

**ADMINISTRATIVE DIRECTIVE
OF THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
NO. 2019-1
REGARDING INTERIM SPECIAL RULE OF CRIMINAL PROCEDURE
FOR PRETRIAL RELEASE**

This 14th day of January, 2019, IT IS HEREBY DIRECTED:

I. Application of DELPAT

- A. DELPAT applies to the following cases or offenses when bail is being imposed on the first instance:¹
- (i) Title 11 offenses;
 - (ii) Traffic offenses;
 - (iii) Title 16 offenses;
 - (iv) Title 4 offenses;²
 - (v) Cases where the defendant is entitled to bail review following detention greater than 72 hours;³ and
 - (vi) Any case in which bail is reviewed or modified without a triggering violation.
- B. DELPAT does **not** apply in cases or offenses involving the following circumstances:
- (i) Violation of probation;
 - (ii) Violation of a condition of bail imposed pursuant to a DELPAT analysis;
 - (iii) Where the defendant is returned on a *capias* in that case;
 - (iv) Where the domestic violence assessment is available and the referral protocol is triggered;
 - (v) Signal offenses and violations of 21 *Del. C.* § 4177(d)(3)–(7); and
 - (vi) Where the initial bail was set on a signal offense and there was no modification of the signal offense when transferred to the Court of Common Pleas.
- C. Where the conditions of release ordered are in accordance with the DELPAT recommendation, the following documents must be completed:
- (i) the Judicial Responses to DELPAT Initial Recommended Response Form (Exhibit A) and the Delaware Pretrial Assessment Tool Form (Exhibit B); and
 - (ii) if pretrial services are ordered, the Pretrial Services Referral Form (Exhibit C).

¹ If bail is imposed by the previous court and not subject to bail review under Section I(A)(v), then there is no need to address bail a second time.

² When bail is to be imposed for these offenses, DELPAT is to be individually run.

³ Such review shall occur within ten days from the date of detention.

II. Deviations from DELPAT Recommendation⁴

- A. Less Intensive Conditions. Where the conditions of release are less restrictive than those recommended by DELPAT, the reason must be stated on the record and the following documents completed:
- (i) the Judicial Responses to DELPAT Initial Recommended Response Form (Exhibit A) and the Delaware Pretrial Assessment Tool Form (Exhibit B); and
 - (ii) if pretrial services are ordered, the Pretrial Services Referral Form (Exhibit C).
- B. More Intensive Conditions. Where the conditions of release are more restrictive than those recommended by DELPAT, the following documents must be submitted together to the Chief Judge⁵ no later than the following business day:
- (i) Order Imposing More Intensive Conditions of Release Than Initial Recommended Response (Exhibits D or E),⁶ conforming to the following requirements:
 - a. The order must include a written explanation as to why the more intensive conditions of release are the least restrictive conditions of release necessary to address the specific risk of pretrial failure at issue;
 - b. All fields within the Order must be typed;
 - (ii) the Judicial Responses to DELPAT Initial Recommended Response Form (Exhibit A) and the Delaware Pretrial Assessment Tool Form (Exhibit B); and
 - (iii) if pretrial services are ordered, the Pretrial Services Referral Form (Exhibit C).

A Decision-Making Process Overview flowchart is attached for your reference (Exhibit F). If any provision herein is in conflict with the directives of the Delaware Supreme Court regarding implementation of the Bail Reform Act, including but not limited to the Order Regarding Interim Special Rule of Criminal Procedure For Pretrial Release, the directives set forth by the Delaware Supreme Court shall apply.

This Directive is effective January 14, 2019.

BY THE CHIEF JUDGE

/s/ _____

⁴ If the conditions of release are set in adherence with the DELPAT recommendation, no additional documentation is required.

⁵ Wherever this Directive requires submission to the Chief Judge, such shall be sent via electronic mail to: CCP_DELPAT.OVERRIDES@state.de.us.

⁶ Orders Imposing More Intensive Conditions fall into one of two categories: (1) Upon Motion by the State (Exhibit D), and; (2) Upon Initiative of the Court (Exhibit E).

