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TO: Assignment Judges
Trial Court Administrators

FROM: Glenn A. Grant, J.A.D. 

DATE: Criminal Justice Reform – Promulgation of the Updated Written Protocol for Issuing an After-Hours Bench Warrant for a Violation of Electronic Monitoring Conditions

SUBJ: July 22, 2019

DIRECTIVE # 15-19
[Supersedes # 07-18]

This Directive promulgates updates to the written protocol outlining the expedited process Judiciary staff must follow to seek the issuance of after-hours bench warrants directing law enforcement to arrest defendants who violate one or more of their electronic monitoring (EM) conditions. This updated Directive adds the Tracker Missed Callback (“TMC”) alert, received after a Low Battery alert, to the list of alerts that staff must respond to after normal court hours. The full list of emergent EM alerts now includes the following acts of noncompliance while on EM: (1) entering an Exclusion Zone; (2) exiting an Inclusion Zone¹; (3) tampering with or cutting the strap affixing the EM device to the defendant’s ankle; (4) and when staff receives a TMC alert after there is a Low Battery alert. Aspects of the protocol relating to inclusion, exclusion and tampering alerts remain the same. This new Directive supersedes Directive #07-18 and it is effective immediately.

If Pretrial Services Program (PSP) staff² receives one or more of the four types of emergent EM alerts, then PSP staff must immediately execute the steps provided in the enclosed Written Protocol for Issuing an After-Hours Bench Warrant for a Violation of Electronic Monitoring Conditions. The steps required under the attached protocol are substantially the same as the current process, with the following changes to incorporate TMC alerts:

1. TMC added to the list of EM violations in the introductory paragraph. Page 1.
2. TMC added to the list of alerts in Step 1, paragraph b. Page 1.
3. Clarification on how to check for a TMC in Step 1, paragraph c. Page 1.
4. TMC added to the list of alerts in the main prompt of Step 2a. Page 1.

¹ This includes the “Failure to Enter” alert, as both indicate when the defendant is in violation of a condition to remain within the inclusion zone during the period of time ordered by the court.

² The monitoring officer will typically be a Pretrial Services Program staff member. However, some vicinages or counties have entered into Memoranda of Understanding with the county jail to assume the role of the electronic monitoring officer. Jail staff monitoring officers must alert the appropriate law enforcement agency as to the defendant’s noncompliance on EM and call PSP staff to pursue a bench warrant.

In addition to the changes made to the Steps of the protocol, language referencing the TMC alert was also added to the section of the protocol for contacting law enforcement (Page 3, Section I) and the itemized checklist (Page 3, Section II). The following updates were made:

1. TMC added to Section I, paragraph b, in two instances. Page 3.
2. Added narrative that the defendant allowed the ankle monitoring device to fully discharge, under Section II, checklist item 2.

The Steps under the protocol are summarized below for convenience. Please note that these summaries remain unchanged from Superseded Directive #07-18:

Step 1:

Staff must investigate the alert in the electronic monitoring system to the best of their ability to ensure that it was not issued in error. However, this investigation should not unreasonably delay the call to law enforcement to warn that the defendant has entered an exclusion zone, or if the monitoring officer has reason to believe that the defendant may be an imminent threat to the victim.

Step 2a:

PSP staff must call the appropriate law enforcement agency as soon as possible to alert them of the defendant's noncompliance on EM.³ Staff must explain the circumstances of the call following the guide for contacting law enforcement and express urgency that action be taken.⁴ Staff must also inform the law enforcement officer that a bench warrant is immediately being sought from the court.

Step 2b:

Immediately after a PSP staff person has contacted police to take action on a defendant's noncompliance on EM, staff must contact the emergent duty judge **in the county or vicinage where the defendant is being monitored** to request the issuance of a bench warrant from the court. Please note that bench warrant requests during normal business hours must be made to a judge from the original county that ordered the EM condition. PSP staff shall inform the court of the facts and circumstances of the violation, including the monitoring officer's investigation of the EM system, and any relevant conversations with law enforcement.

Step 3:

If the judge grants the request for a bench warrant, PSP staff shall issue the bench warrant on the judge's behalf in the PSP automated system.

