1447: Possession of a Deadly Weapon During Commission of a Felony;
 § 1447A: Possession of a Firearm During Commission of a Felony;
 § 1448(a)(1), (a)(4), (a)(6), and (a)(7): Possession and Purchase of Deadly Weapon (Firearm) by Persons Prohibited;
 § 1503: Racketeering;
 § 2109(c)(1): Felony Noncompliance with Bond when Defendant has been Committed in lieu of Bail Involving a (Violent) Felony Offense as defined by § 4201(c) of this title;
 § 2113(c)(1): Felony Noncompliance with Bond when Defendant has been Released on Bail Involving a (Violent) Felony Offense as defined by § 4201(c) of this title;
 § 3533: Aggravated Act of Intimidation;

(3) Any violent felony, as defined by 11 *Del. C.* 4201(c), allegedly committed while the defendant is pending adjudication on a previously charged violent felony;

(4) Any offense under one of the following Domestic Violence circumstances:

- (a) Any violent felony, as defined by 11 *Del. C.* 4201(c), allegedly committed against the petitioner with an active Protection from Abuse order against the defendant;
- (b) Any violent felony, as defined by 11 *Del. C.* 4201(c), allegedly committed against a victim while the defendant is pending adjudication on a previously charged domestic violence offense, as defined by 10 *Del. C.* § 1041(2), allegedly committed against the same victim;

- (c) Any domestic violence offense, as defined by 10 *Del. C.* § 1041(2), allegedly committed while the defendant is pending adjudication on a previously charged violent felony allegedly committed against the same victim;
- (d) Any felony domestic violence offense, as defined by 10 *Del. C.* § 1041(2), in which physical injury, as defined by 11 *Del. C.* § 222(23), or serious physical injury, as defined by 11 *Del. C.* § 222(26), was alleged to have been caused;

(5) Any felony drug offense as follows:

- (a) 16 *Del. C.* § 4752: Drug Dealing (Tier 3).

SPECIAL NOTE:

Both “§ 1112A(h): Sexual Solicitation of a Child” and “§ 1112B(g): Promoting Sexual Solicitation of a Child” as listed above are **NOT** chargeable offenses in the DELJIS law file.³ Instead, these subsections codify that the defendants will be subject to the heightened penalty of a class B felony should they be found guilty of an enhancing element delineated in the subsections. These subsections read as follows:

“§ 1112A(h) Sexual solicitation of a child is a class B felony if the defendant meets in person or attempts to meet in person with the child for the purpose of engaging in a prohibited sexual act.”

And

“§ 1112B(g) Promoting sexual solicitation of a child is a class B felony if the defendant meets in person or attempts to meet in person with another person and a child, or otherwise produces or delivers a child to another person, for the purpose of the person engaging in a prohibited sex act with the child.”

Therefore, in order for the cash only bail presumption to apply, the police officer must allege in the probable cause statement of the arrest warrant, an additional element contained in the applicable subsection. **If the additional element is not contained in the warrant, the cash only bail presumption does not apply.**

Judges retain the discretion to set unsecured, secured, or cash only bail in cases based on the totality of the circumstances, regardless of the statutory presumption of cash bail for defendants charged with any of the above listed charges or circumstances. **But judges determining that a departure from the cash bail presumption is appropriate will need to provide written justification for doing so.** This will be discussed in more detail in the subsections below entitled *The Judicial Action on DELPAT Recommendation Worksheet* and *The*

³ 11 *Del. C.* § 1112A(a) and § 1112B(a) are the chargeable offenses in the DELJIS law file.

Bail & Disposition Worksheet under the MODIFIED DELPAT AND WORKSHEETS FOR THE DECISION-MAKING PROCESS section. In short, these worksheets provide a check-off system documenting the judges' reasoning for bail decisions.

(2) § 2107(d) This is a new section and reads as follows:

“In any case where a court sets bail pursuant to the presumption within paragraph (c) of this section, a court of competent jurisdiction may, consistent with Chapter 21 of this title and court rules, review bail to consider whether bail in a different amount or with a different security is appropriate to reasonably ensure the reappearance of the defendant, compliance with the conditions set forth in the bond, and the safety of the community. The court may modify the defendant's bail in accordance with its findings and determinations at the hearing.”

Justice of the Peace Court will not be affected by this subsection.

§ 2107(e) This is a new section and reads as follows:

“The court shall document the reason(s) for setting bail at a particular amount and level, whether cash, secured, or unsecured, or for modifying bail under paragraph (d) of this section.”

