IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN RE IMPLEMENTATION OF §
THE BAIL REFORM ACT §

ORDER

This 13th day of December 2018, it appears to the Court that:

WHEREAS, the General Assembly enacted legislation in 2018 to reform the system under which courts subject defendants to pretrial conditions of release (the "Bail Reform Act" or "Act");

WHEREAS, as codified in Chapter 21, Title 11 of the Delaware Code, the Bail Reform Act encourages the use of non-monetary conditions of release when those conditions reasonably assure the defendant's appearance at court proceedings, public safety, and the integrity of the judicial process;

WHEREAS, the Bail Reform Act was intended to prevent defendants from being subjected to excessive financial conditions of release, traditionally referred to as money bail;

WHEREAS, the Bail Reform Act seeks to reduce the unnecessary pretrial incarceration of defendants who do not have sufficient means to pay money bail, as well as reduce the resulting loss in employment, the pressure to plead guilty, the economic toll on non-affluent defendants and their families, and other substantial harm that results from the excessive use of money bail;

WHEREAS, the Bail Reform Act reflects that the risk that the defendant will fail to appear is different from the threat that a defendant will commit harm if released pending trial;

WHEREAS, the Bail Reform Act takes effect on January 1, 2019, requiring the Judiciary to put in place an implementing rule by January 1, 2019 for an important systemic reform;

WHEREAS, the Bail Reform Act requires the development of information to enable monitoring of the success of pretrial reform and the pretrial assessment instrument, and the refinement of approaches to implementation to improve the efficiency and equity of both the process to implement the Bail Reform Act and the outcomes generated by the Bail Reform Act;

WHEREAS, the implementing rule is therefore deemed an interim one that will be subject to revision and improvement based on experience using it, the data developed in conformity with it, and feedback from constituents and judges who will work with it;

WHEREAS, the Bail Reform Act directs that its implementation and the procedure for pretrial release shall be as provided by the Rules of the Superior Court, but the procedure for pretrial release must apply across multiple courts, specifically the Superior Court, the Family Court, the Court of Common Pleas, and the Justice of the Peace Court;

WHEREAS, this Court and the presiding judges of the Superior Court, the Family Court, the Court of Common Pleas, and the Justice of the Peace Court agree that the unique, cross-court nature of the procedure for pretrial release means that the Interim Special Rule of Criminal Procedure for Pretrial Release, attached as Exhibit A, should be adopted by the Supreme Court to establish the procedure for pretrial release in the Superior Court, the Family Court, the Court of Common Pleas, and the Justice of the Peace Court.

NOW THEREFORE, IT IS ORDERED THAT:

1. Interim Special Rule of Criminal Procedure for Pretrial Release is adopted to implement the provisions of the Bail Reform Act and to establish the procedure for pretrial release.

2. Beginning January 1, 2019, the Superior Court, as set forth in Exhibit B, the Family Court, as set forth in Exhibit C, the Court of Common Pleas, as set forth in Exhibit D, and the Justice of the Peace Court, as set forth in Exhibit E, shall follow Interim Special Rule of Criminal Procedure for Pretrial Release. As the Interim Rule is applied and refined, these courts shall amend their rules as necessary.

3. The Clerk of the Court is directed to transmit forthwith a certified copy of this Order to the clerk of each trial court in each county.

BY THE COURT:

Chief Justice

Exhibit A

Interim Special Rule of Criminal Procedure for Pretrial Release

Interim Rule 5.2. Pretrial Release.

(a) *Definitions.*

For the purposes of this rule the following definitions apply:

(1) "Bail Reform Act" or "Act" means House Bill No. 204 as Amended by House Amendment No. 1 in the 149th General Assembly, entitled an "Act to Amend Title 11 of the Delaware Code Relating to Release of Persons Accused of Crimes." 11 *Del. C.* § 2101 et seq.

(2) "Conditions of release bond" means a commitment by the defendant promising appearance in court and compliance with all conditions ordered by the court and mandated by statute. A conditions of release bond may or may not have financial terms holding the defendant liable for the full amount of the bond if the defendant violates the conditions of release.

(A) "Fully secured conditions of release bond" means a conditions of release bond guaranteed by a pledge of cash or its equivalent (*i.e.*, a cashier's check, a certified bank check, or a money order) in the full amount of the bond as security.

(B) "Secured conditions of release bond" means a conditions of release bond guaranteed by a surety or pledge of property, cash or its equivalent, or other assets, where the value of the assets pledged may be equal to or less than the amount of the bond (*i.e.*, fully secured or partially secured).

(C) "Unsecured conditions of release bond" means a conditions of release bond that is not guaranteed by any surety or specific pledge of cash or its equivalent.

(3) "Conditions of release" means the requirements that the court determines a defendant must satisfy to be eligible for release pending trial.

(4) "Covered factor" means any of the following factors, which have been incorporated in and given weight by the pretrial assessment or this rule:

(A) the nature and circumstances of the crime charged;

(B) whether a firearm was used or possessed:

(C) the possibility of statutory mandatory imprisonment;

(D) the defendant's record of convictions;

(E) the defendant's history of amenability to lesser sanctions;

(F) the defendant's history of breach of release; and

(G) the defendant's record of appearances at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

(4) "Domestic violence assessment" means the empirically developed lethality assessment instrument required by section 2104(e)(1) of the Bail Reform Act, known as the Domestic Violence Lethality Screen for First Responders, and which shall be used by the court, when available, to assess the likelihood or predicted severity of future violence against the alleged victim.

(5) "Excluded factor" means any of the following factors, which were excluded from the pretrial assessment because they were found to lack a sufficiently strong correlation with the defendant's risk of pretrial failure:

(A) the defendant's employment;

(B) the defendant's custody status at the time of the offense; and

(C) the defendant's length of residence in the community.

(6) "Factor-specific special findings" mean special findings:

(A) that, in a case where the court gives additional weight to a covered factor, there is a compelling reason indicating that the pretrial assessment, domestic violence assessment, and this rule do not adequately account for the factor;

(B) that the court is not giving weight to any excluded factor;

(C) that, in a case where the court gives weight to a suspect factor or any other factor not included in the pretrial assessment, the domestic violence assessment, or this rule, the court believes that consideration of the factor will improve the

decision's reliability without creating disparities based on defendants' race, gender, or wealth;

(D) that, in a case where the court gives weight to the defendant's mental condition, the defendant:

(i) has objectively documented mental health issues relevant to the defendant's risk to public safety; or

(ii) currently exhibits mental health or substance abuse issues relevant to the defendant's risk to public safety, provided that, in the case of a defendant who is unable to knowingly and intelligently participate in presentment proceedings because of incapacitation as a result of the consumption of alcohol or the use of drugs, the court shall follow the procedures and standards contained in 11 *Del. C.* § 1909; and

(E) that explain why, under the circumstances presented, it is necessary and appropriate to give weight to the factor even though the pretrial assessment score is

based on factors demonstrated to be correlated with pretrial failure based on empirical evidence.

(7) "Initial recommended response" means the recommended conditions of release indicated by:

(A) the defendant's pretrial assessment score, as described in subsection (b)(1);

(B) the domestic violence assessment, as described in subsection (b)(2); or

(C) subsection (h)(2) of this rule.

(8) "Obstruct justice" means commit an offense under 11 *Del. C.* §§ 1261–1269 or otherwise interfere with the integrity of the judicial proceedings.

