

The State of New Hampshire

6th Circuit – District Division - Concord

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Henrietta Luneau
Presiding Judge

Theresa A. McCafferty
Clerk

December 18, 2023

Timothy A. Gudas, Clerk
New Hampshire Supreme Court
1 Charles Doe Drive
Concord, New Hampshire 03301

RE: R-2023-0008
Proposed Amendment to Rule 3(d) of the Rules of Criminal
Procedure

Dear Clerk Gudas,

I write in response to the Court's December 14, 2023 Order requesting comments on proposed amendments to the Rules of Criminal Procedure. Specifically, I write to suggest changes to the proposed amendment to Rule of Criminal Procedure 3(d).

Rule of Criminal Procedure 3(d) deals with the issuance of a summons in lieu of arrest. There are two distinct statutes authorizing the issuance of summonses. First, RSA 594:14 authorizes a police officer to issue a summons instead of making an arrest for a misdemeanor or violation, unless the offense is defined as abuse under RSA 173-B:1, is a violation of a protective order issued under RSA 173-B or RSA 458:16, or is a violation of the stalking provisions of RSA 633:3-a. Notably, RSA 594:14 was recently amended to allow issuance of a summons in more cases (previously, a summons could only be issued if the officer was otherwise authorized to make a warrantless arrest, requiring officers to seek arrest warrants for minor offense which they did not personally witness, for example) and to add the list of offenses for which a summons may not be issued. See N.H. Laws 2023, 54:1. Second, RSA 592-A:14 authorizes a judge or justice of the peace to issue a summons in lieu of an arrest warrant for a misdemeanor or violation level offense (described in the statute as offense "of which a district or municipal court has final jurisdiction"). Unlike a summons issued by a police officer, there is no prohibition on a judge or justice issuing a summons for any particular offense. Instead, the judge or justice may issue a summons instead of a warrant if he or she "shall deem an arrest unnecessary." RSA 592-A:14.

The Rules Committee's proposed amendment to Rule 3(d) does not align with the applicable statutes. First, the proposed amendment does not reflect the fact that there are certain offenses for which a police officer may not issue a summons in lieu of arrest. Second, the proposed amendment strikes out language in the current rule which reflects

the authority of a judge or justice to issue a summons instead of an arrest warrant. The following proposed amendment to Rule 3(d) (shown against the text of the current rule) corrects these issues:

(d) Summons. When the ~~complaint~~ **[Complaint]** charges a felony, a summons may not be issued. **[In any case in which a peace officer has probable cause to believe that a person has committed a misdemeanor or violation, the officer may issue to the person in hand a written summons in lieu of arrest, except when issuance of a summons is prohibited by law.]** ~~In any case in which it is lawful for a peace officer to make an arrest for a violation or misdemeanor without a warrant, the officer may instead issue a written summons in hand to the defendant.~~ In any other **[misdemeanor or violation]** case in which an arrest warrant would be lawful, ~~upon the request of the State,~~ the person authorized by law to issue an arrest warrant may issue a summons **[if the person deems an arrest unnecessary]**. A summons shall be in the form required by statute. See RSA 594:14. If a ~~defendant~~ **[Defendant, after receiving notice of the hearing date,]** fails to appear as required by the summons, a warrant may be issued. A person who fails to appear in response to a summons may be charged with a misdemeanor as provided by statute. Upon issuance of a summons, the ~~complaint~~ **[Complaint]** and summons shall be filed with a court of competent jurisdiction without unreasonable delay but no later than 14 days prior to the date of arraignment.

The proposed amended makes clear that a police officer's authority to issue a hand summons does not extend to those offenses where a summons in lieu of arrest is barred by statute. It also restores language reflecting the authority of a judge or justice to issue a summons in lieu of a warrant but makes clear that such authority only applies to misdemeanor and violation cases. The amendment strikes the phrase "upon the request of the State" which appears in the current rule, from the sentence dealing with a judge or justice's authority to issue a summons, because that language is not supported by the statute. Instead, RSA 592-A:14 makes clear that a judge or justice has authority to issue a summons if he or she, not the State, deems an arrest unnecessary.

Thank you for your consideration of this matter.

Sincerely,



Ryan C. Guptill
Judge, New Hampshire Circuit Court