

**PROPOSED REVISIONS TO THE RULES OF CRIMINAL
PROCEDURE FOR THE MAGISTRATE COURTS, RULES OF
CRIMINAL PROCEDURE FOR THE METROPOLITAN COURTS,
AND RULES OF PROCEDURE FOR THE MUNICIPAL COURTS**

The Rules for Courts of Limited Jurisdiction Committee and the Metropolitan Courts Rules Committee have recommended amendments to Rules 6-207, 7-207, and 8-206 NMRA for the Supreme Court's consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's web site at <http://nmsupremecourt.nmcourts.gov/> or sending your written comments by mail, email, or fax to:

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 15, 2015, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's web site for public viewing.

6-207. Bench warrants.

A. **Failure to appear or act.** If any person who has been ordered by the magistrate [judge] court to appear at a certain time and place or to do a particular thing fails to appear at such specified time and place in person, or by counsel when permitted by these rules, or fails to do the thing so ordered, the court may issue a warrant for the person's arrest. The warrant may limit the jurisdictions in which it may be executed. A copy of the warrant shall be docketed in the case file. Unless the judge has personal knowledge of such failure, no bench warrant shall issue except upon a sworn written statement of probable cause.

B. **Failure to pay fines or fees.**

(1) If a defendant disobeys a magistrate court order to pay fines or fees, the court shall issue a summons within three (3) days, notifying the defendant that a bench warrant for failure to pay shall issue thirty (30) days after the missed payment and instructing the defendant to either pay or request a hearing before the expiration of the thirty (30)-day period. The court may serve a summons under this paragraph using any method of service permitted by the Rules of Criminal Procedure for the Magistrate Courts.

(2) If a defendant fails to pay or request a hearing within the time period set forth in the summons, the court shall issue a bench warrant for failure to pay. The court may issue a bench warrant for failure to pay regardless of whether the defendant's probation has otherwise expired or whether the defendant was placed on probation at all.

[B:]C. **Law enforcement information system.** If a bench warrant is issued in a felony, misdemeanor, or driving while under the influence of intoxicating liquor or drugs proceeding, upon

execution of the bench warrant, the court shall cause the warrant to be entered into a warrant information system maintained by a law enforcement agency.

~~[C:]~~**D. Execution and return.** A bench warrant shall be executed and returned in the same manner as an arrest warrant. The return shall be docketed in the case file.

~~[D:]~~**E. Duty to remove warrant.** If the warrant has been entered into a law enforcement information system, upon arrest of the defendant, the person executing the warrant shall cause it to be removed from the system. If the court withdraws the warrant, the court shall cause the warrant to be removed from the warrant information system.

[As amended, effective July 1, 1999; as amended by Supreme Court Order No. _____, effective _____.]

Committee commentary. — If a defendant fails to pay fines or fees as ordered by the magistrate court, the court should issue a summons notifying the defendant of a missed payment and allowing the defendant to either pay at the clerk’s office, request a time extension, or request a hearing prior to the issuance of a bench warrant. If a defendant requests a hearing prior the issuance of bench warrant under Paragraph B of this rule, the court shall not issue a bench warrant prior to the hearing date, even if the hearing is set more than thirty (30) days after a missed payment. The magistrate court retains jurisdiction to collect unpaid fines and fees regardless of whether the defendant’s probation has otherwise expired or whether the defendant was placed on probation at all.

[Adopted by Supreme Court Order No. _____, effective _____.]

7-207. Bench warrants.

A. **Failure to appear or act.** If any person who has been ordered by the metropolitan ~~[judge]~~ court to appear at a certain time and place or to do a particular thing fails to appear at such specified time and place in person or by counsel when permitted by these rules or fails to do the thing so ordered, the court may issue a warrant for the person’s arrest. The warrant may limit the jurisdictions in which it may be executed. A copy of the warrant shall be docketed in the case file. Unless the judge has personal knowledge of such failure, no bench warrant shall issue except upon a sworn written statement of probable cause.

