

# THE COURTS

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

#### [231 PA. CODE CHS. 1910 AND 1930]

#### Proposed Amendments to the Rules Relating to Domestic Relations Matters; Recommendation 57

The Domestic Relations Procedural Rules Committee proposes the following amendments to Rules of Civil Procedure 1910.13-1, 1910.13-2, 1910.16-2, 1910.19 and 1930.4. The Committee solicits comments and suggestions from all interested persons prior to submission of these proposed amendments to the Supreme Court of Pennsylvania.

Written comments relating to the proposed rules must be received no later than Friday, June 15, 2001 and must be directed to:

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The notes and explanatory comments which appear in connection with the proposed amendments have been inserted by the Committee for the convenience of those using the rules. They will not constitute part of the rules and will not officially be adopted or promulgated by the Supreme Court.

PATRICIA A. MILES,  
*Counsel*

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 1910. ACTIONS FOR SUPPORT

#### Rule 1910.13-1. Failure or Refusal to Appear Pursuant to Order of Court. Bench Warrant.

\* \* \* \* \*

(d) The bench warrant shall direct that if the court is unavailable at the time of the party's arrest, the party shall be lodged in the county jail until such time as court is opened for business. The authority in charge of the county jail must promptly notify the sheriff's office and the director of the domestic relations section that defendant is being held pursuant to the bench warrant. **The party shall be brought before the court for a hearing when the court is next open for business. However, [ Under ] under no circumstances shall the party remain in the county jail longer than [ seventy-two hours prior to hearing ] five days from the time of arrest before being brought before the court.**

#### Explanatory Comment—1994

\* \* \* \* \*

An individual arrested pursuant to a bench warrant can be incarcerated for a period not to exceed **[ seventy-two hours ] five days** prior to hearing as set forth in

[ new ] Rule 1910.13-1(d). Under the old rules, if the court [ is ] was unavailable at the time of arrest, the individual could not be held. Therefore, law enforcement officials were unable to execute bench warrants in the evenings or on weekends, when their efforts were most likely to be successful. By limiting the possible period of incarceration to **[ seventy-two hours ] five days**, [ new ] Rule 1910.13-1(d) balances the need to bring parties before the court with the desire to avoid lengthy pre-trial detention. Bail can be set by the court where appropriate, providing additional protection for the respondent.

\* \* \* \* \*

#### Explanatory Comment—2001

**Subdivision (d) of Rule 1910.13-1 and the related comment have been amended to extend the time period for holding an individual arrested on a bench warrant prior to hearing. While continuing to provide a time limit on a party's pre-hearing detention, the amendment will permit law enforcement officials to execute bench warrants on holidays and long weekends when their efforts have traditionally been most successful.**

#### Rule 1910.13-2. Form of Request for Bench Warrant and Supporting Affidavit. Form of Bench Warrant.

\* \* \* \* \*

(b) The Bench Warrant entered by a court pursuant to Rule 1910.13-1 shall be in substantially the following form, and shall be attached to the Request for Bench Warrant form set forth in subdivision (a) of this rule:

[CAPTION]

BENCH WARRANT

\* \* \* \* \*

You are further commanded that if the court is unavailable, the party may be held in the County Jail until the court is opened for business, at which time the party shall be promptly conveyed and delivered into the custody of the court at

\_\_\_\_\_  
 (address)

\_\_\_\_\_  
 (city)

Pennsylvania, for hearing.

The authority in charge of the county jail shall notify the sheriff's office and the director of the domestic relations section forthwith that the party is being held pursuant to the bench warrant.

Under no circumstances may the party be held in the county jail for more than **[ seventy-two hours ] five days** prior to hearing.

\* \* \* \* \*

#### Rule 1910.16-2. Support Guidelines. Calculation of Net Income.

The amount of support to be awarded is based in large part upon the parties' monthly net income. **A support order must be fair and non-confiscatory.**

(a) *Monthly Gross Income.* Monthly gross income is ordinarily based upon at least a six-month average of all of a party's income. The term "income" is defined by the support law, 23 Pa.C.S. § 4302, and includes income from any source. **For purposes of these guidelines, gross income shall include all earned and unearned income that is recurring or will increase the income available to a party over an extended period of time. When determining whether or not an income source should be included in the support guidelines calculation, the court must consider if the funds would have been available to pay expenses related to the subject of the support action if the family was intact and how long that source would have been available to pay those expenses. [The statute lists many types of income including, but not limited to] Gross income includes, but is not limited to, the following:**

**(1) compensation for services, including wages, salaries, bonuses, fees, [and] commissions and compensation in kind (the fair market value of goods, services or benefits received in lieu of wages if they reduce the living expenses of the recipient);**

**(2) military pay and allowances, including Basic Allowance for Quarters (BAQ), Basic Allowance for Subsistence (BAS) and Variable Housing Allowance (VHS) or the fair market value of in-kind benefits;**

**[(2)](3) [net] income from the operation of a business or from dealings in property, minus ordinary and necessary operating expenses;**

**[(3)](4) interest, rents, royalties, and dividends;**

**[(4)](5) pensions and all forms of retirement [(5) distributions from government and private retirement and pension plans, social security retirement benefits, military retirement benefits, Railroad Retirement Board benefits, deferred compensation plans, profit sharing plans, 401(k) plans, individual retirement accounts and Keogh plans;**

**[(5)](6) income from annuities, inheritances or an interest in an estate or trust;**

**(7) income from life insurance and endowment contracts;**

**[(6)](8) social security disability benefits, [social security retirement benefits,] temporary and permanent disability benefits, workers' compensation and unemployment compensation;**

**[(7)](9) alimony if, in the discretion of the trier of fact, inclusion of part or all of it is appropriate; [and]**

**Official Note:**

Since the reasons for ordering payment of alimony vary, the appropriateness of including it in the recipient's gross income must also vary. For example, if obligor is paying \$1,000 per month in rehabilitative alimony for the express purpose of financing obligee's college education, it would be inappropriate to consider that alimony as income from which the obligee could provide child support. However, if alimony is intended to finance obligee's general living expenses, inclusion of the alimony as income is appropriate.

**(10) overtime, part-time and severance pay;**

**(11) discharge of indebtedness;**

**(12) distributive share of partnership gross income;**

**(13) income from the sale of investments or earnings on investments;**

**(14) lottery and gambling winnings;**

**(15) personal injury awards or other lawsuit awards and settlements, insurance compensation or settlements;**

**(16) income tax refunds, credits or rebates;**

**(17) imputed income based upon earning potential; and**

**[(8) other entitlements to money or lump sum awards, without regard to source, including lottery winnings, income tax refunds, insurance compensation or settlements; awards and verdicts; and ](18) any form of payment due to and collectible by an individual regardless of source.**

**Official Note:**

The trial court has discretion to determine the most appropriate method for imputing lump-sum awards as income for purposes of establishing or modifying the party's support obligation. These awards may be annualized or they may be averaged over a shorter or longer period of time depending on the circumstances of the case. They may also be escrowed in an amount sufficient to secure the support obligation during that period of time.

Income tax refunds, **credits or rebates** should not be included as income to the extent they were already factored into the party's actual tax obligation for purposes of arriving at his or her net income.

**Gross income does not include the following:**

**(1) means-tested income (i.e. based upon the fact that the recipient has minimal income and requires government assistance to subsist) including, but not limited to, Temporary Assistance to Needy Families (TANF), General Assistance, Refugee Assistance, rent subsidies, food stamps and Supplemental Security Income for the Aged, Blind or Disabled (SSI);**

**(2) child support received for children of another relationship;**

**(3) non-income producing assets (e.g. undeveloped real estate, automobiles, jewelry, art, stocks and bonds) unless the court finds that the intent of the investment was to avoid the payment of support;**

**(4) income of a child, unless the court determines that such income should be included because the child is a professional or has substantial income that reduces the family's living expenses;**

**(5) income from other household members (e.g. step-parents, current spouse or grandparents) who are not legally responsible for support; and**

**(6) financial assistance for education including loans, grants, scholarships and veterans' education benefits.**

**Explanatory Comment—2001**

The prior version of this rule simply recited the definition of income in the support statute at 23 Pa.C.S. § 4302. As a result of perceived ambiguity,

the rule has been amended to clarify application of the statutory categories of income in support proceedings.

