

RULE [71] 441. PROCEDURE FOLLOWING ARREST WITHOUT WARRANT.

(A) When a defendant has been arrested without a warrant, the defendant shall be either released from custody pursuant to paragraph (B) or taken before the proper issuing authority under paragraph (C).

(B) When a defendant has been arrested without a warrant, the arresting officer may, when the officer deems it appropriate, promptly release the defendant from custody when the following conditions have been met:

- (1) the defendant is a resident of the Commonwealth;
- (2) the defendant poses no threat of immediate physical harm to any other person or to himself or herself;
- (3) the arresting officer has reasonable grounds to believe that the defendant will appear as required; and
- (4) the defendant does not demand to be taken before an issuing authority.

A citation shall be issued to the defendant at the time of release and thereafter the case shall proceed in accordance with Rules [55-59] 405-409 as if the proceedings had been instituted by issuing a citation to the defendant.

(C) When the defendant has not been released from custody under paragraph (B), the defendant shall be taken without unnecessary delay before the issuing authority where a citation shall be filed against the defendant. The defendant shall be given an immediate trial unless:

- (1) the Commonwealth is not ready to proceed, or the defendant requests a postponement or is not capable of proceeding, and in any of these circumstances, the defendant shall be given the opportunity to deposit collateral for appearance on the new date and hour fixed for trial [.] ; or
- (2) the defendant's criminal record must be ascertained before trial as specifically required by statute for purposes of grading the offense charged, in which event the defendant shall be given the opportunity to deposit collateral for appearance on the new date and hour fixed for trial, which shall be after the issuing authority's receipt of the required information.

COMMENT: This rule provides the arresting police officer with a choice to be made based upon the criteria set forth in paragraph (B). Under the rule, the police will either promptly arrange for the defendant's release or, if it is necessary to detain the defendant, provide for immediate trial. Prompt release allows for the completion of any post-arrest procedures authorized by law.

Delay of trial under subparagraph (C)(2) is required by statutes such as 18 Pa.C.S. § 3929 (pretrial fingerprinting and record-ascertainment requirements). Although the defendant's trial may be delayed under this subparagraph, the requirement that the defendant be taken without unnecessary delay before the proper issuing authority remains unaffected. See *also* Rules **[58, 63, and 68] 408, 413, and 423.**

On the defendant's right to counsel and waiver of counsel, see Rules **[316] 122** and **[318] 121.**

With regard to the "proper" issuing authority as used in these rules, see Rule **[21] 130.**

For the procedure in court cases initiated by arrest without warrant, see Rule **[102] 518.**

NOTE: **Rule 71 [A]** adopted July 12, 1985, effective January 1, 1986; *Comment* revised September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; amended August 9, 1994, effective January 1, 1995; amended May 14, 1999, effective July 1, 1999 **[.] ; renumbered Rule 441 and amended March 1, 2000, effective April 1, 2001.**

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**COMMITTEE EXPLANATORY REPORTS:**

**Report explaining the August 9, 1994 amendments published at 22 Pa.B. 6 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).**

**Final Report explaining the May 14, 1999 amendments to paragraph (C)(1) and the Comment published with the Court's Order at 29 Pa.B. 2775 (May 29, 1999).**

**Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at Pa.B. (\_\_\_\_\_, 2000).**