B. **Failure to pay fines or fees.**

(1) If a defendant disobeys a metropolitan court order to pay fines or fees, the court shall issue a summons, notifying the defendant that a bench warrant for failure to pay may issue and instructing the defendant to either pay or request a hearing within the time period set forth in the summons. The court may serve a summons under this paragraph using any method of service permitted by the Rules of Criminal Procedure for the Metropolitan Courts.

(2) If a defendant fails to pay or request a hearing within the time period set forth in the summons, the court may issue a bench warrant for failure to pay. The court may issue a bench warrant for failure to pay regardless of whether the defendant’s probation has otherwise expired or whether the defendant was placed on probation at all.

~~[B:]~~**C. Law enforcement information system.** If a bench warrant is issued in a felony, misdemeanor or driving while under the influence of intoxicating liquor or drugs proceeding, upon execution of the bench warrant, the court shall cause the warrant to be entered into a warrant information system maintained by a law enforcement agency.

~~[C:]~~**D. Execution and return.** A bench warrant shall be executed and returned in the same manner as an arrest warrant. The return shall be docketed in the case file.

~~[D:]~~**E. Duty to remove warrant.** If the warrant has been entered into a law enforcement information system, upon arrest of the defendant, the person executing the warrant shall cause it to

be removed from the system. If the court withdraws the warrant, the court shall cause the warrant to be removed from the warrant information system.

[As amended, effective July 1, 1999; as amended by Supreme Court Order No _____, effective _____.]

Committee commentary. — If a defendant fails to pay fines or fees as ordered by the metropolitan court, the court should issue a summons notifying the defendant of a missed payment and allowing the defendant to either pay at the customer service desk, request a time extension, or request a hearing prior to the issuance of a bench warrant. The metropolitan court retains jurisdiction to collect unpaid fines and fees regardless of whether the defendant’s probation has otherwise expired or whether the defendant was placed on probation at all.

[Adopted by Supreme Court Order No. _____, effective _____.]

8-206. Bench warrants.

A. **Failure to appear or act.** If any person who has been ordered by the municipal [judge] court to appear at a certain time and place or to do a particular thing fails to appear at such specified time and place in person, or by counsel when permitted by these rules, or to do the thing so ordered, the court may issue a warrant for the person’s arrest. Unless the municipal judge has personal knowledge of such failure, no bench warrant shall issue except upon a sworn written statement of probable cause.

B. **Failure to pay fines or fees.**

(1) If a defendant disobeys a municipal court order to pay fines or fees, the court shall issue a summons or order to show cause, notifying the defendant that a bench warrant for failure to pay may issue and instructing the defendant to either pay or appear on the date set forth in the order to show cause. The court may serve a summons or order to show cause under this paragraph using any method of service permitted by the Rules of Procedure for the Municipal Courts.

(2) If a defendant fails to either pay or appear on the date set forth in the summons or order to show cause, the court shall issue a bench warrant for failure to pay. The court may issue a bench warrant for failure to pay regardless of whether the defendant’s probation has otherwise expired or whether the defendant was placed on probation at all.

~~[B:]~~C. **Law enforcement information system.** If a bench warrant is issued in a driving while under the influence of intoxicating liquor or drugs proceeding, upon execution of the bench warrant, the court shall cause the warrant to be entered into a warrant information system maintained by a law enforcement agency. A copy of the warrant shall be docketed in the case file.

~~[C:]~~D. **Execution and return.** A bench warrant shall be executed and returned in the same manner as an arrest warrant. The return shall be docketed in the case file.

~~[D:]~~E. **Duty to remove warrant.** If the warrant has been entered into a law enforcement information system, upon arrest of the defendant, the person executing the warrant shall cause it to be removed from the system. If the court withdraws the warrant, the court shall cause the warrant to be removed from the warrant information system.

[As amended, effective July 1, 1999; as amended by Supreme Court Order _____, effective _____.]