(b) *Treatment of [ Public Assistance, SSI Benefits and ] Social Security Payments to a Child Due to a Parent's Disability or Retirement.*

**[ (1) Neither public assistance nor Supplemental Security Income (SSI) benefits shall be counted as income for purposes of determining support. ]**

**[ (2) ]** If a child for whom support is sought is receiving social security retirement or disability derivative benefits as a result of a parent's age or disability, the benefits the child receives shall be added to the combined monthly net incomes of the obligor and obligee to calculate the income available for support on the vertical axis of the basic child support schedule set forth in Rule 1910.16-3. The presumptive amount of support as set forth on the schedule at the combined income of obligee, obligor and child's benefits shall then be reduced by the amount of the child's social security or disability derivative benefits before apportioning the remaining support obligation between the parties pursuant to Rule 1910.16-4.

*Example.* If the obligor has net monthly income of \$1200 per month; the obligee has net monthly income of \$800; and the child receives social security derivative benefits of \$300 per month as a result of either the obligor's or obligee's retirement or disability, then the total combined monthly net income is \$2,300. Using the schedule at Rule 1910.16-3 for one child, the amount of support is \$539 per month. From that amount, subtract the amount the child is receiving in social security derivative benefits (\$539 minus \$300 equals \$239). Then, apply the formula at Rule 1910.16-4 to apportion the remaining child support amount of \$239 between the obligor and the obligee in proportion to their respective incomes. Obligor's \$1200 net income per month is 60% of the total of obligor's and obligee's combined net monthly income. Thus, obligor's support obligation would be 60% of \$239, or \$143.40, per month.

**[ Official Note:**

**Care must be taken to distinguish Social Security from Supplemental Security Income (SSI) benefits. Social Security benefits are income pursuant to subdivision (a) of this Rule. ]**

\* \* \* \* \*

**Rule 1910.19. Support Modification. Termination. Guidelines as Substantial Change in Circumstances.**

\* \* \* \* \*

**(d) When a child who is the subject of a child support order reaches eighteen (18) years of age, the domestic relations section shall issue an emancipation inquiry and notice to the obligee, with a copy to the obligor, seeking the following information:**

**(1) confirmation of the child's date of birth, date of graduation or withdrawal from high school;**

**(2) whether the child has left the obligee's household and, if so, the date of departure; and**

**(3) any special needs of the child which may be a basis for continuing support for that child beyond the child's eighteenth birthday or graduation from high school, whichever is last to occur.**

The notice shall advise the obligee that if the inquiry is not returned within twenty (20) days of mailing or if the child does not have any special needs, the charging order may be modified or terminated by the court. When no other children are subjects of the child support order and the obligee either does not return the emancipation inquiry within twenty (20) days of its mailing or does not assert grounds for continuing support for the child, then the court shall have the authority to administratively terminate the child support charging order without further proceedings at any time on or after the last to occur of the date the last child reaches age eighteen (18) or graduates from high school. Termination of the charging order shall not affect any arrears accrued through the date of termination.

If the order applies to another child or children and/or the obligee asserts that a child has special needs requiring continued support after emancipation, then the domestic relations section may schedule a conference to determine if the charging order should be modified.

**Explanatory Comment—2001**

Although support orders do not terminate automatically, many obligors are unaware of the necessity of filing a petition to terminate a child support order when the child becomes emancipated. As a result, old orders have continued to charge long after the subject child has become an adult. New subdivision (d) is intended to address this problem by giving the obligee notice of a proposed modification or termination of the order and the opportunity to object. If no objection is made, or if the obligee fails to respond with a reason to continue the order, the rule gives the court the authority to terminate or modify the charging order, depending upon whether or not other children are covered under the order.

**CHAPTER 1930. RULES RELATING TO DOMESTIC RELATIONS MATTERS GENERALLY**

**Rule 1930.4. Service of Original Process in Domestic Relations Matters.**

(a) *Persons Who May Serve.* Original process in all domestic relations matters may be served by the sheriff or a competent adult:

- (1) by handing a copy to the defendant; or
- (2) by handing a copy

(i) at the residence of the defendant to an adult member of the family with whom [ he ] the defendant resides; but if no adult member of the family is found, then to an adult person in charge of such residence; or

(ii) at the residence of the defendant to the clerk or manager of the hotel, inn, apartment house, boarding house or other place of lodging at which [ he ] the defendant resides; or

(iii) at any office or usual place of business of the defendant to [ his ] the defendant's agent or to the person for the time being in charge thereof.

- (3) or pursuant to special order of court.

**Official Note:**

See Rule 76 for the definition of "competent adult."

(b) *Service in Protection From Abuse Matters.* In Protection From Abuse matters only, original process may also be served by an adult **using any means set forth in subdivision (a) above. If personal service cannot be completed within forty-eight (48) hours after the entry of the protection order, the court may, by special order, authorize service by mail pursuant to subdivision (c) of this rule.**

(c) *Service by Mail.* Except in Protection from Abuse matters **unless authorized by special order of court pursuant to subdivision (b) above,** original process may also be served by mailing the complaint and order to appear, if required, to the defendant's last known address by both regular and certified mail. Delivery of the certified mail must be restricted to addressee only, and a return receipt must be requested.

(1) If the certified mail is refused by defendant, but the regular mail is not returned within fifteen days, service may be deemed complete.

(2) If the mail is returned with notation by the postal authorities that it was unclaimed, service shall be made by another means pursuant to these rules.

(d) *Acceptance of Service.* In lieu of service pursuant to this rule, the defendant or **[ his ] the defendant's** authorized agent may accept service of original process by filing with the prothonotary a separate document which shall be substantially in the following form:

\* \* \* \* \*

[Pa.B. Doc. No. 01-583. Filed for public inspection April 6, 2001, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### CARBON COUNTY

Revision of Adult Probation/Parole Department  
Firearms Policy; No. 74MI99

#### Administrative Order No. 12-2001

And Now, this 21st day of March, 2001, it is hereby *Ordered and Decreed* that, effective thirty (30) days after publication in the *Pennsylvania Bulletin*, that the Carbon County Court of Common Pleas hereby *Revises* the Adult Probation/Parole Department Firearms Policy applicable to all members of the Carbon County Adult Probation Department since its inception on December 13, 1999.

The Carbon County District Court Administrator is *Ordered and Directed* to do the following:

1. File seven (7) certified copies of this Administrative Order with the Administrative Office of Pennsylvania Courts.
2. File two (2) certified copies and one (1) diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. File one (1) certified copy with the Pennsylvania Criminal Procedural Rules Committee.
4. Forward one (1) copy for publication in the Carbon County Law Journal.
5. Forward one (1) copy to the Carbon County Law Library.

6. Keep continuously available for public inspection copies of the Order and Rule in the Clerk of Court's Office.

*By the Court*

RICHARD W. WEBB,  
*President Judge*

#### Definitions

*Purpose:* To establish policy and procedure governing the administration of the Carbon County Adult Probation/Parole Department's firearms program.

*Applicability:* To the Chief Adult Probation/Parole Officer, the Deputy Chief Adult Probation/Parole Officer and all Adult Probation/Parole Officers.

*Definitions:* As utilized in this document, the following definitions shall apply:

1. *Arrest:* The physical taking of a person into custody and restraining them until they can be brought before the court to answer the violations alleged against them.