(9) "Pretrial assessment" means the empirically developed pretrial assessment instrument required by section 2104(e)(1) of the Bail Reform Act that shall be implemented by the Delaware Criminal Justice Information System in January 2019 as the Delaware Pretrial Assessment Tool ("DELPAT"), as amended

from time to time, and used by the court to assess the defendant's risk of failing to appear at court proceedings or incurring a new criminal arrest before trial.

(10) "Pretrial assessment score" means the score produced by the pretrial assessment.

(11) "Pretrial Services" means the Pretrial Services unit of the Bureau of Community Corrections of the Department of Correction.

(12) "Public safety" means the protection of the community, alleged victims, witnesses, or any other persons.

(13) "Referral protocol" means the initiation of the protocol, based on the alleged victim's answers to the domestic violence assessment, to inform the alleged victim of the high danger assessment and offer the alleged victim the opportunity to be screened by a hotline counselor for assistance.

(14) "SENTAC" means the Delaware Sentencing Accountability Commission.

(15) "Special findings" means specific findings of fact and conclusions of law made by the court that:

(A) state that the court is making these findings in response to a special showing by the State that explicitly requests more intensive conditions of release than the initial recommended response, and is not making the findings *sua sponte*;

(B) explain why the more intensive conditions of release requested by the State are the least restrictive conditions of release necessary to address the specific risk of pretrial failure at issue;

(C) reference the affidavit filed by the State documenting the factual basis for the State's request for more intensive conditions of release; and

(D) satisfy any subject-specific requirements of this rule.

(16) "Special showing" means a submission to the court by the State that:

(A) explicitly requests more intensive conditions of release than the initial recommended response;

(B) explains why the more intensive conditions of release requested by the State are the least restrictive conditions of release necessary to address the specific risk of pretrial failure at issue;

(C) includes an affidavit documenting the factual basis for the State's request for more intensive conditions of release; and

(D) satisfies any subject-specific requirements of this rule.

(17) "Standard conditions of release used by Pretrial Services" means:

(A) the mandatory conditions of release required by subsection (d) of this rule;

(B) a requirement that the defendant report to his or her supervising officer at such times and places as directed, and permit the officer to visit the defendant's home and place of employment;

(C) a requirement that the defendant report any new arrest, conviction, or police contact within 72 hours to his or her supervising officer;

(D) a requirement that the defendant report any change in residence or employment within 72 hours to his or her supervising officer; and

(E) a requirement that the defendant obtain authorization from his or her supervising officer to leave the State of Delaware or the defendant's approved state of residence.

(18) "State" means the Attorney General, the Attorney General's designee, or a peace officer under 11 *Del. C.* § 1901.

(19) "Suspect factor" means any of the following factors, which have been found to pose a risk of racial, gender, or wealth bias:

(A) the defendant's family ties;

(B) the defendant's financial resources; and

(C) the defendant's character and mental condition.

(b) ***Initial recommend response indicated by pretrial assessment and domestic violence assessment.***

(1) *Pretrial assessment.* In setting the defendant's conditions of release, the court shall use the pretrial assessment. The initial recommended response indicated by the pretrial assessment is determined by the pretrial assessment matrix in Schedule 5.2A to this rule.

(A) If the color of the box in the pretrial assessment matrix is green, the initial recommended response is to release the defendant on his or her own recognizance, subject to a conditions of release bond consisting of only the two mandatory conditions of release set forth in subsection (d) and, if applicable, a requirement that the defendant make no contact with the alleged victim.

(B) If the color of the box in the pretrial assessment matrix is blue, the initial recommended response is to release the defendant subject to an unsecured conditions of release bond, the mandatory conditions set forth in subsection (d), and any other

conditions of release necessary to reasonably assure the defendant's appearance at court proceedings and public safety.

(C) If the color of the box in the pretrial assessment matrix is orange, the initial recommended response is to release the defendant subject to an unsecured conditions of release bond, the mandatory conditions set forth in subsection (d), any other conditions of release necessary to reasonably assure the defendant's appearance at court proceedings and public safety, and a requirement that the defendant report to and comply with the conditions of release determined appropriate by Pretrial Services.

(2) *Domestic violence.* If the domestic violence assessment is available to the court and the referral protocol is triggered, the initial recommended response is to release the defendant subject to a secured conditions of release bond, with a fully secured conditions of release bond being the preferred response, the mandatory

conditions set forth in subsection (d), and any other conditions of release necessary to reasonably assure public safety.

(c) ***Right to pretrial release upon execution of conditions of release bond.***

Any defendant eligible for pretrial release under 11 *Del. C.* § 2103 shall be released pending trial upon execution of one of the following:

(1) a conditions of release bond;

(2) an unsecured conditions of release bond;

(3) a secured conditions of release bond; or

(4) a fully secured conditions of release bond.

(d) ***Mandatory conditions of release.***

For every defendant whom the court grants pretrial release, the court's order setting the conditions of release shall:

(1) require the defendant to return to the court at any time upon notice and submit to the orders and processes of the court;

(2) prohibit the defendant from committing any new criminal offense pending trial; and

(3) if the defendant is charged with any crime involving child sexual abuse or exploitation or a violation of 21 *Del. C.* § 4177 that is alleged to be punishable as a felony pursuant to that section, the conditions of release required by 11 *Del. C.* § 2108(b) or (c).

(e) ***Discretionary conditions of release.***

Except as required by subsection (d), conditions of release are not mandatory and may be required only after an exercise of judicial discretion consistent with the Bail Reform Act and this rule.

(f) ***Presumption that the initial recommended response determines the discretionary conditions of release.***

In setting any discretionary conditions of release, the court shall presumptively adhere to the initial recommended response generated by the pretrial

assessment, the domestic violence assessment, and subsection (h)(2) of this rule, and give substantial weight to that response.

(g) *Conditions of release for risk of failure to appear.*

(1) *In general.* In requiring any discretionary conditions of release based on the risk that the defendant will fail to appear at court proceedings, the court shall recognize that the risk that the defendant will not appear at trial is different from the threat that a defendant will commit harm if released pending trial. In particular, in addressing the risk of non-appearance, the court shall consider the more intensive notification measures now in use. Any doubt as to the need for discretionary conditions of release to address the risk of non-appearance shall be resolved against the imposition of a secured conditions of release bond.

(2) *Requirements for imposing more intensive conditions of release than initial recommended response.* The court shall not require more intensive conditions

of release than the initial recommended response based on the risk that the defendant will fail to appear at court proceedings unless:

(A) the State makes a special showing supporting its conclusion that the defendant poses a demonstrated and specific risk of flight in the current case; and

(B) the court makes special findings supporting its conclusion that the defendant poses a demonstrated and specific risk of flight in the current case, which shall include any applicable factor-specific special findings.

(h) ***Conditions of release for risk to public safety.***

(1) *In general.* In requiring any discretionary conditions of release based on the defendant's risk to public safety, the court shall consider that the most serious threats to be addressed by conditions of release are when the defendant poses a risk of harm to the general public or a specific person.

(2) *Specific risks to public safety.*

(A) *Domestic violence.* In cases involving suspected domestic violence where the referral protocol is triggered, the domestic violence assessment provides for the initial recommended response to be a secured or fully secured conditions of release bond, as described in subsection (b)(2) of this rule.

(B) *Signal offenses.* If the defendant is charged with one of the signal offenses set forth in Schedule 5.2B, the initial recommended response shall be in the court's discretion, based on the entire record, including the defendant's pretrial assessment score and the results of the domestic violence assessment, if available. The court may require any type of conditions of release bond that is necessary to reasonably assure public safety, including a secured conditions of release bond. In determining the amount of any unsecured or secured conditions of release bond, the court shall, consistent with the current SENTAC bail guidelines, set an amount that is substantial enough to sufficiently: (i) deter the defendant from harming the public or a specific

person; or (ii) ensure that the surety will supervise the defendant intensely enough to reasonably assure public safety. The court may also require any other conditions of release necessary to reasonably assure public safety.