Committee commentary. — If a defendant fails to pay fines or fees as ordered by the municipal court, the court may issue a summons notifying the defendant of a missed payment and allowing the defendant to either pay at the clerk’s office, request a time extension, or request a hearing prior to the issuance of a bench warrant. If a defendant requests a hearing prior to the issuance of a bench

warrant under Paragraph B of this rule, the court shall not issue a bench warrant prior to the hearing date. Alternatively, upon a defendant's failure to pay fines and fees the court may issue an order to show cause, setting forth a specific hearing date and time. The municipal court retains jurisdiction to collect unpaid fines and fees regardless of whether the defendant's probation has otherwise expired or whether the defendant was placed on probation at all.

[Adopted by Supreme Court Order No. _____, effective _____.]

Zimbra**supjdm@nmcourts.gov**

I support Proposal 30!!!

From : Marita Robinson <marita.robinson@lopdm.us> Tue, Mar 17, 2015 10:20 AM
Subject : I support Proposal 30!!!
To : nmsupremecourtclerk@nmcourts.gov

Good morning, Mr. Moya,

I am an Assistant Public Defender in Aztec, practicing for about two years in this capacity on misdemeanor and felony cases. I am strongly in favor of Proposal 30. A warrant is an extreme measure for failure to pay, and I have seen too many clients convicted out of magistrate court get thrown in jail simply for missing a payment of fines/fees to the court. This proposed rule's summons procedure would hopefully help to avoid people going to jail, losing their jobs, and further being punished for being low-income in the first place.

Thank you for your consideration.

Sincerely,

Marita Robinson

Law Offices of the Public Defender, 11th Judicial District
300 Gossett Dr.
Aztec, NM 87410
Phone: 505.386.4060
Fax: 505.334.0612

SUPREME COURT OF NEW MEXICO
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MAR 17 2015



Zimbra

supjdm@nmcourts.gov

Comment on Proposal 30 - Bench Warrant for Failure to Pay Fines and Fees

From : Stephen Wayne <stephen.wayne@lopdm.us> Tue, Mar 17, 2015 10:46 AM
Subject : Comment on Proposal 30 - Bench Warrant for Failure to Pay Fines and Fees
To : nmsupremecourtclerk@nmcourts.gov

If this proposal becomes a rule it will provide defendants with meaningful due process, save counties money and decrease the disruptions to New Mexicans' lives.

Under the current system, when a defendant is arrested for failure to pay, they are taken before a judge. At this point the defendant could request a due process hearing at which the defendant could explain why the defendant was unable to pay before their liberty is taken away. Realistically, however, it is quicker for the defendant to remain in custody at the \$58 a day credit they get than to have a hearing to explain their failure to pay. For instance, a defendant owes \$150 and is brought before a judge. It is easier and quicker for a defendant to serve a 3 day sentence earning \$58 credit per day than to request a due process hearing and wait a week or two for a due process hearing to be set.

Currently when a defendant owes a court money and is arrested on a bench warrant, the court more often than not orders a jail sentence to be served at \$58 a day, and the county spends money to keep that person in jail. When a defendant owes money, the county spends money to enforce the court's sentence. That is nonsensical. If someone owes money, the smart course of action economically is give them a chance to pay. Defendants that are summonsed will have a reminder to pay or can request a hearing where they can explain their inability to pay and/or request a lower monthly payment. The end result is less people in jails, county jails saving money and the courts collecting more fines/fees.

Numerous New Mexicans every year are arrested and imprisoned for forgetting or being unable to pay. This disproportionately affects a higher percentage of low-income New Mexicans. These defendants that are arrested miss work, lose jobs, can't pay their bills while in jail, etc. The current system keeps the poor poor. Notifying defendants by summons of their failure to pay gives them a chance to make a late payment, request an extension or explain to a judge why they can't pay. It's only fair.

Stephen Wayne

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MAR 17 2015



Proposed Rule Changes Comment Form.