Judges in the Justice of the Peace Court are familiar with the requirement to document reasons for setting secured or cash bail. This new section requires documentation for when judges order unsecured bail and documentation on the judges' determination on the amount of bail as well. This will be discussed in more detail in the subsections below entitled *The Judicial Action on DELPAT Recommendation Worksheet* and *The Bail & Disposition Worksheet* under the MODIFIED DELPAT AND WORKSHEETS FOR THE DECISION-MAKING PROCESS section. In short, these worksheets provide a check-off system documenting the judges' reasoning for bail decisions.

(3) § 2107(f) This is a new section and reads as follows:

“In any case where a court sets bail for an offense listed in paragraph (c) of this section, the court shall require the defendant to relinquish any firearm in their possession.”

Judges shall order a firearm relinquishment for any case containing a signal offense in which the judge has ordered **secured or cash bail**. DELJIS will be modifying the “Bail Conditions Worksheet” to include a prompt that the relinquishment is pursuant to 11 *Del. C.* § 2107(f). In the interim, judges shall check off No. 12 on the Bail Conditions Worksheet under “Other Bail Conditions.”

➤ **MODIFIED DELPAT AND WORKSHEETS FOR THE DECISION-MAKING PROCESS**

The DELPAT and two (2) decision-making worksheets have been modified to give both the defense and the prosecution more information on judges' reasoning and decisions and to

provide judges with reminders of statutory provisions pertaining to bail decisions. Information on these documents follows:

❖ **The Delaware Pretrial Assessment Tool (the DELPAT)**

- The DELPAT is not a public document. The questions, the algorithm, and the score are all public, but the actual form is not public because it is based on a defendant's criminal history. However, anyone with DELJIS clearance, such as the Attorney General's office, the Office of Defense Services, and Corrections has access to the document. In addition, private defense counsel and the defendant are allowed to view the document.
- The bottom section on the form has been deleted. This section contained a check-off for the general judicial responses of "Conditions Assigned by DELPAT," "Less Intensive Conditions," and "More Intensive Conditions," as well as lines for "Reasons for Override of Conditions," the date and the judge's signature. This information is included in the updated Judicial Action on DELPAT Recommendation worksheet, making the information on the DELPAT form duplicative.

❖ **The Judicial Action on DELPAT Recommendation Worksheet**

- The Judicial Action on DELPAT Recommendation worksheet is a public document. It is available for all to see and is permitted to be included in media packet requests.
- This worksheet replaces the Judicial Responses to DELPAT Initial Recommended Response worksheet, but clerks will continue to be provided with interactive DELJIS programming for input of the judge's check-off responses. The instructions for use of the new worksheet are as follows:

1) Section A. Check one.

The judge shall check off one of the following four (4) options:

- "Conditions of Release as indicated by the DELPAT Matrix." *Documentation in Section B. Mitigating and Aggravating Factors is not required. However, when judges order unsecured bail for defendants falling into the blue or orange areas of the Matrix, they shall check off their reasoning for any amount of unsecured bail on the modified B & D (see **The Bail & Disposition Worksheet** section below.)*
- "Less Intensive Conditions of Release than indicated by the DELPAT Matrix." *Judges shall check off Mitigating Factors, presented in Section B of this worksheet, that are determined to be relevant to the bail decision and*

*shall check off their reasoning for any amount of unsecured bail on the modified B & D (see **The Bail & Disposition Worksheet** section below.)*

- “More Intensive Conditions of Release than indicated by the DELPAT Matrix. ORDER TO OVERRIDE REQUIRED.” *Judges shall first check off M1 through M4, as applicable. Judges shall write an Order to Override documenting their reasoning as to the level, or type, of bail and their reasoning as to the amount of monetary bail. Judges do not check off mitigating or aggravating factors, as these shall be included in the Order to Override.*
 - M1 Specific findings that the defendant poses a risk of flight in the current case;
 - M2 Specific findings that releasing the defendant would pose a substantial danger to the public or victim;
 - M3 Specific findings that releasing the defendant would pose some other risk of pretrial failure; and
 - M4 Other. *Judges shall provide a written explanation of the circumstance justifying more intensive conditions of release.*

- “ORDER TO OVERRIDE NOT REQUIRED” *Judges shall first check off whether the case includes a DV offense, a Felony DUI offense, or a Signal Offense. Judge shall then check off Mitigating and/or Aggravating factors, presented in Section B of this worksheet, that are determined to be relevant to the bail decision and shall check off their reasoning for any amount of monetary bail on the modified B & D (see **The Bail & Disposition Worksheet** section below.)*
 - **Domestic Violence Offense (non-signal offense or signal offense):** *Judges shall evaluate the case and the defendant with **heightened scrutiny** in their individualized assessment, using the “totality of the circumstances” analysis. As stated above, judges shall document their reasoning for the bail decision (whether ordering Release on Own Recognizance or on Unsecured, Secured, or Secured by Cash Only financial conditions) by checking off the Mitigating and/or Aggravating Factors, presented in Section B of this worksheet, that are determined to be relevant to the bail decision and shall check off their reasoning for any amount of monetary bail on the modified B & D (see **The Bail & Disposition Worksheet** section below.)*