Step 4:

Once the electronic bench warrant is issued, PSP staff shall immediately contact law enforcement to inform them that a judge electronically issued a bench warrant directing that the defendant be brought into custody. If, at the time of that call, the law enforcement representative using the EM bench warrant application has non-technical questions regarding the application, PSP staff shall provide the needed non-

³ A guide is attached entitled "Contacting Law Enforcement for Electronic Monitoring Violations." This guide instructs PSP staff of the appropriate local law enforcement agency to call depending on the type of alert, as well as guidance on expressing the urgency of the call to law enforcement on the call. This form does not need to be read mechanically, but rather, is meant to guide the conversation with law enforcement through the most important points of the call.

⁴ See footnote 3.

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technical assistance. If technical assistance is required, the law enforcement representative should be directed to call the Judiciary Help Desk at 1-609-421-6100 for assistance.

If law enforcement is unable to execute the warrant and the defendant was not arrested, then the next business day PSP staff must ensure that the appropriate agency is advised to enter the bench warrant into NCIC. Staff shall also file a Violation of Monitoring and document the violation in PTM.

If the defendant was arrested, then on the following business day, PSP staff shall schedule a violation hearing before the appropriate judge to be heard within three business days.

Conclusion

Please ensure this directive is provided to your staff. Any questions regarding this memorandum may be directed to Assistant Director Sue Callaghan, Criminal Practice Division at sue.callaghan@njcourts.gov or by phone at (609) 815-2900 x55300.

G.A.G.

Attachment:

Protocol for Issuing an After-Hours Bench Warrant for a Violation of Electronic Monitoring Conditions (Supersedes Directive # 07-18)

cc: Chief Justice Stuart Rabner
Criminal Division Judges
Municipal Presiding Judges
Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Special Assistants to the Administrative Director
Municipal Division Managers
Criminal Division Managers and Assistant Division Managers
Vance Hagins, Chief, Criminal Practice
Marcia Rebimbas, Chief, Pretrial Services
Julie Higgs, Chief, Municipal Court Services
Rhonda Crimi, Chief, Municipal Court Services
Maria Pogue, Assistant Chief, Criminal Practice
Justin M. Patterson Moles, Assistant Chief, Pretrial Services

Protocol for Issuing an After-Hours Bench Warrant for a Violation of Pretrial Release Electronic Monitoring Conditions

**Promulgated by Directive #15-19
(Supersedes Directive #07-18)**

Pursuant to Administrative Directive #15-19, staff must perform the actions outlined in the steps below to request a bench warrant to authorize law enforcement to arrest a defendant after a determination that a Pretrial Release electronic monitoring (EM) violation (exclusion zone alert, inclusion zone alert¹, tamper alert, tracker missed callback) has taken place.

Step 1:

Pretrial Services Program (PSP) staff receives an emergent alert via automated text message/call from the monitoring vendor.

- a. PSP staff investigates the alert to confirm whether there is reason to believe that the defendant violated the terms and conditions of electronic monitoring.
- b. PSP staff shall check the electronic monitoring vendor's automated system and determine whether the defendant is located outside of an inclusion zone, within an exclusion zone, or there has been a tamper alert or tracker missed callback alert, by reviewing recent location tracking information and monitoring profile.
- c. PSP staff shall confirm that the monitoring system is accurate by ensuring that the alert was not the result of the defendant accidentally driving through an exclusion zone via a public highway or thoroughfare, stepping in and out of a zone or that the defendant's GPS location is a "float point", or ensure that a tracker missed callback alert was received after a low battery alert, evidencing that the unit was allowed to fully discharge.
- d. If PSP staff determine, upon investigation, that the system produced a false alert, PSP staff shall document the incident in the defendant's Pretrial Management (PTM) case notes. If PSP staff determine, upon investigation, that the system produced a true alert, *then proceed to Step 2.*

Step 2a:

Once satisfied that the defendant is, or was recently, outside of an inclusion zone, or inside of an exclusion zone, or that there was a tamper alert, or a tracker missed callback, PSP staff shall call law enforcement to respond to the defendant's last known location or where the tamper alert occurred.

- a. PSP staff shall call the local law enforcement agency at the victim/witness location or the defendant's last location depending on the type of alert.

¹ This general alert category includes both the inclusion zone leave alert and failed to enter inclusion zone alert.

- b. PSP staff shall follow the attached outline authorized by the Administrative Office of the Courts to provide law enforcement with the relevant information to respond to the alert. (Note: this outline may be modified or adapted, but the general substance must be retained.)
- c. PSP staff shall provide the defendant's present location (or last known location) to the law enforcement agency.
- d. PSP staff shall inform law enforcement that a judge will be immediately contacted to request a bench warrant.