Name: Ellen Wayne
Phone: 505-386-4060
Email: ellen.wayne@lopdm.us

Rule No: 6-207, 7-207, 8-206

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MAR 17 2015



Comments:

I fully support proposal 30. Issuing a bench warrant for failure to pay a fine on time without any opportunity to explain or ask for more time to pay is ludicrous. There are so many scenarios where someone may not make a payment for perfectly legitimate reasons, including being indigent. Automatically issuing a warrant which eventually results in the individual sitting in jail waiting to see a judge (all the while losing his or her job, leaving children without their parents, missing school, etc.) is not in the interest of justice. This is just money that we're talking about here. We're in a sad state of affairs when we are taking away someones liberty without an opportunity to be heard (as is the common practice) and only over MONEY! New Mexico seems to be running a debtors prison. If the changes in proposal 30 are implemented, the justice system would begin treating people more humanely. The system would stop nonchalantly taking away individual's liberty. Just this one extra step of sending a notice and allowing an opportunity to be heard before issuing a warrant will make a huge change in a positive direction. Thank you.

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March 18, 2015

MAR 24 2015



Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848

Re: Comments for 2015 proposed rule amendments

Dear Supreme Court Justices and Rules for Courts of Limited Jurisdiction Committee Members:

I would like to comment on Proposal 30 of the proposed rule amendments for the Magistrate Courts. This involves bench warrants for failure to pay fines and fees. In the proposal, the committee seeks to make it mandatory for the court to have a hearing made prior to the issuance of a bench warrant for failure to pay.

I cannot state strongly enough that I am against this.

When a defendant is ordered to pay fines and costs, it is because that person has been adjudicated to be guilty of a CRIME. Most crimes are committed because the defendants are not acting as RESPONSIBLE citizens – i.e. they are breaking the law, even if it is just a speeding ticket. One of the ways the courts can try to get a defendant to act more responsibly when they have been found guilty of a crime is to assess fines and court costs and require that the defendant pay those amounts within a specified amount of time. Fines and fees are considered a PUNISHMENT (often in lieu of more serious punishments such as jail time). They are imposed not only with the specific intent to punish the offender, but also with the hope that such punishment will lead to a change in behavior – i.e. the defendant will not commit a crime again.

All courts give the defendant a copy of his/her judgment and sentence either in person or via mail, and on the J & S it states when the fines and fees are due, usually within 30 days. The defendant is given the opportunity to be a responsible citizen and make that payment in full within the 30 days. They are also given the opportunity to make payment arrangements if they cannot pay in full within those 30 days, usually by signing a payment agreement.

What this proposed rule amendment would do is make it the Courts' responsibility to remind the defendant to pay these fines, even though we have already told them to. It will become our responsibility to notify them of their bill, even if they have changed addresses, and it will become our fault if they are not notified.

We are not the electric company. We should not have to send out notices every month "reminding" defendants that their payment is due. Part of the hoped for change in behavior is that defendants will be responsible and will take the payment of their fines and costs seriously by making their payment or payments in a timely manner.

The Judiciary is already struggling to make ends meet with its budget. The additional clerical and judicial time and resources required for such a rule change will seriously burden the Magistrate Courts when every time a defendant forgets to pay on time we have to send out a summons. Such an investment of time and money will NOT be recouped by the courts. Credit card companies are charging interest. We do not. We do not assess additional fees or costs UNLESS there is a bench warrant issued.

I empathize with the members of the committee who think that defendants should be "reminded" that they owe the courts money. However, every defendant KNOWS they owe the court the money. They choose not to make the payment. They choose not to request an extension of time to pay. They choose to IGNORE the decision of the court and hope that they don't get caught.

Bench warrants are issued by the court for people failing to pay in order to collect the monies due to the court. A bench warrant serves as a deterrent to those who think they can ignore the court's orders. In addition, once a bench warrant is issued if a defendant wishes to pay he/she can still come to the court to see the judge regarding the warrant. It is also within a judge's discretion to call back a bench warrant and waive a bench warrant fee if the judge deems it appropriate.