(C) *Risk to public safety from recidivist impaired drivers.* In cases where the defendant has been charged with violating 21 *Del. C.* § 4177(d)(3)–(7), the court shall consider the frequency and recency of past convictions for violating 21 *Del. C.* § 4177. Based upon these considerations, the initial recommended response shall be to release the defendant subject to either:

(i) an unsecured conditions of release bond and non-monetary conditions of release, for which the defendant or a surety on the defendant's behalf shall be financially responsible, that are sufficient to protect the public from the severe harm that could result if the defendant again violates 21 *Del. C.* § 4177 before trial, and taking into account the availability of the devices or measures, such as a requirement that the defendant:

(I) wear a monitor that records whether the defendant has consumed alcohol;

(II) install an ignition interlock system on his or her vehicle; or

(III) comply with any other conditions of release tailored to address the specific risk that the defendant will recidivate before trial; or

(ii) where the defendant is not willing to take financial responsibility for the cost of the conditions of release required by the court under clause (i), a secured conditions of release bond, under the standard set forth in subparagraph (B) of this paragraph.

(3) *Requirements for imposing more intensive conditions of release than initial recommended response*. The court shall not require more intensive conditions of release than the initial recommended response based on the defendant's risk to public safety unless:

(A) the State makes a special showing supporting its conclusion that releasing the defendant with less intensive conditions of release would pose a substantial danger to public safety; and

(B) the court makes special findings supporting its conclusion that releasing the defendant with less intensive conditions of release would pose a substantial danger to public safety, which shall include any applicable factor-specific special findings.

(i) ***Conditions of release for risk of obstruction of justice.***

(1) *In general.* In requiring any discretionary conditions of release based on the risk that the defendant will obstruct justice, the court shall consider the possibility that the defendant will undermine the rule of law by intimidating witnesses or taking other steps that obstruct justice and the ability of the judicial system to hold a fair trial.

(2) *Requirements for imposing more intensive conditions of release than initial recommended response*. The court shall not require more intensive conditions of release than the initial recommended response based on the risk that the defendant will obstruct justice unless:

(A) the State makes a special showing supporting its conclusion that the defendant has in the current case threatened to, attempted to, or already obstructed justice; and

(B) the court makes special findings supporting its conclusion that the defendant has in the current case threatened to, attempted to, or already obstructed justice.

(3) *Recommended conditions of release*. If the court determines that more intensive conditions of release are necessary under paragraph (1), the court shall presumptively release the defendant subject to a secured conditions of release bond, with a fully secured conditions of release bond being the preferred response. In

determining the amount of the bond, the court shall, consistent with the current SENTAC bail guidelines, set an amount that is substantial enough to sufficiently: (i) deter the defendant from obstructing justice; or (ii) ensure that the surety will supervise the defendant intensely enough to reasonably assure that the defendant does not obstruct justice. The court may also require any other conditions of release necessary to reasonably assure that the defendant does not obstruct justice.

(j) ***Downward departures from the initial recommended response.***

Notwithstanding the presumption set forth in subsection (f), the court may require less intensive conditions of release than the initial recommended response if the court finds that less intensive conditions would be adequate to reasonably assure the defendant's appearance at court proceedings, public safety, and that the defendant does not obstruct justice.

(k) ***Limitations on release subject to supervision by Pretrial Services.***

(1) *In general.* Consistent with the risk that overuse of supervision by Pretrial Services may cause many of the same harms as the overuse of money bail, and consistent with the presumption of innocence guaranteed by the United States and Delaware Constitutions, the court shall not treat release to supervision by Pretrial Services in the same manner as a post-conviction sentence involving probation and parole, or the conditions required in connection with participation in a diversion program.

(2) *Use of standard conditions of release or consultation with Department of Correction required.* Notwithstanding any other provision in this rule, the court shall not require the defendant to report to Pretrial Services for supervision unless it (i) subjects the defendant to the standard conditions of release used by the Department of Correction; or (ii) if possible, first consults with the Department of Correction.

(3) *Limitations to scope of supervision; tailoring of supervision to address specific risk posed.* Consistent with the distinction between pretrial conditions of release and post-conviction sentences involving probation and parole, the court shall not require conditions of release that involve alcohol or drug testing, monitored curfews, or electronic monitoring (whether through Global Positioning System or home confinement), unless:

(A) the Department of Correction recommends those conditions of release; or

(B) the court finds, by clear and convincing evidence, that the conditions of release are necessary to reasonably assure public safety and are tailored to the specific risk posed by the defendant's release, and the court reports its findings under this subparagraph in accordance with subsection (m)(1).

(l) ***Consideration of the defendant's financial circumstances when requiring an unsecured, secured, or fully secured conditions of release bond.***

If the court requires the defendant to execute an unsecured, secured, or fully secured conditions of release bond, the court shall, when setting the amount of the bond and provided that reliable evidence exists, consider the defendant's financial circumstances, including the defendant's ability to furnish the security or money necessary to guarantee the bond by a surety or pledge of property, cash or its equivalent, or other assets. To that end, the court shall give to the defendant a standard form to use to provide that information.

(m) ***Reporting requirements.***

(1) *Special findings required to be docketed as an order and sent to presiding judge and Chief Justice.* Whenever required by this rule to make special findings, the court shall docket its decision in writing as an order of the court and send a copy of that order to the court's presiding judge. The presiding judge of each court shall,

on a monthly basis, compile the relevant court orders. Solely for purposes of economy and efficient data collection, the presiding judge shall send these orders to the Chief Justice with the court's 30, 60, or 90-day report, depending on the given court's approved practice, in accordance with the Policy on Judicial Reporting on Matters Under Advisement.

(2) *Statistical reporting requirements.* Upon setting the defendant's conditions of release under this rule, the court shall record its decision by selecting at least one judicial response code in the Delaware Criminal Justice Information System.

(n) ***Special circumstances under which the court may require more intensive conditions of release on its own initiative.***

Notwithstanding any requirement in this rule that the State make a special showing, the court may require more intensive conditions of release than the initial

recommended response on its own initiative without a special showing by the State if the court:

(1) makes special findings, including any applicable factor-specific special findings, in accordance with subsection (g)(2)(B), (h)(3)(B), or (i)(2)(B) of this rule;