Judges shall **not** include details from the Risk Assessment in the Domestic Violence Arraignment Form, except the victim's level of risk.⁴

In addition, the DELPAT is only advisory in DV cases.⁵ Consequently, judges are not "departing from the DELPAT recommendation," regardless of the type or amount of bail ordered and are therefore not required to write an Order to Override.

The Signal Offense list contains Domestic Violence circumstances. Pursuant to SB 7, there is a cash only bail presumption for all cases with a Signal Offense.

- **Felony DUI Offense:** As stated above, judges shall document their reasoning for the bail decision (whether ordering Release on Own Recognizance or on Unsecured, Secured, or Secured by Cash Only financial conditions) by checking off the Mitigating and/or Aggravating Factors presented in Section B of this worksheet that are determined to be relevant to the bail decision and shall check off their reasoning for any amount of monetary bail on the modified B & D (see *The Bail & Disposition Worksheet* section below.)

In addition, the DELPAT is only advisory in DUI cases.⁶ Consequently, judges are not "departing from the DELPAT recommendation," regardless of the type or amount of bail ordered and are therefore not required to write an Order to Override.

- **Signal Offense:** As stated above, judges shall document their reasoning for the bail decision (whether ordering Unsecured, Secured, or Secured by Cash Only financial conditions) by checking off the Mitigating and/or Aggravating factors presented in Section B of this worksheet that are determined to be relevant to the bail decision and shall check off their reasoning for any amount of monetary bail on the modified B & D (see *The Bail & Disposition Worksheet* section below.)

As stated in the previous section of this policy directive, SB 7 codified a presumption for cash only bail when a case includes a signal offense. However, judges retain the discretion to set unsecured,

⁴ The Domestic Violence Arraignment Form is NOT a public document and was not designed to make an assessment on the defendant's risk of failure to appear or the defendant's risk of committing a new crime prior to adjudication.

⁵ No risk assessment tool successfully captures risk in cases of domestic violence, so the pretrial assessment (the DELPAT) is advisory in these matters.

⁶ No risk assessment tool successfully captures risk in cases of impaired driving, so the pretrial assessment (the DELPAT) is advisory in these matters.

secured, or cash only bail in cases based on the totality of the circumstances, regardless of the statutory presumption of cash bail for defendants charged with any of the above listed charges or circumstances. **But judges determining that a departure from the cash bail presumption is appropriate will need to provide justification for doing so on the *Judicial Action on DELPAT Recommendation Worksheet* and *The Bail & Disposition Worksheet*.**

2) Section B. Mitigating and Aggravating Factors

An informal survey was conducted by asking all Justice of the Peace Court judges what mitigating factors they are most likely to use when determining that less intensive conditions of release than the DELPAT recommended are appropriate and what aggravating factors they are most likely to use when determining that more intensive conditions of release than the DELPAT recommended are appropriate. The lists in this worksheet were compiled from the responses. In addition, feedback on the lists was requested from the Attorney General's Office and the Office of Defense Services. The Office of Defense Services requested that one additional mitigating factor be included that was not on the Judges' list.

Judges shall check off all Mitigating Factors determined to be relevant to the bail decision when:

- The judge orders less intensive conditions of release than the DELPAT recommends; or
- The judge orders the defendant's release on any financial or non-financial conditions of release bond for cases including a DV Offense or circumstance, a Felony DUI Offense, or a Signal Offense.

Judges shall check off all Aggravating Factors determined to be relevant to the bail decision when:

- The judge orders the defendant's release on any financial or non-financial conditions of release bond for cases including a DV Offense or circumstance, a Felony DUI Offense, or a Signal offense.