Many defendants pay on a monthly basis. In such a scenario, they may be due to pay by the 10th of the month, but by failing to pay they now have an additional 30 days to request a hearing regarding their inability to pay. Allowing for adequate time to schedule such a hearing, it may be 2 weeks or more before we are able to schedule it. By that time, their next payment is due, so now they are behind 2 months. And after paying that amount, another month goes by, and they fail to pay again. We again have to issue another summons. This can go on and on, requiring greater and greater amounts of time and money to recover fines and fees that should have been paid in a timely manner long ago.

In summation, I do not think there should be any mention in Rule 6-207 regarding the court having to notify the defendant that he/she owes money to the court prior to issuance of a bench warrant for failing to pay. The defendants already know. They are just ignoring the judge and the court. It does not assist the fair and impartial administration of justice to allow defendants to pay whenever they feel like they can afford it.

Sincerely,

Lisa Farnum, Court Manager II
Socorro Magistrate Court
102 Winkler St
Socorro, NM 87801

Support for proposal 30

From : Steven Forsberg <steven.forsberg@lopdm.us> Tue, Mar 24, 2015 02:53 PM
Subject : Support for proposal 30
To : nmsupremecourtclerk@nmcourts.gov

I am writing to express my strong support for Proposal 30, regarding rule 6-207. It would require magistrate courts to send summons before issuing bench warrants for failure to pay.

I practiced in magistrate court in a jurisdiction that did not send notice or summons, but simply issued a bench warrant if there was an unpaid balance. To begin with, it was not uncommon to see people in jail who owed trivial sums, had made clerical errors, or who had paid but for some reason their court records didn't reflect it. At least once a week a judge would end up apologizing to a jailed person because of some "snafu" that had resulted in their wrongful arrest, or their arrest over a couple of dollars, etc.

Aside from that there is the economic logic --- locking up people who owe you money, and thereby spending even more money, is simply digging yourself further in a hole. In theory the person will, upon arrest, quickly pay their balance. But in my experience most people who could pay would have done so already. What you are left with is very poor people who can't afford payment sitting in jail to get 'credit' towards a debt they will never repay. I understand that some judges will gladly spend \$200 of county money (to jail someone) in order to try and make \$50 for the judiciary (a fine paid), but that is bad overall policy.

In effect, failure to pay is indirect contempt, and before a person is jailed for indirect contempt they have a due process right to a hearing. If a person is unable to pay they cannot be jailed (*Bearden v. Georgia*, 461 U.S. 660 (1983) and its progeny). If they are simply unwilling to pay they can be jailed, but after their hearing provides due process. This rule change may help the State keep from being subject to litigation over deprivation of rights.

Regards,

Steven J. Forsberg
Assistant Public Defender, Albuquerque
(all opinions are my own I do not speak on behalf of the Law Office of the Public Defender)

SUPREME COURT OF NEW MEXICO
FILED

MAR 24 2015



Comments re: Proposal 30

From : Cynthia Pacheco <aocclp@nmcourts.gov>
Subject : Comments re: Proposal 30
To : nmsupremecourtclerk@nmcourts.gov

Wed, Apr 15, 2015 02:57 PM

 1 attachment

Attached please find my comments in opposition to proposal 30.

Thank you,
Cynthia Pacheco, Manager
Warrant Enforcement Program
Administrative Office of the Courts

 **Proposal 6207.pdf**
130 KB

SYNOPSIS OF PROPOSED RULE

The proposed rule seeks to require courts to issue a Failure to Pay summons to any defendant who has failed to comply with an order to pay fines, fees, or court costs pursuant to an order of the court. The rule requires that the summons be mailed within 3 days of the missed payment, and requires the defendant to pay or request a hearing. The rule requires a bench warrant to be issued within 30 days, regardless of the probationary status of the defendant.