2. *Attack management:* Shielding, distance and movement.

3. *Attack potential:* The immediate and simultaneous existence of intent, weapon, delivery system and target.

4. *Center of mass:* The center of the three largest vital areas available, upper torso, brain and pelvic girdle.

5. *Certification:* The assignment of a certification number to a probation/parole officer after successful completion of a mandatory basic training course from the County Probation and Parole Officers' Firearm Education and Training Commission.

6. *Deadly force:* As defined in Pennsylvania Crimes Code, 18 P. S. § 501, which states: "Force, which, under circumstances in which it is used, is readily capable of causing death or serious bodily injury."

7. *Defense of life rule:* The use of deadly force only in those circumstances in which a person cannot safely disengage and where deadly force is required to stop and render a person incapable of continuing life threatening actions.

8. *Delivery system:* The opportunity to place someone in jeopardy.

9. *Displaying a firearm:* The clearing from a holster (unholstering) a firearm or brandishing a holstered weapon in a manner in which a reasonable person could perceive a use of force threat.

10. *Excessive force:* Force, which is unreasonable in the performance of an act otherwise lawful; or, force used in making an arrest in excess of the force reasonably necessary to effect control of a subject.

11. *Firearm:* Any pistol or revolver with a barrel less than twelve inches, any shotgun with a barrel less than twenty-four inches, or any rifle with a barrel less than fifteen inches (See 18 Pa.C.S. § 6102).

12. *Force:* The impetus of power; physical power of strength, exerted against a person and employed without their consent for the purpose of controlling the person while maintaining a position of advantage.

13. *Handgun:* A revolver or pistol designed to be fired with one hand.

14. *Impairment:* A condition, which can affect judgment, reaction time or motor skills as it may affect the ability to handle a firearm safely.

15. *Intent*: The means to place someone in jeopardy.

16. *Magazine*: A receptacle where rounds are stored for use in a pistol.

17. *Peace officer*: Any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses, or any person on active State duty pursuant to section 311, of the Act of May 27, 1949 (P. L. 1903, No. 568), also known as "The Military Code of 1949." Also, see 18 Pa.C.S. § 501 as applied to probation officers in 61 Pa.C.S. § 309.1.

18. *Pistol*: A semi-automatic handgun.

19. *Preclusion*: Fast assessment to determine if a lower level of force would be inappropriate, ineffective and to disengage is not possible.

20. *Self-defense*: That action taken to nullify an attack when based on a reasonably founded belief that either death, serious bodily injury or other injury will occur because of the existence of a clear and present danger. Self-defense may be personal or instituted for the protection of another person.

21. *Serious bodily injury*: As defined in the Pennsylvania Crimes Code, 18 P. S. § 2301, which states: "Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ."

22. *Target*: A person or thing at which force may be directed or used.

23. *Target identification*: An empirical verification of a person or thing at which force may be directed or used.

24. *Target isolation*: The ability to segregate a target from surrounding people or objects.

25. *Use of force*: As defined by the Pennsylvania Crimes Code, 18 P. S. § 508, Use of Force in Law Enforcement, which states:

"(a) Peace Officer's Use of Force in Making Arrest:

(1) A peace officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force, which he believes to be necessary to effect the arrest, and of any force, which he believes to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using deadly force only when he believes that such force is necessary to prevent death or serious bodily injury to himself or such other person, or when he believes both that:

(i) such force is necessary to prevent the arrest from being defeated by resistance or escape; and

(ii) the person to be arrested has committed or attempted a forcible felony or is attempting to escape and possesses a deadly weapon, or otherwise indicates that he will endanger human life or inflict serious bodily injury unless arrested without delay.

(2) A peace officer making an arrest pursuant to an invalid warrant is justified in the use of any force which he would be justified in using if the warrant were valid, unless he knows that the warrant is invalid."

26. *Use of force model*: The Use of Force Paradigm for Enforcement and Corrections as developed and defined by John Desmedt of the Protective Safety System.

27. *Weapon*: Includes handguns and firearms. It also includes any other instruments of offensive or defensive combat use or designated as being capable of causing injury to another person.

28. *Weapon-carrying officer*: A county probation/parole officer who is authorized to carry a weapon in connection with performance of the duties of his employment.

#### **Authority and Policy Statement**

*Authority*: This policy statement has been developed pursuant to and in accordance with statutory requirements, local rules established by the Carbon County Adult Probation/Parole Department and through the formal adoption by the Carbon County Court of Common Pleas through administrative court order.

*Policy statement*: The Carbon County Adult Probation/Parole Department recognizes that an element of danger does exist in dealing with criminal offenders and will provide adult probation/parole officers with the opportunity to carry a firearm in order to protect themselves from serious bodily injury or deadly force. The consideration in the use of force is for the preservation of life and physical safety of the officer, the public and the offender.

#### **Statutory Authority of Adult Probation Officers**

*Authority of Probation and Parole Officers*: Probation and Parole Officers employed by the Court of Common Pleas enjoy police powers over the offenders under their supervision. Section I of Act 277 of 1963 and amended Act 117 (61 P. S. § 309.1) vests probation officers with such police powers. The Act states:

"Probation Officers heretofore or hereafter appointed by any Court of record of this Commonwealth are hereby declared to be peace officers, and shall have police powers and authority throughout the Commonwealth to arrest with or without warrant, writ, rule of process, any person on probation, intermediate punishment or parole under the supervision of said Court for failing to report as required by the terms of his/her probation, intermediate punishment or parole or for any other violation of his/her probation, intermediate punishment or parole."

*Peace Officer*: In 1973, with the adoption of the Pennsylvania Crimes Code, a peace officer was defined in 18 P. S. § 501 as:

"... any person who by virtue of his public office or public employment is vested by law to make arrests for offenses whether that duty extends to all offenses or is limited to specific offenses ..."

The police powers granted to probation and parole officers are limited. Those powers extend only to persons subject to the jurisdiction of the sentencing common pleas court or as may be granted by another jurisdiction through an Interstate Compact Agreement (61 P. S. § 321 et seq.) or Intercounty Compact Agreement. Therefore, the police power of probation and parole officers differs in scope from that of the police officer.

*Arrest Authority*: Adult probation/parole officers are empowered to make arrests; however, those powers extend only to offenders under the jurisdiction of the department placed on probation, parole or intermediate punishment (See 61 P. S. § 309.1).

**Use of Force Policy**

*Jurisdiction to act:* The use of any force by adult probation/parole officers will be justified only when the department has jurisdiction. The jurisdiction to act as an authorized adult probation/parole officer is limited to those situations involving offenders under the direct supervision of the department and/or those individuals that are encountered by officers as a direct result of the supervision of the offender.

*Purpose of force:* The objective of the use of force by adult probation/parole officers is to establish and maintain lawful control in a timely manner, to minimize the potential for injury to parties directly involved, as well as others. The degree of force authorized is that degree necessary to establish lawful control in a timely manner. This degree of force depends upon the degree of danger or resistance perceived by the officer.

*Use of force model:* The department formally adopts, subscribes and employs The Use of Force Paradigm for Enforcement and Corrections as developed and defined by John Desmedt of The Protective Safety Systems.

*Timeliness:* Timely means on time and not late. Officers need not wait for injury to occur to themselves or others before taking appropriate action to prevent injury.

*Control of the subject:* Control of the subject must be established for the safety of the officer and others in response to perceived danger and when necessary to accomplish duties authorized by law.

*Use of physical force:* Physical force is to be used only in circumstances of justifiable self-protection or the protection of other persons. Adult probation/parole officers should use their discretion in using physical force. When possible, officers should consider withdrawing from the situation and securing assistance. If physical force is used, the officer shall only use the minimum force necessary to control the situation.

*Officer Identification:* If circumstances permit, the officer must make their identity as an adult probation/parole officer known.

