

IN THE FAMILY COURT OF THE STATE OF DELAWARE

ORDER AMENDING RULES 5 AND 46

OF THE FAMILY COURT RULES OF CRIMINAL PROCEDURE

This 4th day of October 2022, **IT IS ORDERED THAT:**

1. Rule 5 shall be amended as follows:

Rule 5. Initial appearance before the committing magistrate.

(a) Taking an adult into custody. --

(1) Initial Appearance. -- Any peace officer taking into custody, with or without a warrant, an adult charged with an offense within the original jurisdiction of this Court may take the person apprehended without unreasonable delay before:

(a) the nearest available Justice of the Peace; or

(b) the court out of which the warrant issued, all in accordance with the command of the warrant.

When apprehension is made without a warrant, a complaint shall be filed forthwith which shall comply with the requirements of Rule 4(a) with respect to the showing of probable cause.

(2) Statement by the Committing Magistrate. The adult charged shall not be called upon to plead. The committing magistrate shall inform the adult of the charge and of any affidavit filed therewith, of the right to retain counsel, of the right to request the assistance of the Public Defender if indigent, and of the general circumstances under which pretrial release may be secured. The committing magistrate shall inform the adult charged that the adult is not required to make a statement and that any statement made may be used against that adult. The committing magistrate shall allow the adult charged reasonable time and opportunity to consult counsel and shall admit the adult to bail with appropriate conditions of continued release that may include a requirement to appear in this Court at a specified time for a review of bail, as provided by statute or in these Rules.

(3) Records. After concluding the proceeding the committing magistrate shall transmit forthwith to the Clerk of the Court for the proper county all papers in the proceeding and any bail taken.

(4) Bond Review Hearing. If the adult charged or any adult material witness shall have been committed to a facility of the Department of Adult Correction in default of bail, by a committing magistrate, such person shall be delivered to this Court at its next session to review the bond fixed by such committing magistrate and this Court may (1) approve the bond, or (2) fix new bond in a greater or lesser amount, or (3) require different surety, or (4) release such person on own recognizance without surety, or (5) make such other disposition as may be appropriate. When conducting review hearings, the Court shall comply with the Special Rule of Criminal Procedure for Pretrial Release.

2. Rule 46 shall be amended as follows:

Rule 46. Bail.

(a) Right to bail; modification for delay. -- A person charged shall be admitted to bail either before conviction or after conviction and pending appeal in accordance with the Constitution, ~~and~~ the laws of this State, and the Special Rule of Criminal Procedure for Pretrial Release. If there is unnecessary delay in bringing a person charged to trial, the Court may modify the terms for release on bail.

3. These amendments shall be effective January 1, 2023, which is at least 30 days after notice to members of the Bar.

BY THE COURT:

/s/ Michael K. Newell 8/19/2022
Michael K. Newell
Chief Judge

/s/ Mark D. Buckworth 8/19/2022
Mark D. Buckworth
Judge

/s/ Peter B. Jones 8/19/2022
Peter B. Jones
Judge

/s/ Mardi F. Pyott 8/30/2022
Mardi F. Pyott
Judge

/s/ Robert B. Coonin 8/19/2022
Robert B. Coonin
Judge

/s/ Arlene Minus Coppadge 10/4/22
Arlene Minus Coppadge
Judge

/s/ Joelle P. Hitch 8/19/2022
Joelle P. Hitch
Judge

/s/ Paula T. Ryan 8/19/2022
Paula T. Ryan
Judge

/s/ Felice G. Kerr 8/19/2022
Felice G. Kerr
Judge

/s/ Jennifer B. Ranji 8/19/2022
Jennifer B. Ranji
Judge

/s/ Natalie J. Haskins 8/19/2022
Natalie J. Haskins
Judge

/s/ Janell S. Ostroski 8/19/2022
Janell S. Ostroski
Judge

/s/ Louann Vari 9/16/2022
Louann Vari
Judge

/s/ James G. McGiffin, Jr. 8/23/2022
James G. McGiffin, Jr.
Judge

/s/ Mary S. Much 8/19/2022
Mary S. Much
Judge

/s/ Michael W. Arrington 8/19/2022
Michael W. Arrington
Judge

/s/ Theresa M. Hayes 8/19/2022
Theresa M. Hayes
Judge