EXHIBIT A

Judicial Responses to DELPAT Initial Recommended Response

___ Conditions of Release assigned as indicated by the DELPAT Initial Recommended Response.

___ Less Intensive Conditions of Release than indicated by the Initial Recommended Response of Risk Assessment Matrix assigned due to:

- ___ L1 The court making specific findings 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.
- ___ L2 Community Support and resources available for defendant's welfare; employment, financial resources, treatment services available, family ties, etc.
- ___ L3 Defendant to be released into custody of family, friend, non-profit agency or other responsible party.
- ___ L4 Defendant is currently engaged in mental health or substance abuse services.
- ___ L5 Defendant faces a presumptive non-custodial sentence if convicted.
- ___ L6 Lack of evidence for probable cause/low likelihood of conviction.
- ___ L7 Other: _____

___ More Intensive Conditions of Release than indicated by the Initial Recommended Response of Risk Assessment Matrix assigned due to:

- ___ M1 Domestic Violence Lethality Assessment protocol triggered.
- ___ M2 The defendant is charged with a Signal offense.
- ___ M3 Risk to public safety due to defendant being a recidivist impaired driver.
- ___ M4 The court making specific findings that the defendant poses a demonstrated and specific risk of flight in the current case.
- ___ M5 The court making specific findings that releasing the defendant with less intensive conditions of release would pose a substantial danger to public safety.
- ___ M6 The court making specific findings that the defendant has in the current case threatened to, attempted to, or already obstructed justice.
- ___ M7 Other: _____

EXHIBIT B

COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR New Castle COUNTY.

DELAWARE PRETRIAL ASSESSMENT TOOL

Defendant: PAM, PETER
Alias.....
SBI No....: T0749674

Uniform Case No.: 9806021042
Date of Birth....: 01/29/1998

1. The Failure to Appear Scale scores range from 0 to 6. The Risk Factors and Weights are as follows:

- | Weights | Risk Factors |
|---------|---|
| a. 0 | N Any prior probation supervision in the past 10 years: (0=no; 1=yes) |
| b. 0 | 0 Total number of prior FTAs in the past year: (0=none; 1=1; 2=2 or more) |
| c. 0 | 00 Total number of prior FTAs in the past 10 years: (0=none; 1=1; 2=2 or more) |
| d. 0 | N Current arrest include at least 1 charge of larceny/stolen vehicle: (0=no; 1=yes) |
| 0 | SUB TOTAL |

2. The New Criminal Activity Scale scores range from 0 to 9. The Risk Factors and Weights are as follows:

- | Weights | Risk Factors |
|---------|---|
| a. 1 | Y Any pending case: (0=no; 1=yes) |
| b. 2 | 03 Any prior convictions: (0=none; 1=1; 2=2 or more) |
| c. 2 | 4 Any prior misdemeanor arrests in the past 2 years: (0=none; 2=1 or more) |
| d. 0 | 0 Any prior probation supervisions: (0=none; 1=1 or more) |
| e. 1 | 00 Age at first arrest: (0=20 or older; 1=19 or younger) |
| f. 0 | 0 Any prior failures to appear: (0=none; 1=1 or more) |
| g. 0 | 00 Any prior violent* conviction w/in past 5 years: (0=0 prior violent convictions, 1=1+ prior violent convictions) |
| 6 | SUB TOTAL |

3. Lethality Assessment Indicates:

- Victim Screened In - Victim Not Screened In - Not Available

DEL PAT	NCA 0	NCA 1	NCA 2	NCA 3	NCA 4	NCA 5	NCA 6	NCA 7	NCA 8	NCA 9
FTA	---	---	---	---	---	---	X	---	---	---
FTA	---	---	---	---	---	---	---	---	---	---
FTA	---	---	---	---	---	---	---	---	---	---
FTA	---	---	---	---	---	---	---	---	---	---
FTA	---	---	---	---	---	---	---	---	---	---
FTA	---	---	---	---	---	---	---	---	---	---
FTA	---	---	---	---	---	---	---	---	---	---