*Verbal Warning:* Whenever possible, the officer must exercise persuasion, advice and warning before using physical force. If such verbal control would be (or is found to be) ineffective, the officer may use physical force to accomplish a lawful purpose.

*Use of Force Considerations:* Officers shall consider the following when employing force:

1. Subject's immediate threat to safety.
2. Subject's active resistance or attempt to escape.
3. Severity of the crime involved.
4. An officer's ability to disengage.
5. The circumstances existing at the moment force is used.
6. The tactics employed by an officer that may have caused a use of force decision to become necessary.

*Reasonable Control Guidelines:* When using force, officers must:

1. Match force to the subject's resistance.
2. Correctly apply techniques and equipment appropriate to that force level.
3. Apply alternative options if tactics fail to establish control.

*Use of Excessive Force:* The use of excessive force is prohibited by Federal and State laws. Violation of these laws can carry both civil and criminal penalties. Officers will be held accountable for the use of force.

*Administration of First Aid:* An officer who uses force on an offender and injuries result, the officer shall:

1. Contact the Carbon County Communications Center for assistance from medical personnel and law enforcement personnel.
2. Contact the Chief Adult Probation/Parole Officer or immediate supervisor.
3. Render first aid to the injured subject. Officers must remember that they are responsible for administering first aid treatment to an injured subject.

*Use of Force Test:* The use of force is based upon determining what force a reasonable officer at the scene would have used under the circumstances (See Graham v. Conner, 109 S.Ct. 1865, 1989).

**Deadly Force Policy**

*Serious Bodily Injury:* The operational definition of serious bodily injury shall be defined by the Use of Force Model as:

1. An open gash or wound;
2. Major broken bones; and/or
3. Damage to internal organs.

*Use of Deadly Force:* The use of deadly force by officers shall be strictly limited to defensive situations. If appropriate, officers shall exhaust all other types of force before resorting to the utilization of deadly force.

*Justifiable Use of Deadly Force:* When the use of deadly force is justified, officers discharging weapons shall not shoot to kill nor shoot to wound, but rather to stop the action by causing the instant incapacitation of the subject. For maximum stopping effectiveness and to minimize the danger to innocent bystanders, officers should shoot at center body mass.

*Offensive Posture:* Officers shall not utilize deadly force in an offensive posture to effect the apprehension of those persons who commit violations of probation, parole or intermediate punishment, or any other law amounting to summary, misdemeanor or felony offenses, which do not present the threat of death or serious bodily injury. Nothing contained in this policy statement shall preclude the use of deadly force for self-defense, when warranted.

*Verbal Warning:* When practical, and if the time and opportunity exists in a deadly force situation, officers shall identify themselves as adult probation/parole officers and give some type of warning prior to the use of deadly force.

*Requirements for Righteous Deadly Force:* Officers shall consider the following:

1. Accurately assessing a subject's imminent potential for attacking in a life-threatening manner (attack potential); the immediate and simultaneous existence of intent, weapon, delivery system and target.
2. Articulating why an officer feared for their life or someone else's when deadly force action was taken.
3. Explaining why a lower level of force was inappropriate, ineffective and disengagement was not possible.

*Target Identification and Isolation:* Officers shall consider the following factors when making a decision to use deadly force:

1. Officers facing a decision to use deadly force must be aware of any innocent third parties that may be present in or near the line of fire.

2. Officers are prohibited from discharging their firearms when they cannot identify their target and it appears reasonably and likely that an innocent person(s) may be injured, unless the prohibition in discharging the firearm is likely to result in the immediate death or serious bodily injury of the officer or another person.

3. Officers shall establish target identification and target isolation.

*Use of Excessive Force:* See Page 5 of this policy statement.

*Administration of First Aid:* See Page 5 of this policy statement.

*Disengagement:* Whenever possible, and if the time and opportunity exists, officers shall utilize shielding, distance and movement (attack management) to disengage from a situation before resorting to deadly force.

*Warning Shots:* Warning shots are strictly prohibited under all circumstances.

*Rescue Shots:* Officers may use a rescue shot for the purpose of identifying location and/or acquiring appropriate assistance.

### **Authorization to Carry Firearms**

*Authorization to Carry a Firearm:* All adult probation/parole officers with peace officer status can request authorization to become a weapon-carrying officer (See Page 18 of this policy statement).

*Requirements to Carry a Firearm:* The department shall authorize officers to carry firearms for defensive purposes when the following criteria is met:

1. Successful completion of a criminal background investigation.

2. Successful completion of a psychological examination.

3. Successful completion of the Basic Orientation Academy for Probation/Parole Officers.

4. A written request from the Adult Probation/Parole Officer to the Chief Adult Probation/Parole Officer to carry a firearm.

5. Successful completion of a first aid and CPR course.

6. Successful completion of a defensive tactics and Use of Force course.

7. Successful completion and certification from the County Probation and Parole Officers' Firearm Education and Training Commission.

8. Ability to demonstrate a proficiency in the knowledge, handling, and safety of firearms.

*Issuance of Authority to Carry a Firearm:* The process of requesting authorization to carry a firearm shall be reviewed by the Chief Adult Probation/Parole Officer who shall consider the following:

1. Demonstrated need to carry a firearm in the performance of their official duties.

2. Physical and emotional condition of the officer.

3. Presence of alcohol-related problems.

4. Signs of emotional instability.

5. Officer under the care of a psychologist or psychiatrist.

6. Current or past disciplinary problems with the officer.

7. Completion of all requirements as outlined in this policy statement.

*Final Approval:* The Chief Adult Probation/Parole Officer will make the final decision. The refusal of a request for authorization to carry a firearm is not appealable. Unless otherwise instructed, an officer may reapply for authorization every six months (See Page 19 of this policy statement).

*Officers Not Requesting Authorization To Carry:* All officers that were hired prior to the implementation date of this policy statement will have the option to carry a firearm. If an officer decides not to carry a firearm, then he/she must complete the Request Not To Carry a Firearm form and return it to the Chief Adult Probation/Parole Officer. Nothing in this policy statement shall prohibit an officer from requesting authorization to carry at a later time (See Page 20 of this policy statement).

*Relinquishing Authorization:* Once an officer is authorized to carry a firearm, that officer cannot request relinquishment of that authorization. The decision to carry a firearm is a difficult and moral decision that must be considered carefully by the officer before requesting authorization.

*Condition of Employment:* After the adoption of this policy statement, any new employee will be required to carry a firearm in the performance of their official duties.

*Issuance of the Firearm:* Once the officer has completed all training and fulfilled all agency requirements, the Chief Adult Probation Officer shall issue a firearm to the officer and execute the firearm issuance form (See Page 21 of this policy statement).

*Firearms Not To Be Carried Without a License:* Since adult parole/probation officers are declared peace officers with police powers to arrest offenders in violation of probation, parole or intermediate punishment, a license to carry a firearm during the performance of their official duties is not required. However, the department recommends that all weapon-carrying officers obtain a license to carry a weapon. The officer shall absorb the costs of the permit. Also, according to 18 Pa.C.S. § 6106, states, No person shall carry a firearm in any vehicle or concealed on or about his person, except in his place of abode or fixed place of business, without a license, except, constables, sheriffs, prison or jail wardens, or their deputies, policemen of this Commonwealth or its political subdivisions, or other law-enforcement officers.

### **Conditions for Carrying a Firearm**

*Conditions for Carrying Firearms:* All weapon-carrying officers shall carry their firearm concealed and under the following circumstances:

1. During an arrest situation.

2. During a search and seizure situation.

3. While conducting field contacts, including after-hour investigations by assigned on-call personnel.

4. Range qualification and related training, including practice shooting.

5. To and from employment.

*Office and Courthouse Setting:* While in the office, all weapon-carrying officers shall secure their firearm in the gun security cabinet within the adult probation office. Officers shall be prohibited from carrying their firearm while in the office, unless entering or exiting the building to conduct fieldwork.