BACKGROUND

Magistrates are required to assess and collect financial penalties of convicted defendants pursuant to NMSA 1978, §35-6-1. Judges are authorized to suspend all or portions of fines, and there is no provision that requires collection of the bench warrant fee. Magistrates exercise discretion in imposition and collection of fines and bench warrant fees.

In accordance with NMSA 1978, §31-12-3 addresses the issues of indigency versus contumacious reasons for non-payment and authorize defendants to make installment payments on financial sentences. Should the person find they are unable to pay, they may perform community service. Courts are authorized to revise, modify, reduce or enlarge the conditions of the installments. Courts are, pursuant to this section, authorized to issue summonses or warrants when a defendant defaults. The section Policy directive 7 authorizes Magistrates to issue courtesy letters before a warrant for failure to pay is issued

The Magistrate Court Warrant Enforcement Program was established by statute in 1993 (NMSA 1978, §35-6-5), to assist the courts with collection of fines, fees, and costs owed to the courts. The program is funded by non-compliant defendants through the assessment of a \$100 administrative fee assessed when a bench warrant (for any reason) is issued. Although the fee is assessed when the warrant is issued, collection of the fee is at the discretion of the Judge. The program employs personnel, services and equipment to assist the courts in collection of fines, fees, and costs owed to the court. The program uses letters, postcards, automated telephone calls, safe surrender events, and social media to engage defendants and educate them in order to avoid arrest and comply with the order of the court.

COMPLIANCE DATA (Financial Sentences)

For the period July 1, 2014 through March 31, 2015, Magistrate Judges ordered \$14,271,050.43 in financial penalties on 125,845 adjudicated cases. Half of the financial penalties (\$7,182,199.92) have been paid. Credit for community service in lieu of fees was completed in 2,782 of those cases, and jail in lieu of fees was completed in 906 of those cases.

Together, the “in lieu” of credit amounts to \$1,628,846.95. Judges exercising discretion waived of \$699,566.50.

Of the 41,874 bench warrants issued by Magistrates for this period of time, less than half included a “failure to pay” condition. Of those, 3,535 were addressed when the defendant voluntarily appeared before the court to ask for modification of the installment. 1,929 (0.05%) of the defendants were incarcerated when the bench warrant was served.

CLARIFICATION OF ISSUES IDENTIFIED IN SUPPORT OF THE RULE CHANGE

Defendants are routinely incarcerated for owing money.

This argument disregards the sanctity of the order of the court. In those cases where a defendant is incarcerated on a failure to pay warrant, it is important to remember that the defendant has been adjudicated. He has had his day in court, had the penalties and consequences explained to him, and been advised of his duty to report to the court if he cannot fulfill his obligations. Defendants in this circumstance are not being penalized for indigency; they are being penalized for failing to comply with the order of the court.

Defendants are subject to harm when incarcerated on bench warrants.

Again, the adjudicated defendant has had the consequences of non-compliance explained to him. While it is true that a defendant who is incarcerated may face marital troubles, further financial difficulties, or loss of employment when jailed for non-compliance with a financial sentence, this is true of ANY person jailed for any reason. Defendants who fail to appear in court or fail to comply with conditions of release or probation may very well have non-contumacious reasons for their non-compliance, but these (possibly non-adjudicated) defendants will not receive the preferential treatment granted the defendant who has failed to pay.

Costs

Supporters of the proposed rule refer to the cost of incarcerating defendants. It is true that the cost of incarceration burdens the counties across our state. This is why the Warrant Enforcement Program makes a targeted effort to reach defendants before they are arrested.

Unfortunately, the supporters of the proposed rule fail to reflect on the cost of implementing this rule. Scheduling summonses for each missed payment will increase the number of hearings from 67,000 each year to nearly 100,000. When the additional resources of employee time, supplies, and postage factored in, the Judicial resources necessary to remind a defendant of his obligations (for the second, third, fourth ... fifteenth time) can cripple the limited resources of the Magistrate system. Bringing defendants into compliance is costly.