Score: Conditions Assigned by DELPAT Less Intensive Conditions More Intensive Conditions
Reason for Override of Conditions:

Judge: _____

Date: _____

EXHIBIT C

COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR Select COUNTY

PRETRIAL SERVICES REFERRAL

DEFENDANT NAME:

CASE NUMBER:

Pretrial Supervision Level will be determined by the Department of Corrections (DOC). While released on bond, the defendant shall be placed on Pretrial Supervision subject to the following special conditions:

- Do Not Drive a Motor Vehicle until case is fully disposed [11 Del. C. § 2108(c)]
- Domestic Violence Evaluation
- Mental Health Evaluation
- Relinquish Firearms
- No Contact with Anyone Under the Age of 18 until the case is fully disposed [11 Del. C. § 2108 (b)]
- No Contact with
- No Unlawful Contact with

Other Special Conditions as follows only if:

- (1) The DOC has recommended the conditions, or
- (2) "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 defendants release and the court reports its finding" to the Chief Judge.¹
 - Substance Abuse Evaluation and Testing
 - Monitored curfew
 - Electronic monitoring

Order to Override Attached

Date: January 4, 2019

The Honorable Judicial Officer Table

Defendant is to report in person to the Pretrial Services Office indicated below by 9:00 a.m. the first business day after release.

New Castle County
314 Cherry Lane
Wilmington De 19801
Phone: (302) 577-3443
Fax: (302) 577-7471

Kent County
511 Maple Parkway
Dover De 19904
Phone: (302)739-5387
Fax: (302) 739-6198

Sussex County
Admin Services
22883 DuPont Blvd
Georgetown De 19947
Phone: (302) 856-5795
Fax: (302) 856-5133

¹ Supreme Court Rule 52 (l) (3) (b)

EXHIBIT D

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR

NEW CASTLE COUNTY KENT COUNTY SUSSEX COUNTY

STATE OF DELAWARE

)
)
)
)
)

DOB:
Case No.:
Offense(s):

vs.

**ORDER IMPOSING MORE INTENSIVE CONDITIONS OF RELEASE THAN INITIAL
RECOMMENDED RESPONSE UPON MOTION BY THE STATE**

The Court, having reviewed the affidavit filed by the State documenting the factual basis for the State's request for more intensive conditions or release, has ordered for more intensive conditions of release than the initial recommended response. The Court has made a special finding that:

- The defendant poses a demonstrated and specific risk of flight in the current case
- Releasing the defendant with less intensive conditions of release would pose a substantial danger to public safety
 - The domestic violence assessment is not currently available to the Court, but the referral protocol would have been triggered had the domestic violence assessment been provided
- The defendant has in the current case threatened to, attempted to, or already obstructed justice

The Court has made 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 these findings *sua sponte*.

The Court further finds that 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 for the following reason(s):

SO ORDERED, THIS DAY OF Select, 2019.

Judge/Commissioner

Cc: Chief Judge Alex Smalls
File

EXHIBIT E

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR

NEW CASTLE COUNTY KENT COUNTY SUSSEX COUNTY

STATE OF DELAWARE

)
)
)
)
)

DOB:
Case No.:
Offense(s):

vs.

ORDER IMPOSING MORE INTENSIVE CONDITIONS OF RELEASE THAN INITIAL RECOMMENDED RESPONSE UPON INITIATIVE OF THE COURT

The Court has ordered for more intensive conditions of release than the initial recommended response. The Court has made a special finding that:

- The defendant poses a demonstrated and specific risk of flight in the current case
- Releasing the defendant with less intensive conditions of release would pose a substantial danger to public safety
 - The domestic violence assessment is not currently available to the Court, but the referral protocol would have been triggered had the domestic violence assessment been provided
- The defendant has in the current case threatened to, attempted to, or already obstructed justice

The Court made 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.