*Courthouse Setting:* While in the Courthouse or Courthouse Annex Building, all weapon-carrying officers shall secure their firearm in the gun security cabinet within the adult probation office. Officers shall be prohibited from carrying their firearm in the courthouse or courthouse annex building, unless entering or exiting the building to conduct fieldwork.

*Concealment of Firearm:* Firearms are to be carried in a concealed manner on the officer, under an article of clothing. The following exception will apply:

1. When participating in an arrest situation, the officer may position the weapon in an unconcealed manner to enhance accessibility.

#### **Displaying a Firearm**

*Displaying a Firearm:* Firearms shall not be displayed or drawn for any other reason than described below:

1. During an arrest situation.
2. Justifiable self-protection or the protection of others
3. When the officer perceives an immediate threat of death or serious bodily injury, which may include an attacking animal.
4. Cleaning the firearm, storage and inspection.
5. Range qualification or practice shooting.
6. Storage at a correctional facility, courthouse or other secure facility.

#### **Handling of Firearms**

*Handling of a Firearm:* The continued authorization to carry a firearm will depend on the following:

1. The officer's compliance with agency policy and procedure.
2. The officer's ability to handle the firearm in a safe manner.
3. The officer's ability to conduct themselves in a safe and proper manner while in possession of the firearm.
4. Except for general maintenance, storage or authorized training, officers shall not draw or exhibit their firearms unless circumstances create strong reasonable belief that it may be necessary to lawfully use the weapon.
5. In those situations, the officer shall exercise a reasonable standard of care with the drawn weapon. Reasonable care includes: pointing the muzzle in a safe direction; keeping the trigger finger outside the trigger guard; and under no circumstances shall a weapon capable of double action be cocked for single action use.
6. The use or handling of a firearm by an officer, on or off-duty, in a careless or imprudent manner or the unjustified endangering of human life by a firearm in violation of this policy statement is strictly forbidden and shall result in a disciplinary investigation and may result in the revocation of authorization to carry a firearm.

7. The department does not authorize or recognize the carrying of an agency issued firearm during off-duty hours.

*Firearm Safety Considerations:* The following regulations apply to all firearms and situations, whether on or off the range, at home or conducting probation/parole activities:

1. Always consider all firearms to be loaded.
2. Never point the muzzle of the firearm across anything, which you are unwilling to shoot.
3. Keep your finger outside the trigger guard until you are ready to shoot.
4. Be certain of your target, target identification and target isolation.
5. When you take a gun from its holster or storage for any other purpose than necessary use, unload it and check to see that it is unloaded three times.
6. A gun is not a toy, do not play with it.
7. Do not use or possess a firearm when drinking or using other substances that alter perception or disposition.
8. Resist the temptation to show off your firearm.
9. Do not loan your firearm to anyone else.
10. When passing a pistol to another individual, make sure the weapon is unloaded, magazine removed, action open, handing it gun grip first.

#### **Storage of Firearms and Ammunition**

*Storing the Firearm:* All weapon-carrying officers shall store their firearm as follows:

1. *In the Field:* When performing fieldwork, firearms are to be concealed on the officer.
2. *In an Automobile:* Firearms shall not be left in a vehicle, trunk, glove compartment, briefcase or other areas of storage, except under the following circumstances.
  - a. When the officer is entering an institution in which a firearms locker is not available.
  - b. When the officer must appear in court in which the courthouse does not allow entrance of an armed officer and there is no firearms locker available.
  - c. Should circumstances arise requiring the emergency or brief storage of a weapon, the containment area must be stationary, locked and be inaccessible to all except the officer.
3. *In the Office:* For purposes of office security and safety, officers are not permitted to carry their firearm in the office, unless entering and exiting to conduct fieldwork. When weapon-carrying officers are assigned to the office for duty days, the firearm must be stored in the gun security cabinet unloaded, with the key being secured by the officer. Under no circumstances are firearms to be stored in desks or any other location in the office. If weapon-carrying officers do not take their firearms home after normal business hours, then the weapon must be secured in the gun security cabinet, unloaded.
4. *In the Courthouse/Annex Building:* For purposes of courthouse security and safety, officers shall secure their firearm in the gun security cabinet within the adult probation office unloaded. Officers shall be prohibited from carrying their firearm in the courthouse or annex building, unless entering or exiting the building to conduct fieldwork.



5. *Correctional Facilities/Other Courthouses:* When officers enter correctional facilities, other courthouses or any other secure facility, the officer shall secure their weapon in accordance with the facility's regulations.

6. *At Home:* See Page 11 of this policy statement.

7. *Interstate Travel:* When traveling outside the Commonwealth of Pennsylvania, officers are not permitted to carry their firearm into the neighboring state.

8. *In a Public Rest Room:* The officer shall remove his/her duty belt with the firearm in the holster and place the duty belt around the officer's neck. This procedure will ensure that the officer's equipment will not be stolen or forgotten.

*Storage of Ammunition:* When in the office, the firearm will be unloaded and the ammunition secured separately from the firearm in the gun security cabinet, accessible only to authorized personnel. When at home, the ammunition shall be removed from the firearm and stored in a separate location.

*Unattended Firearm:* Under no circumstances shall the officer leave his duty weapon unattended while in the office, field, home or any other unsecured locations.

### Home Safety

*Firearm at Home:* All weapon-carrying officers may take their firearms home after normal business hours.

*Home Safety:* It is essential that the officer assigned to carry a firearm instruct their family members in the proper use and handling of the firearm. It should be made perfectly clear that the firearm is not to be handled by anyone other than the officer or a mature adult. The officer is responsible to educate his family members on the safety and proper handling of the firearm. All firearms should be kept out of the reach of children and immature or irresponsible adults and stored in a secure area. Older children may be given gun instruction with the extent of the training being dependent on the child's maturity and judgment of the parents.

*Storage at Home:* Immediately upon entering the residence, the firearm should be unloaded, the magazine removed and the firearm and equipment stored in a secure area. Officers are encouraged to store the ammunition, magazines and the firearm in different locations. The firearm must not be left unattended and accessible while in the residence. It shall be the responsibility of the officer to ensure that the firearm is properly secured in a locked cabinet or drawer. The firearm should be kept beyond the reach of small children.

*Loaded Firearm:* Firearms shall not remain loaded while in the residence. The officer shall immediately unload the weapon when they enter the residence and all ammunition should be kept in a safe location away from the weapon.

*Trigger Guards:* As a suggestion, a trigger guard lock will secure the firearm from accidental discharge. The key to the trigger guard should be kept on the officer's person at all times.

*Unattended Weapon at Home:* The officer shall not leave his duty weapon unattended while in their residence. The firearm must be secured at all times.

### Loading and Unloading Firearms

*Loading Firearms in the Office:* The agency has provided all weapon-carrying officers with a gun barrel to load and unload their weapons. When officers are preparing for fieldwork, the officer shall load his firearm in the gun barrel located within the agency as follows:

1. The officer shall notify all agency personnel that he will be loading his weapon.

2. Before loading the weapon, the officer shall clear the entire room of other agency personnel.

3. The officer shall point the barrel of the weapon into the center of the gun barrel and load the weapon.

4. No other agency personnel shall be permitted in the area until the weapon is loaded and secured in the officer's holster.

*Unloading Firearms in the Office:* When officers return from the field, they shall unload their weapon as outlined above.

### Discharge of Firearms

*Discharge of a Firearm:* The discharge of a firearm is permitted only when an officer reasonably believes that he/she or another person is at risk for serious bodily injury or death and that the deadly force employed by the officer is reasonable and necessary and not excessive by comparison to the type of resistance offered by the offender.

*Unholstering:* See Page 9 of this policy statement (Displaying a Firearm).