Personnel, benefits, supplies, and operating costs for achieving compliance with non-compliant defendants are currently borne by the warrant program. This rule would require compliance measures to be taken but provides no funding mechanism to do so.

Ultimately, the proposed rule shifts the burden from the defendant to the court. The strain on resources (including courtroom time) will, in the end, slow down the system for everyone. If we are to argue the cost and consider “fairness” and “due process” we should consider those (innocent and/or unadjudicated) defendants and other litigants who will now wait longer to have their own day in court.

ARGUMENTS IN OPPOSITION OF THE PROPOSED RULE

Removal of discretion

Currently, Judges have discretion to issue summonses, warrants, or notices to non-compliant defendants. The proposed rule removes the discretion of the Judge to address a defendant who has failed to comply with a court order. If the rule is adopted, Judges will issue orders that they cannot enforce.

Preferential treatment of some defendants

The rule creates a protection ONLY for defendants with financial sentences, and creates an inconsistency in how non-compliant defendants are treated. Adjudicated defendants who must take some other action (schooling, community service, restitution, produce documents, etc.) will not receive the same consideration, and are expected to follow the courts order with no further prompting from the court. Non-adjudicated defendants, who may not have seen a Judge or had any rights or obligations explained to them, are required to adhere to an order of the court (summons, release order pursuant to bond) with no guidance whatsoever.

Integrity of the courts order

When a Judge orders a defendant to pay a financial sentence because that is what the law requires, it is important for defendants to understand that the order of the court is to be followed. The warrant is a powerful tool, and Magistrates take very seriously the impact of incarcerating people for non-compliance, and courts take great care to advise defendants of the consequences, and the alternatives available in lieu of payment. Issuing the warrant is not about collecting money. Issuing a warrant is about the integrity of the order of the court and sending a clear message that there are consequences for failing to obey the law. Issuing an order that we know will not be enforced is bad policy. The message “adhere to the order of the court or we might send you a stern reminder” does not encourage compliance.

TECHNICAL ISSUES

Time is the enemy of compliance. The longer it takes to contact non-compliant defendants, the more likely it is they will not comply. Who will be responsible for making sure that defendants can be located (addresses and telephone numbers). What happens when we send a summons and the defendant has moved?

If a payment is missed, will a defendant be required to pay in full, or will a summons be required for each missed payment? If a defendant owes \$500.00 and is authorized to make the minimum monthly payment of \$50.00, should the court be prepared to set 10 hearings?

What happens when the payment (due to a delay in mail, etc.) arrives between the 4th and 29th day? Does this inadvertently create a 30 day grace period for compliance with the court's order? Should the same be granted to defendants ordered to produce paperwork or surrender themselves to jail?

If the defendant requested a hearing, but later changes his mind and sends in payment, is he required to appear? Who notifies the defendant of the canceled hearing?

What happens when the defendant has failed to comply with multiple items (including failure to pay) contained in a court order?

ALTERNATIVES

Redouble efforts to educate defendants make sure that they know what to do if they cannot pay. Increase efforts to educate defense counsel regarding alternatives to payment. Encourage court staff to explain to defendants what the options are if they come in and see a Judge before a warrant is issued.

Provide language on the Judgement and Sentence and/or Agreement to Pay that explains to defendants what they should do if they cannot pay.

Create and distribute pamphlets to defendants that clearly explain, in plain language, what happens if the defendant fails to comply with the order of the court. Offer telephone numbers that guide defendants if they have questions or need further assistance.

Provide forms that request community service in lieu of and/or payment modifications to defendants in a location accessible by defendants in each court.

Consider adopting a rule governing a "non-arrestable" warrant. These can be used in those circumstances when a Judge believes that a defendant must be shocked into contacting the court, but, in the Judge's discretion, should not be incarcerated.