Mitigating Factors to check off are as follows:

- Little or no criminal history;
- Defendant is currently engaged in mental health or substance abuse services
- Pretrial incarceration would negatively impact Defendant's physical or mental conditions;
- Defendant was not the primary aggressor;
- Defendant is the sole caregiver for children/elderly relative;
- DUI felony case: Significant time between charges;

- Defendant has strong incentives for pretrial success (employment, home ownership, family, etc.) Explain: *(Judges shall explain in succinct, yet adequate, detail why they believe that the defendant has a strong incentive for pretrial success. Clerical staff will enter the information in the computer on the free text lines provided);*
- Other: *(Judges shall explain in succinct, yet adequate, detail the mitigating factor they have found to be applicable to the case or to the defendant. Clerical staff will enter the information in the computer on the free text lines provided).*

Aggravating Factors to check off are as follows:

- Committing a violent felony involving a firearm;
- Committing a violent felony while on probation or pretrial release;
- Subsequent violent felony (revoke bail on original offense per 11 Del. C. § 2116) *(This prompts the judge to revoke the bail on the original offense pursuant to the statutory mandate codified in 11 Del. C. § 2116);*
- Safety of the victim;
- Escalation (severity or quantity) in crimes of violence involving victims;
- DUI felony case: Short time between charges;
- The State's recommendation on the record (ATTACHED)⁷;
- Info from the State or the defendant indicates an increased risk of flight. Explain: *(Judges shall explain in succinct, yet adequate, detail the aggravating factor they have found to be relevant to the case or to the defendant. Clerical staff will enter the information in the computer on the free text lines provided);*
- Out of state criminal record excluded from DELPAT. Explain: *(Judges shall explain in succinct, yet adequate, detail the aggravating factor they have found to be relevant to the defendant. Clerical staff will enter the information in the computer on the free text lines provided);*
- Other: *(Judges shall explain in succinct, yet adequate, detail the aggravating factor they have found to be relevant to the case or to the defendant. Clerical staff will enter the information in the computer on the free text lines provided).*

⁷ The completed Initial Presentment form is to be provided to judges by the arresting police officer or forwarded to judges by the "turnkey" officer. The State's position with regard to bail is to be set forth on the form unless the judge determines there is good cause to accept the form without documentation of the State's position.

3) Section C. Cash Bail

If cash bail is ordered for any defendant, judges shall explain why secured bail insufficiently addresses the defendant's risk factors. Cash bail is the most severe type of financial condition of release and the most limiting for the defendant. Therefore, the reasons for cash bail must be articulated in order for the defendant, the defense attorney, and the prosecutor to have better understandings of the judge's reasoning for the bail decision. This reasoning does not only refer to the aggravating factors the judge determines to be relevant. It also pertains to the determination that secured bail, a less restrictive type of financial condition of release, would not reasonably be able to assure the defendant's appearance in court when required; to assure the protection of the community, victims, witnesses, or any other persons; to avoid any identified specific risk of pretrial failure; and to maintain the integrity of the judicial process.

In addition, when making a determination on the **amount** of the financial conditions of release bond that would reasonably assure the defendant's pretrial success, judges shall consider the defendant's financial circumstances.⁸ The monetary difference between secured and cash only financial terms may be quite significant for the defendant or for the defendant's family, depending upon their respective financial resources and the amenability of the bail bonds industry.

If judges order cash only conditions of release bonds due to a statutory bail presumption, judges shall check off "Statutory Bail Presumption."⁹ If no cash only statutory bail presumption exists, judges shall check off "Other." *If judges check off "Statutory Bail Presumption," further explanation is not required. If judges check off "Other," they shall explain in succinct, yet adequate, detail why cash bail, and not secured bail, was ordered. Clerical staff will enter the information in the computer on the free text lines provided.*

❖ The Bail & Disposition Worksheet

- The Bail & Disposition worksheet is not a public document because it may contain judges' notes.
- The Bail & Disposition worksheet has been modified by:
 - Deleting the lines for Mitigating Factors and Aggravating Factors. This information now is documented on the "Judicial Action on

⁸ Interim Special Rule 5.2(1).

⁹ SB 7 legislated a presumptive cash only financial conditions of release bond for all Signal Offenses, but it did not legislate the amount of the cash only financial condition the judge must set. Judges retain the discretion to order the amount of cash only financial condition that they determine to be appropriate after making an individualized assessment, using a "totality of the circumstances" analysis and with regard for Modified Interim Rule 5.2(m) "Consideration of Defendant's Financial Circumstances."

DELPAT Recommendation” worksheet, making the information duplicative. The clerical staff will no longer be prompted by the programming to enter information at this juncture in the processing of the case.

- Adding a check off section as follows to document judges’ reasoning as to the amount of monetary bail:

“BAIL NOTES/REASON FOR MONETARY BAIL AMOUNT:

_____ Within Recommended Monetary Ranges (SENTAC)

_____ Deviation From Recommended Monetary Ranges:

_____ Given the nature of the offense, in order to ensure the safety of the community and pretrial success, and with the consideration of the defendant’s financial resources, an amount exceeding the recommended monetary range is required.