*A Discharged Weapon:* Any unholstering, discharge or firing of a weapon, other than in a training program, qualification or off-duty practice, must be reported immediately to a supervisor by the officer who discharged the weapon.

*Involved Officer(s) Responsibilities:* Any time an officer is engaged in an incident, which involves the discharge of a firearm, whether by an agency officer or another person, the following procedure shall apply:

1. Immediately following the incident, secure the scene and make every effort to preserve potentially pertinent evidence.

2. Contact the Carbon County Communications Center for the police department that has jurisdiction and medical personnel, if injuries resulted to any persons at the scene.

3. Notify the Chief Adult Probation/Parole Officer or his designee, if unavailable.

*Written Incident Report:* The officer must file a written incident report immediately after the discharge to their immediate supervisor. The officer shall provide the exact location and time of the incident; a detailed description of the incident; names and addresses of witnesses; reasons for discharging the weapon; names of any investigating police officers; and any other information that may be necessary in understanding and investigating the incident. However, if a police investigation has been initiated, the officer(s) involved with the incident will not need to file a written report at this time. The Chief Adult Probation/Parole Officer will obtain a copy of the police report.

*Surrendering the Weapon:* The officer shall surrender the weapon involved to their immediate supervisor or a requesting police officer involved in the investigation. The officer's weapon shall be confiscated and temporarily suspended until the investigation is completed.

*Incidents and Allegations:* It is the responsibility of the officer carrying a firearm to report immediately to a supervisor any incidents or situations that may result in allegations being made or complaints filed regarding the use or displaying of a firearm. Other staff that observes an unusual situation involving a firearm must verbally report to an immediate supervisor. The Chief Adult Probation/Parole Officer may request a written report.

*Departmental Investigation:* The Chief Adult Probation Officer shall receive prompt notification of the incident so that an investigation can be initiated to verify the factual basis surrounding the situation.

### **Shooting At Moving Vehicles**

*Shooting at Moving Vehicle Guidelines:* Officers shall not discharge a firearm at or from a moving vehicle except under the following circumstances:

1. As a last resort measure of self-defense when the subject is using deadly force by means of other than the vehicle.

2. As a last resort measure of self-defense when a vehicle is being driven in a manner deliberately intended to kill or injure an officer or other party.

*Limitations and Consequences Shooting at a Moving Vehicle:* In deciding to shoot at a moving vehicle, officers must take into account the following limitations and consequences:

1. The difficulty of hitting a moving target.
2. The possibility of ricochets striking unintended targets.
3. Population densities.
4. The difficulty in penetrating the automobile body and/or steel belted radial tires.
5. The inability to stop a vehicle's momentum even when the target actor is hit.
6. The possibility of damage or injury, which might result from causing the vehicle to go out of control.

### **Damaged, Lost or Stolen Firearms**

*Damaged Firearm:* Any officer who suspects that his/her issued firearm is damaged shall immediately notify the Chief Adult Probation/Parole Officer. A potentially damaged firearm shall not be carried. The firearm shall be secured and sent to a certified armorer for repairs. During this time, the officer will not carry a firearm until the firearm can be repaired.

*Lost or Stolen Firearm:* The loss or theft of a firearm shall be immediately reported to the Chief Adult Probation/Parole Officer. This report must be made within twenty-four (24) hours of occurrence, either by telephone or in person. The initial notification will be followed immediately by a written report describing the circumstances surrounding the loss or theft of the firearm. The employee must take immediate and reasonable action to recover the firearm and obtain all information available to aid in the investigation and recovery of the firearm. Employees must seek assistance from the appropriate law enforcement agency as soon as possible.

*Security and Accountability:* Officers are directly responsible for the safety and security of authorized firearms. Officers may be required to reimburse the County for the costs of lost, stolen or damaged firearms if:

1. An official investigation establishes that the officer is negligent or otherwise at fault,
2. It is administratively decided that reimbursement is to be made.

*Disciplinary Action:* Failure to safeguard or otherwise secure firearms may result in disciplinary action. Furthermore, the officer's authorization to carry may be suspended and he/she referred for appropriate levels of training.

### **Requirement to Notify the Department of Physical and Pharmacological Conditions Affecting the Ability to a Carry Firearm**

*Impairment:* It shall be the responsibility of the weapon-carrying officer to notify their immediate supervisor of any physical or pharmacological conditions causing physical and/or emotional impairment.

*Prescriptive Medication:* In those instances when an officer is prescribed a medication for an illness or medical condition, it shall be the responsibility of the weapon-carrying officer to notify their immediate supervisor. When an officer believes and/or medical personnel indicate that a medication may affect judgment and/or reaction time, authorization to carry a firearm shall be suspended. Authorization shall be reinstated upon the cessation of the medication and its effects or with a physician's ruling that the medication's potential contraindications would be aversive to handling a firearm safely and proficiently.

### **Temporary Suspension of Authorization to Carry**

*Incidents and Allegations:* See Page 15 of this policy statement.

*Departmental Investigation:* See Page 15 of this policy statement.

*Temporary Suspension of Authorization to Carry:* If circumstances arise where an officer's ability to properly handle a firearm is called into question, the Chief Adult Probation/Parole Officer has the duty and authority to immediately remove the officer's agency issued firearm in an effort to provide for the safety of the officer, as well as that of the community. Reasons for a temporary suspension may include, but are not limited to the following:

1. Physical limitation or injury
2. Mental, emotional, or behavioral impairment
3. Allegations of misconduct, negligence, or carelessness
4. Induced impairment due to drugs (illicit or legal), and/or alcohol
5. Unsafe situational tactics
6. Violation of agency policy or procedure
7. Actions which may indicate a staff member's judgment is impaired
8. Violation of the Protection From Abuse Act, 35 P. S. § 10181, as amended, when the Court directs that all weapons be forfeited.

*Period of Temporary Suspension:* The Chief Adult Probation/Parole Officer shall conduct an investigation into the allegation of improper handling of a firearm. Within thirty (30) days of the alleged allegation, a decision shall be made to:

1. Remove authorization
2. Continue temporary suspension
3. Return firearm

*Continued Temporary Suspension:* If after thirty (30) days, the Chief Adult Probation/Parole Officer has not completed the investigation, then the temporary suspension may be extended for an additional thirty (30) days.

*Removal of Authorization:* After completion of the investigation, the Chief Adult Probation/Parole Officer may remove authorization from the officer until he/she can demonstrate an ability to properly handle the firearm in a safe manner and/or has completed training necessary to demonstrate the safe and proper handling of a firearm. This administrative decision is not considered disciplinary action and is for the safety of the officer and the community.

*Appeal of Decision:* The decision of the Chief Adult Probation/Parole Officer shall be final.

*Allegations Involving the Chief Adult Probation/Parole Officer:* When any allegations are lodged against the Chief Adult Probation/Parole Officer for violations of this firearm policy, then the Deputy Chief Adult Probation/Parole Officer shall remove the firearm from the Chief and conduct an investigation into the allegation in accordance with this policy statement.

*Performance of Official Duties During Suspension:* An officer whose authorization to carry a firearm has been suspended shall continue to perform their official duties and functions as an adult probation/parole officer with no interruption in services.

*Reinstatement Process:* An officer who had authorization removed may reapply for reinstatement every six months.

### **Firearms Training Requirements**

*Basic Firearms Academy:* All officers carrying firearms must attend the initial firearms training course offered by the County Probation and Parole Officers' Firearm Education and Training Commission (See 61 Pa.C.S. § 332.1 through 61 Pa.C.S. § 332.9). The training course shall consist of a period of classroom instruction and range qualification.

*Requalification:* All officers who receive certification by the Commission, must requalify annually and during the time period established by the Commission. The department shall make arrangements with neighboring counties, who have a certified Commission firearms instructor, to conduct requalification training.