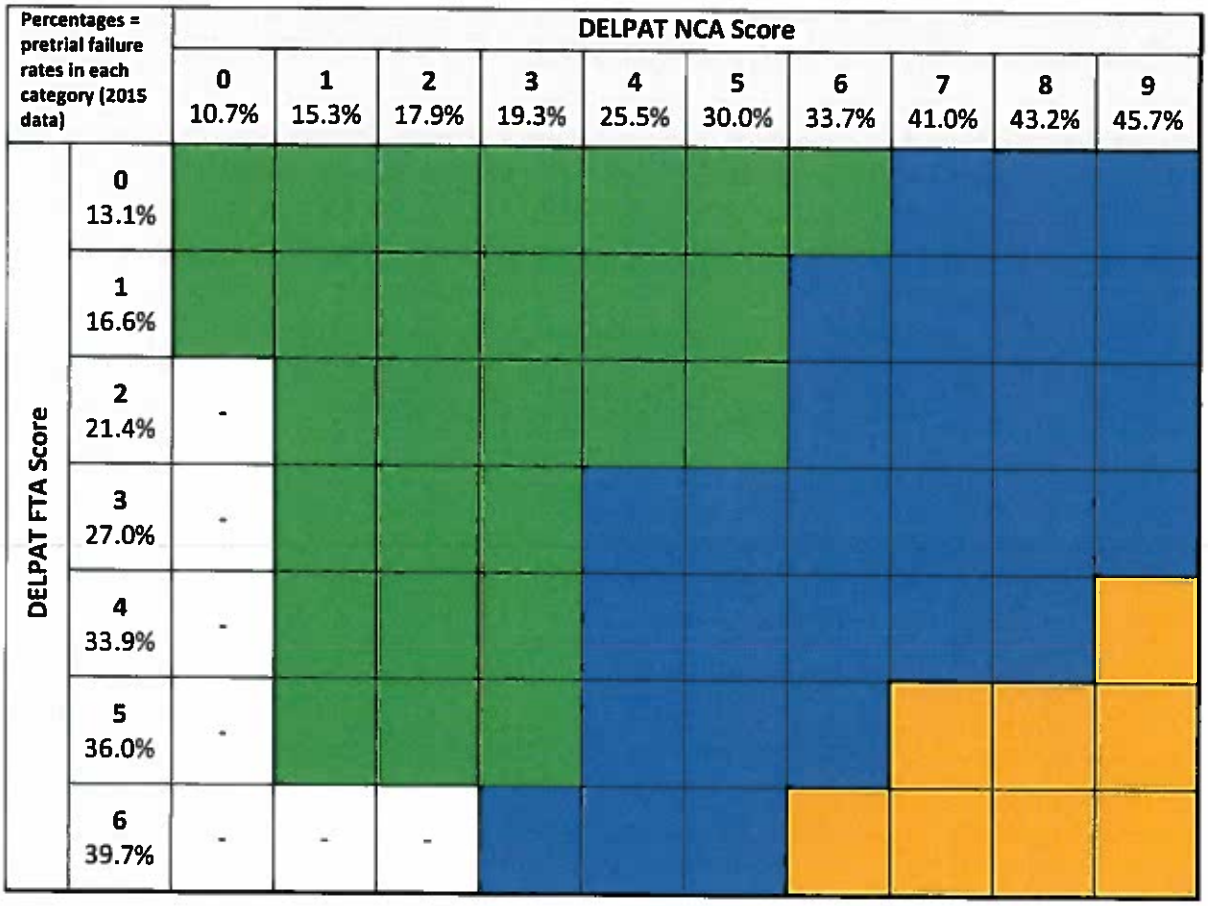
(2) makes findings of fact on the record supporting its conclusion that requiring more intensive conditions of release without a special showing by the State is necessary to address the specific risk of pretrial failure at issue;

(3) reports its findings under paragraphs (1) and (2) in accordance with subsection (m)(1); and

(4) upon request by the defendant, holds a hearing in accordance with Rule 5.3 at which the defendant and the State can address the court's basis for requiring more intensive conditions of release and the court's use of any covered or suspect factor.

Schedule 5.2A. Pretrial assessment matrix.

DELPAT Scoring Response Matrix



Green = release without conditions (standard conditions apply - no criminal activity and return for all court dates)

Blue = release on self-monitored conditions

Orange = release to supervision of Pretrial Services

Schedule 5.2B. Signal Offenses.

A signal offense shall include any of the following offenses:

(1) Any Title 11 Class A felony.

(2) One of the following Title 11 Class B felonies:

§ 606: Abuse of a Pregnant Female in the First Degree.

§ 613: Assault in the First Degree.

§ 632: Manslaughter.

§ 633: Murder of a Child by Abuse or Neglect in the Second Degree.

§ 771(a)(2): Rape in the Third Degree.

§ 772: Rape in the Second Degree.

§ 777A(e)(2) or (e)(4): Sex Offender Unlawful Sexual Conduct Against a Child.

§ 778(2): 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): Trafficking an Individual (Victim is a Minor).

§ 787(b)(2): Forced Labor (Victim is a Minor).

§ 787(b)(3): Sexual Servitude (Victim is a Minor).

§ 826(a)(2): Burglary in the First Degree, provided that the victim who suffers physical injury is 62 years of age or older.

§ 826A: Home Invasion.

§ 832: Robbery in the First Degree.

§ 836(a)(4) through (a)(6): Carjacking in the First Degree.

§ 1103B: Child Abuse in the First Degree.

§ 1108: Sexual Exploitation of a Child.

§ 1109: Unlawful Dealing in Child Pornography, provided that the defendant is eligible for sentencing under § 1110.

§ 1112A(h): Sexual Solicitation of a Child.

§ 1112B(g): Promoting Sexual Solicitation of a Child.

§ 1253: Escape After Conviction (Infliction of Injury Upon Another Person).

§ 1254(b): Assault in a Detention Facility (Causing Serious Injury).

§ 1304(b)(3): Hate Crimes, provided that the underlying offense alleges a Class C felony.

§ 1304(b)(4): Hate Crimes, provided that the underlying offense alleges a Class B felony under.

§ 1447: Possession of a Deadly Weapon During Commission of a Felony.

§ 1447A: Possession of a Firearm During Commission of a Felony.

§ 1503: Racketeering.

§ 3533: Aggravated Act of Intimidation.

(3) Possession of a Firearm by Persons Prohibited under the following circumstances:

11 *Del. C.* §1448(a)(1), where either the defendant has a prior conviction for a violent felony or the defendant has been previously convicted of causing serious bodily injury to another.

11 *Del. C.* §1448(a)(3): Prior Controlled Dangerous Substance possession, use, or distribution conviction.

11 *Del. C.* §1448(a)(4): Juvenile adjudication for felony.

11 *Del. C.* §1448(a)(6): Protection from abuse order pending.

11 *Del. C.* §1448(a)(7): Conviction for domestic violence misdemeanor.

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

(5) 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.

(6) Any violent felony as defined by 11 *Del. C.* § 4201(c) allegedly committed while the defendant is pending adjudication on a previously charged offense of domestic violence as defined by 11 *Del. C.* §1448(a)(7) allegedly committed against the same victim.

(7) Any offense of domestic violence as defined by 11 *Del. C.* §1448(a)(7) allegedly committed while defendant is pending adjudication on a previously charged violent felony as defined by 11 *Del. C.* § 4201(c) allegedly committed against the same victim.

(8) 11 *Del. C.* § 612: Assault in the second degree, provided that the defendant allegedly caused serious physical injury to the victim or caused physical injury to a peace officer as defined by 11 *Del. C.* § 1901.

(9) 11 *Del. C.* § 607: Strangulation.

(10) Any offense that alleges possession of a Tier 4 or Tier 5 quantity of a Schedule I or Schedule II narcotic.

Commentary on Interim Rule 5.2

Purposes of the Bail Reform Act and This Rule

In 2018, the General Assembly enacted legislation to reform the system under which courts subject defendants to pretrial conditions of release (the "Bail Reform Act" or "Act"). Codified in Chapter 21, Title 11 of the Delaware Code, the Bail Reform Act encourages the use of non-monetary conditions of release when those conditions reasonably assure the defendant's appearance at court proceedings, public safety, and the integrity of the judicial process. In particular, the Act was intended to prevent defendants from being subjected to excessive financial conditions of release, traditionally referred to as money bail. By this means, the Act sought to reduce the unnecessary pretrial incarceration of defendants who are not wealthy enough to pay money bail, as well as reduce the resulting loss in employment, the pressure to plead guilty, the economic toll on non-affluent defendants and their families, and other substantial harm that results from the excessive use of money bail.