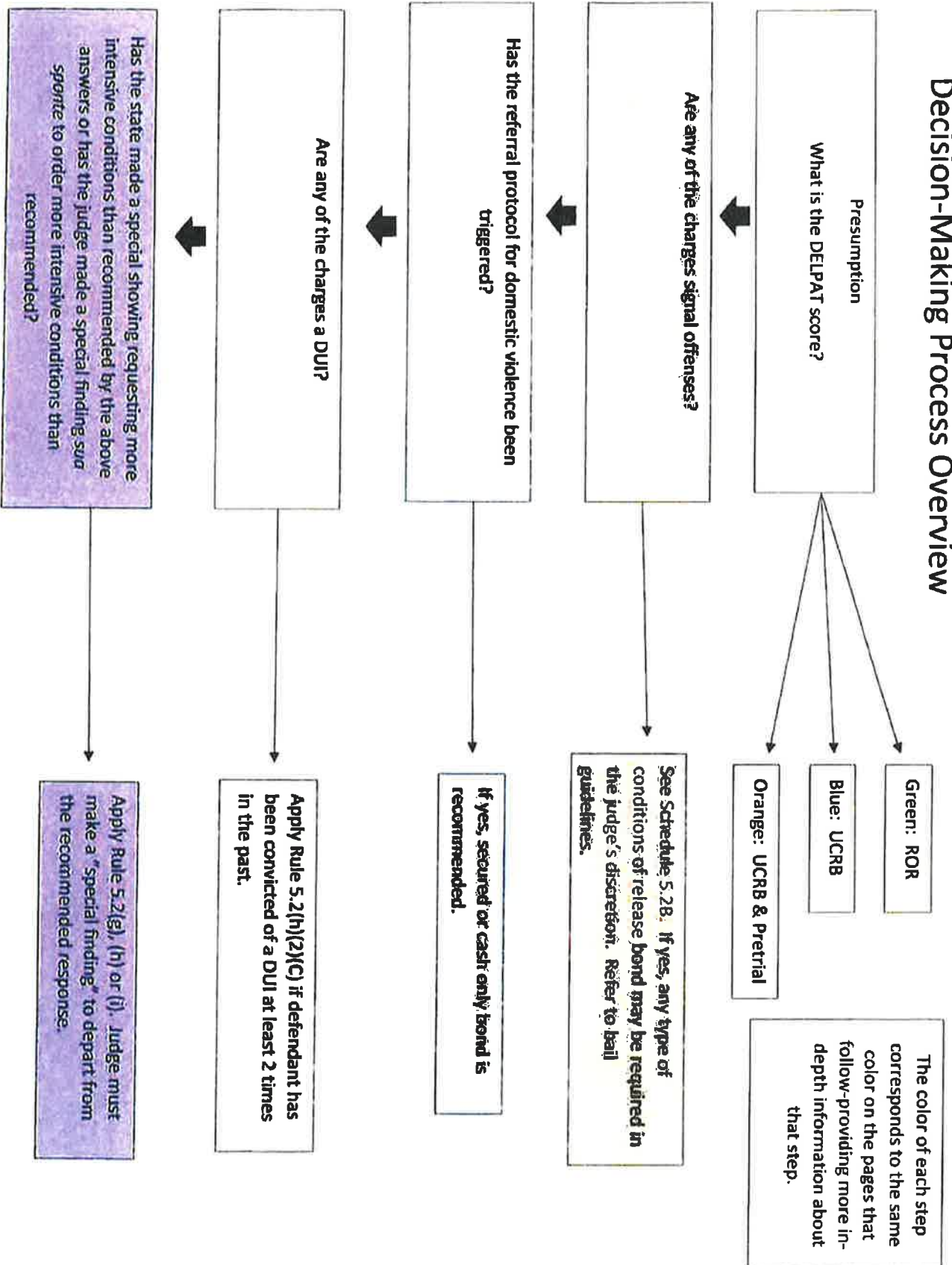
The Court finds that these more intensive conditions of release are the least restrictive conditions of release necessary to address the specific risk of pretrial failure at issue for the following reason(s):

SO ORDERED, THIS DAY OF Select, 2019.

Judge/Commissioner

EXHIBIT F

Decision-Making Process Overview



DELPAT Score

FTA Risk Score	NCA Risk Score									
	0	1	2	3	4	5	6	7	8	9
0	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green
1	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green
2	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green
3	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green
4	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green
5	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green
6	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green

What is the DELPAT score?