*Failure to Qualify at the Initial Training:* If an officer fails to qualify, he/she shall be given a second opportunity to participate in the next available training course. Any officer requesting a third opportunity must receive authorization from the Chief Adult Probation/Parole Officer.

*Failure to Requalify:* If an officer fails to requalify, he/she shall be given a second opportunity to participate in the next available training course. Any officer requesting a third opportunity must receive authorization from the Chief Adult Probation/Parole Officer. Failure to requalify will result in the temporary suspension of authorization to carry a firearm. When an officer fails to requalify, then he/she must attend the initial firearms academy.

*Failure to Qualify By New Employee:* An officer hired after the adoption of this policy statement and fails to qualify/requalify as set forth in this policy statement, will be offered additional training. Failure to qualify thereafter will result in a departmental inquiry as to the reasons an officer failed to qualify. A recommendation will be made to the court concerning the employment status of the officer.

*Independent Firearms Practice:* Officers authorized to carry a firearm may practice with their issued firearm on the employee's own time. The practice must occur only at a firing range, public or private. The department will only issue 200 rounds of practice ammunition to an officer attending the initial firearms training academy. The officer must purchase all other practice ammunition.

*Training Ammunition:* The department shall issue the appropriate number of rounds required for initial qualification and requalification. Approved training ammunition is new, factory-loaded, 124 grain, 9mm rounds. The department will only issue ammunition to the officer for two attempts at qualification. Any other authorized attempts to qualify will require the officer to purchase the ammunition approved by the department.

*Familiarization Training:* All adult probation/parole officers will be required to complete a firearms familiarization course, when available.

### **Authorized Equipment**

*Authorized Firearm:* The department shall issue a Glock Model 26 (9 mm) pistol to each officer authorized to carry a firearm. Personal firearms are prohibited.

*Authorized Duty Ammunition:* The department shall issue thirty (30) rounds of duty ammunition, which is new, factory-loaded, 124 grain hydra-shok, jacketed hollow point. Any other ammunition is prohibited.

*Holsters:* The department shall issue a DeSantis Thumb Break Scabbard for each officer authorized to carry a firearm. All other holsters are prohibited. The holster shall be worn on the officer's duty belt, on the officer's strong side. Cross-draw positioning of a firearm is prohibited.

*Magazines and Extensions:* Each weapon-carrying officer will be issued two additional ten round magazines fitted with grip extensions.

*Double Magazine Pouches:* Each weapon-carrying officer will be issued a nylon double magazine pouch.

*Modifications to Equipment:* All equipment issued by the department is standard and under no circumstances will any modifications be permitted. Officers altering or modifying their equipment will be subject to disciplinary action, including suspension of authorization to carry a firearm.

**Cleaning and Maintenance of Firearms**

*Cleaning of Firearms:* Weapon-carrying officers are responsible for the cleaning and lubrication of their issued firearm after each use, whenever the handgun has been subjected to moisture or dirt and every three months. Cleaning kits will be available in the department and the officer must keep a record of when the handgun was cleaned. Since the department has no designated areas for cleaning, officers will be expected to clean their firearm at their desk or at home. Failure to maintain proper maintenance and cleaning of the firearm may result in the temporary suspension of authorization to carry.

*Safety Considerations:* Before cleaning your firearm, make absolutely sure that it is unloaded. All ammunition should be stored away from the cleaning area, with the gun's action open during the cleaning process.

*Damaged Firearms:* See Page 14 of this policy statement.

*Inspection:* The department shall forward all firearms to a certified Glock armorer for inspection, when necessary.

**Firearm Authorization Request**

I, \_\_\_\_\_, an adult probation/parole officer for the Carbon County Adult Probation/Parole Department, a division of the Court of Common Pleas, Fifty-Sixth Judicial District, do hereby request authorization to carry a firearm in the performance of my duties.

In making the aforementioned request, I acknowledge and certify the following:

1. I am a tenured employee and not on a probationary status.
2. I am not pending any disciplinary action nor am I involved in or have knowledge of any departmental, criminal or civil investigation or litigation against me.
3. I do not have a problem with drugs or alcohol. I am not presently using any drugs, except as authorized by a medical physician. I have verified with my physician that the medication prescribed will not have any effect on my judgment or impair my ability to carry a firearm in the performance of my duties.
4. I have completed psychological testing and have been approved mentally sound by a licensed psychologist to carry a firearm.
5. I am medically and physically sound to carry out my assigned duties as a probation/parole officer.
6. I have completed classroom instruction on firearms and have successfully passed a written examination (County Probation/Parole Officers' Firearm Education and Training Commission).
7. I have completed range instruction and have qualified in the practical phase of shooting (County Probation/Parole Officers' Firearm Education and Training Commission).
8. I will only use my firearm for defensive purposes only, where retreat is not possible and serious injury or death is imminent.
9. I have successfully completed training in chemical agents and impact weapons and have received certification.
10. I have successfully completed training in control tactics, defensive tactics and Use of Force Instruction and have received certification.

I hereby affirm that the aforementioned information is true. Also, I understand that the falsification of any of the aforementioned information shall result in appropriate disciplinary action.

\_\_\_\_\_  
Signature Adult Probation/Parole Officer      Date

**Firearm Certification**

Officer's Name: \_\_\_\_\_

1. Successful completion of criminal background investigation.  Yes  No
2. Successful completion of psychological evaluation.  Yes  No
3. Successful completion of basic orientation academy.  Yes  No
4. Successful completion of first aid and CPR training.  Yes  No
5. Successful completion of defensive tactics.  Yes  No
6. Successful completion of OC spray and expandable baton training.  Yes  No
7. Successful completion of Use of Force training.  Yes  No
8. Successful completion of County Probation and Parole Officers' Firearm and Education and Training Commission.  Yes  No
9. Ability to demonstrate proficiency, safety and knowledge in the proper use and handling of a firearm.  Yes  No

**AUTHORIZATION**

REQUEST DENIED:      REQUEST APPROVED:

Chief Adult Probation/Parole Officer:

I, Ronald S. Kokinda, Chief Adult Probation/Parole Officer hereby approve/deny the within request to carry a firearm in accordance with court and departmental policies and procedures.

Signature and Date: \_\_\_\_\_

**Request Not to Carry a Firearm**

I, \_\_\_\_\_, an adult probation/parole officer for the Carbon County Adult Probation/Parole Department, a division of the Court of Common Pleas, Fifty-Sixth Judicial District, composed of Carbon County, do hereby exercise my option not to carry a firearm in the performance of my duties, at this time.

I acknowledge that if circumstances do change, that I may request authorization to carry a firearm during the performance of my official duties.

In making the aforementioned request, I acknowledge and certify the following:

1. I am a tenured employee and not on a probationary status.
2. I am not pending any disciplinary action nor am I involved in or have knowledge of any departmental, criminal or civil investigation or litigation against me.
3. I have been offered the opportunity to attend the Basic Firearms' Academy and to carry a firearm during the performance of my official duties, but declined.
4. I have been hired prior to the implementation of the Carbon County Adult Probation/Parole Department's firearm program and am exercising my option not to carry a firearm.



**Rule 1308. Compulsory Arbitration: Appeals.**

For the purpose of filing an appeal from the award of arbitrators, the compensation of the arbitrators shall be deemed to be Three Hundred (\$300.00) Dollars. The Prothonotary shall then enter the case in the Pre-trial Docket upon the filing by any party in interest a certification of readiness, pursuant to F.C.R. 212.

[Pa.B. Doc. No. 01-586. Filed for public inspection April 6, 2001, 9:00 a.m.]

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**NORTHAMPTON COUNTY**
**Administrative Order 2001-2—A.R.D./D.U.I. Program Fee; Misc. 7-2001**
**Amended Order of Court**

*And Now*, this 17th day of March, 2001, the fee for all ARD/DUI cases is fixed at \$1375.00.