To accomplish those goals, this rule requires courts to impose the least restrictive conditions necessary to reasonably assure the defendant's appearance in court, public safety, and the integrity of the judicial process. The rule also recognizes that the risk that the defendant will fail to appear is different from the threat that a defendant will commit harm if released pending trial. Finally, the Act and this rule

reflect the overriding principle that, given the presumption of innocence underlying the American system of criminal justice, there is a crucial difference between pretrial conditions of release and post-conviction sentences, and thus the court shall not treat the former the same as the latter.

Overview of the Pretrial Assessment

Role of the pretrial assessment in accomplishing the purposes of the Act and this rule. The Bail Reform Act and this rule seek to increase the reliability and equity of decisions about conditions of pretrial release. To that end, the Act requires the use of an empirically developed pretrial assessment instrument. Consistent with that requirement, a diverse group of constituencies, with the aid of qualified academic and professional advisors, developed the "DELPAT." The DELPAT takes into account factors relevant to whether defendants are, compared to other defendants, at greater risk of failing to appear at trial, endangering public safety, or obstructing justice, and is therefore designed to provide a reliable basis for setting conditions of release. The pretrial assessment was based on consideration of nationally available models and has been tested preliminarily for reliability and validity and to ensure that the assessment is not affected by bias based on race, gender, wealth, or other inappropriate grounds. It is designed to: (i) improve the reliability of pretrial decisions by ensuring that relevant factors are given consistent and measured weight, based on empirical testing and professional input; (ii) increase equity by ensuring

that relevant factors are given consistent weight in all like cases, so that defendants are subject to equal treatment; and (iii) reduce discrimination against poor defendants.

Pretrial assessment score. To aid in the reliable, equitable, and efficient determination of discretionary conditions of release, the pretrial assessment measures the defendant's risk of pretrial failure, which is defined as either (i) failing to appear after notice of a court proceeding or (ii) incurring a new criminal arrest while the current case is pending. The assessment has two scales that address these two distinct types of failure: a Failure to Appear ("FTA") scale and a New Criminal Arrest ("NCA") scale. The scores of these two scales are combined to produce the final pretrial assessment score.

Risk of failure to appear. The FTA scale assesses the risk that the defendant will fail to appear after notice of a court proceeding. The FTA scale employs four risk factors that were found to correlate with an increased risk of non-appearance:

(i) at least one prior sentence that included probation supervision in the past 10 years;

(ii) total number of prior FTA warrants in the past year;

(iii) total number of prior FTA warrants in the past 10 years; and

(iv) the current arrest includes at least one charge of Uniform Crime Reporting code "larceny" or "stolen vehicle."

Factors (i) and (iv) each receive one point, if applicable. Factors (ii) and (iii) each receive one point if one prior FTA warrant is present and two points if two or more prior FTA warrants are present. Thus, a person's FTA score will range from zero to six. There are three FTA scale risk levels: low (zero to one), moderate (two to three), and elevated (four to six).

Risk of new criminal arrest. The NCA scale assesses the risk that the defendant will be arrested for committing a new crime while the current case is pending. The NCA scale employs seven risk factors that were found to correlate with an increased risk of a new criminal arrest before trial:

(i) another pending criminal case;

(ii) prior convictions;

(iii) at least one prior misdemeanor arrest in the past two years;

(iv) at least one prior sentence that included probation supervision;

(v) age at first arrest;

(vi) at least one prior FTA warrant; and

(vii) at least one prior violent conviction within the past five years.

Each risk factor that is present receives one point, except that factor (ii) receives two points in the case of multiple convictions and factor (iii) receives two points. Thus, a person's NCA score will range from zero to nine. There are four

NCA scale risk levels: very low (zero to one), low (two to four), moderate (five to six), and elevated (seven to nine).

Testing of the Statutory Factors and FTA and NCA Scales

An important proviso: defendants at an elevated risk in the large sample used to validate the pretrial assessment were still likely to appear in court and to not get arrested. The testing of the pretrial assessment demonstrated that during the period before trial, most defendants (i) appeared in court and (ii) did not get arrested. That is, even as to the category of defendants deemed to be at an elevated risk of non-appearance or incurring a new criminal arrest, most defendants appeared as required at court proceedings and were not arrested before trial. Thus, in none of the tiers does the defendant's pretrial assessment score indicate that the defendant is more likely than not to fail to appear or get arrested. Instead, the score indicates only that the defendant presents a greater risk of failing to appear or being arrested compared to individuals in lower tiers.

Testing and other consideration of statutory factors. Section 2105(b) of the Bail Reform Act requires the court to consider certain factors when determining the defendant's risk of pretrial failure. To implement that requirement, the professionals developing the pretrial assessment tested many of these factors as part of its development. Some of the statutory factors were not included in the pretrial assessment because statistical analysis determined that they were not good predictors

of the defendant's risk of failing to appear or getting arrested. Some of the other factors could not be tested because of a lack of reliable and consistent data. Because the Act and this rule were designed to improve the consistent, reliable, and equitable determination of conditions of release, the use of factors that are not subject to reliable and consistent data risks defeating this key purpose. Other factors have been considered, and the empirical literature suggests they are associated with bias on the basis of race, gender, or wealth, and therefore the use of them would be inconsistent with the purposes of the Act and this rule.

Statutory factors included in the FTA and NCA scales or elsewhere in this rule. Consistent with section 2105(b), the pretrial assessment, the domestic violence assessment, and this rule have fully or substantially taken into account many of these statutory factors and determined their appropriate weight, thereby obviating the need for courts to consider the factors on an inconsistent, ad hoc basis. For that reason, the court may not give additional weight to any factor fully or substantially included in the pretrial assessment, the domestic violence assessment, or this rule absent a special finding that there is a compelling reason indicating that the pretrial assessment, the domestic violence assessment, and this rule do not adequately account for the factor. Factors in this category needing a special finding include:

(i) the nature and circumstances of the crime charged;

(ii) whether a firearm was used or possessed;

(iii) the possibility of statutory mandatory imprisonment;

(iv) the defendant's record of convictions;

(v) the defendant's history of amenability to lesser sanctions;

(vi) the defendant's history of breach of release; and

(vii) the defendant's record of appearances at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings;

Statutory factors tested and excluded for not being good predictors of the defendant's risk of pretrial failure. Several of the section 2105(b) factors were tested and found to lack a sufficiently strong correlation with the defendant's risk of pretrial failure. The rule therefore prohibits the court from giving weight to these factors. Factors in this category include:

(i) the defendant's employment;

(ii) the defendant's custody status at the time of the offense; and

(iii) the defendant's length of residence in the community.

Suspect statutory factors not tested but presenting a risk of racial, gender, or wealth bias. Several of the section 2105(b) factors were not tested due to the lack of reliable and consistent data or preexisting evidence of racial, gender, or wealth bias in the academic literature. The rule prohibits giving weight to these suspect factors except by making special findings that considering the factor does not create disparities based on race, gender, or wealth. Factors in this category include:

(i) the defendant's family ties;

(ii) the defendant's financial resources; and

(iii) the defendant's character and mental condition.