Step 2b:

PSP staff shall contact the emergent duty judge² to request a bench warrant.³

- a. PSP staff shall relate the relevant facts to the judge hearing the bench warrant request, including their findings upon investigating the EM vendor's automated system and if there is information regarding the interaction with law enforcement.
- b. If the judge denies the request for a bench warrant, PSP staff shall document the incident in the defendant's PTM case notes.
- c. If the judge grants the request, *proceed to Step 3.*

Step 3:

If the judge grants the bench warrant request, PSP staff shall issue the bench warrant on the judge's behalf in the Pretrial Services automated system(s).

- a. PSP Staff shall access the Pretrial EM application and select the correct defendant from the PTM Worklist. Once on the defendant's information page, PSP Staff will:
 - i. Electronically generate the bench warrant, by selecting the case that was violated; selecting the reason for issuing; and certifying that the judge's permission was given.
 - ii. Once submitted, a PDF is sent to the Case Jacket and Pretrial EM application for law enforcement access.
 - iii. Depending on the type of case violated, data must be manually entered in the appropriate system of record (PG, ACS, FACTS).
 - iv. Law enforcement can access the bench warrant through Single Sign On portal and Pretrial EM application.
- b. *Proceed to Step 4.*

Step 4:

PSP staff shall inform law enforcement that a bench warrant directing that the defendant be arrested and brought into custody was electronically issued by Judge [name of judge].

- a. Thereafter, if the defendant is immediately arrested and taken to jail, then law enforcement must immediately execute the warrant using the Pretrial EM application, similar to the current ACS warrant execution function.

² In cases where defendant's monitoring was transferred to another county, contact the emergent duty judge of the monitoring county, not the original county. Please note that bench warrant requests during normal business hours must be made to a judge from the original county that ordered the EM condition.

³ For Vicinages in which either jail or sheriff's officers monitor alerts, pursuant to that county's MOU or agreement with the jail or sheriff's department, the officer will contact PSP staff to inform them of the violation and that a warrant is required. PSP staff will perform the actions outlined under Steps 2b through 5.

- i. Law enforcement will access the worklist and select the correct defendant;
 - ii. "View or Execute Warrant" now shows at the bottom of the defendant information page; click "Execute Warrant";
- b. If the defendant was not immediately arrested, PSP staff must, on the following business day, ensure that the bench warrant is entered into NCIC by law enforcement, following current Vicinage protocol for all warrants.
- c. PSP staff shall file a Violation of Monitoring (VOM), document the violation in PTM, and if the defendant was immediately arrested, on the following business day, schedule a violation hearing before the appropriate judge to be heard within 3 business days.

Contacting Law Enforcement for Electronic Monitoring Violations

I. Who to contact:

- a. Exclusion Zone alert - Immediately contact local law enforcement at the location of the exclusion zone.
- b. Tamper, Inclusion Zone & Tracker Missed Callback alert - You must use sound judgment when determining which jurisdiction to contact first for tamper, inclusion zone, and tracker missed callback alerts. Where the alert occurs, where the defendant lives, where the victim or witness lives and where the victim is likely to be at the time should inform this decision. In most circumstances, the jurisdiction in which the victim or witness lives should be contacted first. However, each case will vary and shall influence your decision. For example, if the defendant lives three hours away from the victim and the alert occurred in the defendant's home, it may be prudent to first contact local law enforcement where the defendant lives. Thereafter, the other jurisdictions should be contacted.

If you cannot reach local law enforcement, dial 911. Be aware that 911 defaults to where the caller is located; you may need to be transferred. Information regarding the call and the result of the police investigation must be recorded in PTM in due course.

II. Checklist:

1. I am _____ / [title] _____.
2. I have a defendant subject to court ordered electronic monitoring who I believe may have entered an exclusion zone/left an inclusion zone/tampered with his/her electronic monitoring device/cannot identify current location/allowed the electronic monitoring unit's batter to die.
3. The victim/witness may be in danger.
 - a. Provide victim/witness' name, address, and whether there's a TRO/FRO.
 - b. Provide defendant's name and address.
4. I will be contacting a judge to request a warrant once we complete this phone call.
5. Provide complaint number if needed
6. If asked whether you have photos: "I'm sorry, I only have the same information you do from the CCH." Provide [gender, race, date of birth, height, weight, SBI number and other identifying information as provided in the Complaint or UDIR].
7. "I would like to learn the results of your investigation. Here is my contact information...."