The Clerk of Court is ordered to assess and collect these fees and disburse them as follows: Two Hundred and Sixty-seven (\$267.00) Dollars for Court costs, One Hundred and Seventy-five (\$175.00) Dollars for the Alcohol Highway Safety Program, Forty (\$40.00) Dollars for the CRN evaluation, Eight Hundred and Ninety-three (\$893.00) Dollars for the superintending fee to be placed in Account No. 110-4005.

This order shall be effective with respect to all ARD/DUI participants sentenced on or after March 1, 2001.

This order replaces Administrative Order #1994-10.

*By the Court*

ROBERT A. FREEDBERG,  
*President Judge*

[Pa.B. Doc. No. 01-587. Filed for public inspection April 6, 2001, 9:00 a.m.]

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**SCHUYLKILL COUNTY**
**Amendments to Orphans' Court Rules**
**Order of Court**

*And Now*, this 23rd day of March, 2001, at 9:00 a.m., the Court hereby approves and adopts Schuylkill County Orphans' Court Rule 2.4D and hereby amends Schuylkill County Orphans' Court Rules 7.1B; 8.2A; and 8.7A. The rules are adopted and amended for use in the Court of Common Pleas of Schuylkill County, Pennsylvania (21st Judicial District) and shall be effective immediately upon publication in the *Pennsylvania Bulletin*.

It is further *Ordered* that said rules as they existed prior to the amendment are hereby repealed and annulled on the effective date of said rules as amended, but no right acquired thereunder shall be disturbed.

The Clerk of the Orphans' Court of Schuylkill County is Ordered and Directed to do the following:

1. File ten (10) certified copies of this Order and Rules with the Administrative Office of Pennsylvania Courts.

2. File two (2) certified copies of this Order and Rules with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, together with a diskette reflecting the text in the hard copy version.

3. File one (1) certified copy of this Order and Rules with the Pennsylvania Orphans' Court Rules Committee.

4. Forward one (1) copy to the Schuylkill County Bar Association for publication in the *Schuylkill Legal Record*.

5. Keep continuously available for public inspection copies of this Order and Rules.

*By the Court*

WILLIAM E. BALDWIN,  
*President Judge*

**Rule 2.4D. Praecepto to Transmit.**

All filings which require action by a judge or an assignment by the Court Administrator shall be accompanied by a praecipe to transmit on the Clerk's form "Praecepto to Transmit", and shall indicate the nature of the filing and what action is being sought to move the matter forward. The purpose of the praecipe is to advise the Court of what may be necessary for a disposition (i.e. when a hearing is required; when a matter is ripe for disposition on the record; matters that can be immediately addressed) and to expedite action on the filing. When a non-jury trial or a hearing involving witnesses is being requested, then the moving party shall list the witnesses to be presented and include an estimate as to the time required to present the case. In matters requiring a non-jury trial or hearing, opposing counsel is required to file a report in WRITING with the Clerk within 10 days of the moving party's filing of the praecipe to transmit, (1) listing the names of the witnesses they will use at trial or hearing; and (2) an estimate of time required to present their case. Failure to file the praecipe to transmit or to indicate what action is required from the Court may result in denial of the relief sought. Failure to list witnesses may result in the preclusion of their testimony.

**Rule 7.1B. Exceptions. Time for Filing. Brief.**

Except as otherwise provided, exceptions, with a brief in support thereof, shall be filed as of course with the Clerk within twenty (20) days from service of a copy of the adjudication, order, or decree complained of, and a true and correct copy of the exceptions and brief served upon all parties in interest, or their counsel of record, who shall have ten (10) days to respond. Proof of service as aforesaid shall be filed with the Clerk prior to any disposition of the exceptions.

**Rule 8.2A. Filing of Report. Place. Time.**

(a) The report of an Auditor or Master who has been appointed to assist the Court in the audit of an account or the disposition of an issue of fact in a matter shall be filed with the Clerk.

(b) The report of the Auditor or Master shall be filed within ninety (90) days after completion of the hearing(s) and shall be extended only upon application to the Court for good cause shown.

**Rule 8.7A. Report of Auditor or Master. Disposition. Procedure.**

(a) The report of an Auditor or Master shall be transmitted to the Court for Confirmation Nisi upon filing with the Clerk and shall become FINAL unless written exceptions thereto are filed within twenty (20) days after the date of filing the report.

(b) *Exceptions.* Any party in interest shall have the right to file exceptions to the report of an Auditor or Master within twenty (20) days after the filing and

confirmation Nisi thereof. Exceptions shall conform to the pertinent provisions of Chapter 7 of these rules.

[Pa.B. Doc. No. 01-588. Filed for public inspection April 6, 2001, 9:00 a.m.]

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### YORK COUNTY

#### Administrative Order Appointing and Approving Custody Mediators and Custody Mediation Supervisors; No. 2001-MI-00089

##### Administrative Order

*And Now, To Wit*, this 6th day of March, 2001, it is *Ordered* that the following mediators are appointed and approved as supervisors for individuals seeking to become custody mediators under Pa.R.Civ.P. 1940.4.

Joanne Betlem Kehr, Esq.  
Irene Burrill, L.S.W.  
Claudia DeArment, Esq.  
Heather Dorion, Esq.  
Patricia R. Marcus, Esq.  
E. John Mitton, Esq.  
Thomas D. O'Shea, Esq.  
Judy Shopp, Esq.  
Julie D. Swope, M.Ed.  
Rebecca N. Tortorici, Esq.  
Audrey E. Woloshin, Esq.

Should a mediator become a Practitioner Member of the Academy of Family Mediators, that individual should contact in writing the court to request that he or she be appointed and approved as a supervisor.

*It Is Further Ordered* that following individuals are appointed and approved as custody mediators under Pa.R.Civ.P. 1940.4.

Joseph Adams, Esq.  
Kevin M. Behr, M.S., N.C.C.  
John G. Bergdoll, Esq.  
Joanne Betlem Kehr, Esq.  
Irene Burrill, LSW  
Claudia DeArment, Esq.  
Susan A. Docktor, Esq.  
Douglas A. Gent, Esq.  
Patricia Marcus, Esq.  
Martin Miller, Esq.  
E. John Mitton, Esq.  
Polly Rost, Ph.D.  
Stanley E. Schneider, Ed.D.  
Julie D. Swope, M.Ed.  
Rebecca N. Tortorici, Esq.  
Audrey E. Woloshin, Esq.

Any individual approved as a mediator or any mediator approved as a custody mediation supervisor shall remain in compliance with any regulations of the Commonwealth of Pennsylvania and shall mediate only custody cases in compliance with procedures and duties set forth under Pa.R.Civ.P. 1940.1—1940.8.

*It Is Further Ordered*, that in accordance with Pa.R.Civ.P. 239, the District Court Administrator shall:

(a) File seven copies hereof with the Administrative Office of Pennsylvania Courts;

(b) Distribute two certified copies hereof to the Legislative Reference Bureau for Publication in the *Pennsylvania Bulletin*;

(c) File one certified copy hereof with the Domestic Relations Procedural Rules Committee;

(d) Cause a copy hereof to be published in the York Legal Record at the expense of the County of York; and

(e) Supervise the distribution hereof to all Judges.

*By the Court*

JOHN H. CHRONISTER,  
*President Judge*

[Pa.B. Doc. No. 01-589. Filed for public inspection April 6, 2001, 9:00 a.m.]

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## SUPREME COURT

#### Appointment to Judicial Conduct Board; No. 267 Supreme Court Rules; Doc. No. 1

##### Order

*Per Curiam*:

*And Now*, this 20th day of March, 2001, The Honorable John L. Musmanno, Allegheny County, is hereby appointed as a member of the Judicial Conduct Board for a term of four years.

[Pa.B. Doc. No. 01-590. Filed for public inspection April 6, 2001, 9:00 a.m.]