Special note on the defendant's character and mental condition. The Bail Reform Act refers to the defendant's "character and mental condition." These terms refer to separate concepts. The term "character" is subjective, has no reliable benchmark, and overlaps with many factors already taken into account by a defendant's criminal record, which is a major input into the pretrial assessment. For that reason, any consideration of that factor is suspect. The term "mental condition" is vague and may also lead to biased decisionmaking, such as where a court uses the term to refer to the defendant's perceived intelligence. That said, there may be circumstances that call for consideration of the defendant's mental condition, in the more discrete sense of a case where the defendant is suffering from a mental illness or condition that indicates that the defendant poses a substantial risk to public safety, or where the defendant is currently under the influence of alcohol or drugs. Given the potential for bias, however, the rule instructs the court not to consider the defendant's mental condition unless the defendant has objectively documented mental health issues relevant to the defendant's risk to public safety or currently exhibits mental health or substance abuse issues relevant to the defendant's risk to public safety. In the case of a defendant who is unable to knowingly and intelligently

participate in presentment proceedings because of incapacitation as a result of the consumption of alcohol or the use of drugs, the court shall follow the separate statutory procedures and standards contained in 11 *Del. C.* § 1909.

Domestic Violence

Domestic violence assessment. In cases where the State contends that the defendant has committed domestic or intimate partner violence, the domestic violence assessment, when available, helps to measure the risk that the defendant may seriously injure or kill the alleged victim. This domestic violence assessment includes the following questions that a first responder is to ask the alleged victim at the time of the incident:

(i) Has the defendant ever used a weapon against you or threatened you with a weapon?

(ii) Has the defendant threatened to kill you or your children?

(iii) Do you think the defendant might try to kill you?

(iv) Does the defendant have a gun or can the defendant get one easily?

(v) Has the defendant ever tried to choke you?

(vi) Is the defendant violently or constantly jealous or does the defendant control most of your daily activities?

(vii) Have you left the defendant or separated after living together or being married?

(viii) Is the defendant unemployed?

(ix) Has the defendant ever tried to commit suicide?

(x) Do you have a child that the defendant knows is not his or hers?

(xi) Does the defendant follow or spy on you or leave threatening messages?

(xii) Is there anything else that worries you about your safety? If so, what worries you?

Trigger of referral protocol. Questions in the domestic violence assessment are grouped into two sets, plus a general catch-all question that serves as an override, the answers to which may trigger a referral protocol that requires the first responder to inform the alleged victim of the high danger assessment and offer the alleged victim the opportunity to be screened by a hotline counselor for assistance. The first set consists of questions (i) through (iii), the second set contains questions (iv) through (xi), and question (xii) is the general catch-all question. The referral protocol is triggered by either (i) an affirmative response to any one of the first set of questions; (ii) an affirmative response to at least four of the second set of questions; or (iii) a discretionary decision by the first responder, based on the alleged victim's response to the catch-all question or any other reason, to trigger the referral protocol.

Conditions of Release for Failure to Appear

Although it is critical that there be incentives and consequences that address the possibility that a defendant will not appear for trial, the risk that the defendant will fail to appear at scheduled court proceedings is categorically different from the threat that a defendant will commit harm if released pending trial. For that reason, the rule discourages the use of monetary conditions where the only risk is that the defendant will fail to appear, and the court can require a secured bond only if the State makes a special showing and the court makes special findings that there is a demonstrated and specific flight risk in the current case. For example, if a defendant with a warrant for his or her arrest purchases a one-way ticket to a foreign country, those circumstances may justify the imposition of a secured bond to assure the defendant's appearance in court. In addition, the court has the authority to make special findings of this kind on its own motion. In most cases, however, the court should not require a secured bond at first appearance where the main risk is that the defendant will fail to appear. Instead, the rule encourages the use of notification measures and other non-monetary conditions of release to assure the defendant's appearance. If the defendant has already failed to appear in the current case, by contrast, the court may under Rule 5.4 impose more intensive conditions of release in its discretion without ordering a new pretrial assessment. When, despite being given a chance to have conditions of release not involving monetary terms, a

defendant fails to appear, the defendant's breach will subject him to the imposition of monetary conditions, in the discretion of the court, as is generally true when a defendant breaches conditions of release.

Conditions of Release for Risk to Public Safety

The most serious threat to be addressed by conditions of release is when the defendant poses a risk of harm to the general public or a specific person. Consistent with the seriousness of that threat, the pretrial assessment provides for a higher score based on the defendant's risk to public safety, and the domestic violence assessment provides for a secured conditions of release bond where there is a heightened risk that the defendant may harm the alleged victim. In addition, the rule identifies certain serious offenses that signal a heightened risk to public safety. These signal offenses involve very serious offenses, such as homicides, crimes of violence, sex crimes, gun crimes, and high level drug offenses. A number of these signal offenses specifically involve domestic violence and therefore supplement the protections of the domestic violence assessment in addressing this important area. As to these signal offenses, the court has discretion to impose more stringent conditions of release than suggested by the initial recommended response, including monetary conditions. The rule also addresses the risks posed by recidivist impaired drivers, by providing for conditions of release tailored to the unique threats posed by these defendants.

In addition, the rule allows for the court to require more intensive conditions of release where the State makes a special showing and the court makes special findings that releasing the defendant with less intensive conditions of release would pose a substantial danger to public safety. Likewise, the court has the authority to make special findings of this kind on its own motion. Given the breadth of the signal offenses, the rule contemplates that these "residual" departures will be relatively rare.

Conditions of Release for Obstruction of Justice

The Bail Reform Act recognizes that some defendants pose the danger of undermining the rule of law by intimidating witnesses or taking other steps that obstruct justice and the ability of the judicial system to hold a fair trial. These situations are case-specific, not susceptible to being addressed by a pretrial assessment instrument, and therefore this rule sets forth standards by which the State can make a special showing and the court can make special findings to address when a defendant has taken specific actions that show this threat to be substantial and justify more intensive conditions of release than the initial recommended response. As with non-appearance and public safety risks, the court also has the authority to make special findings of this kind on its own motion.

Downward Departures from the Initial Recommended Response

The rule provides for procedures where the court wishes to depart downward from the initial recommended response. The court may impose less intensive conditions of release than the initial recommended response without making "special findings" so long as the court finds that less intensive conditions will adequately assure the defendant's appearance at court proceedings, public safety, and that the defendant does not obstruct justice. For statistical tracking purposes, the court still must record its decision by selecting at least one judicial response code in the Delaware Criminal Justice Information System.

Limitations on Release to Pretrial Services

Consistent with the risk that overuse of supervision by Pretrial Services may cause many of the same harms as the overuse of money bail, and consistent with the presumption of innocence guaranteed by the United States and Delaware Constitutions, the rule discourages the court from confusing release to Pretrial Services with either a post-conviction sentence involving probation and parole or participation in a diversion program. Specifically, if the court releases the defendant to Pretrial Services, it must either impose the standard conditions of release used by Pretrial Services or first consult with the Department of Correction. In addition, the rule discourages the use of types of conditions of release that are either suspect in

the context of pretrial release or resource intensive: alcohol or drug testing, curfews, and electronic monitoring.

Consideration of the Defendant's Financial Circumstances

Due to concerns about creating disparities based on race, gender, or wealth, the rule prohibits giving weight to the defendant's financial circumstances in setting the conditions of release except by making special findings. Put plainly, in initially determining whether to impose monetary conditions of release, a defendant's wealth should not bias that decision. But, when the court decides to impose monetary conditions of release, equity requires the court to consider the defendant's wealth and ability to satisfy those monetary conditions of release. The rule therefore directs the court to provide defendants with a form to provide financial information so that the conditions of release can fully take into account the defendant's means in setting appropriate monetary conditions of release.

Sua Sponte Departures from the Initial Recommended Response

As previously noted, the court may depart downward from the initial recommended response on its own initiative. And as noted, the rule also allows for the court to depart upward on its own initiative, provided that the court explains its reasons for doing so (and that the court makes the same special findings that it must make when the State requests more intensive conditions of release). But consistent

with the defendant's right to seek review of her conditions of release, the court must offer the defendant an opportunity to contest that upward departure.