_____ Given the totality of the circumstances, and with consideration of the defendant’s financial resources, an amount lower than the recommended monetary range is sufficient to ensure pretrial success.”

- The line “Other” provides free text space if judges wish to document any *additional* information concerning the bail amount that they consider to be relevant to their decision beyond the check off responses.

CONCLUSION

Judges shall continue to make Pretrial release decisions in response to the numerical scores assigned by the DELPAT for all initial cases that include any of the following charges: any Title 11 charge; any Title 16 charge, except for civil offenses; and any 21 *Del. C.* § 4177 charges.

On all initial cases with a DELPAT, judges shall document bail decisions on the Judicial Action on DELPAT Recommendation worksheet. Judges shall: 1) Check off how the bail decision relates to the DELPAT recommendation; 2) Write an Order to Override or check off Mitigating and/or Aggravating factors determined to be relevant to the bail decision¹⁰; 3) Justify the reason when a cash only bail is ordered; and 4) Justify the amount of any monetary bail set.

¹⁰ Judges shall write an Order to Override or check off Mitigating and/or Aggravating factors determined to be relevant to the bail decision **unless** they have checked off that the bail decision is to order a “Conditions of Release as indicated by the DELPAT Matrix.” If so, judges are required to only document the reasons for the amount of any monetary bail.

ATTACHMENTS: Modified DELPAT
Judicial Action on DELPAT Recommendation
Modified Bail & Disposition Worksheet

cc: Honorable Collins J. Seitz, Jr.
Honorable Kathaleen S. McCormick
Honorable Jan R. Jurden
Honorable Carl C. Danberg
Honorable Michael K. Newell
Gayle P. Lafferty, State Court Administrator
All Justice of the Peace Courts
Marianne Kennedy, Justice of the Peace Court Administrator
Rebecca Trifillis, Justice of the Peace Court Staff Attorney
Mark Hitch, Operations Manager
Stephanie Parker, Operations Manager
Michael Igllo, Chief of Uniformed Services
Law Libraries: New Castle County, Kent County, Sussex County,
Widener University School of Law

Judicial Action on DELPAT Recommendation

Defendant: MISS FISH

Case Number: 2106003797

A. CHECK ONE:

- Conditions of Release as indicated by the DELPAT Matrix.
- Less Intensive Conditions of Release than indicated by the DELPAT Matrix. Judges shall check off mitigating factors below relevant to the bail decision.
- More Intensive Conditions of Release than indicated by the DELPAT Matrix. ORDER TO OVERRIDE REQUIRED. Judges shall check off M1 thru M4 as applicable.
 - M1 Specific findings that the defendant poses a risk of flight in the current case.
 - M2 Specific findings that releasing the defendant would pose a substantial danger to the public or victim.
 - M3 Specific findings that releasing the defendant would pose some other risk of pretrial failure.
 - M4 Other: _____
- ORDER TO OVERRIDE NOT REQUIRED. Judges shall check off mitigating/aggravating factors below relevant to the bail decision. Check type of offense.
 - Domestic Violence Offense Felony DUI SIGNAL Offense

B. MITIGATING AND AGGRAVATING FACTORS:

Mitigating Factors: (Check all that apply.)

- 1) Little or no criminal history
- 2) Defendant is currently engaged in mental health or substance abuse services
- 3) Pretrial incarceration would negatively impact Defendant's physical or mental conditions
- 4) Defendant was not the primary aggressor
- 5) Defendant is the sole caregiver for children/elderly
- 6) DUI felony case: Significant time between charges relative
- 7) Defendant has strong incentives for pretrial success (employment, home ownership, family, etc.)
- Explain: _____
- 8) Other: _____

Aggravating Factors: (Check all that apply.)

- 1) Committing a violent felony involving a firearm.
- 2) Committing a violent felony while on probation or pretrial release.
- 3) Subsequent violent felony (revoke bail on original offense per 11 Del. C. Section 2116)
- 4) Safety of the victim
- 5) Escalation (severity or quantity) in crimes of violence involving victims
- 6) DUI felony case: Short time between charges
- 7) The State's recommendation on the record (ATTACHED)
- 8) Info from the State or the defendant indicates an increased risk of flight
- Explain: _____
- 9) Out of state criminal record excluded from DELPAT
- Explain: _____
- 10) Other: _____

C. CASH BAIL: If cash bail is ordered for any defendant, judges shall explain why secured bail insufficiently addresses the defendant's risk factors:

Statutory Bail Presumption Other:

_____ Justice of the Peace