The first component of the decision making process is the "DELPAT Scoring Response Matrix" (Matrix). The computer will auto-populate the Matrix by marking the block that corresponds to the nexus created with the scores assigned on the FTA Scale and the NCA Scale. This block is assigned to one of three (3) tiers of release conditions:

- 1) Green Tier: Release with no conditions other than those mandated by statute¹, on a conditions of release bond, with the exception that a no-contact order with a specified victim and/or witness may be included;
- 2) Blue Tier: Release with additional self-monitored conditions, on a conditions of release bond not guaranteed by financial terms; and
- 3) Orange Tier: Release with appropriate conditions and a court order to report to pretrial supervision, monitored through the Department of Correction (DOC), on a conditions of release bond not guaranteed by financial terms. Pretrial Services will now also be available for adults with cases transferred to Family Court.

IMPORTANT NOTE: NO BLOCK ON THE MATRIX CORRESPONDS TO THE USE OF A MONETARY CONDITION OF RELEASE.

Signal Offenses

The presence of a charge found on the signal offense schedule deems the defendant eligible for release with a monetary condition regardless of the DELPAT score presumption.

This schedule includes charges in the following categories (see schedule for specific charges)

1. Any Class A felony;
2. Certain Title 11 Class B felonies;
3. Possession of a Firearm by Persons Prohibited under 11 Del. C. § 1448 and certain circumstances;
4. Any violent felony allegedly committed while the defendant is pending adjudication on a previously charged violent felony, as defined by 11 Del. C. § 4201(c);
5. Any violent felony, as defined by 11 Del. C. § 4201(c), allegedly committed against the petitioner with an active Protection From Abuse (PFA) 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 DV, 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 the 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. One of the following Title 11 Class C, D or E felonies:
 - § 607 – Strangulation (Class D or E)
 - § 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 (Class C or D).
9. Any offense that alleges possession of a Tier 4 or Tier 5 quantity of a Schedule I or Schedule II narcotic;
10. The domestic violence assessment indicates that the referral protocol has been triggered;
11. Any felony level charge of 21 Del. C. § 4177.

If such charges or circumstances exist in the present case, the defendant is deemed to be eligible for release on a monetary condition—no matter the defendant's original DELPAT score – and the judge may impose a financial condition, on a secured conditions of release bond or a fully secured conditions of release bond, that sufficiently reduces the risk to the community that the release of the defendant would pose. A judge, on its own initiative or in response to a specific showing from the State, has the discretion to impose either non-monetary conditions or a monetary condition for these charges or circumstances. A judge shall document the reasons for any monetary condition of release.

Domestic Violence and DUI

Has the referral protocol for domestic violence been triggered?

Section 3 of the DELPAT contains the Lethality Assessment

This is based upon an empirically-developed lethality assessment instrument known as the "Domestic Violence Lethality Screen for First Responders." The instrument's purpose is to assess the likelihood or predicted severity of future violence against the alleged victim. The correlating response will be auto-populated by the DELJIS system as follows:

- a) Victim screened in;
- b) Victim not screened in; or
- c) Not available.

A check for "Victim screened in" indicates that the referral protocol has been triggered. When the referral protocol is triggered, based upon the victim's answers to the questions on the instrument, the police officer is to inform the alleged victim of the high danger assessment and to offer the alleged victim the opportunity to be screened by a hotline counselor for assistance. If the referral protocol has been triggered, the "initial recommended response is to release the defendant subject to a secured conditions of release bond or a fully secured conditions of release bond, mandatory conditions of release... and any other conditions of release necessary to reasonably assure public safety."

Are any of the charges a DUI?

Interim Rule 5.2(h)(2)(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 sever 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 paragraph (B) of this paragraph.

Special Showing/Special Finding

Has the state made a special showing requesting more intensive conditions than recommended by the above answers?