Interim Rule 5.3. Modification of conditions of release.

(a) *Definitions.*

All terms shall have the meanings given them in Rule 5.2(a).

(b) *Obligation to review conditions of release if the defendant is detained for inability to meet required conditions of release.*

Unless reviewed earlier, if the defendant remains detained for more than 72 hours from the defendant's initial presentment as a result of the inability to meet the required conditions of release, the court with jurisdiction over the defendant shall, on its own initiative, review de novo the defendant's conditions of release to determine whether to modify those conditions. This review shall occur within 10 days from the date of detention.

(c) *Motions by parties for review of conditions.*

(1) *In general.* A defendant, regardless of custody status, or the Attorney General, the Attorney General's designee, a third party private or commercial surety,

the Department of Correction, or any person or nongovernmental organization to whom a defendant has been released for supervision may file a motion in the court with jurisdiction over the defendant to modify the defendant's conditions of release or make an oral application at any proceeding at which the parties are both present.

(2) *Hearing on motion.*

(A) *Expedited hearing required.* Upon a request for modification of conditions under this subsection, the court shall hold a hearing in an expedited manner, but in no event later than 10 days after the filing of the motion or oral application.

(B) *Defendant's right to counsel.* The defendant shall have the right to assistance of retained or appointed counsel at any hearing under this subsection. Nothing in this subparagraph shall be construed to create or expand any substantive right to appointed counsel.

(d) ***Same standards apply to requests for modification of conditions.***

In determining whether to modify the defendant's conditions of release under this rule, the court shall continue to adhere to Rule 5.2 in all respects.

(e) ***Court must state reasons for decision and issue implementing order.***

Upon the disposition of any request to modify the defendant's conditions of release under subsection (c), the court shall set forth on the record the reasons for amendment or continuation of the conditions required and issue an implementing written order.

(f) ***Later motion for review; later review limited.***

After an initial request for modification of the defendant's conditions of release under subsection (c), later motions for review of the order setting conditions of release may be filed only upon a material change in circumstance. The court may rule on later motions with or without a hearing.

Commentary to Interim Rule 5.3.

Rule 5.3 provides for two different mechanisms for judicial review of the defendant's conditions of release after the court's initial determination. First, the court with jurisdiction over the defendant shall review the defendant's conditions of release on its own initiative within 72 hours if the defendant remains detained because she cannot meet the conditions of release. Second, the rule provides the State, the defendant, and certain other interested parties with the opportunity to move for modification of the conditions of release. Upon a request for modification, the court shall hold a hearing and state its reasons on the record, and in making a determination under either mechanism, the court shall follow the same considerations as it would under Rule 5.2 in making an initial determination. After the first request for modification, however, the court need not hold a hearing.

Interim Rule 5.4. Hearings for violation of conditions of release.

(a) *Definitions.*

All terms shall have the meanings given them in Rule 5.2(a).

(b) *Power of the court to issue summons or warrant.*

The court, when notified by the State or the Department of Correction of a violation of the defendant's conditions of release, may issue a summons or a warrant for the arrest of a defendant for violating any condition of release.

(c) *Power to arrest and authorize arrest without a warrant.*

(1) *In general.* In addition to the State's authority to arrest a defendant without a warrant as otherwise provided by law, the Commissioner of the Department of Correction or any probation officer, acting in performance of his or her duties, under exigent circumstances may arrest a supervised defendant without a warrant when in the judgment of the Commissioner or probation officer the supervised defendant has

violated any material condition of release, as set forth in 11 *Del. C.* § 2114. The Commissioner or probation officer may deputize any other officer with power of arrest to do so by giving that officer a written statement setting forth in what manner the supervised defendant has in the judgment of the Commissioner or the probation officer violated a material condition of release. When an arrest is made by a probation officer or the Commissioner, the officer shall present to the detaining authority a written statement of the circumstances of violation.

(2) *Notice to court and detaining authority.* Upon arrest and detention under this subsection, the State, the Commissioner, or a probation officer shall immediately notify the court with jurisdiction over the defendant and shall submit to the court a written report showing in what manner the defendant has violated the conditions of release.

(d) ***Pretrial violations hearing.***

If the State, the Commissioner, or a probation officer alleges noncompliance with material conditions of release, or if the defendant is arrested under the authority of a summons or warrant issued for violation of the conditions of release, a probation officer shall take the defendant directly before the court with jurisdiction over the defendant if that court is in session or take the defendant before a magistrate who may revoke or modify the bail, provided that a hearing before the court that has jurisdiction shall be held within 72 hours. The hearing may be summary in nature.

(e) ***Entry of order.***

Upon the completion of a hearing under subsection (d), the court shall enter an order continuing the existing conditions of release, setting different conditions of release, or revoking the defendant's release. If the court finds that the defendant has breached the conditions of release, the court may require more intensive conditions

of release in its discretion and need not order a new pretrial assessment. The court shall revoke the defendant's release only when the State:

(1) shows that the defendant knowingly violated a condition of release; and

(2) proves, by clear and convincing evidence, that no other condition or combination of conditions of release can reasonably assure the defendant's appearance at court proceedings, public safety, and that the defendant does not obstruct justice.

(f) ***Review.***

An order continuing or modifying the conditions of release under this rule is reviewable by the court only upon a material change in circumstance. The court may rule on subsequent motions with or without a hearing.

Commentary on Interim Rule 5.4.

The Bail Reform Act and these rules are designed to give defendants an opportunity to be released on the least restrictive conditions needed to reasonably assure the defendant's appearance, public safety, and the integrity of the judicial process. When a defendant receives that opportunity and then fails to comply with the conditions of release, however, the defendant is in a categorically different position.

For that reason, Rule 5.4 gives the court discretion to determine the appropriate consequences of a breach of the conditions of release, including the discretion to impose monetary conditions of release. Although the court may take into account the results of the pretrial assessment in determining those consequences, the court need not follow the results of any prior pretrial assessment, give it any particular weight, or order a new pretrial assessment. Instead, upon a breach of release, the court is entitled to use its discretion under this rule to modify the conditions of release as it deems appropriate to reasonably assure the defendant's appearance, public safety, and the integrity of the judicial process.

Exhibit B

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

ORDER REGARDING INTERIM SPECIAL RULE OF CRIMINAL PROCEDURE FOR PRETRIAL RELEASE

This 13th day of December 2018, it appears to the Court that:

WHEREAS, the General Assembly enacted legislation in 2018 to reform the system under which courts subject defendants to pretrial conditions of release (the "Bail Reform Act" or "Act");

WHEREAS, the Bail Reform Act takes effect on January 1, 2019, requiring the Judiciary to put in place an implementing rule by January 1, 2019 for an important systemic reform;

WHEREAS, the Bail Reform Act directs that its implementation and the procedure for pretrial release shall be as provided by the Rules of the Superior Court, but the procedure for pretrial release must apply across multiple courts, specifically the Superior Court, the Family Court, the Court of Common Pleas, and the Justice of the Peace Court;

WHEREAS, the Supreme Court and the presiding judges of the Superior Court, the Family Court, the Court of Common Pleas, and the Justice of the Peace Court agree that the unique, cross-court nature of the procedure for pretrial release mean that Interim Special Rule of Criminal Procedure for Pretrial Release should be adopted by the Supreme Court to establish the procedure for pretrial release in the

Superior Court, the Family Court, the Court of Common Pleas, and the Justice of the Peace Court;

WHEREAS, by order dated December 13, 2018, the Supreme Court, with the agreement of the presiding judges of the Superior Court, the Family Court, the Court of Common Pleas, and the Justice of the Peace Court, adopted Interim Special Rule of Criminal Procedure for Pretrial Release;

WHEREAS, by order dated December 13, 2018, the Supreme Court, directed the Superior Court, the Family Court, the Court of Common Pleas, and the Justice of the Peace Court, to follow Interim Special Rule of Criminal Procedure for Pretrial Release beginning January 1, 2019 and, as the Interim Rule is applied and refined, to amend their rules as necessary;

NOW, THEREFORE, IT IS ORDERED that, beginning January 1, 2019, this Court shall follow Interim Special Rule of Criminal Procedure for Pretrial Release. As the Interim Rule is applied and refined, this Court shall amend its rules as necessary.

President Judge

Exhibit C

IN THE FAMILY COURT OF THE STATE OF DELAWARE

ORDER REGARDING INTERIM SPECIAL RULE OF CRIMINAL PROCEDURE FOR PRETRIAL RELEASE

This 13th day of December 2018, it appears to the Court that:

WHEREAS, the General Assembly enacted legislation in 2018 to reform the system under which courts subject defendants to pretrial conditions of release (the "Bail Reform Act" or "Act");

WHEREAS, the Bail Reform Act takes effect on January 1, 2019, requiring the Judiciary to put in place an implementing rule by January 1, 2019 for an important systemic reform;

WHEREAS, the Bail Reform Act directs that its implementation and the procedure for pretrial release shall be as provided by the Rules of the Superior Court, but the procedure for pretrial release must apply across multiple courts, specifically the Superior Court, the Family Court, the Court of Common Pleas, and the Justice of the Peace Court;

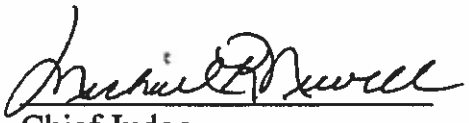
WHEREAS, the Supreme Court and the presiding judges of the Superior Court, the Family Court, the Court of Common Pleas, and the Justice of the Peace Court agree that the unique, cross-court nature of the procedure for pretrial release mean that Interim Special Rule of Criminal Procedure for Pretrial Release should be

adopted by the Supreme Court to establish the procedure for pretrial release in the Superior Court, the Family Court, the Court of Common Pleas, and the Justice of the Peace Court;

WHEREAS, by order dated December 13, 2018, the Supreme Court, with the agreement of the presiding judges of the Superior Court, the Family Court, the Court of Common Pleas, and the Justice of the Peace Court, adopted Interim Special Rule of Criminal Procedure for Pretrial Release;

WHEREAS, by order dated December 13, 2018, the Supreme Court, directed the Superior Court, the Family Court, the Court of Common Pleas, and the Justice of the Peace Court, to follow Interim Special Rule of Criminal Procedure for Pretrial Release beginning January 1, 2019 and, as the Interim Rule is applied and refined, to amend their rules as necessary;

NOW, THEREFORE, IT IS ORDERED that, beginning January 1, 2019, this Court shall follow Interim Special Rule of Criminal Procedure for Pretrial Release. As the Interim Rule is applied and refined, this Court shall amend its rules as necessary.



Chief Judge

Exhibit D

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

ORDER REGARDING INTERIM SPECIAL RULE OF CRIMINAL PROCEDURE FOR PRETRIAL RELEASE

This 13th day of December 2018, it appears to the Court that:

WHEREAS, the General Assembly enacted legislation in 2018 to reform the system under which courts subject defendants to pretrial conditions of release (the "Bail Reform Act" or "Act");

WHEREAS, the Bail Reform Act takes effect on January 1, 2019, requiring the Judiciary to put in place an implementing rule by January 1, 2019 for an important systemic reform;

WHEREAS, the Bail Reform Act directs that its implementation and the procedure for pretrial release shall be as provided by the Rules of the Superior Court, but the procedure for pretrial release must apply across multiple courts, specifically the Superior Court, the Family Court, the Court of Common Pleas, and the Justice of the Peace Court;

WHEREAS, the Supreme Court and the presiding judges of the Superior Court, the Family Court, the Court of Common Pleas, and the Justice of the Peace Court agree that the unique, cross-court nature of the procedure for pretrial release mean that Interim Special Rule of Criminal Procedure for Pretrial Release should be adopted by the Supreme Court to establish the procedure for pretrial release in the

Superior Court, the Family Court, the Court of Common Pleas, and the Justice of the Peace Court;

WHEREAS, by order dated December 13, 2018, the Supreme Court, with the agreement of the presiding judges of the Superior Court, the Family Court, the Court of Common Pleas, and the Justice of the Peace Court, adopted Interim Special Rule of Criminal Procedure for Pretrial Release;

WHEREAS, by order dated December 13, 2018, the Supreme Court, directed the Superior Court, the Family Court, the Court of Common Pleas, and the Justice of the Peace Court, to follow Interim Special Rule of Criminal Procedure for Pretrial Release beginning January 1, 2019 and, as the Interim Rule is applied and refined, to amend their rules as necessary;

NOW, THEREFORE, IT IS ORDERED that, beginning January 1, 2019, this Court shall follow Interim Special Rule of Criminal Procedure for Pretrial Release. As the Interim Rule is applied and refined, this Court shall amend its rules as necessary.

Chief Judge

Exhibit E

IN THE JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE

ORDER REGARDING INTERIM SPECIAL RULE OF CRIMINAL PROCEDURE FOR PRETRIAL RELEASE

This 13th day of December 2018, it appears to the Court that:

WHEREAS, the General Assembly enacted legislation in 2018 to reform the system under which courts subject defendants to pretrial conditions of release (the "Bail Reform Act" or "Act");

WHEREAS, the Bail Reform Act takes effect on January 1, 2019, requiring the Judiciary to put in place an implementing rule by January 1, 2019 for an important systemic reform;

WHEREAS, the Bail Reform Act directs that its implementation and the procedure for pretrial release shall be as provided by the Rules of the Superior Court, but the procedure for pretrial release must apply across multiple courts, specifically the Superior Court, the Family Court, the Court of Common Pleas, and the Justice of the Peace Court;

WHEREAS, the Supreme Court and the presiding judges of the Superior Court, the Family Court, the Court of Common Pleas, and the Justice of the Peace Court agree that the unique, cross-court nature of the procedure for pretrial release mean that Interim Special Rule of Criminal Procedure for Pretrial Release should be adopted by the Supreme Court to establish the procedure for pretrial release in the

Superior Court, the Family Court, the Court of Common Pleas, and the Justice of the Peace Court;

WHEREAS, by order dated December 13, 2018, the Supreme Court, with the agreement of the presiding judges of the Superior Court, the Family Court, the Court of Common Pleas, and the Justice of the Peace Court, adopted Interim Special Rule of Criminal Procedure for Pretrial Release;

WHEREAS, by order dated December 13, 2018, the Supreme Court, directed the Superior Court, the Family Court, the Court of Common Pleas, and the Justice of the Peace Court, to follow Interim Special Rule of Criminal Procedure for Pretrial Release beginning January 1, 2019 and, as the Interim Rule is applied and refined, to amend their rules as necessary;

NOW, THEREFORE, IT IS ORDERED that, beginning January 1, 2019, this Court shall follow Interim Special Rule of Criminal Procedure for Pretrial Release. As the Interim Rule is applied and refined, this Court shall amend its rules as necessary.

Chief Magistrate