Judges shall not override and require more intensive conditions of release than the initial recommended response indicates based on the risk that the defendant will fail to appear at court proceedings, would pose a substantial danger to public safety, or would obstruct justice unless:

- A) A special showing is a submission to the court by the State that:
 - 1) explicitly requests more intensive conditions of release than the initial recommended response;
 - 2) 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;
 - 3) includes an affidavit documenting the factual basis for the State's request for more intensive conditions of release; and
 - 4) satisfies any subject-specific requirements of this rule."
- B) Special findings are "specific findings of fact and conclusions of law made by the court that:
 - 1) 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*;
 - 2) 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;
 - 3) reference the affidavit filed by the State documenting the factual basis for the State's request for more intensive conditions of release; and
 - 4) satisfy any subject-specific requirement of this rule."
- C) If the judge determines that more intensive conditions of release are necessary based on the risk that the defendant will obstruct justice by "intimidating witnesses or taking other steps that obstruct justice and the ability of the judicial system to hold a fair trial," the judge shall presumptively order a conditions of release bond guaranteed by financial terms or a conditions of release bond guaranteed by financial terms secured by cash only in "an amount that is substantial enough to sufficiently:
 - 1) deter the defendant from obstructing justice; or
 - 2) ensure that the surety will supervise the defendant intensely enough to reasonably assure that the defendant does not obstruct justice

Has the state made a special showing requesting more intensive conditions than recommended by the above answers?

Judges shall *not* order an override for more intensive conditions of release based upon "any factor fully or substantially included in the pretrial assessment, the domestic violence assessment, or this rule (Interim Rule 5.2) 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:

- 1) the nature and circumstances of the crime charged;
- 2) whether a firearm was used or possessed;
- 3) the possibility of statutory mandatory imprisonment;
- 4) the defendant's record of convictions;
- 5) the defendant's history of amenability to lesser sanctions;
- 6) the defendant's history of breach of release; and
- 7) the defendant's record of appearances at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings."

Judges shall *not* order an override for more intensive conditions of release by giving weight to statutory factors that 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:

- 1) the defendant's employment;
- 2) the defendant's custody status at the time of the offense; and
- 3) the defendant's length of residence in the community."

Judges shall *not* order an override for more intensive conditions of release by giving weight to statutory factors that have not been tested, but are suspect of presenting a risk of racial, gender, or wealth bias, "except by making *special findings*, that considering the factor does not create disparities based in race, gender or wealth. Factors in this category include:

- 1) the defendant's family ties;
- 2) the defendant's financial resources; and
- 3) the defendant's character and mental condition."

The judge may, however, consider the defendant's financial ability to furnish the monetary terms necessary to guarantee the bond and set the amount accordingly.

However, according to Interim Rule 5.2(n), judges are permitted to override to more intensive conditions of release than the initial recommended response *sua sponte* (without a special showing by the State), if the judge:

- 1) makes special findings, including any applicable factor-specific special findings (all factors listed in the last 3 paragraphs above);
- 2) documents the findings of fact in an "Order to Override" supporting the judge's 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;
- 3) holds a hearing upon request by the defendant, at which time the defendant and the State can address the judge's basis for requiring more intensive conditions of release and the judge's use of any covered or suspect factor.

Decision-Making Process Paperwork

Always Complete the Judicial Responses to DELPAT Initial Recommended Response

Judges will select one of the following:

- Conditions of Release assigned as indicated by the DELPAT Initial Recommended Response.
- Less Intensive Conditions of Release (with selection)
- More Intensive Conditions of Release (with selection)

Complete the Pretrial Services Referral form **only** if ordering the defendant to pretrial services.

If you have checked off the top 3 boxes on the judicial response to DELPAT under more intensive conditions, you do not need to complete the Order to Override



Domestic Violence Lethality Assessment protocol triggered.
The defendant is charged with a Signal offense.
Risk to public safety due to defendant being a recidivist impaired driver

Complete the Order to Override Presumptive Bail Decision **only** if ordering **more** intensive conditions than recommended by the DELPAT and Supreme Court Interim Rules 5.2, 5.3 and 5.4

- Must indicate that a special showing has been made by the state and the court has made a special finding; OR
- The court, *sua sponte*, has made a special finding; AND
- State findings and reasons with specificity

